REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE EXPLOSIVES CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5201

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 29 1997

x - x

DECISION

This is a petition seeking for the cancellation of an assessment for alleged deficiency value-added tax for 1988 issued by the respondent against the petitioner in the total amount of P7,548,699.73.

The antecedent facts of the case are as follows.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines and primarily engaged in the manufacture and sale of industrial explosives, detonators, safety fuses and similar products. It sells said products to various local mining companies including Maricalum Mining Corporation, Marcopper Mining Corporation and North Davao Mining Corporation.

On June 18, 1992, petitioner received a fax transmission from Ortigas Center Branch of Hongkong and Shanghai Banking Corporation, Ltd. (Exh. "A") informing them that they had received a Warrant of Garnishment Order No. N-B-586-92 (Exh. "A-1") issued by the Bureau of Internal Revenue, and in consequence thereof, the said bank debited petitioner's account in the amount of P7,548,699.73.

The said warrant of garnishment made reference to an alleged assessment (FAS-88-91-001822) issued by the respondent against the petitioner on April 19, 1991 for deficiency value-added tax for 1988 in the same amount of P7,548,699.73.

Petitioner, through its auditors, SGV & Company, filed with the respondent a letter, dated June 23, 1992 (Exh. "B"), claiming that it had no knowledge nor received any assessment notice from the respondent and was only informed about the same through the aforementioned warrant of garnishment. Evidently, the alleged assessment notice was sent by mail to petitioner's former office located at WCI Bldg., Fairlane corner Brixton, Pasig, Metro Manila, considering that it is the same address used in the warrant of garnishment and despite due notices of change of address filed by the petitioner with the Revenue District Offices of Pasig and Mandaluyong.. At that time, petitioner already moved to another office located at the 7th Floor, Citytrust Building, EDSA, Mandaluyong, Metro Manila.

Through the same letter, petitioner protested the said assessment and requested for the immediate lifting of the warrant of garnishment and for the referral of the case to Appellate Division of the BIR for proper administrative hearings.

On the same date, petitioner sent a letter to respondent with a list of properties owned by the petitioner, whose total value is P10,966,000.00 and sufficient to cover the amount of the assessment as a property bond (Annex "G", CTA Rec., p. 40). Respondent, through a letter addressed to Hongkong and Shanghai Banking Corporation, dated July 3, 1992 (Annex "F", CTA Rec., p. 41), lifted the warrant of garnishment in view of the aforestated property bond to guarantee the payment of petitioner's alleged tax liability.

On January 17, 1995, petitioner, through SGV & Company received a letter from the respondent (Exh. "C" and "C-1") denying with finality petitioner's protest against the disputed assessment. Hence, on February 17, 1995, the instant Petition for Review was filed.

In lieu of an Answer, respondent filed a Motion to Dismiss on May 9, 1995 on the ground of lack of jurisdiction of this Court over the instant case. Respondent asserted that the disputed assessment, dated April 19, 1992, had become final and unappealable when petitioner failed to file a protest letter within 30 days from receipt of the notice of assessment.

Petitioner filed an Opposition to Motion to Dismiss and Motion to Declare Respondent in Default on June 6, 1995 (pp. 26-44, CTA rec.), and a Comment thereto was filed by the respondent on June 23, 1995 (pp. 48-49, CTA rec.). In view thereof, this Court, in a Resolution, dated July 17, 1995 (pp. 50-51, CTA rec.), resolved to deny petitioner's Motion to Declare respondent in Default and to defer the resolution of respondent's Motion to Dismiss until respondent's presentation of evidence that petitioner in fact received the subject assessment and petitioner failed to file the protest within the reglementary period.

Upon failure of the respondent to appear in Court and to present evidence in support of her motion, this Court, in a Resolution promulgated on August 18, 1995 (pp. 55-56, CTA rec.), resolved the following, to wit:

> "Considering the order in open court on August 8 1995, respondent's motion to dismiss on the ground of lack of jurisdiction filed on May 9, 1995, is DENIED for failure of respondent to appear and present evidence to prove, as required in the resolution of this Court of July 17, 1995, that the alleged assessment issued by the respondent on April 19, 1991 was received by the petitioner but was not disputed or protested by it within the reglementary period prescribed by law.
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> On the other hand, this Court finds merit in petitioner's opposition to respondent's motion to dismiss that this Court has jurisdiction over this case in the light of the oral and documentary evidence presented by its counsel during the hearing to the effect that petitioner did not receive respondent's alleged assessment of April 19, 1995 but only a warrant of garnishment on petitioner's bank account at the Hongkong and Shanghai Banking Corporation; that a written protest thereof was filed by the petitioner with the Commissioner of Internal Revenue; and that said protest was denied by respondent in her letter dated November 7, 1994 which was received by petitioner on January 17, 1995 (See p. 53, CTA rec. & TSN August 8, 1995 Hearing)."

On September 18, 1995, respondent in her Answer again raised the issue of lack of jurisdiction as a defense but again failed to present any evidence nor a memorandum in support thereof during the trial.

Considering that the issue on lack of jurisdiction had already been resolved by this Court through the aforestated Resolution, dated August 18, 1995, this

Court is now tasked to resolve the lone issue of whether or not the petitioner is liable for the alleged deficiency value-added-tax assessment for the year 1988.

The disputed assessment resulted from the disallowance of petitioner's claim for transitional input tax credit for the first quarter of 1988 in the amount of P3,774,349.86, which represents the balance of its deferred sales tax credit (DSTC) account as of the year ended December 31, 1987 (Exhs. "F" and "J"). Said transitional input tax credit was disallowed by respondent on the ground that it pertained to unapplied sales tax credit on petitioner's allegedly exempt sales of explosives to various mining companies, which were supposedly exempted from payment of all kinds of taxes, including sales taxes under Presidential Letter of Instruction (LOI) No. 1416.

Petitioner strongly disputed respondent's claim, considering that the mining companies were not really exempted from payment of sales taxes during the effectivity of LOI No. 1416. Instead, the payment of their tax liabilities were merely suspended owing to their dire financial distress at that time. Pertinent portions of the aforementioned LOI No. 1416 (Exh. "G") dated July 17, 1984 is quoted hereunder, to wit:

> "In view of the foregoing, it is therefore, in the national interest of the Government to assist the copper industry and towards this end, I hereby order and direct the suspension of payment of all taxes, duties, fees, imposts and other charges, whether direct or indirect, due and payable by the copper mining companies in distress to the National and Local Government under the following conditions:" (underscoring supplied)

In fact, under Executive Order No. 340, dated October 14, 1988 (Exh. "I"), the suspension of payment was lifted and the mining companies were required to remit to the Bureau of Internal Revenue (BIR) their unpaid tax liabilities, thus:

> "NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order the lifting of the suspension of payment of all taxes, duties, fees, imposts and other charges, whether direct or indirect, under LOI No. 1416, dated July 17, 1984, and direct:
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> 1. Immediate payment of all obligations incurred from May 1, 1988 which are eligible for suspension under LOI No. 1416;
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> 2. Payment of all obligations suspended by LOI No. 1416 and incurred from January 1, 1988 to April 30, 1988, in equal monthly installments up to December 31, 1988;
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> 3. Payment of all obligations suspended by LOI No. 1416 and incurred from October 31, 1987 to December 31, 1987, in equal monthly installments up to June 30, 1989;
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> 4. Payment of all obligations incurred before October 31, 1987 and suspended by LOI No. 1416 subject to a schedule of payment to be submitted by the copper mining companies concerned within fifteen (15) days hereof and which schedule shall be approved by the Secretary of Finance upon the recommendation by the Secretary of Trade and Industry, taking into account the individual paying capacity of each mining company."

Petitioner further contends that during the effectivity of LOI No. 1416, as seller, it was not able to charge the affected mining companies with sales taxes for which they were indirectly liable. In relation with this, the BIR even relieved the petitioner from remitting the said sales taxes through Revenue Ruling No. 55-87 dated February 20, 1987 (Exh. "H"), addressed to Maricalum Mining Corporation, to wit:

> "In order to effectuate the suspension of payment, in the case of the sales tax which is indirectly due and payable by you, your

major suppliers, contrary to their position on this matter, should not bill to you the tax for which they are directly liable under the law. On this basis, said suppliers are relieved from paying the sales tax."

This Court finds the petitioner's arguments bereft of merit.

The core of the controversy lies on whether or not the amount of P3,774,349.86 should be allowed as transitional input tax credit in favor of the petitioner for the first quarter of 1988.

This transitional input tax credit is derived from the provisions of Section 105 of the Tax Code which specifically states, thus:

> **Section 105**. ***Transitional input tax credits***. - A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax. (as added by EO 273)

Section 26(b) of Revenue Regulations No. 5-87 further elaborated on the concept of the transitional input tax credit when it provided, thus:

> "Transitional input tax credits. - (1) Manufacturer, producers and importers. - The unused deferred tax credit as of December 31, 1987 shall be allowed as input tax credit to all original sellers subject to the value-added tax for the first time, provided that they have registered in accordance with the provisions of Section 107. For this purpose the amount appearing in their books of accounts and corroborated by the amount reflected in the sales tax return as of December 31, 1987 shall be initially accepted as the transitional input tax credit which shall be carried over as allowable tax credits against output tax less any amount for which an application for the issuance of a tax credit certificate has been filed. In the case of corporations filing their sales tax returns on a fiscal quarter basis, they shall file a short period return for the period ending December 31, 1987 which in addition to their ledger account of deferred tax

credit shall be the basis of the transitional input tax credits which will be provisionally allowed."

From these aforesaid provisions of law and revenue regulation, petitioner came up with the figure of P3,774,349.86 as transitional input tax credit for the first quarter of 1988 which represents the "balance of its unused deferred sales tax credit as of December 31, 1987" (p. 30, petitioner's). Petitioner explained in its memorandum that this unused deferred sales tax credit pertains to the excess, as of December 31, 1987, of petitioner's sales tax payable on its original sales of its finished products (industrial explosives) over the total sales tax paid on its local purchases or importations of raw materials, parts, accessories or other articles pursuant to Section 166(c) in relation to Section 165 and 166(a) of the 1986 Tax Code. To put it clearly, the total tax paid by the petitioner on the purchases or importation of the raw materials, etc., far exceeded the amount of the sales tax due on the finished product, hence this excess was used by the petitioner as its transitional input tax credit. Petitioner then analyzed that the reason why respondent disallowed its transitional input tax credit was due to the latter's thesis that during the period prior to 1988, petitioner's sales of explosives to the mining companies were exempt from sales tax, pursuant to Letter of Instruction No. 1416, thus, it lost its privilege to utilize its own sales tax credits against said exempt sales; therefore, petitioner has no "unused deferred sales tax credit" to speak of, ergo, it has no basis for any transitional input tax credit. On this point, petitioner argues that its sales to the mining companies of explosives were not exempt from sales tax; instead, Letter of Instruction No. 1416 merely authorized the suspension of these mining companies' liabilities for all taxes, duties, fees and imports, whether it be direct or indirect. Petitioner further avers that Executive Order No. 340, dated October 14, 1988, lifted the suspension provided by LOI No. 1416 and ordered these mining companies to pay these obligations specifically for the payment of taxes that were temporarily suspended.

It is obvious from the arguments propounded by the petitioner that the allowance of the transitional input tax credit depends on whether or not the sales tax that was supposed to have been paid on its sales of explosives to the mining companies were indeed paid after the suspension was lifted by virtue of Executive Order No. 340, because it is only from the fact of payment of the sales taxes can there be a balance of unused deferred sales tax credit which is the basis of the transitional input tax credit claimed by the petitioner. It is for this reason that in the letter denying the petitioner's protest, the present Commissioner of Internal Revenue, Liwayway Vinzons-Chato, stated that the reason for her denial was the failure of the petitioner to show by documentary evidence, that the mining companies have in fact remitted to the BIR, the unpaid (suspended) sales taxes (Exhibit "C", page 94, CTA records). It is erroneous for the petitioner to assert that the burden to prove payment of suspended sales taxes to the BIR was not its responsibility, but upon the mining companies themselves. Petitioner must remember that it is being assessed for value-added tax deficiency and no other and, therefore, it behooves upon it to show that the assessment is baseless, both in fact and in law. The documents presented by the petitioner as evidence do not show that the respondent's disallowance of the amount of P3,774,349.86 as transitional input tax credit is erroneous. Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise **(Sy Po v. Court of Tax Appeals, 164 SCRA 524).**

WHEREFORE, in view of the foregoing, the Court finds the petition for review without merit. Petitioner is hereby **ORDERED** to **PAY** the respondent the amount of P7,573,699.73 representing deficiency value-added tax assessment inclusive of increments, for the taxable year 1988, plus 20% delinquency interest per annum from April 19, 1991 until fully paid pursuant to Section 249(c)(3) of the Tax Code.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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