

FIRST DIVISION

[G.R. No. 182399, March 12, 2014]

**CS GARMENT, INC.,* PETITIONER, VS. COMMISSIONER OF
INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

SERENO, C.J.:

Before the Court is a Rule 45 petition for review on certiorari, assailing the respective Decision^[1] and Resolution^[2] of the Court of Tax Appeals (CTA) *en banc* in EB Case No. 287. These judgments in turn affirmed the Decision^[3] and the Resolution^[4] of the CTA Second Division, which ordered the cancellation of certain items in the 1998 tax assessments against petitioner CS Garment, Inc. (CS Garment or petitioner). Accordingly, petitioner was directed to pay the Bureau of Internal Revenue (BIR) the remaining portion of the tax assessments. This portion was comprised of the outstanding deficiency value-added tax (VAT) on CS Garment's undeclared local sales and on the incidental sale of a motor vehicle; deficiency documentary stamp tax (DST) on a lease agreement; and deficiency income tax as a result of the disallowed expenses and undeclared local sales. However, while the present case was pending before this Court, CS Garment filed a Manifestation and Motion stating that the latter had availed itself of the government's tax amnesty program under Republic Act No. (R.A.) 9480, or the 2007 Tax Amnesty Law.

FACTS

We reproduce the narration of facts culled by the CTA *en banc*^[5] as follows:

Petitioner [CS Garment] is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Road A, Cavite Ecozone, Rosario, Cavite. On the other hand, respondent is the duly appointed Commissioner of Internal Revenue of the Philippines authorized under law to perform the duties of said office, including, *inter alia*, the power to assess taxpayers for [alleged] deficiency internal revenue tax liabilities and to act upon administrative protests or requests for reconsideration/reinvestigation of such assessments.

Petitioner is registered with the Philippine Economic Zone Authority (PEZA) under Certificate of Registration No. 89-064, duly approved on December 18, 1989. As such, it is engaged in the business of manufacturing garments for sale abroad.

On November 24, 1999, petitioner [CS Garment] received from

respondent [CIR] Letter of Authority No. 00012641 dated November 10, 1999, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period January 1, 1998 to December 31, 1998.

On October 23, 2001, petitioner received five (5) formal demand letters with accompanying Assessment Notices from respondent, through the Office of the Revenue Director of Revenue Region No. 9, San Pablo City, requiring it to pay the alleged deficiency VAT, Income, DST and withholding tax assessments for taxable year 1998 in the aggregate amount of P2,046,580.10 broken down as follows:

Deficiency VAT

| | |
|-----------------------------|---------------------|
| Basic tax due | P314,194.00 |
| Add: Surcharge | 157,097.00 |
| Interest | <u>188,516.00</u> |
| <i>Total Amount Payable</i> | <u>P 659,807.00</u> |

Deficiency Income Tax (at Normal Rate of 34%)

| | |
|-----------------------------|---------------------|
| Basic tax due | P 78,639.00 |
| Add: Surcharge | 39,320.00 |
| Interest | <u>43,251.00</u> |
| <i>Total Amount Payable</i> | <u>P 161,210.00</u> |

Deficiency Income Tax (at Special Rate of 5%)

| | |
|-----------------------------|-----------------------|
| Basic tax due | P 742,574.10 |
| Add: Surcharge | - |
| Interest | 408,416.00 |
| Compromise Penalty | <u>25,000.00</u> |
| Total Amount Payable | <u>P 1,175,990.10</u> |

Deficiency DST

| | |
|-----------------------------|-------------------|
| Basic tax due | P 806.00 |
| Add: Surcharge | 403.00 |
| Interest | <u>484.00</u> |
| <i>Total Amount Payable</i> | <u>P 1,693.00</u> |

Deficiency EWT

| | |
|-----------------------------|--------------------|
| Basic tax due | P22,800.00 |
| Add: Surcharge | 11,400.00 |
| Interest | <u>13,680.00</u> |
| <i>Total Amount Payable</i> | <u>P 47,880.00</u> |

| | |
|--------------------|----------------------|
| <i>GRAND TOTAL</i> | <u>P2,046,580.10</u> |
| | ===== |

On November 20, 2001, or within the 30-day period prescribed under Section 228 of the Tax Code, as amended, petitioner filed a formal written protest with the respondent assailing the above assessments.

On January 11, 2002, or within the sixty-day period after the filing of the protest, petitioner submitted to the Assessment Division of Revenue Region No. 9, San Pablo City, additional documents in support of its protest.

Respondent failed to act with finality on the protest filed by petitioner within the period of one hundred eighty (180) days from January 11, 2002 or until July 10, 2002. Hence, petitioner appealed before [the CTA] via a Petition for Review filed on August 6, 2002 or within thirty (30) days from the last day of the aforesaid 180-day period.

The case was raffled to the *Second Division* of [the CTA] for decision. After trial on the merits, the *Second Division* rendered the Assailed Decision on January 4, 2007 upon which the Second Division cancelled respondent's assessment against CS Garments for deficiency expanded withholding taxes for CY 1998 amounting to P47,880.00, and partially cancelled the deficiency DST assessment amounting to P1,963.00. However, the *Second Division* upheld the validity of the deficiency income tax assessments by subjecting the disallowed expenses in the amount of P14,851,478.83 and a portion of the undeclared local sales P1,541,936.60 (amounting to P1,500,000.00) to income tax at the special rate of 5%. The remainder of undeclared local sales of P1,541,936.06 (amounting to P41,936.60) was subjected to income tax at the rate of 34%. The *Second Division* found that total tax liability of CS Garments amounted to P2,029,570.12, plus 20% delinquency interest pursuant to Section 249(C)(3), and computed the same as follows:

| <u>Deficiency</u> <u>Tax</u> | | <u>VAT</u> | | <u>DST</u> | | <u>Income Tax</u> | | <u>TOTAL</u> |
|---------------------------------|--|-------------------|--|---------------|--|---------------------|---------------|---------------------|
| | | | | | | <u>at 5%</u> | <u>at 34%</u> | |
| Basic Tax | | P | | P | | P 817,573.94 | P | |
| Due | | 314,194.00 | | 145.00 | | | 1,789.44 | |
| 25% | | 78,548.50 | | 36.25 | | 204,393.49 | 447.36 | |
| Surcharge | | | | | | | | |
| 20% | | <u>188,516.00</u> | | | | | | |
| Interest | | | | <u>102.02</u> | | <u>422,898.52</u> | <u>925.6</u> | |
| | | <u>P</u> | | <u>P</u> | | <u>P</u> | <u>P</u> | <u>P</u> |
| | | 581,258.50 | | 283.27 | | 1,444,865.95 | 162.40 | 2,029,570.12 |

On January 29, 2007, CS Garments filed its "Motion for Partial Reconsideration" of the said decision. On May 25, 2007, in a resolution, the Second Division denied CS Garments' motion for lack of merit. (Citations omitted)

Petitioner appealed the case to the CTA *en banc* and alleged the following: (1) the Formal Assessment Notices (FAN) issued by the Commissioner of Internal Revenue (CIR) did not comply with the requirements of the law; (2) the income generated by CS Garment from its participation in the Cavite Export Processing Zone's trade fairs and from its sales to employees were not subject to 10% VAT; (3) the sale of the company vehicle to its general manager was not subject to 10% VAT; (4) it had no undeclared local sales in the amount of P1,541,936.60; and (5) Rule XX, Section 2 of the PEZA Rules and Regulations allowed deductions from the expenses it had incurred in connection with advertising and representation; clinic and office supplies; commissions and professional fees; transportation, freight and handling, and export fees; and licenses and other taxes.

The CTA *en banc* affirmed the Decision and Resolution of the CTA Second Division.

As regards the first issue, the *banc* ruled that the CIR had duly apprised CS Garment of the factual and legal bases for assessing the latter's liability for deficiency income tax, as shown in the attached Schedule of Discrepancies provided to petitioner; and in the subsequent reference of the CIR to Rule XX, Section 2 of the Rules and Regulations of R.A. 7916. With respect to the second issue, the CTA pronounced that the income generated by CS Garment from the trade fairs was subject to internal revenue taxes, as those transactions were considered "domestic sales" under R.A. 7916, otherwise known as the Special Economic Zone Act. With respect to the third issue, the CTA *en banc* declared that the sale of the motor vehicle by CS Garment to the latter's general manager in the amount of P1.6 million was subject to VAT, since the sale was considered an incidental transaction within the meaning of Section 105 of the NIRC. On the fourth issue, the CTA found that CS Garment had failed to declare the latter's total local sales in the amount of P1,541,936.60 in its 1998 income tax return. The tax court then calculated the income tax liability of petitioner by subjecting P1.5 million of that liability to the preferential income tax rate of 5%. This amount represented the extent of the authority of CS Garment, as a PEZA-registered enterprise, to sell in the local market. The normal income tax rate of 34% was then charged for the excess amount of P41,936.60. Finally, as regards the fifth issue, the CTA ruled that Section 2, Rule XX of the PEZA Rules – which enumerates the specific deductions for ECOZONE Export Enterprises – does not mention certain claims of petitioner as allowable deductions.

Aggrieved, CS Garment filed the present Petition for Review assailing the Decision of the CTA *en banc*. However, on 26 September 2008, while the instant case was pending before this Court, petitioner filed a Manifestation and Motion stating that it had availed itself of the government's tax amnesty program under the 2007 Tax Amnesty Law. It thus prays that we take note of its availment of the tax amnesty and confirm that it is entitled to all the immunities and privileges under the law. It has submitted to this Court the following documents, which have allegedly been filed with Equitable PCI Bank–Cavite EPZA Branch, a supposed authorized agent-bank of the BIR:[6]

1. Notice of Availment of Tax Amnesty under R.A. 9480
2. Statement of Assets, Liabilities, and Net worth (SALN)
3. Tax Amnesty Return (BIR Form No. 2116)
4. Tax Amnesty Payment Form (Acceptance of Payment Form or BIR Form No. 0617)
5. Equitable PCI Bank's BIR Payment Form indicating that CS Garment deposited the amount of P250,000 to the account of the Bureau of Treasury–BIR

On 26 January 2009, the Office of the Solicitor General (OSG) filed its Comment objecting to the Manifestation and Motion of CS Garment.[7] The OSG asserts that the filing of an application for tax amnesty does not by itself entitle petitioner to the benefits of the law, as the BIR must still assess whether petitioner was eligible for these benefits and whether all the conditions for the availment of tax amnesty had

been satisfied. Next, the OSG claims that the BIR is given a one-year period to contest the correctness of the SALN filed by CS Garment, thus making petitioner's motion premature. Finally, the OSG contends that pursuant to BIR Revenue Memorandum Circular No. (RMC) 19-2008, petitioner is disqualified from enjoying the benefits of the Tax Amnesty Law, since a judgment was already rendered in favor of the BIR prior to the tax amnesty availment. The OSG points out that CS Garment submitted its application for tax amnesty only on 6 March 2008, which was almost two months after the CTA *en banc* issued its 14 January 2008 Decision and more than one year after the CTA Second Division issued its 4 January 2007 Decision.

On 8 February 2010, the Court required both parties to prepare and file their respective memoranda within 30 days from notice.^[8] After this Court granted the motions for extension filed by the parties, the OSG eventually filed its Memorandum on 18 May 2010, and CS Garment on 7 June 2010. It is worthy to note that in its Memorandum, the OSG did not raise any argument with respect to petitioner's availment of the tax amnesty program. Neither did the OSG deny the authenticity of the documents submitted by CS Garments or mention that a case had been filed against the latter for availing itself of the tax amnesty program, taking into account the considerable lapse of time from the moment petitioner filed its Tax Amnesty Return and Statement of Assets, Liabilities, and Net Worth in 2008.

On 17 July 2013, the parties were ordered^[9] to "move in the premises"^[10] by informing the Court of the status of the tax amnesty availment of petitioner CS Garment, including any supervening event that may be of help to the Court in its immediate disposition of the present case. Furthermore, the parties were directed to indicate *inter alia* (a) whether CS Garment had complied with the requirements of the 2007 Tax Amnesty Law, taking note of the aforementioned documents submitted; (b) whether a case had been initiated against petitioner, with respect to its availment of the tax amnesty program; and (c) whether respondent CIR was still interested in pursuing the case. Petitioner eventually filed its Compliance^[11] on 27 August 2013, and the OSG on 29 November 2013.^[12]

According to the OSG,^[13] CS Garment had already complied with all documentary requirements of the 2007 Tax Amnesty Law. It also stated that the BIR Litigation Division had not initiated any case against petitioner relative to the latter's tax amnesty application. However, the OSG reiterated that the CIR was still interested in pursuing the case.

ISSUE

The threshold question before this Court is whether or not CS Garment is already immune from paying the deficiency taxes stated in the 1998 tax assessments of the CIR, as modified by the CTA.

DISCUSSION

Tax amnesty refers to the articulation of the absolute waiver by a sovereign of its right to collect taxes and power to impose penalties on persons or entities guilty of violating a tax law.^[14] Tax amnesty aims to grant a general reprieve to tax evaders who wish to come clean by giving them an opportunity to straighten out their