REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1178
(CTA Case No. 8218)

Present:

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

Promulgated:
MAY 19 2015
3:44 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Assailed in the Petition for Review are a) the Decision dated December 6, 2013 dismissing the Petition for Review and b) the Resolution dated April 29, 2014 denying Coca-Cola Bottlers Philippines, Inc.'s Motion for Reconsideration for lack of merit in CTA Case No. 8218.

THE FACTS

The pertinent facts as found by the Court in Division are as follows:

> Petitioner Coca-Cola Bottlers Philippines, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office located at No. 1980 Paz Guazon Street, Paco, Manila, and is primarily engaged in the business of manufacturing and selling at wholesale, beverages such as Coca-Cola, Sprite, Royal True Orange, Minute Maid, etc. It is a VAT-registered taxpayer with Tax Identification Number 000-112-104-000. On January 1, 2005, petitioner was issued a Permit to Adopt Computerized Books of Accounts with System Generated Accounting Records (No. 0105-116-00020-CBA/AR) by the Bureau of Internal Revenue (BIR).
>
> Respondent Commissioner of Internal Revenue is an official of the Republic of the Philippines authorized to, among others, refund or credit taxes, pursuant to Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Diliman, Quezon City.
>
> Petitioner filed its Monthly VAT Declarations for the months of October 2008 and November 2008 on November 24, 2008 and December 24, 2008, respectively.
>
> On January 26, 2009, petitioner filed its Quarterly VAT Return for the quarter ended December 31, 2008.
>
> Subsequently, on May 27, 2009, Zenaida G. Garcia, OIC-ACIR, Large Taxpayers Service of the BIR, issued Letter of Authority No. 2007-00049455, authorizing certain Revenue Officers to examine the books of accounts and other accounting records of petitioner for the period January 1, 2008 to December 31, 2008. Said

Letter of Authority was received by petitioner on June 2, 2009.

During the quarter ended December 31, 2008, due to inadvertence of petitioner's employees, there was an instance when details of official receipts from the suppliers/service providers of petitioner were not uploaded in its computerized accounting system. Petitioner believes that the effect thereof is that there was an erroneous overpayment of VAT for the said quarter in the amount of ₱111,177,395.70.

Petitioner considered amending its Quarterly VAT Return for the quarter ended December 31, 2008, and its Monthly VAT Declarations for October and November 2008 to correct the supposed over/erroneous payment; **but allegedly prevented from doing so in view of the said Letter of Authority issued by the BIR against petitioner.**

On January 21, 2011, petitioner filed an Application for Tax Credits/Refunds (BIR Form No. 1914), and a letter request with the LT Regular Audit Division I of the BIR for the refund or issuance of tax credit certificate of the supposed erroneously paid VAT in the amount of ₱111,177,395.70, for the quarter ended December 31, 2008.

Petitioner filed the present Petition for Review on January 25, 2011; while Respondent filed her Answer on March 23, 2011.[1]

Respondent in essence interposed the following special and affirmative defenses:

That taxes collected are presumed to be in accordance with laws and regulations; that a claim for

[1] Rollo, p. 67.

refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim; that petitioner must prove compliance with the requisites in Sections 204 and 229 of the 1997 NIRC, as amended, to be entitled to the claim for refund of VAT erroneously or illegally collected; that petitioner is barred from amending its VAT return for the quarter ended December 31, 2008 by reason of the issuance of the Letter of Authority; that since tax refunds are regarded as tax exemptions and these are to be construed *strictissimi juris* against the person or entity claiming the exemption.[2]

On December 6, 2013, the Court in Division denied the Petition for Review.[3] It ruled that neither Section 112 nor Section 229 of the 1997 NIRC, as amended, is applicable. Hence, petitioner is disqualified to the refund claim or tax credit.

Dissatisfied, petitioner moved for the reconsideration of the Decision dated December 6, 2013 which the Court in the Resolution dated April 29, 2014 denied for lack of merit.[4]

THE GROUNDS

Petitioner appealed the case by way of a Petition for Review before the Court *en banc* only as to the substantiated amount of ₱48,573,188.23, and raised the following assignment of errors:

1. The CTA Special First Division erred in failing to consider that the amount of VAT being refunded by petitioner is "output VAT" and not "input VAT".

2. The CTA Special First Division erred in failing to consider that Section 229 and not Section 112 of the NIRC of 1997 is applicable to petitioner's claim for refund/tax credit. 9r

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[2] Rollo, pp. 67-72.
[3] Rollo, pp.65-84.
[4] Rollo, pp. 5-14.

> 3. The CTA Special First Division erred in failing to consider that Petitioner is prohibited from amending its Quarterly VAT Return for the quarter ended December 31, 2008 to include the input tax inadvertently omitted in the said VAT Return because of the Letter of Authority issued by the Bureau of Internal Revenue.
>
> 4. The CTA Special First Division erred in failing to consider that the government will be unjustly enriched at the expense of the petitioner if the output VAT erroneously paid is not refunded to the petitioner.
>
> 5. The CTA Special First Division erred in failing to consider that the instant claim for refund shall not be construed in "*strictissimi juris*" against the petitioner.[5]

In compliance with the Resolution dated October 15, 2014, respondent filed her Memorandum on December 9, 2014. Petitioner on the other hand, manifested that it will be adopting the facts and arguments in the Petition for Review as its Memorandum. Thereafter, the case was submitted for decision.

THE COURT'S RULING

INPUT VAT, AND NOT OUTPUT VAT IS THE SUBJECT OF THE REFUND CLAIM OR TAX CREDIT.

In its Quarterly VAT Return[6] for the quarter ended December 31, 2008, petitioner reflected an output tax due of ₱1,488,109,013.33 which was offset against the allowable input tax of ₱1,167,479,241.49 leaving a net output tax payable of

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[5] Rollo, p. 23.
[6] Exhibit "E".

₱320,629,771.84 which was paid through the BIR's Electronic Filing and Payment System (EFPS) on November 24, 2008, December 24, 2008 and January 26, 2009 in the respective amounts of ₱20,185,909.05[7], ₱138,794,279.00[8] and ₱161,649,582.22[9]:

Vatable Sales/Receipts	₱12,400,908,444.42
Zero-Rated Sales/Receipts	33,238,944.27
Total Sales/Receipts	₱12,434,147,388.69
Output Tax Due	₱ 1,488,109,013.33
Less: Allowable Input Tax	
Input Tax Carried Over from Previous Quarter	-
Input Tax Deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter	₱ 469,013,117.43
Total	₱ 469,013,117.43
Current Transactions	
Purchase of Capital Goods exceeding ₱1Million	₱ 82,367,812.99
Domestic Purchase of Goods Other than Capital Goods	714,957,777.98
Importation of Goods Other than Capital Goods	126,584,248.00
Domestic Purchase of Services	292,310,112.98
Total	₱ 1,216,219,951.95
Total Available Input Tax	₱ 1,685,233,069.38
Less: Deductions from input tax	
Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	517,753,827.89
Total Allowable Input Tax	₱ 1,167,479,241.49
Net VAT Payable	₱ 320,629,771.84

Jr

7 Exhibit "C-1".
8 Exhibit "D-1"
9 Exhibit "E-1".

Less: Tax Credits/Payments	
Monthly VAT Payments – previous two months	158,980,189.62
Tax Still Payable	**₱ 161,649,582.22**

Petitioner alleges that the amount of VAT being refunded by petitioner is "output VAT" and not "input VAT".

Petitioner asserts that it erroneously paid output VAT (or excess Output over Input Tax) for the quarter ended December 31, 2008 in the total amount of P320,629,771.84 instead of P209,452,376.19. The alleged erroneous overpayment of output VAT occurred when its employees inadvertently failed to apply a certain amount of input tax in the computation of its output VAT for the said quarter resulting to overstatement of output VAT (or excess output over input tax) in the amount of ₱111,177,395.70 detailed as follows:

	Output Tax Due Per VAT Return	**Output Tax Due Should Be**
OUTPUT TAX	**₱1,488,109,013.33**	**₱ 1,488,109,013.33**
Less: Allowable Input Tax		
Input Tax Carried Over from Previous Quarter	-	-
Input Tax Deferred on Capital Goods from Previous Quarter	₱ 469,013,117.43	₱ 469,013,117.43
Input Tax on Purchase of Capital Goods Exceeding 1Million	82,367,812.99	82,367,812.99
Input Tax on Domestic Purchases of Goods Other Than Capital Goods	714,957,777.98	714,957,777.98
Input Tax on Importation of Goods Other Than Capital Goods	126,584,248.00	126,584,248.00
Input Tax on Domestic Purchases of Services:		
1. Paid Upon presentation of the Invoice	47,700,176.80	47,700,176.80
2. Purchased on Credit and paid during the quarter	244,609,936.18	355,787,331.88
TOTAL AVAILABLE INPUT TAX	**₱1,685,233,069.38**	**₱ 1,796,410,465.08**
Less: Input Tax on purchases of Capital Goods exceeding P1Million deferred for the succeeding period	517,753,827.89	517,753,827.89
TOTAL ALLOWABLE INPUT TAX	**1,167,479,241.49**	**1,278,656,637.19**

VAT PAID/SHOULD BE PAID	**₱ 320,629,771.84**	**₱ 209,452,376.14**
Value Added Tax (VAT) paid per VAT Return		₱ 320,629,771.84
Less: Value Added Tax (VAT) that should be paid for the quarter		209,452,376.14
Over/Erroneously Paid VAT for the Quarter		**₱ 111,177,395.70**

Petitioner alleges that since the input VAT was understated due to accounting error of the company's employees, it follows that the output VAT for the quarter was overstated. Thus, the output VAT actually paid was more than what should have been paid.

The Court disagrees with petitioner's posture.

Section 110 of the NIRC of 1997, as amended, defines output and input taxes as, follows:

> "The term **'input tax'** means the value-added tax due from or paid by a VAT - registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.
>
> "The term **'output tax'** means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code."

Output tax refers to those liable for payment of VAT under Section 105 of the NIRC of 1997, as amended[10]; while input VAT, on the other hand, refers to amount creditable against the output tax under Section 110 (A)[11] of the same code. Thus, input taxes from

[10] "SEC. 105. *Persons Liable.* - Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code. *xxx*"
[11] SEC. 110. *Tax Credits.-*

certain transactions evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, shall be creditable against the output tax. **If at the end of any taxable quarter, the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. On the other hand, if the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters.**[12]

In the instant case, not considering certain input taxes in the computation of output taxes will definitely result in higher payment of output tax. The fact that the claimant is seeking before this Court to recognize input taxes inadvertently excluded and by simply applying input tax credit against output VAT, it is availing of the creditable input tax mechanism under Section 110 of the 1997 NIRC, as amended. It was incorrect for petitioner to treat the refund claim as output tax because an unreported or unclaimed input tax does not automatically become output tax.[13]

The Court in Division correctly observed that:

> As can be gleaned above, the comparative figures for the *"Output Tax"*, and every comparative figures under the *"Allowable Input Tax"* remained constant, except for the *"Input Tax on Domestic Purchases of Services" — "Purchased on credit and paid during the quarter"*, which shows a difference of ₱111,177,395.70 (₱244,609,936.18 less ₱355,787,331.88). Thus, there can be no doubt that the supposed *"Difference"* between the *"VAT Paid/Should Be Paid"* (₱320,629,771.84 less ₱209,452,376.14) in the same amount of ₱111,177,395.70 have arisen only because of the alleged unreported or unclaimed input tax on *"Input Tax on Domestic Purchases of Services" — "Purchased on credit and paid during the quarter"*. Consequently, **the amount being claimed for refund or tax credit is, in reality,** Je

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(A) Creditable Input Tax. –

(1) 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: xxx

[12] See *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, CTA EB Case No. 1100, March 10, 2015 and *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7951, November 20, 2013.

[13] See *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, CTA EB Case No. 1100, March 10, 2015.

merely part of petitioner's input tax for the fourth quarter of 2008.[14] (Emphasis supplied.)

Clearly, undeclared input VAT is subject of the refund claim/tax credit.

SECTIONS 229 AND 112 OF THE 1997 NIRC, AS AMENDED, ARE INAPPLICABLE TO THE CASE AT BAR.

Petitioner further asserts that Section 229, and not Section 112, of the 1997 NIRC, as amended, is applicable to petitioner's claim for refund/tax credit.

Petitioner alleges that it overpaid output VAT because it erroneously failed to apply certain amount of input tax in the computation of its output VAT payable for the quarter ended December 31, 2008. Section 112 of the 1997 NIRC is inapplicable because this provision pertains to claims for refund/tax credit of unutilized input tax attributable to zero-rated sales.

Respondent insists that petitioner mistakenly anchored its claim under Sections 204 (c) and 229 of the 1997 NIRC in its futile attempt to convince the Honorable Court of its entitlement to the refund claim.

Petitioner's assertions deserve scant consideration.

Section 112 of the 1997 NIRC, as amended, specifically deals with "refunds or tax credits of input tax", in contrast with Section 229 which pertains to "recovery of tax erroneously or illegally collected".

"SEC. 112. **Refunds or Tax Credits of Input Tax**. — *jc*

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[14] Rollo, p.79.

"(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 sale 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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

(B) *Cancellation of VAT Registration.* — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner 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 Subsection (A) hereof. *Jr*

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

xxx xxx xxx."

The Supreme Court further elaborated in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[15] why an excessively collected input VAT cannot be within the purview of Section 229 but under Section 112 of the 1997 NIRC, as amended, as ruled in this manner:

> **The input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper.** The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person — the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System. In such event, the second VAT-registered

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[15] G.R. Nos. 187485, 196113 and 197156, February 12, 2013, 690 SCRA 336.

taxpayer will have no input VAT to offset against his own output VAT.

xxx xxx xxx

Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax "erroneously, xxx illegally, xxx excessively or in any manner wrongfully collected." The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact "excessively" collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229. (Emphasis supplied.)

Going back to Section 112 of the 1997 NIRC, as amended, there are only two (2) instances when **excess input taxes** may be claimed for refund and/or issuance of tax credit certificate:

1. When the claimant is a VAT-registered person, whose sales are zero-rated or effectively zero-rated under Section 112(A); and

2. when the VAT registration of the claimant has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106 [under Section 112(B)].

The instant case does not qualify under the aforementioned circumstances under Section 112.

The Court-commissioned Independent CPA (ICPA)[16], who verified petitioner's voluminous documents supporting its claimed input taxes of ₱111,177,395.70 on purchases of services on credit,

[16] Ms. Katherine O. Constantino, Partner of Constantino Guadalquiver & Co.

found that only the amount of ₱48,573,188.23 is properly supported by VAT official receipts.[17]

The substantiated claimed input taxes of ₱48,573,188.23 for the fourth quarter of 2008 were recorded in petitioner's books of accounts but were not reported in its VAT return due to alleged inadvertence.

Petitioner's Quarterly VAT Return for the fourth quarter of 2008 shows output taxes due in the amount of ₱1,488,109,013.33. Had petitioner declared the substantiated input taxes of ₱48,573,188.23 in its Quarterly VAT Return for the fourth quarter of 2008, considering its output taxes and substantiated input taxes for the fourth quarter of 2008 per the ICPA's examination, it would not have had enough input taxes to offset against its output taxes for the same taxable period. Thus, petitioner wouldn't have had a VAT overpayment for the fourth quarter of 2008. To illustrate as follows:

Output tax			₱ 1,488,109,013.33
Less: Allowable input tax			
Substantiated input tax on domestic purchases and importation of goods other than capital goods and domestic purchase of services		₱ 81,440,435.77	
Substantiated input tax on capital goods exceeding P1Million:			
From previous quarter	₱ 469,013,117.43		
Current purchases	3,540,925.02		
Total unamortized input tax on capital goods exceeding P1Million	₱ 472,554,042.45		
Less: Input tax deferred for the succeeding period	(517,753,827.89)		
Amortized input tax on capital goods exceeding P1Million	₱(45,199,785.44)	-	
Substantiated undeclared input taxes, subject of the present claim		48,573,188.23	130,013,624.00
Net VAT Payable			₱ 1,358,095,389.33
Less: Tax Payments			
Monthly VAT Payments -- Oct & Nov 2008		₱ 158,980,189.62	
VAT Payment -- December 2008		161,649,582.22	320,629,771.84
VAT Still Payable			**₱ 1,037,465,617.49**

[17] Exhibit BB, p. 15.

Section 112 speaks of excess and unutilized input taxes. Thus, while petitioner reflected the amount of ₱33,238,944.27 as zero-rated sales/receipts in its Quarterly VAT Return for the fourth quarter of 2008, there is no excess input VAT, as shown per the above computation, which may be attributed to the said zero-sales/receipts.

PETITIONER SHOULD HAVE TIMELY AMENDED ITS RETURN REFLECTING THE CORRECT INPUT TAX PRIOR TO RECEIPT OF THE LETTER OF AUTHORITY ("LOA") UNDER SECTION 6(A) OF THE 1997 NIRC, AS AMENDED.

TO INVOKE THE PROVISION OF SECTION 229 OF THE 1997 NIRC, AS AMENDED, AS BASIS OF PETITIONER'S REFUND CLAIM IN THE EVENT OF UNDECLARATION OF INPUT TAXES WILL RENDER NUGATORY THE PROVISION OF SECTION 6(A) OF THE SAME CODE.

Petitioner claims that the Court in Division failed to consider that it is prohibited from amending quarterly VAT return for the fourth quarter of taxable year 2008 to include the input tax inadvertently omitted in the said VAT Return because of the Letter of Authority ("LOA") issued by the BIR.

Petitioner's contention is unmeritorious.

Under Section 4.110-8 of Revenue Regulations No. 16-2005, as amended, input taxes are available as tax credits if they are substantiated and reported in the VAT returns as follows:

"SEC. 4.110-8. Substantiation of Input Tax Credits. –

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties, or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, **must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau.** (Emphasis supplied.)

If a taxpayer has committed an error or mistake in the entries in the return such as in the instant case, the law allows its amendment under Section 6(A) of the 1997 NIRC which reads:

"Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, **That within three (3) years from the date of such filing, the same may be modified, changed or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer.** (Emphasis supplied.)

Amendment or modification of the tax return is prohibited by law upon the issuance of the LOA. This is to prevent situations where the government is at the losing end in allowing refund or tax credit when eventually it is found that the taxpayer has an existing similar tax liability for the same covered period.

Here, considering that petitioner has undeclared input taxes for the 4th quarter of 2008, it should have immediately modified its return prior to the receipt of the Letter of Authority ("LOA")[18] pursuant to Section 6(A) of the 1997 *gc*

[18] Docket, CTA Case No. 8218, pp.5 & 23.

NIRC, as amended; properly declared input tax for the covered period, respectively; and carried over the substantiated claimed input taxes of ₱111,177,395.70 to the succeeding year.

Should Section 229 serve as basis of petitioner's refund claim in the event of undeclaration of input taxes, this will render nugatory the provision of Section 6(A) of the 1997 NIRC, as amended.

To illustrate, assuming for the sake of argument that petitioner was able to substantiate its input tax enough to cover its output tax liability, to allow petitioner to refund or claim for tax credit under Section 229 in effect sanctions the amendment of return despite the issuance of LOA in violation of Section 6(A) of the 1997 NIRC. In granting its claim, petitioner will be placed in a better position than the claimant under Section 112 entitled to ordinary tax credit or refund on zero-rated sales or effectively zero-rated sales. One cannot do directly, he cannot do indirectly.[19]

For failure to timely avail of the remedy of modifying the return reflecting the correct input taxes, the petitioner is barred from seeking solace of under Section 229.

THE *FORT BONIFACIO* CASE INVOLVES TRANSITIONAL INPUT TAX AND NOT PASSED-ON VAT AS PART OF THE PURCHASE PRICE PAID BY PETITIONER.

Petitioner invokes the case of *Fort Bonifacio Development v. Commissioner of Internal Revenue*[20] wherein the taxpayer-claimant was refunded erroneously paid output VAT when it failed to apply input tax in the computation of output VAT.

We are not persuaded. *gr*

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[19] *Alvarez v. PICOP Resources, Inc.*, Resolution, G.R. Nos. 162243, 164516 and 171875, 3 December 2009, 606 SCRA 444 and *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, G.R. No. 166471, March 22, 2011, 646 SCRA 21.
[20] G.R. No. 173425, September 4, 2012, 679 SCRA 566.

This Court sees no reason to apply the case of *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*[21]. In that case, when petitioner failed to apply its transitional input tax in computing its output VAT for the 1st quarter of 1997, the Supreme Court allowed the refund by deducting transitional input tax credit against output tax paid.

Here, the case does not involve transitional input tax credit under Section 111 of the 1997 NIRC, as amended. The amount being claimed by petitioner for refund or tax credit represents passed-on VAT as part of the purchase price it paid. The transitional input tax credit aims to avoid any inequity resulting from the change in status of a person who becomes liable to VAT for the first time or elects to be a VAT-registered person without recognizing the VAT paid on related inputs before becoming VAT-registered.[22]

Moreover, in the *Fort Bonifacio* case, there was no LOA issued; nor was the issuance or non-issuance of LOA raised as among the issues in the case. Thus, the *Fort Bonifacio* case is not on all fours with the instant case.

This Court concurs with the findings of **the Special First Division**[23] **that the substantiated claimed P48,573,188.23 represents "undeclared input taxes" in the VAT return for the fourth quarter of 2008**, and not as "erroneously paid taxes" contemplated under Section 229. Clearly, neither Section 229 nor Section 112 of the 1997 NIRC, as amended, is the applicable provision in the case at bar.

The Court sees no cogent reason to discuss the other grounds for being moot.

The findings of the Court in Division in denying petitioner's refund claim or tax credit representing undeclared input VAT for the quarter ended December 31, 2008, is **AFFIRMED.**

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[21] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, supra.*
[22] De Leon Hector S. And De Leon, Jr. Hector M., The National Internal Revenue Code Annotated, 2003 Edition, Vol. II, p. 131.
[23] Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Esperanza Fabon-Victorino.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding 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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

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CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
MAY 1 9 2015
3:44 p.m.

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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Juanito C. Casteñeda, Jr. which affirms the denial of petitioner's claim for refund of alleged erroneously paid Value Added Tax (VAT) on the ground that based on evidence presented, output VAT exceeds input VAT.

I am, however, of the opinion that: 1) Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, applies to petitioner's claim for refund; and, 2) though the regulations require that input tax must be reflected in the tax returns, said rule is not absolute as long as the taxpayer is able to prove and substantiate its entitlement to the said deduction.

In this regard, Section 229 of the NIRC of 1997, as amended, gives a taxpayer a period of two (2) years from date of payment to file an administrative and judicial claim for refund of erroneously collected tax, to wit:

> "**SEC. 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.
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> 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 therefor, 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."

In the instant case, records show that petitioner's input VAT amounting to ₱111,177,395.70 incurred in the 4th quarter of 2008 was inadvertently not reported in the tax return and consequently was not deducted against the output tax. Pursuant to Section 110(A)(1) of the NIRC of 1997, as amended, input taxes from certain transactions that are evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, shall be creditable against the output tax resulting to the taxpayer's VAT liability, as follows:

Output tax	₱xxx,xxx.xx
Less: Input tax	xxx,xxx.xx
VAT Due	₱xxx,xxx.xx

Considering that the input tax amounting to ₱111,177,395.70 for the 4th quarter of 2008 was not deducted against the output tax, petitioner paid a higher output tax. **It is the alleged overpayment of output VAT amounting to ₱111,177,395.70 arising from the taxpayer's inadvertent failure to declare its input taxes which is the subject matter of the present claim for refund**. The erroneous payment of higher output tax provides a justifiable claim for refund under Section 229 of the NIRC of 1997, as amended.

To be sure, the additional output taxes paid to the government (arising from the taxpayer's inadvertent failure to declare its input taxes) represents erroneously collected taxes. In applying Section 229 of the NIRC of 1997, as amended, the taxpayer is merely using the clear, plain and unconditional provision of Section 229 of the NIRC of 1997, as amended, which is the available remedy to pursue its claim for refund or tax credit of its alleged erroneously collected output taxes.

In the assailed Decision of the Special First Division, the Court denied the claim for refund as the substantiated input taxes were not reported in petitioner's VAT return due to the alleged inadvertence. As a general rule, input taxes must be substantiated and reported in the VAT returns of a taxpayer in order for said taxes to be available as tax credits.[1] But as earlier stated, this rule is not inflexible. In *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*,[2] **the transitional input VAT was likewise not shown in the VAT return, yet the Supreme Court granted the <u>refund</u> of the corresponding overpayment of output VAT,** *viz:*

> "In this case, when petitioner realized that its transitional input tax credit was not applied in computing its output VAT for the 1st quarter of 1997, **it filed a claim for refund to recover the output VAT it erroneously or excessively paid for the 1st quarter of 1997. In filing a claim for tax refund, petitioner is simply applying its transitional input tax credit against the output tax it has paid.** Hence, it is merely availing of the tax credit incentive given by law to first time VAT taxpayers."

It must be stressed that the term 'input tax' includes transitional input tax determined in accordance with Section 111 of the NIRC of 1997, as amended.[3] In granting the claim for refund in the Fort Bonifacio Development Corporation case, the Supreme Court allowed input tax **not reported in the VAT returns** to be deducted against output tax.

In applying the *Fort Bonifacio Development Corporation case* to the present case, what is actually being adopted is the principle that input taxes

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[1] Section 4.110.8 of Revenue Regulations No. 16-2005, as amended, October 19, 2005.
[2] G.R. No. 173425, September 4, 2012.
[3] SEC. 110. Tax Credits. –
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The term *"input tax"* means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business or importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. **It shall also include the transitional input tax determined in accordance with Section 11 of this Code.** (Emphasis supplied)

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not reported in the VAT return may still be credited against the output tax due. **Stated differently, although the input taxes were not reported in the VAT returns, the same may still be credited against the output tax liability of the taxpayer for as long as said input taxes were properly substantiated.** Hence, any output tax paid by the taxpayer, *on account of its failure to declare its correct and substantiated input taxes in its VAT returns and apply the same as credit against its output tax*, shall be available for refund as erroneously paid output tax. Petitioner is therefore allowed under Section 229 of the NIRC of 1997, as amended, to claim for refund or credit of its *alleged* erroneously paid output tax.

It is at this juncture that I quote the enlightening disquisition of the Honorable Associate Justice Amelia R. Cotangco-Manalastas as the *ponente* in **Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue,**[4] *viz.*:

> Clearly then, any increase in the input tax shall lead to a decrease in the output tax, while a decrease in input tax leads to an increase in output tax. If there is an error in the computation of input taxes, such that less input tax is recognized, there is a higher output tax liability. Such error when corrected, i.e., a higher input tax is recognized, results to a lower output tax than that already paid and thus provides a justifiable claim for refund of erroneously paid output tax.
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> By analogy, the ruling of the Supreme Court in Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, et al., is instructive:
>
> Xxx xxx xxx.
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> In the instant case, petitioner failed to consider in its computation of output tax liability certain input taxes on some of its purchases of services on credit, thus leading to a payment of higher output taxes than it otherwise should have paid. When petitioner realized this and could no longer amend its VAT returns due to the issuance of the Letter of Authority, petitioner applied for refund of erroneously/excessively paid output tax. In filing for tax refund, petitioner is simply applying its input tax credit against the output VAT, hence, petitioner is merely availing of the creditable input tax mechanism provided for in Section 110.

Lastly, Section 6(A) of the NIRC of 1997, as amended, which prohibits a taxpayer from amending his tax return after the issuance of a Letter of Authority (LOA) is insignificant in pursuing the remedy under Section 229 of the NIRC of 1997, as amended. Besides, the amendment of

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[4] CTA Case No. 8183, January 17, 2014; penned by Honorable Associate Justice Amelia R. Cotangco-Manalastas and concurred by Honorable Associate Justice Lovell R. Bautista.

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the return is prohibited under Section 6(A) of the NIRC of 1997, as amended, to prevent a taxpayer from curing any fraud he has committed if a letter of authority for the examination of his return has already been served on him or such amendment has been made in the course of an investigation of his tax liability.[5] The prohibition is relevant in connection with the Commissioner of Internal Revenue's (CIR) power to make an assessment of a taxpayer's liability. In contrast, Section 229 of the NIRC of 1997, as amended, is confined to a determination of whether or not there was an erroneous payment of tax, irrespective of the entries in tax returns. Significantly, there is nothing in Section 229 of the NIRC of 1997, as amended, which expressly requires that the erroneously paid tax be reflected in the tax return. Said requirement is explicit only in cases where the CIR *motu propio* gives a refund or tax credit, even without a written claim, that is - - "where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

While petitioner's claim for refund is properly anchored on Section 229 of the NIRC of 1997, as amended, and the *Fort Bonifacio Development Corporation case*, such claim must still be denied. As found by the Independent CPA and the Court in Division, petitioner's substantiated input VAT is not enough to offset its output VAT liability, as follows:

	4th Quarter
Output Tax	Php1,488,109,013.33
Less: substantiated input taxes	130,013,624.00
VAT Payable	**Php1,358,095,389.33**

Considering that petitioner's VAT payments for the 4th quarter of 2008 only amounted to ₱320,629,771.84, petitioner did not overpay its taxes due in the 4th quarter of 2008. Thus, there is no basis for petitioner to ask for refund of erroneously paid output VAT.

All told, I **VOTE** to **DENY** the Petition for Review filed by Coca-Cola Bottlers Philippines, Inc. in CTA EB Case No. 1178 but solely on the afore-stated reasons.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] De Leon Hector S. and De Leon, Jr. Hector M., The National Internal Revenue Code Annotated, Eight Edition 2003, p.34.