REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

****

CRESCENT PARK 6-3 PROPERTY HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8058

Members:

UY, *Chairperson, and*
FABON-VICTORINO, *JJ.*

Promulgated:

FEB 05 2014 ; 11:28 a.m.

x---x

AMENDED DECISION

UY, *J.*:

For resolution is respondent's **"MOTION FOR RECONSIDERATION"** filed on August 28, 2013, with petitioner's **"COMMENT (TO RESPONDENT'S MOTION FOR RECONSIDERATION)"** filed on September 26, 2013.

In an Amended Decision dated July 15, 2013, this Court partially granted petitioner's Motion for Reconsideration and modified the Decision dated January 4, 2013. The dispositive portion of the Amended Decision reads:

> **"WHEREFORE,** premises considered, petitioner's **'MOTION FOR RECONSIDERATION'** is hereby **PARTIALLY GRANTED.** Accordingly, the dispositive portion of the Decision of this Court dated January 24, 2013 is hereby **MODIFIED** to read as follows:

MO

> **'WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to refund to petitioner, or issue a tax credit certificate in its favor in, the amount of **TWENTY ONE MILLION FOUR HUNDRED SEVENTY THREE THOUSAND TWO HUNDRED EIGHTY PESOS (₱ 21,473,280.00),** representing the unutilized input VAT incurred by petitioner for calendar year 2008.
>
> **SO ORDERED'**

SO ORDERED"

Consequently, respondent filed the instant motion contending that this Court erred in issuing the Amended Decision based on the following grounds, to quote:

1. Herein petitioner NEVER **relied** on **BIR Ruling No. DA-489-03** in filing the instant petition, thus, petitioner cannot assert that it was misled of such BIR Ruling to claim exception of the 120-day mandatory period under Section 112(C) of the NIRC of 1997;
2. Petitioner's purchase of real properties ***(from which the alleged unutilized input tax subject of the present claim came from)*** from 6-3 Property Holdings, Inc. (6-3 PHI) was subjected to VAT considering that 6-3 PHI PEZA-registered activities do not include sale of real properties. Thus, the leasing of the same properties to 6-3 PHI which originally bought by petitioner to 6-3 PHI does not qualify to zero-rated sale; and
3. A perusal of Petition's Official Receipt(OR) Nos. 0003, 0004, 0006, 0007, 0008, 0009, and 0010 *(Exhs. "EE", "FF", "GG", "HH", "II", "JJ", and "KK")* as proof of its alleged sales of services (as lessor of properties) to 6-3 PHI for the year 2009 reveal that its Authority to Print/BIR Permit was issued only on February 22, 2011, thus, the issuance of the said ORs had been ante-dated to

> make it appear to have been issued for the year 2009. Therefore, the reasonable conclusion would be, petitioner has yet no Authority to Print/BIR Permit for the year 2009. Absence of the BIR's Authority to Print is fatal to taxpayer's claim for refund/tax credit for it is tantamount to non-compliance with mandatory invoicing requirements on documents supporting the sale of goods and services. (Silicon Philippines, Inc. vs. CIR, CTA EB No. 154 [CTA Case no. 6338), February 6, 2007).

In opposition, petitioner argues that it relied on the *San Roque Case* in its Memorandum and Motion for Reconsideration. The doctrines in the *San Roque Case* should be applied to the present case considering that the facts therein are similar to that of the instant case. Also, considering that respondent is contributory to the confusion of the proper interpretation of the law, it should not be faulted for having relied in good faith on the prevailing jurisprudence.

Furthermore, petitioner contends that 6-3 PHI is a PEZA registered enterprise, authorized to engage in the maintenance of a 27 storey Information Technology (IT) Building, on a parcel of land for lease to other PEZA registered enterprise. Thus, its lease of the subject parcel of land to 6-3 PHI, for the latter to build and/or maintain thereon a PEZA-registered IT Building, is a zero rated sale of services in accordance with Section 108 of the National Internal Revenue Code (NIRC), as implemented by Section 4.106-5 and in relation to Section 4.108-6 of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 04-07.

Moreover, petitioner posits that respondent's reliance to the case of *Silicon Philippines Inc. vs. Commissioner of Internal Revenue* is misplaced for the factual circumstances between the two are different. It argues that what is important is that the Authority to Print has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered. In a claim for tax refund or issuance of a tax credit certificate attributable to zero-rated sales, what is to be closely scrutinized is the documentary substantiation of the input VAT paid rather than the supporting documents for the zero-rated export sales. Considering that the Authority to Print was duly secured, petitioner argues that its official receipts are duly registered with the Bureau of Internal Revenue (BIR).

With respect to the first ground, we find respondent's contention contrary to the import of the Supreme Court's ruling in the *San Roque* case. A judicious review and understanding of the said case would elucidate that the Supreme Court did not require a taxpayer to show first its reliance on *BIR Ruling No. DA-489-03* before it can be excepted from the mandatory 120-day period. What the Supreme Court ruled is that taxpayers can rely on the said BIR Ruling from the time of its issuance on December 10, 2003, until its reversal by the Supreme Court on October 6, 2010. Petitioner filed its judicial claim on March 31, 2010. Apparently, the exception to the mandatory 120-day period applies to the instant case.

With respect to the second ground, the same had already been settled in the Amended Decision dated July 15, 2013. As such, we find no further reason to elaborate on the same.

We will now proceed to address the third ground.

A review of the requisites for claim for credit/refund of input VAT attributable to zero-rated sales becomes imperative. The requisites are as follows:

1) the taxpayer must be VAT-registered;
2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;
3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and
4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

Relevantly, the second requisite requires that the taxpayer must be engaged in zero-rated or effectively zero-rated sales. In order for sales to be considered zero-rated for purposes of refund or tax credits of input tax, the taxpayer must prove its compliance with the substantiation requirements provided under Section 113 (A), in relation to Sections 237 and 238 of the NIRC of 1997. The pertinent provisions provide as follows:

SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —

(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

xxx xxx xxx

(2) **A VAT official receipt for every lease** of goods or properties, and for every sale, barter or exchange **of services**.

xxx xxx xxx

SEC. 237. Issuance of Receipts or Sales or Commercial Invoices. — **All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered** valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.

Sec. 238. Printing of Receipts or Sales or Commercial Invoices. — **All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.**

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations

> to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.
>
> All persons who print receipt or sales or commercial invoices shall maintain a logbook/register of taxpayer who availed of their printing services. The logbook/register shall contain the following information:
>
> (1) Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices are printed; and
>
> (2) Number of booklets, number of sets per booklet, number of copies per set and the serial numbers of the receipts or invoices in each booklet." (*Emphasis Supplied.*)

As such, entities engaged in zero-rated transactions are required to secure from the BIR an authority to print receipts or invoices and to issue duly registered receipts or invoices. Therefore, for petitioner's claim for issuance of tax credit certificate to thrive, it must substantiate its claim arising from its unutilized input VAT attributable to its zero rated sales by sales invoices or official receipts.

It is noteworthy that this Court, sitting *en banc*, explained the foundation for requiring the presentation of official receipts in sales of services, thus:

> "This is to avoid the situation where the government could end up refunding a tax which was not even paid. It should be noted that the seller will only become liable to pay the output VAT upon receipt of payment from the purchaser. xxxx As a matter of fact if the seller is not paid on the transaction, the seller of service would legally not have to pay output tax while the purchaser may legally claim input tax credit thereon. The government ends up refunding a tax which has not been paid at all. Hence, to avoid this, official receipt for the sale of services is an absolute requirement.

> While the use of official receipt as proof of sale of services and sales invoice for sale of goods has already been recognized in NIRC of 1997 prior to its amendment, it was even clarified in the subsequent law under Republic Act (R.A.) No. 9337."[1]

As correctly raised by respondent, petitioner's Official Receipt(OR) Nos. 0003, 0004, 0006, 0007, 0008, 0009, and 0010[2] reveal that the Authority to Print/BIR Permit was issued only on February 22, 2011. However, the said receipts were allegedly issued to 6-3 PHI in 2009. Consequently, petitioner had no duly registered official receipts at the time the sales transaction was made. As such, failure of petitioner to issue a duly registered official receipt warrants the denial of its claim for refund for it failed to substantiate its zero-rated sales.

WHEREFORE, premises considered, respondent's **"MOTION FOR RECONSIDERATION"** is hereby **GRANTED.** Accordingly, the Amended Decision of this Court dated July 15, 2013 is hereby **CANCELLED** and **SET ASIDE** and the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

---

[1] AT & T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 381 (C.T.A. Case No. 7221), September 24, 2008. Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Lovell R. Bautista, Erlinda P. Uy,
[2] Exhibits. "EE", "FF", "GG", "HH", "II", "JJ", and "KK".

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice