

## FIRST DIVISION

**[ G.R. No. 117982, February 06, 1997 ]**

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.  
COURT OF APPEALS, COURT OF APPEALS AND ALHAMBRA  
INDUSTRIES, INC., RESPONDENTS.  
D E C I S I O N**

**BELLOSILLO, J.:**

ALHAMBRA INDUSTRIES, INC., is a domestic corporation engaged in the manufacture and sale of cigar and cigarette products. On 7 May 1991 private respondent received a letter dated 26 April 1991 from the Commissioner of Internal Revenue assessing it deficiency Ad Valorem Tax (AVT) in the total amount of Four Hundred Eighty-Eight Thousand Three Hundred Ninety-Six Pesos and Sixty-Two Centavos (P 488,396.62), inclusive of increments, on the removals of cigarette products from their place of production during the period 2 November 1990 to 22 January 1991.[1] Petitioner computes the deficiency thus -

<b>Total AVT due per manufacturer's declaration</b>	P4,279,042.33
<b>Less: AVT paid under BIR Ruling No. 473-88</b>	3,905,348.85
<b>Deficiency AVT</b>	373,693.48
<b>Add: Penalties:</b>	
<b>25% Surcharge (Sec. 248[c][3] NIRC)</b>	93,423.37
<b>20% Interest (P 467,116.85 x 82/360 days)</b>	21,279.77
<b>Total Amount Due</b>	P 488,396.62

In a letter dated 22 May 1991 received by petitioner on even date, private respondent thru counsel filed a protest against the proposed assessment with a request that the same be withdrawn and cancelled. On 31 May 1991 private respondent received petitioner's reply dated 27 May 1991 denying its protest and request for cancellation stating that the decision was final, and at the same time requesting payment of the revised amount of Five Hundred Twenty Thousand Eight Hundred Thirty-Five Pesos and Twenty-Nine Centavos (P 520,835.29), with interest updated, within ten (10) days from receipt thereof. In a letter dated 10 June 1991 which petitioner received on the same day, private respondent requested for the reconsideration of petitioner's denial of its protest. Without waiting for petitioner's reply to its request for reconsideration, private respondent filed on 19 June 1991 a petition for review with the Court of Tax Appeals. On 25 June 1991 private respondent received from petitioner a letter dated 21 June 1991 denying its request for reconsideration declaring again that its decision was final. On 8 July 1991 private respondent paid under protest the disputed ad valorem tax in the sum of P

520,835.29.<sup>[2]</sup>

In its Decision<sup>[3]</sup> of 1 December 1993 the Court of Tax Appeals ordered petitioner to refund to private respondent the amount of Five Hundred Twenty Thousand Eight Hundred Thirty-Five Pesos and Twenty-Nine Centavos (P 520,835.29) representing erroneously paid ad valorem tax for the period 2 November 1990 to 22 January 1991.

The Court of Tax Appeals explained that the subject deficiency excise tax assessment resulted from private respondent's use of the computation mandated by BIR Ruling 473-88 dated 4 October 1988 as basis for computing the fifteen percent (15%) ad valorem tax due on its removals of cigarettes from 2 November 1990 to 22 January 1991. BIR Circular 473-88 was issued by Deputy Commissioner Eufracio D. Santos to Insular-Yebana Tobacco Corporation allowing the latter to exclude the value-added tax (VAT) in the determination of the gross selling price for purposes of computing the ad valorem tax of its cigar and cigarette products in accordance with Sec. 127 of the Tax Code as amended by Executive Order No. 273 which provides as follows:

Sec. 127. Payment of excise taxes on domestic products. - x x x x (b) Determination of gross selling price of goods subject to ad valorem tax. - Unless otherwise provided, the price, excluding the value-added tax, at which the goods are sold at wholesale in the place of production or through their sales agents to the public shall constitute the gross selling price.

The computation, pursuant to the ruling, is illustrated by way of example thus -

$P44.00 \times 1/11 = P 4.00$  VAT

$P44.00 - P 4.00 = P40.00$  price without VAT

$P40.00 \times 15\% = P 6.00$  Ad Valorem Tax

For the period 2 November 1990 to 22 January 1991 private respondent paid P3,905,348.85 ad valorem tax, applying Sec. 127 (b) of the NIRC as interpreted by BIR Ruling 473-88 by excluding the VAT in the determination of the gross selling price.

Thereafter, on 11 February 1991, petitioner issued BIR Ruling 017-91 to Insular-Yebana Tobacco Corporation revoking BIR Ruling 473-88 for being violative of Sec. 142 of the Tax Code. It included back the VAT to the gross selling price in determining the tax base for computing the ad valorem tax on cigarettes. Cited as basis by petitioner is Sec. 142 of the Tax Code, as amended by E.O. No. 273 -

Sec. 142. Cigar and cigarettes - x x x x For purposes of this section, manufacturer's or importer's registered wholesale price shall include the ad valorem tax imposed in paragraphs (a), (b), (c) or (d) hereof and the amount intended to cover the value added tax imposed under Title IV of this Code.

Petitioner sought to apply the revocation retroactively to private respondent's removals of cigarettes for the period starting 2 November 1990 to 22 January 1991

on the ground that private respondent allegedly acted in bad faith which is an exception to the rule on non-retroactivity of BIR Rulings.<sup>[4]</sup>

On appeal, the Court of Appeals affirmed the Court of Tax Appeals holding that the retroactive application of BIR Ruling 017-91 cannot be allowed since private respondent did not act in bad faith; private respondent's computation under BIR Ruling 473-88 was not shown to be motivated by ill will or dishonesty partaking the nature of fraud; hence, this petition.

Petitioner imputes error to the Court of Appeals: (1) in failing to consider that private respondent's reliance on BIR Ruling 473-88 being contrary to Sec. 142 of the Tax Code does not confer vested rights to private respondent in the computation of its ad valorem tax; (2) in failing to consider that good faith and prejudice to the taxpayer in cases of reliance on a void BIR Ruling is immaterial and irrelevant and does not place the government in estoppel in collecting taxes legally due; (3) in holding that private respondent acted in good faith in applying BIR Ruling 473-88; and, (4) in failing to consider that the assessment of petitioner is presumed to be regular and the claim for tax refund must be strictly construed against private respondent for being in derogation of sovereign authority.

Petitioner claims that the main issue before us is whether private respondent's reliance on a void BIR ruling conferred upon the latter a vested right to apply the same in the computation of its ad valorem tax and claim for tax refund. Sec. 142 (d) of the Tax Code, which provides for the inclusion of the VAT in the tax base for purposes of computing the 15% ad valorem tax, is the applicable law in the instant case as it specifically applies to the manufacturer's wholesale price of cigar and cigarette products and not Sec. 127 (b) of the Tax Code which applies in general to the wholesale of goods or domestic products. Sec. 142 being a specific provision applicable to cigar and cigarettes must perforce prevail over Sec. 127 (b), a general provision of law insofar as the imposition of the ad valorem tax on cigar and cigarettes is concerned.<sup>[5]</sup> Consequently, the application of Sec. 127 (b) to the wholesale price of cigar and cigarette products for purposes of computing the ad valorem tax is patently erroneous. Accordingly, BIR Ruling 473-88 is void ab initio as it contravenes the express provisions of Sec. 142 (d) of the Tax Code.<sup>[6]</sup>

Petitioner contends that BIR Ruling 473-88 being an erroneous interpretation of Sec. 142 (b) of the Tax Code does not confer any vested right to private respondent as to exempt it from the retroactive application of BIR Ruling 017-91. Thus Art. 2254 of the New Civil Code is explicit that "(n)o vested or acquired right can arise from acts or omissions which are against the law x x x x "<sup>[7]</sup> It is argued that the Court of Appeals erred in ruling that retroactive application cannot be made since private respondent acted in good faith. The following circumstances would show that private respondent's reliance on BIR Ruling 473-88 was induced by ill will: first, private respondent despite knowledge that Sec. 142 of the Tax Code was the specific provision applicable still shifted its accounting method pursuant to Sec. 127 (b) of the Tax Code; and, second, the shift in accounting method was made without any prior consultation with the BIR.<sup>[8]</sup>

It is further contended by petitioner that claims for tax refund must be construed against private respondent. A tax refund being in the nature of a tax exemption is regarded as in derogation of the sovereign authority and is strictly construed against