Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8136

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
MAY 15 2013
3:10 p.m.

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DECISION

CASANOVA, *J.*:

The instant Petition for Review,[1] filed by petitioner Coca-Cola Bottler's Philippines, Inc., dated July 23, 2010, seeks the refund or issuance of tax credit certificate (TCC) in the amount of ₱80,366,056.99 representing over/erroneous payment of value-added tax (VAT) arising from the understatement of VAT overpayment for the quarter ended June 30, 2008.

The facts of the case, as culled from the records, are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 1980 Paz Guazon Street, Paco, Manila and is primarily engaged in the business of manufacturing and selling, at wholesale, beverages such as Coca-Cola, Sprite, Royal True Orange, Minute Maid, etc.[2]

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[1] Docket, pp. 5-14.
[2] Par.1, Admitted Facts By Petitioner and Respondent (Admitted Facts), Joint Stipulation of Facts and Issues (JSFI), Ibid, p. 57.

Respondent is an official of the Republic of the Philippines authorized to, among others, refund or credit taxes pursuant to Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended, and may be served with summons at her office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Petitioner is a VAT Registered Taxpayer with Tax Identification Number 000-112-104-000[4] and BIR Certificate of Registration No. OCN 8PC0000019025.[5]

In the conduct of its business, petitioner purchases goods from VAT registered suppliers and services from VAT registered service providers.[6]

Petitioner's accounting practice concerning purchases of services on credit consists of charging input tax component into a temporary account Input Tax-Services-Clearing upon receipt of the invoice from its supplier of services. When petitioner pays the account, the input taxes recorded in the temporary account is transferred to Input Tax Services account, which is subsequently closed to Output Tax Payable at the end of the taxable quarter.[7]

For the quarter ended June 30, 2008, petitioner reported VAT overpayment of ₱39,431,863.39 in its Quarterly VAT Return:[8]

Vatable sales/receipts		₱ 12,144,018,171.25
Output tax due		₱ 1,457,282,180.55
Less: Allowable input tax		
Carried over from previous quarter/Excess over 70% of output VAT	₱ 89,591,300.05	
Deferred on capital goods exceeding P1M from previous quarter	244,984,132.38	₱ 334,575,432.43
Purchase of capital goods exceeding P1M	₱ 188,578,618.27	
Domestic purchases of goods	1,042,344,653.12	
Importation of goods	83,234,236.15	

[3] Par. 2, Admitted Facts, JSFI, Id, pp. 57-58.
[4] Exhibit "A".
[5] Par. 3, Admitted Facts, JSFI, Docket, p. 58.
[6] Par. 4, Admitted Facts, JSFI, Ibid, p. 58.
[7] Exhibit "R".
[8] Exhibits "F" to "F-1".

Domestic purchases of services	202,566,364.96	1,516,723,872.50
Total available input tax		₱ 1,851,299,304.93
Less: Deductions from input tax		
On purchases of capital goods exceeding P1M deferred to succeeding period		409,422,842.51
Total allowable input tax		₱ 1,441,876,462.42
Net VAT Payable		₱ 15,405,718.13
Less: Tax credits/Payments		
Monthly VAT payments-previous two months		54,837,581.52
Tax still payable/(Overpayment)		₱ (39,431,863.39)

Petitioner further claims that its output tax for the period ended June 30, 2008 was partially paid via the Development Bank of the Philippines (DBP) in the amount of ₱54,837,581.52[9] while the rest were offset against its input tax credits for the same quarter.[10]

Petitioner asserts that, due to inadvertence, several purchases of services on credit with input taxes amounting to ₱80,366,056.99 that had been paid in the second quarter of 2008 were <u>not</u> transferred to the Input Tax-Services account and consequently <u>not</u> declared in its Quarterly VAT Return and, <u>not</u> charged to the output tax payable for the quarter ended June 30, 2008. This resulted to the alleged understatement of petitioner's tax overpayment for the same quarter amounting to ₱80,366,056.99,[11] computed as follows:

	Should be	**Per Quarterly VAT Return**
Vatable sales/receipts	₱12,144,018,171.25	₱ 12,144,018,171.25
Output tax due	₱ 1,457,282,180.55	₱ 1,457,282,180.55
Less: Allowable input tax		
Carried over from previous quarter/Excess over 70% of output VAT	₱ 89,591,300.05	₱ 89,591,300.05
Deferred on capital goods exceeding P1M from previous quarter	244,984,132.38	244,984,132.38
Total input tax carried over from previous quarter	₱ 334,575,432.43	₱ 334,575,432.43
Purchase of capital goods exceeding P1M	₱ 188,578,618.27	₱ 188,578,618.27
Domestic purchases of goods	1,042,344,653.12	1,042,344,653.12
Importation of goods	83,234,236.15	83,234,236.15
Domestic purchases of services	282,932,421.95	202,566,364.96
Total input tax – current quarter	₱ 1,597,089,929.49	1,516,723,872.50
Total available input tax	₱ 1,931,665,361.92	₱ 1,851,299,304.93
Less: Deductions from input tax		
On purchases of capital goods exceeding P1M deferred to succeeding period	409,422,842.51	409,422,842.51
Total allowable input tax	₱ 1,522,242,519.41	₱ 1,441,876,462.42
Net VAT Payable	₱ (64,960,338.80)	₱ 15,405,718.13
Less: Tax credits/Payments		

[9]Exhibits "C" to "C-2" and "D" to "D-1".
[10]Exhibits "E" to "E-1" and "F" to "F-1".
[11]Exhibit "P".

Monthly VAT payments-previous two months	54,837,581.52	54,837,581.52
Tax still payable/(Overpayment)	**₱(119,797,920.38)**	**₱ (39,431,863.39)**
Difference – Understatement of overpayment		**₱80,366,056.99**

Due to the issuance of a Letter of Authority (LOA) to examine petitioner's books of accounts for all internal revenue taxes for the taxable year 2008,[12] petitioner could no longer amend its VAT Return for the subject quarter to include the alleged input taxes in the amount of ₱80,366,056.99, when the error was discovered.

Hence, on July 21, 2010, petitioner filed with the Bureau of Internal Revenue its application for tax refund/TCC in the amount of ₱80,366,056.99 representing over/erroneous payment of value-added tax arising from understatement of VAT overpayment for the quarter ended June 30, 2008 that was carried to the next quarter.[13] Thereafter, petitioner filed its judicial claim before this Court on July 23, 2010.

In her Answer,[14] filed on August 16, 2010, respondent averred the following special and affirmative defenses:

> "9. The petition is premature considering that petitioner's claim for tax refund/credit of the alleged erroneously paid Value-Added Tax for the second quarter ending June 30, 2008 in the amount of P80,366,056.99 is still pending investigation with the LT-Regular Audit Division I, BIR National Office, Diliman, Quezon City.
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> 10. The VAT Returns themselves (BIR Form 2550M and 2550Q) filed by the petitioner for the second quarter ending June 30, 2008 did not show any erroneously paid tax whatsoever.
>
> 11. Claim for refund is construed strictly against the claimant and should not be allowed unless proven explicitly and categorically.

[12] Exhibit "B".
[13] Exhibit "M"; Par. 7, Admitted Facts, JSFI, Docket, p. 58.
[14] Ibid, pp. 33-36.

12. The allegations regarding tax refundability do not ipso facto merit the refund claimed."

During trial, petitioner presented the following witnesses: 1) Mr. Gerardo E. Espiridion[15], petitioner's Tax Manager; 2) Ms. Rosemarie M. Gamboa[16], petitioner's CokeOne Decision Support Team Lead; 3) Mr. Jerome Antonio B. Constantino[17], Independent Certified Public Accountant (ICPA); 4) Ms. Camille Kate A. Doligosa[18], Plant Finance Manager of petitioner in its Iloilo Plant; and, 5) Noel I. Anore[19], Plant Finance Manager of petitioner in its Cagayan de Oro Plant. Thereafter, Formal Offer of Evidence for the Petitioner[20] was filed on July 18, 2011. A Comment/Opposition (To Petitioner's Formal Offer of Evidence)[21] was filed by respondent on August 18, 2011.

On the other hand, respondent's counsel manifested in November 28, 2011 hearing that, "the tax investigation with regard to petitioner's administrative claim is still pending and respondent is constrained to submit the case for decision."[22] In the same hearing, the Court granted both parties thirty (30) days within which to file their respective memorandum.

Subsequently, petitioner filed an Urgent Omnibus Motion 1. To Defer Submission of the Parties' Memoranda; 2. To Allow Petitioner to Present Additional Evidence; and, 3. To Recall the Independent CPA to Examine Petitioner's Additional Evidence and Testify Thereon.[23] On December 28, 2011, petitioner, likewise, filed an Urgent Motion to Defer Submission of Parties Memoranda,[24] which was granted by this Court in a Resolution[25] dated January 3, 2012. Respondent filed her

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[15] Minutes of the Hearing dated November 17, 2010, Ibid, p. 133.
[16] Minutes of the Hearing dated December 1, 2010, Id, p. 169.
[17] Minutes of the Hearing dated January 26, 2011, Id, p. 208; Minutes of the Hearing dated May 2, 2011, Id, p. 256; and Minutes of the Hearing dated May 18, 2011, Id, p. 269.
[18] Minutes of the Hearing dated March 9, 2011, Id, p. 241.
[19] Minutes of the Hearing dated March 9, 2011, Id, p. 241.
[20] Id, pp. 283-327.
[21] Id, pp. 353-357.
[22] Minutes of the Hearing dated November 28, 2011, Id, p. 404.
[23] Id, pp. 405-408.
[24] Id, pp. 465-467.
[25] Id, p. 469.

Comment/Opposition (To Petitioner's URGENT OMNIBUS MOTION dated December 12, 2011) on January 2, 2012.[26]

Thereafter, the Court, in the interest of justice, granted, in its January 18, 2012 Resolution, petitioner's Urgent Omnibus Motion and stated that as regards petitioner's Motion to Defer Submission of the Parties' Memoranda, the resolution of the same becomes moot since the Court already issued a Resolution on January 3, 2012 granting respondent's Urgent Motion to Defer Submission of Parties Memoranda.[27]

In the February 20, 2012 hearing, Mr. Jerome Antonio B. Constantino (recalled witness), completed his testimony and, as moved by petitioner's counsel, petitioner was given until March 11, 2012 to file its Supplemental Formal Offer of Evidence. Respondent, on the other hand, was granted 10 days from receipt thereof to file her comment.[28] On March 12, 2012, A Supplemental Formal Offer of Evidence (For the Petitioner)[29] was filed while respondent's Comment/Opposition (To Petitioner's Supplemental Formal Offer of Evidence)[30] was filed on March 27, 2012.

On June 21, 2012, the case was submitted for decision[31] taking into consideration Respondent's Memorandum,[32] filed on June 18, 2012 and Memorandum (For the Petitioner)[33] filed on June 13, 2012.

The sole issue[34] raised for the resolution of this Court is whether or not petitioner is entitled to tax refund or issuance of tax credit certificate in the amount of ₱80,366,056.99 representing over/erroneous payment of value added tax arising from

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[26] Id, pp. 470-472.
[27] Resolution dated January 18, 2012, Id, pp. 474-476.
[28] Minutes of the Hearing dated February 20, 2012, Id, p. 488.
[29] Id, pp. 490-493.
[30] Id, pp. 494-495.
[31] Id, p. 523.
[32] Id, pp. 506-511.
[33] Id, pp. 512-522.
[34] Issue to be Resolved, JSFI, Id, p. 59.

understatement of VAT overpayment for the quarter ended June 30, 2008 that was carried to the next quarter.

In the case at bench, petitioner anchors its claim on the provisions of Section 204(C) in relation to Section 229 of the NIRC of 1997, which are hereby quoted for easy reference:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*—The Commissioner may—
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> xxx xxx xxx
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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*—No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding

> may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

It should be noted that in this case, petitioner is essentially claiming for its alleged understatement of overpayment of VAT (excess input taxes) due to undeclared input taxes for the second quarter of 2008. But, in order for input taxes to be available as tax credits, they must be substantiated and reported in the VAT returns of a taxpayer following Section 4.110-8 of Revenue Regulations No. 16-2005, as amended, which explicitly provides:

> "SEC. 4.110-8. *Substantiation of Input Tax Credits.*—
>
> (a) **Input taxes for the importation of goods or the domestic purchase of goods, properties or services** is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated by the following documents, and **must be reported in the information returns required to be submitted to the Bureau**: *(Emphasis supplied)*
>
> xxx xxx xxx."

In the present petition, the ICPA found that out of petitioner's total claim of ₱80,366,056.99, only the amount of ₱67,528,010.56 was properly supported, as shown below:

Properly supported by official receipts (ORs)	Amount
Final and consolidated report[35]	₱ 45,725,555.07
Supplemental report[36]	21,802,455.49
TOTAL	**₱ 67,528,010.56**

The ICPA, likewise, examined petitioner's voluminous documents supporting its input taxes from domestic purchases and importation of goods other than capital goods and purchase of services and purchase of capital goods, as reported in its Quarterly VAT Return for the second quarter of 2008 amounting to ₱1,328,145,254.23 and ₱188,578,618.27, respectively. The ICPA further examined the supporting documents pertaining to petitioner's input taxes declared in its Quarterly VAT Return for the previous quarter (first quarter of 2008) amounting to ₱1,454,376,536.09.[37] The following were found to be duly substantiated, to wit:[38]

	1st Quarter	2nd Quarter
Input Taxes from:		
Domestic purchases and importation of goods other than capital goods and purchase of services	₱ 59,120,806.00	₱ 202,392,434.78
Purchase of capital goods	-	92,142.86
TOTAL	**₱ 59,120,806.00**	**₱ 202,484,577.64**

This Court noted that, while the substantiated claimed input taxes in the amount of ₱67,528,010.56 for the second quarter of 2008 were recorded in petitioner's books of accounts, the same shall be denied on the ground that the said amount was not reported in petitioner's VAT return due to the alleged inadvertence. Therefore, following Section 4.110-8 of Revenue Regulations No. 16-2005, as amended, petitioner cannot credit or offset the undeclared input taxes against output taxes for the said taxable period.

Corollary thereto, Section 110(A)(2) and (B) of the NIRC of 1997, as amended,[39] states:

[35]Exhibit "O[6]", Annex 3.
[36]Exhibit "L[8]", Annex 1.
[37] Exhibit "EEEEE".
[38] Exhibit O[6], pages 63-74, 81-83, 102-114 and 117-118.
[39] Republic Act No. 9361, November 21, 2006.

"SEC. 110. *Tax Credits.*—

(A) Creditable Input Tax. -

xxx xxx xxx

(2) The input tax on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

"*Provided,* That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P 1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: ***Provided, finally,*** **that in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee <u>upon payment</u> of the compensation, rental, royalty or fee.** *(Emphasis and underscoring supplied)*

xxx xxx xxx

(B) *Excess Output or Input Tax.*—If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

The foregoing provides for the time when the input taxes are creditable. Moreover, the output and input taxes contemplated in the foregoing provisions are those reported in the taxpayer's VAT return. Thus, the input tax for the second quarter of 2008 should have been declared in petitioner's Quarterly VAT Return pertaining to the same quarter so that it could be creditable against the output tax of the same taxable period.

Petitioner's Quarterly VAT Returns for the first and second quarters of 2008 show the following output taxes due:

Exhibit	Period Covered	Output Tax
EEEEE	1st Quarter	₱ 1,269,933,934.95
F to F-1	2nd Quarter	1,457,282,180.55
TOTAL		**₱ 2,727,216,115.50**

Thus, had petitioner declared the substantiated input taxes of ₱67,528,010.56 in its Quarterly VAT Return for the second quarter of 2008, considering its output taxes and substantiated input taxes for the first and second quarters of 2008 per ICPA examination, it would not have had enough input taxes to offset against its output taxes for the same taxable periods. Thus, petitioner would not have had erroneously paid output VAT for the second quarter of 2008, which may be the subject of a claim for refund under Section 229 of the NIRC of 1997, as amended. To illustrate, the computation is shown hereafter:

	1st Quarter	2nd Quarter
Output Tax	₱ 1,269,933,934.95	₱ 1,457,282,180.55
Less: Substantiated Input Taxes	59,120,806.00	202,484,577.64
VAT Payable	**₱ 1,210,813,128.95**	**₱ 1,254,797,602.91**

Hence, the claimed ₱80,366,056.99 subject of the instant case essentially represents undeclared input taxes for the second quarter of 2008, and not the erroneously paid VAT or understatement of VAT overpayment, since it was not declared in the pertinent VAT Return and consequently not offset against output tax for the same period.

Moreover, Section 112 of the NIRC of 1997, as amended, enumerates the two instances when excess input taxes may be claimed for refund:

a) when they are attributable to zero-rated or effectively zero-rated sales, and

b) upon cancellation of VAT registration due to retirement from or cessation of business.

Applying Section 112, petitioner's claim for refund or tax credit of its **undeclared input taxes** for the second quarter of 2008 clearly does not fall under any of the foregoing instances provided by law. Consequently, petitioner is not entitled to a refund or issuance of tax credit certificate in the amount of ₱80,366,056.99.

WHEREFORE, premises considered, petitioner's Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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.

ROMAN G. DEL ROSARIO
Presiding Justice