

Summary of Significant SC Decisions (November – December 2016)

Commissioner of Internal Revenue v. Deutsche Knowledge

GR No. 211072, November 7, 2016

- DKS filed its administrative and judicial claim for refund for unutilized input Vat for the 2nd qtr of 2007 on June 18, 2009 and June 30, 2009, respectively, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though DKS filed its judicial claim without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in *San Roque*. Verily, the CTA *En Banc* did not err in reversing the dismissal of DKS's judicial claim and remanding the case to the CTA First Division for the resolution of the case on the merits.
- It has already been settled in *San Roque* that BIR Ruling No. DA-489-03 is a general interpretative rule which **all** taxpayers may rely upon from the time of its issuance on December 10, 2003 until its effective reversal by the Court in *Aichi*. While RR 16-2005 may have re-established the necessity of the 120-day period, taxpayers cannot be faulted for still relying on BIR Ruling DA-489-03 even after the issuance of RR 16-2005 because the issue on the mandatory compliance of the 120-day period was only brought before the Court and resolved with finality in *Aichi*. All told, the Court maintains that the 120-day period is permissible from December 10, 2003, when BIR Ruling No. DA-489-03 was issued, until October 6, 2010, when *Aichi* was promulgated; but before and after said period, the observance of the 120-day period is mandatory and jurisdictional.

Napocor v. Provincial Treasurer of Benguet

GR No. 209303, November 14, 2016

Facts:

- The OIC-Provincial Treasurer of Benguet assessed petitioner for RPT in the amount of P62,645,668.80. Petitioner challenged before the Local Board of Assessment Appeals (LBAA) the legality of the assessment and the authority of the respondents to assess and collect real property taxes from it when its properties are exempt pursuant to the LGC. It has previously filed letters requests for exemption, which the treasurer did not act upon. The LBAA deferred the proceedings upon NPC's payment under protest of the assessed amount, or upon filing of a surety bond to cover the disputed amount of tax. NPC moved to reconsider the Order on the ground of lack of legal basis, but the same was denied in a Resolution dated October 3, 2006. NPC filed a petition for review

before the Central Board of Assessment Appeals (CBAA) claiming that payment under protest was not required before it could challenge the authority of respondents to assess tax on tax exempt properties before the LBAA. The CBAA however dismissed the appeal for having been filed out of time. The CBAA held that it was incumbent upon NPC to pay under protest before the LBAA could entertain its appeal as provided under Section 252 of the LGC.

Issue:

Whether or not the case was filed out of time.

Ruling:

- Yes. To afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a “fresh period” of 15 days within which to file the notice of appeal in the lower court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration. It is emphasized, however, that the “fresh period rule” applies only to judicial appeals and not to administrative appeals, particularly under Rule 40 (appeals from the Municipal Trial Courts to the Regional Trial Courts); Rule 41 (appeals from the Regional Trial Courts to the Court of Appeals or Supreme Court); Rule 42 (appeals from the Regional Trial Courts to the Court of Appeals); Rule 43 (appeals from quasi-judicial agencies to the Court of Appeals); and Rule 45 (appeals by certiorari to the Supreme Court). In sum, these Rules cover judicial proceedings under the 1997 Rules of Civil Procedure.
- Applying the principle to the present case, the appeal from the decision of the LBAA to the CBAA is not judicial but administrative in nature. Clearly, the “fresh period rule” does not apply. If the motion for reconsideration was denied, the party should perfect his appeal during the remainder of the period of appeal, reckoned from receipt of the resolution of denial; he does not enjoy a fresh period to perfect his appeal. Thus, the appeal before the CBAA should have been filed within the remaining 14 days from the 30-day period to appeal, counted from receipt of the order denying the motion for reconsideration.

Commissioner of Customs v. Singson

GR No. 181007, November 21, 2016

Facts:

15,000 bags of rice were imported on board the vessel MV “Gypsy Queen” into the Philippines by respondent which was allegedly held to be smuggled. Thus, the DCC of Port of Cebu, issued a WSD against M/V Gypsy Queen and the 15,000 bags of rice for violating the Tariff and Customs Code (TCC). Afterwards, forfeiture proceedings were conducted where both parties submitted their respective evidence. The DCC however ordered the release of the goods on the ground of lack of evidence. The petitioner solely rely its argument on the certification issued by the PCG Station Commander in Manila stating that by verification made by his office with the Office of the Station Commander, Coast Guard Station, Manila, show that there was no vessel named MV "Gypsy Queen" that logged-in or submitted any Master's Oath of Safe Departure on 15 August 2001. It also found that no personnel by the name [P03 Fernandez, PCG, was detailed at Pier 18, Mobile Team on said date.

Issue:

- Whether or not the evidence presented serves as proof of violation of the TCC.

Ruling:

- No. The said certification is not sufficient to prove that the respondents violated the TCC. A reading of the said certification plainly shows that if there is something which was admitted, it is nothing more than the fact that Capt. Urbi sent a communication to the DCC of Cebu stating the information that he gathered from the PCG Station Commander in Manila, and not the truthfulness or veracity of those information. The certification presented by the petitioner does not reveal any kind of deception committed by the respondents. Such certification is not adequate to support *the* proposition sought to be established which is the commission of fraud. It is erroneous to conclude that the 15 ,000 bags of rice were smuggled simply because of the said certification which is not conclusive and cannot overcome the documentary evidence of the respondents showing that the subject rice was produced and acquired locally.

Secretary of Finance v. Lazatin**GR No. 210588, November 29, 2016****Facts:**

The respondents questioned RR No. 2-2012 requiring an FEZ locator to first pay the required VAT and excise taxes upon entry into the FEZ of a petroleum product, and must thereafter prove the use of the petroleum product for the locator's registered activity in order to secure a credit for the taxes paid.

Issue:

- Whether or not Respondents have legal standing.
- Whether or not RR 2-2012 is valid and constitutional.

Ruling:

- Yes. Respondents have legal standing. Members of Congress possess the legal standing to question acts that amount to a usurpation of the legislative power of Congress. Thus, the allegation that RR. 2-2912 - an executive issuance purporting to implement the provisions of the Tax Code – directly contravenes RA 9400 clothes a member of Congress with legal standing to question the issuance to prevent undue encroachment of legislative power by the executive. Likewise, enterprises located within the FEZ having legal standing being directly affected by the RR.

Ruling:

- No, RR 2-2012 is unconstitutional. RR 2-2012 clearly imposes VAT and excise tax on the importation of petroleum and petroleum products into FEZs. *Strictly speaking, however, articles brought into these FEZs are not taxable importations under the law.* when goods (e.g., petroleum and petroleum products) are brought into an FEZ, *the goods remain to be in foreign territory* and are not therefore goods introduced into Philippine customs territory subject to Philippine customs and tax laws. *Therefore, the act of bringing the goods into an FEZ is not a taxable importation. As long as the goods remain (e.g., sale and/or consumption of the article within the FEZ) in the FEZ or re-*

exported to another foreign jurisdiction, they shall continue to be tax-free. It is worthy to note that RR 2-2012 does not even refer to a specific Tax Code provision it wishes to implement. *While it purportedly establishes mere administration measures for the collection of VAT and excise tax on the importation of petroleum and petroleum products, not once did it mention the pertinent chapters of the Tax Code on VAT and excise tax.*

Roy v. SEC and PLDT GR No. 207246, November 22, 2016

- The SC upheld, in this case, SEC Memorandum Circular No. 8-2013 (“Circular”) which says that a corporation complies with the Filipino ownership requirement if the prescribed Filipino ownership is met by both (a) the total number of outstanding shares of stock entitled to vote in the election of directors; and (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.
- According to the SC, the Circular is consistent with its previous decision and resolution , both of which are already final. The Circular also correctly applies the provisions of the Constitution , the Foreign Investment Act (FIA) and the Securities Regulation Code (SRC) in determining the nationality of a corporation.
- The SC explained that consistent with the intent of the Constitution to place in the hands of Filipino citizens the control and management of public utilities, a corporation operating a public utility must be effectively controlled by Filipinos. Corollary to this, both the FIA and SRC require that in order for stocks to be considered held and owned by Filipinos, mere legal title is not enough. Full beneficial ownership of stocks, coupled with appropriate voting rights is essential. This is precisely because the right to vote in the election of directors, coupled with full beneficial ownership of stocks, translates to effective control of a corporation.
- Thus, if the Filipino has the stock voting power (he can vote or direct another to vote for him), or he has the investment power over the stock (he can dispose of the stock or direct another to dispose it), or he has both the voting and investment powers, then such Filipino is the beneficial owner of that specific stock.
- Interestingly, the SC further explained that in determining the nationality of the voting stocks, the nature and feature of the stock itself must be taken into consideration.
- Moreover, the SC stated that the substance or essence of the stock as a financial instrument is also important. Shares of stock, even if denominated as “preferred” shares that pay fixed dividends and have a mandatory redemption feature, are contractual obligations and should be recognized as liabilities, not equity. On the other hand, those that do not have a fixed maturity and have no contractual obligations to make any payment are recognized as equity. It is the latter that must be considered in determining the nationality of the voting stocks.

Pilipinas Shell Petroleum v. Commissioner of Customs

GR No. 195876, December 5, 2016

Facts:

On April 10, 1996, imported crude oil was unloaded from its carrying vessel. 43 days later, on May 23, 1996, the importer, Shell, filed the IEIRD and paid import duties on the importation. The BOC District Collector initially assessed Shell for deficiency customs duties, but later on, demanded payment of the full value of the imported oil on the ground that it was already owned by the government when Shell withdrew it from the vessels. It was alleged that when the IEIRD was filed and duties were paid, the prescriptive period for such, which is 30 days from the time the goods were unloaded from the vessel, had already lapsed, thus resulting in abandonment of the goods.

Issue:

Whether or not the goods have already been abandoned.

Ruling:

Both the CTA in Division and the CTA En Banc ruled that failure to file the IEIRD within the prescribed period will result in the abandonment of the goods in favor of the government under Section 1801(B) of the TCCP.

Therefore, when the importer withdrew the oil shipment for consumption, it appropriated for itself properties which already belonged to the government by operation of law.

Be that as it may, the SC ruled that the claim against the importer has prescribed. Section 1603 of the TCCP provides that in the absence of fraud or protest, the passing of one year from the settlement of duties shall render the same as final. Such finality renders inoperable the deemed abandonment. In this case, the liquidation of the importer's shipment became final and conclusive on 24 May 1997 or exactly upon the lapse of the prescriptive period.