REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

ASSOCIATED SWEDISH STEELS PHILS, INC., Petitioner,	**CTA Case No. 7850**
	Members:
- versus -	**ACOSTA,** *Chairperson* **UY,** *and* **FABON-VICTORINO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 16 2011 ; 2:00 pm

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DECISION

UY, J.:

The case before the Court is a Petition for Review filed by petitioner Associated Swedish Steels Phils., Inc. seeking the issuance of tax credit certificate (TCC) in its favor in the total amount of **TWENTY THREE MILLION THREE HUNDRED THREE THOUSAND SEVEN HUNDRED SIXTY NINE PESOS AND EIGTHY THREE CENTAVOS (₱ 23,303,769.83)**, representing excess/unutilized input value-added tax (VAT) credits from the commencement of its operations until the cancellation of its VAT registration.

THE FACTS

The antecedent facts as stipulated by the parties and as borne by the records are as follows:

Petitioner is a corporation duly organized and registered under the laws of the Philippines, with principal office previously located at No. 3 E. Rodriguez Jr. Avenue, Bagong Ilog, Pasig City.[1]

On the other hand, respondent is vested by the National Internal Revenue Code (NIRC) with the authority to decide, approve, and grant tax refunds. She holds office at the Bureau of Internal Revenue (BIR), National Office Building, Diliman, Quezon City.[2]

On November 15, 2007, the Board of Directors of petitioner approved the cessation of the latter's operations effective December 31, 2007.[3] Petitioner indeed ceased its business operations effective December 31, 2007. From then on, it did not recommence any form of business.[4]

As of December 31, 2007, petitioner has accumulated excess/unutilized input tax credits from its importation of goods and from domestic purchase of goods and services in the total amount of ₱ 23,303,769.83, the details of which are as follows:[5]

(In Philippine Pesos)			
PERIOD	**INPUT VAT FOR THE YEAR**	**OUTPUT VAT FOR THE YEAR**	**EXCESS INPUT VAT**
Carried-over from 2007	1,502,557.73	724,619.78	23,303,769.83

On July 1, 2008, petitioner filed an Application for Registration Information Update.[6] Subsequently, on July 7, 2008, petitioner filed with the BIR Regional District Office No. 43 an Application for Tax Credits/Refunds (BIR Form No. 1914) to claim a refund of excess or unutilized input VAT credits.[7] On the same date, an administrative claim for issuance of a TCC was also filed.[8]

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 56. Exhibit "A".
[2] Par. 2, Stipulation of Facts, JSFI, Docket, pp. 56 to 57.
[3] Par. 3, Stipulation of Facts, JSFI, Docket, p. 57.
[4] Par. 4, Id.
[5] Par. 5, Id.
[6] Exhibit "B", Docket, pp. 161 to 162.
[7] Par. 7, Id.
[8] Par. 8, Id.

Due to the inaction of respondent and upon the notion that it would want to preserve its right to claim said TCC, petitioner was constrained to file the instant Petition for Review on December 5, 2008, supposedly pursuant to Section 112(B) of the NIRC of 1997.[9]

Respondent filed her Answer[10] on February 19, 2009, and interposed the following Special and Affirmative Defenses:

> "7. The claim for refund is still under examination by the respondent's Bureau;
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> 8. 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;
>
> 9. The grant of claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 10. 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."

The case was then set for pre-trial conference on March 6, 2009.[11] Thereafter, the parties filed their Joint Stipulation of Facts and Issues[12] on March 16, 2009, which was approved in the Resolution dated March 26, 2009.[13] During trial, petitioner presented and offered documentary and testimonial evidence to prove its claim.

On the other hand, respondent, through counsel, manifested during the hearing held on August 5, 2010 that there is no news on the supposed terminated examination; therefore, respondent would just submit the case for decision. The

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[9] See Par. 9, Petition for Review, Docket, p. 6.
[10] Docket, pp. 33 to 35.
[11] Docket, p. 36.
[12] Docket, pp. 56 to 59.
[13] Docket, p. 69.

parties then were required to file their respective memorandum.[14] On November 3, 2010, petitioner filed its Memorandum but respondent did not file Memorandum. On November 11, 2010, the case was submitted for decision, considering the Memorandum filed by petitioner, sans respondent's memorandum.[15]

Hence, this Decision.

THE ISSUES

The following are the issues[16] submitted by the parties for the Court's resolution:

> "a. Whether the Petitioner indeed applied for the cancellation of its VAT Registration due to cessation of business?
>
> b. Whether the Respondent indeed cancelled Petitioner's VAT registration pursuant to Petitioner's Application for Registration Information Update?
>
> c. Whether the Petitioner has accumulated and incurred excess and unutilized input VAT in the amount of **TWENTY THREE MILLION THREE HUNDRED THREE THOUSAND SEVEN HUNDRED SIXTY NINE AND 83/100 PESOS (P23,303,769.83)** arising from the importation of goods and domestic purchases of goods and services which were not applied to any output tax during the period covered by the claim?
>
> d. Whether the unutilized input VAT of Petitioner is substantiated by documentary evidence?"

The foregoing stipulated issues are simplified as follows:

> "Whether petitioner is entitled to its claim for issuance of tax credit certificate in the amount of ₱ 23,303,769.83 representing excess/unutilized input VAT from the commencement of its operations until the cancellation of its VAT registration, pursuant to Section 112(B) of the NIRC of 1997, as amended."

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[14] Minutes of hearing held on August 5, 2010, Docket, p. 436.
[15] Resolution dated November 11, 2010, Docket, p. 516.
[16] Docket, p. 58.

Petitioner's arguments

Petitioner argues that it is VAT-registered entity as required under Section 112(B) of the NIRC of 1997, as amended, and that it has timely filed the administrative and judicial claim for refund of its unused input tax upon the cancellation of its VAT registration due to cessation of business operations, pursuant to the same provision of law in relation to Sections 236 and 229 of the same Code.

According to petitioner, it incurred and paid input taxes on its local and foreign purchases of goods and services and which remained unutilized as of December 31, 2007. These accumulated input taxes were duly supported by VAT invoices or official receipts in accordance with Section 4.113-1 of Revenue Regulations No. (RR) 16-05 and in relation to Sections 113 and 237 of the NIRC of 1997, as amended.

Petitioner further asserts that the acquisition of a document attesting that petitioner has no internal revenue tax liabilities is not a requisite in claims for refund due to cancellation of a taxpayer's VAT registration under Section 112(B) of the NIRC of 1997, as amended.

In conclusion, petitioner strongly claims that it was able to prove through documentary evidence all the elements that will entitle it to the grant of its claim for refund and/or issuance of TCC in the reduced amount of ₱ 20,589,873.89, representing its unutilized input VAT as of the date of the cessation of its operations.

Respondent's counter-arguments

Respondent contends, in her Answer, that the burden of proof is upon petitioner to prove that it is entitled to the claim for refund or issuance of TCC; that 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; that the taxes sought to be refunded were paid in accordance with law; and that the burden of proof is upon petitioner-claimant to show with clear and unambiguous provision of law supporting the same.

THE COURT'S RULING

Section 112(B) of the NIRC of 1997, as amended by Republic Act No. (RA) 9337[17], provides as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.—*
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> xxx xxx xxx
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> (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."

Based on the foregoing, to be entitled to the TCC being sought, petitioner must show compliance with the following requisites, to wit:

1. It was a VAT-registered entity;
2. Its VAT 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 the NIRC of 1997, as amended;
3. It has unused input tax; and
4. It has applied with the BIR for the issuance of tax credit certificate for such unused input tax within two (2) years from the date of the cancellation of its VAT registration.

We shall first determine whether petitioner has fulfilled the *second* and *last* requisites, namely: whether its VAT registration has been cancelled due to

[17] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of the NIRC of 1997, as amended; and whether It has applied with the BIR for the issuance of tax credit certificate for such unused input tax within two (2) years from the date of the cancellation of its VAT registration.

As aforestated, the two-year period commences to run from the date of the cancellation of petitioner's VAT registration. Thus, it is important to pinpoint when such cancellation occurred.

In this connection, Section 236 of the NIRC of 1997, as amended by RA 9337, provides:

"SEC. 236. *Registration Requirements.—*

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(C) *Registration of Each Type of Internal Revenue Tax.—* Every person who is required to register with the Bureau of Internal Revenue under Subsection (A) hereof, **shall register each type of internal revenue tax for which he is obligated**, shall file a return and shall pay such taxes, and shall update such registration of any changes in accordance with Subsection (E) hereof.

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(E) *Other Updates.—* Any person registered in accordance with this Section shall, whenever applicable, update his registration information with the Revenue District Office where he is registered, specifying therein any change in tax type and **other taxpayer details**.

(F) *Cancellation of Registration.—*

(1) *General Rule.* — The registration of any person who ceases to be liable to a tax type shall be cancelled **upon filing** with the Revenue District Office where is registered, an application for registration information update in a form prescribed therefor;

(2) *Cancellation of Value-added Tax Registration.* — A VAT-registered person may cancel **his registration for VAT if**:

(a) He makes written application and can demonstrate to the Commissioner's satisfaction that his gross sales or receipts for the following twelve (12) months, other than those that are exempt under Section 109(A) to (U), will not exceed One Million five hundred thousand pesos (P1,500,000), or

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(b) He has ceased to carry on his trade or business, and does not expect to recommence any trade or business within the next twelve (12) months.

The cancellation of registration will be effective from the first day of the following month." *(Emphases supplied)*

Thus, as a general rule, if a taxpayer ceases to be liable to a tax type, his registration shall be cancelled upon the filing with the proper Revenue District Office of an application for registration update in a form prescribed therefor.

However, in the case of a VAT-registered person, the cancellation of his registration, as such, does not depend on whether or not he ceases to be liable to VAT, but must rest on any of the grounds stated in the above-quoted Subsection (F)(2), and shall be effective only from the first day of the following month, not upon the filing of the said application.

In this case, petitioner was able to establish that it ceased its business operations effective December 31, 2007 and from then on, it did not recommence any form of business,[18] and that it filed an Application for Registration Information Update on July 1, 2008.[19]

Accordingly, the cancellation of petitioner's registration as a VAT-registered person took effect only on August 1, 2008, *i.e.*, the first day of the following month. Such being the case, insofar as petitioner is concerned, the two-year period under the earlier quoted Section 112(C) commenced to run only on such date.

Consequently, the filing of petitioner's administrative claim for issuance of a TCC on July 7, 2008[20] was **prematurely** made. Thus, petitioner failed to comply with the above-stated *last* requisite under Section 112(B) of the NIRC of 1997, as amended by RA 9337.

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[18] Par. 4, Stipulation of Facts, JSFI, Docket, p. 57.
[19] Exhibit "B", Docket, pp. 161 to 162.
[20] Par. 8, Stipulation of Facts, JSFI, Docket, p. 57.

The foregoing non-compliance perforce is sufficient ground for the dismissal of the instant Petition for Review. Hence, it becomes unnecessary to discuss the other grounds raised herein.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice