REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EASTERN TELECOMMUNICATIONS PHILIPPINES, INC. AND TELECOMMUNICATIONS TECHNOLOGIES PHILIPPINES, INC.,
Petitioners,

- versus -

C.T.A. CASE NO. 6026

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 14 2002

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P2,500,000.00 allegedly representing Documentary Stamp Tax (DST) paid on March 10, 1998.

Petitioners Eastern Telecommunications Philippines, Inc. (ETPI) and Telecommunications Technologies Philippines, Inc. (Teletech) are corporations duly organized and existing by virtue of legislative franchises under Republic Act Nos. 808 and 7617, respectively. Teletech is a wholly-owned subsidiary of ETPI.

The claim for refund arose from the payment by Petitioner ETPI of DST on March 10, 1998 corresponding to the original issuance by Petitioner Teletech of its 250,000,000 common shares with a par value of P1.00 per share or an aggregate par value of P250,000,000.00 in favor of ETPI.

The antecedent facts are stated as follows:

254

On April 6, 1995, Petitioner Teletech increased its authorized capital stock from Two Hundred Million Pesos (P200,000,000.00) to Four Hundred Fifty Million Pesos (P450,000,000.00). Out of the increase in capitalization, ETPI subscribed to 250,000,000 shares of common stock with an aggregate par value of Two Hundred Fifty Million Pesos (P250,000,000.00). The corresponding DST was allegedly paid by ETPI in the amount of Two Million Five Hundred Thousand Pesos (P2,500,000.00) on March 10, 1998 to the BIR through Union Bank of the Philippines (Exhibit B).

Petitioners ETPI and Teletech were allegedly exempt from the payment of DST pursuant to their respective legislative franchises and confirmed in BIR Ruling Nos. DA-276-98 and DA-277-98 both dated June 26, 1998. Thus, a claim for refund was filed on March 7, 2000 with the BIR Revenue District Office No. 49, Revenue Region No. 8, Makati City. (Exhibit C)

To toll the running of the two-year prescriptive period, Petitioners filed their Petition for Review with this Court and sought for the refund of the DST paid in the amount of P2,500,000.00. On April 3, 2000, Respondent filed a Motion to Dismiss on the ground that the petition allegedly "failed to show on its face compliance with the condition *sine qua non* enunciated in Section 230 of the 1993 NIRC (now 229) before a Petition for Review may be filed before the Honorable Court of Tax Appeals" (p. 27, CTA Records). Petitioners, thus, filed on May 9, 2000 an "Opposition with Motion to Admit Amended Petition for Review." Consequently, the Court issued a Resolution dated June 21, 2000 granting admission of the Amended Petition for Review and denying

255

Respondent's Motion to Dismiss. Respondent was likewise ordered to file his Answer to Petitioners' Amended Petition for Review.

In the Amended Petition for Review, Petitioners anchored their claim for refund on the following propositions, to wit:

1. Both ETPI and Teletech are franchise grantees and existing by virtue of their legislative franchises under Republic Act Nos. 808 and 7617.

2. The BIR confirmed ETPI's and Teletech's exemption under their legislative franchises in BIR Ruling Nos. DA-276-98 and DA-277-98 both dated June 26, 1998. Pertinent portions of which are quoted hereunder:

BIR Ruling No. DA-276-98

"In reply, please be informed that the phrase "in lieu of all taxes" under Sec. 8 of R.A. No. 808, as amended by R.A. No. 5002, declares in effect that ETPI, after paying a franchise tax equivalent to 5% of all gross receipts of all business covered by its franchise, may not be required to pay the documentary stamp tax (DST) imposed under Title VII of the Tax Code of 1997, on various documents, papers and instruments executed by it which are necesary in the conduct of its business coverd by the franchise."

BIR Ruling No. DA-277-98

"In reply, please be informed that the phrase "in lieu of all taxes" under Sec. 10 of R.A. No. 7617 declares in effect that Teletech after paying a franchise tax equivalent to 3% of all gross receipts of the business covered by its franchise may not be required to pay the documentary stamp tax (DST) imposed under Title VII of the Tax Code of 1997, on various documents, papers and instruments executed by it, which are necessary in the conduct of its business covered by the franchise."

3. Since ETPI and Teletech are both exempt from the payment of DST under their respective legislative franchises, Section 173 of the Tax Code does not apply and DST shall not be imposed on the issuance of stock dividends by Teletech to ETPI.

256

In his Answer to the Amended Petition for Review, Respondent raised the following Special and Affirmative Defenses, to wit:

"5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau.

6. There is no showing in the Amended Petition that the tax sought to be refunded was actually paid.

7. Granting that the tax sought to be refunded has actually been paid, the claim is already barred by prescription.

7.1. When petitioners amended their petition on May 9, 2000, the amended pleading superseded the original pleading which is deemed withdrawn and no longer constitutes part of the record. However, the filing of the amended pleading does not retroact to the date of the filing of the original. Hence, the statute of limitations runs until the filing of the amendment (*Ruymann, et al. vs. Director of Lands 34 Phil 429*).

