REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STERLING TOBACCO CORPORATION,
Petitioner,

- versus -

C.T.A. Case No. 4618

12/7/93

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - x

D E C I S I O N

The facts and antecedents of the case at bar are not in dispute.

Petitioner is a duly registered domestic corporation engaged in the manufacture and sale of cigar and cigarette products.

A letter, dated April 26, 1991, was received by petitioner on April 29, 1991 notifying it of a proposed assessment for deficiency excise tax in the total amount of P4,282,624.75, on the removal of cigarettes for the period starting October 8, 1990 to January 22, 1991. (Annex "A"). The computation is shown hereunder:

Total AVT (Basic)	P35,294,509.00
Less: AVT Paid under BIR Ruling No. 473-88	32,060,644.48
Deficiency AVT	P 3,233,864.48
Add: Penalties:	
25% Surcharge (Sec. 248(c)(3) NIRC)	808,466.13
20% Interest (P4,042,330.65 x 107/360 days x 20%)	240,294.10
Total Amount Due	P 4,282,624.75

Pursuant to Section 229 of the Tax Code, the parties met in a formal conference on May 6, 1991 whereby petitioner registered its protest to the foregoing assessment.

A protest letter, dated May 14, 1991, was subsequently filed by petitioner's counsel with the BIR Excise Tax Service on even date, with a request that the proposed assessment be withdrawn and cancelled (Annex "B").

In a letter, dated May 27, 1991, and received by petitioner on May 31, 1991, respondent denied petitioner's protest and request for cancellation and withdrawal of the disputed assessment stating that said decision is final, and at the same time requested payment of the revised amount of P4,563,342.16, including updated interest, within (10) days from receipt thereof (Annex "C").

Petitioner, in a letter, dated June 6, 1991, and received by respondent on June 7, 1991, requested for a reconsideration of respondent's denial of its protest and request for cancellation and withdrawal of the disputed assessment (Annex "D").

While awaiting respondent's reply to its request for reconsideration, petitioner filed with this Court the instant petition for review on June 19, 1991 with the prayer that aforementioned deficiency tax assessment be cancelled and withdrawn (pp. 1-7, C.T.A. Records).

Respondent, in a letter, dated June 21, 1991, and received by petitioner on June 25, 1991, reaffirmed its denial of petitioner's protest and request for cancellation and withdrawal of the disputed assessment declaring again that this decision is final and reiterating its demand for payment of the deficiency excise tax of P4,563,342.16, inclusive of increments, within ten (10) days from receipt of the said letter (Annex "E").

On July 17, 1991, petitioner paid under protest the deficiency ad valorem tax assessment in the total amount of P4,563,342.16 as evidenced by the following:

ANNEX	P.O./T.C.C.	OR/TDM	DATE	AMOUNT
H,I	C-11315537	CBP No. B23292625	07-19-91	P 661,713.16
L,K	BOC 006280	TDM SN 000089	07-17-91	1,115,835.00
J,M	BOC 006336	TDM SN 000091	07-17-91	1,372,621.00
N,O	BOC 006292	TDM SN 000090	07-17-91	1,413,173.00
		TOTAL		P4,563,342.16

On July 24, 1991, petitioner filed with the Appellate Division of the Bureau of Internal Revenue its request for refund/tax credit in the amount of P4,563,342.16, representing the alleged deficiency ad valorem tax it paid under protest (Annex "P").

An Amended Petition for Review was likewise filed by petitioner on July 24, 1991 with the prayer that the disputed assessment be cancelled and withdrawn and that respondent be ordered to grant the petitioner's claim for tax credit/refund of its payment under protest of the alleged deficiency ad valorem tax amounting to P4,563,342.16 (pp. 20-29, C.T.A. Records).

The issue addressed to this Court for resolution is whether or not petitioner is entitled to the refund of P4,563,342.16, representing the disputed deficiency excise tax assessment for the period October 8, 1990 to January 22, 1991 which petitioner paid under protest.

Petitioner's entitlement to the refund claimed hinges to a great extent on the determination of the validity of the deficiency excise tax assessment issued by respondent.

The subject deficiency excise tax assessment resulted out of petitioner's use of the computation mandated by B.I.R. Ruling No. 473-88, dated October 4, 1988, as basis for computing the 15% ad valorem tax due on its removal of cigarettes for the period October 8, 1990 to January 22, 1991. The correct computation, pursuant to said ruling, is illustrated by way of example as follows:

P44.00 x 1/11	=	P4.00	VAT
P44.00 - P4.00	=	P40.00	Price without VAT
P40.00 x 15%	=	P6.00	Ad valorem tax

The above computation which shows that VAT is excluded from the tax base in computing for the 15% excise tax due is allegedly in accordance with Section 127(b) of the Tax Code, as amended by Executive Order No. 273, to wit:

> "SEC. 127. Payment of excise taxes on domestic products. -
>
> xxx xxx xxx
>
> (b) Determination of gross selling price of goods subject to ad valorem tax. - Unless otherwise provided, the price, <u>excluding the value-added tax</u>, at which the goods are sold at wholesale in the place of production or through their sales agents to the public shall constitute the gross selling price. xxx" (Underscoring supplied)
>
> xxx xxx xxx

Thereafter, respondent issued BIR Ruling No. 017-91 on February 11, 1991 revoking BIR Ruling No. 473-88. It included the value-added tax to the gross selling price in determining the tax base for computing the 15% ad valorem tax on native cigarettes. Cited as basis by respondent is Section 142 of the Tax Code, as amended by E.O. No. 273 quoted below:

> "SEC. 142. Cigar and cigarettes. -
>
> xxx xxx xxx
>
> For purposes of this section, "manufacturer's or importer's registered wholesale price" shall include the ad valorem tax imposed in paragraphs (a), (b), (c) or (d) hereof and the amount intended to cover the value added tax imposed under Title IV of this Code. (Underscoring supplied)

Respondent sought to apply the revocation retroactive to petitioner's removals of cigarettes for the period starting from October 8, 1990 to January 22, 1991 on the ground that petitioner allegedly acted in bad faith, which is an exception to the rule on non-retroactivity of B.I.R. rulings. Section 246 of the Tax Code provides as follows:

> "SEC. 246. Non-retroactivity of rulings.- Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (b) where the taxpayer acted in bad faith." (Underscoring supplied)

To be noted is the difference in the taxable base on which the excise tax is to apply as mandated by the two incompatible BIR rulings. The deficiency excise tax assessment can be attributed to the said difference.

There is no question that the correct computation of the excise tax on cigarettes in the case at bar is the one provided in Section 142 of the Tax Code and BIR Ruling No. 017-91 dated February 11, 1991 and not the computation provided in Section 127(b) of the Tax Code and BIR Ruling No. 473-88 dated October 4, 1988. In fact, upon knowledge and information of the existence and effectivity of BIR Ruling No. 017-91, Petitioner immediately implemented the method of computation mandated therein by including back the VAT in computing for the tax base for purposes of the 15% ad valorem tax.

Well-entrenched also is the rule that "rulings and circulars, rules and regulations, promulgated by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to taxpayers, except in the three instances enumerated in Section 246 of the NIRC.". (PLDT vs. CIR, CTA Case No. 4056, December 28, 1988 citing ABS-CBN Broadcasting Corporation vs. CTA and CIR, 108 SCRA 142 and CIR vs. Buroughs, Ltd. and CTA, 142 SCRA 324.) Without doubt, petitioner would be prejudiced by a retroactive application of the revocation as it would be assessed deficiency excise tax.

What is left to be answered is whether petitioner acted in bad faith in using BIR Ruling No. 473-88 in computing its excise tax liabilities for the period from October 8, 1990 to January 22, 1991 to warrant a retroactive application of BIR Ruling No. 017-91.

Respondent's allegation of bad faith is anchored on the following:

> (1) BIR Ruling No. 473-88 dated October 4, 1988 was allegedly never published or circularized and even Insular-Yebana Tobacco Corporation which requested said ruling did not implement the same and neither did the big cigarette factories availed of it.
>
> (2) Petitioner allegedly, in violation of Section 127(c) of the NIRC, failed to submit its amended Manufacturer's Declaration before shifting its manner of computing the ad valorem tax due on the cigarettes it produced and did not secure the approval of the BIR unlike other cigarette manufacturers which made official consultation with the BIR and were duly informed.

On the other hand, petitioner's claim that it acted in good faith is based on the following:

(1) BIR Ruling No. 473-88 was published on February 20, 1989 in Business World, a newspaper of general circulation in the Philippines and until BIR Ruling 017-91 was never qualified nor disclaimed by the Bureau of Internal Revenue such that petitioner's reliance thereon for the period under review cannot be faulted.

(2) The aforesaid BIR ruling was clear and categorical, leaving no room for any other interpretation that petitioner did not see the need to consult BIR before implementing the same.

(3) Following the procedure it adopted through the years, petitioner found no practical reason to file an amended Manufacturer's Declaration since it is only in instances where the gross selling price is adjusted that petitioner files one. In the instant case, it is only the excise tax due that was changed.

(4) After the subsequent revocation of BIR Ruling No. 473-88 by BIR Ruling No. 017-91, petitioner immediately reverted to the previous method by which it computes for the excise tax due, which includes the VAT.

Bad faith does not simply connote bad judgment or negligence, it imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It partakes of the nature of fraud. (Board of Liquidators vs. Kalaw. 20 SCRA 1007). It is a breach of a known duty through some motive of interest or ill will. (Lopez vs. Pan American Airways, 16 SCRA 438.). Being a state of mind, it is indicated by acts and circumstances and is provable by circumstantial evidence. (Laig vs. Court of Appeals, 82 SCRA 305.)

Going over the records of the case, We find no convincing evidence that petitioner's implementation of the computation mandated by BIR Ruling No. 473-88 was ill-motivated or attended with dishonest purpose that partakes of the nature of fraud. We observed that BIR Ruling No. 473-88 was dated October 4, 1988 and published on February 20, 1989 but petitioner used the computation therein only for the period starting October 8, 1990 to January 22, 1991. In the intervening period after October 4, 1988 but prior to October 8, 1990, petitioner used the previous computation but did not file a claim for refund of the excise tax it overpaid. Even with the publication of BIR Ruling No. 473-88 in a newspaper of general circulation on February 20, 1989, respondent did not disclaim or bother to correct it. Only upon the issuance of BIR Ruling No. 017-91 dated February 11, 1991 that the aforesaid ruling was revoked. Upon knowledge thereof, petitioner immediately reverted to the computation mandated by BIR Ruling 017-91.

It is an established doctrine that "a taxpayer cannot be convicted for taking the tax authorities at their word." (International Business Machines vs. U.S., 343 F 2d [1965] p. 923.) To impute bad faith and slap deficiency assessment on petitioner for merely relying on respondent's own assurance in the form of a ruling that it is the correct computation is reprehensible for it is inconsistent with justice and fair play.

While it is true that the Government is never estopped from collecting taxes legally due it because of mistakes or errors on the part of its agents, this stand qualified by Section 246 of the Tax Code in the sense that rulings issued by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to taxpayers, except in the three instances enumerated therein.

The publication of BIR Ruling No. 473-88 in a newspaper of general circulation serves as sufficient notice to all which are similarly situated and petitioner's availment thereof cannot be taken against it. The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes or altogether avoid them, by means which the law permits, cannot be doubted.

(Delpher Trades Corp. vs. Intermediate Appellate Court, 157 SCRA 349.)

As to the contention that petitioner's failure to submit the amended Manufacturer's Declaration for respondent's approval is tantamount to bad faith, We find said conclusion untenable in the light of the explanation given by petitioner. The evidence on hand do not warrant such inference.

Premises considered, We resolve that the deficiency excise tax assessment issued by respondent against petitioner in the amount P4,563,342.16, inclusive of increments, is without legal basis because of the prohibition against the retroactive application of the revocation of BIR rulings in the absence of bad faith on the part of the petitioner. The aforementioned deficiency excise tax assessment is hereby cancelled and withdrawn.

Inasmuch as petitioner has already paid under protest the foregoing deficiency excise tax assessment of P4,563,342.16, as clearly established by the evidence submitted, the same should be refunded to petitioner.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund or issue a tax credit certificate to petitioner in the amount of P4,563,342.16.

SO ORDERED.

Quezon City, Metro Manila, December 7, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals