Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

CARGILL PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 6714 & 7262

Members:

BAUTISTA, *and*
CASANOVA

Promulgated:

JUL 13 2018 3:40 pm

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AMENDED DECISION

CASANOVA, *J.*:

Before this Court is CTA Case No. 7262 remanded by the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 779, pursuant to the Supreme Court's Decision[1] in G.R. No. 203774 entitled ***Cargill Philippines, Inc. vs. Commissioner of Internal Revenue***.

As culled from the Supreme Court's Decision, the facts of this case are as follows:

> "Cargill is a domestic corporation duly organized and existing under Philippine laws whose primary purpose is to own, operate, run, and manage plants and facilities for the production, crushing, extracting, or otherwise manufacturing and refining of coconut oil, coconut meal, vegetable oil, lard, margarine, edible oil, and other articles of similar nature and their by-products. It is a VAT-registered entity with Tax Identification No. VAT

[1] Docket (Vol. IV), pp.1667-1670.

Registration No. 000-110-659-000. As such, it filed its quarterly VAT returns for the second quarter of calendar year 2001 up to the third quarter of fiscal year 2003, covering the period April 1, 2001 to February 28, 2003, which showed an overpayment of ₱44,920,350.92 and, later, its quarterly VAT returns for the fourth quarter of fiscal year 2003 to the first quarter of fiscal year 2005, covering the period March 1, 2003 to August 31, 2004 which reflected an overpayment of ₱31,915,642.26. Cargill maintained that said overpayments were due to its export sales of coconut oil, the proceeds of which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas and, thus, are zero-rated for VAT purposes.

On June 27, 2003, Cargill filed before the Bureau of Internal Revenue (BIR) an administrative claim for refund of its unutilized input VAT in the amount of ₱26,122,965.81 for the period of April 1, 2001 to February 28, 2003 (**first refund claim**). Thereafter, or **on June 30, 2003**, it filed a judicial claim for refund, by way of a petition for review, before the CTA, docketed as CTA Case No. 6714. On September 29, 2003, it subsequently filed a supplemental application with the BIR increasing its claim for refund of unutilized input VAT to the amount of ₱27,847,897.72.

On May 31, 2005, Cargill filed a second administrative claim for refund of its unutilized input VAT in the amount of ₱22,194,446.67 for the period of March 1, 2003 to August 31, 2004 (**second refund claim**) before the BIR. **On even date**, it filed a petition for review before the CTA, docketed as CTA Case No. 7262.

For its part, respondent Commissioner of Internal Revenue (CIR) claimed, *inter alia*, that the amounts being claimed by Cargill as unutilized input VAT in its first and second refund claims were not properly documented and, hence, should be denied.

On Cargill's motion for consolidation, the CTA Division, in a Resolution dated July 10, 2007, ordered the consolidation of CTA Case No. 6714 with CTA Case No. 7262 for having common questions of law and facts.

The CTA Division Ruling

In a Decision dated August 24, 2010 (August 24, 2010 Decision), the CTA Division partially granted Cargill's claims for refund of unutilized input VAT and thereby ordered the CIR to issue a tax credit certificate in the reduced amount of ₱3,053,469.99, representing Cargill's unutilized input VAT attributable to its VAT zero-rated export sales for the period covering April 1, 2001 to August 31, 2004. It found that while Cargill timely filed its administrative and judicial claims within the two (2)-year prescriptive period, as held in the case of *CIR v. Mirant Pagbilao Corp.*, it, however, failed to substantiate the remainder of its claims for refund of unutilized input VAT, resulting in the partial denial thereof.

Dissatisfied, CIR respectively moved for reconsideration, and for the dismissal of Cargill's petitions, claiming that they were prematurely filed due to its failure to exhaust administrative remedies. Cargill likewise sought for reconsideration, maintaining that the CTA Division erred in disallowing the rest of its refund claims.

In an **Amended Decision dated April 20, 2011**, the CTA Division preliminarily denied the individual motions of both parties, to wit: (*a*) CIR's motion for reconsideration for lack of notice of hearing; (*b*) CIR's motion to dismiss on the ground of *estoppel;* and (*c*) Cargill's motion for reconsideration for lack of merit.

Separately, however, the CTA Division superseded and consequently reversed its August 24, 2010 Decision. Citing the case of *CIR v. Aichi Forging Company of Asia, Inc. (Aichi)*, it held that the 120-day period provided under Section 112(D) of the National Internal Revenue Code (NIRC) must be observed prior to the filing of a judicial claim for tax refund. As Cargill failed to comply therewith, the CTA Division, without ruling on the merits, dismissed the consolidated cases for being prematurely filed.

Aggrieved, Cargill elevated its case to the CTA *En Banc.*

The CTA En Banc Ruling

In a Decision dated June 18, 2012, the CTA *En Banc* affirmed the CTA Division's April 20, 2011 Amended Decision, reiterating that Cargill's premature filing of its claims divested the CTA of jurisdiction, and perforce, warranted the dismissal of its petitions. To be specific, it highlighted that Cargill's petition in CTA Case No. 6714 was filed on June 30, 2003, or after the lapse of three (3) days from the time it filed its administrative claim with the BIR; while its petition in CTA Case No. 7672 was filed on the same date it filed its administrative claim with the BIR, *i.e.*, on May 31, 2005. As such, the CTA *En Banc* ruled that Cargill's judicial claims were correctly dismissed for being filed prematurely.

Cargill moved for reconsideration which was, however, denied by the CTA *En Banc* in a Resolution dated September 27, 2012, hence, this petition."

Thus, petitioner filed a Petition for Review with the Supreme Court entitled Cargill Philippines, Inc. vs. Commissioner of Internal Revenue, with Docket No. G.R. No. 203774.[2]

On March 11, 2015, the First Division of Supreme Court rendered a Decision partially granting petitioner's Petition for Review, the dispositive portion of which provides:

"**WHEREFORE**, the petition is **PARTLY GRANTED**. Accordingly, the Decision dated June 18, 2012 and the Resolution dated September 27, 2012 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 779 are hereby **AFFIRMED** only insofar as it dismissed CTA Case No. 6714. On the other hand, CTA Case No. 7262 is **REINSTATED** and **REMANDED** to the CTA Special First Division for its resolution on the merits.

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[2] Docket (Vol. III), pp.1408-1476.

SO ORDERED."

On May 11, 2015, petitioner filed a Motion for Partial Reconsideration[3] of the said Decision, which was denied by the Supreme Court in its Resolution dated July 8, 2015.

On June 13, 2016[4], the Court of Tax Appeals received the Entry of Judgment issued by the Supreme Court certifying that on October 12, 2015, the Decision dated March 11, 2015 had become final and executory.

Hence, the CTA *En Banc,* in the Resolution[5] dated February 9, 2017, remanded CTA Case No. 7262 to the CTA Special First Division for resolution on the merits.

Considering the period of time from the rendition of this Court's Decision on August 24, 2010, and the remand of this case on March 14, 2017, this Court directed both parties to submit a manifestation informing the Court of any supervening event which may have transpired that would affect the disposition of CTA Case No. 7262 and whether there is a need to conduct further proceedings.[6]

On March 29, 2017, petitioner manifested[7] that in view of the fact that CTA Case Nos. 6714 and 7262 were consolidated, the dismissal of CTA Case No. 6714 may affect the disposition of the merits of CTA Case No. 7262. Petitioner requested for leave to file Memorandum for CTA Case No. 7262, which the Court granted in the Resolution[8] dated June 6, 2017. In the same resolution, the Court noted that respondent failed to file a manifestation as directed in the Resolution dated March 14, 2017, despite notice.

Considering petitioner's Memorandum[9] filed on September 11, 2017, the Court issued a Resolution[10] on October 6, 2017, submitting CTA Case No. 7262 anew for decision.

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[3] Docket (Vol. IV), pp.1672-1681.
[4] Docket (Vol. IV), p.1683.
[5] Docket (Vol. IV), p.1700-1701.
[6] Resolution dated March 14, 2017, Docket (Vol. IV), pp.1704-1705.
[7] Manifestation (With Motion for Leave to File Memorandum), Docket (Vol. IV), pp.1706-1708.
[8] Docket (Vol. IV), pp.1711-1712.
[9] CTA docket, vol. IV, pp.1730-1760.
[10] CTA docket, vol. IV, p.1857.

