

## THIRD DIVISION

[ G.R. No. 115712, February 25, 1999 ]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.  
COURT OF APPEALS, COURT OF TAX APPEALS AND CARNATION  
PHILIPPINES, INC. (NOW MERGED WITH NESTLE PHILS. INC.),  
RESPONDENT.**

### DECISION

**PURISIMA, J.:**

Before the Court is an appeal from the decision of the Court of Appeals<sup>[1]</sup> dated May 31, 1994, which affirmed *in toto* the decision of the Court of Tax Appeals<sup>[2]</sup> dated January 26, 1993, the dispositive portion of which reads:

"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 Nos. 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."<sup>[3]</sup>

The undisputed facts of the case as recited in the Decision (*Annex "A"*) of the Court of Appeals, are:<sup>[4]</sup>

"On January 15, 1982, Carnation Phils. Inc. (Carnation), filed its Corporation Annual Income Tax Return for taxable year ending September 30, 1981; and its Manufacturers/Producers Percentage Tax Return for the quarter ending September 30, 1981."<sup>[5]</sup>

"On October 13, 1986, March 16, 1987 and May 18, 1987, Carnation, through its Senior Vice President Jaime O. Lardizabal, signed three separate `waivers of the Statute of Limitations Under the National Internal Revenue Code' wherein it:

*"x x x 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 Revenue 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."*

"The waivers were not signed by the BIR Commissioner or any of his agents.

"On August 5, 1987, Carnation received BIR's letter of demand dated July 29, 1987 asking the said corporation to pay P1,442,586.56 as deficiency income tax, P14,152,683.85 as deficiency sales tax and P3,939,913.03 as deficiency sales tax on undeclared sales, all for the year 1981. This demand letter was accompanied by assessment Notices Nos. FAS-4-81-87-005824, FAS-4-81-87-005825 and FAS-4-81-87-005826.

"In a basic protest dated August 17, 1987, Carnation disputed the assessments and requested a reconsideration and reinvestigation thereof.

"On September 30, 1987, Carnation filed a supplemental protest.

"These protests were denied by the BIR Commissioner in a letter dated March 15, 1988

"Whereupon, Carnation appealed to the CTA.

"On January 26, 1993, the CTA issued the questioned order, the dispositive portion of which reads:

*"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."*

The pivot of inquiry here is whether or not the three (3) waivers signed by the private respondent are valid and binding<sup>[6]</sup> as to toll the running of the prescriptive period for assessment and not bar the Government from issuing subject deficiency tax assessments.

Section 318 (*now Section 203*) of the National Internal Revenue Code, the law then applicable reads:

"SEC 318. *Period of Limitations 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 purpose 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."<sup>[7]</sup> (underscoring ours)

The decision of the Court of Appeals affirming what the Court of Tax Appeals decided, established that subject assessments of July 29, 1987 were issued outside the statutory prescriptive period. Carnation filed its annual income tax and percentage tax returns for the fiscal year ending September 30, 1981 on January 15, 1982<sup>[8]</sup> and November 20, 1981,<sup>[9]</sup> respectively. In accordance with the above-quoted provision of law, private respondent's 1981 income and sales taxes could have been validly assessed only until January 14, 1987 and November 19, 1986, respectively.<sup>[10]</sup> However, Carnation's income and sales taxes were assessed only on July 29, 1987, beyond the five-year prescriptive period.<sup>[11]</sup>

Petitioner BIR Commissioner contends that the waivers signed by Carnation were valid although not signed by the BIR Commissioner because (a) when the BIR agents/examiners extended the period to audit and investigate Carnation's tax returns, the BIR gave its implied consent to such waivers; (b) the signature of the Commissioner is a mere formality and the lack of it does not vitiate the binding effect of the waivers; and (c) that a waiver is not a contract but a unilateral act of renouncing one's right to avail of the defense of prescription and remains binding in accordance with the terms and conditions set forth in the waiver.<sup>[12]</sup>

Petitioner's submission is inaccurate. The same tax code is clear on the matter, to wit:

"SEC. 319. *Exceptions as to period of limitation of assessment and collection of taxes.* -- (a) x x x

"(b) Where before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner of Internal Revenue 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 agreement in writing made before the expiration of the period previously agreed upon."

The Court of Appeals itself also passed upon the validity of the waivers executed by Carnation, observing thus:

"We cannot go along with the petitioner's theory. Section 319 of the Tax code earlier quoted is clear and explicit that the waiver of the five-year prescriptive period must be in writing and signed by both the BIR Commissioner and the taxpayer.

"Here, the three waivers signed by Carnation do not bear the written consent of the BIR Commissioner as required by law.

"We agree with the CTA in holding "these `waivers' to be invalid and without any binding effect on petitioner (Carnation) for the reason that there was no consent by the respondent (Commissioner of Internal Revenue)."

"The ruling of the Supreme Court in *Collector of Internal Revenue vs. Solano*,<sup>[13]</sup> is in point, thus: