356 Phil. 189

THIRD DIVISION

[G.R. No. 125704, August 28, 1998]

PHILEX MINING CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, COURT OF APPEALS, AND THE COURT OF TAX APPEALS, RESPONDENTS.

D E C I S I O N

ROMERO, J.:

Petitioner Philex Mining Corp. assails the decision of the Court of Appeals promulgated on April 8, 1996 in CA-G.R. SP No. 36975[1] affirming the Court of Tax Appeals decision in CTA Case No. 4872 dated March 16, 1995[2] ordering it to pay the amount of P110,677,668.52 as excise tax liability for the period from the 2nd quarter of 1991 to the 2nd quarter of 1992 plus 20% annual interest from August 6, 1994 until fully paid pursuant to Sections 248 and 249 of the Tax Code of 1977.

The facts show that on August 5, 1992, the BIR sent a letter to Philex asking it to settle its tax liabilities for the 2nd, 3rd and 4th quarter of 1991 as well as the 1st and 2nd quarter of 1992 in the total amount of P123,821,982.52 computed as follows:

PERIOD COVERED	BASIC TAX	25% SURCHARGE	INTEREST	TOTAL EXCISE TAX DUE
2nd Qtr., 1991	12,911,124.60	3,227,781.15	3,378,116.16	19,517,021.91
3rd Qtr., 1991	14,994,749.21	3,748,687.30	2,978,409.09	21,721,845.60
4th Qtr., 1991	19,406,480.13	4,851,620.03	2,631,837.72	26,889,937.88
	47,312,353.94	11,828,088.48	8,988,362.97	68,128,805.39
1st Qtr., 1992	23,341,849.94	5,835,462.49	1,710,669.82	30,887,982.25
2nd Qtr., 1992	19,671,691.76	4,917,922.94	215,580.18	24,805,194.88

43,013,541.70	10,753,385.43	1,926,250.00	55,693,177.13
90,325,895.64	22,581,473.91	10,914,612.97	123,821,982.52
==========	==========	==========	==========[3]

In a letter dated August 20, 1992,[4] Philex protested the demand for payment of the tax liabilities stating that it has pending claims for VAT input credit/refund for the taxes it paid for the years 1989 to 1991 in the amount of P119,977,037.02 plus interest. Therefore, these claims for tax credit/refund should be applied against the tax liabilities, citing our ruling in Commissioner of Internal Revenue v. Itogon-Suyoc Mines, Inc.[5]

In reply, the BIR, in a letter dated September 7, 1992,[6] found no merit in Philex's position. Since these pending claims have not yet been established or determined with certainty, it follows that no legal compensation can take place. Hence, he BIR reiterated its demand that Philex settle the amount plus interest within 30 days from the receipt of the letter.

In view of the BIR's denial of the offsetting of Philex's claim for VAT input credit/refund against its exercise tax obligation, Philex raised the issue to the Court of Tax Appeals on November 6, 1992.[7] In the course of the proceedings, the BIR issued a Tax Credit Certificate SN 001795 in the amount of P13,144,313.88 which, applied to the total tax liabilities of Philex of P123,821,982.52; effectively lowered the latter's tax obligation of P110,677,688.52.

Despite the reduction of its tax liabilities, the CTA still ordered Philex to pay the remaining balance of P110,677,688.52 plus interest, elucidating its reason, to wit:

> "Thus, for legal compensation to take place, both obligations must be liquidated and demandable. 'Liquidated' debts are those where the exact amount has already been determined (PARAS, Civil Code of the Philippines, Annotated, Vol. IV, Ninth Edition, p. 259). In the instant case, the claims of the Petitioner for VAT refund is still pending litigation, and still has to be determined by this Court (C.T.A. Case No. 4707). A fortiori, the liquidated debt of the Petitioner to the government cannot, therefore, be set-off against the unliquidated claim which Petitioner conceived to exist in its favor (see Compañia General de Tabacos vs. French and Unson, No. 14027, November 8, 1918, 39 Phil. 34)."[8]

Moreover, the Court of Tax Appeals ruled that "taxes cannot be subject to set-off on compensation since claim for taxes is not a debt or contract."[9] The dispositive portion of the CTA decision[10] provides:

> "In all the foregoing, this Petition for Review is hereby DENIED for lack of merit and Petitioner is hereby ORDERED to PAY the Respondent the amount of P110,677,668.52 representing excise tax liability for the period from the 2nd quarter of 1991 to the 2nd quarter of 1992 plus 20% annual interest from August 6, 1994 until fully paid pursuant to Section 248 and 249 of the Tax Code, as amended."

Aggrieved with the decision, Philex appealed the case before the Court of Appeals docketed as CA-G.R. CV No. 36975.[11] Nonetheless, on April 8, 1996, the Court of

Appeals affirmed the Court of Tax Appeals observation. The pertinent portion of which reads:[12]

> "WHEREFORE, the appeal by way of petition for review is hereby DISMISSED and the decision dated March 16, 1995 is AFFIRMED."

Philex filed a motion for reconsideration which was, nevertheless, denied in a Resolution dated July 11, 1996.[13]

However, a few days after the denial of its motion for reconsideration, Philex was able to obtain its VAT input credit/refund not only for the taxable year 1989 to 1991 but also for 1992 and 1994, computed as follows:[14]

Period Covered By Claims For Vat refund/credit	Tax Credit Certificate Number	Date Of Issue	Amount
1994 (2nd Quarter)	007730	11 July 1996	P25,317,534.01
1994 (4th Quarter)	007731	11 July 1996	P21,791,020.61
1989	007732	11 July 1996	P37,322,799.19
1990-1991	007751	16 July 1996	P84,662,787.46
1992 (1st-3rd Quarter)	007755	23July 1996	P36,501,147.95

In view of the grant of its VAT input credit/refund, Philex now contends that the same should, ipso jure, off-set its excise tax liabilities[15] since both had already become "due and demandable, as well as fully liquidated;"[16] hence, legal compensation can properly take place.

We see no merit in this contention.

In several instances prior to the instant case, we have already made the pronouncement that taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other. [17] There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity.[18] We find no cogent reason to deviate from the aforementioned distinction.

Prescinding from this premise, in Francia v. Intermediate Appellate Court,[19] we categorically held that taxes cannot be subject to set-off or compensation, thus:

> "We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government

> owes him an amount equal to or greater than the tax being collected. The collection of tax cannot await the results of a lawsuit against the government."

The ruling in Francia has been applied to the subsequent case of Caltex Philippines, Inc. v. Commission on Audit,[20] which reiterated that:

> "x x x a taxpayer may not offset taxes due from the claims that he may have against the government. Taxes cannot be the subject of compensation because the government and taxpayer are not mutually creditors and debtors of each other and a claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off."

Further, Philex's reliance on our holding in *Commissioner of Internal Revenue v. Itogon-Suyoc Mines, Inc.*, wherein we ruled that a pending refund may be set off against an existing tax liability even though the refund has not yet been approved by the Commissioner,[21] is no longer without any support in statutory law.

It is important to note that the premise of our ruling in the aforementioned case was anchored on Section 51(d) of the National Revenue Code of 1939. However, when the National Internal Revenue Code of 1977 was enacted, the same provision upon which the Itogon-Suyoc pronouncement was based was omitted.[22] Accordingly, the doctrine enunciated in Itogon-Suyoc cannot be invoked by Philex.

Despite the foregoing rulings clearly adverse to Philex's position, it asserts that the imposition of surcharge and interest for the non-payment of the excise taxes within the time prescribed was unjustified. Philex posits the theory that it had no obligation to pay the excise liabilities within the prescribed period since, after all, it still has pending claims for VAT input credit/refund with BIR.[23]

We fail to see the logic of Philex's claim for this is an outright disregard of the basic principle in tax law that taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.[24] Evidently, to countenance Philex's whimsical reason would render ineffective our tax collection system. Too simplistic, it finds no support in law or in jurisprudence.

To be sure, we cannot allow Philex to refuse the payment of its tax liabilities on the ground that it has a pending tax claim for refund or credit against the government which has not yet been granted. It must be noted that a distinguishing feature of a tax is that it is compulsory rather than a matter of bargain.[25] Hence, a tax does not depend upon the consent of the taxpayer.[26] If any payer can defer the payment of taxes by raising the defense that it still has a pending claim for refund or credit, this would adversely affect the government revenue system. A taxpayer cannot refuse to pay his taxes when they fall due simply because he has a claim against the government or that the collection of the tax is contingent on the result of the lawsuit it filed against the government.[27] Moreover, Philex's theory that would automatically apply its VAT input credit/refund against its tax liabilities can easily give rise to confusion and abuse, depriving the government of authority over the manner by which taxpayers credit and offset their tax liabilities.

Corollarily, the fact that Philex has pending claims for VAT input claim/refund with the government is immaterial for the imposition of charges and penalties prescribed