Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

COLT COMMERCIAL INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9110

Members:
CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
NOV 17 2017
2:50 p.m.

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DECISION

CASANOVA, J.:

This resolves the Petition for Review[1] filed on August 7, 2015, seeking for the refund of the amount of ₱811,768.91, representing its unutilized input tax payments attributable to its zero-rated sales for the first quarter of taxable year 2013.

The facts as stated in the parties' Joint Stipulation of Facts and Issues[2] and as found in the records of this case, are as follows:

Petitioner Colt Commercial Inc. is a corporation duly organized and existing under the laws of the Philippines, with business address at Suite 508 Padilla Delos Reyes Bldg., 232 Juan Luna St., Brgy. 289 Zone 027, Binondo, Manila.[3]

On the other hand, respondent is the Commissioner of Internal Revenue who is authorized under the law to act on claims for

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[1] Docket (Vol. I), pp. 10-22.
[2] Docket (Vol. I), pp. 241-244.
[3] Par. 1.a., Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 241.

refunds, tax credit certificates and other matters involving the enforcement of the 1997 National Internal Revenue Code (NIRC), as amended.[4]

Petitioner is registered with Revenue District Office (RDO) No. 30, Binondo, Manila as VAT taxpayer, with Taxpayer Identification No. 008-327-264-000.[5] Its primary purpose is to engage in the business of merchandising, distributing and marketing, whether as principal, agent, indenter or manufacturer's representative wholesale, or retail, such as but not limited to industrial, agricultural, manufacturing tools and equipment, engineering products, hardware items, construction materials and electrical supplies and or all kinds of goods, wares and merchandise.[6]

As per the Amended Quarterly VAT Return for the 1st Quarter of Taxable Year 2013, petitioner has an excess input tax in the amount of ₱811,768.91.[7]

On March 12, 2015, petitioner filed its administrative claim for VAT refund with BIR RDO No. 30.[8]

However, on July 23, 2015, BIR RDO No. 30 denied the administrative claim for VAT refund of creditable input tax on the ground that the amount of ₱811,768.91, which is the subject of the application for refund, had been applied against the output tax for the 2nd quarter of taxable year 2013.[9]

Later on, petitioner filed the instant Petition for Review[10] on August 7, 2015.

On September 24, 2015, respondent filed an Answer[11] interposing the following special and affirmative defenses:

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[4] Par. 11, The Parties, Petition for Review, Docket (Vol. I), p. 12; Admitted in par. 9 of respondent's Answer, p. 162.
[5] Par. 1.c., JSFI, Docket (Vol. I), p. 242.
[6] Par. 1.b., JSFI, Docket (Vol. I), p. 241.
[7] Par. 1.e, JSFI, Docket (Vol. I), p. 242.
[8] Par. 1.f., JSFI, Docket (Vol. I), p. 242.
[9] Par. 1.g., JSFI, Docket, (Vol. I), p. 242.
[10] See footnote no. 1.
[11] Docket (Vol. I), pp. 161-164.

"16. The petition is premature considering that petitioner's claim for tax refund/credit of unutilized input tax payments attributable to zero-rated sales for the first quarter of taxable year 2013 in the amount of ₱811,768.91 is still pending investigation with Revenue Region No. 6, Manila.

17. Petitioner has already applied the entire amount of input tax, subject of the claim for refund, against its output tax by carrying over the same to succeeding taxable quarters. Records showed that petitioner consistently carried forward its Input Tax credits from taxable quarter ending March 31, 2013 up to March 31, 2015.

18. Section 112 of the NIRC of 1997, as amended, provides that any VAT-registered person whose sales are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to zero-rated sales or effectively zero-rated sales, except transitional input tax, within two (2) years after the close of the taxable quarter when the sale were made, to the extent that such input tax has not been applied against output tax.

19. The remedies of tax refund and input tax carry-over are alternative and the choice of one precludes the other.

20. Claim for refund is construed strictly against the claimant and should not be allowed unless proven explicitly and categorically

21. Tax refunds are in the nature of tax exemptions. Accordingly, the claimants of those refunds bear the burden of proving the factual basis of their claims, and of showing, by words too plain to be mistaken, that the legislature intended to exempt them.

The case was set for Pre-Trial Conference on November 12, 2015.[12] Then, petitioner's Pre-Trial Brief[13] was filed on November 9, 2015, while Respondent's Pre-Trial Brief[14] was filed on November 11, 2015.

On November 27, 2015, the parties filed their Joint Stipulation of Facts and Issues,[15] which was subsequently approved in the Pre-Trial Order[16] issued by the Court on January 21, 2016, and the pre-trial of the case was deemed terminated.

Subsequently, during trial, petitioner presented as its witness its President, Mr. Cyrus S. Chung,[17] the Independent Certified Public Accountant (CPA) Mr. Garry S. Pagaspas[18], and its Accounting Head, Ms. Jenifer S. Mañago[19].

After presentation, marking, identification and formal offer, the Court admitted as part of petitioner's documentary evidence exhibits "P-1" to "P-36-1".[20]

On the other hand, respondent manifested that he will no longer present evidence.[21]

Thus, on November 15, 2016, petitioner filed its Memorandum[22], while respondent's Memorandum[23] was filed on November 17, 2016. Accordingly, the case was submitted for decision on November 28, 2016.[24]

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[12] Docket (Vol. I), p. 165.
[13] Docket (Vol. I), pp. 209-231.
[14] Docket (Vol. I), pp. 232-237.
[15] Docket (Vol. I), pp. 241-244.
[16] Docket (Vol. I), pp. 259-264.
[17] Minutes of the Hearing held on February 10, 2016, Docket (Vol. I), p. 275, Exhibit "P-30" – Judicial Affidavit of Mr. Cyrus S. Chung.
[18] Minutes of the Hearing held on March 7, 2016 and April 27, 2016, Docket (Vol. I), p. 344 and Docket (Vol. II), p. 475, respectively; Exhibit "P-35"-Judicial Affidavit of Mr. Garry. S. Pagaspas.
[19] Minutes of the Hearing held on March 7, 2016, Docket (Vol. I), p. 344; Exhibit "P-33"-Judicial Affidavit of Ms. Jennifer S. Mañago.
[20] Resolutions dated July 15, 2016 and October 11, 2016, Docket (Vol. II), pp. 508-509, and 526-527, respectively.
[21] Minutes of the hearing held on April 27, 2016, Docket (Vol. II), p. 475.
[22] Docket (Vol. II), pp. 528-549.
[23] Docket (Vol. II), pp. 550-553.
[24] Resolution dated November 28, 2016, Docket (Vol. II), p. 555.

The parties submitted the following issues[25] for this Court's disposition:

> "1. Whether petitioner is entitled to a tax refund in the amount of ₱811,768.91 for the first quarter of taxable year 2013.
>
> 2. Whether the alleged carry-over of unutilized excess input VAT had the effect of utilization if the same was deducted from Quarterly VAT Return as 'VAT Refund/TCC Claimed'."

In order for the Court to determine whether petitioner is entitled to the refund claimed, Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended is instructive, to wit:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input

[25] Par. 2, JSFI, Docket (Vol. I), p. 242.

taxes shall be allocated ratably between his zero-rated and nonzero-rated sales."

In other words, a claim for refund or tax credit of unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes; (e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (g) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (h) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made.[26]

Before delving on each of the requisites, the timeliness of the filing of the instant claim for refund or issuance of tax credit certificate shall first be determined.

As stated in Section 112 (A) of the NIRC, as amended, the administrative claim must be filed within two years after the close of the taxable quarter when the zero-rated sales were made. The application of the two year period provided under Section 112(A) to administrative claims for tax refund or credit of unutilized input VAT is consistent with the ruling in the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[27] wherein the Supreme Court said to wit:

" C. The Administrative Claims Were Timely Filed

We sum up our conclusions so far: (1) it is only the administrative claim that must be filed within the

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[26] *Luzon Hydro Corporation, vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013.
[27] G.R. No. 191498, January 15, 2014.

> two-year prescriptive period; and (2) the two-year prescriptive period begins to run from the close of the taxable quarter when the relevant sales were made."

Clearly from the above-quoted Section 112(A), the administrative claim for the issuance of a TCC or refund of input VAT must be filed with the respondent within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Since the instant claim covers the first quarter of 2013, the 2-year prescriptive period is reckoned from March 31, 2013, the close of such quarter, until March 31, 2015. Thus, petitioner timely filed its administrative claim for refund on March 12, 2015[28].

As to the timeliness of the judicial claims, it is necessary to quote the provision under Section 11 of Republic Act No. (RA) 1125[29], as amended by RA 9282[30], which provides the period of limitation within which to appeal before this Court, to wit:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*— Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal should be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days** from the receipt of the decision or ruling or in the case of inaction as herein provided, **from the expiration of the period**

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[28] Par. 1.f., JSFI, Docket (Vol. I), p. 242; Exhibits "P-14" to "P-15".
[29] An Act Creating the Court of Tax Appeals.
[30] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership Amending for the Purpose Certain Sections of Republic Act No.1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

fixed by law to act thereon. xxx" (*Emphasis supplied*)

Also, in the same case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[31], the Supreme Court laid down the summary of rules on prescriptive periods for claim of refund or credit of input VAT, including the period for filing an appeal before this Court of the administrative claim for refund of input VAT as follows:

"SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

xxx xxx xxx

B. *120+30 Day Period*

1. The taxpayer can file an appeal in one of two ways: (1) **file the judicial claim within thirty days after the Commissioner <u>denies the claim</u> <u>within the 120-day period</u>**, or (2) **file the judicial claim within thirty days from the expiration of the 120-day period <u>if the Commissioner does not act within the 120-day period</u>**.

2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.

3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi and San Roque*)

4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*)

[31] G.R. No. 191498, January 15, 2014.

> 5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (*San Roque*)" (*Emphases supplied*)

Accordingly, counting from the filing of petitioner's administrative claim with the supporting documents on March 12, 2015, respondent had one hundred twenty (120) days or until July 10, 2015 to act on the claim. Records show that respondent issued a letter denying the claim only on July 23, 2015[32], which is 13 days beyond the 120-day period to act. Since respondent failed to act on the claim within the 120–day period prescribed by law, petitioner had thirty (30) days or until August 10, 2015 (August 9, 2015, being a Sunday) within which to file a judicial claim before this Court. Thus, petitioner, likewise, timely filed its appeal by way of a Petition for Review on August 7, 2015.

The Court shall now proceed to determine petitioner's compliance with the remaining requisites for refund of input VAT.

As to the first requisite, it was already stipulated by the parties that petitioner is registered with Revenue District Office No. 30, Binondo, Manila as a VAT taxpayer, with Taxpayer Identification No. 008-327-264-00[33]. Thus, the first requisite was satisfied by petitioner.

With regard to the requisite that the taxpayer should be engaged in zero-rated or effectively zero-rated sales, records show that petitioner is duly registered with the Securities and Exchange Commission (SEC) and is primarily engaged in the business of merchandising, distributing and marketing, whether as principal, agent, indenter or manufacturer's representative wholesale, or retail, such as but not limited to industrial, agricultural, manufacturing tools and equipment, engineering products, hardware items, construction materials and electrical supplies and or any all kinds of goods, wares and merchandise.[34]

Petitioner avers that majority of its clients are entities doing business within the economic zone and registered with the Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan

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[32] Par. 1.g., JSFI, Docket (Vol. I), p. 242; Exhibit "P-29".
[33] Par. 1.c., JSFI, Docket (Vol. I), p. 242; Exhibit "P-5".
[34] Exhibits "P-1" and "P-2".

Authority (SBMA), and that the sales to said buyers are classified as effectively zero-rated transactions pursuant to Section 106(A)(2)(c) of the NIRC of 1997, as amended, to wit:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
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> (A) *Rate and Base of Tax.* – xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
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> xxx xxx xxx
>
> (c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate."

Furthermore, pertinent provisions of Revenue Regulations (RR) No. 16-2005, as amended, states:

> "SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* – xxx
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (c) 'Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement'. – Sales of goods or property to persons or entities who are tax-exempt under special laws, *e.g.* sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) pursuant to R.A. No. 7227, sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA) or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., shall be effectively subject to VAT at zero-rate."

It is clear from the foregoing that the sales of goods to entities registered with PEZA and SBMA are subject to VAT at zero percent (0%) rate.

To prove that its clients are duly registered with PEZA and SBMA, petitioner submitted PEZA, SBMA and BOI Certificates of Registration[35], and PEZA ERD Forms No. 97-01 and BOI Certificates of Tax Exemption[36], which were noted by the Court-commissioned Independent Certified Public Accountant (ICPA) Mr. Garry S. Pagaspas, in his Report.

However, the ICPA Report shows that these documents offered as evidence by petitioner were not verified by the ICPA as faithful reproduction of the originals thereof. In his report, the ICPA explicitly stated that:[37]

> "B. We have verified the list of such persons or entities exempted from value added tax under special laws such as Republic Act No. 7916 otherwise known as "The Special Economic Zone Act of 1995" and Republic Act No. 7227 otherwise known as "Bases Conversion and Development Act of 1992" and **noted the supporting documents related to such registration and zero-rating except that we were not able to determine as to whether or not they were faithful reproduction of the originals as CCI was not able to provide us the same**. xxx" *(Emphasis supplied)*

Verily, the authenticity and veracity of the foregoing documents were not confirmed as petitioner failed to provide the originals thereof for verification. Thus, the same cannot be given credence by the Court.

Meanwhile, according to the ICPA, petitioner was, nonetheless, issued a Certification by PEZA dated February 16, 2016 stating that the entities listed therein are registered with PEZA, to wit:[38]

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[35] Exhibit "P-6".
[36] Exhibit "P-8".
[37] Exhibit "P-36", ICPA Report, p. 7.
[38] Ibid, p. 9.

> "C. Nevertheless, we confirm and verify that CCI was issued a Certification by PEZA dated February 16, 2016 that the entities listed therein along with other suppliers for other taxable years are indeed, registered with PEZA under corresponding VAT Certificates number. We attach a copy of such PEZA Certification dated February 16, 2016 as Exhibit P-60, and made an integral part hereof."

However, the Certificate dated February 16, 2016[39] referred to by the ICPA, which the latter used as basis to confirm the PEZA registration of petitioner's clients, was not formally offered. In fact, a mere copy of the said document was only introduced by the ICPA as attachment to his Report. Nowhere can it be seen from the said report that the ICPA examined its original or that the same is a faithful reproduction of the original document.

In the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[40], the Supreme Court held as follows:

> "...the Rules of Court, which is suppletory in quasi-judicial proceedings, particularly Sec. 34 of Rule 132, Revised Rules on Evidence, is clear that **no evidence which has not been formally offered shall be considered**. Thus, where the pertinent invoices or receipts purportedly evidencing the VAT paid by Atlas were not submitted, the *courts a quo* evidently could not determine the veracity of the input VAT Atlas has paid. xxx
>
> It must be noted that the most competent evidence must be adduced and presented to prove the allegations in a complaint, petitioner, or protest before a judicial court." *(Emphasis supplied)*

Well-settled is the rule that tax refunds are in the nature of tax exemption. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or

[39] Labeled as Exhibit P-60 of the ICPA Report, Thick Folder, and Box of ICPA.
[40] G.R. No. 159490, February 18, 2008.

entity claiming the refund.[41] The pieces of evidence presented entitling a taxpayer to an exemption is also *strictissimi* scrutinized and must be duly proven.[42] It is petitioner's ultimate responsibility to make sure that every piece of evidence is presented, duly marked and formally offered in evidence.

Since petitioner was not able to adduce sufficient evidence to prove that its clients are PEZA- and/or SBMA-registered entities, petitioner's alleged sales of goods thereto failed to qualify for VAT zero-rating under Section 106(A)(2)(c) of the NIRC of 1997, as amended. Consequently, the third requisite for the refund/tax credit of input VAT under Section 112(A) of the NIRC of 1997, as amended, was not met.

Considering that petitioner failed to discharge the burden to prove that it had zero-rated sales for first quarter of the taxable year 2013, it is therefore not entitled to the refund of the alleged input VAT attributable thereto in the amount of ₱811,768.91.

In view of the foregoing, the Court sees no further need to address petitioner's compliance with the other requisites to be entitled to the claim for refund/tax credit certificate.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for insufficiency of evidence.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[41] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.,* G.R. No. 127105, June 25, 1999.

[42] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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.

ROMAN G. DEL ROSARIO
Presiding Justice