REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DUTY FREE PHILIPPINES CORPORATION,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE REPRESENTED BY KIM S. JACINTO-HENARES, AND/OR NESTOR S. VALEROSO, OIC-ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE,
Respondents.

CTA CASE NO. 9136

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
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RESOLUTION

CASTAÑEDA, JR., J.:

For the Court's resolution is respondent's **Motion for Partial Reconsideration**, filed on December 20, 2017, with petitioner's **Comment (to Motion for Partial Reconsideration)**, filed on January 31, 2018.

Respondent moves for the reconsideration of the Decision dated December 12, 2017 (assailed Decision), the dispositive portion of which reads:

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱93,362,170.95**, representing petitioner's erroneously paid VAT for taxable year 2013.

SO ORDERED.

Respondent raised the following allegations in his motion:

1. The Court has no jurisdiction over the petition; and

2. The Court erred in ruling that petitioner is entitled to refund in the amount of ₱93,362,170.95 representing alleged erroneously paid VAT for the period July 1 to December 31, 2013.

In arguing that the Court has no jurisdiction, respondent cites the case of *Power Sector Assets and Liabilities Management Corporation (PSALM) vs. Commissioner of Internal Revenue (CIR)*[1] (PSALM case) and avers that based thereon, petitioner should have appealed the case to the Department of Justice (DOJ).

Moreover, respondent once again alleges in his motion that petitioner's exemption under Republic Act (RA) No. 9593 has already been repealed by the enactment of RA No. 10351. Respondent avers that only transactions falling under Section 109 of the National Internal Revenue Code (NIRC) of 1997, as amended, are exempt from VAT.

On the other hand, petitioner opposes the foregoing allegations, and elucidated on the factual antecedents of the PSALM case. Petitioner argues that the collection made by the Bureau of Internal Revenue (BIR) from PSALM was not based on a valid assessment but by virtue only of the Memorandum of Agreement (MOA) among BIR, PSALM, and National Power Corporation (NPC). Petitioner claims that insofar as PSALM is concerned, the filing of a petition for the settlement of claims before the DOJ is not an appeal from a BIR assessment but an original action, while the present case is an appeal from respondent's decision. Moreover, petitioner argues

[1] G.R. No. 198146, August 8, 2017.

that the PSALM case involves purely questions of law which do not challenge the mathematical computation of VAT deficiency.

Petitioner contends that it has long been settled that in cases of tax disputes, the Court of Tax Appeals has exclusive appellate jurisdiction, and cites the consolidated case of *Philippine National Oil Company (PNOC) vs. The Hon. Court of Appeals (CA), et al.,*[2] and *Philippine National Bank (PNB) vs. CA, et al.*[3]

The Court finds that the ruling in the PSALM case does not apply to the present case.

First, the parties involved in the PSALM case are different from those in the present case. Moreover, this case is a claim for refund of VAT erroneously or illegally assessed under Section 7(a) of RA No. 1125, as amended. On the other hand, the PSLAM case is initially a petition for the adjudication of the dispute filed by PSALM with the DOJ.

To be clear, the PSALM case arose when NPC received a letter from the BIR demanding immediate payment of ₱3,813,080,472.00 deficiency VAT for the sale of two power plants. As a result, the BIR, NPC, and PSALM executed a MOA wherein they agreed, among others, that:

(1) NPC/PSALM shall remit under protest to the BIR the amount of ₱3,813,080,472, representing basic VAT, upon execution of the MOA.

(2) The remittance shall be without prejudice to the outcome of the resolution of the issues before the appropriate courts or body.

(3) NPC/PSALM and BIR mutually undertake to seek final resolution of the issues by the appropriate courts or body.

(4) BIR shall waive any and all interests and surcharges on the BIR letter, except when the case is elevated by the BIR before an appellate court.

[2] G.R. No. 109976, April 26, 2005.
[3] G.R. No. 112800, April 26, 2005.

(5) Any resolution by the appropriate courts or body in favor of the BIR, other than a decision by the Supreme Court, shall not constitute as precedent and sufficient legal basis as to the taxability of NPC/PSALM's transactions pursuant to the privatization of NPC's assets.

(6) Any resolution in favor of NPC/PSALM by any appropriate court or body shall be immediately executory without necessity of notice or demand from NPC/PSALM. A ruling from the Department of Justice (DOJ) that is favorable to NPC/PSALM shall be tantamount to the filing of an application for refund (in cash)/tax credit certificate (TCC), at the option of NPC/PSALM. BIR undertakes to immediately process and approve the application, and release the tax refund/TCC within fifteen (15) working days from issuance of the DOJ ruling that is favorable to NPC/PSALM.

(7) Either party has the right to appeal any adverse decision against it before any appropriate court or body.

Subsequently, PSALM filed with the DOJ a petition for the adjudication of the dispute to resolve the issue of whether the sale of the power plants should be subject to VAT. Evidently, the PSALM case is not an appeal from the decision of the CIR involving disputed assessments, refunds of internal revenue taxes, fees or other charges, or other matters arising under the NIRC of 1997, as amended.

In contrast, the instant case arose from petitioner's claim for reimbursement of VAT, invoking Section 229 of the NIRC of 1997, as amended, which was subsequently denied by respondent in a letter dated August 5, 2015.

Furthermore, it bears emphasis that petitioner's appeal was deemed perfected by virtue of the timely filing of the petition for review and the payment of the corresponding docket and other lawful fees[4]. It is settled that jurisdiction, once acquired, continues until the final disposition of the case.[5]

Considering the foregoing, the Court finds respondent's argument bereft of merit.

As to respondent's second argument, this is a mere reiteration of his arguments in previous pleadings filed, which have already been considered and discussed by the Court, to wit:

> Based on the provision above, respondent itself provided only for the imposition of excise tax on importation of alcohol or tobacco products by petitioner, and did not in any way mention VAT. Indeed, if respondent supposed that Section 7 of RA No. 10351 withdrew petitioner's exemption from import VAT as well, it could have easily included the same in RR No. 17-2012.
>
> It is settled that administrative regulations and policies enacted by administrative bodies to interpret the law have the force of law and are entitled to great respect.
>
> Hence, the Court finds that only excise taxes are withdrawn from petitioner's tax exemption under RA No. 9593. Accordingly, respondent erroneously collected VAT from petitioner's importation of tobacco and alcohol for taxable year 2013.

As to respondent's argument that only transactions falling under Section 109 of the NIRC of 1997, as amended, are exempt from VAT, suffice it to state that since RA No. 9593 is a special law, the same is included in the list under Section 109, *viz:*

> SEC. 109. *Exempt Transactions.* –

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[4] Section 11, RA No. 1125, as amended, in relation to Section 8, Rule 42 of the Rules of Court.

[5] *Republic v. Central Surety & Insurance Co.*, G.R. No. L-27802, October 26, 1968; *Dioquino v. Cruz, Jr.*, G.R. Nos. L-38579 & L-39951, September 9, 1982; *Sociedad Europea de Financiacion, S.A. vs. Court of Appeals*, G.R. No. 75787, January 21, 1991; *Valdez vs. China Banking Corporation*, G.R. No. 155009, April 12, 2005; *Philippine National Bank vs. Cayetano A. Tejano, Jr.*, G.R. No. 173615, October 16, 2009.

> (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax.
>
> xxx xxx xxx
>
> (K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529; xxx *(Underscoring supplied)*

Hence, the Court finds no compelling reason to modify or amend the assailed Decision.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Decision, respondent's **Motion for Partial Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice