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TAX LAW FOR BUSINESS

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Service to BOI entities

THE OIC-Assistant Commissioner may have a point, but that alone does not authorize him to render ineffective the inclusion of services made to BOI-registered manufacturer/producer whose products are 100 percent exported as an export sale subject to zero percent value added tax (VAT), the Court of Tax Appeals declared in CTA Case 8662, on February 2, 2015.

The case sprung from a deficiency VAT assessment made by the Bureau of Internal Revenue (BIR) against the taxpayer. Apparently, said taxpayer rendered management services to four mining companies, which are all VAT-registered with the BIR and also registered with the Board of Investments (BOI) as 100 percent exporter, pursuant to Executive Order 226. The taxpayer treated these management fees as VAT zero-rated pursuant to the proviso in paragraph (a)(5) of Section 4.106-5 of RR 16-05, which states that the sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100 percent exported are considered export sales.

The BIR, however, averred that any reference to sale of “services” under the said section is erroneous and unmistakably in conflict with the governing law, specifically section 108 of the Tax Code, where the zero-rated sale of services were enumerated. In the Final Decision on Disputed Assessments issued against the taxpayer, the OIC-Assistant Commissioner reasoned out that section 4.106-5 covers only “Zero-Rated Sales of Goods or Properties” and the inclusion of services was “an inadvertent or typographical error.” Thus, he concluded that the management fees should be subject to the 12 percent and not 0 percent VAT.

But the CTA decided the case in favor of the taxpayer. According to the Court, the BIR was not accurate in contending that the entire section of 4.106 covers matters that only involve sale of goods and properties. At the time of the issuance of the assessment, section 4-106.5 (a)(5) of RR 16-05 clearly included “services” in the enumeration of the items that deemed to be “export sales” subject to the 0 percent VAT rate, when sold by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100 percent exported. Whether the inclusion of “services” among “export sales” subject to 0 percent VAT rate was erroneous or not is a point distinct from the fact of inclusion.

The Court further stated that, though the OIC-Assistant Commissioner may have a point, his course of action may not to render the proviso ineffective. As he has no authority to interpret tax laws, a power lodged exclusively with the CIR, he should have raised the matter to the CIR, for the CIR to issue a ruling and/or to recommend to the Secretary of Finance the issuance of the appropriate amendment or a new revenue regulation. Otherwise, he should have obtained from competent authorities, possibly from the courts, a ruling that the disputed proviso is inconsistent with the Tax Code.

Further, while it is true that the CIR has clarified that any reference to sale of services under the disputed proviso is erroneous and unmistakable in conflict with the Tax Code, this pronouncement was made only in her memorandum, rather than in a ruling, and has not at all changed the text of RR 16-05, which can only be changed by the Secretary of Finance upon the CIR’s recommendation. Finally, the Court reiterated the settled doctrine that a taxpayer’s reliance in good faith on revenue rules and regulations cannot be prejudiced by the subsequent changes in the interpretation thereof.

This case again tells us that taxpayers cannot be penalized for relying in good faith on the issuances by the tax authorities. Individual officers or employees of the tax agency may have their respective views on the correct interpretation of the tax laws. Indeed, they may have their point. But the power to interpret tax laws is the exclusive domain of the commissioner. That should be followed unless later amended or declared invalid. In this case, since the regulations classified the transaction as among those VAT zero-rated transactions, that should be faithfully adhered to by the tax revenue officers, unless subsequently amended or declared void by the courts.

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