

SUMMARY OF SIGNIFICANT SC DECISIONS (January 2012)

-digested by Atty. Julie Ann Aranda

- 1. The proper party to question, or seek a refund of an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another.**

Petitioner filed an administrative claim for refund on the excise taxes paid on the purchase of jet fuel from its supplier oil company for the period of July 1, 1998 to December 31, 1998, which it alleged to have been erroneously paid based on Section 135(a) and (b) of the Tax Code of 1997. Due to inaction by respondent Commissioner, petitioner filed a Petition for Review with the Court of Tax Appeals. The CTA denied the petition and ruled that while petitioner's country indeed exempts from excise taxes petroleum products sold to international carriers, petitioner nevertheless failed to comply with the second requirement under Section 135 (a) of the 1997 Tax Code as it failed to prove that the jet fuel delivered by Petron came from the latter's bonded storage tank. Upon the denial of the motion of reconsideration, petitioner elevated the case to the CA. The CA affirmed the denial and ruled that petitioner is not the proper party to seek for the refund of the excise taxes paid. Upon appeal, the Supreme Court held that excise taxes, which apply to articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines, is basically an indirect tax. While the tax is directly levied upon the manufacturer/importer upon removal of the taxable goods from its place of production or from the customs custody, the tax, in reality, is actually passed on to the end consumer as part of the transfer value or selling price of the goods, sold, bartered or exchanged. The proper party to question, or seek a refund of an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another. Petitioner, as the purchaser and end-consumer, ultimately bears the tax burden, but this does not transform its status into a statutory taxpayer. **(Silkair (Singapore) Pte. Ltd., vs. Commissioner of Internal Revenue, G.R. No. 166482, January 25, 2012)**

- 2. An investment contract must have the following elements (referred to as the *Howey test*): (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others.**

The respondent is engaged in selling computer software and hosted websites without providing internet service. To earn profit, PCI devised a scheme whereby buyers could acquire from petitioner an internet website for a certain price. Buyers

may also refer down-line buyers to PCI and could earn commissions, interest in real estate in the Philippines and in the United States, and insurance coverage worth ₱50,000.00. The SEC issued a cease and desist order against PCI for the latter's failure to register the investment contracts or securities with the SEC. The Court held that under RA 8799, an investment contract is a contract, transaction, or scheme where a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others and have to be registered with the SEC before they can be distributed. An investment contract has the following elements, referred to as the *Howey test*: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others. The petitioner's clients do not make such investment with PCI. The client can use website to enable people to have internet access to products or services he has to offer to them.. The buyers of the website do not invest money in PCI that it could use for running a business that would generate profits for the investors. Actually, petitioner is engaged in network marketing, a scheme adopted by companies for getting people to buy their products outside the usual retail system. The buyer can become a down-line seller and also earns commissions from purchases made by new buyers whom he refers to the person who sold the product to him. The network goes down the line where the orders to buy come. **(Securities and Exchange Commission vs. Prosperity.Com, Inc., G.R. No. 164197, January 25, 2012)**

SUMMARY OF SIGNIFICANT SC DECISIONS (February 2012)

-digested by Atty. Julie Ann Aranda

- 1. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts.**

It is well-settled that rules and regulations, which are the product of a delegated power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency.

Petitioner issued Customs Memorandum Order (CMO) No. 27-2003 prescribing guidelines, for tariff purposes, in the applicable to importation of wheat. Respondent filed a Petition for Declaratory Relief with the Regional Trial Court (RTC) of Las Pinas City. Petitioner filed a Motion to Dismiss and alleged that the RTC did not have jurisdiction over the subject matter of the case because respondent was asking for a judicial determination of the classification of wheat, thus, action for declaratory relief is improper. The Supreme Court held that the determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a

law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine the validity of the acts of the political departments.

Also, Section 1403 of the Tariff and customs law mandates that the customs officer must first assess and determine the classification of the imported article before tariff may be imposed. Unfortunately, CMO 23-2007 has already classified the article even before the customs officer had the chance to examine it. In effect, petitioner Commissioner of Customs diminished the powers granted by the Tariff and Customs Code with regard to wheat importation when it no longer required the customs officer's prior examination and assessment of the proper classification of the wheat. It is well-settled that rules and regulations, which are the product of a delegated power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law; and that it be not in contradiction to, but in conformity with, the standards prescribed by law. **(Commissioner of Customs and the District Collector of the Port of Subic vs. Hypermix Feeds Corporation, G.R. No. 179579, February 1, 2012)**

SUMMARY OF SIGNIFICANT SC DECISIONS (March 2012)

-digested by Atty. Evert O. Pomarin

- 1. Under Section 228, in case of the inaction of the CIR on the protested assessment, the taxpayer has two options, either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days from the receipt of a copy of such decision.**

Taxpayer filed a letter protest against the Assessment Notice issued alleging deficiency income tax for the year 1993. The protest was denied by the Regional Director of the BIR for the reason that the case was not elevated to the Court of Tax Appeals as mandated by the provisions of the last paragraph of Section 228 of the Tax Code. By virtue thereof, the said assessment notice has become final, executory and demandable. The Supreme Court held that it is not correct to say that the assessment became final and executory by the sole reason that the taxpayer failed to appeal the inaction of the Commissioner within 30 days after the 180-day reglementary period because in effect, it limited the remedy of the taxpayer under Section 228 of the NIRC to just one, that is - to appeal the inaction of the Commissioner on its protested assessment after the lapse of the 180-day period. **(Lascona Land Co., Inc., v. Commissioner of Internal Revenue, G.R. No. 171251, March 5, 2012)**