Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ERICSSON TELECOMMUNICATIONS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8027

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

AUG 02 2012
4:00 p.m.

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AMENDED DECISION

CASANOVA, *J.*:

For resolution is petitioner's Motion for Reconsideration[1] filed on May 30, 2012, without respondent's Comment, seeking reconsideration of this Court's Decision[2] (Assailed Decision) promulgated on May 7, 2012, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the Petition for Review is hereby **DISMISSED** for failure to substantiate.
>
> **SO ORDERED.**"

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[1] Docket, pp. 000260-000274.
[2] Ibid, pp. 000244-000258.

In the Assailed Decision, this Court ruled that both the administrative and judicial claims of petitioner fell within the two-year prescriptive period under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended, on the ground that the case does not cover refund of input tax under Section 112 (A) and (D), but on petitioner's mistake of paying its excess input VAT. However, this Court denied the Petition for Review due to petitioner's failure to comply with the invoicing requirements on the documents supporting the sale of goods and services, specifically, its failure to present its VAT receipts and/or invoices to substantiate its input VAT.

Relentless to its cause, petitioner filed the instant Motion for Reconsideration. In its motion, petitioner argues that with the factual finding that petitioner erroneously paid the amount of P8,092,182.94, representing its excess input value-added tax (VAT), under Section 229 of the 1997 NIRC, as amended, it need not prove any other thing to be entitled to the refund of the said excess input VAT; reference to the last clause of Section 229 would show that the Commissioner may even refund or credit any tax if it appears on the face of the return that a tax has been erroneously paid; and, the provisions dealing with the invoicing requirements, namely, Section 113 and Section 237 of the 1997 NIRC, Section 4-108-1 of Revenue Regulations No. 7-95 or the Consolidated Value-Added Tax Regulations and A-13 of Revenue Memorandum Circular No. 42-2003, cited in the AT&T case, do not apply in the instant case.

After taking a second hard look at the arguments proffered by the petitioner, *We* find merit in petitioner's Motion for Reconsideration.

The provisions governing recovery of erroneously paid taxes are Section 204 (C) and Section 229 of the 1997 NIRC, as amended, to wit:

> **"SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. —** The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the

> value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund . . ."
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> "**SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, **That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."** [Underscoring supplied]

From the foregoing, it is clear that in order for a taxpayer to be entitled to a refund or tax credit, it must prove not only that the taxes paid were illegally or erroneously collected but also that: (a) a written claim for the refund or credit thereof was duly filed with the Commissioner; and (b) the suit or proceeding was instituted within two years from the date of payment of the tax or penalty regardless of any supervening cause that might arise after such payment.

In the case at bench, this Court had already ruled in the Assailed Decision that petitioner timely filed both its administrative and judicial claims, pertinent portion of which is hereby quoted for easy reference:

> "x x x, petitioner erroneously paid the excess input VAT on January 25, 2008 as shown in the confirmation payment generated under the EFPS payment system of the BIR.[3]; filed its administrative claim with respondent on January 12, 2010; and, filed its judicial claim on January 20, 2010. Therefore, counting from January 25, 2008, when petitioner made its erroneous payment of tax, **both the administrative and the judicial claims, fell within the two-year prescriptive period under Section 229 of the 1997 NIRC, as amended.** Thus, CIR's contention that the instant petition was prematurely filed deserves scant consideration." (Emphasis supplied)

Going now to the issue on whether or not petitioner erroneously paid its excess input VAT, the 2007 fourth quarterly VAT return of petitioner would show that its total output tax due is P41,965,071.76 while its total available input tax is P50,057,254.70; its input tax is higher than the output tax by P8,092,192.94 which petitioner should have carried over to the succeeding quarter or quarters. Unfortunately, instead of applying the excess available input tax in the next or succeeding quarters, petitioner inadvertently and erroneously paid the same. Records show that petitioner filed through EFPS its BIR Form No. 2550Q[4] on January 24, 2008 and paid[5] the same electronically the following day.

Given that petitioner, indeed, paid thru error or mistake its excess input VAT and that respondent accepted the payment thereof, the principle of *solutio indebiti* under Article 2154 of the New Civil Code, which provides that: "(I)if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises," must be applied. Respondent, therefore, has the obligation under the law to restore the tax erroneously paid by petitioner.

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[3] Exhibit "E."
[4] Exhibit "D."
[5] Exhibit "E."

In the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,*[6] the Supreme Court clearly defined the distinction between Section 112 (A) of the 1997 NIRC, as amended, and Sections 204 (C) and 229 of the same Code. The High Court held that Section 112 (A) of the NIRC of 1997 applies to claims for unutilized input VAT refund/credit; whereas, Sections 204 (C) and 229 of the NIRC of 1997 apply to instances of erroneous payment or illegal collection of internal revenue taxes.

It bears emphasis that, in the instant case, petitioner does not seek to refund its unutilized input VAT *per se* under Section 112, but its erroneous payment of input VAT pursuant to Section 229. *We* note that nothing in Section 229 requires compliance with the invoicing requirements before a taxpayer could claim a refund for its erroneous payment of tax. In fact, the last paragraph of Section 229 explicitly provides that "the Commissioner may, even without a written claim therefor, refund or credit any tax, **where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."** This Court cannot go beyond the confines of what has been provided in this Section. Thus, to require petitioner to substantiate its erroneously paid input VAT, by requiring it to present its VAT receipts and/or invoices as required in Section 112 and BIR's Revenue Regulations, would, therefore, render nugatory the last paragraph of Section 229. Consequently, applying the provision of Section 229, this Court may rely on petitioner's VAT return and confirmation payment generated under the EFPS payment system of the BIR to determine the actual amount remitted to the BIR for the purpose of ascertaining the refund due.

Moreover, it is settled rule that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law.

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[6] G.R. No. 172129, September 12, 2008.

Substantial justice, equity and fair play are on the side of petitioner. After all, the BIR could still avail of other remedy such as filing a case in court for collection of the tax deficiency, if there is any, against the petitioner.

We stress that technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes.[7]

Since petitioner proved that it erroneously paid its input tax and was able to prove that it filed within the two (2)-year prescriptive period its claim for refund both in the administrative and judicial level, this Court sees no other interpretation but to grant petitioner's prayer.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **GRANTED.** The May 7, 2012 Decision of this Court is hereby **REVERSED**. Accordingly, respondent is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner in the amount of Eight Million Ninety Two Thousand One Hundred Eighty Two Pesos and Ninety Four Centavos (P8,092,182.94), representing erroneously paid excess input VAT for the fourth quarter of 2007.

CAESAR A. CASANOVA
Associate Justice

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

WE CONCUR:

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice