

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

KROMINCO, INC.,

Petitioner,

C.T.A. AC NO. 71

(RTC Civil Case No. 571)

Members:

- versus -

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

OFFICE OF THE MUNICIPAL
TREASURER OF LORETO,
DINAGAT ISLAND,

Respondent.

Promulgated:

JAN 18 2012

ABFurnish 3:29 p.m.

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

This is a Petition for Review filed on March 11, 2011 by Krominco, Inc. (hereafter “petitioner”) praying for the reversal of the Decision dated October 15, 2010, rendered by the Regional Trial Court of Surigao City, Branch 32, in Civil Case No. 571, entitled “*Krominco, Inc. vs. Office of the Municipal Treasurer of Loreto, Dinagat Island*”.

On March 29, 2011, respondent Municipal Treasurer of Loreto, Dinagat Island was ordered to file her comment, to which respondent complied on May 5, 2011. *Ob*

On May 17, 2011, petitioner filed its “Reply (To Respondent’s Comment dated 29 April 2011)”.

On May 31, 2011, the case was deemed submitted for decision.

On November 15, 2011, both parties filed a “Joint Manifestation and Motion” stating that the parties have entered into a Compromise Agreement.

A perusal of the “Compromise Agreement”, however, shows that the respondent failed to submit proof that the signatories under the “Compromise Agreement” have the required authorization from the Sanggunian to enter into said compromise agreement, in accordance with *Sections 22 and 192 of the Local Government Code of 1991*. Thus, in a Resolution dated December 23, 2011, respondent was ordered to submit proof of authority from the Sanggunian to enter into the said “Compromise Agreement”, within ten (10) days from notice.

On January 3, 2012, petitioner filed a “Manifestation” submitting the following documents in relation to the parties’ “Joint Manifestation and Motion”, to wit:

- 1) Photocopy of the “Excerpt from the Minutes of the Special Session of the Sangguniang Bayan of Loreto, Dinagat Islands, held on August 31, 2011 at the Legislative Building”, which was issued by the Sangguniang Bayan Secretary Vicente M. Omaña, as attested



and certified to be duly adopted by the Sangguniang Bayan Presiding Officer, Vice-Mayor Pretsy B. Semorlan, and approved by Municipal Mayor Doandre Bill A. Ladaga, containing the following:

(1) **Resolution No. 051-2011 dated August 31, 2011** issued by the Sangguniang Bayan of Loreto, Dinagat Islands, entitled: “Resolution Authorizing The Local Chief Executive, Hon. Doandre Bill A. Ladaga, Hon. Pretsy B. Semorlan, Vice-Mayor/Presiding Officer Of The Sangguniang Bayan, and Mrs. Julieta L. Cornites, Municipal Treasurer Of The Municipality Of Loreto, Province Of Dinagat Islands To Enter Into A Compromise Agreement With Krominco, Inc. Relative To Business Tax Cases From CY 2006 to 2010 And SCA Case No. 539 Pending With The RTC, Surigao City, Branch 32”; and

(2) **Ordinance No. 011-210 dated August 31, 2011** issued by the Sangguniang Bayan of Loreto, Dinagat Islands, entitled: “An Ordinance Authorizing The Local Chief Executive, Hon. Doandre Bill A. Ladaga, Hon. Pretsy B. Semorlan, Vice-Mayor/Presiding Officer Of The Sangguniang Bayan, and Mrs. Julieta L. Cornites, Municipal Treasurer Of The Municipality Of Loreto, Province Of



Dinagat Islands, To Enter Into A Compromise Agreement With Krominco, Inc. Relative To Business Tax Cases From CY 2006 to 2010 And SCA Case No. 539 Pending With The RTC, Surigao City, Branch 32 And Such Other Terms And Conditions Which May Be Agreed Upon By The Parties” (Annex “A”);

2) Certified True Copy of the Decision dated October 28, 2011 in SCA No. 539, approving the parties’ “Compromise Agreement” dated October 4, 2011(Annex “B”); and

3) Photocopies of the following Mayor’s Permits, Mayor’s Clearances, and Tax Clearance Certificates in favor of petitioner:

(a) For the period January 25, 2006 to December 31, 2006, inclusive (Annex “C”);

(b) For the period January 23, 2007 to December 31, 2007, inclusive (Annex “D”);

(c) For the period January 16, 2008 to December 31, 2008, inclusive (Annex “E”);

(d) For the period January 9, 2009 to December 31, 2009, inclusive (Annex “F”); and

(e) For the period January 1, 2010 to December 31, 2010, inclusive (Annex “G”).

Finding the aforesaid documents as substantial compliance with the required proof of authority from the Sanggunian to enter into the said “Compromise Agreement”, petitioner’s “Manifestation” is hereby **NOTED**.



The Compromise Agreement reads, as follows:

“COMPROMISE AGREEMENT”

KNOW ALL MEN BY THESE PRESENTS:

This **COMPROMISE AGREEMENT** (the “Agreement”), made and executed this 4th day of October, 2011, at Loreto, Dinagat Islands, by and between:

KROMINCO, INC. (the “First Party”), a domestic corporation duly organized and existing under the Philippine laws, with principal office at No. 2232 Don Chino Roces Avenue, Makati City, and hereinafter represented by its Executive Vice President, **Mr. Jonathan T. Que, Administrative Officer, Mr. Romeo A. Togonon** and its counsel, **Atty. Fernando S. Almeda III;**

-AND-

THE MUNICIPALITY OF LORETO, DINAGAT ISLANDS (the “Municipality”), a local government unit duly organized and existing under Republic Act (R.A.) No. 7160, with official station located at the Municipal Hall, Loreto, Dinagat Islands, hereinafter represented by Hon. Doandre Bill A. Ladaga, the Local Chief Executive (LCE);

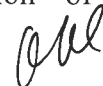
THE SANGGUNIANG BAYAN OF LORETO, the legislative body of the Municipality, duly organized and existing under Section 446 of R.A. No. 7160, and with official station at the Legislative Building, Loreto, Dinagat Islands, hereinafter represented by Hon. Pretsy B. Semorlan, Municipal Vice Mayor and Presiding Officer;

THE OFFICE OF THE MUNICIPAL TREASURER OF LORETO, a local government office duly organized and existing under Republic Act (R.A.) No. 7160, with official station located at the Municipal Hall, Loreto, Dinagat Islands, hereinafter represented by its incumbent, Mrs. Julieta L. Cornites.

(The foregoing parties are herein collectively referred to as the “Second Party”).

WITNESSETH THAT:

WHEREAS, the First Party extracts chromite in designated mining claims located within the territorial jurisdiction of the Municipality;



WHEREAS, the Second Party has assessed the First Party for business tax arrears allegedly incurred from 2006 to 2010, and First Party has filed cases questioning the validity of these assessments with the proper courts;

WHEREAS, the aforementioned assessments are currently subject of the following cases, to wit: (a) “Krominco, Inc. v. Municipal Treasurer of Loreto,” docketed as AC No. 71 and pending before the 3rd Division of the Court of Tax Appeals (CTA); (b) “Krominco, Inc. v. Municipal Treasurer of Loreto.” Docketed as AC No. 72 and pending before the 1st Division of the CTA; and (c) “Krominco, Inc. v. Sangguniang Bayan, et.al.,” docketed as SCA No. 539 and pending before the Regional Trial Court of Surigao City, Branch 32 (RTC);

WHEREAS, the parties, for the purpose of avoiding a protracted and expensive litigation, have agreed to amicably settle the above cases, upon terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto have agreed as follows:

A. Obligations and Warranties of the Parties:

1. In order to settle AC No. 71, AC No. 72 and SCA No. 539, the parties have agreed on the settlement amount of **FOUR MILLION AND FIVE HUNDRED THOUSAND PHILIPPINE PESOS (PHP4,500,000.00)**, which shall fully satisfy the Second Party’s claims against the First Party for all tax arrears allegedly incurred from 2006 to 2010.

Starting 2011, which represents the First Party’s 2010 gross receipts, and onwards, or next succeeding years, the business tax rate shall be 2% of the First Party’s gross receipts from sales in the Municipality. The Second Party warrants that as of the execution of this Agreement, there is no municipal ordinance or resolution which amends the 2006 Loreto Municipal Revenue Ordinance.

2. Upon the parties’ execution of this Agreement, each party shall simultaneously submit to the other party the following, among others:

a. By the First Party to the Second Party:

1) Joint Motions to Render Judgment Based on Compromise Agreement for AC No. 71, AC No. 72 and SCA No. 539;



2) The payment of the settlement amount in instalments, and by way of six postdated checks, to wit:

Date of Postdated Checks	Amount (PHP)
31 August 2011	3,000,000.00
30 September 2011	300,000.00
31 October 2011	300,000.00
30 November 2011	300,000.00
31 December 2011	300,000.00
31 January 2012	300,000.00
TOTAL	4,500,000.00

b. By the Second Party to the First Party:

1) Joint Motions to Render Judgment Based on Compromise Agreement for AC No. 71, AC No. 72 and SCA No. 539;

2) the duly approved municipal ordinance which should be in accordance with this Agreement, authorizing the Second Party to sign and execute this Agreement, and naming the persons who shall represent the Second Party for this purpose;

3) the corresponding local tax permits and clearances for the years 2006 to 2010, including, but not limited to Mayor's Permits and tax clearances in favor of the First Party; and

3. In consideration of the First Party's payment of the settlement amount, the Second Party, acting through its officers and representatives, shall allow the First Party to peacefully operate within the territory of the Second Party, and refrain from issuing orders or similar directives that may disturb the First Party's business, or cause injury to the latter's rights, without legal or reasonable justification.

4. This Agreement shall be submitted for the approval of the RTC in SCA No. 539, and the CTA in AC No(s). 71 and 72. The parties undertake to submit any and all documents required by said courts to be able to render judgment in said cases based on this Agreement. Specifically, each party shall submit to the other party within three (3) days from receipt of the written request the requested documents.



Nonetheless, as between the parties, this Agreement is valid and enforceable against each other whether or not the same is approved by the aforementioned courts.

5. The Second Party confirms and undertakes that it shall not file or pursue against the First Party other claims covering prior years until 2010 other than the settlement amount indicated in this Agreement.

B. Miscellaneous:

1. The parties mutually warrant they have the necessary authority and legal capacity to sign, execute and deliver this Agreement and its implementing documents.

2. In the event that the Compromise Agreement is approved and judgment is rendered in accordance therewith, it is understood that either party's failure to comply with any of their undertakings, or commit a breach of any of their warranties in the Compromise Agreement shall entitle the aggrieved party to move for the immediate issuance of a Writ of Execution to enforce the erring party's obligations under this Agreement. Provided that, if the erring party is the Second Party, then it is agreed that in addition to the Writ of Execution to enforce the erring party's obligations, the First Party may, at its option, cause the resumption of the litigation in AC No. 71, AC No. 72 and SCA No. 539, shall resume.

3. Upon full and final satisfaction of their respective obligations, the parties obligate themselves to file the necessary joint motion to consider this Agreement as fully satisfied.

4. The Municipal Treasurer shall, from time to time, **formally** advise the First Party of any new tax ordinances that he or she is aware of.

5. No waiver of any of the terms of this Agreement shall be valid unless it is in writing and signed by both parties to this Agreement. The failure by either party to enforce at any time any of the provisions of this Agreement shall not be construed to be a waiver of those provisions.

6. The parties have read this Agreement and all its terms and conditions carefully and acknowledge that the same is entered into free of duress, force, misrepresentation, intimidation and any and all other forms of vice of consent. The parties represent that they entered into this Agreement freely, voluntarily, in good faith, and with full knowledge and understanding of their rights and obligations hereunder. This Agreement has been prepared by the combined efforts of the parties and their respective attorneys and may only be amended in writing by a document so designated and executed by both parties hereto.



IN WITNESS WHEREOF, the parties hereto have mutually and voluntarily agreed to the foregoing stipulations and have hereunto signed these presents at the date and place indicated above.

KROMINCO, INC.

MUNICIPALITY OF LORETO

By:

By:

(SGD.) JONATHAN T. QUE
Krominco Executive Vice President

(SGD.) DOANDRE BILL A. LADAGA
Municipal Mayor

(SGD.) ROMEO A. TOGONON
Krominco Administrative Officer

(SGD.) PRETSY B. SEMORLAN
Vice-Mayor/Presiding Officer

(SGD.) FERNANDO S. ALMEDA III
Legal Counsel

(SGD.) JULIETA L. CORNITES
Municipal Treasurer.”

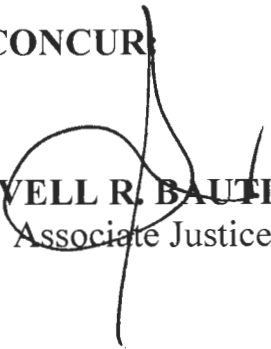
Finding the Compromise Agreement to be well taken, and not contrary to law, morals, good customs, public order and public policy, the same is hereby **APPROVED**.

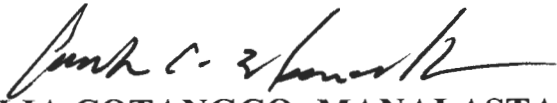
WHEREFORE, premises considered, judgment is hereby rendered based on the aforequoted Compromise Agreement. The parties are thus, enjoined to faithfully comply with all the terms and conditions of the said Compromise Agreement.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

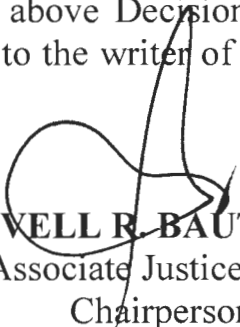
WE CONCUR:


LOVELL R. BAUTISTA
Associate Justice


AMELIA COTANGCO- MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice