REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HEDCOR SIBULAN, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8166

Members:

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

Promulgated:

APR 1 2 2017 10:00 AM

x - x

RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution are the following:

1. Petitioner's **Omnibus Motion (I) For Partial Reconsideration of the Decision dated December 21, 2016 (II) For Reopening of Trial**, filed on January 6, 2017, without respondent's comment despite notice per Records Verification dated February 20, 2017; and

2. Respondent's **Motion for Partial Reconsideration**, filed through registered mail on January 6, 2017 and received by this Court on January 19, 2017, with petitioner's **Comment (Re: Motion for Partial Reconsideration dated January 6. 2017)**, filed on February 20, 2017.

The parties move for the reconsideration of the Court's Decision dated December 21, 2016, which partially granted the petition, as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **₱32,779,572.33** representing petitioner's unutilized input taxes for the 3rd quarter of 2008 attributable to its zero-rated sales.
>
> **SO ORDERED.**

Petitioner's Omnibus Motion (I) For Partial Reconsideration of the Decision dated December 21, 2016 (II) For Reopening of Trial

In its motion, petitioner submits that the Court erred in holding that the supporting documents submitted by petitioner are insufficient to prove the existence of its reported input valued-added tax (VAT) in the amount of ₱6,734,473.03. A review of the evidence on record will show that petitioner purchased goods and services and thus, incurred input VAT in the 3rd quarter of calendar year (CY) 2008 in the amount of ₱39,514,045.36. Petitioner presented receipts, invoices, and import-entry documents covering its input VAT. Moreover, respondent neither presented nor offered any evidence against or controverted petitioner's claim for refund. Hence, petitioner argues that its input VAT for 3rd quarter of CY 2008 is duly substantiated by appropriate documentary evidence.

Petitioner also argues that input VAT in the aggregate amount of ₱3,286,697.43 were sufficiently supported by VAT invoices. The Court disallowed the said amount because the supporting VAT invoices did not indicate the Bureau of Internal Revenue's (BIR) authority to print (ATP). However, petitioner submits that nowhere in the Tax Code or the pertinent VAT regulations is it required that the ATP be reflected in the official receipts (ORs) or invoices. In *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[1] (*Intel* case), the Supreme Court held that it is not specifically required that the BIR authority to print be reflected or indicated therein; what is important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered.

---

[1] G.R. No. 166732, April 27, 2007.

In view of the foregoing, petitioner submits that the suppliers that issued the ORs and invoices corresponding to the disallowed input VAT in the aggregate amount of ₱3,286,697.43 had secured the necessary ATP for such ORs and invoices. Petitioner also manifests that, in particular, the invoices pertaining to the purchase of goods from Phelps Dodge Philippines Energy Products Corp. (Phelps Dodge) are registered and, in support thereof, attaches a copy of Phelps Dodge's Permit to Use Computerized Accounting System (CAS) or Components Thereof to its motion.

Petitioner stresses that Revenue Memorandum Order (RMO) No. 21-2000 explicitly exempts taxpayers who have registered its CAS with the BIR from securing an ATP for its invoices and receipts. Likewise, RMO No. 29-2002 only requires taxpayers with CAS but without computer-generated receipts and invoices to apply for ATP for ORs and invoices. As such, while the ATP was not indicated on the invoices of Phelps Dodge which were issued to petitioner, said invoices were duly registered with the BIR by virtue of the CAS Permit issued to Phelps Dodge.

Petitioner insists that claims for refund of erroneously paid taxes, despite their more technical nature, are still, in essence, civil cases. As such, the quantum of evidence that is required to sustain petitioner's claim is a mere preponderance of evidence, and certainly not evidence beyond reasonable doubt. Hence, it is sufficient that petitioner's evidence is more credible and conclusive than of the respondent. In this case, petitioner's evidence all point to the fact that it incurred or paid input taxes in the amount of ₱39,514,045.36 while respondent did not present any evidence to contradict petitioner's claim.

In order to erase any doubt as to whether petitioner's input VAT claim in the aggregate amount of ₱6,734,473.03 are supported by ORs and invoices compliant with the substantiation requirements, petitioner prays for the reopening of trial and requests leave of Court for the admission of supplemental evidence to prove the same citing the case of *BPI-Family Savings Bank, Inc. vs Court of Appeals*.

Petitioner stresses that Republic Act (RA) No. 1125, as amended, provides that proceedings before this Court are not governed by strict procedural rules. Moreover, no prejudice, financial or otherwise, will be caused to the respondent by the presentation of additional evidence since only the amounts which are rightfully due to be refunded will be adjudged in favor of petitioner. On the other

a

hand, if petitioner is deprived of the opportunity of presenting additional evidence, petitioner's right to claim the taxes it overpaid may forever be forfeited.

After a careful evaluation of petitioner's arguments, this Court finds no compelling reason to reverse or modify the assailed Decision.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[2] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[3]

Unfortunately, as found in the assailed Decision, input taxes in the total amount of ₱6,734,473.03 should be disallowed for non-compliance with the substantiation requirements under the VAT law and regulations.

In *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*[4], the Supreme Court held that the taxpayer claiming a VAT input tax credit or refund has the burden of proving that he is entitled to the refund or credit by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded. The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchases for goods or services attributable to zero-related sales.

Anent petitioner's argument that the ATP is not required to be reflected in the ORs or invoices, the Court finds that petitioner's reliance in the *Intel* case is misplaced.

Section 238 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that all persons who are engaged in

[2] *Citibank, N.A. vs. Court of Appeals, et al.,* G.R. No. 107434, October 10, 1997.
[3] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.,* G.R. No. 127105, June 25, 1999.
[4] G.R. No. 180173, April 6, 2011.

business shall secure from the BIR an authority to print receipts or sales or commercial invoices before a printer can print the same.

The said provision seeks to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem — the printer.[5]

Although printing the ATP on the invoices or receipts is not required, still Section 238 of the NIRC of 1997, as amended, expressly requires persons engaged in business to secure an ATP from the BIR prior to printing invoices or receipts.

In the case of *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[6] (*Silicon* case), the Supreme Court clarified that if the ATP is not indicated in the invoices or receipts, the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR and without this proof, the invoices or receipts would have no probative value for the purpose of refund, thus:

> ***Printing the ATP on the invoices or receipts is not required***
>
> It has been settled in *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue* that the ATP need not be reflected or indicated in the invoices or receipts because there is no law or regulation requiring it. Thus, in the absence of such law or regulation, failure to print the ATP on the invoices or receipts should not result in the outright denial of a claim or the invalidation of the invoices or receipts for purposes of claiming a refund.
>
> ***ATP must be secured from the BIR***
>
> But while there is no law requiring the ATP to be printed on the invoices or receipts, Section 238 of the NIRC expressly requires persons engaged in business to

---

[5] Hector S. de Leon and Hector M. de Leon, *The National Internal Revenue Code Annotated*, vol. II, 2011 ed., p. 662.
[6] G.R. No. 172378, January 17, 2011.

G

secure an ATP from the BIR prior to printing invoices or receipts. Failure to do so makes the person liable under Section 264 of the NIRC.

This brings us to the question of whether a claimant for unutilized input VAT on zero-rated sales is required to present proof that it has secured an ATP from the BIR prior to the printing of its invoices or receipts.

We rule in the affirmative.

Under Section 112 (A) of the NIRC, a claimant must be engaged in sales which are zero-rated or effectively zero-rated. To prove this, duly registered invoices or receipts evidencing zero-rated sales must be presented. However, since the ATP is not indicated in the invoices or receipts, the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR. Without this proof, the invoices or receipts would have no probative value for the purpose of refund. In the case of *Intel*, we emphasized that:

> It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. **Indeed, what is important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered.** (*Emphasis supplied*)

Considering that petitioner failed to show that its suppliers had secured the necessary ATP for its ORs and invoices or that the said ORs and invoices were duly registered with the BIR, then the ORs and invoices covering the input VAT of ₱3,286,697.43 shall still be disallowed.

<

> efficiencies and productivities that would ultimately uplift the general welfare. To allow the CIR to determine the completeness of the documents submitted and, thus, dictate the running of the 120-day period, would undermine these objectives, as it would provide the CIR the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with the CTA.
>
> A hypothetical situation illustrates the hazards of granting the CIR the authority to decide when complete documents have been submitted - A taxpayer files its administrative claim for VAT refund/credit with supporting documents. After 121 days, the CIR informs the taxpayer that it must submit additional documents. Considering that the CIR had determined that complete documents have not yet been submitted, the 120-day period to decide the administrative claim has not yet begun to run. In the meantime, more than 120 days have already passed since the application with the supporting documents was filed to the detriment of the taxpayer, who has no opportunity to file a judicial claim until the lapse of the 120+30 day period in Section 112(C). With no limitation to the period for the CIR to determine when complete documents have been submitted, the taxpayer may be left in a limbo and at the mercy of the CIR, with no adequate remedy available to hasten the processing of its administrative claim.
>
> xxx xxx xxx
>
> xxx for purposes of determining when the supporting documents have been completed — **it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period**. After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. (*Emphasis supplied*)

Hence, as in this case, petitioner determined that it already submitted the complete documents at the time of filing its administrative claim for refund, then the 120-day period is reckoned from the date of filing of its administrative claim.

There being no new matter or issue raised by respondent, the Court finds no compelling reason to reverse the assailed Decision.

Overall, the Court finds no cogent reason to reverse, amend or modify the Court's Decision dated December 21, 2016.

WHEREFORE, premises considered, petitioner's **Omnibus Motion (I) For Partial Reconsideration of the Decision dated December 21, 2016 (II) For Reopening of Trial** and respondent's **Motion for Partial Reconsideration** are **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice