REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

TROPITEK INTERNATIONAL, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6422

x --------------------------------------- x

TROPITEK INTERNATIONAL, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6499

Members:

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUL 13 2005

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

Once again, We are confronted with the duty of denying a tax refund due to the obstinate neglect of taxpayers to adhere with the

212

invoicing requirements set forth in our Tax Code. Sad to note, the instant case is but one of the many suits illustrative of this quandary. Harsh as it is, but the invoicing requirements are safeguards against fraud, and to allow relaxation thereof would open a floodgate of perpetual deception.

THE CASES

Before Us are these two Petitions for Review filed by Tropitek International, Inc. (hereafter "petitioner"), to wit: C.T.A Case No. 6422, which was filed on April 1, 2002, seeks the refund or the issuance of tax credit certificate representing the excess creditable VAT input taxes covering the 1st quarter of year 2000. Similarly, C.T.A Case No. 6499 filed on July 1, 2002 seeks refund of the excess input taxes corresponding to the remaining quarters of the taxable year 2000.

THE FACTS

In C.T.A Case No. 6422, respondent, in his Answer, by way of special and affirmative defenses, averred:

> "5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center;
>
> 6. To support its claim, it is imperative for petitioner to prove the following to wit:

a. The registration requirements of a Value Added Taxpayers pursuant to Section 6(a) & (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1(a) of the Revenue Regulations No. 7-95.

b. That the VAT input taxes of P1,348,244.75 allegedly paid by petitioner from its domestic purchases of services were attributable to its zero-rated sales and such tax has not been applied against any output tax.

c. That petitioner's claim for tax credit or refund of the excess Input Value Added Tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 4. 106-1 (RE: Refund or Tax Credits of Input Tax) and with Section 4. 106-2 (Re: Procedures for Claiming Refunds or Tax Credits of Input Tax) of Revenue Regulation No. 7-95.

d. That petitioner domestic purchases of services were made in the course of its trade or business, properly supported by invoices or receipts and import entry or other equivalent documents showing that it actually paid VAT in pursuance to Section 4. 104-5(a) (b) of Revenue Reg. No. 7-95 (Re: Substantiation of Claims for Input Tax Credit).

e. The requirements as enumerated under Section 4.104-2 of the Rev. Reg. 7-95 (RE: Persons who can avail of the Input Tax Credits)

f. The requirements under Section 4.100-2 in relation to Section 4.102-1 and Section 4.102-2 of the Rev. Reg. No. 7-95, which provides that petitioner's export sale of taxable goods and services to persons doing business outside the Philippines, are paid for in acceptable foreign currency actually or constructively remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

214

g. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code as amended.

7. Furthermore and consistent with the well settled principle in taxation, claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for tax refund. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon the vague implications."

Likewise, in C.T.A Case No. 6499, respondent raised similar defenses, to wit:

"5. The petition was filed without compliance with the condition precedent for claiming input tax refund because there is no showing that petitioner has submitted complete documents in support of its claim, in contravention with the requirements of Section 112 (D) of the Tax Code. Said provision reads: "In proper cases, the Commission shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof";

6. Petitioner must prove that the VAT input taxes of P2,311,309.56 allegedly paid on its domestic purchases of goods and services were attributable to its alleged zero-rated sales and such taxes have not been applied against any output tax;

7. Petitioner must prove that its domestic purchases of taxable goods and services were made in the course of its trade or business, duly supported by invoices or receipts and import entry or other equivalent documents showing that it actually paid VAT in pursuance to Section 4.106-2 of Rev. Reg. No. 7-95;

215

> 8. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in accordance with law, and the burden of proof to prove otherwise is upon petitioner;
>
> 9. Assuming without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under Sections 204(C) and 230 of the Tax Code. Otherwise, its failure to prove the same is fatal to the claim for refund;
>
> 10. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs Commissioner of Internal Revenue 124 SCRA 1211)."

Upon motion by petitioner on the ground that both petitions involved herein have the same parties and questions of law, C.T.A Case No. 6499 was ordered consolidated with C.T.A Case No. 6422 in the Resolution dated September 10, 2002.

In view of the consolidation, petitioner and respondent submitted the following Joint Stipulation of Facts:

> "1. Petitioner, Tropitek International, Inc., is duly registered with the Securities and Exchange Commission (SEC) under the name Tropitek International, Inc., with the export of furniture as its primary purpose;
>
> 2. Petitioner is duly registered as a Value Added Taxpayer in accordance with Section 236 of the National Internal Revenue Code of 1997, with BIR Certificate of Registration bearing OCN 2RC0000007515;
>
> 3. Respondent is the duly appointed Commissioner of Internal Revenue, vested with the authority to act as such, including, inter alia, the power to decide, approve and grant refunds and/or tax credits of

aul

216

excess Value Added Tax (VAT) input payments and holding office at the BIR National Office Building, Diliman, Quezon City, where he may be served with summons and other court processes;

4. Respondent is represented in the said One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center by the Revenue Examiner of the Value Added Tax Division of the Respondent's Bureau of Internal Revenue who are assigned at the said Center;

5. For all the quarters of 2000, Petitioner filed its quarterly VAT returns covering the periods of January 1, 2000 to March 31, 2000, April 1, 2000 to June 30, 2000, July 1, 2000 to September 30, 2000, and October 1, 2000 to December 31, 2000, respectively;

6. On April 1, 2002, petitioner filed an administrative claim for refund of the unutilized input VAT before the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center o fthe Department of Finance in the amount of P1,077,583.32 covering the first quarter of 2000;

7. On June 28, 2002, the petitioner filed an administrative claim for refund of the unutilized input VAT before the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance in the total amount of P2,234,729.17 covering the second, third and fourth quarters of 2000;"

Petitioner presented Maria Theresa A. Rojos and Mr. Wilfredo Z. Palad, as witnesses, and submitted documentary evidence, marked as Exhibits "A" to "BE-100", including their submarkings.

On the other hand, respondent submitted the cases for decision, without presenting any evidence.

Thereafter, both parties were ordered to file their respective memoranda within thirty (30) days from notice. For failure of both parties to file their respective memoranda, the case was deemed submitted for decision on May 16, 2005.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE PETITIONER COMPLIED WITH THE PROVISIONS OF SECTIONS 204 (C) AND 229 OF THE TAX REFORM ACT OF 1997.

II

WHETHER OR NOT THE PETITIONER'S UNAPPLIED OR UNUTILIZED INPUT TAXES FOR ALL THE QUARTERS OF 2000 ARE SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

III

WHETHER OR NOT THE SAID UNAPPLIED OR UNUTILIZED INPUT TAXES WERE CARRIED OVER TO SUCCEEDING QUARTERS AND APPLIED AGAINST ANY OF THE OUTPUT TAXES OF THE PETITIONER FOR THE SAID PERIOD.

IV

WHETHER OR NOT THE PETITIONER'S EXPORT SALES ARE SUBJECT TO THE VALUE ADDED TAX AT THE RATE OF ZERO PERCENT.

218

V

WHETHER OR NOT PETITIONER'S EXPORT SALES WERE PAID FOR IN ACCEPTABLE FOREIGN CURRENCY.

The foregoing issues raised by both parties boil down to the principal issue of whether or not petitioner is entitled to a tax refund.

<u>THE COURT'S RULING</u>

We find no reason to grant the tax refund prayed for by the petitioner.

Petitioner is registered with the Bureau of Internal Revenue as a VAT taxpayer pursuant to the requirements of then Section 107 of the National Internal Revenue Code (hereafter "NIRC"), as shown by the Certificate of Registration wherein it has been issued OCN 2RC0000007515 (*Annex "A"*). It is engaged in the manufacture, production and exporting of furniture. As such, petitioner claims that its export sales are subject to value added tax (VAT) at zero percent (%) rate under *Section 106 (A)(2)(a) of the NIRC*, which reads as follows:

> "(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export Sales. – The term 'export sales' means:

> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

In the course of its trade, petitioner accumulated input taxes on its domestic purchases of goods and services. In view of its zero-rated sale, substantial portion of said input taxes remained unutilized since petitioner is mostly engaged in export sale for which it does not generate output tax.

For the foregoing reason, petitioner seeks application of *Section 112(a) of the NIRC*, which provides for the right to refund or tax credits of input taxes. Pertinent portion of the above provision is provided hereunder, 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. x x x"

aul

220

Purportedly, petitioner has accumulated input taxes which remained unutilized in the absence of corresponding output taxes to offset it with. Thus, it is critical at this point to first determine whether petitioner has ably proved its zero-rated sales which justifies the absence of the output taxes.

Key Issue to be Resolved

This leads Us to the key issue of whether petitioner, in relation to its zero-rated sales, has complied with the invoicing requirements of the NIRC. The resolution of this issue must take precedence over the others since an adverse ruling to such effect renders the rest of the issues moot and academic.

While *Section 112 of the NIRC of 1997, as amended*, allows tax refund or credit of input tax of zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, however, certain invoicing requirements must be faithfully complied with before such claim for refund or credit can be granted.

Invoicing Requirements

Sections 113(A) and 237 of the NIRC lay down the invoicing requirements for VAT registered persons. More specifically, *Section 4-*

221

108-1 of Revenue Regulation No. 7-95 enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods by all VAT-registered persons. The pertinent portion thereof is quoted hereunder:

> "SEC. 4-108-1. ***Invoicing Requirements***.- All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. **the word "zero-rated" imprinted on the invoice covering zero-rated sales**; and
> 6. the invoice value or consideration. (Emphasis supplied)
>
> xxx xxx
>
> Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoices or receipts and this shall be considered as 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax."

The afore-quoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory

au

222

as the word "shall" is used. The word "shall" is imperative, commonly operating to impose an obligation or duty which may be enforced; it is a word of command that must be given a compulsory meaning (*Pimentel vs. Aguirre, Jr., citing Ruben A. Agpalo, Statutory Construction, 1990 Ed., p. 239*). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said memorandum circular.

In the case of *Compania General de Tabacos de Filipinas vs. Hon. Court of Appeals, et al., 426 SCRA 203*, the Supreme Court held that regulations issued by the BIR that would give effect to the law are valid regulations and ruled as follows:

> "We agree with petitioner that both Sections 137 and 141 of the former Tax Code allowed the sale of stemmed leaf tobacco without any prepayment of tax. We must stress, however, that a careful reading of the aforementioned provisions show that such sale is qualified by and is subject to "such conditions as may be prescribed in the regulations of the Department of Finance." Said conditions were provided for in Revenue Regulations Nos. V-39 and 17-67, which were issued to clarify and implement the foregoing provisions of the Tax Code. Hence, said provisions of the Tax Code must be read and interpreted in accordance with said regulations.
>
> x x x x x x
>
> Petitioner's arguments impugning the validity of Revenue Regulations Nos. V-39 and 17-67 deserve scant consideration. First, both regulations were issued pursuant to

223

> Section 245 (now Section 244) of the Tax Code. The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts. Second, our scrutiny of Revenue Regulations Nos. V-39 and 17-67 show that said regulations did not modify or deviate from the text of Sections 137 and 141 but merely implemented and clarified said two provisions by providing certain conditions under which stemmed leaf tobacco may be exempted from prepayment of specific tax."

A cursory examination of petitioner's official sales receipts (*Exhibits "AN-1 to 472","AO", "AP", "AQ", ""AR", "AT", "AS", and "AV"*) immediately reveal that the same do not bear the imprinted words "zero-rated" on the face thereof, in violation of *Section 4.108-1 of Revenue Regulation No. 7-95.*

<u>Failure to Comply with the Invoicing Requirements: Effects thereof</u>

Accordingly, *Revenue Memorandum Circular No. 42-2003* has clarified the issue relative to the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements. The pertinent portion of the said circular provides:

> "A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale

auc

224

> of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (*e.g.,* failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer."

Under said memorandum, failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant. Thus, if the claim for refund/issuance of tax credit certificate is based on the existence of zero-rated sales by the taxpayer, but fails to comply with the invoicing requirements in the issuance of sales invoices, such as the failure of a claimant-taxpayer to imprint the word "zero-rated" on the sale invoices or receipts, the claim for tax credit/refund of VAT on its sales shall be denied.

225

Rationale of Strict Compliance

Moreover, *Section 110 of the NIRC of 1997, as amended*, provides that: "Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: x x x." If the invoice or official receipt is not imprinted with "zero-rated", there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated. This is the rationale for the mandatory requirement in *Revenue Regulations No. 7-95* that the words "zero-rated" be imprinted in the invoice or receipt, as the case may be. The zero-rated taxpayer should be entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance with invoicing requirements under the regulations. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer.

226

Petitioner has Burden of Proof

Noteworthy of emphasis is that a claim for tax refund is in the nature of tax exemption. Laws granting tax exemption are construed *stricticissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who thus seek to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*Sea-Land Services, Inc. vs. Court of Appeals, 359 SCRA 441*).

Petitioner has the burden of proof to establish the factual basis of its claim for tax refund (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332*). Petitioner failed in this regard. The denial of the tax refund was petitioner's fault having failed to substantiate its claim for tax refund with sufficient evidence. The official receipts submitted by petitioner in violation of the invoicing requirements cannot be considered as valid proof of its zero-rated sales of goods for VAT purposes.

With the conclusion thus reached, We find no reason to tackle on the other issues raised in these petitions.

227

WHEREFORE, premises considered, the petitions are hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

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

228