Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

UNISYS PUBLIC SECTOR SERVICES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1232
(CTA Case No. 8216)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, *and*
RINGPIS-LIBAN, *J.J.*

Promulgated:

NOV 29 2016 2:45 p.m.

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RESOLUTION

CASANOVA, *J.*:

This resolves petitioner's Motion for Reconsideration (Re: 16 June 2016 Decision of the Honorable Court)[1], filed on July 15, 2016, with respondent's Comment filed on August 17, 2016.

Petitioner seeks reconsideration of this Court's Decision dated June 16, 2016, the decretal portion of which reads as follows:

> "**WHEREFORE**, the Petition for Review of petitioner, Unisys Public Sector Services Corporation, is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Petitioner takes exception to this Court's Decision based on the following factual and legal grounds:

[1] EB Docket, pp. 208-224

1. The reckoning point of the two-year prescriptive period is the filing of the final adjusted return and the date of payment which is the end of each taxable quarter.

2. Petitioner sufficiently established through documentary and testimonial evidence its entitlement to its refund claim. In addition, Petitioner was likewise able to present evidence for purposes of ascertaining the accuracy of the amount sought to be refunded.

a. Petitioner presented substantial evidence which would support and prove its compliance with the requisite elements in case of refund and/or issuance of TCC for erroneously paid VAT under Section 229 of the Tax Code.

b. The rightful entitlement of petitioner to it (sic) claim for tax refund/credit stemmed from its erroneous use of the actual instead of the standard input VAT in computing its VAT payables for the covered period.

On the other hand, respondent, in his Comment, posits that this Court has correctly ruled that "petitioner's administrative claim for refund for the months of October 2008 and November 2008 have already prescribed"; that petitioner failed to prove and support its claim for refund by proper and sufficient documents to show that it is entitled to tax refund or credit; that tax refunds are in the nature of tax exemptions which must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken; that such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

We have carefully perused petitioner's Motion for Reconsideration and finds the same bereft of merit.

In its Motion, petitioner insists that the "reckoning point of the two-year prescriptive period is the filing of the final adjusted return and the date of payment which is the end of each taxable quarter."

Again, We reiterate that the said issue had already been resolved by the CTA Third Division in its Resolution dated September 16, 2014, in this wise:

> "In a bid to have its claim for VAT refund considered to have been timely filed within the two-year period stated in Section 229 of the NIRC, petitioner would have this court believe that its payments for its October 2008 and November 2008 VAT liability were advanced payments that should only be credited on January 29, 2009, the date petitioner paid its December 2008 VAT liability.
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> Petitioner confuses two different and distinct concepts - the act of payment and the act of filing. Even if Section 4.114-l says that '**Payments in the monthly VAT declaration shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter**, the crediting of the monthly payments is for the **limited and specific purpose** of arriving at a) the net VAT payable; or b) the excess input tax/over-payment as of the end of a quarter.
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> Petitioner says that 'the determination [of the] seasonable filing of claims for refund for erroneous and overpaid output VAT liabilities in accordance with Section 229 of the Tax Code should be reckoned from the **filing and payment** of the output VAT liabilities for the covered quarter'. However, this is not what Section 229 requires.
>
> We reiterate our ruling that Section 229 is emphatic on the requirement that the claim for refund must be filed within two (2) years **from the date** of payment in all cases in view of the phrase 'regardless of any supervening cause' that may arise after payment.
>
> A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or 'speech is the index of intention'. Furthermore, there is the maxim *verba*

> *legis non est recedendum*, or 'from the words of a statute there should be no departure'.
>
> While petitioner wishes that the act of filing be synonymous with payment, Section 229 of the NIRC clearly omits as a reckoning point of the two-year period, the date of filing, and only specifies the date of payment. This Court is bereft of power to supply the omission."

Petitioner's reliance on the Supreme Court pronouncements cited in the case of Jideco Manufacturing Philippines, Inc. vs. Commissioner of Internal Revenue[2] (the "Jideco case") is misplaced.

The factual antecedents in the two cited cases i.e. TMX Sales, Inc.[3] and ACCRA Investments Corporation[4] are not similar to the facts in the instant case. The TMX and ACCRA cases involved claims for refund of erroneously paid corporate income taxes and both cases were decided based on the 1977 Tax Code.

On the other hand, the case now before us involves petitioner's claim for refund of erroneously paid VAT for the last quarter of 2004 and the Assailed Decision was based on the 1997 Tax Code, as amended.

Thus, more in point in the application of jurisprudential ruling/pronouncement as to the reckoning period for claims for refund of erroneously paid tax is the Supreme Court decision in the case of Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership[5] where the High Court ruled in this wise:

> "Furthermore, San Roque distinguished between Section 112 and Section 229 of the 1997 Tax Code:
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>> 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

[2] CTA Case No. 6552, September 16, 2004
[3] Commissioner of Internal Revenue vs. TMX Sales, Inc. and Court of Tax Appeals, G.R. No. 83736, January 15, 1992
[4] ACCRA Investments Corporation vs. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals, G.R. No. 96322, December 20, 1991
[5] G.R. No. 191498, January 15, 2014

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

In a claim for refund or credit of 'excess' input VAT under Section 110(B) and Section 112(A), the input VAT is not 'excessively' collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is 'excessively' collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an 'excess' input VAT. The term 'excess' input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as 'excessively' collected under Section 229.

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, . . . illegally, . . . 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 calim under Section 229.

Under Section 110(B) and Section 112(A), the prescriptive period for filing a judicial claim for 'excess' input VAT is two years from the close of the taxable quarter when the sale was made by the person legally liable to pay the output VAT. This prescriptive period has no relation to the date of payment of the 'excess' input VAT. The 'excess' input VAT may have been paid for more than two years but this does not bar the filing of a judicial claim for 'excess' VAT under Section 112(A), which has different reckoning period from Section 229. Moreover, the person claiming the refund or credit of the input VAT is not the person who legally paid the input VAT. Such person seeking the VAT refund or credit does not claim that the input VAT was 'excessively' collected from him, or that he paid an input VAT that is more than what is legally due. He is not the taxpayer who legally paid the input VAT.

As its name implies, the Value-Added Tax system is a tax on the value added by the taxpayer in the chain of transactions. For simplicity and efficiency in tax collection, the VAT is imposed not just on the value added by the taxpayer, but on the entire selling price of his goods, properties or services. However, the taxpayer is allowed a refund or credit on the VAT previously paid by those who sold him the inputs for his goods, properties, or services. The net effect is that the taxpayer pays the VAT only on the value that he adds to the goods, properties, or services that he actually sells.

Under Section 110(B), a taxpayer can apply his input VAT only against his output Vat. The only exception is when the taxpayer is expressly 'zero-rated or effectively zero-rated' under the law, like companies generating power through renewable sources of energy. Thus, a non-zero rated VAT-registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his 'excess' input VAT under the VAT System. He can only carry-over and apply his 'excess' input VAT against his future output VAT. If such 'excess' input VAT is an 'excessively' collected tax, the taxpayer should be able to seek a refund or credit for such 'excess' input VAT whether or not he has output VAT. The VAT System does not allow such refund or credit. Such 'excess' input VAT is not an 'excessively' collected tax under Section 229. The 'excess' input VAT is a correctly and properly collected tax. However, such 'excess' input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added by the taxpayer. If the input VAT is in fact 'excessively' collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.

Any suggestion that the 'excess' input VAT under the VAT System is an 'excessively' collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such 'excess' input VAT under Section 229 as an

> ordinary tax refund or credit outside of the VAT System. Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.
>
> From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is 'erroneously . . . illegally . . . excessively or in any manner wrongfully collected.' In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. As the Court held in Mirant, Section 229 should 'apply only to instances of erroneous payment or illegal collection of internal revenue taxes.' Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due. Under the VAT System, there is no claim or issue that the 'excess' input VAT is 'excessively or in any manner wrongfully collected.' In fact, if the 'excess' input VAT is an 'excessively' collected tax under Section 229, then the taxpayer claiming to apply such 'excessively' collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such 'excessively' collected tax, and thus there will no longer be any 'excess' input VAT. This will upend the present VAT System as we know it.

Two things are clear from the above-quoted San Roque disquisitions. First, when it comes to recovery of unutilized input VAT, Section 112, and not Section 229 of the 1997 Tax Code, is the governing law. Second, prior to 8 June 2007, the applicable rule is neither Atlas nor Mirant, but Section 112(A)."

WHEREFORE, foregoing considered, petitioner's Motion for Reconsideration (Re: 16 June 2016 Decision of the Honorable Court) dated July 14, 2016 is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
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

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice