REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

VESTAS SERVICES PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2459
(CTA Case No. 9604)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
AUG 2 3 2023 2:30 pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution is the "Motion for Reconsideration (Re: Decision dated 07 February 2023)"[1] (**MR**) filed by petitioner Vestas Services Philippines, Inc. (**petitioner/VSPI**) on 28 February 2023, without comment from respondent Commissioner of Internal Revenue[2] (**respondent/CIR**).

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[1] *Rollo*, pp. 121-167.
[2] *Per* Records Verification dated 25 May 2023, id., p. 173.

The MR assails the Court *En Banc* Decision dated 07 February 2023[3] (**assailed Decision**), dispositive portion of which reads:

> ...
>
> **WHEREFORE**, the foregoing considered, the present Petition for Review filed by petitioner Vestas Services Philippines, Inc. on 19 May 2021 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

In support of its MR, petitioner contends that it filed its administrative claim for value-added tax (**VAT**) refund or tax credit certificate (**TCC**) for the fourth (4^{th}) quarter of calendar year (**CY**) 2014 before the lapse of the prescribed two (2)-year period which, in this case, ended on 31 December 2016.

It reiterated its previous argument that it filed its administrative claim before Revenue District Office (**RDO**) No. 50 on 29 December 2016 since the records were then still with the said RDO and the latter also did not refuse receipt of its application. When later on advised to re-file its application with RDO No. 51, it did so on the next business day, or on 09 January 2017. With the Revenue Officer's (**RO**'s) action and advice, RDO No. 50 should be considered to have already given due course to its administrative claim.

Petitioner avers further that the Court *En Banc* erred in declaring that it deliberately filed its administrative claim in the wrong venue based on the declaration of its own witness (Ian Jasper E. Monteras [**Monteras**]) during his cross-examination. According to petitioner, the Court *En Banc* misconstrued the declaration as a judicial admission (but which could still be contradicted or explained).

Moreover, petitioner alleges that it filed its administrative claim before RDO No. 50 and it did so in good faith since the transactions (covered by the claim for VAT refund or TCC) transpired while it was registered at RDO No. 50. Petitioner adds that it cannot be faulted for relying on the Bureau of Internal Revenue's (**BIR**'s) advice that it can re-file its application with RDO No. 51 in accord with the pronouncement in *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v.*

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3 *Rollo*, pp. 90-116.

Commissioner of Internal Revenue[4] (**Zuellig-Pharma**) where the Supreme Court ruled that an innocent taxpayer cannot be faulted for merely acting on the representations of the government.

In addition, petitioner asserts that the filing before RDO No. 51 should not invalidate its administrative claim since both offices (RDO No. 50 and RDO No. 51) are authorized to process and approve claims under the National Internal Revenue Code (**NIRC**) of 1997, as amended. Likewise, Revenue Memorandum Circular (**RMC**) No. 66-08[5] does not penalize a taxpayer who files documents at the original RDO.

Lastly, petitioner maintains that nowhere in the NIRC of 1997, as amended, confers jurisdiction unto a specific RDO to rule on a refund case. According to it, the Court's reliance on Section 4.112-1(c) of Revenue Regulations (**RR**) No. 16-2005[6] is contrary to law and jurisprudence.

We resolve.

After a careful perusal of the present MR and the arguments raised therein, petitioner still failed to convince Us that it filed its administrative claim for VAT refund or TCC before the correct venue and within the proper period.

In the assailed Decision, We have ruled that administrative claims for VAT refund or TCC *shall be filed in the RDO having jurisdiction over the taxpayer's principal place of business pursuant to Section 4.112-1(c) of RR. No. 16-2005.*[7]

For emphasis, We quote below:

...

> II. RDO NO. 51 HAS JURISDICTION OVER PETITIONER'S PRINCIPAL PLACE OF BUSINESS IN PASAY CITY.

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[4] G.R. No. 244154, 15 July 2020.

[5] Filing and Payment of Tax Returns of Newly Transferred Taxpayers.

[6] Consolidated Value-Added Tax Regulations of 2005.

[7] Supra at note 3; pp. 106-108; Citations omitted, emphasis, italics and underscoring in the original text.

Corollarily, Section 4.112-1(c) of RR No. 16-2005 provides:

...

SEC. 4.112-1. ***Claims for Refund/Tax Credit Certificate of Input Tax.*** –

...

(c) Where to file the claim for refund/tax credit certificate

Claims for refunds/tax credit certificate shall be filed with the appropriate BIR office (Large Taxpayers Service (LTS) or Revenue District Office (RDO) having jurisdiction over the principal place of business of the taxpayer; *Provided*, however, that direct exporters may also file their claim for tax credit certificate with the One Stop Shop Center of the Department of Finance; *Provided*, finally, that the filing of the claim with one office shall preclude the filing of the same claim with another office.

...

It is clear from the foregoing that the application for VAT credit/refund *shall* be filed in the RDO having jurisdiction over the taxpayer's principal place of business. The use of the word "shall" underscores the mandatory character of the rule. The term "shall" is a word of command and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.

...

Subsequently, petitioner transferred its principal place of business to **12th floor, Five ECom, Harbor Drive, Mall of Asia Complex, Pasay City, Philippines** as evidenced in its Amended AOI which provides:

...

THIRD: That the place where the principal office of the Corporation is to be established and/or located is in: ***12/F Five E-Com Center, Harbor Drive, Mall of Asia Complex, Pasay City, Philippines 1300.*** (As amended on April 25, 2015)

...

The Certificate of Filing of Amended AOI was approved on 29 June 2016. Petitioner then filed for the transfer of its BIR registration. Currently, petitioner is registered with RDO No. 51 and issued with COR 9RC0000777961E. Hence, the RDO that has jurisdiction over petitioner's principal place of business is RDO No. 51.

...

We do not share petitioner's view that We erred in relying on the abovementioned regulation. It must be recalled that tax revenue regulations are issuances signed by the Secretary of Finance (upon the CIR's recommendation) that specify, prescribe or define rules and regulations for the effective enforcement of the provisions of the NIRC of 1997, as amended, and other related statutes. <u>As these issuances are mandated by the Tax Code itself, they are in the nature of a subordinate legislation that are as compelling as the provisions of the tax law they implement.</u>[8] Thus, they can rightfully be considered to provide a binding set of rules in the filing of claims for VAT refund or TCC. Absent any showing that Section 4.112-1(c) of RR No. 16-2005 contravenes the Tax Code, petitioner's argument must fail.

We are also not persuaded that Monteras' judicial admission (petitioner's witness) was taken out of context and was misconstrued to mean that petitioner deliberately filed its administrative claim in the wrong venue. It is propitious to point out that Monteras' declaration during his cross-examination was confirmed even *during his redirect examination* (when asked on the effectivity of petitioner's transfer of registration to RDO No. 51). The relevant portions of the assailed Decision provide:[9]

> ...
>
> ... Ironically, however, its own witness declared in open court during the re-direct examination that it received the new [Certificate of Registration] in December 2016. Monteras testified, to wit:
>
> ...
>
> ATTY. CORDOVA
>
> Q. In your cross-examination **you were asked whether the VSPI know the transfer to RDO 50 to 51 is effective already?**
>
> MR. MONTERAS
>
> A. **Upon receipt of the Certificate of Registration from RDO 51.**
>
> ATTY. CORDOVA
>
> Q. When did you receive this Certificate of Registration?

8 *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013.

9 Supra at note 3, p. 110; Citation omitted and emphasis in the original text.

MR. MONTERAS

A. **I just cannot remember the date, it is during [the] middle of December.**

...

From the testimony above, We can deduce that the issuance of the new COR and petitioner's receipt thereof were both made on 12 December 2016. ...

...

Petitioner could not also be deemed as an innocent taxpayer as it claims to have only obeyed the BIR's advice. Its circumstances are not on all fours with *Zuellig-Pharma* as the claimant therein filed its administrative claim before the proper RDO. Unfortunately, petitioner could not be treated in the same way as it obviously did not also file its claim within the prescribed period.

Lastly, taxpayers are reminded that tax refunds (such as this case) are in the nature of tax exemptions, and are to be construed *strictissimi juris against the entity claiming the same.* The burden of proof rests upon petitioner to establish by sufficient and competent evidence that it is entitled to a claim for refund.[10]

WHEREFORE, the foregoing considered, the "Motion for Reconsideration (Re: Decision dated 07 February 2023)" filed by petitioner Vestas Services Philippines, Inc. on 28 February 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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10 *Philippine Geothermal, Inc. v. The Commissioner of Internal Revenue*, G.R. No. 154028, 29 July 2005.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice