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G.R. No. 187485 (*Commissioner of Internal Revenue v. San Roque Power Corporation)*

G.R. No. 196113 (*Taganito Mining Corporation v. Commissioner of Internal Revenue*)

G.R. No. 197156 (*Philex Mining Corporation v. Commissioner of Internal Revenue)*

Promulgated:

February 12, 2013

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SEPARATE DISSENTING OPINION

SERENO, *CJ.*:

The crux of the disparity in opinion among my esteemed colleagues is the proper application of the mandatory and jurisdictional nature of the $120+\leq30$ period provided under Section 112 (D) of the 1997 NIRC, whether prospective or retroactive.

I concur with the dissent of Justice Velasco that Revenue Regulation No. (RR) 7-95 was not superseded and did not become obsolete upon the approval of RA 8424 or the 1997 NIRC. It bears to stress that Section 106 (d) of the 1977 NIRC from which RR 7-95 was construed was not repealed by Section 112 (D) of the 1997 NIRC, thus, the same regulation which implements the same framework of the law may still be given effect for the proper execution of the terms set therein. It is wrong to assume that RR 7-95 was automatically revoked upon the enactment of a new law which conveys the same meaning as the old law. Needless to say, RR 7-95 was created in view of Section 106 (d) of the 1977 NIRC which has the same context and was actually replicated in Section 112 (D) of the 1997 NIRC. Thus, to conclude that RR 7-95 became inconsistent with Section 112 (D) of the 1997 NIRC is misplaced.

Moreover, to disregard RR 7-95 upon the enactment of the 1997 NIRC would likewise create a complicated scenario of determining which administrative issuance would govern claims under the said tax code during the intervening period pending the revision on its implementing rules. It would be nearly impossible for the Bureau of Internal Revenue to operate in an administrative vacuum.

Although we express the same position that the CTA Decisions constitute an operative fact on the manner in which the BIR, CA, CTA and even this court regarded the 120+≤30 period leading the taxpayers to believe that they were observing the proper period in their claims for refund, I do not agree with Justice Velasco's stand as to the application of RR 16-2005 which construed the nature of the 120+≤30 period as mandatory and jurisdictional only from the date it took effect on 1 November 2005. I believe that in line with numerous jurisprudence, the mandatory and jurisdictional application of the 120+≤30 period must be applied prospectively, or at the earliest only upon the finality of *Aichi* where this Court categorically ruled on the nature of the 120+≤30 period pursuant to Section 112 (D) of the 1997 NIRC. Prior to *Aichi*, the CTA continuously ruled that the 120+≤30 period is not mandatory and jurisdictional.

In *Miranda et. al. v. Imperial, et.al.,*[1] (*Miranda* case) while the Court had ruled: "only decisions of this Honorable Court establish jurisprudence or doctrines in this jurisdiction," decisions of the Court of Appeals (CA) which cover points of law still undecided in the Philippines may still serve as judicial guides or precedents to lower courts.[2] Indeed, decisions of the CA have a persuasive juridical effect.[3] And they may attain the status of doctrines if after having been subjected to test in the crucible of analysis and revision, the Supreme Court should find the same to have merits and qualities sufficient for their consecration as rules of jurisprudence.[4] If unreversed decisions of the CA are given weight in applying and interpreting the law, Court of Tax Appeals (CTA) decisions must also be accorded the same treatment considering they are both appellate courts, apart from the fact that the CTA is a highly specialized body specifically created for the purpose of reviewing tax cases.[5] This is especially the case when the doctrine and practice in the CTA has to do only with a procedural step.

Applying the foregoing to the issue at hand, the CTA's disposition of the issue of the prescriptive period for claims for refund of input VAT, which had never been controverted by this Court until the *Aichi* case, had served as a guide not only to inferior courts but also to taxpayers. Hence, following the pronouncement in *Miranda* case, we must give weight to the dispositions made during the interim period when the issue of mandatory compliance with Section 112 had not yet been resolved, much less raised in this jurisdiction.

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[1] 77 Phil.1073 (1947).
[2] *GSIS v. Cadiz*, 453 Phil. 384, 391 (2003).
[3] A Comparative Study of the Juridical Role and its Effect on the Theory on Juridical Precedents in the Philippine Hybrid Legal System, Cesar Villanueva, <http://law.upd.edu.ph/plj/images/files/PLJ%20volume%2065/PLJ%20 volume%2065%20first%20&%20second%2 0quarter%20-04-%20Cesar%20Lapuz%20Villanueva%20 %20Comparative%20Study%20of%20the%20Judicial%20Role.pdf> (visited 14 January 2013).
[4] Persons, Dean Ernesto L. Pineda, 33 (2004), citing *Miranda v. Imperial*, id. at 1, and *Gaw Sin Gee v. Market Master of the Divisoria Market, et.al.* [C.A.], 46 O.G. 2617.
[5] *Commissioner of Internal Revenue, v. Solidbank Corporation*, 462 Phil. 96 (2003).

Although I recognize the well-settled rule in taxation that tax refunds or credit, just like tax exemptions, are strictly construed against taxpayers, reason dictates that such strict construction properly applies only when what is being construed is the substantive right to refund of taxpayers. When courts themselves have allowed for procedural liberality, then they should not be so strict regarding procedural lapses that do not really impair the proper administration of justice.[6] After all, the higher objective of procedural rule is to insure that the substantive rights of the parties are protected.[7] In *Balindong v. Court of Appeals*[8] we stated:

> x x x. Hence, **rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.** Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain its failure to comply with the rules. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism or whimsicality in the settlement of disputes. **The enforcement of procedural rules is not antithetical to the substantive rights of the litigants. The policy of the courts is to give effect to both procedural and substantive laws, as complementing each other, in the just and speedy resolution of the dispute between the parties.**[9] (Emphasis supplied)

In the light of the foregoing, I find that previous regard to the 120+≤30 day period is an exceptional circumstance which warrant this Court to suspend the rules of procedure and accord liberality to the taxpayers who relied on such interpretations.

We find it violative of the right to procedural due process of taxpayers when the Court itself allowed the taxpayers to believe that they were observing the proper procedural periods and, in a sudden jurisprudential turn, deprived them of the relief provided for and earlier relied on by the taxpayers. It is with this reason and in the interest of substantial justice that the strict application of the 120+≤30 day period should be applied prospectively to claims for refund or credit of excess input VAT.

To apply these rules retroactively would be tantamount to punishing the public for merely following interpretations of the law that have the imprimatur of this Court. To do so creates a tear in the public order and sow more distrust in public institutions. We would be fostering uncertainty in the minds of the public, especially in the business community, if we cannot guarantee our own obedience to these rules.

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[6] *Fabrigar v. People*, 466 Phil. 1036, 1044 (2004) citing *Ligon v. Court of Appeals*, 314 Phil. 689, 699 (1995).
[7] Id.
[8] 488 Phil. 203 (2004).
[9] Id. at 215-216.

In a dissenting opinion in a case involving VAT law, Justice Tinga well said: "**Taxes may be inherently punitive, but when the fine line between damage and destruction is crossed, the courts must step forth and cut the hangman's noose. Justice Holmes once confidently asserted that 'the power to tax is not the power to destroy while this Court sits' and we should very well live up to this expectation not only of the revered Holmes, but of the Filipino people who rely on this Court as the guardian of their rights. At stake is the right to exist and subsist despite taxes, which is encompassed in the due process clause**."[10] (Emphasis supplied)

The Court should not allow procedural rules that it has tolerated, then suddenly distolerated, to unjustly result in the denial of the legitimate claims of taxpayers, *viz*:

> **Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.**[11] (Emphasis supplied)

Further, in *Land Bank of the Philippines v. De Leon*,[12] this Court had said that "[a] prospective application of our Decision is not only grounded on equity and fair play, but also based on the constitutional tenet that rules of procedure shall not impair substantive rights."[13]

It is my view that the mandatory nature of 120+≤30day period must be completely applied prospectively in order to create stability and consistency in our tax laws.

In this case, at the time Taganito filed its administrative and judicial claims for refund, the two-year prescriptive period remained the unreversed interpretation of the court. Thus, we cannot fault Taganito for heavily relying on court interpretations even with the existence of RR 16-2005. Taxpayers or the public in general, cannot be blamed for preferring to abide court interpretations over mere administrative issuances as the latter's validity is still subject to judicial determination.

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[10] *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 251 (2005).
[11] *BPI-Family Savings Bank, Inc. v. Court of Appeals*, 386 Phil. 719, 729 (2000).
[12] 447 Phil. 495 (2003).
[13] Id. at 503.

Accordingly, I concur with the opinion as to the outcome of the Dissent of Justice Velasco with regard to G.R. Nos. 187485 and 197156. However, for consistency of my position as discussed above and in the further interest of substantial justice, I vote to GRANT the Petition of Taganito in G.R. No..196113.

MARIA LOURDES P. A. SERENO
Chief Justice