REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KAWASAKI HEAVY INDUSTRIES LTD. (Manila Office),
Petitioner,

- versus -

C.T.A. CASE NO. 4397

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

5/29/92

D E C I S I O N

This is a claim for refund of P226,711.73 in allegedly erroneously paid contractor's tax (now value-added tax) for the third and fourth quarters of 1987.

Petitioner is the Manila Representative Office of the Kawasaki Heavy Industries Ltd. of Japan. It was established in March, 1978 under authority of Securities and Exchange Commission under Certificate of Registration No. 804 and Board of Investment Registration Certificate of Authority No. 974, which both empower petitioner to:

> "a. Oversee the implementation of the Joint Venture Agreement between the Philippine Government (through NIDC) and Kawasaki dated January 27, 1977;

> b. Conduct and make surveys and studies of market, economics, and financial conditions in the Philippines; and
>
> c. Advise and render assistance to local distributors/indentors' and customers in the Philippines." (Securities and Exchange Commission Registration No. 804; CTA Records, p. 5).

On October 20, 1987, petitioner paid P116,798.25 as contractor's tax for the taxable quarter ending September 30, 1987 (Exhs. "E", "E-"1, "E-2", "F", "F-"1, and "G"); and on January 20, 1988, it paid P109,913.48 in contractor's tax covering the last quarter of 1987 (Exhs. "H", "H-1", "H-2", "I", "I-1", and "J-1").

On July 4, 1989, respondent issued BIR Ruling No. 25-000-00-136-89 (dated July 4, 1989 and addressed to the Philippine Shipyard and Engineering Corporation) which reads, in part, as follows:

> "xxx xxx xxx
>
> Based on the foregoing representations, you now request in effect a ruling on the following tax-related issues:
>
> xxx xxx xxx
>
> '5. Is the KHI Manila Office subject to the value-added tax (VAT)?
>
> If yes, what 'gross receipts' shall it report for VAT purposes? (Incidentally,

> PSEC, which pays technical fees directly to KHI Japan, is EPZA-registered, exempt from contractor's tax, and thus exempt from VAT under Sec. 103(u) of the TAx Code, as per BIR Ruling No. 0-00-354-8 dated November 9, 1987).
>
> Assuming that KHI Manila Office is subject to VAT, do the technical services sold to PSEC (an entity exempt from VAT by virtue of its exemption from contractor's tax under the EPZA law, a special law) qualify for zero rating?'
>
> xxx xxx xxx
>
> 3. KHI Manila Office is not subject to VAT since it is not engaged in any income-generating business activity in the Philippines. A person is subject to VAT if it renders service 'in the course of trade or business' (Sec. 99, Tax Code)." (Exhs. "K" and "K-1"; CTA Records, pp. 60 to 62) (Underscoring Our).

On account of the aforequoted BIR Ruling, petitioner, on October 9, 1989, filed with the Bureau of Internal Revenue, a claim for refund (dated October 6, 1989) of allegedly erroneously paid contractor's tax for the quarters ending September 30, 1987 and December 31, 1987 in the total amount of P226,711.73.

On October 9, 1989, as respondent had not yet acted on petitioner's claim, and in order to toll the running of the prescriptive period, petitioner filed the instant petition for review with the Court.

The sole issue in this case is whether or not petitioner is entitled to the refund of the amount of P226,711.73.

It is petitioner's contention that the allegedly "erroneously paid contractor's tax (now value-added tax) is refundable in accordance with BIR Ruling No. 25-000-00-136-89 dated July 4, 1989" ("Memorandum For Petitioner", p.3; CTA Record, p. 75). Accordingly, it argues that:

> "It has been held that decisions of administrative officers, like respondent herein, are not to be disturbed by the courts, except when the former have acted beyond their statutory authority or clearly acted arbitrarily or with grave abuse of discretion (See Deluao vs. Casteel, 26 SCRA 4775, 496 [1968]).
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> So also, the aforesaid BIR Ruling puts respondent in estoppel. By his declaration, respondent intentionally and deliberately led petitioner to believe that his ruling is true and petitioner was led to act upon such belief, hence respondent cannot, in any litigation arising out of such declaration, be permitted to contradict the same (See De Castro vs. Ginete, 27 SCRA 623, 628 [1969]).
>
> Moreover, as petitioner does not earn any income, hence it is not subject to any tax.
>
> Finally, respondent did not present any evidence in this case. That being so, petitioner's claim that it is not subject to the then contractor's tax

should stand." ("Memorandum For Petitioner", pp. 3 to 4; CTA Records, pp. 75 to 76).

Respondent, on the other hand, counters petitioner's contentions thus:

> "7. BIR Ruling No. 25--000--00-136-89 is a response to the letter (sic) dated November 24, 1988 and December 29, 1988 of the Philippine Shipyard and Engineering Corporation (PHILSECO) seeking advice on the tax status of the KHI Japan and Manila Offices. It is actually a BIR opinion which is not conclusive in nature;
>
> 8. Furthermore, BIR Ruling No. 25-000-00-136-89 is not a resolution of a dispute between the BIR and KHI Manila Office. Accordingly, the latter cannot rely on the aforesaid ruling to compel a tax refund from the BIR. Moreover, the Republic of the Philippines, which is the true respondent in this case, is not estopped by the acts or omissions of its employees or officials (Republic vs. Aquino, 120 SCRA 186);
>
> 9. Petitioner is liable for the contractor's tax. In his CONTRACTOR'S QUARTERLY PERCENTAGE TAX RETURN for the Third Quarters (sic) of 1987, petitioner declared a gross rreceipt of xxx (P3,893,275.155). Again, in his (sic) CONTRACTOR'S QUARTERLY PERCENTAGE TAX RETURN for the last quarter of 1987, petitioner declared a gross receipt of xxx (P3,6633,782.50). There being no explanation as to how these amounts were received by petitioner, they are deemed received by him in the 'course of business' as technical service fees, in view of petitioner's function to 'advice (sic) and render assistance to local distributors/indentors and customers in the Phillippines';
>
> 10. BIR No. (sic) 25-000-00-136-89 states that petitioner renders technical

> assistance in the management and operation of PHILSECO, for which the latter pays technical service fees. Technical service fees are subject to contractor's tax (CIR vs. Court of Tax Appeals, 134 SCRA 49). In the absence of a showing that KHI Japan has actually received technical service fees from PHILSECO and paid the corresponding contractor's tax thereon, then it is presumed that these technical service fees were paid to KHI, Manila, as the one rendering technical services to PHILSECO" ("Answer", pp. 3 to 5; CTA Records, pp. 33-35).

The Court finds more merit in respondent's contentions.

Petitioner puts much importance on the finding of respondent in BIR Ruling No. 25-000-00-136-89, that "KHI Manila Office is not subject to VAT" According to petitioner, such "pronouncement" puts respondent in estoppel, and the State is, in effect, thereby bound to grant petitioner's claim for refund.

The Court does not consider BIR Ruling No. 25-000-00-136-89 as persuasive as petitioner seems to think it is. Firstly, it should be emphasized that, as laid down by the Supreme Court in the case of **Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corporation and the Court of Tax Appeals**, 160 SCRA 560 (1988):

> "xxx (I)t is axiomatic that the State can never be in estoppel, and this is particularly true in matters involving

> taxation. The errors of certain administrative officers should never be allowed to jeopardize the government's financial position."

Secondly, as respondent correctly notes, the ruling in question is not a resolution of a dispute between the BIR and the petitioner, for it was issued in response to the letters of inquiry of the Philippine Shipyard and Engineering Corporation (PHILSECO). Therefore, it is incorrect for petitioner to say that respondent, through said ruling, had "intentionally and deliberately led petitioner to believe" that it was indeed not subject to the 4% contractor's tax Lastly, the Court notes that respondent's finding that petitioner is not subject to contractor's tax is anchored on the fact that "it is not engaged in any income-generating business activity in the Philippines." In other words, the basis of the ruling is factual; and it is, therefore, not conclusive on the Court since BIR Ruling No. 25-000-00-136-89, being merely in response to the query of PHILSECO, was based purely on the representations or statement of facts made in PHILSECO's letters (which representations were adopted and laid down by respondent, albeit summarily, in the first paragraph of its ruling).

Thus, respondent, in making such ruling, did not consider any extraneous facts not laid down by PHILSECO in its query.

Therefore, the Court must train its attention on the provisions of law applicable to the instant case in order that it can best decide the outcome of the instant case. Section 170 of the 1987 Tax Code, as amended reads as follows:

> "Sec. 10. Contractors, proprietors or operators of dockyards, and others. -- A contractor's tax of four percent of the gross receipts is hereby imposed on proprietors or operators of the following business establishments and/or persons engaged in the business of selling or rendering the following services for a fee or compensation:
>
> xxx xxx xxx
>
> (q) Other independent contractors. The term 'independent contractors' includes persons (juridical or natural) not enumerated above (but not including individuals subject to the occupation tax under the Local Tax Code) whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees. It does not include regional or area headquarters established in the Philippines by multinational corporations, including their alien executives, and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region.

> The term 'gross receipts' means all amounts received by the prime or principal contractor as the total contract price, undiminished by any amount paid to the subcontractor under a subcontract arrangement. Any portion of the total contract price which is paid to the subcontractor, shall be excluded from the taxable gross receipts of the subcontractor." (As amended by PD No. 1994).

Under this provision, three conditions must be met in order for an independent contractor to be subject to the 4% contractor's tax (now the 10% VAT). These are that the independent contractor: one, is essentially engaged in the selling or rendering of "all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees"; two, is neither a regional or area headquarter (which acts only as a supervisory, communications and coordinating center for its affiliates, subsidiaries or branches in the Asia-Pacific Region) established in the Philippines by a multinational corporation, nor an alien executive of such headquarter (unless such headquarter or alien executive earns or derives income from the Philippines); and three, earns or derives income from the Philippines.

In the case at bar, petitioner, which renders technical services (by advising and rendering assistance to local distributors/indentors and customers in the Philippines), meets the first two conditions enumerated above. The decision of the Court, therefore, hinges on whether or not petitioner earns or derives any income from the Philippines.

Petitioner, in its memorandum, stated factually that it "does not earn any income" ("Memorandum for Petitioner", p. 2; CTA Records, p. 74), which statement it based on the T.S.N. (dated May 25, 1990) of the testimony of Mrs. Milagros Samson Capanas, petitioner's Executive Secretary and Administrative Assistant. The Court has carefully read through said transcript, and has found only the portion quoted below to deal even indirectly with the income-generating power of petitioner. This portion reads:

> "Q. (Atty. Baarde) Does petitioner earn any income?
>
> A. (Mrs. Capanas) No." (T.S.N., May 25, 1990, p. 27).

Obviously, such a bare and self-serving allegation made by petitioner's executive-secretary-cum-administrative-assistant cannot be considered by the Court as sufficient by itself to warrant a positive finding for petitioner, especially in the light of the fact that petitioner, in its third and fourth quarter contractor's tax returns for 1987, declared as its taxable gross receipts amounts totalling P7,557,057.65. For, as respondent correctly observed:

> "There being no explanation as to how (this amount was) received by petitioner, (such amount is) deemed received by (it) in the 'course of business' as technical service fees xxx.
>
> xxx In the absence of a showing that KHI Japan has actualy received technical service fees from PHILSECO and paid the corresponding contractor's tax thereon, then it is presumed that these technical service fees were paid to KHI Manila, as the one rendering technical services to PHILSECO." ("Answer", pp. 4-5; CTA Records, pp. 34-35).

That respondent did not introduce any evidence to show that petitioner did, indeed, earn or derive income from the Philippines is of no moment. It is, after all, on the petitioner that the burden of proving its claim for refund (which is in the nature of an exemption) rests. And, as the Court has discussed earlier, a most important ingredient in a successful claim for refund by petitioner, is a clear showing that it did not derive any income from this country.

In view of the foregoing, the Court so holds that petitioner is subject to 4% contractor's tax on its gross receipts for the third and fourth quarters of 1987, and that the payment by petitioner of the amount of P226,711.73 as such percentage tax for the said period is not erroneous.

WHEREFORE, finding the instant petition for review without merit, the same is hereby **DISMISSED.** Petitioner's prayer for the refund to it of the amount of P226,711.73 in allegedly erroneously paid contractor's tax is hereby **DENIED.**

SO ORDERED.

Quezon City, Metro Manila, May 29, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

STELLA DADIVAS-FARRALES
Acting 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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals