Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

****

TOP MASTER CONSTRUCTION (PHILIPPINES), INC. [Formerly: HUME FURNITURE (PHILIPPINES), INC.],
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 8391

Members:

CASTAÑEDA, JR., *Chairperson*,
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAY 29 2014 2:45 p.m.

x--x

AMENDED DECISION

CASTAÑEDA, JR., *J.*:

This resolves Petitioner's "Motion for Partial Reconsideration" dated March 21, 2014 and Respondent's "Motion for Reconsideration" filed on March 21, 2014 with Petitioner's "Comment (To Respondent's Motion for Reconsideration)" dated April 21, 2014. Both motions are assailing the Decision of this Court dated February 17, 2014. The dispositive portion of the assailed Decision provides:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of ₱ 9,808,710.73, representing excess and unutilized input VAT arising from its zero-rated transactions for the fourth quarter of fiscal year 2009 to the second quarter of fiscal year 2010.[1]

[1] Docket, pp. 477-478.

Petitioner's Motion for Partial Reconsideration

In support of its motion, petitioner raises the following grounds which may warrant the reversal or modification of this Court's decision, to wit:

1. This Court erred in disallowing the amount of P124,560.00 representing petitioner's claim finding that the official receipt marked as Exhibit "VV-2" were filed beyond the period of claim. Petitioner submits that the date indicated in the said exhibit is an honest mistake and a mere typographical error;

2. This Court also erred in disallowing the amount of P3,164,965.25 pursuant to Sec. 113(B)(4) of the Tax Code. Petitioner posits that corresponding exhibits supporting such claim was not allowed on the ground that the address indicated was not that of petitioner's business address but instead of petitioner's lone project site which was the physical address used by Travellers International Hotel Group, Inc. Petitioner, at this juncture maintains that the Court should not be bound by the mistakes of petitioner's suppliers and thus, such claim should be allowed.

Petitioner prays that the disallowances made by the Court in total amount of ₱3,164,965.25 be partially reconsidered. Details of the subject disallowances are enumerated hereunder:[2]

Exhibit	OR No.	Date	Supplier	Input Tax
1. Input tax on domestic purchase of service supported by VAT OR dated outside the period of claim.				
VV-2	0003	18-Jun-02	HNW Construction Works Pte Ltd. Co.	₱ 124,560.00
Sub-total				***₱ 124,560.00***
2. Input tax on domestic purchase of services supported by VAT OR but with discrepancy on the address used.				
WW-10	2258	20-Jul-09	Taisei Philippine Construction, Inc.	₱ 64,285.71
WW-27	2263	25-Aug-09	Taisei Philippine Construction, Inc.	193,202.68
WW-12	2257	20-Jul-09	Taisei Philippine Construction, Inc.	801,239.42
XX-16	2279	13-Oct-09	Taisei Philippine Construction, Inc.	189,502.88
XX-18	2278	13-Oct-09	Taisei Philippine Construction, Inc.	55,082.85
XX-30	2349	5-Nov-09	Taisei Philippine Construction, Inc.	134,872.32
XX-41	2348	2-Dec-09	Taisei Philippine Construction, Inc.	831,654.61
XX-43	2350	2-Dec-09	Taisei Philippine Construction, Inc.	107,222.68
XX-45	2351	21-Dec-09	Taisei Philippine Construction, Inc.	107,264.78
XX-46	2312	21-Dec-09	Taisei Philippine Construction, Inc.	3,152.58
XX-48	2317	21-Dec-09	Taisei Philippine Construction, Inc.	37,212.93
XX-49	2313	21-Dec-09	Taisei Philippine Construction, Inc.	430,727.52
XX-50	2316	21-Dec-09	Taisei Philippine Construction, Inc.	63,483.75
XX-51	2314	21-Dec-09	Taisei Philippine Construction, Inc.	21,500.54
Sub-total				***₱ 3,040,405.25***

jc

[2] Decision dated February 27, 2014, p. 13, Docket p. 475.

TOTAL	**₱ 3,164,965.25**

Petitioner contends that Exhibit "VV-2" in the amount of ₱124,560.00 pertaining to Official Receipt Number 0003 dated June 18, 2002 which were considered in the assailed Decision as dated beyond the period of claim was borne out of an honest mistake and a mere typographical error.[3]

Petitioner points out that the official receipts bearing numbers 0002[4] and 0004[5] were dated May 2, 2009 and June 2, 2009, respectively. Logically, as petitioner claims, the natural order and sequence of events and dates would demonstrate honest mistake and excusable error on the date appearing in official receipt number 0003.[6] Besides, since petitioner was incorporated on December 15, 2008, as evidenced by its Certificate of Incorporation[7], it is impossible, if not, absurd for the petitioner to have entered such transaction in 2002.[8]

Moreover, petitioner claims that the amount of ₱3,040,405.25 must also be allowed in re-computing petitioner's excess and unutilized input VAT. Petitioner asseverates that the address indicated in the official receipts issued by Taisei Philippine Construction, Inc. is the address of petitioner's project site and lone client which is Travellers International Hotel Group, Inc.[9] Hence, petitioner asserts that it should not be faulted by the mistakes of its suppliers.[10]

The Court finds merit on the petitioner's contention that the date contained in Official Receipt Number 0003 ("OR No. 0003") is a mere typographical error. However, with respect to the argument on disallowed input taxes due to discrepancy on the address used, the Court finds it untenable.

A close reexamination of the exhibits presented reveal that the date in question is June 18, 2002, which is way before petitioner was incorporated on December 15, 2008. In addition, considering the dates of the official receipts in a given series, *i.e.* OR Nos. 0002 and 0004, which are numbered sequentially before and after the subject official receipt and are both dated in the taxable year 2009,[11] persuades the Court that petitioner's transaction with HNW Construction Works Pte. Ltd. Co. in 2002 was indeed improbable.

---

[3] Petitioner's Motion for Partial Reconsideration, Par. 4, Docket, p. 480.
[4] Exhibit "VV-1".
[5] Exhibit "VV-3".
[6] Petitioner's Motion for Partial Reconsideration, Par. 5-6, Docket, pp. 480-481.
[7] Exhibit "A".
[8] Petitioner's Motion for Partial Reconsideration, Par. 7, Docket, p. 481.
[9] Petitioner's Motion for Partial Reconsideration, Par. 9 and 11, Docket, p. 481.
[10] Petitioner's Motion for Partial Reconsideration, Par. 12, Docket, p. 482.
[11] Exhibits "VV-1" and "VV-3".

On the other hand, while it may be true that the address indicated was that of petitioner's lone client, Travellers International Hotel Group, Inc. (TIHGI)[12], Sec. 113 (B)(4) of the NIRC of 1997, as amended, in relation to Section 4.113-1. (B)(3) of Revenue Regulation No. 16-2005, clearly provides that the address of the purchaser, customer or client must be indicated in the VAT invoice of VAT official receipt, thus:

> "Sec. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> x x x x
>
> **"(B) *Information Contained in the VAT Invoice or VAT Official Receipt.*** - The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> x x x x
>
> **"(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person**, the name, business style, if any, **address** and taxpayer identification number (TIN) **of the purchaser, customer or client."**
>
> "Sec. 4.113-1. *Invoicing Requirements.*-
>
> x x x x
>
> **"(B) *Information Contained in the VAT Invoice or VAT Official Receipt.*** - The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> x x x x
>
> **"(3) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person**, the name, business style, if any, **address** and TIN **of the purchaser, customer or client,** shall be indicated in addition to the information required in (1) and (2) of this Section." (Emphasis supplied)

When the law is clear and unambiguous, its application is what it confers. The Supreme Court in its case *Manuel G. Abello, et al. v. Commissioner of Internal revenue and Court of Appeals*[13] held:

---

[12] Exhibit "PP".
[13] G.R. No. 120721, Feb. 23, 2005 citing the case of *Cebu Portland Cement Co. v. Municipality of Naga*, 24 SCRA 708 [1968].

> It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.

Petitioner cannot point fingers and attribute its fault to its supplier Taisei Philippine Construction, Inc. who issued an official receipt with a wrong address. In every transaction, the taxpayer is expected to exercise due diligence, especially for those seeking for a refund like herein petitioner.

It bears stressing that a taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[14] Evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[15] In the instant case, petitioner's official receipts supporting its input tax claim amounting to ₱3,040,405.25 failed to meet the invoicing standards provided by law. Hence, this argument has no leg to stand on.

Respondent's Motion for Reconsideration

On the other hand, respondent likewise sought for reconsideration on the decision based on the following grounds:

1. Petitioner's sales of services to Travelers International Hotel Group, Inc., a PEZA-registered enterprise, does not qualify as zero-rated sales but subject to 12% VAT.

2. Failure to print/imprint the word "zero-rated" on the sales invoices is fatal to a claim for refund of input VAT.

Petitioner however argues against respondent's motion by claiming that:

1. Petitioner's sales of services to Travellers International Hotel Group, Inc., qualifies as VAT zero rated sales under Sec. 108 (B)(3) of the Tax Code since Travellers is a PEZA registered entity entitled to the benefits of zero-rating as one of its incentives. Thus, petitioner concludes that sales of services to Travellers qualify for VAT zero-rating and thus, the input taxes arising from such zero-rated sales are considered as refundable or that a tax credit certificate be issued for it. *ge*

---

[14] *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012 citing *Paseo Realty and Development Corporation v. Court of Tax Appeals, et al.*, 483 Phil. 254 (2004).
[15] *Atlas Consolidated Mining Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 546 SCRA 150, 163.

2. Petitioner complied with the requirement of imprinting "zero-rated" on its official receipts. Petitioner argues that the word "zero-rated" are prominently reflected on their official receipts covering their zero-rated sales.

By going over respondent's motion, the Court sees no substantial arguments that may warrant the reversal of its Decision since we had already passed upon and discussed such issues in the assailed Decision, to wit:

> Republic Act No. 7916 is a special law which grants exemption from national (including VAT) and local taxes to duly registered business establishments operating within its proper jurisdiction except payment of the preferential tax rate of 5% on gross income earned. As such, sales of services by VAT-registered entities in the Customs Territory, like herein petitioner, to PEZA-registered entities are effectively subject to zero percent (0%) VAT under Section 108(B)(3) of the NIRC of 1997, as amended.
>
> The Supreme Court in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.,* explained the foregoing principle in this wise:
>
>> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the **ECOZONE is a foreign territory**. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>>
>> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>>
>> The Philippine VAT system adheres to the **Cross Border Doctrine**, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, **actual export of** goods and **services from the**

> **Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.

Similarly, in the case of *Commissioner of Internal Revenue v. Sekisui Jushi Philippines, Inc.*, the High Court made the following disquisition:

> Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent.
>
> (Emphasis supplied and citations omitted)

Proceeding to the issue on whether petitioner complied with the "imprinting" requirement of official receipts, Section 113 of the NIRC of 1997, as amended provides:

> SEC. 113. **Invoicing and Accounting Requirements for VAT-Registered Persons. –**
>
> (B) *Information contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> x x x x
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, that:
>
> x x x x
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
>
> x x x x

A perusal of the exhibits[16] presented would show that it complied with the requirements of Sec. 113 of the NIRC of 1997, as amended. The law simply requires that the term "zero-rated sale" be written or printed **prominently** on the official receipt. On that premise, the Court sees no cogent reason to deviate from its ruling allowing petitioner's claim for refund based on the questioned official receipts.

WHEREFORE, premises considered, respondent's motion is **DENIED** for lack of merit.

On the other hand, petitioner's **Motion for Partial Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the Decision promulgated on February 27, 2014 is **AMENDED** and **MODIFIED** to the extent that the respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the total amount of ₱9,933,270.73,[17] representing excess and unutilized input VAT arising from its zero-rated transactions for the fourth quarter of fiscal year 2009 to the second quarter of fiscal year 2010.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

---

[16] Exhibits "EEE-1" to "EEE-9".
[17] ₱9,933,270.73 = ₱9,808,710.73 + ₱124,560.00.

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 Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice