REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE REGION BANK
(Los Baños Rural Bank)
Petitioner,

- versus -

C.T.A. CASE NO. 5378

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 01 1997

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P85,909.09 representing erroneously collected value-added tax on petitioner's purchase of a motor vehicle, with legal interest thereon, from the time of collection until refunded or credited in favor of petitioner.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines and authorized by the Central Bank of the Philippines on February 27, 1960 to operate as a Rural Bank under the terms and conditions of Republic Act No. 720, as amended (Exhibits "A", "A-1" and "B").

On March 13, 1993, petitioner amended Articles I and VII of its Articles of Incorporation by stating therein that the name of the corporation shall be "Los Baños Rural Bank, Inc.", doing business under the business name or style "THE REGION BANK (Los Baños Rural Bank) INC.", and increasing its capital stock. Its Amended Articles of Incorporation incorporating said changes was duly filed with the Securities and Exchange Commission (SEC) under SEC Reg. No. 13811 (Exh. "C", p. 50, CTA records).

Sometime in 1994, petitioner purchased one (1) unit of Mitsubishi Galant 2000 VR from Union Motors Corporation, which was subsequently registered in its name with the Land Transportation Office (LTO) on June 14, 1994 under Certificate of Registration No. 24322476 (Exh. "D", p. 57, CTA records).

Petitioner alleged that Union Motors Corporation required petitioner to pay value-added tax on its purchase of the aforesaid motor vehicle, amounting to ₱85,909.09. The said amount was later paid and/or remitted by Union Motors Corporation to the Bureau of Internal Revenue as attested by its Certification, dated June 6, 1994 (Exhibit "E", p. 58, CTA records).

Petitioner contended that it is not liable to pay value-added tax on its purchase of the motor vehicle because it is exempt from the payment of such tax pursuant to the express provisions of Section 15 of Republic Act No. 7353, otherwise known as the Rural Bank Act of 1992. Therefore, on July 12, 1994, petitioner filed, through counsel, a letter-claim for refund, dated

July 4, 1994, with the respondent (Exh. "F", Annex "B" of the Petition for Review, p. 10, CTA records) or issuance of a tax credit certificate in the amount of ₱85,909.09 representing erroneously or illegally collected value-added tax.

However, despite several follow-ups with the Office of the respondent, its refund claim has not been acted upon and remains unacted up to the present.

Inasmuch as the two-year prescriptive period under Section 204 of the Tax Code, as amended, is about to lapse, petitioner initiates the instant petition for review.

In her Answer, respondent sets forth the following special and affirmative defenses:

> 1. Petitioner's claim for tax refund/credit is still undergoing administrative routinary investigation/ examination by respondent's bureau;
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> 2. The amount of tax sought by the petitioner to be refunded/credited was collected and paid pursuant to law and pertinent BIR implementing regulations, hence the same is not refundable. Petitioner must prove that the amount of tax under contention was actually paid, remitted, and received by the respondent's Bureau;
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> 3. Petitioner's allegation that it is tax-exempt does not ipso facto warrant the refund. Petitioner must prove that it is a tax-exempt entity and/or it is exempt from paying the particular kind of tax which is under contention;

4. Exemptions from taxation is (sic) construed in *strictissimi juris* and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure on the part of the petitioner to prove the same is fatal to its claim for tax refund;

5. Moreover, petitioner must prove that it has complied with the provision of Section 230 of the Tax Code, as amended.

The issues to be resolved in this case are: (1) whether or not petitioner is exempt from the payment of value-added tax and hence, entitled to a refund or tax credit; and (2) whether or not the provisions of Section 230 of the Tax Code, as amended were complied with by the petitioner.

We find petitioner's allegations bereft of merit.

Petitioner contends that it should not have paid the value-added tax on the vehicle it purchased from Union Motors on account of its tax-exempt status granted under Section 15 of Republic Act No. 7353 and Section 2 of Revenue Regulations No. 16-93, both provisions are quoted hereunder thus :

Republic Act No. 7353

Section 15. All rural banks created and organized under the provisions of this Act shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges, for a period of five (5) years from the date of commencement of operations.

All rural banks in operation as of the date of approval of this Act shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges, for a period of five (5) years from the approval of this Act."

Revenue-Regulations No. 16-93

"Section 2. Taxes covered by the **Exemption.**

"A. All rural banks created and organized under the provisions of the Act and rural banks already in operation as of the date of the approval thereof on April 2, 1992, shall be exempt from the payment of all taxes, fees and charges of whatever nature and description, except the corporate income tax and local taxes, fees and charges. **(Section 15, R. A. 7353)**

"The corporate income taxes which rural banks are liable to pay are the following:

"a. 35% corporate income tax as provided for under Section 24 (a) of the NIRC;

"b. 20% final withholding tax (FWT) on interest income derived from Philippine currency bank deposits and yield or any other monetary benefit for deposit substitutes, trust funds and sources within the Philippines. **(Section 24 (e) (1), NIRC;**

"c. Creditable expanded withholding tax (EWT) on sales, exchanges or transfers of real properties (whether classified as ordinary or capital asset) by Rural banks consummated on or after January 1, 1990 **(RMC 7-90)**;

"d. Capital gains tax (CGT) on capital gains realized from the sale, exchange or disposition of (i) shares of stock in any domestic corporation under Section 24 (e) (2), NIRC; and (ii) as statutory seller of acquired real property through mortgage foreclosure sale, whether judicial or extra-judicial under

> Revenue Memorandum Order No. 6-92 dated January 15, 1992, the creditor-rural bank representing the owner-mortgagor of the real property becomes liable to pay the capital gains tax due on such foreclosure sale based on the bid price in the auction sale; and
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> "e. All other income taxes as provided for and imposed under Title II of the NIRC."

A reading of the aforequoted provisions leads Us to the conclusion that petitioner has magnified the contents of Section 15 of Republic Act No. 7353 beyond the scope of the exemption provided by said law.

The facts as presented by the records of this case show that the amount of value-added tax sought to be refunded by the petitioner refers to the VAT passed on to it by the seller which formed part of the purchase price of the vehicle. It is an indirect tax which is shifted by the seller to the buyer by adding the same to the cash cost and/or selling price. The tax exemption granted to petitioner by virtue of Section 15 of Republic Act No. 7353 extends only to those taxes which petitioner is directly liable to pay and not to the taxes which are merely passed on to it as a consequence of the sale. In essence, the amount of refund in the sum of P85,909.09 does not take the form of a tax on the part of the buyer of the vehicle, petitioner herein, but is considered a part of the purchase price which it is expected to pay, therefore it does not fall under the tax exemption enjoyed by the petitioner. At this point, it is apt to quote a portion of the case entitled, **Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, 20 SCRA 1056,** where the Supreme Court ruled, thus :

> "It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes a part of the price which the purchaser must pay. It does not matter that an additional amount is billed as tax to the purchaser. The method of listing the price and the tax separately and defining taxable gross receipts as the amount received less the amount of the tax added, merely avoids payment by the seller of a tax on the amount of the tax. <u>The effect is still the same, namely, that the purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all and the amount added because of the tax is paid to get the goods and for nothing else</u>." (Underscoring supplied)

It is already well-settled that tax exemptions are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority (**Philippine Petroleum Corporation vs. Municipality of Pililla, Rizal, 198 SCRA 82**), therefore We cannot interpret a tax-exemption provision to include those taxes that were merely passed on to the taxpayer. In the case of **Kumagai-Gumi Company Ltd., vs. CIR, CTA Case No. 4670, dated July 29, 1997,** this Court ruled, thus :

> "Therefore, the petitioner herein being Japanese nationals may be considered exempted

from value-added tax pursuant to Section 103 (u) of the NIRC. However, this pertains to its own direct tax liability by reason of its own supply of products and services meaning the output value-added tax due. <u>This cannot refer to input value-added taxes passed on to it by its suppliers as forming part of the invoice price.</u>"

WHEREFORE, in view of the foregoing, the petition for review is **DISMISSED** for lack of merit and the claim for refund in the amount of P85,909.09 is hereby **DENIED**.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals