747 Phil. 542

SECOND DIVISION

[G.R. No. 204142, November 19, 2014]

HONDA CARS PHILIPPINES, INC., PETITIONER, VS. HONDA CARS TECHNICAL SPECIALIST AND SUPERVISORS UNION, RESPONDENT.

D E C I S I O N

BRION, J.:

We resolve the present petition for review on *certiorari*[1] seeking to nullify the March 30, 2012 decision[2] and October 25, 2012 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 109297. These rulings were penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Romeo F. Barza and Edwin D. Sorongon.

The Factual Antecedents

On December 8, 2006, petitioner Honda Cars Philippines, Inc., *(company)* and respondent Honda Cars Technical Specialists and Supervisory Union *(union)*, the exclusive collective bargaining representative of the company's supervisors and technical specialists, entered into a collective bargaining agreement *(CBA)* effective April 1, 2006 to March 31, 2011.[4]

Prior to April 1, 2005, the union members were receiving a transportation allowance of P3,300.00 a month. On September 3, 2005, the company and the union entered into a Memorandum of Agreement[5] *(MOA)* converting the transportation allowance into a monthly gasoline allowance starting at 125 liters effective April 1, 2005. The allowance answers for the gasoline consumed by the union members for official business purposes and for home to office travel and *vice-versa.*

The company claimed that the grant of the gasoline allowance is tied up to a similar company policy for managers and assistant vice-presidents (AVPs), which provides that *in the event the amount of gasoline is not fully consumed, the gasoline not used may be converted into cash, subject to whatever tax may be applicable.* Since the cash conversion is paid in the monthly payroll as an excess gas allowance, the company considers the amount as part of the managers' and AVPs' compensation that is subject to income tax on compensation.

Accordingly, the company deducted from the union members' salaries the withholding tax corresponding to the conversion to cash of their unused gasoline allowance.

The union, on the other hand, argued that the gasoline allowance for its members is a "negotiated item" under Article XV, Section 15 of the new CBA on *fringe benefits.* It thus opposed the company's practice of treating the gasoline allowance that,

when converted into cash, is considered as compensation income that is subject to withholding tax.

The disagreement between the company and the union on the matter resulted in a grievance which they referred to the CBA grievance procedure for resolution. As it remained unsettled there, they submitted the issue to a panel of voluntary arbitrators as required by the CBA.

The Voluntary Arbitration Decision

On February 6, 2009, the Panel of Voluntary Arbitrators[6] rendered a decision/award[7] declaring that the cash conversion of the unused gasoline allowance enjoyed by the members of the union is a fringe benefit subject to the fringe benefit tax, not to income tax. The panel held that the deductions made by the company shall be considered as advances subject to refund in future remittances of withholding taxes.

The company moved for partial reconsideration of the decision, but the panel denied the motion in its June 3, 2009 order,[8] prompting the company to appeal to the CA through a Rule 43 petition for review. The core issue in this appeal was whether the cash conversion of the unused gasoline allowance is a fringe benefit subject to the fringe benefit tax, and not to a compensation income subject to withholding tax.

The CA Ruling

The CA Eight Division denied the petition and upheld with modification the voluntary arbitration decision. It agreed with the panel's ruling that the cash conversion of the unused gasoline allowance is a fringe benefit granted under Section 15, Article XV of the CBA on "**Fringe Benefits**." Accordingly, the CA held that the benefit is not compensation income subject to withholding tax.

This conclusion notwithstanding, the CA clarified that while the gasoline allowance or the cash conversion of its unused portion is a fringe benefit, it is "not necessarily subject to fringe benefit tax."[9] It explained that Section 33 (A) of the National Internal Revenue Code *(NIRC)* of 1997 imposed a fringe benefit tax, effective January 1, 2000 and thereafter, on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank-and-file employees) by the employer (unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer).

According to the CA, "it is undisputed that the reason behind the grant of the gasoline allowance to the union members is primarily for the convenience and advantage of Honda, their employer."[10] It thus declared that the gasoline allowance or the cash conversion of the unused portion thereof is not subject to fringe benefit tax.[11]

The Petition

Its motion for reconsideration denied, the company appeals to this Court to set aside the CA's dispositions, raising the very same issue it brought to the appellate

court — whether the cash conversion of the gasoline allowance of the union members is a fringe benefit or compensation income, for taxation purposes.

The company reiterates its position that the cash conversion of the union members' gasoline allowance is compensation income subject to income tax, and not to a fringe benefit tax. It argues that the tax treatment of a benefit extended by the employer to the employees is governed by law and the applicable tax regulations, and not by the nomenclature or definition provided by the parties. The fact that the CBA erroneously classified the gasoline allowance as a fringe benefit is immaterial as it is the law – Section 33 of the NIRC – that provides for the legal classification of the benefit.

It adds that there is no basis for the CA conclusion that the cash conversion of the unused gasoline allowance redounds to the benefit of management. Common sense dictates that it is the individual union members who solely benefit from the cash conversion of the gasoline allowance as it goes into their compensation income.

In any event, the company submits that even assuming that the cash conversion of the unused gasoline allowance is a tax-exempt fringe benefit and that it erred in withholding the income taxes due, still the union members would have no cause of action against it for the refund of the amounts withheld from them and remitted to the Bureau of Internal Revenue *(BIR)*.

Citing Section 204 of the NIRC, the company contends that an action for the refund of an erroneous withholding and payment of taxes should be in the nature of a tax refund claim with the BIR. It further contends that when it withheld the income tax due from the cash conversion of the unused gasoline allowance of the union members, it was simply acting as an agent of the government for the collection and payment of taxes due from the members.

The Union's Position

In its *Comment*[12] dated April 19, 2013, the union argues for the denial of the petition for lack of merit. It posits that its members' gasoline allowance and its unused gas equivalent are fringe benefits under the CBA and the law [Section 33 (A) of NIRC] and is therefore not subject to withholding tax on compensation income. Moreover, under that law and BIR Revenue Regulations 2-98, the same benefit is not subject to the fringe benefit tax because it is required by the nature of, or necessary to the trade or business of the company.

The union further submits that in 2007, the BIR ruled that fixed and/or pre-computed transportation allowance given to supervisory employees in pursuit of the business of the company, **shall not be taxable as compensation or fringe benefits of the employees**.[13] It maintains that the gasoline allowance is already pre-computed by the company as sufficient to cover the gasoline consumption of the supervisors whenever they perform work for the company. The fact that the company allowed its members to convert it to cash when not fully consumed is no longer their problem because the benefit was already given.

Our Ruling