Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

PACIFIC CONCRETE PRODUCTS, INC.,

CTA EB CASE NO. 601
(CTA Case No. 7408)

-versus-

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 0 3 2010 1:50 p.m.

x---x

DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review filed on March 12, 2010 for the Court *en banc*, pursuant to Section 18 of Republic Act No. 1125[1], as amended by Republic Act No. 9282 and Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended, assailing the Decision

---

[1] An Act creating the Court of Tax Appeals
[2] Sec. 2. *Cases within the jurisdiction of the Court en banc*.- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

dated November 25, 2009 and the Resolution dated February 12, 2010 of this Court's former Second Division.

Petitioner seeks a reversal of both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated November 25, 2009:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, petitioner is **ORDERED** to **PAY** respondent the deficiency excise tax in the amount of ONE MILLION THIRTY-FOUR THOUSAND ONE HUNDRED NINETY-NINE PESOS AND 43/100(P1,034,199.43),for the quarry resources it supplied for the construction and upgrading of the Manila North Tollways Project for the taxable year 2003.
>
> In addition, pursuant to Sections 248 and 249 of the NIRC of 1997, petitioner is hereby **ORDERED** to **PAY** a penalty equivalent to twenty five percent(25%) of the amount due, and a delinquency interest equivalent to twenty percent (20%) per annum on the amount of P1,034,199.43 from February 8, 2006 until such amount is paid in full.
>
> **SO ORDERED.**"

---

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.-*
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

Resolution dated February 12, 2010:

> "**WHEREFORE**, finding no new matters or arguments that will warrant the reversal or modification of the assailed Decision, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

The antecedent facts are as follows:

On March 28, 2005, petitioner received from respondent's Large Taxpayer Service, through Ms. Kim S. Jacinto-Henares, then Deputy Commissioner for Special Concerns, a Formal Letter of Demand dated March 31, 2005, assessing among others the petitioner a deficiency excise tax in the amount of P2,751,727.05, inclusive of penalties, under Assessment No. TF 123-11-03.[3]

On May 3, 2005, petitioner filed with the respondent a letter-protest dated April 29, 2005, followed-up with another letter-protest, dated May 10, 2005, disputing the afore-said assessment.[4]

On January 9, 2006, the petitioner received from the respondent, through Ms. Elvira R. Vera, Head Revenue Executive Assistant-Excise Large Taxpayers Service, dated December 27, 2005, its final decision on the disputed assessment, which after taking into account petitioner's

[3] Joint Stipulation of Facts and Issues, Division Docket, pp. 168-172.
[4] Ibid.

L

arguments contained in its letter-protest, finds the petitioner liable for deficiency excise tax in the recomputed amount of P1,034,199.43.[5]

In the said final decision, it is stated by Mr. Elvira R. Vera that "in case you are not agreeable to this decision, you may file your appeal with the Court of Tax Appeals within thirty(30) days from date of receipt hereof xxx"

On April 28, 2005, petitioner received from the respondent a Formal Letter of Demand dated March 31, 2005 assessing the former deficiency excise tax, under Assessment TF 123-11-03 in the amount of P2,751,727.05, computed as follows:

Total Market Value xxx of Excisable Materials Used	P96,177,272.73
Multiplied by the Tax Rate	2%
Excise Tax Due	P 1,923,545.45
Less: Payments	15,565.36
Excise Tax Due Thereon	P 1,907,980.09
Add: 20% Interest per Annum from 2-14-03 to 4-30-05	843,746.96
TOTAL AMOUNT DUE	P 2,751,727.05
	============

On May 3, 2005, petitioner filed with the respondent a letter-protest dated April 29, 2005 disputing the assessment pursuant to the provisions of the 1997 Tax Code. The letter protest was followed-up with another letter of protest made by the petitioner dated May 10, 2005.

Acting on these letters of protests, the respondent through Ms. Elvira R. Vera, Head Revenue Executive Assistant-Excise Large Taxpayers Service, sent to the petitioner its final decision on the

[5] Ibid.

disputed assessment through a letter dated December 27, 2005, which the petitioner received on January 9, 2006, wherein the respondent, after reviewing the arguments and points raised by the petitioner, nonetheless finds it liable for deficiency excise tax in the recomputed amount as follows, to wit:

Total Market Value xxx of Excisable Materials Used	P33,243,713.41
Multiplied by the Tax Rate	2%
Excise Tax Due	P 664,874.27
Less: Payments	15,565.36
Excise Tax Due Thereon	P 649,308.91
Add: 20% Interest per Annum from 2-14-03 to 1-31-06	384,890.52
TOTAL AMOUNT DUE	P 1,034,199.43
	===========

Thus, petitioner filed a Petition for Review on February 8, 2006 docketed as CTA Case No. 7408 and which was raffled to this Court's former Second Division. Thereafter, the parties filed their respective pleadings and the issues were simplified.

After trial, this Court's former Second Division rendered a Decision[6] finding petitioner as liable to pay the assessed excise tax.

In a vain attempt, petitioner filed a motion for reconsideration, as the same was denied for lack of merit in a Resolution dated February 12, 2010.

Hence, petitioner filed the instant Petition for Review.

Petitioner raised the sole issue -

---

[6] En Banc Docket pp. 20-31.

6

> **"Whether or not the decision and resolution of the 2nd Division of this Court declaring that the petitioner is liable to pay the excise tax is based on sound legal principles and has not acted with grave abuse of discretion tantamount to lack of jurisdiction in the appreciation of facts or fails to notice certain relevant facts given the admission by the private respondent Commissioner of Internal Revenue in the pre-trial brief that petitioner is not the possessor of the product and that Asensio Pinzon Aggregates (Corp.) has assumed the payment of the excise tax."**

Stripped of unnecessary verbosity and surplusage, we proceed to the gist of the controversy and simplify the issue in this wise:

> **"Whether this Court's former Second Division erred in holding petitioner as liable to pay the excise tax as possessor of the product despite the admission of the respondent that petitioner is not the possessor of the product and that Asensio-Pinzon Aggregates Corp. (APAC) has assumed the payment of the excise tax. "**

Significantly, the question is what should prevail between an admission which is conclusive upon the party who made it and does not require proof to establish the contrary, and the evidence presented to prove and to contradict the admission.

Petitioner argues that an admission is conclusive upon the party who made it and it does not require proof to establish the contrary. Because of the admission made by respondent that petitioner is not the possessor of the quarry products and it appearing from the records that respondent did not challenge the said admission nor committed any mistake in making the admission, respondent is bound by it.

L

Otherwise stated, petitioner should not be held liable for the excise tax due to respondent's admission that petitioner is not the possessor of the quarry products and APAC assumed liability thereon.

The petition is bereft of merit.

While it is true that an admission having been made in a stipulation of facts at pre-trial by the parties, must be treated as a judicial admission under Section 4, Rule 129 of the Rules of Court,[7] which requires no proof,[8] this is not without exception. The admission may, however, be contradicted by a showing that it was made through palpable mistake or that no such admission was made. Also, in order to prevent manifest injustice, the admissions made by the parties during the pre-trial may be disregarded by the court.[9]

In the instant case, petitioner assails the findings of this Court's former Second Division based on evidence that petitioner is the possessor of the quarry products subject to excise tax and thus it is liable to pay the excise tax thereon. Petitioner takes exception to this evidence because of the alleged admission made by respondent's

---

[7] Section 4, Rule 129 of the Rules of Court provides:

SEC. 4. *Judicial admissions.* – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made.

[8] Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue, G.R. No. 157594, March 9,2010.

[9] Sese vs. Intermediate Appellate Court, G.R. 66186, July 31, 1987.

counsel on the issues to be resolved as stated in the Joint Stipulation of Facts and Issues, to wit:

> "Whether the petitioner is liable to pay the excise tax **given the fact that**:
>
> 1. the excise tax is a tax on quarry resources;
> 2. **the petitioner is not the possessor of the product;**
> 3. **There is an existing agreement wherein Asensio-Pinzon Aggregates(APAC) and not the petitioner shall pay the excise tax.**"(Emphasis supplied)

Petitioner insists on this alleged admission. Respondent's witness, Ms. Sta. Ana herself, testified during the July 9, 2008 hearing[10], as follows:

"xxx xxx xxx.

ATTY. BUENDIA

Q. I noticed that in these records of the BIR, it does not include the stipulation of facts which was submitted to this Honorable Court. The Stipulation of Facts was not one of the ...(interrupted)

JUSTICE CASTAÑEDA

Can you clarify? Where are the Stipulation of Facts in the Court's records?

ATTY. BABARAN

Yes, your Honors. This is the BIR records your Honors. Naturally, there is no stipulation here, your Honors.

ATTY, BUENDIA

Q. The reason why I am bringing that up is that, because if you will notice in paragraph 4 of your Affidavit, Ms. Zlma Sta. Ana, 9.5 of paragraph 4, you stated that one of the reasons why you made a recommendation that Pacific Concrete Products, Inc is liable in paying the excise tax is that Pacific Concrete Corporation is the possessor of the quarry materials. You stated that in your Affidavit, am I correct?

---

[10] En Banc Docket. pp.11-13

MS. STA. ANA
A. Yes.

ATTY, BUENDIA
Q. That is found on line 5 of paragraph 4, Am I correct?

MS. STA. ANA
A. Yes.

ATTY. BUENDIA
And that is contrary to the stipulation of facts which was submitted before this Honorable Court by the counsel of the Bureau, Atty. Claro Ortiz, and this representation, wherein you stated on page 3, on the sub-title, Issues, your Honors, there was an agreement, subparagraph 2, that petitioner, referring to Pacific Concrete Products, is not the possessor of the product.

ATTY. BABARAN
I would like to clarify.
Are you referring to the issue?

ATTY. BUENDIA
Yes.

ATTY. BABARAN
Your Honors, these are issues, these are not part of the stipulation of facts, your Honors.

JUSTICE CASTAÑEDA
That is precisely what he is being questioned.

ATTY. BUENDIA
Your Honors, although it is under the subtitle, "Issue", It is stated here, "Where the instant petition revolves around the resolution of the following issues: (A)Whether the petitioner is liable to pay the excise tax given the fact that the petitioner is not the possessor of the product.

JUSTICE CASTAÑEDA
Yes. So, it assumes. It assumes that petitioner is not the possessor of the product. So, what can you say Atty. Babaran?

ATTY. BABARAN
Your Honors, I think this is an issue, your honors, and this doesn't mean that...(interrupted)

ζ

JUSTICE CASTAÑEDA

No, it says, given the fact that the petitioner is not the possessor of the product. Is there an error there on your part in the statement of the issues?

ATTY. BABARAN

I think, your Honors, perhaps, that is an issue of... (interrupted)

JUSTICE CASTAÑEDA

At any rate, the Court has leeway in determination of this but be aware of what you stipulated on.

ATTY. BABARAN

But, your Honors, I think this is an issue on the part of... (interrupted)

JUSTICE CASTAÑEDA

Yes, but the issue already assumes the fact that the petitioner is not the possessor of the product. Well, it is apparent that you did not understand the stipulation? xxx."

Based on the foregoing, it is evident that respondent did not intend to admit that petitioner is not the possessor of the quarried product and that there is an existing agreement wherein Asensio-Pinzon Aggregates (APAC) and not the petitioner shall pay the excise tax thereon.

Apparently, respondent's counsel did not understand or comprehend the implication of the phrase "given the fact that" as stated in the issue to be resolved, as it assumed that:

a) the excise tax is a tax on quarry resources;

(b) petitioner is not the possessor of the product; and

(c) there is an existing agreement wherein Asensio-Pinzon Aggregates (APAC) and not the petitioner shall pay the excise tax.

We are aware of the general rule that the client is bound by the action of his counsel in the conduct of his case including blunders and mistakes as a result of the ignorance, inexperience or incompetence.[11] However, litigation is not simply a contest of litigants before the bar of public opinion but it is a pursuit of justice through legal and equitable means as well.[12] Significantly, the rules of procedure should be viewed as mere tools designed to facilitate the pursuit of justice. Their application which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. This is the reason why rules and procedures in this Court are not strictly governed by the technical rules of evidence.

Admissions made by the parties during a pre-trial conference and incorporated in their joint stipulation of facts and issues, submitted and thereafter admitted by this Court are binding. This rule, however, is not without exceptions. If, in order to prevent manifest injustice, the

---

[11] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007.
[12] National Development Corporation vs. Firestone Ceramics, Inc., G.R. No. 143590, November 14, 2001.

admissions made by the parties during the pre-trial may be disregarded by the court.[13]

Be that as it may, it does not negate the fact that respondent did not intend to admit the same and the findings of fact of this Court's former Second Division which upon review correctly concluded that petitioner was in possession of the basalt resources at the time of removal and therefore it is liable to pay the excise tax.

We quote:

> "The MPSA(Mineral Product Sharing Agreement) recognized the Memorandum of Agreement (MOA) which APAC and petitioner executed on November 19, 1991. In said agreement, APAC allowed and authorized petitioner to extract, mine, and haul basalt and other materials found in Montalban, Rizal covered by AQP-IV-1067. However, there was no provision identifying who should pay excise taxes due on the extracted, mined, and hauled basalt and other materials in the Contract area.
>
> In determining who is liable to pay excise tax due on the basalt resources used for the construction and upgrading of the Manila North Tollways Project, the Court refers to the Tax Code. Section 130 of the NIRC of 1997 (which) provides:
>
> xxx xxx xxx.
>
> **Uncontroverted are the facts that petitioner was granted authority to extract, mine, and haul basalt and other materials found in Montalban, Rizal; and that it supplied basalt for the construction and upgrading of the Manila North Tollways Project from Balintawak to Sta. Ines for the year 2003. Thus, petitioner was in possession of the basalt resources when the same were removed from the Contract Area, and petitioner also delivered the basalt resources at the Pulilan Site of the Leighton Contractors (Asia) Limited, in the Manila North Tollway pursuant**

[13] Sese vs. Intermediate Appellate Court, G.R. No. 66186, July 31, 1987.

C

> **to the Agreement and Form of Supply Contract. As petitioner was in possession of the basalt resources at the time of removal from the locality of Montalban, Rizal, it is therefore liable to pay the excise tax.**(Emphasis supplied)
>
> The Supreme Court consistently ruled that excise tax is imposed on the taxpayer's privilege of severing or extracting minerals or mineral products from the earth. The Government's right to exact said impost springs from the Regalian theory of State ownership of its natural resources. Said tax is due and payable only upon removal of the minerals or mineral products, or quarry resources from the locality where mined or extracted."

It is contrary to the objective of the law if we were constrained to rule that based on the alleged admission that petitioner is not the possessor of the quarried product and thus it is not liable to pay the excise tax thereon, if the evidence negates such claim. Moreover, it would unduly prejudice the right of the government who stands to lose its power of taxation only because of a mere technicality, inaccuracy of language, or plain carelessness.

Moreover, a perusal of the Memorandum of Agreement between APAC and petitioner reveals that APAC did not assume the excise tax liability on the quarried products. As aptly pointed by this Court's former Second Division:

> "This Court considered the stipulated facts and the parties' respective arguments, and had examined every piece of evidence submitted by both parties in support of their respective contentions, when the assailed Decision was issued. This Court even pointed out that the Memorandum of Agreement, which APAC and petitioner executed on November 19, 1991, has no provision identifying who should pay

excise taxes due on the extracted, mined, and hauled basalt and other materials in the Contract area.

Equally noteworthy is the fact that this Court adopted the facts as stipulated by the parties, which were quoted verbatim from the Joint Stipulation of Facts and Issues. This Court does not agree with petitioner that both parties admitted that APAC, not petitioner, shall pay the excise tax. xxx"[14]

Even assuming that there is an existing agreement that petitioner shall not pay the excise tax and APAC would assume liability thereon; the same has no leg to stand on. The consolidated cases of Fels Energy, Inc. vs. The Province of Batangas[15] and National Power Corporation vs. The Local Board of Assessment Appeals of Batangas[16] would be instructional. The Supreme Court held that:

"The mere undertaking of petitioner NPC under Section 10.1 of the Agreement, that it shall be responsible for the payment of all real estate taxes and assessments, does not justify the exemption. The privilege granted to petitioner NPC cannot be extended to FELS. The covenant is between FELS and NPC and does not bind a third person not privy thereto, in this case, the Province of Batangas."

In the instant case, respondent is not bound even if there is an agreement between APAC and petitioner as to who will be liable for taxes due to the government. To reiterate, there was no agreement between petitioner and APAC and likewise there was no admission

[14] En Banc Docket, p. 34.
[15] G.R. No. 168557, February 16, 2007.
[16] G.R. No. 170628, February 16, 2007.

from respondent that petitioner shall not pay the excise tax and that APAC would assume liability thereon.

Well-settled is the rule that litigation is neither a game of technicalities nor a battle of wits and legalisms; rather, it is an abiding search for truth, fairness and justice. In the instant case, the alleged admission in the "issue" stipulated by the parties cannot be countenanced as it would result into falsehood, unfairness and injustice.[17]

Moreover, the power of taxation is an inherent attribute of sovereignty from which the government chiefly relies to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that "taxes are the lifeblood of the government." For this reason, the right of taxation cannot easily be surrendered[18], especially in this case when to admit that petitioner is not the possessor of the quarried products and that it is not liable to the payment of the excise tax thereon, would be a relinquishment of the government's power to tax which respondent never intends to do so.

---

[17] Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 134467, November 17, 1999.
[18] Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc. G.R. No. 163835, July 7, 2010

WHEREFORE premises considered, the instant petition is **DENIED.** The Decision of this Court's former Second Division in CTA Case No. 7408, dated November 25, 2009, and its Resolution, dated February 12, 2010, are hereby **AFFIRMED.** No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ERNESTO D. ACOSTA
Presiding Justice