REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CARNATION PHILS., INC.
(now merged with Nestle
Phils., Inc.),
Petitioner,

- versus -

C.T.A. CASE NO. 4263

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

1/26/93

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

D E C I S I O N

Petitioner comes before this Court praying for the nulling and voiding of the assessments covering its alleged deficiency income and sales taxes for the taxable year ending September 30, 1981, in the total amount of P19,535,183.44, inclusive of penalties and interest.

The records of the case, as well as that of the Bureau of Internal Revenue in connection with the same, evidence a clear factual background of the controversy at hand.

Petitioner, a duly registered Philippine corporation, filed its Corporation/Partnership

Annual Income Tax Return for taxable year ending September 30, 1981 (Exh. "F"; CTA Records, p. 113), on January 15, 1982; and its Manufacturers/Producers Percentage Tax Return for the quarter ending September 30, 1981 (Exh. "M"; CTA Records, p. 114), on November 20, 1981.

On October 13, 1986, March 16, 1987 and May 18, 1987 petitioner, through its Senior Vice President Jaime O. Lardizabal, and in consideration of the approval by the Commissioner of Internal Revenue of petitioner's request for reinvestigation and/or reconsideration of its internal revenue case involving the assessments for the fiscal year 1981 which were pending at the time, signed three separate "Waivers Of The Statute of Limitations Under The National Internal Revenue Code", wherein it:

> "xxx waives the running of the prescriptive period provided for in Sections 318 and 319 and other related provisions of the National Internal Revenue Code and consents to the assessment and collection of the taxes which may be found due after reinvestigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 318 and 319 and

> other relevant provisions of the National Internal Renenue Code, but not after (13 April 1987 for the earlier-executed waiver or June 14, 1987 for the later waiver, or July 30, 1987 for the subsequent waiver, as the case may be). However, the taxpayer (petitioner herein) does not waive any prescription already accrued in its favor." (Exhs. "B" and "B-1" and "B-2"; CTA Records, pp. 104-106)

Neither waiver was signed by respondent Commissioner or any of his agents.

On August 5, 1987, petitioner received respondent's Letter of Demand No. FAS-1B-81-87, dated July 29, 1987 (Exh. "A"; CTA Records, pp. 101-102), asking from petitioner to pay of P1,442,586.56, P14,152,683.85, and P3,939,913.03 representing, respectively, its alleged deficiency income tax, sales tax, and sales tax on undeclared sales for the year 1981, increments included. This demand letter was accompanied by Assessment Notices No. FAS-1-81-87-005824, FAS-4-81-87-005825, and FAS-4-81-87-005826 (Exhs. "A-1", "A-2", and "A-3"; CTA Records, p. 103).

Petitioner filed a basic protest (BIR Records, pp. 46-47) with the BIR on August 20, 1987, therein disputing the assessments covered by Demand Letter No. FAS-1B-81-87. This was supplemented by a petitioner's protest dated September 28, 1987 and received by the BIR's Receivable Accounts Division on September 30, 1987 (BIR Records, pp.266-287). These protests were denied by respondent in a letter (Annex "F", "Petition for Review"; CTA Records, p.41), dated March 15, 1988 and received by petitioner through counsel on March 25, 1988, which states, in part, as follows:

> "Please be informed that after reinvestigation, this Office did not find any legal or factual justification to withdraw, cancel or even modify our above-mentioned assessments.
>
> "In view thereof, it is requested that the aforesaid tax liabilities of your client (petitioner herein) be paid immediately, inclusive of the penalties incident to late payment.
>
> "This is our final decision. If you are not amenable thereto, you may appeal to the Court of Tax Appeals within thirty (30) days after receipt of this letter, otherwise, your client's assessments shall become final, executory and unappealable."

Consequently, on April 22, 1988, petitioner seasonably filed the instant petition for review with this Court.

We must first settle the preliminary and prejudicial issue of prescription raised by petitioner in its pleadings.

Petitioner contends that the deficiency assessments subject of the instant petition are barred by prescription, since they were issued beyond five years from the filing of the returns covering the internal revenue taxes assessed therein.

Respondent contrarily asserts that its right to assess petitioner for 1981 deficiency income and sales taxes has not yet prescribed for the reason that petitioner has, in the case at bar, allegedly "clearly and expressly waived the defense of prescription by its several requests for reinvestigation thru the execution of the written waiver of the statute of limitations duly filed with the Office of respondent" ("Answer", p. 3; CTA Records, p. 67). To this, petitioner responds that:

> "Although the period of prescription is waivable by agreement, there must exist, however, two essential requisites for the waiver to be valid: first, the waiver must be entered into before expiration of the time prescribed for making an assessment; and second, the Commissioner and the taxpayer must have consented thereto <u>in writing</u>. xxx
>
> "xxx xxx xxx
>
> "A cursory examination of the waivers signed by the petitioner show that there is nothing in the waivers to indicate that the Commissioner (the respondent) consented thereto since not one was signed by him. From the very nature of the petitioner's condition limiting the extension period up to certain dates only, the respondent's approval thereof in writing must be given to comply with the requisites of law." ("Memorandum For Petitioner", p. 7; CTA Records, p. 176)

We agree with petitioner, and find that the subject assessments were issued beyond the five-year prescriptive period allowed by the Tax Code.

Section 318 of the 1981 Tax Code provides that:

> "**Sec. 318. Period of limitation upon assessment and collection.** -- Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after

> the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: **Provided**, That this limitation shall not apply to cases already investigated prior to the approval of this Code.

As established by petitioner's uncontradicted evidence, it filed its annual income tax and percentage tax returns for the fiscal year ending September 30, 1981 on January 15, 1982 and November 20, 1981, respectively. Therefore, in accordance with the above-quoted provision, petitioner's 1981 income and sales taxes could have been validly assessed by respondent only until January 14, 1987 and November 19, 1986, respectively.[1] Clearly, the subject assessments, which are all dated July 29, 1987, were all issued beyond the five-year prescriptive period provided under the 1981 Tax Code.

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These dates were computed by adding 1,825 days (or 365 days per year x 5 years) to the dates of filing, considering in the process that 1984 was a leap year.

Respondent cannot seek refuge in Section 319(b) of the 1981 Tax Code (now Section 223(b)) which reads as follows:

> "Sec. 319. Exceptions as to period of limitation of assessment and collection of taxes. -- xxx
>
> "(b) Where before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
>
> "xxx xxx xxx"

Notwithstanding the fact that the records show that petitioner, through its Senior Vice President Jaime Lardizabal, signed three waivers of the statute of limitations under the Tax Code on separate dates (October 13, 1986, March 16, 1987, and May 18, 1987). We find these "waivers" to be invalid and without any binding effect on petitioner for the reason that there was no consent by the respondent and no period was set or agreed upon for subsequent assessment.

Regarding this point, We reiterate the interpretation which We gave to what is now Section 223(b) of the Tax Code (Section 319(b) of the 1981 Tax Code) in the case of **Boise Cascade Philippines, Inc. vs. Commissioner of Internal Revenue,** C.T.A. Case No. 2858 (March 30, 1987). In said case, We stated, in part, that:

> "The law is clear and explicit that a valid waiver of the statute of limitation provided for in the above-quoted provision of the law (referring to what was Section 319(b) of the 1981 Tax Code and is now Section 223(b) of the Tax Code) requires that the said statute of limitation must be in writing and must be both signed by the Commissioner of Internal Revenue and the taxpayer. xxx.
>
> "In the instant case, the language of said statute of limitation being plain and unambiguous, it conveys a clear and definite meaning, and therefore, said statute must simply be applied and never to be interpreted. xxx
>
> "In the case at bar, the <u>law is clear and definite that it is only the Commissioner of Internal Revenue, who is specially named by said provision of Section 332(b)</u> (Section 319(b) of the 1981 Tax

> Code and now Section 223(b)) of the Tax Code, as the one who can sign the waiver of the statute of limitation, and since the Commissioner has not signed the waiver, there is, therefore, no consummation or valid waiver which may suspend the running of the period within which to assess the tax in question. xxx" (Boise Cascade Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 1858 (1987), pp. 30-32) (Underscoring Ours)

Therefore, the Court finds that there is no waiver of the statute of limitations validly entered into by the petitioner and respondent. Consequently, petitioner cannot be deemed estopped from raising the defense of prescription against the assessments on the ground of its signing of the two "waivers" presented as Exhibits "B" and "B-1" in the case at bar.

Inasmuch as the assessments subject of the instant petition were all issued beyond the five-year prescriptive period allowed under the 1981 Tax Code, the Court finds no need to delve into the other issues raised.

WHEREFORE, the Court, finds the assessments for allegedly deficient income and sales taxes for petitioner's fiscal year ending September 30, 1981 covered by Demand Letter No. FAS-1B-81-87 and Assessment Notices No. FAS-1-81-87-005824, FAS-4-81-87-005825, and FAS-4-81-87-005826 (all dated July 29, 1987) in the total amount of P19,535,183.44 to be NULL AND VOID for having been issued beyond the five-year prescriptive period provided by law.

No costs.

SO ORDERED

Quezon City, Metro Manila, January 26, 1993.

MANUEL K. GRUBA
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 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