The sole issue for determination of this Court pertains to the proper amount of excess and unutilized input VAT covering the period of March 1, 2003 to August 31, 2004 that is allowable for refund or issuance of tax credit certificate in favor of petitioner in CTA Case No. 7262.

In the Decision dated August 24, 2010 pertaining to both CTA Case Nos. 6714 and 7262, this Court partially granted petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱3,053,469.99, computed as follows:

	April 1, 2001 to Feb. 28 2003	**March 1, 2003 to Aug. 31, 2004**	**Total**
Output VAT	₱ 194,184,554.44	₱ 26,322,238.96	₱ 220,506,793.40
Less: Input VAT			
Carried-over from prev qtr	₱ 15,414,288.07	₱ 1,274,092.82	₱ 15,414,288.07
Presumptive Input Tax	6,701,884.34	-	6,701,884.34
Domestic purchases	165,655,103.00	28,101,616.12	193,756,719.12
Total available Input Tax	₱ 187,771,275.41	₱ 29,375,708.94	₱ 215,872,891.54
Vat Payable/(Excess Input Tax)	₱ 6,413,279.03	₱ (3,053,469.99)	₱ 4,633,901.86
Less: Advance Payment	7,687,371.85	-	7,687,371.85
Tax Payable/(Overpayment)	**₱ (1,274,092.82)**	**₱ (3,053,469.99)**	**₱ (3,053,469.99)**

It could be gleaned from the above that the refundable excess input VAT as per the original Decision in the amount of ₱3,053,469.99 is composed of ₱1,274,092.82 pertaining to the overpayment for the period April 1, 2001 to February 28, 2003 which was then carried over to the following period and accumulated with the overpayment for the period March 1, 2003 to August 31, 2004 in the amount of ₱1,779,377.17 (₱3,053,469.99 less ₱1,274,092.82).

However, since only CTA Case No. 7262 was remanded by the Supreme Court, we shall tackle the issues raised in petitioner's Motion for Reconsideration and Supplement to Petitioner's Motion for Reconsideration filed on September 13, 2010 and December 29, 2010, respectively, of this Court's August 24, 2010 Decision as they relate to CTA Case No. 7262 and determine whether or not the refundable input VAT of ₱1,779,377.17 as originally granted is correct.

Input Tax Carried Over from Previous Quarter requires substantiation

Petitioner posits that the substantiation of ₱21,633,716.56 representing the excess input VAT carried over from the 4th quarter of taxable year 2000, through the presentation of invoices and receipts, does not form part of the requisites necessary to entitle petitioner to a refund in this case. In order to be entitled to a refund of excess input VAT attributable to zero-rated sales, the provisions of Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, shall apply.

Moreover, according to petitioner, in order to satisfy the requisite of Sec. 112(A), it is imperative for a taxpayer to prove the extent that its input tax was not applied against its output tax. It then follows that the taxpayer also has to prove the input tax that was ACTUALLY applied or utilized against its output tax.

In this case, petitioner allegedly had excess input tax of ₱27,847,897.72 at the end of the period April 1, 2001 to February 23, 2003 because the total input tax it incurred during the said period plus the amount of ₱38,199,071.54 which presents input tax carried over from the quarter preceding said period, was much higher than its total output tax.

The Court disagrees.

At the outset, it must be noted that this issue pertains only to petitioner's claimed excess input VAT covering the period of April 1, 2003 to February 28, 2003 (CTA Case No. 6714) and does not have a bearing on petitioner's claimed excess input VAT for the period of March 1, 2003 to August 31, 2004 (CTA Case No. 7262). However, for purposes of academic discussion, we shall elucidate on the said issue.

To recall, petitioner's excess input tax to be carried over to the period April 1, 2001 to February 28, 2003 (CTA Case No. 6714), was arrived at as follows:

Total Output Taxes	₱ 38,700,447.19
Less: Accumulated Input Taxes Carried Over from Previous Quarter	21,633,716.56

Sub-total	₱ 17,066,730.63
Less: Total Input Taxes from Current Purchases	55,265,802.17
Excess Input Tax Credits to be Carried Over	**₱ (38,199,071.54)**

From the foregoing, a component of the excess amount of ₱38,199,071.54 as of the end of February 28, 2003 is the Accumulated Input Taxes Carried Over from Previous Quarter of ₱21,633,716.56. The other components are petitioner's Output Taxes of ₱38,700,447.19 and Total Input Taxes from Current Purchases of ₱55,265,802.17.

It is undeniable that petitioner's Accumulated Input Taxes Carried Over from Previous Quarter of ₱21,633,716.56 formed part of its total input tax credits of ₱76,899,518.73 (the sum of ₱21,633,716.56 and ₱55,265,802.17) that were used or applied to cover its Output Taxes of ₱38,700,447.19 and that the excess amount of ₱38,199,071.54 resulted from its total tax credits less its output tax liability. Clearly, its Accumulated Input Taxes Carried Over from Previous Quarter in the amount of ₱21,633,716.56 is a part of petitioner's excess input VAT of ₱38,199,071.54.

In other words, if the Accumulated Input Taxes Carried Over from Previous Quarter remains unsupported, the Excess Input Tax of ₱38,199,071.54 which will be carried over to April 1, 2001 to February 28, 2003 will be reduced. Hence, the substantiation of the amount of ₱21,633,716.56 is crucial in order to fully grant the petition.

Advance Payment of VAT on Refined Sugar should be properly supported

In the August 24, 2010 Decision, this Court denied petitioner's claim for the Advance VAT Payments on Refined Sugar for the period March 1, 2003 to August 30, 2004 in the amount of ₱11,096,505.52 for being unsupported, to wit:

> "xxx However, as regards petitioner's claimed advance VAT payments in the amount of ₱14,195,983.19, supported merely by Payment Forms, the same cannot be allowed to be credited against its output tax. **The Payment Forms should have been machine validated or supported by official receipt issued by**

> **the BIR's Authorized Agent Bank (AAB) or the Revenue Official Receipt (ROR) issued by the Revenue Collection Officer (RCO) or the duly authorized City or Municipal Treasurer**. In addition, petitioner should have presented the corresponding Certificate of Advance Payment of the VAT as required under Sections 5 and 7 of RR 7-89, as amended by Sections 5 and 8 of RR 29-02.
>
> **Also, petitioner's claimed ₱11,096,505.52 advance VAT payments for the period March 1, 2003 to August 31, 2004 shall be disallowed for petitioner's failure to substantiate the same.**" *(emphasis supplied)*

Petitioner asserts that it has been duly proven that the advanced payment of VAT on refined sugar in the amount of ₱14,195,983.19 was truly received by the Government for the following reasons:

First, petitioner insists that all of the disallowed Payment Forms bear the receiving stamp of the appropriate office of the BIR.

Second, petitioner questions the Court's reliance on the Certificate of Advance Payment (the "Certificate"), since petitioner's advance payments were filed from August 2001 to November 2002, so that such payments are still covered by RR 7-89 and not RR No. 29-02, which was only issued on December 20, 2002. However, petitioner believes that RR 7-89 suffers from intrinsic irregularity since an administrative regulation cannot override a statute.

Petitioner points out that under RR 7-89, the advance payment of VAT on the sale of refined sugar shall be paid by the seller/owner to the BIR, "thru the sugar refinery" who shall thereafter issue the Certificate upon receipt of the advance payment of VAT, to wit:

> "SECTION 3. *Requirement to pay in advance VAT on sale of refined sugar.* – The value added tax on the sale of refined sugar shall be paid in advance by the owner/seller to the Bureau of Internal Revenue (BIR), thru the sugar refinery. The advance payment shall be made prior to or upon issuance of the refined sugar release order (RSRO) or similar instruments.

> "SECTION 5. *Proof of advance payment.* – The sugar refinery shall issue a certificate of advance payment in a form prescribed therefore (BIR Form No. ___) to each owner/seller upon payment in advance of the VAT as required in Section 3 of these Regulations. This certificate and official receipt/confirmation receipt issued by the BIR for the advance payment shall serve as proof of the credit for such advance payment against output tax as provided in Section 7 of these Regulations."

Petitioner avers that by issuing Sections 3 and 5 of RR 7-89, respondent in effect authorized private entities (specifically the sugar refineries) to collect taxes on his behalf. Petitioner submits that there is nothing contained in the NIRC of 1997, as amended, that authorizes respondent to delegate the collection of taxes to sugar refineries. RR 7-89 itself states that it was issued pursuant to Section 245 of the NIRC of 1997, as amended. However, Section 245 is very specific that VAT shall be paid only to the BIR's collection officers or to duly authorized agent banks.

Petitioner asserts that Section 8(B) of the NIRC of 1997, as amended, is also specific that it is only respondent, his duly authorized representative, or an authorized agent bank that may acknowledge the payment of a tax. Hence, petitioner argues, neither may a sugar refinery be considered respondent's "duly authorized representative" under Section 8(B) of the NIRC of 1997, as amended, for the purpose of receiving tax payments. It is further submitted that the phrase "duly authorized representative" is limited by Section 12 of the NIRC of 1997, as amended, to wit:

> "SEC. 12. *Agents and Deputies for Collection of National Internal Revenue Taxes.* – The following are hereby constituted agents of the Commissioner:
>
> a) The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods;
>
> b) The head of the appropriate government office and his subordinates with respect to the collection of energy tax; and

c) Banks duly accredited by the Commissioner with respect to receipt of payments of internal revenue taxes authorized to be made thru banks. xxx"

In sum, petitioner insists that RR 7-89 quite clearly contravenes the express provision of the NIRC of 1997, as amended, on who may collect internal revenue taxes insofar as it authorizes sugar refineries to collect taxes from the seller/owners and issue the Certificate to allow them to withdraw the refined sugar.

Nevertheless, even if petitioner's argument is correct that RR No. 7-89 is contrary to law, the same only applies to CTA Case No. 6714, which is no longer being tackled. For CTA Case No. 7262 covering the period March 1, 2003 to August 30, 2004, the applicable revenue regulation is RR No. 29-02, which, even petitioner has found to be the valid regulation over RR 7-89.

Therefore, because the Advanced VAT Payment in the amount of ₱11,096,505.52 for the period March 1, 2003 to August 30, 2004 was not substantiated with VAT Payment Certificates or Official Receipts from an Authorized Agent Bank or any collecting agent as prescribed by RR No. 29-02, the disallowance made in the original Decision still stands.

Refundable Excess Input Tax for period March 1, 2003 to August 31, 2004 shall be ₱1,779,377.16

In fine, our perusal of the issues raised by petitioner in its Motion for Reconsideration and Supplement to Petitioner's Motion for Reconsideration shows that the same were not meritorious enough to overturn the Court's original Decision in CTA Case No. 7262.

Thus, the Court hereby finds petitioner entitled to a refundable input VAT amounting to ₱1,779,377.16 attributable or allocable to its zero-rated export sales for the period March 1, 2003 to August 31, 2004 under CTA Case No. 7262, computed as follows:

	March 1, 2003 to Aug. 31, 2004
Output VAT	₱ 26,322,238.96

a/

Less: Input VAT	
Carried-over from prev qtr	₱ -
Presumptive Input Tax	-
Domestic purchases	28,101,616.12
Total available Input Tax	₱ 28,101,616.12
Vat Payable/(Excess Input Tax)	₱ (1,779,377.16)
Less: Advance Payment	-
Tax Payable/(Overpayment)	**₱ (1,779,377.16)**

WHEREFORE, in light of the foregoing considerations, the Petition for Review in CTA Case No. 7262 is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount **of ONE MILLION SEVEN HUNDRED SEVENTY-NINE THOUSAND THREE HUNDRED SEVENTY-SEVEN PESOS AND SIXTEEN CENTAVOS (**₱1,779,377.16**)** representing its unutilized excess input VAT for the period of March 1, 2003 to August 31, 2004.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

LOVELL R. BAUTISTA
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.

LOVELL R. BAUTISTA
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Acting Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice