

## THIRD DIVISION

[ G.R. NO. 140230, December 15, 2005 ]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.  
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,  
RESPONDENT.**

### D E C I S I O N

**GARCIA, J.:**

In this petition for review on *certiorari*, the Commissioner of Internal Revenue (Commissioner) seeks the review and reversal of the September 17, 1999 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. No. SP 47895, affirming, in effect, the February 18, 1998 decision<sup>[2]</sup> of the Court of Tax Appeals (CTA) in C.T.A. Case No. 5178, a claim for tax refund/credit instituted by respondent Philippine Long Distance Company (PLDT) against petitioner for taxes it paid to the Bureau of Internal Revenue (BIR) in connection with its importation in 1992 to 1994 of equipment, machineries and spare parts.

The facts:

PLDT is a grantee of a franchise under Republic Act (R.A.) No. 7082 to install, operate and maintain a telecommunications system throughout the Philippines.

For equipment, machineries and spare parts it imported for its business on different dates from October 1, 1992 to May 31, 1994, PLDT paid the BIR the amount of P164,510,953.00, broken down as follows: (a) compensating tax of P126,713,037.00; advance sales tax of P12,460,219.00 and other internal revenue taxes of P25,337,697.00. For similar importations made between March 1994 to May 31, 1994, PLDT paid P116,041,333.00 value-added tax (VAT).

On March 15, 1994, PLDT addressed a letter to the BIR seeking a confirmatory ruling on its tax exemption privilege under Section 12 of R.A. 7082, which reads:

Sec. 12. The grantee ... shall be liable to pay the same taxes on their real estate, buildings, and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay. In addition thereto, the grantee, ... shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee, its successors or assigns, **and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof:** Provided, That the grantee ... shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Sec. 2 of Executive Order No. 72 unless the

latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto. (Emphasis supplied).

Responding, the BIR issued on April 19, 1994 Ruling No. UN-140-94,<sup>[3]</sup> pertinently reading, as follows:

PLDT shall be subject only to the following taxes, to wit:

xxx xxx xxx

7. The 3% franchise tax on gross receipts which shall be in lieu of all taxes on its franchise or earnings thereof.

xxx

xxx

xxx

The "in lieu of all taxes" provision under Section 12 of RA 7082 clearly exempts PLDT from all taxes including the 10% value-added tax (VAT) prescribed by Section 101 (a) of the same Code on its importations of equipment, machineries and spare parts necessary in the conduct of its business covered by the franchise, except the aforementioned enumerated taxes for which PLDT is expressly made liable.

xxx xxx xxx

In view thereof, this Office ... hereby holds that PLDT, is exempt from VAT on its importation of equipment, machineries and spare parts ... needed in its franchise operations.

Armed with the foregoing BIR ruling, PLDT filed on December 2, 1994 a claim<sup>[4]</sup> for tax credit/refund of the VAT, compensating taxes, advance sales taxes and other taxes it had been paying *"in connection with its importation of various equipment, machineries and spare parts needed for its operations"*. With its claim not having been acted upon by the BIR, and obviously to forestall the running of the prescriptive period therefor, PLDT filed with the CTA a petition for review,<sup>[5]</sup> therein seeking a refund of, or the issuance of a tax credit certificate in, the amount of P280,552,286.00, representing compensating taxes, advance sales taxes, VAT and other internal revenue taxes alleged to have been erroneously paid on its importations from October 1992 to May 1994. The petition was docketed in said court as *CTA Case No. 5178*.

On February 18, 1998, the CTA rendered a decision<sup>[6]</sup> granting PLDT's petition, pertinently saying:

This Court has noted that petitioner has included in its claim receipts covering the period prior to December 16, 1992, thus, prescribed and barred from recovery. In conclusion, We find that the petitioner is entitled to the reduced amount of P223,265,276.00 after excluding from the final computation those taxes that were paid prior to December 16, 1992 as they fall outside the two-year prescriptive period for claiming for a refund as provided by law. The computation of the refundable amount is summarized as follows:

## COMPENSATING TAX

Total amount claimed P126,713.037.00

Less:

a) Amount already  
prescribed: xxx

Total P  
38,015,132.00

b) Waived by P P39,456,006.00  
petitioner (Exh. B- 1,440,874.00  
216)

Amount refundable P87,257,031.00

## ADVANCE SALES TAX

Total amount claimed P12,460.219.00

Less amount already  
prescribed: P5,043,828.00

Amount refundable P7,416,391.00

## OTHER BIR TAXES

Total amount claimed P25,337,697.00

Less amount already  
prescribed: 11,187,740.00

Amount refundable P14,149,957.00

## VALUE ADDED TAX

Total amount claimed P116,041,333.00

Less amount waived  
by petitioner  
(unaccounted 1,599,436.00  
receipts)

Amount refundable P114,441,897.00

TOTAL AMOUNT P223,265,276.00,  
REFUNDABLE

=====

(Breakdown omitted)

and accordingly disposed, as follows:

WHEREFORE, in view of all the foregoing, this Court finds the instant petition meritorious and in accordance with law. Accordingly, respondent is hereby ordered to REFUND or to ISSUE in favor of petitioner a Tax

Credit Certificate in the reduced amount of P223,265,276.00 representing erroneously paid value-added taxes, compensating taxes, advance sales taxes and other BIR taxes on its importation of equipments (sic), machineries and spare parts for the period covering the taxable years 1992 to 1994.

Noticeably, the CTA decision, penned by then Associate Justice Ramon O. de Veyra, with then CTA Presiding Judge Ernesto D. Acosta, concurring, is punctuated by a dissenting opinion<sup>[7]</sup> of Associate Judge Amancio Q. Saga who maintained that the phrase "*in lieu of all taxes*" found in Section 12 of R.A. No. 7082, *supra*, refers to exemption from "*direct taxes only*" and does not cover "indirect taxes", such as VAT, compensating tax and advance sales tax.

In time, the BIR Commissioner moved for a reconsideration but the CTA, in its Resolution<sup>[8]</sup> of May 7, 1998, denied the motion, with Judge Amancio Q. Saga reiterating his dissent.<sup>[9]</sup>

Unable to accept the CTA decision, the BIR Commissioner elevated the matter to the Court of Appeals (CA) by way of petition for review, thereat docketed as **CA-G.R. No. 47895**.

As stated at the outset hereof, the appellate court, in the herein challenged Decision<sup>[10]</sup> dated September 17, 1999, dismissed the BIR's petition, thereby effectively affirming the CTA's judgment.

Relying on its ruling in an earlier case between the same parties and involving the same issue – *CA-G.R. SP No. 40811*, decided 16 February 1998 – the appellate court partly wrote in its assailed decision:

This Court has already spoken on the issue of what taxes are referred to in the phrase "in lieu of all taxes" found in Section 12 of R.A. 7082. There are no reasons to deviate from the ruling and the same must be followed pursuant to the doctrine of *stare decisis*. xxx. "*Stare decisis et non quieta movere*. Stand by the decision and disturb not what is settled."

Hence, this recourse by the BIR Commissioner on the lone assigned error that:

THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT IS EXEMPT FROM THE PAYMENT OF VALUE-ADDED TAXES, COMPENSATING TAXES, ADVANCE SALES TAXES AND OTHER BIR TAXES ON ITS IMPORTATIONS, BY VIRTUE OF THE PROVISION IN ITS FRANCHISE THAT THE 3% FRANCHISE TAX ON ITS GROSS RECEIPTS SHALL BE IN LIEU OF ALL TAXES ON ITS FRANCHISE OR EARNINGS THEREOF.

There is no doubt that, insofar as the Court of Appeals is concerned, the issue petitioner presently raises had been resolved by that court in *CA-G.R. SP No. 40811*, entitled *Commissioner of Internal Revenue vs. Philippine Long Distance Company*. There, the Sixteenth Division of the appellate court declared that under the express provision of Section 12 of R.A. 7082, *supra*, "*the payment [by PLDT] of the 3% franchise tax of [its] gross receipts shall be in lieu of all taxes*" exempts PLDT from payment of compensating tax, advance sales tax, VAT and other internal revenue

taxes on its importation of various equipment, machinery and spare parts for the use of its telecommunications system.

Dissatisfied with the CA decision in that case, the BIR Commissioner initially filed with this Court a motion for time to file a petition for review, docketed in this Court as *G.R. No. 134386*. However, on the last day for the filing of the intended petition, the then BIR Commissioner had a change of heart and instead manifested<sup>[11]</sup> that he will no longer pursue *G.R. No. 134386*, there being no compelling grounds to disagree with the Court of Appeals' decision in *CA-G.R. 40811*. Consequently, on September 28, 1998, the Court issued a Resolution<sup>[12]</sup> in *G.R. No. 134386* notifying the parties that "*no petition*" was filed in said case and that the CA judgment sought to be reviewed therein "*has now become final and executory*". Pursuant to said Resolution, an Entry of Judgment<sup>[13]</sup> was issued by the Court of Appeals in *CA-G.R. SP No. 40811*. Hence, the CA's dismissal of *CA-G.R. No. 47895* on the additional ground of *stare decisis*.

Under the doctrine of *stare decisis et non quieta movere*, a point of law already established will, generally, be followed by the same determining court and by all courts of lower rank in subsequent cases where the same legal issue is raised.<sup>[14]</sup> For reasons needing no belaboring, however, the Court is not at all concluded by the ruling of the Court of Appeals in its earlier *CA-G.R. SP No. 47895*.

The Court has time and again stated that the rule on *stare decisis* promotes stability in the law and should, therefore, be accorded respect. However, blind adherence to precedents, simply as precedent, no longer rules. More important than anything else is that the court is right,<sup>[15]</sup> thus its duty to abandon any doctrine found to be in violation of the law in force.<sup>[16]</sup>

As it were, the former BIR Commissioner's decision not to pursue his petition in *G.R. No. 134386* denied the BIR, at least as early as in that case, the opportunity to obtain from the Court an authoritative interpretation of Section 12 of R.A. 7082. All is, however, not lost. For, the government is not estopped by acts or errors of its agents, particularly on matters involving taxes. Corollarily, the erroneous application of tax laws by public officers does not preclude the subsequent correct application thereof.<sup>[17]</sup> Withal, the errors of certain administrative officers, if that be the case, should never be allowed to jeopardize the government's financial position.<sup>[18]</sup>

Hence, the need to address the main issue tendered herein.

According to the Court of Appeals, the "*in lieu of all taxes*" clause found in Section 12 of PLDT's franchise (R.A. 7082) covers all taxes, whether direct or indirect; and that said section states, in no uncertain terms, that PLDT's payment of the 3% franchise tax on all its gross receipts from businesses transacted by it under its franchise is in lieu of all taxes on the franchise or earnings thereof. In fine, the appellate court, agreeing with PLDT, posits the view that the word "*all*" encompasses any and all taxes collectible under the National Internal Revenue Code (NIRC), save those specifically mentioned in PLDT's franchise, such as income and real property taxes.

The BIR Commissioner excepts. He submits that the exempting "*in lieu of all taxes*"