

## FIRST DIVISION

[ G.R. No. 96262, March 22, 1999 ]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.  
EMBROIDERY AND GARMENTS INDUSTRIES (PHIL.), INC.,  
RESPONDENT.**

### D E C I S I O N

**PARDO, J.:**

The case is an appeal *via certiorari* from a decision of the Court of Appeals<sup>[1]</sup> affirming that of the Court of Tax Appeals<sup>[2]</sup> absolving respondent from liability for deficiency income tax and advance sales tax in the amounts of P2,756,241.68, and P3,500,798.47, respectively, for the years 1959 to 1961.

The facts may be related as follows:

On September 22, 1964, on the basis of a sworn report of an informer, the Courts of First Instance of Manila and Bulacan issued search warrants for the seizure of certain documents from the offices of respondent Embroidery and Garments Industries (Phil.), Inc. in Manila and Valenzuela, Bulacan. Armed with the warrants, agents of the Anti-Technical Smuggling Unit, Bureau of Internal Revenue, seized various business records and documents from respondent's offices.

On January 4, 1966, petitioner assessed respondent the sum of P436,846.44, inclusive of 75% surcharge and penalty as advance sales tax for the years 1959 to 1961 and, on March 23, 1966, assessed deficiency income tax in the sum of P4,799.641.95, inclusive of 50% surcharge and ½% monthly interest for the years 1960 and 1961.

Respondent protested the assessments, and on December 9, 1970, petitioner issued to respondent a revised assessment requiring the latter to pay the amount of P2,756,241.68, inclusive of 50% surcharge and ½% monthly interest as deficiency income tax for the years 1959 to 1961. On December 22, 1970, petitioner required respondent to pay P3,500,798.47, as advance sales tax and 75% surcharge corresponding to the same years.

On January 7, 1971, respondent filed with the Bureau of Internal Revenue a protest disputing the revised assessments and requesting further investigation. On the same date, petitioner denied the protest.

On January 20, 1971, respondent requested petitioner to reconsider the denial of its protest. On January 29, 1971, petitioner granted the request upon respondent's execution of a waiver of the statute of limitations.

On September 14, 1971, petitioner denied respondent's protest on the disputed

assessments.

On October 14, 1971, respondent filed with the Court of Tax Appeals a petition for review of the disputed tax assessments.

On March 29, 1972, respondent filed its answer to the petition praying for its dismissal.

On January 15, 1990, the Court of Tax Appeals rendered decision finding respondent not liable for deficiency income tax and advance sales tax assessed against it, accordingly, reversed the BIR decision. In its decision, the Court of Tax Appeals held that the assessments were of doubtful validity as they were based on incompetent evidence consisting of an informant's report and the sworn statement of a disgruntled former general manager of respondent that in the years in question respondent sold all its dollar quotas to local Chinese textile traders at an overprice or premium on the dollar value of textile importation of 80% for suiting materials and 70% for women's clothing materials and faked its invoices to reduce its costs of importation. On the other hand, respondent adduced evidence consisting of official records of the Bureau of Customs that its tax-free importations had been re-exported to their suppliers in accordance with the Embroidery Law and cleared by the Bureau of Customs. The tax court ruled that the assessments must be based on actual facts and proved by competent evidence, not imposed based on unverified information supplied by an informant, or disputed presumptions.

On June 13, 1990, petitioner filed with the Court of Appeals a petition for review of the decision of the Court of Tax Appeals.<sup>[3]</sup>

On November 9, 1990, the Court of Appeals promulgated its decision affirming the appealed decision of the tax court.<sup>[4]</sup>

On December 4, 1990, petitioner filed a motion for reconsideration of the Court of Appeals' decision.

On February 7, 1991, the Court of Appeals denied the motion.<sup>[5]</sup>

On March 18, 1991, within the extended time granted, petitioner filed with the Supreme Court a petition for review on *certiorari* of the decision of the Court of Appeals.<sup>[6]</sup>

In the petition, the Commissioner of Internal Revenue submits that the Court of Appeals erred:

(1) in not holding that respondent is liable for deficiency income tax and advance sales tax in view of its failure to declare its income realized for the years 1959 to 1961 from the sales of its dollar quota to local Chinese textile dealers at a premium of 70% to 80% of the dollar value, which dollar quota rights were allocated by the Central Bank of the Philippines to enable respondent to import tax-free textile raw materials to be manufactured into finished products for re-export pursuant to the provisions of the Embroidery Law (R.A. No. 3137), and

(2) in not holding that the imposition of 50% surcharge for fraud was legal and