REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ECCO ASIA NACAP NEDERLAND BV (JOINT VENTURE),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6595

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
SEP 08 2009; 10:53am

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DECISION

BAUTISTA, *J.*:

This is a Petition for Review filed by Ecco Asia Nacap Nederland BV (Joint Venture) seeking that judgment be rendered ordering respondent to issue a tax credit certificate or to refund the amount of FIFTEEN MILLION FIVE HUNDRED NINETY THOUSAND TWO HUNDRED NINETY THREE PESOS AND 39/100 (P15,590,293.39), representing its alleged unutilized input value-added tax (VAT) on importation of capital goods for the period covering the fourth quarter of 2000 to the fourth quarter of 2001.

Petitioner is an unregistered joint venture, with business address at the 2nd floor, Hatchasia Global City Center, 31st corner 2nd Avenue, E-Square IT Park, Fort Bonifacio Global City, Taguig, Metro Manila. It is registered with the Bureau of Internal Revenue (BIR) as a value-added taxpayer.[1]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

In December 1999, being engaged in the general contractor business, it was awarded the "Gas Pipeline Facility Project" from the take-off point at Tabangao, Batangas City to the receiving point at 1200 MW Ilijan Natural Gas Combined Cycle Power Plant by the National Power Corporation (NPC). Among the responsibilities of petitioner under the contract is to furnish the supplying, manufacturing, testing and commissioning needs of the project.[2]

Petitioner alleges that in compliance with the requirements of its contract, it imported various capital goods during the fourth quarter of 2000, for which it paid ten percent (10%) VAT in the amount of P5,738,993.00, even though the named importer/consignee was NPC as shown in petitioner's Import Entry and Internal Revenue Declarations (IEIRDs).[3] Since petitioner claims that it was the one who paid the VAT on the importation allegedly made in the name of NPC, it asserts that this payment of P5,738,993.00 is its input VAT.[4]

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[1] Pars. 1 and 2, Joint Stipulation of Facts and Issues, docket, p. 80.
[2] Exhibit "P".
[3] Exhibits "O-1-1", "O-2-1", "O-3-1", and "O-7-1".
[4] Exhibit "A".

Similarly, for the taxable period from the first to fourth quarters of 2001, petitioner purportedly imported capital goods in the name of NPC as importer/consignee and again paid the VAT due on said importation in the amount of P9,806,300.39.[5]

Petitioner filed its Quarterly and Monthly VAT Returns for the fourth quarter of 2000 and for the first to fourth quarters of taxable year 2001.[6]

On January 22, 2003, petitioner filed its applications for the issuance of tax credit certificate or for the refund of its unutilized input VAT for the period covering the fourth quarter of 2000 to the fourth quarter of 2001, based on its alleged VAT payments on importation of capital goods.[7]

Unacted upon by respondent, petitioner elevated the matter to this Court via Petition for Review on January 27, 2003.

Respondent raised the following Special and Affirmative Defenses, in his Answer filed on March 17, 2003:

> "5. The Petitioner's claim for tax refund/credit is still undergoing administrative routinary investigation/examination by the Respondent's Bureau;
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> 6. The alleged tax sought to be refunded was collected pursuant to law and pertinent implementing rules and regulations; hence, the same is not refundable;
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> 7. Petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not ***ipso facto*** warrant the refund/credit;
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> 8. Claims for tax refund or credit are construed in ***strictissimi juris*** against the taxpayer as they partake the nature of an exemption from tax, and it is incumbent upon the Petitioner to prove that the same is fatal to its claim for refund/credit;

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[5] Exhibits "O-4-1", "O-5-1", "O-6-1", "O-8-1", "O-9-1", "O-10-1", "O-11-1", "O-12-1", "O-13-1", "O-14-1", "O-15-1", "O-16-1", "O-17-1", "O-20-1", "O-21-1", and "O-22-1".
[6] Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", and "W".
[7] Par. 4, Joint Stipulation of Facts and Issues, docket, pp. 80-81.

9. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the National Internal Revenue Code of 1997."

During trial, petitioner presented its Formal Offer of Evidence; while respondent was declared to have waived his right to present evidence, in view of the repeated absence of respondent's counsel for the presentation of evidence.[8]

On September 10, 2008, the case was submitted for decision, taking into consideration petitioner's Memorandum filed on August 19, 2008, sans respondent Memorandum.

The parties jointly stipulated the following issues for this Court's resolution:

"1. Whether or not the ten percent (10%) VAT was erroneously paid by petitioner on importations by the National Power Corporation in relation to its Gas Pipeline Facility Project.

2. Whether or not the ten percent (10%) VAT erroneously paid on importation of capital goods claimed by petitioner was applied against its output VAT liability for fourth quarter of taxable year 2000 and the first, second, third and fourth quarters of taxable year 2001, respectively.

3. Whether or not the claim for issuance of tax credit certificate from input VAT paid on importation for the fourth quarter of taxable year 2000 and the first, second, third and fourth quarters of taxable year 2001, filed by the petitioner with the Bureau of Internal Revenue was filed within the two-year period provided by law.

4. Whether or not this Petition for Review filed by the petitioner with this Honorable Court was filed within the two-year period provided by law.

5. Whether or not the unutilized input VAT paid on importation of capital goods for the fourth quarter of taxable year 2000 and the first, second, third, and fourth quarters of taxable year 2001 (sic) sought to be refunded are fully substantiated.

[8] Resolution dated June 13, 2008, docket, pp. 706-707.

6. Whether or not the input VAT sought to be refunded herein was applied against any output VAT liability of the petitioner for the succeeding taxable quarters after the taxable year 2001."

Anent the first issue, petitioner alleges that it incurred input VAT on the importation of capital goods in connection with its contract with NPC for the design, permitting, geological investigation, supply, manufacture, installation, testing and commissioning of the Gas Pipeline Facility Project[9]. It further asserts that the input VAT it paid on the said importations was for the account of NPC, considering that NPC would be the ultimate owner of the subject importation. And since NPC is exempt from all taxes, pursuant to Section 13 of Republic Act (R.A.) No. 6395, as amended by Presidential Decree (P.D.) Nos. 380 and 938, petitioner's payment of VAT on said importations was erroneously made.

A scrutiny of the subject contract reveals that it is indeed petitioner's obligation, among others, to provide all labor, goods, materials, equipment, and temporary works required for the design, execution, testing and commissioning of the project.[10] But as found in the records, specifically, the IEIRDs[11], the importations were made in the name of NPC as the importer/consignee; while the taxes due on the said importations were paid by petitioner as shown in the manager's checks[12] issued payable to the order of the "Bureau of Customs FAO NPC" and the Application to Purchase Managers' Checks[13]. Even Mr. Romeo Ballesteros, petitioner's project accountant, testified during the November 17, 2003 and October 5, 2004 hearings that the importation of the materials was

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[9] Exhibit "P".
[10] Exhibit "P-1".
[11] Exhibits "O-1-1", "O-2-1", "O-3-1", "O-4-1", "O-5-1", "O-6-1", "O-7-1", "O-8-1", "O-9-1", "O-10-1", "O-11-1", "O-12-1", "O-13-1", "O-14-1", "O-15-1", "O-16-1", "O-17-1", "O-20-1", "O-21-1", and "O-22-1".
[12] Exhibits "T" to "T-11", docket, pp. 548-551.
[13] Exhibits "T-12" to "T-23", docket, pp. 552-557.

made in the name of NPC, since NPC is the owner of the imported materials and that all the said materials formed part of the project.[14]

This brings Us then to the issue of who is the proper party to claim the refund, considering that the tax thereon was assessed on NPC being the importer/consignee on record.

The case of **Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue**[15] is in point, where the Supreme Court defined the term "proper party" in a refund claim, in this manner:

> "(t)his Court has categorically ruled that '**the proper party to question, or seek a refund of an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another**.' xxx
>
> xxx xxx xxx
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> The person entitled to claim a tax refund is the statutory taxpayer. Section 22(N) of the NIRC defines a taxpayer as 'any person subject to tax.' In *Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp.*, the Court ruled that:
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>> A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer.' The terms 'liable for tax' and 'subject to tax' both connote a legal obligation or duty to pay a tax.
>
> xxx. Petitioner is neither a 'person liable for tax' nor 'a person subject to tax.' There is also no legal duty on the part of petitioner to pay the excise tax; hence, petitioner cannot be considered the taxpayer." *(Emphasis supplied)*

In the instant case, the tax was assessed on NPC and that petitioner merely paid for it in its behalf as stated in the manager's checks[16]. The proper party therefore to claim the refund is NPC.

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[14] TSN dated October 5, 2004, pages 9-10 and 38.
[15] G.R. Nos. 171383 and 172379, November 14, 2008.
[16] Exhibits "T" to "T-11", docket, pp. 548-551.

It is NPC which is granted the privilege of tax exemption by virtue of Republic Act No. 6395 (The Revised NPC Charter), as amended by P.D. Nos. 380 and 938. Petitioner cannot invoke NPC's tax exemption privileges for it is exclusively and legally granted to NPC by the State.

It is a basic rule in an action for tax refund/credit that the party claiming the tax refund/credit has the burden of proving it. Claims for refund or tax credit of taxes are in the nature of tax exemptions and being so, they are construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority.[17]

Petitioner failed to prove that it is entitled to claim NPC's tax exemption. And its failure to discharge the said burden, petitioner's claim must fail.

Consequently, petitioner has no other recourse but to collect the alleged VAT payments for NPC from NPC itself. This is based on the principle of *solutio indebiti*, principally governed and covered by Articles 2142 and 2154 of the Civil Code. Under the said principle, when money is paid to another under the influence of a mistake of fact, that is to say, on the mistaken supposition of the existence of a specific fact, where it would not have been known that the fact was otherwise, it may be recovered. The ground upon which the right of recovery rests is that money paid through misapprehension of facts belongs in equity and in good conscience to the person who paid it.[18]

Since petitioner is not the proper party to claim the refund or the issuance of tax credit certificate in the amount of P15,590,293.39, representing the alleged unutilized input VAT on importation of capital goods for the fourth

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[17] Commissioner of Internal Revenue vs. Seagate Technology (Philippines), G.R. No. 153866, February 11, 2005.

[18] The Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation, G.R. No. 147295, February 16, 2007.

quarter of 2000 and the first to fourth quarters of 2001, the resolution of the remaining issues is no longer necessary.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division