550 Phil. 304

# FIRST DIVISION

# [ G.R. NO. 168129, April 24, 2007 ]

## COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PHILIPPINE HEALTH CARE PROVIDERS, INC., RESPONDENT.

## D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

For our resolution is the instant Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse the Decision[1] dated February 18, 2005 and Resolution dated May 9, 2005 of the Court of Appeals (Fifteenth Division) in CA-G.R. SP No. 76449.

The factual antecedents of this case, as culled from the records, are:

The Philippine Health Care Providers, Inc., herein respondent, is a corporation organized and existing under the laws of the Republic of the Philippines. Pursuant to its Articles of Incorporation,[2] its primary purpose is "To establish, maintain, conduct and operate a prepaid group practice health care delivery system or a health maintenance organization to take care of the sick and disabled persons enrolled in the health care plan and to provide for the administrative, legal, and financial responsibilities of the organization."

On July 25, 1987, President Corazon C. Aquino issued Executive Order (E.O.) No. 273, amending the National Internal Revenue Code of 1977 (Presidential Decree No. 1158) by imposing Value-Added Tax (VAT) on the sale of goods and services. This E.O. took effect on January 1, 1988.

Before the effectivity of E.O. No. 273, or on December 10, 1987, respondent wrote the Commissioner of Internal Revenue (CIR), petitioner, inquiring whether the services it provides to the participants in its health care program are exempt from the payment of the VAT.

On June 8, 1988, petitioner CIR, through the VAT Review Committee of the Bureau of Internal Revenue (BIR), issued VAT Ruling No. 231-88 stating that respondent, as a provider of medical services, is exempt from the VAT coverage. This Ruling was subsequently confirmed by Regional Director Osmundo G. Umali of Revenue Region No. 8 in a letter dated April 22, 1994.

Meanwhile, on January 1, 1996, Republic Act (R.A.) No. 7716 (Expanded VAT or E-VAT Law) took effect, amending further the National Internal Revenue Code of 1977. Then on January 1, 1998, R.A. No. 8424 (National Internal Revenue Code of 1997) became effective. This new Tax Code substantially adopted and reproduced the provisions of E.O. No. 273 on VAT and R.A. No. 7716 on E-VAT.

In the interim, on October 1, 1999, the BIR sent respondent a Preliminary Assessment Notice for deficiency in its payment of the VAT and documentary stamp taxes (DST) for taxable years 1996 and 1997.

On October 20, 1999, respondent filed a protest with the BIR.

On January 27, 2000, petitioner CIR sent respondent a letter demanding payment of "deficiency VAT" in the amount of P100,505,030.26 and DST in the amount of P124,196,610.92, or a total of P224,702,641.18 for taxable years 1996 and 1997. Attached to the demand letter were four (4) assessment notices.

On February 23, 2000, respondent filed another protest questioning the assessment notices.

Petitioner CIR did not take any action on respondent's protests. Hence, on September 21, 2000, respondent filed with the Court of Tax Appeals (CTA) a petition for review, docketed as CTA Case No. 6166.

On April 5, 2002, the CTA rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the instant Petition for Review is PARTIALLY GRANTED. Petitioner is hereby ORDERED TO PAY the deficiency VAT amounting to P22,054,831.75 inclusive of 25% surcharge plus 20% interest from January 20, 1997 until fully paid for the 1996 VAT deficiency and P31,094,163.87 inclusive of 25% surcharge plus 20% interest from January 20, 1998 until paid for the 1997 VAT deficiency. Accordingly, VAT Ruling No. 231-88 is declared void and without force and effect. The 1996 and 1997 deficiency DST assessment against petitioner is hereby CANCELLED AND SET ASIDE. Respondent is ORDERED to DESIST from collecting the said DST deficiency tax.
>
> SO ORDERED.

Respondent filed a motion for partial reconsideration of the above judgment concerning its liability to pay the deficiency VAT.

In its Resolution[3] dated March 23, 2003, the CTA granted respondent's motion, thus:

> WHEREFORE, in view of the foregoing, the instant Motion for Partial Reconsideration is GRANTED. Accordingly, the VAT assessment issued by herein respondent against petitioner for the taxable years 1996 and 1997 is hereby WITHDRAWN and SET ASIDE.
>
> SO ORDERED.

The CTA held:

> Moreover, this court adheres to its conclusion that petitioner is a **service contractor** subject to VAT since it does not actually render medical service but merely acts as a conduit between the members and petitioner's accredited and recognized hospitals and clinics.

> However, after a careful review of the facts of the case as well as the Law and jurisprudence applicable, this court resolves to grant petitioner's "Motion for Partial Reconsideration." We are in accord with the view of petitioner that it is entitled to the benefit of non-retroactivity of rulings guaranteed under Section 246 of the Tax Code, in the absence of showing of bad faith on its part. Section 246 of the Tax Code provides:
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> > ***Sec.*** 246. ***Non-Retroactivity of Rulings.*** — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, x x x.
>
> Clearly, undue prejudice will be caused to petitioner if the revocation of VAT Ruling No. 231-88 will be retroactively applied to its case. VAT Ruling No. 231-88 issued by no less than the respondent itself has confirmed petitioner's entitlement to VAT exemption under Section 103 of the Tax Code. In saying so, respondent has actually broadened the scope of "medical services" to include the case of the petitioner. This VAT ruling was even confirmed subsequently by Regional Director Ormundo G. Umali in his letter dated April 22, 1994 (*Exhibit M*). Exhibit P, which served as basis for the issuance of the said VAT ruling in favor of the petitioner sufficiently described the business of petitioner and there is no way BIR could be misled by the said representation as to the real nature of petitioner's business. Such being the case, this court is convinced that petitioner's reliance on the said ruling is premised on good faith. The facts of the case do not show that petitioner deliberately committed mistakes or omitted material facts when it obtained the said ruling from the Bureau of Internal Revenue. Thus, in the absence of such proof, this court upholds the application of Section 246 of the Tax Code. Consequently, the pronouncement made by the BIR in VAT Ruling No. 231-88 as to the VAT exemption of petitioner should be upheld.

Petitioner seasonably filed with the Court of Appeals a petition for review, docketed as CA-G.R. SP No. 76449.

In its Decision dated February 18, 2005, the Court of Appeals affirmed the CTA Resolution.

Petitioner CIR filed a motion for reconsideration, but it was denied by the appellate court in its Resolution[4] dated May 9, 2005.

Hence, the instant petition for review on certiorari raising these two issues: (1) whether respondent's services are subject to VAT; and (2) whether VAT Ruling No. 231-88 exempting respondent from payment of VAT has retroactive application.

On the first issue, respondent is contesting petitioner's assessment of its VAT liabilities for taxable years 1996 and 1997.