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The Mistaken Truth

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What happens in one's personal life apparently happens too in the tax cases that are decided by our Courts.

Have you ever experienced lying on your bed and out of the blue suddenly thinking that something you believed in to be right for the longest time could actually be wrong? Or being confident about something but suddenly have lingering thoughts that you are possibly mistaken? I have.

This year has been a very memorable year for me: I got married to my high-school-classmate-turned-college-boyfriend of 5 years, I got promoted in the company where I work, and most specially, I gave birth to a beautiful and healthy baby girl.

At first, I thought that these events and milestones would be enough for me to lead a happy, enjoyable, stress-free kind of life (too good to be true, as we say). But along the way I realized that this is not always the case. I have learned that for each commitment I make, there is an equivalent obligation I must fulfill; for every authority I am conferred with, there is a corresponding responsibility to wield the authority with wisdom; and for every new role I assume (e.g., being a mother), the sacrifices one needs to make seem endless. In this respect, it seems that I have been mistaken all this time.

What happens in one's personal life apparently happens too in the tax cases that are decided by our Courts.

Thus, in the case of Commissioner of Internal Revenue ("CIR") vs. Euro-Philippines Airline Services, Inc. ("Euro-Phil") (G.R. No. 222436, 23 July 2018), I believe many did not expect the decision of the Supreme Court (SC) to cancel and withdraw the assessment of Euro-Phil for deficiency value-added tax (VAT) taking into consideration the strict rules of the BIR on invoicing requirements.

Euro-Phil is an exclusive passenger sales agent of British Airways, PLC, an off-line international airline in the Philippines to service the latter's passengers in the Philippines. And in the said case, Euro-Phil received a Formal Assessment Notice ("FAN") for an assessment of deficiency VAT and other taxes amounting to around 4 million pesos. After the inaction of the CIR on the protest filed, Euro-Phil elevated the assessment to the Court of Tax Appeals (CTA) – First Division, arguing that the receipts that are supposedly subject to 12% VAT really pertained to "services rendered to persons engaged in international air transport" hence, zero-rated.

The CTA-First Division ruled that Euro-Phil is indeed rendering services to persons engaged in international air transport operations and, as such, is zero-rated under Section 108 of the National Internal Revenue Code of 1997, as amended ("Tax Code"). Thus, the assessment for the deficiency VAT was cancelled and withdrawn for lack of basis, which was affirmed by the CTA En Banc.

However, in the CTA En Banc decision, Justice Del Rosario, in his dissenting opinion, stated that it is not enough for Euro-Phil to invoke Section 108 of the Tax Code since it likewise has the burden to show compliance with the invoicing requirements laid down in Section 113 of the same Code to be entitled to zero-rating. The CIR adopted this view in its Petition for Review on Certiorari with the SC and argued that Euro-Phil had to comply with the invoicing requirements to be entitled to zero-rating.

The SC denied the CIR's petition and ruled that the CTA En Banc did not commit any reversible error. It stated that there is no dispute that Euro-Phil is indeed a VAT-registered entity and the services it renders are to persons engaged in international air transport operations, thus, subject to zero percent VAT. Also, failure to present and offer proof to show that the same has complied with the invoicing requirements does not negate the established fact that British Airways PLC is engaged in international air transport operations.

Moreover, as dictated by Section 113 of the Tax Code on the provisions on the "Consequences of Issuing Erroneous VAT Invoice of VAT Official Receipt, nowhere therein is a presumption created by law that non-imprintment of the word "zero-rated" deems the transaction subject to 12% VAT. In addition, Section 4. 113-4 of Revenue Regulations No. 16-2005, Consolidated Value-Added tax Regulations of 2005, does not state that the non-imprintment of the word "zero-rated" deems the transaction subject to 12% VAT. The above only pertains to non-VAT registered entities which issues invoices and receipts presenting their Taxpayer's Identification Number (TIN) followed by the word "VAT" and to VAT-registered entities issuing VAT invoices and receipts for a VAT-exempt transaction but fails to display prominently on the invoice or receipt the term "VAT exempt sale".

Based on the foregoing, the Supreme Court explained that failure to comply with invoicing requirements as mandated by law does not deem the VAT zero-rated transaction subject to 12% VAT.

Being a tax professional, it is common in the practice to subject non-compliant receipts to 12% VAT as a conservative approach. However, in light of the above case, it seems that there is a different interpretation and treatment as far as the Tax Code is concerned. In my opinion, it is something that we have to consider in the future in relation to assessments for deficiency VAT. However, the same might not be the case for VAT refunds wherein more stringent rules apply regarding invoicing requirements.

Please note that as of this writing, there is a pending Motion for Reconsideration filed by the CIR last 01 October 2018. Thus, the above decision may not yet be final and executory (but still persuasive).

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