REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PENN PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7457

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated: JUN 24 2021

x - x
9:20 a.m.

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent-movant Commissioner of Internal Revenue's (**respondent-movant**'s/**CIR**'s) "Motion for Partial Reconsideration"[1] of this Court's Decision[2] in the above-captioned case filed on 08 February 2021, without comment/opposition of petitioner Penn Philippines, Inc. (**petitioner/PPI**) *per* Records Verification dated 15 March 2021[3]. In the assailed Decision, this Court disposed of the subject controversy in the following wise:

> ...
>
> **WHEREFORE**, the foregoing considered, petitioner Penn Philippines, Inc.'s Petition for Review on 19 April 2006 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of ₱2,706,140.07

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[1] Division Docket, Volume III, pp. 1110-1116.
[2] Dated 19 January 2021, id., pp. 1090-1109.
[3] Id., p. 1128.

> representing its excess and unutilized input VAT attributable to zero-rated sales for the four (4) quarters of CY 2004.
>
> ...

In arriving at the foregoing decision, the Court disallowed certain zero-rated sales alleged by petitioner for not being properly substantiated pursuant to the invoicing requirements under Section 113[4] and Section 237[5] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

A perusal of the records of this case would reveal that petitioner claimed its zero-rated sales to be in the amount of ₱398,992,724.18. However, upon the Court's review, only zero-rated sales totaling ₱382,352,467.27[6] was found to be supported by petitioner's documentary evidence. As a result, petitioner's sales amounting to ₱16,640,256.91 were disallowed.

It is from this disallowance that respondent-movant draws the basis for his present motion. In sum, the CIR argues that the value of disallowed sales should have been subjected by the Court to 12% value-added tax (**VAT**) in the amount of ₱1,996,830.82 therefore deducted from Our award of ₱2,706,140.07.

We find respondent-movant's contention bereft of merit.

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4 **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
(A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

5 **SEC. 237.** *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or 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, fees, receipts or invoices **shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser**. (Emphasis supplied)

6 Exhibit "RR-7".

In the case of *Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc.*[7] the Supreme Court categorically held that a taxpayer-claimant's failure to comply with invoicing requirements as mandated by law, does not deem the transaction subject to 12% VAT.

Applying the principle to the case at bar, petitioner's sales of goods that do not qualify for zero-rating for failure to comply with invoicing requirements, does not automatically make the subject sale subjected to VAT.

Moreover, in the case of *Commissioner of Internal Revenue v. Toledo Power Company*,[8] the Supreme Court held that, while in some refund cases, the determination of a taxpayer's liability may be allowed thus resulting in the offsetting of taxes, the same is proper only in cases for tax refund under Section 229[9] of the NIRC of 1997, as amended, but not in claims for tax refund or credit under Section 112[10] of the NIRC of 1997, as amended, thereof, to wit:

> ...
>
> But while TPC's sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, we cannot hold it liable for deficiency VAT by imposing 10% VAT on said sales of electricity as what the CIR wants us to do.
>
> As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes.
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> In *Commissioner of Internal Revenue v. Court of Tax Appeals*, we allowed offsetting of taxes in a tax refund case because there was an existing deficiency income and business tax assessment against the taxpayer. We said that "[t]o award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects" and that "to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits."

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7 G.R. No. 222436, 23 July 2018.

8 G.R. Nos. 196415 & 196451, 02 December 2015.

9 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.*

10 **SEC. 112.** *Refunds or Tax Credits of Input Tax.*

Similarly, in *South African Airways v. Commissioner of Internal Revenue,* we permitted offsetting of taxes because the correctness of the return filed by the taxpayer was put in issue.

In the recent case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue,* we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order to determine whether there should be a refund. However, we clarified that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.

But in all these cases, we allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC. A situation that is not present in the instant case.

In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. And since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC's VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.

Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period.[11]

...

It is clear from the foregoing that the correctness of a taxpayer's VAT returns is not an issue in claims for tax refund or credit under Section 112[12]. What is to be resolved is simply whether or not the

[11] Citations omitted, emphasis and underscoring supplied.
[12] Supra at note 10.

taxpayer is entitled to a refund or credit of its unutilized input VAT for the taxable year in question.

The present case involves a claim for tax refund or credit under Section 112 of the NIRC of 1997, as amended. Thus, this Court limited its determination to petitioner's right to the refund claimed. The relief prayed for by respondent-movant in the case at bar – which is for this Court to assess petitioner for its VAT deficiencies, is beyond this Court's authority to provide.

WHEREFORE, the foregoing considered, respondent-movant Commissioner of Internal Revenue's Motion for Partial Reconsideration filed on 08 February 2021 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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