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Defects in waivers: The general rule and exception

Waivers of the defense of prescription in tax cases has been consistently characterized by jurisprudence as a derogation of a taxpayer's right, and must, therefore, be strictly construed against the government. This has lead the Courts to invalidate waivers that do not strictly conform to the requirements mandated by the law and by Bureau of Internal Revenue (BIR) rules.

The advent of the case of *Next Mobile* v *Commissioner of Internal Revenue,* GR 212825, changed the complexion of how defects in waivers have been appreciated by the Courts. In the case mentioned, the Supreme Court refused to invalidate the waivers of the defense of prescription, reasoning that the taxpayer in this case is as much to blame for the defects as the BIR. The Supreme Court (SC) also held the taxpayer accountable as it had continued to deal with the BIR despite causing some of the defects in the waivers. In other words, the SC applied the doctrines of in pari delicto and estoppel to the issue of the validity of waivers.

Despite the explicit pronouncement from the High Court that the ruling embodied in the Next Mobile case is an exception, the doctrine found widespread application in the lower Courts. This had the effect of holding the defense of defects in waivers to higher standards. So long as taxpayers failed to point out the defects to the BIR, the Courts continued to uphold the validity of the waivers, even if taxpayers had no participation in the defects themselves.

A seemingly contradictory conclusion was reached by another recent SC decision in the case of *Commissioner of Internal Revenue* v *Philippine Daily Inquirer,* GR 213943, dated March 22. In the said case, the SC has struck down waivers of the defense of prescription for failure to conform to the requirements of law and the rules.

In the said case, the High Court reiterated the time-honored principle that the BIR may not invoke the principle of estoppel to justify its lapses in the execution of waivers. The SC also reinforced the concept that waivers are a derogation of the rights of a taxpayer, and, thus, must be construed strictly against the government.

A closer examination of the doctrines as embodied in the Next Mobile and the *Philippine Daily Inquirer* cases will show that the two do not necessarily clash. As mentioned earlier, the SC explicitly mentioned that its decision in the Next Mobile case applies pro hac vice, that is, the ruling therein applies, given the particular set of facts in the said case. On the other hand, the *Philippine Daily Inquirer* case reinforces the oft-repeated principle that waivers of the defense of prescription is to be strictly construed against the government.

In other words, the *Philippine Daily Inquirer* is a reiteration of the general rule that waivers must faithfully comply with requirements under the law and rules. Being of recent application, it frames the doctrine found in the Next Mobile case in proper perspective: as an exception applicable only to a strict set of circumstances.

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