7.2 Petitioners allegedly paid the documentary stamp tax on March 10, 1998. However, the amended petition was filed only on May 9, 2000 which is already beyond the two (2) year prescriptive period to claim the refund.

8. Claims for tax refund/credit are construed strictly against the claimants thereof as they are in the nature of exemption from payment of tax.

9. In an action for tax credit/refund, the burden is upon the taxpayer to establish its right thereto, and failure to sustain this burden is fatal to said claim (*Surigao Consolidated Mining Co. vs. CIR 9 SCRA 728-734 [1963*].

10. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 both of the 1997 Tax Code."

Petitioners offered in evidence BIR Form Nos. 2000 and 2000-A, Documentary Stamp Tax Declaration and Corporate Stock Documentary Stamp Tax (DST) Declaration

257

for Existing Corporation, respectively, to prove that the DST sought to be refunded was actually paid. (Exhibits B ad B-3).

The written claim for refund dated March 3, 2000 which was filed on March 7, 2000 with the BIR Revenue District Office No. 49, Revenue Region No. 8, Makati City was likewise offered to proved that Petitioners filed an administrative claim for refund.

The following issues have been stipulated by the parties in their Joint Stipulation of Facts and Issues, to wit:

> "1. Whether or not Petitioners are exempt from DST and thus entitled to a refund of the DST in the amount of Two Million Five Hundred Thousand Pesos (P2,500,000.00).
>
> 2. Whether or not Petitioners' claim for refund of the DST was filed within the two (2) year prescriptive period as required under Section 229 of the National Internal Revenue Code, as amended."

We shall first discuss the issue on prescription.

Records show that the DST subject of Petitioners' claim for refund was paid on March 10, 1998.(Exhibit B) The corresponding administrative claim for refund was filed with the BIR Revenue District Office on March 7, 2000 and the judicial claim for refund was filed with this Court on March 10, 2000. Apparently, the two-year prescriptive period prescribed in Section 229 of the National Internal Revenue Code of 1997 has been complied with.

However, on May 9, 2000, Petitioners filed an Amended Petition for Review. Respondent contended that the claim for refund is already barred by prescription. He alleged that the amended pleading superseded the original pleading which is deemed withdrawn and is no longer considered part of the record. He further invoked the case of

Ruymann vs. Director of Lands 34 Phil. 429, in which the High Court ruled that the filing of an amended pleading does not retroact to the date of the filing of the original.

We do not agree with Respondent's contentions. In the Ruymann case, the High Court held that "an amendment to a complaint which introduces a new or different cause of action, making a new or different demand, is equivalent to a fresh suit upon a new cause of action, and the statute of limitations continues until the amendment is filed."

In the instant case, however, the original Petition for Review was amended to include the fact that a claim for refund has been duly filed with the Respondent. There is, however, no introduction of a new or different cause of action. The Amended Petition for Review merely provided for a more accurate statement of the facts already alleged in the original Petition for Review. In the case of **Verzosa vs. Court of Appeals, 299 SCRA 100**, the High Tribunal held "It follows that when the amended complaint does not introduce new issues, causes of action, or demands, the suit is deemed to have commenced on the date the original complaint was filed, not on the date of the filing of the amended complaint. In other words, for demands already included in the original complaint, the suit is deemed to have commenced upon the filing of such original complaint. In short, for purposes of determining the commencement of a suit, the original complaint is deemed abandoned and superseded by the amended complaint only if the amended complaint introduces a new or different cause of action or demand."

Prescinding from the foregoing, since the Amended Petition for Review did not introduce a new or different cause of action as it merely included the fact of filing an administrative claim for refund and supplemented the facts originally alleged, the filing

259

of the Amended Petition for Review relates back to the date of filing the Original Petition for Review. Hence, Petitioners' claim is not yet barred by prescription for having filed their claim for refund, both administrative and judicial, within the two-year prescriptive period.

We shall now proceed to discuss the merits of the case.

Quoted hereunder are the pertinent provisions of the 1997 National Internal Revenue Code, viz:

> "**SEC. 175**. *Stamp Tax on Original Issue of Shares of Stock*. – On every original issue, whether on organization, reorganization or for any lawful purpose, of shares of stock by an association, company or corporation, there shall be collected a documentary stamp tax of Two Pesos (P2.00) on each Two Hundred Pesos (P200.00), or fractional part thereof, of the par value, of such shares of stock; *Provided*, *That* in the case of the original issue of shares of stock without par value, the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration for the issuance of such shares of stock: *Provided, further*, That in the case of stock dividends, on the actual value represented by each share."
>
> **SEC. 173**. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers*. – Upon documents, instruments, loan agreements and papers, and upon acceptances assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: *Provided, That* whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax."

As can be deduced from the foregoing provisions of law, the original issuance by Petitioner Teletech of its 250,000,000 common shares of stock with an aggregate par

260

value of Two Hundred Fifty Million Pesos (P250,000,000.00) in favor of Petitioner ETPI, is subject to the DST.

However, Petitioners contend that since they are both exempt from the payment of the DST under their respective legislative franchises, the proviso in Section 173 of the National Internal Revenue Code of 1997, which provides that "the other party thereto who is not exempt shall be the one directly liable for the tax," shall not apply.

Records show that Teletech was granted a legislative franchise by virtue of R.A. No. 7617. ETPI's legislative franchise under R.A. No. 808 was originally granted to Eastern Extension Australasia and China Telegraph Company, Ltd., however, pursuant to the authority granted under Presidential Decree No. 489 dated June 24, 1974, the said franchise was transferred to ETPI.

The tax provisions of the legislative franchises of Teletech and ETPI are quoted hereunder:

R.A. 7617 - TELETECH

> "**SEC. 10**. *Tax Provisions.* – The grantee shall be liable to pay the same taxes on their real estate, buildings and personal property exclusive of this franchise, as other persons or telecommunication entities are now or hereafter may be required by law to pay. In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, three per centum (3%) of the gross receipts of its regulated telecommunication services transacted under this franchise, and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof; *Provided That* the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Oder No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

R.A. 808 - ETPI

261

SEC. 8. In consideration of the franchise and rights hereby granted, the Grantee shall pay to the Republic of the Philippines during the life of this franchise a tax of five per cent of the gross earnings derived by the Grantee from its operation under this franchise and which originate in the Philippines. Such tax shall be due and payable annually, within ten (10) days after the audit and approval of the accounts as prescribed in section seven of this Act, and shall be in lieu of all taxes of any kind, nature or description, levied, established or collected by any municipal, provincial or Republic authority except that the Grantee shall pay the tax on its real property in conformity with existing law."

Under the foregoing tax provisions, Teletech and ETPI are liable to pay franchise taxes of 3% and 5% respectively, of their gross receipts or earnings from the operation of their respective franchises, in lieu of all taxes. Teletech's franchise, however, provides that the "grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72" ETPI's franchise, on the other hand, provides that "the Grantee shall pay the tax on its real property in conformity with existing law."

It can be inferred, therefore, that Teletech and ETPI are both exempt from the payment of DST which is governed under Title VII of the National Internal Revenue Code following the principle *expressio unius est exclusio alterius*, the express mention of one thing implies the exclusion of another thing.

The original issuance by Teletech of its common shares to ETPI is definitely subject to the DST. However, since Teletech is not liable to pay taxes other than its franchise tax of 3% and income taxes under Title II of the National Internal Revenue Code, it is thus exempt from the payment of the DST on the original issuance of shares under Section 175 of the said Code. As such, the other party to the transaction shall be

262

held liable for its payment. Considering that the other party, ETPI, is likewise exempt from the payment of the DST under its legislative franchise, the proviso under Section 173 of the National Internal Revenue Code will not apply in this case.

However, the exemption from other taxes granted under the *"in lieu of"* provision of the respective franchises of ETPI and Teletech shall apply only when the franchise tax has been paid, that is, 5% for ETPI and 3% for Teletech.

While payment of the DST in the amount of P2,500,000.00 (Exhibit B) has been proven by Petitioner ETPI, yet the claim for refund cannot be granted on the ground that Petitioners ETPI and Teletech failed to prove that they have paid their respective franchise taxes.

The Court has defined the phrase *"in lieu of"* in the case of PLDT vs. CIR, CTA Case No. 5106 promulgated on December 18, 1995, in this wise:

> "The phrase *"in lieu of"* means instead of, in place of, or in substitution for (Black vs. Barnes, 46P.2d 625,626). x x x the "in lieu of" implies the existence of something for which a substitution is being made."

It can thus be inferred therefrom, that the exemption shall apply only upon fulfillment of a condition, that of payment of the franchise tax.

Moreover, BIR Ruling Nos. DA-276-98 and DA-277-98 which were relied upon by Petitioner and presented as Exhibits M and N, declared that the phrase "in lieu of" shall apply only after payment of the franchise tax of 5% for ETPI and 3% for Teletech. Exemption from other taxes will only take effect after payment of their respective franchise taxes.

263

In fine, ETPI and Teletech may claim exemption from DST upon proof of payment of their respective franchises. Thus, failure by Petitioners ETPI and Teletech to prove that their respective franchise taxes have been paid is fatal to their claim.

WHEREFORE, in view of all the foregoing, the claim for refund by Petitioners ETPI and Teletech is hereby **DENIED** for lack of merit.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge

264