Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION
****

PHILEX MINING CORPORATION,
Petitioner,

C.T.A. CASE NO. 7657

- versus -

Members:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 12 2009 3:55pm

x - x

DECISION

CASANOVA, *J.*

Before Us is a Petition for Review by Philex Mining Corporation, filed on July 13, 2007, seeking for the approval of its application for, and the issuance of, Value Added Tax (VAT) refund, in the amount of P6,332,598.23 as excess input VAT for the 2nd quarter of 2005 paid on its purchases of taxable goods and services allegedly attributable to zero-rated sales of its mineral products.

Petitioner, Philex Mining Corporation, is a VAT-registered corporation organized under Philippine laws with principal office at 27 Brixton St., Pasig City with VAT Registration Certification No. 35-6-000731 dated October 29, 1997.[1] It is engaged in the mining business, the exploration of mine properties, and the commercial production and marketing of mine products.[2]

Respondent, on the other hand is the government official charged with the administration and enforcement of the national internal revenue tax laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the Tax Code, with address at the BIR National Office, Diliman, Quezon City.[3]

Petitioner's application for zero-rating pursuant to Section 4.100-3 of Revenue Regulations No. 7-95 (RR 7-95) was approved on April 12, 1998.[4] Since petitioner's sales were deemed zero-rated, petitioner alleged that there was no output VAT against which it could apply or use its input taxes incurred for the 2nd quarter of 2005 [5].

For the 2nd quarter of 2005, petitioner filed its original VAT return on July 26, 2005 and the amended return on December 1, 2005 which reported total zero-rated sales of P1,335,044,466.98, domestic purchase of goods of P825,912.30 with corresponding input tax of P82,591.23, and importation of goods of P62,500,070.00 with corresponding input tax of P6,250,007.00[6].

Relying on Section 4.106-2 of RR 7-95, petitioner filed its claim for refund/tax credit with the One Stop Shop Center of the Department of Finance

[1] Stipulation of Facts and Issues (SFI), Par. 2, p. 37.
[2] Ibid, Par. 1.
[3] Petition for Review, Rollo p. 1.
[4] Supra, note 1.
[5] Ibid, Par. 3.
[6] Ibid., Par. 3, Rollo, pp. 37-38.

on March 20, 2006, in the amount of P6,332,598.23. Respondent has not acted upon petitioner's claim for refund for which reason petitioner filed the instant petition before Us on July 13, 2007.

In response to the Petition for Review, respondent stipulated the following Special and Affirmative Defenses[7]:

> "6. The claim for refund is still under examination by the respondent's Bureau;
>
> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
>
> 8. The grant of claim for refund [is] tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

Petitioner presented evidence in support of its claim and even commissioned an Independent Certified Public Accountant to prove its allegations. Respondent submitted the case for decision on the ground that the One Stop Shop Inter-Agency Tax Credit and Duty Drawback of the Department of Justice has not replied as to the status of the investigation on petitioner's claim for refund.[8]

---

[7] Answer, Rollo, pp. 20-22.
[8] Resolution, Rollo, p. 157.

Upon receipt of petitioner's Memorandum on August 26, 2008, the instant petition was submitted for decision[9] on October 7, 2008, *sans* respondent's Memorandum.

As agreed upon by the parties, the issues are as follows[10]:

> "1. Whether or not [p]etitioner's importation of capital goods, and domestic purchases and importations of goods which are attributable to its export sales for the 2nd quarter of 2005, are duly supported by documentary evidence[;]
>
> 2. Whether [p]etitioner made direct and indirect exports of mineral products during the same period[;]
>
> 3. Whether or not the accumulated or excess input VAT was not utilized or applied by [p]etitioner against output VAT in the 2nd quarter or in the succeeding quarters or taxable years[;]
>
> 4. Whether or not the export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas[;]
>
> 5. Whether or not [p]etitioner is entitled to the refund of the excess input taxes in the total amount of Php 6,332,598.23 for the 2nd quarter of 2005 paid for the purchase of capital goods and/or non-capital goods and services due to [p]etitioner being a producer and exporter of mineral products."

The main issue to be resolved is whether or not petitioner is entitled to a refund in the amount of P6,332,598.23 representing excess input VAT for the 2nd quarter of 2005.

[9] Resolution, Rollo, p. 184.
[10] SFI, Rollo, p. 39.

Petitioner filed its claim under Section 112 (A) of the National Internal Revenue Code of 1997 (1997 NIRC), it is stated that:

> "**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: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Based on the afore-quoted provisions of Section 112 (A), in order to be entitled to a refund/ tax credit of unutilized input VAT, the following requisites must be complied with:

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

Prior to the determination of petitioner's entitlement to refund and substantiation of its claim, this Court finds it imperative to decide whether or not petitioner met the requirements of prescription.

In its Petition for Review, petitioner alleged that its "[p]etition is being filed within the two-year period of limitation for the recovery of erroneously or illegally collected internal revenue tax under Sec. 229 of the Tax Code, and under the above-mentioned Sec. 4.106.2(c) of RR No. 7-95.[11]"

For convenience, Section 229 of the 1997 NIRC and Section 4.106.2(c) are reproduced hereunder:

> "**SECTION 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 therefore, 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."
>
> (Emphasis supplied)

---

[11] Petition for Review, par. 14, Rollo, p. 4.

"**SECTION 4.106-2.** ***Procedures for claiming refunds or tax credits of input tax —***

xxx xxx xxx

(c) Period within which refund or tax credit of input taxes shall be made. — In proper cases, the Commissioner shall grant a tax credit/refund for creditable input taxes within sixty (60) days from the date submission of complete documents in support of the application filed in accordance with subparagraphs (a) and (b) above.

In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of said denial, otherwise the decision will become final. However, if no action on the claim for tax credit/refund has been taken by the Commissioner of Internal Revenue after the sixty (60) day period from the date of submission of the application but before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter, the taxpayer may appeal to the Court of Tax Appeals." (Emphasis supplied)

From the above-cited provisions, a taxpayer is given two (2) years from the payment of a tax or liability, regardless of any supervening event, to file its claim for refund. The claim should first be filed before the Commissioner who shall decide the same within sixty (60) days. If the Commissioner denies the claim, the taxpayer has thirty (30) days from receipt of denial to appeal before this Court; if the Commissioner did not act on the claim within the sixty-day period, the taxpayer may go directly to the Court of Tax Appeals provided that it is still within the two years mandated by Section 229.

Despite the foregoing, We rule that the instant Petition is filed out of time. a

In a recent case decided by the Supreme Court entitled ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) G.R. No. 172129, September 12, 2008***, the High Court has settled that in determining the two-year period for the filing of a claim for VAT-refund, the reckoning date should be the end of the taxable quarter as stipulated in Section 112(A) of the 1997 NIRC and not as stipulated in Section 229 of the 1997 NIRC.

The pertinent portion of the *Mirant Case* provides that:

> "The next question is, whether or not MPC is entitled to a refund or a TCC for the alleged unutilized input VAT of PhP135,993,570 covered by OR No. 0189 which sufficiently proves payment of the input VAT.
>
> We answer the query in the negative.
>
> **Claim for refund or tax credit filed out of time**
>
> The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112 (A) of the NIRC pertinently reads:
>
>> (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 <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: . . . . (Emphasis ours.)
>
> **The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not. As the CA aptly puts it, albeit it**

erroneously applied the aforequoted Sec. 112 (A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued'. Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.** Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.

Reckoning for prescriptive period under Secs. 204 (C) and 229 of the NIRC inapplicable

To be sure, MPC cannot avail itself of the provisions of either Sec. 204 (C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefore. Secs. 204 (C) and 229 respectively provide:

xxx xxx xxx

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes."

(Emphasis supplied)

It is thus clear that where the claim for refund involves value added taxes, the governing provision is Section 112(A), which states that the claim must be filed within two years from the close of taxable quarter. The periods provided in Section 229 applies only where the claim involves erroneous payment or illegal collection of internal revenue taxes.

Going now to the instant petition, the claim for refund involves input VAT incurred for the 2^{nd} quarter of 2005. The questioned quarter ends on June 30, 2005, from which the two year-period to file the refund claim in the administrative and judicial levels is reckoned. The two-year period ends on July 2, 2007.

Upon review, records show that petitioner's administrative claim was within the prescriptive period as it was filed on March 20, 2006. However, the judicial claim before this Court was filed only on July 19, 2007, which falls outside prescription. Thus, applying the case of *Mirant,* petitioner is already barred from making a refund claim.

This Court is bound by the principle of *Stare decisis et non quieta movere*-stand by the decision and disturb not what is settled. As repeatedly held by the Supreme Court:

> ". . . [U]nder the doctrine of *stare decisis*, once a point of law has been established by the court, that point of law will, generally, be followed by the same court and by all courts of lower rank in subsequent cases where the same legal issue is raised. *Stare decisis* proceeds from the first principle of justice that, absent powerful countervailing considerations, like cases ought to be decided alike." [12]

[12] *CDCP Coporation vs. Commissioner of Internal Revenue and The Court of Appeals*, G.R. No. 122213, July 28, 2005, citing the case of *Ayala Corp. vs. Rosa-Diana Realty Corp., G.R. No. 134284*, December 1, 2000, 346 SCRA 663, 67.

Stare decisis obligates this Court to observe the doctrine of the *Mirant Case.* Thus, We have no other recourse but to deny petitioner's claim for refund.

WHEREFORE, the instant Petition for Review is hereby **DENIED** on the ground of **PRESCRIPTION**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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