REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CRESCENT PARK 6-24 PROPERTY HOLDINGS, INC.,
Respondent.

CTA EB NO. 1230
(CTA Case No. 8202)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, *JJ.*

Promulgated:

AUG 11 2016 11:45 a.m.

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DECISION

RINGPIS-LIBAN, J.

Before the Court En Banc is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) on October 15, 2014, praying that the Amended Decision[1] dated June 18, 2014 (Assailed Decision), and the Resolution[2] (Assailed Resolution) dated September 10, 2014 of the same Special First Division of the Court (Court in Division) be reversed and set aside.

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[1] Rollo CTA EB Case No. 1230, pp. 5018, with Annexes.
[2] Ibid. pp. 31-38.

THE FACTS

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

"Petitioner is a VAT-registered entity as evidenced by Bureau of Internal Revenue ("BIR") with Certificate of Registration No. 9RC0000236971 VAT and Taxpayer's Identification Number 007-080-781-000 VAT.

Petitioner was established to buy and acquire by purchase, lease or otherwise, lands, and interest in land and to own, hold, improve, promote, develop, subdivide and manage any land owned, held or occupied by the corporation or belonging to them, to construct, erect and manage or administer buildings such as condominiums, apartments, hotels, restaurants, stores or other structures now or hereafter erected on any land owned, held or occupied by the petitioner.

On October 18, 2008, petitioner purchased from 6-24 Property Holdings Inc. ("6-24 PHI"), a domestic corporation engaged in leasing of building spaces, two parcels of land *xxx* located at 30th and 31st Streets, Bonifacio Global City, Taguig City, each consisting of one thousand six hundred (1,6000) square meters or an aggregate area of three thousand two hundred (3,200) square meters and covered by Transfer Certificate of Title Nos. 1787-P and 17890-P, respectively, issued by the Registry of Deeds of Taguig City. As indicated in the Deed of Sale, the subject lands were sold for a total of P376,324,401 with a corresponding VAT of FORTY FIVE MILLION ONE HUNDRED FIFTY EIGHT THOUSAND NINE HUNDRED TWENTY EIGHT and 12/100 PESOS (P45,158,928.12). *xxx*

6-24 PHI is likewise registered with the Philippine Economic Zone Authority (PEZA) with Registration Certificate No. 07-03-f (IT) as ecozone Facilities Enterprise. It is operating at E-Square Information Technology Park Bonifacio Global City, Taguig City. *xxx*

Petitioner and 6-24 PHI, likewise, entered into a long term lease agreement whereby the entire subject lands were leased by petitioner to 6-24 PHI to be used by the latter for the purpose of building and/or maintaining thereon a PEZA-registered information technology building or facility. The lease is valid for twenty five years with automatic renewal for twenty five (25) years.

> Petitioner filed its application for tax credit certificate/refund for the unutilized VAT input taxes in the amount of FORTY FIVE MILLION ONE HUNDRED FIFTY EIGHT THOUSAND NINE HUNDRED TWENTY EIGHT and 12/100 PESOS (45,158,928.12) along with all supporting documents on July 26, 2010, with the Revenue District Office No. 47, East Makati."[3]

On December 16, 2010, Crescent Park 6-24 Property Holdings Inc. (Crescent) filed a Petition for Review before the Court in Division.

In the Answer[4], the CIR avers that the alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau; that the taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable; that Crescent's claim for refund or issuance of tax credit certificate in the amount of P45,158,928.12, as alleged unutilized input VAT for the 4th quarter to zero-rated sale of services, were not fully substantiated by proper documents, such as sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code; that Crescent's sales of goods and services to various alleged clients do not qualify as effectively zero-rate VAT; and that Crescent failed to comply with the conditions under Section 112 (A)(B)(C) of the 1997 Tax Code.

After trial on the merits and upon the submission of the parties' memorandum, the case was submitted for decision on December 20, 2012.[5]

On October 24, 2013, the Court in Division rendered its Decision[6] denying Crescent's Petition for Review on the reason that it failed to prove that the alleged sale of services to 6-24 is subject to zero-rating.

On November 29, 2013,[7] Crescent filed its "Motion for Reconsideration," praying that the decision be reversed and set aside.

On June 18, 2014,[8] the Court in Division rendered the questioned Amended Decision granting Crescent's Petition for Review. On July 3, 2014, the CIR filed a "Motion for Reconsideration, praying that the Decision dated October 24, 2013 be reinstated.

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[3] Docket, CTA Case No. 8202, pp. 6 – 8.
[4] Ibid. pp. 5-15, with Annexes.
[5] Ibid. Resolution page 732.
[6] Ibid. pp. 736- 752.
[7] Ibid. pp. 755-768, with Annexes.
[8] Ibid. pp. 798-807.

On September 10, 2014,[9] the Court in Division rendered the Assailed Resolution, denying for lack of merit the CIR's "Motion for Reconsideration."

Aggrieved, the CIR filed before the Court *En Banc* this Petition for Review.

In the Resolution[10] dated February 27, 2015, respondent Crescent was directed by the Court *En Banc* to file its comment in this case. On April 30, 2015, Crescent filed its "Comment/Opposition (To Petitioner's Compliance filed on February 4, 2015 and Petition for Review dated 14 October 2014)."

In the Resolution dated May 22, 2015,[11] the Court gave due course to the Petition for Review and ordered the parties to file their respective memoranda. Respondent Crescent filed its Memorandum on August 10, 2015.[12] Per Records Verification Report of the Judicial Records Division of this Court dated August 11, 2015,[13] the CIR failed to file her Memorandum.

In the Resolution[14] dated August 28, 2015, this case was deemed submitted for decision.

ISSUES

The issues for the Court *En Banc's* resolution are:

1. Whether the Court of Tax Appeals has no jurisdiction over the Judicial Claim for Refund/Tax Credit since Crescent Park filed its claim for refund as early as July 5, 2010 and not July 26, 2010;

2. Whether Crescent had no duly registered official receipts at the time the sales transaction was made; and

3. Whether the Court in Division erred in holding that Crescent Park 6-24 Property Holdings, Inc. is entitled to refund or issuance of tax credit certificate in the amount of Forty Five Million One Hundred Fifty Eight Thousand Nine Hundred Twenty Eight and 12/100 Pesos (P45,158,928.12) on

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[9] Ibid. pp. 828-835.
[10] Rollo, CTA EB No. 1230, pp. 8-9.
[11] Ibid pp. 111-112.
[12] Ibid. pp. 108-121.
[13] Ibid. page 122.
[14] Ibid. pp. 124-125.

its unutilized input VAT attributed to its zero-rated sale of services in 2008.

ARGUMENTS

Petitioner CIR argues that the administrative claim for refund filed on July 5, 2010 and the administrative claim for refund filed on July 26, 2010, both worded similarly, have legal effects that cannot be set aside by the Court; that respondent Crescent's allegation that the administrative claim for refund was filed on July 26, 2016 is false and inaccurate; that it was surprisingly discovered by petitioner's counsel that Crescent earlier filed a similar claim for refund on July 5, 2010 when Crescent submitted its formal offer of evidence; that the Court in Division failed to consider that the official receipts that Crescent issued to 6-24 PHI as proof of its alleged sales of services for the 4^{th} quarter of taxable year 2008 reveal that the Authority to Print BIR Permit, as appearing on the official receipts, was secured only on April 5, 2011; that at the time of the sales transactions were made, Crescent had no duly registered official receipts in violation of the invoicing requirement.

On the other hand, respondent Crescent argues that the Court has jurisdiction over the instant case; that the CIR is bound by her stipulations; that the issue of jurisdiction and prescriptive period to file claim for refund have been passed upon by the Court in Division; that the July 5, 2010 and July 26, 2010 administrative claims for refund pertain to two different taxable periods; that the period covered by the July 5, 2010 administrative claim is from January 1, 2009 to March 31, 2009, while the July 26, 2010 administrative claim is from October 1, 2008 to December 31, 2008; that raising the issue of jurisdiction over the subject matter at any stage of the proceedings is barred by estoppel; and the Court in Division has already declared that Crescent has properly substantiated its refund claim.

RULINGS OF THE COURT EN BANC

Jurisdiction of the Court

In its attempt to overturn the Court in Division's Amended Decision granting Crescent's claim for refund and the Resolution denying the CIR's Motion for Reconsideration, the CIR avers that there are legal effects in filing two administrative claims for refund. If the administrative claim for refund was filed on July 5, 2010, the CIR has 120 days within which to act on the application for refund. If the CIR does not act within the said 120 days, then the respondent has 30 days from the lapse of the 120 days within which to appeal the inaction to the Court of Tax Appeals (CTA). So, from July 5, 2010, the CIR has until November 2, 2010 within which to act on the application for refund. Thereafter, respondent has from November 2, 2010 or until December

2, 2010 within which to appeal to the CTA. In this case, Crescent filed its Petition for Review before the Court in Division on December 16, 2010.

In the proceedings before the Court in Division, the CIR, instead of presenting its evidence, executed a Supplemental Joint Stipulation of Facts,[15] wherein the parties admitted that:

> "1. On July 5, 2010, petitioner filed an application (BIR Form 1914) and letter request with the Revenue District Office (RDO) No. 47 – East Makati, of the Bureau of Internal Revenue for the issuance of tax credit certificate of its unutilized input VAT attributable to its zero-rated sales allegedly incurred in fourth quarter of 2008 and carried over to the first quarter of 2009, in the amount of Forty Five Million One Hundred Fifty Eight Thousand Nine Hundred Twenty Eight & 12/100 pesos (P45,158,928.12) xxx
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> 2. On July 16, 2010, petitioner filed a letter notice dated July 15, 2010 with the Revenue District Office (RDO) No. 47 of the Bureau of Internal Revenue formally withdrawing its application and letter request for the issuance of tax credit certificate filed on July 5, 2010. xxx
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> 3. On July 26, 2010, petitioner filed an application (BIR Form 1914) and letter request with the Revenue District Office (RDO) No. 47 – East Makati, of the Bureau of Internal Revenue for the issuance of tax credit certificate of its unutilized input VAT attributable to its zero-rated sales allegedly incurred in fourth quarter of 2008 in the amount of Forty Five Million One Hundred Fifty Eight Thousand Nine Hundred Twenty Eight & 12/100 pesos (P45,158,928.12) xxx
>
> 4. Petitioner filed its Amended Quarterly VAT Return for the third (3rd) quarter of 2010 on April 12, 2011 xxx"

Contrary to the position taken by the CIR, this Court ruled that the CIR is bound by her stipulations in the Supplemental Joint Stipulation of Facts dated August 14, 2012. The CIR admitted that the July 5, 2010 administrative claim was withdrawn and a new administrative claim was filed on July 26, 2010. Hence, the CIR cannot claim that the instant case was filed beyond the prescriptive period. Besides, it was already settled that the Court has jurisdiction over the instant case. As stated in the Decision, Assailed Amended Decision and Assailed Resolution, Crescent seasonably filed its Petition for Review:

[15] Docket, pp. 670-672, with Annexes.

Decision dated October 24, 2013:

> "It is admitted that the instant case pertains to a claim for refund of input VAT incurred in the 4th quarter of 2008. It is equally admitted that petitioner reported the alleged zero-rated sales only when the lease payments were received in the 1st quarter of 2009. Hence, the two-year prescriptive period should be reckoned from the end of the 1st quarter of 2009 or on March 31, 2009 when the alleged zero-rated sales were made. Counting from said date, petitioner had two years or until March 31, 2011 to file its administrative claim. Evidently, petitioner seasonably filed its administrative claim on July 26, 2010.
>
> Section 112 of the NIRC of 1997, as amended, also provides that respondent had one hundred twenty (120) days from filing to act on the claim. Upon receipt of the adverse decision or expiration of 120-day period, petitioner had thirty days to elevate the case to this Court.
>
> In the instant case, the 120-day period ended on November 23, 2010. Thus, petitioner had 30 days on until December 23, 2010 to file its judicial claim for refund. Clearly, the instant Petition for Review was also filed on time on December 16, 2010."[16]

Assailed Decision dated June 18, 2014:

> "As stated in the assailed Decision of October 24, 2013, both the administrative and the Judicial claims for refund/tax credit were seasonably filed by petitioner on July 26, 2010 and December 16, 2010, respectively, in accordance with the provision of Section 112 of the NIRC, as amended, and the ruling in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi).*"[17]

Assailed Resolution dated September 10, 2014:

> "It was never disputed that both the administrative and judicial claims for refund/tax credit were seasonably filed by petitioner on July 26, 2010 and December 16, 2010, respectively, in accordance with the provision of Section 112 of the NIRC of

[16] Decision, page 12.
[17] Amended Decision, page 23.

1997, as amended and the ruling in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi).*"[18]

Whether Crescent had duly registered official receipts at the time the sales transactions were made

The CIR claims that Crescent's lack of BIR's Authority to Print (ATP) at the time Crescent issued the receipts for the subject sales transactions is fatal to its claim for refund since it is tantamount to failure to comply with the mandatory invoicing requirements on documents supporting zero-rated sale of services.

After consideration, this Court finds the CIR's argument meritorious.

While it is true that printing the ATP on the invoices or receipts is not required since there is no law, rule or regulation requiring it, however, it is imperative that at the time the sales transactions were made, the receipts issued evidencing the zero-rated sales transactions must be duly registered official receipts.

To be entitled to refund or tax credit certificate, petitioner must comply with all the requisites for a VAT refund/tax credit of input tax paid attributable to zero-rated sales under Section 112(A) of the NIRC of 1997, as amended, to wit:

1) that there must be zero-rated or effectively zero-rated sales;
2) that input taxes were incurred or paid;
3) that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4) that the input taxes were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period.

To prove that the sales transactions are zero-rated for purposes of refund or tax credit, the taxpayer must prove compliance with the substantiation requirements provided in Section 113 (A) in relation to Sections 237 and 238 of the NIRC, as amended.

Sec. 113. ***Invoicing and Accounting Requirements for VAT-Registered Persons.-***

[18] Resolution, page 4.

(A) Invoicing Requirements – A VAT – registered person shall issue:

xxx

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter, or exchange of services.

Sec. 237. ***Issuance of Receipts or Sales or Commercial Invoices. –***

All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and designation of merchandise or nature of service: *Provided however,* That where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.

Sec. 238. ***Printing of Receipts or Sales or Commercial Invoices.***

All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

All persons who print receipt or sales or commercial invoices shall maintain a logbook/register of taxpayer who availed of their printing services. The logbook/register shall contain the following information:

(1) Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices are printed; and
(2) Number of booklets, number of sets per booklet, number of copies per set and the serial number of the receipts or invoices in each booklet.

An examination of Exhibits "GG-1" to "GG-12" reveals that there were no duly registered official receipts at the time the zero-rated sales transactions were made because the ATP appearing on the receipts were secured on "4/5/2011" or April 5, 2011. It appears that the subject transactions occurred long before Crescent was able to secure from the BIR an authority to print the subject receipts. Hence, the issuance of the subject receipts is an afterthought of the transactions made in 2009. To illustrate:

Petitioner's Exhibits	Official Receipts Number	Date of transaction	Date of Authority to Print/BIR Permit
"GG-1"	OR No. 0003	2/17/2009	4/5/2001
"GG-2"	OR No. 0004	6/2/2009	4/5/2011
"GG-3"	OR No. 0005	6/11/2009	4/5/2011
"GG-4"	OR No. 0006	6/11/2009	4/5/2011
"GG-5"	OR N0. 0007	4/30/2009	4/5/2011
"GG-6"	OR No. 0008	5/10/2009	4/5/2011
"GG-7"	OR No. 0009	9/11/2009	4/5/2011
"GG-8"	OR No. 00010	10/1/2009	4/5/2011
"GG-9"	OR No. 00011	11/1/2009	4/5/2011
"GG-10"	OR No. 00012	12/1/2009	4/5/2011
"GG-11"	OR No. 00013	1/27/2010	4/5/2011
"GG-12"	OR No. 00014	1/28/2010	4/5/2011

In the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. CIR,*[19] the Supreme Court ruled that:

"**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 invalidation of the invoices or receipts for purposes of claiming a refund.

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[19] G.R. No. 172378, January 17, 2011.

ATP must be secured from the BIR

But while there is no law requiring the ATP to be printed on the invoices or receipt, Section 238 of the NIRC expressly requires persons engaged in business to 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."

The absence of BIR's ATP at the time of sales transactions in 2009, is fatal to Crescent's claim for refund since it is tantamount to non-compliance with the mandatory invoicing requirements on documents supporting the sale of goods and services.

Therefore, Crescent was not able to satisfy the legal requirements for its entitlement to refund/tax credit.

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[20] In this case, Crescent was not able to prove that it is entitled to a refund or issuance of a tax credit certificate for its unutilized input VAT attributed to its zero-rated sale of services in 2008 in the amount of Forty Five Million One Hundred Fifty Eight Thousand Nine Hundred Twenty Eight and 12/100 Pesos (P45, 158, 928.12).

WHEREFORE, the Petition for Review is **PARTIALLY GRANTED.** The Court has jurisdiction over the instant case. However, Crescent Park 6-24 Property Holdings, Inc.'s petition for refund is denied. Accordingly, the Amended Decision dated June 18, 2014 and Resolution dated September 10, 2014 are reversed.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

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[20] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

AMELIA R. COTANGCO – MANALASTAS
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.

ROMAN G. DEL ROSARIO
Presiding Justice