REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ECW JOINT VENTURE, INC.,
Petitioner,

C.T.A. EB No. 14
(C.T.A. Case No. 6509)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 2 2 2006 Apolinario

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DECISION

BAUTISTA, J.:

Before the Court *en banc* is a Petition for Review seeking the reversal of the Decision of the Court of Tax Appeals, sitting as a Division, promulgated on March 1, 2004 and the Resolution dated May 17, 2004, both denying petitioner's claim for refund of alleged unutilized input value-added tax (VAT) on domestic purchases of goods and services attributable to zero-rated sales of construction services for the period April 1, 2000 to December 31, 2000. In the assailed Resolution, the Court likewise denied petitioner's "Motion for New Trial".

The facts as culled from the records are stated as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at RCBC Plaza, Ayala Avenue corner Gil Puyat Avenue, Makati City. It is engaged in general construction and is duly registered with the Bureau of Internal Revenue as a VAT enterprise on September 3, 1997 under Certificate of Registration No. OCN 9RC0000015285.

Petitioner was engaged in the construction of RCBC Plaza Building located at Ayala Avenue corner Buendia Avenue, Makati City. In consideration for its services, petitioner was paid partly in Philippine pesos and partly in US Dollars. For the three quarters from April 1 to December 31, 2000, petitioner generated revenues paid in Philippine pesos in the amount of P827,962,230.00 and payments in US Dollar in the total amount of $4,426,990.16 which were remitted to its US Dollar Savings Account being maintained at the Rizal Commercial Banking Corporation with peso equivalent of P177,079,560.00.

For the period April 1, 2000 to December 31, 2000, petitioner seasonably filed its Quarterly Value-Added Tax Returns reflecting the following information:

Period 2000	Date Filed	Taxable Sales	Output VAT	Carried from Previous Qtr	Input VAT for the Qtr.	Excess Input VAT
2^{nd} Qtr	07/19/00	P220,204,076.00	P22,020,407.00	-	P 47,404,541.00	P25,384,134.00
3^{rd} Qtr	10/24/00	557,839,790.00	55,783,979.00	P25,384,135.00	47,388,614.00	16,988,770.00
4^{th} Qtr	01/23/01	210,899,830.00	21,089,983.00	16,988,770.00	35,207,548.00	31,106,335.00
		P988,943,696.00	P98,894,369.00		P130,000,703.00	

On June 19, 2002, petitioner simultaneously amended its 2000 quarterly VAT returns to reflect its zero-rated sales of goods and to allocate the input taxes accumulated for the period as follows:

Period 2000	Taxable Sales	Output VAT	Zero-Rated Sales	Input VAT Carried from Previous Qtr	Input VAT for the Qtr	Input VAT Carried Over to Succeeding Qtr	Excess Input VAT
2nd Qtr	P196,443,260	P19,644,326	P 26,136,880	-	P 47,404,541	P 25,384,134	P 2,376,081
3rd Qtr	445,837,130	44,583,713	123,202,920	P 25,384,134	47,388,611	16,988,766	11,200,266
4th Qtr	185,681,840	18,568,184	27,739,760	16,988,766	35,207,548	31,106,335	2,521,795
Total	P827,962,230	P82,796,223	P177,079,560		P 130,000,700		P16,098,142

On the same date, petitioner filed an administrative claim for refund with the Revenue District Office No. 50 of the Bureau of Internal Revenue in the amount of P16,098,142.00 representing its unutilized excess input VAT attributable to its zero-rated sales for the second, third and fourth quarters of the year 2000.

To suspend the running of the two-year prescriptive period, petitioner filed on July 19, 2002, a petition for review with this Court, sitting as a Division.

The issues to be resolved by the Court's Division have been jointly stipulated by the parties, to wit:

(a) Whether or not petitioner has an unutilized input VAT for the period April 1 to December 31, 2000 in the aggregate amount of P16,098,142.

(b) Whether or not petitioner's sale of services qualify as zero-rated sales under Section 108(B)(2) of the Tax Code.

(c) Whether or not the unutilized input VAT for the period April 1 to December 31, 2000 were carried over and applied against its output tax liability for the succeeding taxable quarters.

(d) Whether or not petitioner's claim for refund of the unutilized input VAT for the period April 1 to December 31, 2000 are substantiated by documentary evidence.

(e) Whether or not petitioner is entitled to the refund in the amount of P16,098,142 as unutilized input VAT for the three quarters from April 1 to December 31, 2000.

On November 30, 2003, the case was submitted for decision sans the evidence and memorandum of the respondent.

On March 1, 2004, the Court's Division rendered a Decision denying petitioner's claim for refund in the reduced amount of P15,855,075.64 for lack of merit on the basis of the following grounds:

(1) That petitioner failed to substantiate its taxable sales in the sum of P827,962,230.00 when it failed to submit in evidence the VAT official receipts supporting taxable sales; and

(2) That petitioner failed to deduct the amount sought to be refunded in the amended VAT returns for the 2nd, 3rd, and 4th quarters of the year 2000.

On April 12, 2004, petitioner filed a Motion for Partial Reconsideration and New Trial seeking for a partial reversal of the Decision and for a new trial to allow the petitioner to present the VAT official receipts covering its taxable sales to comply with the requirements as well as to fully establish and support its claim for refund.

In a Resolution dated May 17, 2004, the Court's Division denied petitioner's Motion for Partial Reconsideration and New Trial. A Second Motion for Partial Reconsideration and New Trial was filed by petitioner on June 29, 2004 but was withdrawn on July 12, 2004 to enable petitioner to appeal before the Court *en banc*.

Hence, this appeal.

The following issues were raised by petitioner in its Petition for Review:

I. Whether or not the petitioner failed to deduct the amounts sought to be refunded from the succeeding quarters in violation of Section 110(C) of the Tax Code.

II. Whether or not the petitioner is entitled to a new trial on the ground of 'mistake and excusable negligence' on the part of the petitioner since the requirement of submission of VAT official receipts for taxable sales is a new one and was not required by this Honorable Court to be submitted in their previous decisions involving cases where the petitioners have both taxable sales and zero-rated sales/exempt sales in the period where they were claiming refund for excess input VAT attributable to its zero-rated sales.

In assailing the Decision and Resolution of the Court's Division, promulgated on March 1, 2004 and May 17, 2004, respectively, the following grounds were advanced by the petitioner:

I

The petitioner did not violate the provisions of Section 110(C) of the Tax Code since the amount sought to be refunded was deducted from the amounts carried over to the succeeding quarters contrary to the findings of the Honorable Court.

II

The Quarterly VAT Returns were deemed sufficient proof of taxable sales and the petitioners were not required to submit their VAT Official Receipts/Invoices to prove their taxable sales in the following cases: American Express International Inc.-Philippine Branch vs. Commissioner of Internal Revenue, CTA Case No. 5813, January 2, 2001, Ormat Incorporated vs. Commissioner of Internal Revenue, CTA Case No. 5566, March 14, 2001; Matsushita Business Machine Corporation of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 5896, October 17, 2001; American Express International Inc. – Philippine Branch vs. Commissioner of Internal Revenue, CTA Case No. 6099, April 19, 2002; Dyno Nobel Philippines Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6098, May 14, 2002.

III

The submission of the VAT Official Receipts and/or Invoices to support taxable sales is a new requirement which was first enunciated in the case of Honda Trading Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6282 August 21, 2003 and Resolution dated December 17, 2003.

IV

In the recent case of ECW Joint Venture, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6398, January 22, 2004, considering that it involves the same petitioner and the same subject matter under the same set of facts and circumstances (except the period covered) as in the case at bar, the Court of Tax Appeals granted petitioner's claim for refund of excess VAT payments attributable to zero-rated sale of services without requiring the presentation of VAT official receipts to support petitioner's taxable sales.

V

The submission of the additional requirements if allowed to be presented will afford the Honorable Court with the amplest opportunity for the proper and just determination of the case.

VI

The principle of *solutio indebiti* mandates the Respondent to return what is not rightfully due it.

We shall resolve the first ground in relation to the first issue.

Petitioner contends that it has complied with Section 110 (C) of the 1997 National Internal Revenue Code (NIRC) as it was shown in the amended quarterly VAT returns that the amount being carried over from each quarter no longer includes the amount being claimed for refund.

We are not convinced.

Section 110(C) of the 1997 NIRC provides:

> " xxx xxx xxx
>
> SEC. 110. Tax Credits.-
>
> (C) Determination of Creditable Input Tax. – The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be **reduced** by the amount of claim for refund or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.
>
> The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also those filed with other government agencies, such as the Board of Investments and the Bureau of Customs." (Emphasis supplied)

The foregoing provision clearly requires that the amount of input VAT being claimed for refund should be deducted from the accumulated input VAT as of the month or quarter when such claim was opted to be filed.

A careful review of petitioner's amended quarterly VAT returns for the second, third and fourth quarters of 2000 reveals that the input value-added taxes in the amounts of P2,376,081, P11,200,266, and P2,521,795 were merely reflected as Overpayment which should have been indicated as VAT Refund/TCC Claimed.[1]

Corollarily it is incorrect for petitioner to indicate the amounts claimed for refund in box 28 as "Tax Payable (Overpayment)" and box 30 "Total Amount Payable (Overpayment) of its amended quarterly VAT Returns[2] as this does not comply with the requirements set forth in Section 110 (C) of the 1997 NIRC and that such indication does not reflect the true intention of petitioner to claim for the refund of the subject amounts.

The amounts claimed for refund should have been indicated in box 24A "Any VAT Refund/TCC Claimed" of petitioner's amended quarterly VAT Returns[3]. And boxes 28 "Tax Payable (Overpayment)" and 30 "Total Amount Payable/(Overpayment)" should be "nil".

As correctly held by the Court's Division in the assailed Decision, and We quote:

> "Although the amount to be carried over to succeeding quarter is net of the amount of claim for refund, still the input value-added taxes were not deducted and merely reflected as an overpayment. This creates the impression that petitioner still had the input VAT in its books of accounts and is available as a credit against its future output VAT liability. The reason for the deduction is to assure that the claimed input VAT shall not be applied against any future output VAT liability. ***(Sagara Metro Plastics Industrial Corp. vs. Commissioner of Internal Revenue, CTA Case Nos. 6295, 6320, & 6333, October 10, 2003)"***

To grant petitioner's claim for refund without proof of deduction of the corresponding amount, would be dangerous and tantamount to granting twice the refund sought to be refunded, to the prejudice of the Government.[4]

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[1] *Exhs. E,F, and G, Petitioner's Exhibits, CTA Case No. 6509*
[2] *BIR Form 2550Q*
[3] *ibid.*
[4] *BASF Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6175, March 20, 2002; Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5760 & 5902, February 5, 2002; AMI Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No 5304, January 20, 1998; AMI Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5187 & 5199, October 2, 1997; Sagara Metro Plastics Industrial Corp. vs. Commissioner of Internal Revenue, supra.*

In the previous cases relied upon by petitioner, the quarterly VAT returns were deemed sufficient proof of taxable sales and petitioners therein were not required to submit the corresponding VAT Official Receipts/Invoices to prove taxable sales.

Petitioner further argues that in the assailed Resolution, the Division stated that in the aforementioned cases, "each petitioner involved presented official receipts and/or invoices to support its case". While there were official receipts/invoices submitted by the respective petitioners to support their purchases with input taxes claimed, there were no VAT official receipts and/or invoices submitted to prove their taxable sales.

Furthermore, petitioner argues that the submission of the VAT official receipts and/or invoices is a new requirement which was first enunciated in the case of ***Honda Trading Philippines Corporation vs. Commissioner of Internal Revenue***[5]**.**

We cannot subscribe to petitioner's arguments.

The cases relied upon by petitioner were promulgated prior to the ***Honda***[6] case, which is now the controlling case, where this Court ruled, thus:

> " xxx xxx xxx
>
> Considering, however, that petitioner reported taxable sales along with its zero-rated and exempt sales, the court finds it also necessary for the petitioner to submit invoices pertaining to the taxable sales and the corresponding input VAT. These documents are necessary to determine the veracity of such declaration for any discrepancy will affect petitioner's claim for refund. To illustrate, an underdeclaration of output VAT liability or overstatement of input VAT will reduce the excess VAT credit.
>
> Based on the evidence submitted by petitioner, we cannot verify if the latter had indeed incurred any excess input VAT credits. Petitioner failed to present the invoices and/or official receipts pertaining to the said taxable sales and purchases of goods and services to support its taxable sales and the input VAT attributable thereto. As a consequence, the court cannot verify the amounts declared in the quarterly VAT returns. We cannot determine with accuracy the allocated input VAT for taxable sales. Petitioner's presentation of the abovementioned documents is material to its claim for refund. Its failure to do so is a fatal defect.

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[5] *CTA Case No. 6282, promulgated August 21, 2003*
[6] *ibid.*

Well-settled is the rule that a claim for refund is construed *strictissimi juris* against the taxpayer as it partakes the nature of exemption from taxation ***(Citibank N.A. vs. Court of Appeals, et. al., G.R. No. 107434, October 10, 1997)***. Besides, we believe that in claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent and supporting evidence, then the granting thereof could prove to be improper, if not difficult. ***(ECW Joint Venture, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6398, May 26, 2003)***"

Moreover, the Court clearly explained in a Resolution[7], thus:

"In the Motion for Reconsideration, petitioner invoked the ruling in the case of Matsushita Business Machine Corporation of the Philippines vs. Commissioner of Internal Revenue, *supra*, which involves a claim for refund of unutilized input VAT that arose from its domestic purchases of goods and services directly attributable to zero-rated sales. According to petitioner, the court granted the claim for refund in the said case, while in the case at bar, the court resolved to deny the claim.

We adhere to the principle that the court may abandon its previous ruling if it is contrary to the mandate and spirit of the law. To us, it is paramount that the court should endeavor to make a sensible construction of the laws in order to ascertain the truth and to avoid injustice. Upon subsequent review of the laws relied upon by the parties as well as the facts of the case, the court believes that the ruling in the above-cited case should be abandoned.

Thus, we declare that pursuant to Section 112 (A) of the Tax Code, whenever a VAT registered entity is engaged in zero-rated or effectively zero-rated sales and also taxable sales or exempt sale of goods or services and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any of the transactions, it shall be allocated proportionately on the basis of the volume of sales. For the court to determine the correct amount of unutilized input VAT for those sales, the claimant should offer in evidence, among others, the invoices and receipts attributable to taxable sales, exempt sales and zero-rated sales in accordance with the VAT invoicing requirements under the Tax Code and applicable revenue regulations." (Emphasis supplied)

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[7] *Honda Trading Philippines, Corp. vs. Commissioner of Internal Revenue, CTA Case No. 6282, December 17, 2003*

In addition, the Court's Division clearly explained in the assailed Decision the reason why petitioner's claim for refund was denied, pertinent portion is hereunder quoted, thus:

> "xxx Upon verification of the amounts declared by petitioner in its amended VAT returns, the court found out that petitioner failed to substantiate its taxable sales in the sum of P827,962,230.00. Petitioner did not present as evidence the VAT official receipts supporting its taxable sales. These documents are necessary to the court to ascertain the correctness of the output VAT liability in the sum of P82,796,223.00 declared by petitioner in its quarterly VAT returns for the second, third and fourth quarters of 2000. It must be stressed that the excess input VAT of petitioner in the sum of P16,098,142.00 was arrived at after it has deducted the total input VAT of P98,894,365.00 (net of input VAT carried over to succeeding quarter) against its output VAT of P82,796,223.00. Thus, it follows that in computing for the amount of excess input VAT, petitioner must also substantiate its taxable sales. These documents will guide the court in determining the correct amount of output VAT liability to be offset against the verified input VAT. In the absence of the official receipts evidencing the amount of taxable sales, the court cannot compute with accuracy the amount of excess input VAT that may be granted to petitioner. These documents are important in verifying the declaration of taxable sales in the petitioner's quarterly VAT returns for any discrepancy will affect petitioner's claim for refund. To illustrate, an under-declaration of output VAT liability will reduce the excess VAT credit ***(Honda Trading Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6282, August 21, 2003)*** Therefore, the VAT official receipts for taxable sales are material documents to support its claim for refund. The failure to submit the same is a fatal defect."[8]

On the fifth ground raised by petitioner, the Court rules to deny the reopening of the case to allow petitioner to submit additional evidence.

Petitioner cannot claim that its failure to submit in evidence the VAT official receipts and/or invoices to support its taxable sales was due to mistake or excusable negligence so as to warrant a new trial for the reception of these pieces of evidence.

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[8] *ECW Joint Venture, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6509, March 1, 2004*

Contrary to petitioner's assertions, in the earlier ECW[9] case, involving the same parties, facts and subject matter, but which refer to different quarterly periods, there were various suppliers' invoices and official receipts submitted in evidence for consideration of the Court. The claim for refund in the said case was partially granted because petitioner therein failed to substantiate the full amount of the claim, as there were likewise no VAT invoices/official receipts to prove the existence of a portion of the input taxes. Even in this earlier case, it appears that petitioner was aware of the evidentiary requirements of its claim for refund. Hence, petitioner's prayer that it be allowed to present additional evidence as this is a new requirement by the Court's Division has no leg to stand on.

On the sixth ground, petitioner claims that under the principle of *solutio indebiti*, respondent is mandated to return what is not rightfully due it. Furthermore, since the Bureau of Internal Revenue received excess input VAT when there was no right to receive it, an obligation to return the same is required.

We are not convinced.

Petitioner's belief is misplaced. In order for the rule on *solutio indebiti* to apply, it is an essential condition that petitioner must first show that it is entitled to the claimed refund. It must show that it has in fact incurred excess input VAT. As previously discussed, petitioner failed in this respect because it was not able to prove by clear and convincing evidence its entitlement to the claimed refund for failure to substantiate its taxable sales, as the VAT official receipts and/or invoices were not submitted in evidence.

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[9] *ECW Joint Venture, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6398, January 22, 2004*

It is well-settled that the claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.

Finally, based on the foregoing pronouncements, petitioner's reliance on the BPI[10] case is misplaced.

Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and must be construed *strictissimi juris* against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law . . . and cannot be permitted to exist upon vague implications.[11] Thus, when tax exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim.[12]

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution promulgated on March 1, 2004 and May 17, 2004, respectively, are hereby **AFFIRMED** in toto.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[10] *BPI Family Savings Bank, Inc. vs. Court of Tax Appeals, G.R. No. 122480, April 12, 2000*

[11] *Asiatic Petroleum Co. v. Llanes, 49 Phil. 466; Northern Phil. Tobacco Corp. v. Mun. of Agoo, La Union, 31 SCRA 304; Rogan v. Commissioner, 30 SCRA 968; Asturia Sugar Central, Inc. v. Commissioner of Customs, 29 SCRA 617; Davao Light and Power Co. Inc. v. Commissioner of Custom, 44 SCRA 122; cited in Commissioner of Internal Revenue vs. Solidbank Corporation, G.R. No. 148191, November 25, 2003*

[12] *Farrington v. Tennessee & Country Shelby, 95 U.S. 679, 686; Manila Electric Co. v. Vera, L-29987, Oct. 22, 1975; Manila Electric Co. v. Tabios, L-23847, Oct. 22, 1975, 67 SCRA 451; cited in Commissioner of Internal Revenue vs. Solidbank Corporation, ibid.*

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Resolution 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 this Court.

ERNESTO D. ACOSTA
Presiding Justice