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How sincere can you be?

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Good faith is difficult to establish in the midst of subjectivity, doubts, and criticisms.

Bona Fide. In good faith. An essential trait not only in dealing with people, but also in business and legal transactions. The same is defined in Bouvier Law Dictionary as: "The honest and fair pursuit of one's stated and reasonable purposes. Good faith is sincerity, a measure to assess one's own conduct and the conduct of others. Good faith is subjective, measuring what one knows, rather than entirely determining what one should reasonably believe under the circumstances. Yet, the subjective aspect of good faith has an objective limit in that contradictions between knowledge and the purpose for which one acquires or employs knowledge may bar good faith."

A phrase drawn between the objective and subjective lines of facts. But, how can good faith actually determine whether a refund of taxes previously paid would ensue or not?

In Court of Tax Appeals (CTA) Case No. 9221, petitioner San Miguel Energy Corporation filed a petition for review seeking the refund or issuance of tax credit certificate for alleged erroneously collected documentary stamp tax (DST) for the taxable year 2010. The alleged erroneously collected DST arose from the petitioner's payment under protest in the amount of Php16,611,637.05 representing DST inclusive of surcharge, interest and penalties. The same is in response to the Bureau of Internal Revenue (BIR) assessment that intercompany advances evidenced by memos are subject to DST pursuant to Commissioner of Internal Revenue v. Filinvest Development Corporation (G.R. Nos. 163653 and 167689 dated 19 July 2011) and circularized in Revenue Memorandum Circular (RMC) No. 48-2011. The said decisions state that loan agreements subject to DST may be evidenced by instructional letters, journals and cash vouchers.

To counter the assessment and support its claim for refund, petitioner avers that the aforementioned decisions in 2011 cannot be retroactively applied to its 2010 intercompany advances because the BIR's basis of the DST is the mere Note appearing on its 2010 Audited Financial Statements. Further, assuming that it is indeed liable to pay DST, petitioner claims that there should be no imposition of surcharge, interest and penalty as it merely relied on existing rulings at the time of the advances.

In evaluating the foregoing arguments, the CTA held that interpretation of the law shall be retroactively applied up to the date the law was enacted in the absence of a prior ruling overruled by the Court. Further, prospective application of an interpretation of the law shall be sustained to primarily benefit parties who relied and acted on old doctrine in good faith.

Applying the same to the instant case, the advances evidenced by memos are subject to DST because the 2011 decision is deemed constituted as part of the Tax Code from 1994 up to the present. The said 2011 decision did not overrule a previous Supreme Court decision and merely provided interpretation to the old doctrine. Notwithstanding this, the CTA decided that the petitioner shall not be liable to the corresponding surcharge and interest as it relied on BIR Ruling [DA (C-035) 127-08]. In the said ruling, the BIR signified that memos are prepared for accounting purposes and would not evidence inter-company advances; hence, not subject to DST. Considering that it is in good faith that the petitioner did not subject the transaction to DST, the CTA decided that there is justification to not impose surcharge and interest, thereby granting petitioner partial refund in the amount of Php8,456,497.05.

Good faith is difficult to establish in the midst of subjectivity, doubts, and criticisms. The surrounding circumstances should be properly evaluated so as not to make it an excuse from taxpayer's obligations. Meanwhile, successfully demonstrating good faith could lead to exemption from the full retroactive application of a decision and eventually, a refund. Essentially, the intention is to protect the interests of those who relied on previously issued rulings. The doctrine is applied only as a matter of equity, in the interest of fair play, and as a practical reality. Hence, the next time you encounter these words in Philippine statutes, consider how such a simple phrase can determine the outcome of a case.

"He who comes to equity must come with clean hands, and he who seeks equity must do equity. (G.R. Nos. 209287 and 209135 dated 01 July 2014)"

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