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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DRAVO PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3487

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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9/5/87

D E C I S I O N

In its letter dated January 19, 1982 to respondent Commissioner of Internal Revenue, petitioner Dravo Philippines, Inc., requested for the refund of the amount of P98,326.14, representing alleged erroneously paid 3% contractor's tax. And to be entitled to the judicial action for the recovery of said erroneously paid P98,326.14, petitioner filed the instant petition for review on July 7, 1982, subject matter of this proceeding.

The background facts, which are not disputed, are as follows:

Petitioner is a resident foreign corporation with offices (at the time of filing of petition) at 357 Buendia Avenue Extension, Makati, Metro Manila.

On September 10, 1979 petitioner entered into a project management services agreement with the Hydro-Resources Contractors Corporation in connection with the construction of the Magat Dam Project in Luzon. (Exhibits B, B-1-a, B-1-b, B-2 to B-6, inclusive.)

On July 21, 1980 petitioner filed for the second quarter ended June 30, 1988 its quarterly percentage tax return with respondent's Bureau declaring therein gross receipts amounting to P3,277,538.10 and paid the corresponding 3% contractor's tax due thereon in the amount of P98,326.14. (Exhibits D, D-1, C, C-1.)

On January 22, 1982 petitioner through its auditors filed with respondent's appellate division a claim for refund of said amount of P98,326.14, alleging that as a subcontractor, any amount received from a contractor does not form part of its taxable gross receipts.

Basis of the refund claim is an amendment by Section 25 of Presidential Decree No. 1457, effective June 11, 1978, which excluded from the term "gross receipts" under Section 205 of the applicable National Internal Revenue Code receipts of subcontractors. Thus:

> "x x x. Any portion of the total contract price which is paid to the subcontractor, shall be excluded from the taxable gross receipts of the subcontractor." (Section 205, 1977 N.I.R.C.)

Since no action was seasonably taken by respondent on petitioner's claim for refund, petitioner filed the instant petition for review on July 7, 1982.

As stated above, the contractor's tax in question was paid on July 21, 1980. (Exhibits D, D-1, C & C-1.) The written claim for refund (Exhibit E) was filed on January 22, 1982 (Exhibit E-1) and the petition for review was filed on July 7, 1982 (CTA records). It seems clear therefore that petitioner has complied with the provisions of Sections 292 and 295 of the applicable 1977 National Internal Revenue Code.

Thus, the only remaining issue as posed by respondent is whether petitioner is entitled to the refund of P98,326.14 as alleged erroneous payment of 3% contractor's tax for the second quarter ended June 30, 1980.

Petitioner argues that it is entitled to the refund of the amount of P98,326.14 as erroneous payment of the 3% contractor's tax. Argument advanced is that such payment was erroneous.

Reason: petitioner is a subcontractor. Under Section 25 of Presidential Decree No. 1457, amending the last paragraph of Section 205 of the then National Internal Revenue Code, quoted above, amounts received by a subcontractor from the principal contractor do not form part of the former's taxable gross receipts. Adverting to the terms of the law, it is quite apparent that petitioner's right to the refund is planted upon the condition that petitioner is a subcontractor.

As stated by respondent, in 1979 - September 10, 1979 (Exhibit B) - petitioner entered into a Project Management Services Agreement with Hydro-Resources Contractors Corporation for the construction of the Magat Dam in Luzon at an agreed compensation scheme (pages 47 and 48, BIR records). (Exhibits B, B-1-a, B-1-b, B-2, B-3, B-4, B-5, B-6; p. 148, CTA records.) The records show that the Hydro-Resources Contractors Corporation has a contract with the National Irrigation Administration, Republic of the Philippines, covering the construction of Phases and of the Magat River Multipurpose Project. (Exhibits B-3, B-3-a, p. 55, CTA records.) It appears that the Hydro-Resources Contractors Corporation needed such project management services in connection with its contract with the National Irrigation Administration for the construction of the Magat Dam Project in Luzon. (Exhibits B-1-c, B-3, B-3-a, B-6.)

It seems clear therefore that petitioner rendered such services as subcontractor to the Hydro-Resources Contractors Corporation, the principal contractor, as were needed for the accomplishment of the latter's contract with the National Irrigation Administration in connection with the Magat Dam Project. (Exhibits B-1-c, B-3, B-3-a, B-6.) As a matter of fact, this is admitted by respondent's examiner when she stated in her memorandum dated June 30, 1986 that "Taxpayer (petitioner herein), therefore being a subcontractor for construction management services in connection with the construction of the Magat Dam Project is not subject to the 3% contractor's tax, hence, the amount of P98,326.14 was erroneously paid and refundable." (Exh. 2, p. 68, BIR records.) And the evidence shows that no part of petitioner's receipts under its contract with the Hydro-Resources Contractors Corporation for such project management services as subcontractor were received from the National Irrigation Administration or the Republic of the Philippines. They were all paid by the Hydro-Resources Contractors Corporation as principal contractor. (Exhibits B-1-c, B-4, B-5, B-6, C-1.)

Respondent however argues that petitioner's activities or undertakings with the Hydro-Resources Contractors Corporation in connection with the construction of the Magat Dam Project as reflected in the Project Management Service Agreement fall under the definition of the term "independent contractor". And independent contractors are subject to the contractor's tax under Section 205 of the applicable National Internal Revenue Code.

Respondent misses the point. The applicable law says that the term "gross receipts" subject to the contractor's tax means all amounts received by the prime or principal contractor as the total contract price, undiminished by amount paid to the subcontractor under a subcontract arrangement. However, any portion of the total contract price which is paid to the subcontractor shall be excluded from the taxable gross receipts of the subcontractor. The statute speaks of the portion of the contract price paid to the subcontractor under a subcontract agreement as excluded from the taxable gross receipts of such subcontractor. Accordingly, for the exclusion to apply, it is enough that the gross receipts are those of a subcontractor and they form part of the portion of the total contract price of the prime or principal contractor paid to such subcontractor. That the subcontractor may be an independent contractor, to our mind, is therefore of no moment. It seems clear that the philosophy behind the exclusion is to minimize the effects of double taxation of the same gross receipts.

Here in the case at bar, the primary contract is between the National Irrigation Administration, Republic of the Philippines, and the Hydro-Resources Contractors Corporation. /There is no privity of contract between petitioner Dravo Philippines and the National Irrigation Administration of the Republic of the Philippines. /To accomplish its contract for the construction of the Magat Dam for the National Irrigation Administration, the primary contractor Hydro-Resources Contractors Corporation had contracted for the management services of the Dravo Philippines Corporation without making the latter co-primary contractor. Petitioner rendered such services as subcontractor to the principal contractor. And as stated above, no part of petitioner Dravo's receipts under said contract for such services as subcontractor was received from the Republic of the Philippines. They were paid by the principal contractor Hydro-Resources Contractors Corporation.

Respondent next contends that petitioner's payment of the 3% contractor's tax in the amount of P98,326.14 was assumed by the Hydro-Resources Contractors Corporation. In support thereof, respondent cites a portion of the agreement between the prime and principal contractor Hydro and petitioner Dravo whereby the former assumed to pay "all taxes, license fees, and all duties of any kind whatsoever in connection with the performance of the contract work imposed by the authorities of the Philippines." And in an investigation conducted by respondent's examiner, it was "disclosed that although the amount of P98,326.14 has been actually paid to the bureau (Bureau of Internal Revenue), it (petitioner) requested reimbursement of said amount from Hydro Resources Contractors Corporation as evidenced by their letter to said corporation dated Sept. 4, 1980 x x x. No evidence has been presented by subject taxpayer that said amount was not re-imbursed to them by Hydro Resources Contractors Corporation its principal and prime contractor. It is also noted x x x from the Schedule of Taxes and Licenses of said taxpayer that all taxes and licenses of the company has been assumed and paid by Hydro-Resources Contractors Corporation its principal and prime contractor." (Memorandum of the Revenue Examiner dated June 30, 1980, Exhibit "2", p. 66, BIR records.)

Respondent admits at least that petitioner Dravo paid the contractor's tax of P98,328.14 to the Bureau of Internal Revenue as a subcontractor although petitioner requested reimbursement of said amount from the principal and prime contractor the Hydro Resources Contractors Corporation. No evidence whatsoever was presented by respondent that the contractor's tax was in fact assumed by the Hydro Resources Contractors Corporation, or that petitioner, had been actually reimbursed by the former. But to our mind, the refundability of the contractor's tax in question erroneously paid by petitioner to the Government is not affected by the question of whether the primary and principal contractor did or did not reimburse petitioner.

Admittedly, petitioner Dravo paid the contractor's tax of P98,326.14 on its gross receipts of P3,277,538.10, but such gross receipts paid to petitioner as a subcontractor are excluded under Section 205 of the applicable National Internal Revenue Code from its taxable gross receipts as a subcontractor. Since the taxpayer who made the erroneous payment of the contractor's tax is petitioner, it is thus axiomatic that petitioner, being the real party in interest, should be the claimant thereof. *(See **Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corporation & the Court of Tax Appeals**, G.R. No. 66838, April 15, 1988.)* On the assumption that the Hydro-Resources Contractors Corporation reimbursed the contractor's tax of P98,3265.14, such reimbursement should be independent of the right of petitioner to request the refund of such tax it erroneously paid to the Government. The question as to who shall pay any given tax and who shall be entitled to the refund thereof in case it is erroneously paid are determined by law, the operation of which should not be affected by an agreement to which the Government is not a party.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a refund and/or tax credit to petitioner Dravo Philippines, Inc.,

in the amount of P98,326.14 representing erroneously paid contractor's tax for the quarter ended June 30, 1980.

SO ORDERED.

Quezon City, Metro Manila, September 15, 1989.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals