REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

NORTHWIND POWER DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9887

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, and
MANAHAN, *JJ.*

Promulgated:

SEP 1 3 2019 ; 11:31 am

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RESOLUTION

For the Court's resolution is respondent's **Motion for Reconsideration Re: Resolution dated 10 June 2019**, filed on July 2, 2019, with petitioner's **Comment/Opposition [Re: Motion for Reconsideration dated July 2, 2019]**, filed on August 1, 2019.

The dispositive portion of the assailed Resolution reads:

> **WHEREFORE**, petitioner's *Motion to Withdraw* is hereby **GRANTED**. Accordingly, the Petition for Review filed on July 25, 2018 is **DISMISSED**, and the case is considered **CLOSED** and **TERMINATED**. The VAT Refund/Credit Notice dated May 11, 2018 is **DECLARED** final and executory. No further pleadings or motions shall be entertained herein.
>
> **SO ORDERED.**

In his motion, respondent states that while he did not object on petitioner's withdrawal of the petition for review, he maintains his counterclaim against petitioner. Respondent contends that the Court should have resolved the merits of his counterclaim citing Section 2, Rule 17 of the Rules of Court, *viz*:

> SEC. 2. *Dismissal upon motion of plaintiff.* – Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court.

In his Answer with Counterclaim, respondent argues that petitioner's claim for refund in the total amount of ₱20,083,953.55 should be entirely denied, which the Excise Large Taxpayer Audit Division mistakenly granted in the amount of ₱16,472,943.38.

Respondent thus prays that the June 10, 2019 Resolution be reversed and set aside, and a new one be entered resolving his counterclaim declaring that petitioner is not entitled to the entire claim of ₱20,083,953.55 for taxable year 2016.

Petitioner counters, among others, that respondent's act of denying its claim and retroactively applying its decision is prejudicial to it. It invokes Section 246[1] of the National Internal Revenue Code

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[1] SEC. 246. *Non-retroactivity of Rulings.* – Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

(NIRC) and claims that it did not fall under any of the exceptions where retroactive application of the ruling is allowed. Moreover, petitioner avers that the Bureau of Internal Revenue (BIR) already issued a check in the amount of ₱14,932,179.38[2] payable to petitioner as partial payment of its VAT refund and this refund was granted because of the BIR's factual findings, based on petitioner's supporting documents, as well as both parties' understanding and interpretation of the tax laws. Further, petitioner contends that it believed in good faith that the signatory to the decision has the delegated authority allowed by law.

The instant motion for reconsideration is bereft of merit.

A counterclaim is any claim which a defending party may have against an opposing party.[3] A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. **Such a counterclaim must be within the jurisdiction of the court** both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counter-claim may be considered compulsory regardless of the amount.[4]

From the foregoing, before the Court can entertain respondent's counterclaim, the claim must be within its jurisdiction.

However, the Court finds that it has no jurisdiction over respondent's counterclaim.

In this case, the administrative claim for VAT refund for the taxable year 2016 was allegedly filed on March 22, 2018[5], hence, the provisions of Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) shall govern.

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2 Copy of which is attached as Annex "A" to petitioner's Comment/Opposition [Re: Motion for Reconsideration dated July 2, 2019].
3 Section 6, Rule 6, Rules of Court.
4 Section 7, Rule 6, Rules of Court.
5 Par. 6, Petition for Review, docket, p. 11; Annex "P-2", Petition for Review, docket, vol. I, pp. 71-76.

It should be noted that what is appealable to this Court is the decision denying the claim for VAT refund as provided in Section 112(C) of the NIRC of 1997, as amended by RA No. 10963, to wit:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
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> **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code. (*Emphasis supplied*)

As held by the Supreme Court in the case of *Team Sual Corporation (formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue*[6], it is the **denial or inaction "deemed a denial" which the taxpayer-claimant takes to the Court of Tax Appeals (CTA) for review**. Without any 'decision,' the CTA as a court of special jurisdiction acquires no jurisdiction over a taxpayer-claimant's judicial claim for refund.

Hence, the Court cannot resolve respondent's counterclaim pertaining to the approved portion of VAT refund as an appeal thereto was not specifically mentioned in the law. The CTA, being a

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[6] G.R. Nos. 201225-26, 201132 & 201133, April 18, 2018 (applied by analogy considering that law applicable in the said case is the NIRC prior to its amendment by RA No. 10963).

court of special jurisdiction, can only take cognizance of such matters as are clearly within its jurisdiction.[7]

Moreover, respondent's counterclaim must be dismissed for failure to exhaust administrative remedies.

Under the doctrine of exhaustion of administrative remedies, recourse through court action cannot prosper until after all such administrative remedies have first been exhausted. If remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts. It is settled that non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.[8]

It should be noted that the VAT Refund Notice[9] issued by Assistant Commissioner Teresita M. Dizon of the Large Taxpayers Service informing petitioner of the total amount allowable for VAT Refund states as follows:

> The approved report on the said claim may be subjected to audit/investigation and should there be material findings, the amount allowable may be adjusted and/or an assessment notice may be issued for the collection of any deficiency tax or excess tax credit.

Hence, it was improper for respondent to reverse its decision in the form of a counterclaim. In accordance with Revenue Memorandum Circular (RMC) No. 17-18[10], respondent's remedy, if he believes that the Assistant Commissioner of the Large Taxpayers Service indeed erroneously granted the amount of ₱16,472,943.38, is to subject the petitioner to an audit/investigation and to issue an assessment notice, if necessary.

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[7] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.),* G.R. No. 169778, March 12, 2014.

[8] *Lihaylihay vs. The Treasurer of the Philippines Roberto C. Tan, et al.*, G.R. No. 192223, July 23, 2018 citing *Teotico vs. Baer*, G.R. No. 147464, June 8, 2006.

[9] Annex "P-3", Petition for Review, docket, vol. I, p 79.

[10] SUBJECT: Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN), February 27, 2018.

Further, respondent cannot simply reverse its decision and set it up as a counterclaim without offending due process. He had the full opportunity at the administrative level to review petitioner's claim for refund and in fact partially granted the claim through his Assistant Commissioner. Official duties are presumed to have been regularly performed.[11] Hence, it is presumed that petitioner's claim for refund was processed in accordance with RMC No. 17-18.

The general rule is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. However, estoppel should not be invoked except in a rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing.[12]

Indeed, the government is not estopped from questioning the approved portion of petitioner's VAT refund even if payment has already been received. However, respondent should observe due process and abide by the BIR's own administrative rules and cannot resort to this short-cut of reversing his own decision through a counterclaim. To allow respondent's counterclaim to subsist would put taxpayers at a disadvantageous position where they would be forced to settle with the partial grant at the administrative level lest the Commissioner of Internal Revenue would capriciously reverse his decision via a counterclaim every time an appeal on the partial denial is made.

Thus, the Court holds that respondent's counterclaim is likewise dismissed.

WHEREFORE, respondent's **Motion for Reconsideration Re: Resolution dated 10 June 2019** is **DENIED** for lack of merit.

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[11] Section 3(m), Rule 131 of the Rules of Court.
[12] *Republic of the Philippines vs. Court of Appeals, et al.*, G.R. No. 116111, January 21, 1999.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice