

FIRST DIVISION

[G.R. No. 215950, June 20, 2016]

TRIDHARMA MARKETING CORPORATION, PETITIONER, VS. COURT OF TAX APPEALS, SECOND DIVISION, AND THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

DECISION

BERSAMIN, J.:

In this special civil action for *certiorari*,^[1] the taxpayer assails the resolutions issued on July 8, 2014^[2] and December 22, 2014^[3] in CTA Case No. 8833 whereby the Court of Tax Appeals (CTA), Second Division, granted its motion for suspension of the collection of tax but required it to post a surety bond amounting to P4,467,391,881.76.

The relevant facts follow.

On August 16, 2013, the petitioner received a Preliminary Assessment Notice (PAN) from the Bureau of Internal Revenue (BIR) assessing it with various deficiency taxes - income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT) and documentary stamp tax (DST) - totalling P4,640,394,039.97, inclusive of surcharge and interest. A substantial portion of the deficiency income tax and VAT arose from the complete disallowance^[4] by the BIR of the petitioner's purchases from Etheria Trading in 2010 amounting to P4,942,937,053.82. The petitioner replied to the PAN through its letter dated August 30, 2013.^[5]

On September 23, 2013, the petitioner received from the BIR a Formal Letter of Demand assessing it with deficiency taxes for the taxable year ending December 31, 2010 amounting to P4,697,696,275.25, inclusive of surcharge and interest. It filed a protest against the formal letter of demand. Respondent Commissioner of Internal Revenue (CIR) required the petitioner to submit additional documents in support of its protest, and the petitioner complied.^[6]

On February 28, 2014, the petitioner received a Final Decision on Disputed Assessment worth P4,473,228,667.87, computed as follows:^[7]

| <u>Tax Type</u> | <u>Basic Tax</u> | <u>Surcharge</u> | <u>Interest</u> | <u>Total</u> |
|------------------------|-------------------------|-------------------------|------------------------|---------------------|
| 1. IT | 1,527,100,903.98 | 763,550,451.99 | 878,605,999.55 | P3,169,257,355.52 |
| 2. VAT | 612,723,525.25 | 306,361,762.63 | 379,049,238.36 | 1,298,134,526.24 |
| 3. WHT | 1,679,413.14 | | 1,048,137.84 | 2,727,550.98 |
| 4. DST | 534,493.40 | | 336,511.18 | 871,004.58 |
| 5. | 1,378,127.78 | | 860,102.76 | 2,238,230.54 |

| | | | | |
|-------|------------------|------------------|------------------|------------------|
| EWT | | | | |
| TOTAL | 2,143,416,463.55 | 1,069,912,214.62 | 1,259,899,989.69 | 4,473,228,667.87 |

The petitioner filed with the CIR a protest through a Request for Reconsideration. However, the CIR rendered a decision dated May 26, 2014 denying the request for reconsideration.^[8]

Prior to the CIR's decision, the petitioner paid the assessments corresponding to the WTC, DST and EWT deficiency assessments, inclusive of interest, amounting to P5,836,786.10. It likewise reiterated its offer to compromise the alleged deficiency assessments on IT and VAT.^[9]

On June 13, 2014, the petitioner appealed the CIR's decision to the CTA *via* its so-called Petition for Review with Motion to Suspend Collection of Tax, which was docketed as CTA Case No. 8833 and raffled to the CTA Second Division.^[10]

The CTA in Division issued the first assailed resolution on July 8, 2014, stating thusly:

In the instant case, petitioner's Financial Statements and Independent Auditor's Report for December 31, 2013 and 2012, as identified by its witness, indicate that the company's total equity for the year 2012 and 2013 was P955,095,301 and P916,768,767, respectively. To yield to respondent's alleged assessment and collection in the amount of P4,467,391,881.76 would definitely jeopardize the normal business operations of petitioner thereby causing irreparable injury to its ability to continue.

Moreover, considering petitioner's willingness to post bond, as manifested during the June 19, 2014 hearing, in such reasonable amount as may be fixed by this Court, pursuant to Section 11 of R.A. No. 1125, as amended, this Court in the interest of substantial justice, resolves to grant petitioner's Motion.

x x x x

WHEREFORE, considering the urgency of the action to be enjoined, petitioner's Motion for Suspension of Collection of Tax in the amount of P4,467,391,881.76 allegedly representing its deficiency Income Tax and Value Added Tax for taxable year 2010 is **GRANTED**. Provided, however, that petitioner deposits with this Court an acceptable surety bond equivalent to 150% of the assessment or in the amount of **SIX BILLION SEVEN HUNDRED ONE MILLION EIGHTY SEVEN THOUSAND EIGHT HUNDRED TWENTY TWO and 64/100 PESOS (P6,701,087,822.64)** within fifteen (15) days from notice hereof.

Moreover, pursuant to Supreme Court Circular *A.M. No. 04-7-02-SC*, otherwise known as the "Proposed Guidelines on Corporate Surety Bonds", petitioner is hereby **ORDERED** to submit the following documents with the surety bond stated above:

1. Certified copy of a valid Certificate of Accreditation and Authority issued by the Office of the Court Administrator;
2. Copy of the Certificate of Compliance with Circular No. 66 of the Insurance Commission duly certified by the Insurance

Commission;

3. Proof of payment of legal fees under the Rules of Court and the documentary stamp tax (thirty centavos [P0.30] on each four pesos [P4.00] or fractional part thereof, of the premium charged, pursuant to Section 187 Title VII of Rep. Act No. 8424) and Value Added Tax (VAT) under the National Internal Revenue Code;

4. Photocopy of the Certificate of Accreditation and Authority issued by the Court Administrator containing the photograph of the authorized agent (after presentation to the Clerk of Court of the original copy thereof as Copy of the Certificate of Accreditation and Authority containing the photograph of the agent); and

5. Secretary Certificate containing the specimen signatures of the agents authorized to transact business with the courts.

In addition, the said bond must be a continuing bond which shall remain effective until the above-captioned case is finally decided, resolved or terminated by this Court without necessity of renewal on a yearly basis, or its validity being dependent on the payment of a renewal premium pursuant to Section 177 of the Insurance Code.

Failure to comply with the above requirements will cause the setting aside of this Resolution granting petitioner's motion for the suspension of the collection of the tax liability.

x x x x

SO ORDERED.^[11]

The petitioner filed its Motion for Partial Reconsideration praying, among others, for the reduction of the bond to an amount it could obtain.

On December 22, 2014, the CTA in Division issued its second assailed resolution reducing the amount of the petitioner's surety bond to P4,467,391,881.76, which was the equivalent of the BIR's deficiency assessment for IT and VAT.^[12]

Hence, the petitioner has commenced this special civil action for *certiorari*, asserting:

I.

WITH ALL DUE RESPECT, THE CTA SECOND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION IN REFUSING TO CONSIDER, AND IN COMPLETELY IGNORING, THE PATENT ILLEGALITY OF THE ASSESSMENT THAT, UNDER LAW AND JURISPRUDENCE, FULLY JUSTIFIED DISPENSING WITH THE REQUIREMENT OF POSTING A BOND.

II.

WITH ALL DUE RESPECT, THE CTA SECOND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION IN IMPOSING A GARGANTUAN BOND IN THE AMOUNT OF P4,467,391,881.76 THAT PETITIONER HAS

DEMONSTRATED BY UNREFUTED EVIDENCE TO BE FACTUALLY AND LEGALLY IMPOSSIBLE TO PROCURE.

III.

WITH ALL DUE RESPECT, THE CTA SECOND DIVISION COMMITTEED GRAVE ABUSE OF DISCRETION IN GRANTING AN ILLUSORY RELIEF, AND IN EFFECTIVELY DENYING PETITIONER ACCESS TO THE REMEDY PROVIDED BY LAW. UPON UNCONTRADICTED EVIDENCE, THE IMPOSITION OF A BOND IS NOT ONLY UNJUST, BUT WILL CAUSE IRREPARABLE INJURY UPON PETITIONER EVEN BEFORE IT IS HEARD.^[13]

On February 9, 2015, the Court issued a temporary restraining order^[14] enjoining the implementation of July 8, 2014 and December 22, 2014 resolutions of the CTA in Division, and the collection of the deficiency assessments.

Issue

Did the CTA in Division commit grave abuse of discretion in requiring the petitioner to file a surety bond despite the supposedly patent illegality of the assessment that was beyond the petitioner's net worth but equivalent to the deficiency assessment for IT and VAT?

Ruling of the Court

The petition for *certiorari* is meritorious.

Section 11 of Republic Act No. 1125 (R.A. No. 1125),^[15] as amended by Republic Act No. 9282 (RA 9282)^[16] it is stated that:

Sec. 11. *Who may appeal; effect of appeal.* — x x x

x x x x

No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: ***Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.*** (bold emphasis supplied.)

Clearly, the CTA may order the suspension of the collection of taxes provided that the taxpayer either: (1) deposits the amount claimed; or (2) files a surety bond for not more than double the amount.

The petitioner argues that the surety bond amounting to P4,467,391,881.76 greatly exceeds its net worth and makes it legally impossible to procure the bond from bonding companies that are limited in their risk assumptions.^[17] As shown in its audited