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Adapting to the Demands of International Competition

By

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"The adoption of competition systems implies the consolidation of market principles, involving the transition from state ownership, vertically integrated monopolies and strong state intervention to a situation in which the interaction of economic agents can take place more freely".¹

Competition policy

Competition policy, in its broadest sense, is the set of government policies that affect the nature and extent of competition in the economy. It encompasses all policies that seek to facilitate effective competition to promote efficiency and ensure growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives.²

Among the various acts hampering competition, the formation of cartels, abuse of dominant position and monopoly most adversely affect competition.

Consider the following definitions:³

1. **Cartel** – It refers to a combination of firms, providing goods in relevant markets, acting or joined together to obtain a shared monopoly to control production, sale and price, or to obtain control in any particular industry or commodity, or a group of firms that agree to restrict trade. It also refers to firms or sections of firms having

1 (UNCTAD Secretariat, Objectives of competition law and policy: Towards a coherent strategy for promoting competition and development). The quotation was taken from the presentation of Atty. Rodolfo A. Salalima, Chief Legal Counsel, Senior Advisor and Spokesperson of Globe Telecom, Inc. during the AVID Thought Leadership Forum, on December 5, 2011, in Mandarin Oriental Hotel.

2 The definition of competition policy was presented by Undersecretary Zenaida Cuisin Maglaya of the Department of Trade and Industry during the Association of Vehicle Importers and Distributors (AVID) Thought Leadership Forum, December 5, 2011, Ballrooms 1 and 2, Mandarin Oriental Hotel, Makati City.

3 The definition of cartels, dominant position and monopoly are from the Section 4 -Definition of Terms, HB 4835.

- common interest designed to promote the exchange of knowledge resulting from scientific and technical research, exchange of patent rights and standardization of products among themselves with the intent of preventing, restricting or distorting competition;
2. **Dominant position** – It refers to a situation where a firm, either by itself or acting in collusion with other firms, is in a position to control a relevant market for the sale of a particular good or service by fixing its prices, excluding competitor firm, or controlling the market in a specific geographical area; and
 3. **Monopoly** – It refers to a privilege or undue advantage of one or more firms, consisting in the exclusive right to carry on a particular business or trade, and or manufacture of a particular product, article or object of trade, commerce or industry. It is a form of market structure in which one or a few firms dominate the total sales of a product or service.

Implementing an actual competition legislation entails the consideration of certain factors and realities like: (a) the lack of general understanding on the benefits of competition, (b) resource constraints, and the lack of expertise and skilled staff. In the creation of a competition agency there is a need for such body to be independent and apart from other government agencies. There should be a continuous review of existing laws and policies. Concerned authorities need to be strengthened to further enhance the enforcement and implementation of competition-related laws and policies. There is a need to pursue competition policy advocacy, information and education campaign.



Pre-WTO era (1970 to 1980)

The years from 1970 to 1980 was an era characterized by economic policies that concentrated on the protection of domestic industries. By protecting domestic industries, jobs were created, contributing to the development of the country. Patronizing local produce was considered a patriotic thing to do. However, domestic consumers were deprived of cheaper quality goods.

The government, as a matter of policy, promotes quantitative restrictions, imposing a ban on importation,

or the imposition of high protective tariffs.

More often than not, the following logic was followed in the pursuit of a protective policy:

- If a product is not manufactured in the Philippines, lower tariffs and taxes are imposed in order to satisfy the desire of the consumers;
- The second case is when a product was partially manufactured in the Philippines. The importation of raw materials was scrutinized whether such imports were available or manufactured domestically. If such raw materials were available or manufactured locally the government would pursue the "*domestic content rule*". Locally available/produced raw materials would have a preferential treatment by imposing a high tariff on equivalent imported product; and
- For importations directly competing with domestically produced products, the latter received the most protection. It was evident in the case of agricultural products. During that era, local products competing with imports had the most protection in the form of non-tariff barriers and the usual high tariffs and taxes. Non-tariff barriers meant import quotas.

WTO era (January 1, 1995 onwards)

The Philippines ratified the GATT-Uruguay Final Round in 1994, paving its membership to the World Trade Organization (WTO) starting January 1, 1995. Membership to the WTO means that the Philippines would adhere to all its trade agreements, a "*take it or leave it basis*" proposition. As a consequence, such WTO⁴ membership also means a repeal of several laws enacted during the protectionist era. During the Senate debates on the ratification of the GATT-Uruguay Round, the following suggestions were presented as "*safety nets*"⁵ in preparation for the adverse impact of a liberal international trade:

1. Allowing a presumptive input tax on agricultural products used by processors;
2. Amending the Agri-Agra law to plug the loopholes within the law which tend to divert credit away from the agricultural sector;
3. Enactment of plant variety registration and protection law;
4. Amending the laws on patents, trademarks, copyright, and reprinting;
5. Enactment of laws on geographical indications, topographies of integrated circuits, and protection of undisclosed information;
6. Amending the Garments and Textiles Export Board in view of the phase out of the garment export quotas within the next ten years;
7. Amending the Omnibus Investment Code (EO 226) to incorporate new package of incentives;
8. Amending the Labor Code to allow the

⁴ The GATT (General Agreement on Tariff and Trade)-Uruguay Round is also called the final round containing all the previous agreements under GATT. Once the "critical mass" of GATT members ratify the GATT Uruguay Round, a new international organization would be created, the World Trade Organization (WTO). The Philippines is an original member of the WTO starting January 1, 1995.

⁵ The enumeration of the safety nets was discussed during the Senate ratification of the WTO on October 12, 1994.

issuance of employment permits to non-resident aliens, and to amend provisions on labor-only contracting and job-only contracting;

9. Enacting a law on unemployment assistance insurance and on training and retraining; and
10. Enactment of ancestral domain law and codes on environment, mining, forestry, and land management.

The enumeration reflects both the coverage and the apprehension of the adversely affected sectors. It is clear that competition assumed a widened signification to cope with the demands of the WTO rules.

The following comments reinforce the complex nature of competition:

1. *The WTO agreements will exert tremendous demand on the Philippines to revise the Constitution in order to remove obstacles to the performance of its obligations based on the national treatment principles of the agreements. While the Philippines may be able to maintain a standstill policy at present without being obliged to give concession upon the effectivity of the WTO, it would be a matter of time for Philippine commitments to clash with the constitutional safeguards of economic protection.* (Dean Merlin Magallana, UP College of Law);

2. *The ratification of the WTO (GATT-Uruguay Round) would amount to a wholesale undue delegation of powers not only on the part of the President, but also of the Congress tantamount to surrendering sovereignty on the part of the Philippines of their prerogatives. A treaty can repeal or supplant a statute in the same manner that a statute can alter or repeal a treaty. A treaty can replace a statute only if the treaty is constitutional.* (Prof. Esteban Bautista, UP College of Law);
3. *The WTO will remove all quantitative restrictions imposed by the Philippine laws on the entry of foreign agricultural products, at the same time, it will preserve the quantitative restrictions imposed by rich countries against the entry of labor from countries like the Philippines. It therefore imposes unfair competition and trade practices against Philippine enterprises and trade arrangements that are not based on equity and reciprocity. The WTO runs counter to the constitutional provisions regarding unfair trade practices.* (Jeremias Montemayor, Federation of Free Farmers);

4. *The traditional forms of protection envisioned by the framers of the Constitution take the form of tariff protection, quantitative restrictions, import prohibitions, and market protection, all of which are now obsolete because of the WTO.* (Atty. Mervin Encanto, Integrated Bar of the Philippines); and

5. *An alternative to GATT lies in reconstructing and rendering our economy on the basis of development strategy that converted our neighbours into newly industrialized countries. The central argument against GATT is that it would compel us to forego the strategy because it violates GATT's spirit. The development strategy consists*

essentially in controlling, managing, manipulating and harnessing market forces to achieve both economic and non-economic goals; national self sufficiency and economic self-reliance; the integrity of sovereignty; a modernized military; full employment; administrative control of inflation; promotion of social justice and the installation of economic democracy which political democracy is a charade. (Alejandro Lichauco, UP Law Center).



Governing body handling competition

On June 9, 2011, President Aquino issued Executive Order No. 45 designating the Department of Justice as the *Competition Authority*, which is mandated to perform the following:

1. Investigate all cases involving violations of competition laws and prosecute violations to prevent, restrain and punish monopolization, cartels and combinations in restraint of trade;
2. Enforce competition policies and laws to protect consumers from abusive, fraudulent, or harmful corrupt business practices;
3. Supervise competition in markets by ensuring that prohibitions and requirements of competitive laws are adhered to, and to this end, call on other government agencies and/or entities for submission of reports and provision for assistance;
4. Monitor and implement measures to promote transparency and accountability in markets; and
5. Promote international cooperation and strengthen Philippine trade relations with other countries.

While the creation of an Authority to handle competition is laudable, the choice of the Department of Justice (DOJ) as the lead government agency seems to be slanted towards the "legal" side of the subject matter. Bear in mind that present day competition must be *preventive* as well as *curative*. WTO provisions encompass almost every commercial aspect of a nation's day to day operation. Such being the case the currently accepted paradigms would have a tendency more often needing timely response from a WTO member adversely affected. The choice of the lead government agency, the DOJ, gives an impression on the curative side of unfair competition.

There is a need to anticipate the demands of foreign competition even before such demands are not yet

manifest at the moment. In this regard, the expertise of other professionals, like economists, is needed also. There is a need for comprehensive national policy regarding competition in order to perform the following: (a) rationalization of government resources through the government's annual budget up with a "single position" if confronted by foreign competitor; (b) drafting competition policies (short, medium and long term plans) to avoid hasty decisions; (c) timely responding to the sudden demands of competition; and (d) providing expertise to government negotiators in international forums of the thrust of the Philippines on a particular subject matter.

In this regard, a competition government agency is convenient under the Office of the President considering that it is the Executive Department that enters into treaties with other countries. Furthermore, an office under the Office of the President makes it easier to coordinate with affected government agencies.



Trade complications

The main objective of the WTO is to simplify trade among its member countries. The WTO also allows the creation of free trade areas (FTAs). Under the FTAs, WTO member countries may devise a special low tariff among its members giving rise to complications. A country like the Philippines has FTAs with the ASEAN (Association of South East Asian Nations), Japan, Korea, India, and China, among others. As result, the Philippines has different set of tariffs applicable to each FTA, and an MFN (most favoured nation clause) for WTO member countries that do not have FTA agreements with the Philippines.

One of the FTA's is the PJEPA (Philippine Japan Economic Partnership Agreement). Currently, there is clamor to review its provisions because some sectors of the economy are of the opinion that some PJEPA provisions are disadvantageous to the Philippines. In order to assess the effectivity of the PJEPA, the DTI (not the DOJ, as per the mandate of EO 45) spearheads the evaluation in order to achieve a *unified international trade strategy for the country*⁶. The following are the steps taken by the DTI: (a) institutionalization of an efficient

and effective consultative system for enhancing and sustaining public engagement in trade policy formulation, (b) intensification of trade policy analysis and expanding the network of institutions involved in trade policy research by establishing the Trade and Industry Policy Research Network, and enhancing the effectiveness of trade-related inter-agency coordination and communication called – *One Country, One Team*.

Ideally, the WTO is concerned only in trade. This is the reason why quantitative restrictions were abolished and are given tariff equivalents. The tariff equivalents are liberalized (lowered) through a pre-determined schedule for an eventual minimal tariff rate. However, some FTAs like the European Union insist that the principle of "human rights" be included in their dealings with other WTO member countries. Non trade matters in the WTO definitely complicates matter.

If one of the ways to liberalize trade is through the decrease in tariff, the Philippines will not attain full liberalization. Even if the tariff rate is zero percent (0%), the Philippines imposes a VAT (value-added tax) of 12% in addition to other specific taxes in accordance with the National Internal Revenue Code of the Philippines. Furthermore, the Philippines, as a developing country, depends partly on import revenues. The Bureau of Customs (BOC) is the second biggest source of government revenue, next only to the Bureau of Internal Revenue (BIR).

Legislative response

Congress proposes the creation of the **Philippine Fair Competition Commission (PFCC)**⁷ in order to *implement the national policy and attain the objectives and purposes* of the proposed Philippine Fair Competition Act of 2011. The Commission is mandated to conduct industry studies and company profiles, make public disclosure of information, study trade conditions in and with foreign countries, and impose the rules regarding prohibitive competition, among others.

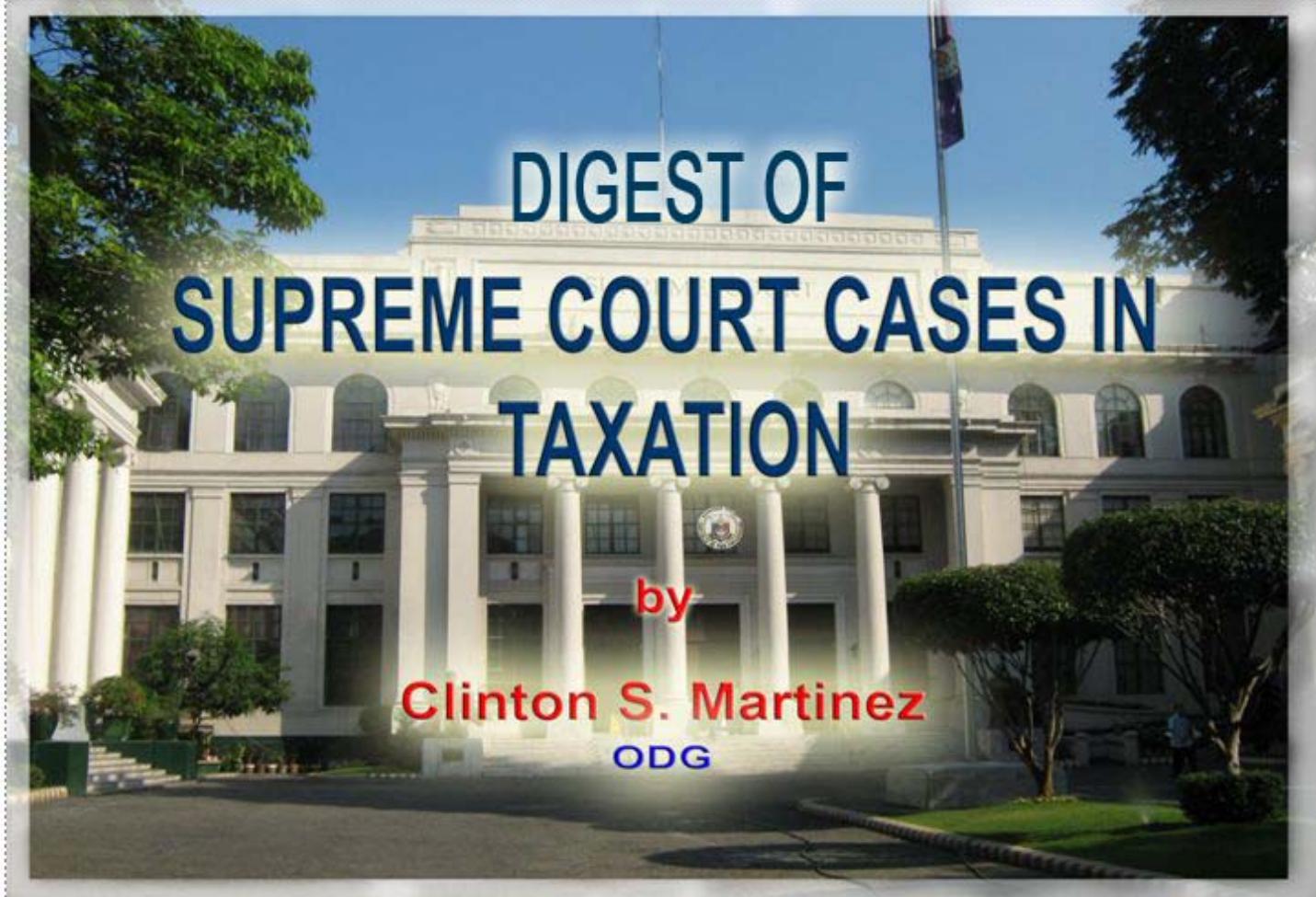
The proposed legislation, once enacted will serve as the comprehensive legislation harmonizing the different laws on competition in the Philippines. Competition provisions are sprinkled through the following laws: (a) Revised Penal Code of the Philippines, (b) New Civil Code of the Philippines, (c) Corporation Code of the Philippines, (d) Revised Securities Act, (e) Electric Power Industry Reform Act, (f) Intellectual Property Code, (g) Consumer Act of the Philippines, (f) Price Act, (g) Downstream Oil deregulation Act of 1998, and (h) Safeguard Measures Act.⁸

A competition law is a must for the Philippines considering that the ASEAN would be functioning as a common market in 2015.

⁶ Adrian Cristobal, Jr., Undersecretary for Industry Development and Trade Policy (DTI), in a letter sent to the STSRO dated December 19, 2011.

⁷ Section 5, HB 4835; Section 20, SB 123 (Sen. Osmena); Section 12 (*concerned regulation agencies*), SB 1 (Sen. Enrile); Section 10, SB 358 (*concerned regulation agencies*) (Sen. Trillanes).

⁸ The enumeration is taken from the presentation of Undersecretary Zenaida Cuison Maglaya of the Department of Trade and Industry during the AVID Thought Leadership Forum held in the Mandarin Oriental Hotel, December 5, 2011.



1. UNITED AIRLINES, INC., *Petitioner*, vs. COMMISSIONER OF INTERNAL REVENUE, *Respondent*, G.R. No. 178788, September 29, 2010, Villarama, Jr., J.

Facts:

Petitioner United Airlines, Inc. (UAI) is a foreign corporation engaged in the international airline business and organized and existing under the laws of Delaware, United States of America (USA).

UAI used to operate passenger and cargo flights originating in the Philippines (online international carrier). On February 21, 1998 UAI ceased operating its passenger flights originating in and out of the Philippines and appointed Aerotel Ltd. Corp., an independent general sales agent for many international airline firms, as its sales agent in the country. UAI's cargo flights continued until January 31, 2001.

Petitioner on April 12, 2002, filed with respondent Commissioner of Internal Revenue (CIR) a claim for income tax refund based on Section 28(A)(3)(a) of the Tax Code of 1997 in connection with Article 4(7) of the Tax Treaty between the Philippines and USA. Relying on the change in definition of Gross Philippine Billings (GPB) in the Tax Code, UAI forwarded that it ceased operating passenger flights originating from the Philippines commencing February 21, 1998 and hence its passenger revenue for 1999, 2000 and 2001 should not be considered as income from sources within the Philippines pursuant to Article 9 of the Tax Treaty.

Petitioner filed on April 15, 2002 a petition for review with the Court of Tax Appeals (CTA), as no resolution for its claim had yet been made and because of the two (2)-year prescriptive period. UAI claims that it is entitled to a refund of P5,028,813.23.

The CTA First Division ruled against petitioner stating that "X x x no excess or erroneously paid tax may be refunded to petitioner because the income tax on GPB under Section 28(A)(3)(a) of the NIRC applies as well to gross revenue from carriage of cargoes originating from the Philippines." The CTA denied a motion for reconsideration (MR) holding that "X x x petitioner's claim for tax refund was not offset with its tax liability; that petitioner's tax deficiency was due to erroneous deductions from its gross cargo revenue; that it did not make an assessment against petitioner; and that it merely determined if petitioner was entitled to a refund based on the undisputed facts and whether petitioner had paid the correct amount of tax."

The CTA En Banc affirmed the decision of the CTA First Decision.

This petition is based on the following:

1. "The CTA En Banc grossly erred in denying the petitioner's claim for refund of erroneously paid income tax on Gross Philippine Billings [GPB] based on its finding that petitioner's underpayment of [P31.43 million]

GPB tax on cargo revenues is a lot higher than the GPB tax of [P5.03 million] on passenger revenues, which is the subject of the instant claim for refund. the denial of petitioner's claim on such ground clearly amounts to an off-setting of tax liabilities, contrary to well-settled jurisprudence.

2. "The decision of the CTA En Banc violated petitioner's right to due process.
3. "The CTA En Banc acted in excess of its jurisdiction by denying petitioner's claim for refund of erroneously paid income tax on gross Philippine billings based on its finding that petitioner underpaid GPB tax on cargo revenues in the amount of [P31.43 million] for the taxable year 1999.
4. "The CTA En Banc has no authority under the law to make any assessments for deficiency taxes. the authority to make assessments for deficiency national internal revenue taxes is vested by the 1997 NIRC upon respondent.
5. "Any assessment against petitioner for deficiency income tax for the taxable year 1999 is already barred by prescription."

Issue:

The Supreme Court (SC) at the outset stated that "The main issue to be resolved is whether the petitioner is entitled to a refund of the amount of **P5,028,813.23** it paid as income tax on its passenger revenues in 1999."

Held:

The SC denied the petition of United Airlines, Inc. The Court pronounced:

"As correctly pointed out by petitioner, inasmuch as it ceased operating passenger flights to or from the Philippines in 1998, it is not taxable under Section 28(A)(3)(a) of the NIRC for gross passenger revenues. This much was also found by the CTA. In *South African Airways v. Commissioner of Internal Revenue*, we ruled that the correct interpretation of the said provisions is that, if an international air carrier maintains flights to and from the Philippines, it shall be taxed at the rate of 2 1/2% of its GPB, while international air carriers that do not have flights to and from the Philippines but nonetheless earn income from activities in the country will be taxed at the rate of 32% of such income.

"Here, the subject of claim for tax refund is the tax paid on passenger revenue for taxable year 1999 at the time when petitioner was still operating cargo flights originating from the Philippines although it had ceased passenger flight operations. The CTA found that petitioner had underpaid its GPB tax for 1999 because petitioner had made deductions from its gross cargo revenues in the income tax return it filed for the taxable year 1999, the amount of underpayment even greater than the refund sought for erroneously paid GPB tax on passenger revenues for the same taxable period. Hence, the CTA ruled petitioner is not entitled to a tax refund.

"Under Section 72 of the NIRC, the CTA can make a valid finding that petitioner made erroneous deductions on its gross cargo revenue; that because of the erroneous deductions, petitioner reported a lower cargo revenue and paid a lower income tax thereon; and the petitioner's underpayment of the income tax on cargo revenue is even higher than the income tax it paid on passenger revenue subject of the claim for refund, such that the refund cannot be granted.

"Precisely, petitioner questions the offsetting of its payment of the tax under Sec. 28(A)(3)(a) with their liability under Sec. 28(A)(1), considering that there has not yet been any assessment of their obligation under the latter provision. Petitioner argues that such offsetting is in the nature of legal compensation, which cannot be applied under the circumstances present in this case."

The SC cited its ruling in the case of *Philex Mining Corporation vs. Commissioner of Internal Revenue*:

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

The ruling likewise quoted *Francia vs. Intermediate Appellate Court* wherein it ruled "X x x 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 a tax cannot await the results of a lawsuit against the government."

In finally disposing of the case, the SC said:

"Here, petitioner's similar tax refund claims assumes that the tax return that it filed was correct. Given, however, the finding of the CTA that petitioner, although not liable under Sec. 28 (A)(3)(a) of the 1997 NIRC, is liable under Sec. 28 (A)(1), the correctness of the return filed by petitioner is now put in doubt. As such, we cannot grant the prayer for a refund.

"In the case at bar, the CTA explained that it merely determined whether petitioner is entitled to a refund based on the facts. On the assumption that petitioner filed a correct return, it had the right to file a claim for refund of GPB tax on passenger revenues it paid in 1999 when it was not operating passenger flights to and from the Philippines. However, upon examination by the CTA, petitioner's return was found erroneous as it understated its gross cargo revenue for the same taxable year due to deductions of two (2) items consisting of commission and other incentives of its agent. Having underpaid the GPB tax due on its cargo revenues for 1999, petitioner is not entitled to a refund of its GPB tax on its passenger revenue, the amount of the former being even

much higher (P31.43 million) than the tax refund sought (P5.2 million). The CTA therefore correctly denied the claim for tax refund after determining the proper assessment and the tax due. Obviously, the matter of prescription raised by petitioner is a non-issue. The prescriptive periods under Sections 203 and 222 of the NIRC find no application in this case."

"We must emphasize that tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority. In any event, petitioner has not discharged its burden of proof in establishing the factual basis for its claim for a refund and we find no reason to disturb the ruling of the CTA. It has been a long-standing policy and practice of the Court to respect the conclusions of quasi-judicial agencies such as the CTA, a highly specialized body specifically created for the purpose of reviewing tax cases."

The Petition was denied for lack of merit. The SC affirmed the decision of the CTA *En Banc* dated July 5, 2007 (CTA EB No. 227).

2. BELLE CORPORATION, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent, G.R. No. 181298, January 10, 2011, Del Castillo, J.

Facts:

Petitioner in its 1997 second quarter income tax return (ITR) declared an over payment of income taxes in the amount of P66,634,290.00. Due to the over payment, no taxes were paid for the second and third quarters of 1997. For the year ending December 31, 1997 petitioner's ITR showed over payment in the sum of P132,043,528.00. *"Instead of claiming the amount as a tax refund, petitioner decided to apply it as a tax credit to the succeeding taxable year by marking the tax credit box in its 1997 ITR."* For taxable year 1998, Belle Corporation's amended ITR detailed an over payment of P106,447,318.00. Petitioner filed an administrative claim for refund on April 12, 2000, of its unutilized excess income tax payments for 1997 in the sum of **P106,447,318.00**.

Despite said claim for refund, petitioner carried over the amount to taxable year 1999 and applied a part of the amount to its 1999 Minimum Corporate Income Tax (MCIT) liability. This is shown in its 1999 ITR.

For failure of respondent Commissioner of Internal Revenue (CIR) to act and to toll the running of the 2-year period of prescription, petitioner on April 14, 2000 appealed the claim for refund with the Court of Tax Appeals (CTA). The same was docketed as CTA Case No. 6070. The CTA (April 10, 2001) denied said petition for review, holding:

"That all the allegations by the Petitioner as well as the figures accompanying Petitioner's claim are substantiated by documentary evidence but noticed some flaws in Petitioner's application of the pertinent laws involved."

"It is an elementary rule in taxation that an automatic carry over of an excess income tax payment should only be made for the succeeding year. (Paseo Realty and Dev't. Corp. vs. CIR, CTA Case No. 4528, April 30, 1993) True

enough, implicit from the provisions of Section 69 of the NIRC, as amended, (supra) is the fact that the refundable amount may be credited against the income tax liabilities for the taxable quarters of the succeeding taxable year not succeeding years; and that the carry-over is only limited to the quarters of the succeeding taxable year. (citing ANSCOR Hagedorn Securities Inc. vs. CIR, CA-GR SP 381-77, December 21, 1999) To allow the application of excess taxes paid for two successive years would run counter to the specific provision of the law above-mentioned."

Belle Corporation's motion for reconsideration was denied in a resolution; hence, it elevated the matter to the Court of Appeals (CA) under Rule 43 (Petition for Review) of the Rules of Court. The CA denied the petition on January 25, 2007. It held that:

"While BELLE may not have fully enjoyed the complete utilization of its option and the sum of Php 106,447,318 still remained after it opted for a tax carry over of its excess payment for the taxable year 1998, but be that as it may, BELLE has only itself to blame for making such useless and damaging option, and BELLE may no longer opt to claim for a refund considering that the remedy of refund is barred after the corporation has previously opted for the tax carry over remedy. As a matter of fact, the CTA even made the factual findings that BELLE committed an aberration to exhaust its unutilized overpaid income tax by carrying it over further to the taxable year 1999, which is a blatant transgression of the 'succeeding taxable year limit' provided for under Section 69 of the old NIRC."

Issue:

Whether Belle Corporation is entitled to the refund of the excess income tax payments for taxable year 1997, amounting to P106,447.318.00.

Held:

The Supreme Court (SC) said that both the CTA and CA were incorrect in applying Section 69 of the old Tax Code. It mentioned that the controlling proviso is Section 76 of the National Internal Revenue Code (NIRC) of 1997.

The SC pronounced that *"unutilized excess income tax payments may be refunded within two years from the date of payment under Section 69 of the old NIRC."* However, under the NIRC of 1997, the option to carry over excess income tax payments is irrevocable. The Court cited the applicable proviso:

"Section 76. Final Adjustment Return. - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:

- "(a) Pay the excess tax still due; or*
- "(b) Be refunded the excess amount paid, as the case may be.*

"In case the corporation is entitled to a refund

of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry over and apply the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."

In explaining that it is Section 76 of the 1997 NIRC, and not Section 69, that should govern, the SC declared:

"Section 76 and its companion provisions in Title II, Chapter XII should be applied following the general rule on the prospective application of laws such that they operate to govern the conduct of corporate taxpayers the moment the 1997 NIRC took effect on 1 January 1998. There is no quarrel that at the time respondent filed its final adjustment return for 1997 on 15 April 1998, the

deadline under Section 77(B) of the 1997 NIRC (formerly Section 70(b) of the 1977 NIRC), the 1997 NIRC was already in force, having gone into effect a few months earlier on 1 January 1998. Accordingly, Section 76 is controlling.

"Accordingly, since petitioner already carried over its 1997 excess income tax payments to the succeeding taxable year 1998, it may no longer file a claim for refund of unutilized tax credits for taxable year 1997.

"To repeat, under the new law, once the option to carry-over excess income tax payments to the succeeding years has been made, it becomes irrevocable. Thus, applications for refund of the unutilized excess income tax payments may no longer be allowed."

The petition was denied, and the decision of 25 January 2007 and resolution of 21 January 2008, of the CTA were "X x x AFFIRMED only insofar as the denial of petitioner's claim for refund is concerned."



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