REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus-

PUREGOLD DUTY FREE, INC.,
Respondent.

CTA EB No. 723
(CTA Case No. 7812)

Present:

Acosta, *P.J.*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:
MAY 09 2012

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DECISION

COTANGCO-MANALASTAS, J.:

On appeal are the *Resolutions* promulgated by the Second Division on November 25, 2010 and January 20, 2011 cancelling and setting aside the assessment for deficiency VAT and excise tax against respondent in view of its availment of Tax Amnesty under Republic Act No. 9399.

The Parties[1]

Petitioner is the chief of the Bureau of Internal Revenue (BIR) which is charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected with

[1] *Rollo*, C.T.A. EB Case No. 723, pp. 8-9.

such taxes, fees and charges. Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.

The Facts[2]

For the period January 1998 to May 2004, respondent imported tobacco and alcohol products. Respondent has consistently declared and paid the 5% preferential tax pursuant to Executive Order No. 80 and Republic Act No. 7227.

Notwithstanding respondent's availment of R.A. No. 9399 Tax Amnesty, petitioner through the Large Taxpayer's Service, issued a Final Decision on Disputed Assessment (FDDA) arguing that R.A. No. 9399 is not applicable to the alleged deficiency Value-Added Tax (VAT) and excise tax assessments. Instead, petitioner argues that the applicable provision is Section 131(A) of R.A. No. 8424.

The FDDA reiterated the alleged deficiency VAT and excise tax assessments in the aggregate amount of P2,780,610,174.51 arising from the importation of alcohol and tobacco products for the period January 1998 to May 2004. The breakdown of this amount is as follows:

1. Value Added Tax (VAT)	-	Php	923,418,902.25
2. Excise Tax	-	Php	1,857,037,916.57
3. Inspection Fees	-	Php	153,355.70
		Php	**2,780,610,174.51**

Respondent filed its petition for review before the Court of Tax Appeals on July 22, 2008 with herein petitioner's Answer filed on September 18, 2008. On January 16, 2009, respondent filed a Motion for Early Resolution of the Issue of Amnesty.

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[2] *Rollo*, pp. 9-13.

Said motion was resolved by the CTA First Division on July 13, 2009, holding in abeyance the resolution of respondent's motion and setting the case for further reception of evidence for both parties as to the issue of the availment of amnesty. Formal offers of evidence were filed by both parties.

On June 3, 2010, the CTA Second Division resolved respondent's Motion for Early Resolution and ruled that the issue regarding the availment of the tax amnesty under R.A. No. 9399 may only be addressed after a full blown trial.

Respondent filed a Motion for Reconsideration which was resolved by the CTA Second Division in favor of respondent. Said resolution, dated November 25, 2010, cancelled and set aside the assessments for deficiency VAT and excise tax for the importation of alcohol and tobacco products for the period of January 1998 to May 2004 on the ground that respondent has availed of the tax amnesty under R.A. No. 9399. Petitioner's Motion for Reconsideration was subsequently denied through a resolution dated January 20, 2011.

Hence, petitioner filed the instant petition for review.

Issues

Petitioner raises the following sole issue:

> "Whether or not respondent is liable for deficiency Value Added Tax, excise tax and inspection fees for the period January 1998 to May 2004 despite its availment of Tax Amnesty under Republic Act No. 9399."[3]

Ruling of the Court

The petition has no merit.

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[3] *Rollo*, p. 13.

After a careful review of the records and arguments raised by the petitioner, we agree with respondent's contention that the same are merely a rehash of previous arguments already passed upon and discussed by the Court.

Petitioner's arguments rely on (1) the applicability of Section 131(A) of the National Internal Revenue Code of 1997 (Tax Code); and, (2) that the subject deficiency taxes are not covered by the Tax Amnesty under R.A. No. 9399. These contentions have been discussed and resolved by the CTA Second Division and there are no compelling reasons to deviate from the said rulings. Thus, we reiterate the CTA Second Division's discussion, as follows:

> "As to whether or not petitioner's tax liabilities are excluded under R.A. 9399; it is significant to note that what petitioner seeks to cancel in its petition for review and *Motion for Early Resolution*, is respondent's assessment of deficiency excise tax and Value Added Tax (VAT) on imported alcohol and tobacco products.
>
> Clearly, these are not taxes on articles, raw materials, capital goods, equipment and consumer items removed from the Special Economic Zones and Freeport Zones and entered into the customs territory of the Philippines for local or domestic sale. This may be verified in respondent's Formal Letter of Demand where it was stated that the assessment was made against petitioner's importation of wines, liquors and tobacco products. In view thereof, the deficiency tax assessments made against petitioner, are not excluded under R.A. No. 9399.
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> As to respondent's contention that petitioner is not entitled to avail of the tax amnesty provided under R.A. No. 9399 on the basis of Section 131 of the NIRC of 1997; this Court is not persuaded.
>
> The coverage of the tax amnesty is the difference of all national and local taxes that petitioner is liable under the Local Government Code, the Tax Code and other pertinent laws, and the 5% tax that petitioner had previously been liable pursuant to Executive Order (EO) No. 80.
>
> Being liable to VAT and excise taxes on importations of alcohol and cigars under Section 131 of the 1997 Tax Code is not a condition to be excluded from the tax amnesty. Contrarily, being liable to such taxes is obviously contemplated by RA No. 9399 thru the phrase "all national and local tax impositions under relevant tax laws, rules and regulations." If petitioner is liable to VAT and excise taxes pursuant to the provision of Section 131(A) of the 1997 Tax Code, then such

> amount of taxes will be used in determining the difference mandated by R.A. No. 9399, which in turn, is the subject of the latter law.
>
> Furthermore, it is jurisprudentially settled that a tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.
>
> Consequently, the government, through the enactment of R.A. No. 9399, expressed its intention to waive its right to collect petitioner's deficiency tax liabilities, which in this case is the tax imposed under Section 131(A) of the NIRC of 1997, subject to the condition that petitioner has complied with the requirements provided therein."[4] (*citations omitted*)

The same issue was once again discussed in the Resolution dated January 20, 2011, *to wit*:

> "After a close scrutiny of the arguments raised by respondent, this Court finds that the same contentions were already raised in her "*Comment (Re: Petitioner's Manifestation of Compliance)*" filed on November 15, 2010 and which have already been sufficiently addressed in the assailed Resolution dated November 25, 2010.
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> To reiterate, liability for VAT and excise taxes on importations of alcohol and cigars under Section 131 of the NIRC of 1997, as amended, is contemplated under R.A. No. 9399 when it provides that "*registered business enterprises operating prior to the effectivity of this Act within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone created under Proclamation No. 163, series of 1993, xxx, may avail themselves of the benefits of remedial tax amnesty herein granted on* ***all applicable tax and duty liabilities, inclusive of fines, penalties, interest and other additions thereto****, incurred by them or that might have accrued to them due to the rulings of the Supreme Court in the cases of* ***John Hay People's Coalition vs. Lim, et. al., G.R. No. 119775 dated 23 October 2003 and Coconut Oil Refiners Association, Inc. vs. Torres, et.al. G.R. No. 132527 dated 29 July 2005***".
>
> Petitioner incurred liability for the assessed deficiency VAT, excise taxes and inspection fees when its tax incentives was in effect removed by the Supreme Court when it ruled in the case of *Coconut Oil Refiners Association, Inc., vs. Torres*, that the incentives provided under R.A. No. 7227 extends only to business enterprises registered within the Subic Special Economic Zone (SSEZ). Since, petitioner's tax liabilities accrued because of the said ruling, it is

[4] Resolution dated November 25, 2010, pp. 5-6; *Rollo*, pp. 26-27.

> clear that petitioner's tax liabilities fall within the coverage of R.A. No. 9399.[5]

Petitioner's grounds and arguments have been squarely resolved by the CTA Second Division. This Court finds no reason to deviate from said findings.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

CIELITO N. MINDARO-GRULLA
Associate Justice

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[5] *Rollo*, pp. 32-33.

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice