385 Phil. 569

SECOND DIVISION

[G.R. No. 132929, March 27, 2000]

COMMISSIONER OF CUSTOMS, PETITIONER, VS. COURT OF TAX APPEALS AND PHILIPPINE CASINO OPERATORS CORPORATION, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

The issue for decision in this case is whether the Philippine Casino Operators Corporation (PCOC) is, by virtue of its concessionaire's contract with the Philippine Amusement and Gaming Corporation (PAGCOR), exempt from the payment of duties, taxes and other imposts on importations. Both the Court of Appeals and the Court of Tax Appeals ruled in the affirmative. Hence this petition.

The facts are as follows:

PAGCOR is a government corporation with exclusive franchise to operate and maintain gambling casinos. On July 5, 1977, it entered into a contract with PCOC for the operation of its floating casino off Manila Bay. This establishment was, however, gutted by fire in 1979, for which reason, PAGCOR shifted its operations to land-based casinos and entered into another contract with PCOC for the management of a casino at the Provident International Resources Corporation (PIRC) building on Imelda Avenue, Parañaque City. Both contracts contained the following stipulation: [1]

> Section 2(e). The CONCESSIONARE shall be authorized in behalf of the FRANCHISE[E] to...procure either local or imported equipment and facilities from foreign sources as may be required in the casino operation....

From 1982 to 1984, PCOC imported various articles and equipment which, on the strength of indorsements of exemption it had procured from the Ministry of Finance, were released from the Bureau of Customs free of tax.

Sometime in May 1988, the Customs Bureau received confidential information that PCOC had been able to obtain tax exemption through fraud and misrepresentation. Accordingly, the District Collector of Customs issued a warrant for the seizure of the imported articles. On March 12, 1989, agents of the Bureau served the warrants at the PIRC building, where the articles were kept, and several auto parts, escalators, elevators, power systems, kitchen equipment and other heavy equipment were seized or detained.[2]

After hearing, the District Collector of Customs ordered on February 22, 1990 the

forfeiture of the imported articles. PCOC appealed, but the Commissioner of Customs, on February 12, 1991, affirmed the ruling. PCOC elevated the case to the CTA, which, on May 28, 1997, reversed the ruling of the Commissioner of Customs and ordered the release of the articles to PCOC.

On June 20, 1997, the Commissioner filed a motion for reconsideration but his motion was denied on the ground that it was filed late. The CTA, therefore, ordered the entry of its judgment.

The Commissioner then filed a petition for *certiorari*. But in its decision dated March 3, 1998, the Court of Appeals dismissed the petition. Hence, this petition for review on *certiorari*. Petitioner contends that the Court of Appeals[3]—

I. ERRONEOUSLY AFFIRMED THE DECISION OF THE COURT OF TAX APPEALS THAT SERVICE TO THE LEGAL SERVICE DIVISION OF THE BUREAU OF CUSTOMS IS BINDING ON THE OSG.

II. [ERRONEOUSLY] DISMISSED THE PETITION FOR CERTIORARI AS, ALLEGEDLY, THE PROPER REMEDY IS AN APPEAL.

III. ERRONEOUSLY AFFIRMED THE ORDER TO RELEASE THE SEIZED ARTICLE ILLEGALL IMPORTED.

First. Petitioner was represented in the CTA by the Office of the Solicitor General which deputized lawyers in the Legal Service Division of the Bureau of Customs to serve as collaborating counsels. In accordance with this arrangement, lawyers in both offices (Bureau of Customs and the OSG) were served copies of decisions of the CTA. The lawyers at the Bureau received a copy of the decision of the CTA on May 30, 1997, while the OSG received its own on June 5, 1997. As earlier stated, the OSG filed its motion for reconsideration on June 20, 1997. Counted from this date, the motion was seasonably filed, but if the period for appealing or filing a motion for reconsideration were reckoned from the date of receipt of the decision by the lawyers of the Bureau of Customs, then the motion was filed five days late. The Court of Appeals ruled that service of the copy of the CTA decision on the lawyers of the Bureau of Customs was equivalent to service on the OSG, and, therefore, the motion for reconsideration was filed late.[4]

This is error. In National Power Corp. v. NLRC,[5] it was already settled that although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel, and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive. It was explained:

> ...The lawyer deputized and designated as "special attorney-OSG " is a mere representative of the OSG and the latter retains supervision and control over the deputized lawyer. The OSG continues to be the principal counsel . . . , and as such, the Solicitor General is the party entitled to be furnished copies of the orders, notices and decisions. The deputized special attorney has no legal authority to decide whether or not an appeal should be made.

> As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter. We have likewise consistently held that the proper basis for computing reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG. . . .[6]

In ruling that it is service of the adverse decision on the deputized lawyers and not that on the OSG which is decisive, the CA cited the cases of Republic v. Soriano[7] and National Irrigation Administration v. Regino.[8]

These cases are not in point. In *Soriano,* the Court dismissed the petition of the OSG not because it was bound by the earlier service of its orders on the deputized counsel but because, *counted from the OSG's receipt of the questioned orders,* its Motion for Reconsideration was filed late. Thus, it was stated:[9]

> The three . . . Orders in question were received by the OSG on October 14, 1986 having been referred to it by the Insurance Commissioner on that same day . . . . Applying the Interim Rules and Guidelines of the Rules of Court, the OSG had until October 29, 1986 to file its appeal from the questioned Orders. Consequently, the Motion for Reconsideration filed on November 10, 1986 was filed out of time. . . .

On the other hand, the case of *National Irrigation Administration v. Regino* is different because there the OSG did not deputize any special counsel. The other counsel of record, Atty. Basuil, was deputized by the NIA. Thus, the Court's ruling therein that the service of the lower court's order (denying motion for reconsideration) to Atty. Basuil was also deemed service to the OSG was based on Rule 13, §2 of the Rules of Court.[10] The Court itself impliedly recognized that had Atty. Basuil been a deputized special counsel of the OSG, he would have no authority to decide on his own what action to take on any incident regarding the case. The Court stated: "[A]s aptly noted by the private respondent, the Solicitor General did not appoint Atty. Basuil a special attorney or his deputy."[11]

Second. The Court of Appeals ruled that petitioner should have filed an appeal and not a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure because even assuming that the CTA erred in ruling that PCOC is exempt from the payment of importation-related taxes, its error would be an error of judgment committed in the exercise of its jurisdiction.[12]

We disagree. In its order of August 14, 1997, the CTA denied petitioner's motion for reconsideration and ordered the entry of judgment. As far as petitioner was concerned, there was no longer any appeal and execution of the decision was in order, whereas the prime specification of petition for *certiorari* is that there is no appeal, nor any other plain, speedy, adequate remedy in the ordinary course of law.

Third. Coming now into the merits of the case, the CTA ruled that the importations

of PCOC were exempt from tax pursuant to §4(2)(b) of B.P. Blg. 1067-B, as amended by P.D. No. 1399,[13] which provides:

> Sec. 4. EXEMPTIONS.—
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> . . . .
>
> (2) *Income and other taxes*.—
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> . . . .
>
> (b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees, or levies, shall inure to the benefit of and extend to corporation/s, association/s agency/ies, or individual/s with whom the Franchise [PAGCOR] has any contractual relationship in connection with the operations of the casino/s authorized to be conducted under the franchise and to those receiving compensation or other remuneration from the Franchise Holder as a result of essential facilities furnished and/or technical services rendered to the Franchise Holder.

This provision is not applicable because it refers to income tax exemption. As PCOC claims to be exempt from the payment of duties, taxes, and other imposts from imported articles, the CTA should have applied instead the provision of the first paragraph of §4(1), to wit:

> SEC. 4. EXEMPTIONS.—
>
> (1) *Duties, taxes and other imposts on importations* - All importations of equipment, vehicles, automobiles, boats, ships, barges, aircraft and such other gambling paraphernalia, including accessories or related facilities, for the sole and exclusive use of the casinos, the proper and efficient management and administration thereof, and such other clubs, recreation or amusement places to be established under and by virtue of this Franchise shall be exempt from the payment of duties, taxes and other imposts, including all kinds of fees, levies, or charges of any kind or nature.
>
> Vessels and/or accessory ferry boats imported or to be imported by any corporation having existing contractual arrangements with the Franchisee, for the sole and exclusive use of the casino or to be used to service the operations and requirements of the casino, shall likewise be totally exempt from the payment of all taxes, duties and other imposts, including all kinds of fees, levies, assessments or charges of any kind or nature, whether National or local.

Under the first paragraph above, full exemption from the payment of importation-related taxes is granted to PAGCOR - and no other - irrespective of the type of

article imported. On the other hand, while the second paragraph grants exemption not only to PAGCOR but also to "any corporation having existing contractual arrangements with [it]," the exemption covers only the importation of vessels and/or accessory ferry boats, whereas the imported articles involved in this case consisted of auto parts, elevators, escalators, power systems, kitchen equipment and other heavy equipment. PCOC admittedly did not import vessels or accessory ferry boats so as to be exempt from the payment of customs duties.

Nonetheless, the CTA ruled that PAGCOR's exemption under the first paragraph of §4(1) extends to PCOC by virtue of the concessionaire's contract under which PCOC was allowed to import equipment and facilities for the use of PAGCOR's casinos.[14] This is not correct. It is settled that tax exemptions should be strictly construed against those claiming to be qualified thereto.[15]

The CTA's ruling in *Philippine Casino Operators Corporation v. Commissioner of Internal Revenue,*[16] which it cited in deciding this case, is not in point. The sole issue posed in that case, which it answered in the affirmative using §4(2)(b), was whether PCOC was exempt from paying income tax, surtax of improperly accumulated profits, and business tax.

Fourth. Prescinding from what has been said, we hold that the forfeiture of the illegally released equipment was proper under §2530, pars. (f) and (l), sub-paragraphs 3, 4 and 5 of the Tariff and Customs Code, as amended.[17] Contrary to private respondent's contention, the forfeiture proceedings were not barred by prescription as the one year prescriptive period under Sec. 1603[18] of the Tariff and Customs Code, as amended, applies only in the absence of fraud. In this case, PCOC's importations were released by the Bureau of Customs free of tax by virtue of indorsements issued by the Ministry (now Department) of Finance. These, in turn, were issued on certain misrepresentations of Constancio Francisco, an interlocking officer of PCOC and PIRC,[19] to the effect that the importations were exempt from taxes and duties. The following letter[20] is typical of the requests he made:[21]

PHILIPPINE AMUSEMENT & GAMING CORPORATION
METRO MANILA

April 22, 1983

THE HONORABLE MINISTER
Ministry of Finance
Manila

Sir:

Re: Shipment of 62 Packages Containing five units Traction Geared Elevators Per Eastern B/L No. YMA-20
From: Nippon Otis Elevator Company, Tokyo