REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

UNISYS PUBLIC SECTOR SERVICES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8293

Members:

BAUTISTA, *Chairperson*;
FABON-VICTORINO, and
RINGPIS LIBAN, JJ.

Promulgated:

FEB 10 2016

10:24 a.m.

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RESOLUTION

FABON-VICTORINO, J.:

In the Decision dated September 22, 2015, the Court partially granted petitioner's claim for refund or issuance of tax credit certificate (TCC), in this wise:

> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Unisys Public Sector Services Corporation in the reduced amount of ₱51,187,799.96, representing its erroneously paid or illegally collected value-added taxes for the second to fourth quarters of CY 2009 and the first three quarters of CY 2010.
>
> **SO ORDERED**.

Both aggrieved, petitioner and respondent now assail the Court's Decision through the following motions, to wit:

1) Petitioner's Motion for Partial Reconsideration posted on October 9, 2015; and

2) Respondent's Motion for Partial Reconsideration filed on October 9, 2015.

<u>Petitioner's Motion for Partial Reconsideration</u>

Petitioner insists that the computation used by the Court to arrive at the actual amount for refund is flawed on the following grounds:

(1) The present refund is a case of erroneous tax payment and not a refund of unused input VAT. For this type of tax refund, the existence or non-existence of actual input VAT should not affect the tax being refunded.

(2) The amount of standard input VAT (7%) used in the re-calculation made by the Third Division is erroneous.

(3) The disallowance of the VAT withheld by NSO on the ground that the supporting document bears no weight since this document lacks the signature of the authorized signatory of NSO lacks merit.

Respondent, on the other hand, counters that to be entitled to refund, petitioner needs to comply with the requisites under Sections 110(A) and 113(A) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, and implemented by Sections 4.110-2, 4.110-8 and 4.113-1 of Revenue Regulation (RR) No. 1605. Further, petitioner must prove its entitlement to the refund sought, but failed.

Petitioner's motion lacks merit.

With respect to petitioner's first argument, the Court finds that contrary to petitioner's claim, the existence or non-existence of actual input VAT affects the tax subject of the present claim for refund even if the case involves erroneous tax payment and not a refund of unused input VAT. As elucidated in the assailed Decision, to be entitled to refund/TCC, petitioner must prove that it incurred and had enough input tax credits and VAT payments, and complied with the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended by RA No. 9337, and implemented by Sections 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-05.

Further, in a similar case involving the same parties[1] the Court in Division ruled that the taxpayer's claim for erroneously paid input tax must be substantiated by an invoice or official receipt since it is the only way to determine the veracity of petitioner's refund claim. The Court ruled, thus:

> "Petitioner argues that the amount of actual input VAT does not affect or has minimal effect on the determination of its entitlement to the refund of its erroneously paid output VAT, and that, hence, compliance of the actual input VAT with the invoicing requirement should have no impact.
>
> This is a misnomer. As correctly pointed out by respondent, petitioner belatedly raises an issue that we have already ruled upon as far back as our Resolution of April 19, 2012.
>
> In that Resolution, we already exhorted petitioner to substantiate its claim with invoices or official receipts, thus:

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[1] *Unisys Public Sector Services Corporation v. Commissioner of Internal Revenue*, C.T.A. Case No. 8216, September 16, 2014.

> "**Section 110(A)(1) of the 1997 NIRC, as amended, states that any input tax creditable against output tax must be evidenced by a VAT invoice or official receipt. Since petitioner's claim is an overpayment of Input VAT offset from its output VAT, petitioner's claim must be substantiated by an invoice or official receipt.**"

Furthermore, in *Technirail S.A. — Philippine Branch v. Commissioner of Internal Revenue*, this Court already ruled that "[t]o be creditable against petitioner's output VAT liability for the year 2000, the total input VAT of P14,518,760.32 must be supported by proper VAT invoices (in cases where the input taxes pertain to purchase of goods) and VAT official receipts (in cases where the input taxes pertain to purchase of services)."

Petitioner claims that it erroneously paid VAT when it used its actual accumulated input VAT for the fourth (4th) quarter of taxable year 2008 instead of the seven (7%) standard input VAT in computing the net VAT payable, hence, the importance of substantiating the claim for input tax. However, despite a clear directive by this Court on what it would take to prove their claim for refund, petitioner still did not comply with the substantiation requirements under Sections 110 (A) and 113 (A) and (B) of the 1997 NIRC, as implemented by RR 16-2005, and the refund was denied.

Invoicing and substantiation requirements must be followed because it is the only way to determine the veracity of petitioner's refund claim. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming the exemption. The condonation of a tax liability is in the nature of a tax exemption. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed. Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference. Tax exemptions are not to be presumed." (emphases supplied)

Petitioner also complains the amount of standard input VAT (7%) used by the Court in re-calculation, saying it was erroneous. Petitioner argues that the 7% standard input VAT should have been used instead of the difference between the 7% standard input VAT and actual input VAT incurred from its actual purchases.

As a general rule, Section 4.114-2 of RR No. 16-2005, as amended by RR No. 4-2007 provides that income payments to the government on their purchases of goods and services shall be subject to Final Withholding VAT of 5%, thus:

"SEC. 4.114-2. Withholding of VAT on Government Money Payments and Payments to Non-Residents. —

(a) The government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or of services taxed at twelve percent (12%) VAT pursuant to Secs. 106 and 108 of the Tax Code, deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof. The five percent (5%) final VAT withholding rate shall represent the net VAT payable of

> the seller. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT attributable to sale to government exceeds seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost."

Generally, the 7% standard input VAT is the allowable input VAT on sales to government, in lieu of the actual input VAT attributable to such sales. However, the amount of Standard Input VAT is not directly reported as allowable deduction on the VAT Return. Only the amount of actual input VAT may be reflected therein. As such, the Input Tax on Sale to Government closed to Expense accounts for the excess of standard over actual input VAT so that the whole amount of standard input VAT is incorporated in the computation of VAT due or overpayment per VAT Return.

In the assailed Decision, the allowable Input VAT used by the Court as deduction to the output VAT amounts to ₱70,473,672.59. The said amount is composed of the Valid Input VAT and the Input Tax on Sale to Government closed to Expense, as shown below:[2]

Less: Input VAT			
Valid Input VAT		10,504,353.80	
Input Tax on Sale to Government closed to expense			
*CY 2009 (₱36,080,451.55- ₱8,924,321.38)	₱ 27,156,130.17		
CY 2010	32,813,188.62	59,969,318.79	70,473,672.59

[2] Decision, Docket, Vol. 3, p. 938.

The Standard Input VAT amounts to ₱81,690,605.33. On the other hand, the allowable amount of input tax on sale to government used in the Decision amounts to ₱70,074,459.59. A comparison of the two amounts would reveal a difference of ₱11,616,145.74, as shown below:

Standard Input VAT	₱ 81,690,605.33
Less: Allowable Input VAT on Sale to Government per Decision	
Valid Input VAT attributable to sales to government [Total Sales to Government(1,167,008,647.51)/Total Sales (1,213,112,410.82) * Valid Input VAT (10,504,353.80)]	10,105,140.80
Input Tax on Sale to Government closed to Expense	59,969,318.79
Subtotal	₱ 70,074,459.59
Difference	**₱ 11,616,145.74**

The same may also be accounted as follows:

Actual Input VAT attributable to sales to government	₱ 21,721,286.55
Valid Input VAT attributable to sales to government	10,105,140.80
Difference	**₱ 11,616,145.75**

To arrive at the input tax on Sale to Government closed to Expense of ₱59,969,318.79, the Court used the actual input VAT attributable to sales to government of ₱21,721,286.55. However, examination revealed that only the input VAT of ₱10,504,353.80 was found to be valid, thus, the amount of valid input VAT attributable to sales to government would only be ₱10,105,140.80. The discrepancy of ₱11,616,145.74 therefore, is attributed to the unsubstantiated Input VAT of petitioner. In fine, the amount of standard input VAT (7%) used by the Court in re-calculation is not erroneous.

Anent the disallowance of VAT withheld by NSO on the ground that the Certificate of Creditable Tax Withheld lacks the signature of the authorized signatory of NSO, Section 5.128(C) of RR No. 14-03[3] requires that the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by the payor-withholding agent to the payee should be signed by both the withholding agent and the payee

[3] *Amending Revenue Regulations No. 2-98, as amended, in order to simplify the collection of tax, through withholding at the source, on sales of goods or services subject to the 3% percentage tax under Section 116 of the Code, and/or to the value-added tax (VAT) under Sections 106 and 108 of the same Code*, issued on March 26, 2003.

attesting to the correctness and accuracy of the information contained therein.

Further, the law and the rules require that the Creditable Tax Withheld Certificate should be complete in relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes. The figures appearing in the Creditable Tax Withheld Certificates should be taken at face value since these documents are executed under the penalties of perjury pursuant to Section 267 of the NIRC of 1997, as amended, which provides:

> "SEC. 267. Declaration under Penalties of Perjury. — Any declaration, return and other statement required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code."[4]

Respondent's Motion for Partial Reconsideration

In her Motion for Reconsideration, respondent raises her lone ground, to wit:

> "THE HONORABLE COURT ERRED IN FINDING THAT PETITIONER IS ENTITLED TO REFUND IN THE REDUCED AMOUNT OF P51,187,799.96 ALLEGEDLY REPRESENTING ERRONEOUS PAYMENTS FOR VALUE-ADDED TAX (VAT) FOR THE SECOND TO FOURTH QUARTERS OF CALENDAR YEAR 2009 AND THE SUCCEEDING THREE QUARTERS OF CALENDAR YEAR 2010."

[4] *Commissioner of Internal Revenue v. Roxas Land Corporation*, C.T.A. EB CASE NO. 407. February 18, 2009.

Respondent explains that there was no erroneous payment of VAT involved in the instant case since petitioner failed to prove its entitlement to refund. Specifically, respondent disagrees with the Court's finding that the 7% Standard Input Tax can be considered as Allowable Input Tax Creditable against Output VAT.

Even assuming *arguendo* that petitioner is entitled to refund, it has no legal personality to do so since the only valid document in force and applicable to the instant case is the Assignment and Assumption Agreement dated March 6, 2008. Based on the said Agreement, petitioner does not have any legal representation insofar as the economic benefits or losses with the transaction with the NSO. In fact, it is Unisys Australia Ltd. which is the ultimate beneficiary and benefactor of all the privileges and obligations in the project, hence, the only party in interest. Further, the Termination Agreement belatedly executed was a mere afterthought. Even the heading on all the electronic soft copy files submitted by petitioner to the Revenue Officers was in the name of Unisys Australia Ltd. and all the transactions were reported simultaneously in one database together with the transactions of Unisys Australia Ltd.

Finally, petitioner failed to comply with the documentary requisites for its claim for refund as mandated by the NIRC of 1997, as amended, and by RR No. 16-2005. Since claims for refund are construed strictly against the claimant, it is incumbent upon petitioner to prove its entitlement to the refund sought but failed.

Despite directive, petitioner failed to file any comment/opposition on respondent's motion.

Respondent's Motion as well lacks merit.

The Court sufficiently explained in the assailed Decision that the 7% Standard Input VAT is the proper allowable input VAT against the output VAT.

Section 4.114-2 of RR No. 16-2005, as amended by RR No. 4-2007, implementing Section 114 (C) of the NIRC of

1997, as amended, mandates that income payments to the government on their purchases of goods and services shall be subject to Final Withholding VAT of five percent (5%) and the remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales.

Hence, the standard 7% input VAT is the allowable input VAT on sales to government in lieu of the actual input VAT attributable to such sales. But since the amount of Standard Input VAT is not directly reported as allowable deduction on the VAT Return, only the amount of actual input VAT may be reflected therein. As such, the Input Tax on Sale to Government closed to Expense accounts for the excess of standard over actual input VAT so that the whole amount of standard input VAT is incorporated in the computation of VAT due or overpayment per VAT Return.

As to respondent's allegation that petitioner has no legal personality to claim for refund and that all the files submitted by petitioner to the Revenue Officers handling its claim for refund were all in the name of Unisys Australia Ltd., the same are simply baseless. It is self-serving without any supporting evidence. Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[5] In fine, mere allegations are not evidence.[6]

Finally, diametrically opposed to respondent's claim, petitioner was able to substantiate its claim for refund albeit in the reduced amount of ₱51,187,799.96 through the documents it presented in Court, all enumerated in the assailed Decision of September 22, 2015, specifically in pages 18 to 22 thereof.

Aside from its belated assertion that petitioner failed to comply with the documentary requisites as provided by the

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[5]*Domingo v. Robles*, G.R. No. 153743, March 18, 2005, 453 SCRA 812, 818; *Ongpauco v. Court of Appeals*, G.R. No. 134039, December 21, 2004, 447 SCRA 395, 400.
[6]*Mayor v. Belen*, G.R. No. 151035, June 3, 2004, 430 SCRA 561, 567; *Marubeni Corporation v. Lirag*, 415 Phil. 29, 38 (2001).

law and the rules, there was no indication that respondent required or even notified petitioner of the need to submit additional documents in the administrative level and that petitioner failed to comply with such demand.

In the consolidated cases of *Team Sual Corporation (formerly: Mirant Sual Corporation) v. Commissioner of Internal Revenue*, and *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*[7], the Court *En Banc* held that the completeness of documents to support a claim for refund is determined by the taxpayer and not by the BIR whose duty under Section 112 (C) of the NIRC of 1997, as amended, is to act on the claim within the allowable period of 120-day period from the date of submission of complete documents.

Further, non-submission of complete documents in the administrative level is not fatal to petitioner's claim for refund in the judicial level. As previously ruled by the Court *En Banc* in *Commissioner of Internal Revenue v. Toledo Power Company*[8], to wit:

> "In a VAT refund case such as the present case, the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level as held in several CTA En Banc cases one of which is Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc. It will not bar the CTA from receiving, evaluating, and appreciating evidence submitted before it. Once the claim for refund has been elevated to the CTA, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court."

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[7] CTA EB Nos. 649 and 651, March 21, 2012.
[8] CTA EB No. 589, January 12, 2011.

WHEREFORE, Petitioner's Motion for Partial Reconsideration posted on October 9, 2015 and Respondent's Motion for Partial Reconsideration filed on October 9, 2015, are hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice