REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*EN BANC*

*******

COMMISSIONER OF INTERNAL REVENUE,
*Petitioner*,

-versus-

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,
*Respondent*.

C.T.A. EB No. 295
(CTA Case No. 5178)

Present:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:

MAY 27 2008 [handwritten signature] 9:00 a.m.

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

# D E C I S I O N

*ACOSTA, P.J.:*

This is a Petition for Review filed on July 24, 2007 seeking to set aside the Resolutions issued by the Court of Tax Appeals' Second Division dated May 17, 2007 and June 19, 2007, granting respondent Philippine Long Distance Telephone Company's (PLDT) Motion for Writ of Execution and the Resolution denying petitioner Commissioner of Internal Revenue's (Commissioner) Motion for Reconsideration, respectively, rendered in CTA Case No. 5178 entitled "*Philippine Long Distance Telephone Company vs. Commissioner of Internal Revenue*".

The facts of the case are as follows:

On December 15, 2005, the Supreme Court rendered a decision in *Commissioner of Internal Revenue vs. Philippine Long Distance Company*, G.R. 140230, the dispositive portion of which states:

[initials]

"WHEREFORE, the petition is partially GRANTED. The decision of the Court of Appeals in CA-G.R. No.47895 dated September 17, 1999 is MODIFIED. The Commissioner of Internal Revenue is ORDERED to issue a Tax Credit Certificate or to refund to PLDT only the [amount] of P94,673,422.00 advance sales tax and compensating tax erroneously collected by the Bureau of Customs from October 1, 1992 to May 31, 1994, less the VAT which may have been due on the importations in question, but have otherwise remained uncollected.

SO ORDERED."

Said decision became final and executory and has been recorded in the Book of Entries of Judgment on February 5, 2006.[1]

Thereafter on March 28, 2006, PLDT filed a "Motion for a Writ of Execution" with Opposition thereto filed by the Commissioner on April 21, 2006. This motion was granted in a Resolution dated April 24, 2006. However, acting on the Motion for Reconsideration filed by the Commissioner on May 15, 2006, the CTA Second Division reversed itself and set the case for hearing in a Resolution promulgated on August 7, 2006. On the scheduled hearing on September 20, 2006, counsel for PLDT manifested and moved that the Court set aside this August 7, 2006 Resolution and reinstate the April 24, 2006 Resolution, granting the Motion for a Writ of Execution. On May 17, 2007, the Second Division ruled affirmatively on this oral manifestation and motion and issued the corresponding Writ of Execution. It found:

"In the instant case, considering that the Supreme Court's decision had already became final and executory, the issuance of a writ of execution becomes a ministerial duty on the part of this Court and the petitioner [herein respondent PLDT] is entitled as a matter of right to a writ of execution. It therefore becomes the ministerial duty of this Court to issue a writ of execution.

It is worth stressing that in the final decision, the Supreme Court ordered respondent [Commissioner] 'to issue a Tax Credit

[1] *Division Docket, CTA Case No. 5178, page 397.*

> Certificate or to refund to PLDT only the [amount] of P94,673,422.00 advance sales tax and compensating tax erroneously collected by the Bureau of Customs from October 1, 1992 to May 31, 1994 less the VAT which may have been due on the importations in question, but have otherwise remained uncollected.'"

On May 29, 2007, the Commissioner filed a Motion for Reconsideration, with Opposition filed by PLDT on June 8, 2007. This Motion for Reconsideration was denied by the Second Division on June 19, 2007.

Not satisfied, this Petition for Review was filed by the Commissioner on July 24, 2007 raising the sole issue of "WHETHER OR NOT THE WRIT OF EXECUTION SHOULD BE HELD IN ABEYANCE PENDING THE PRESENTATION OF RESPONDENT'S PROOF OF PAYMENT OF THE CORRESPONDING VAT ON THE IMPORTATIONS IN QUESTION".

According to the Commissioner, while there is no question that the decision of the Supreme Court had become final and executory, there exists a question as to how much refund/tax credit should be granted considering the tenor of the decision. The Commissioner aver that a final determination of the amount of the refund has yet to be made, since the Supreme Court is very clear on the matter; the grant of the refund/tax credit of the advance sales tax and compensating tax in the total amount of P94,673,422.00, is subject to the condition that PLDT present proof of payment of the corresponding VAT on said transactions.

The Commissioner claims that the evidence on record does not show that PLDT presented evidence of VAT payments covering the importations in question; that what it presented were proof of payments of VAT for the period covering "1 March 1994 to 29 February 1994". For this omission, no Writ of Execution can be issued.

On August 30, 2007, complying with this Court's resolution, PLDT filed its Comment to the Petition for Review, raising the following issues:

> I. WHETHER OR NOT HEREIN RESPONDENT HAD PRESENTED IN EVIDENCE PROOFS OF PAYMENTS OF VAT ON ITS IMPORTATIONS COVERING THE PERIOD FROM 1 OCTOBER 1992 TO 31 MAY 1994.
>
> II. WHETHER OR NOT HEREIN RESPONDENT HAD COMPLIED WITH THE CONDITION PRESCRIBED BY THE SUPREME COURT FOR THE EXECUTION OF ITS FINAL AND EXECUTORY DECISION.
>
> III. WHETHER OR NOT IT IS THE MINISTERIAL DUTY OF THE HONORABLE COURT TO ISSUE A WRIT OF EXECUTION OF THE FINAL AND EXECUTORY DECISION OF THE SUPREME COURT.
>
> IV. WHETHER OR NOT THE PETITIONER IS LIABLE FOR INTEREST FROM THE DATE OF THE FINALITY OF THE DECISION OF THE SUPREME COURT UNTIL THE EXECUTION THEREOF.

PLDT claims that it had complied with the Supreme Court decision. It had already presented evidence proving VAT payments of its importations from October 1, 1992 to May 31, 1994. PLDT maintains that the instant Petition for Review is merely a dilatory tactic employed by the Commissioner to avoid the immediate issuance of the tax credit certificate in its favor.

PLDT avers that to prove its VAT payments for March 1, 1992 to February 29, 1994, it formally offered the following evidence on September 22, 2006: Exhibits "E" to "J" consisting of the Petition for Review in CTA Case No. 5106, the Formal Offer of Evidence dated December 16, 1994 in the said case, the March 1, 1995 Resolution admitting the offered pieces of evidence, the December 18, 1995 Court of Tax Appeals Decision, the February 16, 1998 Court of Appeals Decision and the September 28, 1998 Supreme Court Resolution, respectively.

PLDT explains that CTA Case No. 5106 is an earlier claim filed to seek the refund of erroneously paid VAT for the period 1 March 1992 to 29 February 1994. In this case it offered in evidence Exhibits "A" to "A-3557" inclusive, which consists of the report of SGV & Co., Schedule I, a summary of VAT payments, and photocopies of the official receipts covering erroneous VAT payments for this period.

Corollary thereto, on December 18, 1995, the CTA rendered its Decision in CTA Case No. 5106, ordering the Commissioner of Internal Revenue to issue in favor of PLDT a tax credit certificate in the amount of P428,730,320, representing erroneously and illegally paid VAT on its importation of equipment, machineries and spare parts for this period.

On the other hand, for the period 1 March 1994 to 31 May 1994 PLDT likewise formally offered on September 22, 2006, Exhibits "A" to "D" consisting of the Formal Offer of Evidence dated February 14, 1996, Court Resolution dated March 26, 1997 admitting the exhibits offered, the Decision dated February 18, 1998, ordering the Commissioner to issue a Tax Credit Certificate in the amount of P223,265,276.00 in favor of PLDT, where the Court supposedly acknowledged VAT payments of importations for the period in question and lastly, the final and executory decision of the Supreme Court dated December 15, 2005 affirming the CTA decision, respectively.

The said Formal Offer of Evidence marked as Exhibit "A" consisted of documentary evidence marked as Exhibits "C" to "D-304", inclusive of submarkings, consisting of the report of the SGV & Co., the schedule of VAT payments and the photocopies of receipts supporting these VAT payments.

In addition, PLDT argues that the Commissioner categorically admitted that it presented before this Court proof of VAT payments for the period covering "1 March 1994 to 29 February 1994".

Glu

Given the above, PLDT maintains that it is now the ministerial duty of the Court to issue a Writ of Execution of the Final Decision of the Supreme Court.

On November 26, 2007, upon the PLDT's filing of a Manifestation on November 9, 2007 stating that it is adopting as Memorandum, the Comment it previously filed, and the Commissioner's filing of her Memorandum on November 20, 2007, this case was deemed submitted for decision.

The issues raised by the parties can be summed up into: whether or not the issuance of the Writ of Execution should be held in abeyance pending the presentation of PLDT's proof of payment of the corresponding Value-Added Tax (VAT) on the importations in question; corollary thereto, whether PLDT has already presented the evidence required of it, so that the issuance of writ should now be the ministerial duty of the court; and whether interest can be charged against the government.

**THE COURT'S RULING**

Petitioner Commissioner of Internal Revenue maintains that while the final decision of the Supreme Court orders the refund or issuance of a tax credit certificate in favor of PLDT, a Writ of Execution cannot be issued in the amount stated in therein without determining and deducting the VAT due on the importations in question. In this regard, the Court agrees. It is clear in the dispositive portion of the said Supreme Court decision that the VAT which may have been due on the importations should be taken into account in determining the amount to be granted for refund/issuance of tax credit to PLDT. However, the Court finds merit in PLDT's contention that a Writ of Execution should now be ordered since it had already presented sufficient proof of the VAT payments, as required in the Supreme Court decision.

*Glen*

**FOR THE PERIOD MARCH 1, 1992 to FEBRUARY 29, 1994**

As correctly argued by PLDT, in CTA Case No. 5106 (an earlier claim for refund for erroneously paid VAT for the period March 1, 1992 up to February 29, 1994),[2] proof of VAT payments on the importations have already been submitted[3]. Thus:

| EXHIBITS | DESCRIPTION |
|---|---|
| A to A-1 | Report of SGV & Co. dated September 30, 1994 |
| A-2 to A-41 | Schedule I, summary of VAT payments, accompanying the above-mentioned SGV & Co. Report |
| A-42 to A-3557 | Photocopies of the official receipts covering the VAT payments mentioned in Schedule I |

And on September 22, 2006, PLDT offered the following Exhibits:

| EXHIBITS | DESCRIPTION |
|---|---|
| E | Petition for Review in CTA Case No. 5106 |
| F | Formal Offer of Evidence dated December 16, 1994 filed by PLDT in CTA Case No. 5106 |
| G | Resolution dated March 1, 1995, admitting the evidence formally offered |
| H | Decision of the CTA in CTA Case No. 5106, dated December 18, 1995 |

Elm

---

[2] *Exhibit "E", September 22, 2006 Formal Offer of Exhibits.*
[3] *Exhibit "F", ibid.*

| | |
|---|---|
| I | Decision of the Court of Appeals dated February 16, 1998, affirming the CTA decision |
| J | Resolution of the Supreme Court dated September 28, 1998, declaring the above CA decision final and executory |

These Exhibits were offered to prove the amount of VAT paid, albeit erroneously, during the period March 1, 1992 to February 29, 1994. In the said CTA decision the following findings of fact were made:

> "On various dates, starting March 1, 1992 to February 29, 1994, petitioner purchased imported equipments, machineries and spare parts for its use in operating its franchise. It paid Value Added Tax (VAT) on said importations in the sum of P698,059,124.00 xxx"

Clearly, PLDT has already shown proof of VAT payments for the period March 1, 1992 to February 29, 1994.

**FOR THE PERIOD MARCH 1, 1994 to MAY 31, 1994**

This Court likewise agrees with PLDT that for the period March 1, 1994 to May 31, 1994, it has likewise proved VAT payments. In its Formal Offer of Evidence dated February 14, 1996 in CTA Case No. 5178, the following exhibits were offered to prove the amount of VAT paid on PLDT's importation of machineries and spare parts during the period March 1, 1994 to May 31, 1994[4]:

| **EXHIBITS** | **DESCRIPTION** |
|---|---|
| C to C-1 | Report of SGV & Co. dated April 25, 1995 |
| C-3 to C-6 | Schedule of VAT |

Glen

[4] Division Docket, CTA Case No. 5178, page 31.

| | |
|---|---|
| | payments (Summary and Details of VAT paid during the period March 1, 1994 to May 31, 1994) |
| D to D-304 | Photocopies of the official receipts covering the VAT payments mentioned in Exhibits C-3 to C-6 |

These Exhibits were admitted on March 26, 1997. Further, in the Decision of the CTA division dated February 18, 1998, as later affirmed by the Supreme Court, contained the following findings of fact:

> " xxx petitioner likewise paid value-added taxes (VAT) on similar importations for the period covering March 1, 1994 to May 31, 1994 in the amount of One Hundred Sixteen Million Forty One Thousand Three Hundred Thirty Three Pesos (P116,041,333.00)"

Evidence relating to VAT payments for March 1, 1994 to May 31, 1994 were also offered on September 22, 2004, to wit:

| EXHIBITS | DESCRIPTION |
|---|---|
| A | Formal Offer of Evidence dated February 14, 1996 |
| B | Resolution dated March 26, 1997 admitting the documents offered |
| C | Decision of the CTA Division dated February 18, 1998 |
| D | The final and executory Decision of the Supreme Court dated December 15, 2005 |

Verily, VAT payments for this period have likewise been proven by PLDT.

*Elu*

In view of the above, the Resolution of the Second Division of this Court should be upheld *in toto.* VAT payments for the period in question has sufficiently been proven by PLDT thus, it has now become the ministerial duty of this Court to issue a Writ of Execution of the final and executory decision of the Supreme Court.

Despite the above, PLDT's claim for interest from the date of the finality of the Supreme Court decision until its execution cannot be granted. The final decision of the Supreme Court can no longer be altered or modified. As held in the assailed Resolution of the Second Division, the lower court cannot vary the mandate of the superior court or reexamine it for any other purpose other than execution.[5]

Moreover, it is a settled principle that the government, cannot be made to pay interest on the amount to be refunded in the absence of a statutory provision clearly or expressly directing or authorizing such payment of interest.[6] Interest is not to be awarded against a sovereign government unless its consent has been manifested by an Act of its legislature or by a lawful contract of its executive officers. And if there be doubt upon the subject, that doubt must be resolved in favor of the state.[7] This has been reiterated in the recent case of ***Republic of the Philippines, represented by the Commissioner of Customs, vs.Unimex Micro-Electronics GmBH,***[8] where it was held:

> "Interest may be paid only either as compensation for the use of money (monetary interest) or as damages (compensatory interest). We quote in agreement the CTA's disquisition in its decision dated September 19, 2002:
>
> > 'Interest may be paid either as compensation for the use of money (monetary interest) referred to in Article 1956 of the New Civil Code or as damages (compensatory interest) under Article 2209 above cited.

---

[5] *CTA Second Division Resolution dated May 17, 2007 citing Tropical Homes, Inc, vs. Fortun, et al. 169 SCRA 91 (1985), etc.*
[6] *Collector of Internal Revenue vs. St. Paul's Hospital of Iloilo, No. L-12127, May 25, 1959, 105 Phil. 1319.*
[7] *Sarasola vs. Trinidad, No. 14595, October 11, 1919, 40 Phil. 259.*
[8] *G.R. Nos. 166309-10, March 9, 2007,518 SCRA 19.*

> As clearly provided in [Article 2209], interest is demandable if: a) there is monetary obligation and b) debtor incurs delay.
>
> This case does not involve a monetary obligation to be covered by Article 2209. There is no dispute that this case was originally filed questioning the seizure of the shipment by the Bureau of Customs. Our decision subject of this action for revival [of judgment] did not refer to any monetary obligation by [petitioner] towards the [respondent]. In fact, if there was any monetary obligation mentioned, it referred to the obligation of [respondent] to pay the correct taxes, duties, fees and other charges before the release of the goods can be had. In one case, the Supreme Court held:
>
>> 'In a comprehensive sense, the term 'debt' embraces not merely money due by contract, but whatever one is bound to render to another, either for contract or the requirement of the law, such as tax where the law imposes personal liability therefor.'
>
> Therefore, the government was never a debtor to the petitioner in order that [Article] 2209 could apply. Nor was it in default for there was no monetary obligation to pay in the first place. There is default when <u>after</u> demand is made either judicially or extrajudicially. In other words, for interest to be demandable under Article 2209, there should be a monetary obligation and the debtor was in default...
>
> In the instant case, [petitioner] was never under monetary obligation to [respondent], no demand can be made either judicially or extrajudicially. Parallel thereto, there could be no default...

No doubt, the present case does not fall within the first situation. Neither can it be considered as one involving interest based on damages under the second situation.

More importantly, interest is not chargeable against petitioner except when it has expressly stipulated to pay it or when interest is allowed by the legislature or in eminent domain cases where damages sustained by the owner take the form of interest at the legal rate." *(Citations Omitted)*

In view of the above, while there is no merit in the Commissioner's contentions, PLDT having been able to prove VAT payments and consequently entitlement to a Writ of Execution as a matter of right, PLDT's claim for interest has no basis in law. No interest can be charged against the government.

**ACCORDINGLY**, the instant Petition for Review is hereby **DENIED** for lack of merit. The Resolutions of the Second Division are hereby **UPHELD**. Let a **WRIT OF EXECUTION** be issued in the amount of P94,673,422.00 representing advance sales tax and compensating tax erroneously collected from October 1, 1992 to May 31, 1994, there having been sufficient proof of VAT payments as required in the final and executory decision of the Supreme Court dated December 15, 2005.

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Justice

WE CONCUR:

**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

## CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice