REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1044
(CTA Case No. 8136)

Present:
Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

SEP 15 2015
2:40 p.m.

x---x

RESOLUTION

BAUTISTA, J.:

For consideration is petitioner's "Motion for Reconsideration" filed on March 31, 2015; with respondent's "Comment/Opposition" filed on June 23, 2015.

The Court *En Banc,* on February 12, 2015, promulgated a Decision, the dispositive portion thereof states:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**. Accordingly, the Decision and Resolution dated May 15, 2013 and July 3, 2013, respectively, are hereby **AFFIRMED**.

SO ORDERED."

Petitioner's arguments:

Petitioner alleges that the amount of erroneous payment of output VAT was only determined on July 2009 after the Large Taxpayer Service of the Bureau of Internal Revenue ("BIR") had already issued a letter of authority dated May 27, 2009. Therefore, it could not possibly amend the quarterly VAT returns without violating Section 275 of the National Internal Revenue Code, as amended ("NIRC").

Furthermore, it alleges that the subject matter of the claim for refund or tax credit is the inadvertent omission/under declaration of input VAT amounting to Php80,366,056.99 in computing its output VAT for the said period of claim. Therefore, the substantiation requirement was focused on the substantiated input VAT and not on the omitted input VAT.

Finally, it alleges that the Court in coming up with its Decision, substantial justice, equity and fair play should have prevailed over technicalities and legalism.

Respondent's arguments:

Respondent avers that the Independent Certified Public Accountant ("ICPA") failed to determine with certainty whether its Input VAT of Php80,366,056.99 was properly substantiated with VAT invoices/receipts.

Finally, she alleges that the substantiated input VAT of Php202,484,577.64 was not enough to offset petitioner's output tax of Php1,457,282,180.55. Hence there is no basis for petitioner's claim.

The issue lies on petitioner's claim of the alleged undeclared input VAT in the amount of Php80,366,056.99.

The Court *En Banc* has already settled the issue and found that the alleged undeclared amount of Php80,366,056.99 only the amount of Php67,528,010.56 was substantiated[1] and that this amount is insufficient to offset the output tax in the total amount of Php2,727,216,115.50.[2]

In the case of *Emilia Manzano vs. Miguel Perez Sr., Leoncio Perez, et. Al.,*[3] the Supreme Court held that when petitioner failed to discharge its burden, the findings and conclusions of the Court shall not be disturb, to wit:

> "This Court finds no cogent reason to disturb the findings and conclusions of the Court of Appeals. Upon close examination of the records, we find that petitioner has failed to discharge her burden of proving her case by a preponderance of evidence. This concept refers to evidence that has greater weight or is more convincing than that which is offered in opposition; at bottom, it means probability of truth."

In the present case, petitioner failed to discharge its burden of proof when it did not present sufficient evidence to prove that it is entitled to its claim of undeclared input VAT of Php80,366,056.99. Thus, the Court *En Banc* finds no basis to disturb its findings and conclusions reached based merely on conjectures.

Finally, while Section 6(A) of the NIRC prohibits a taxpayer from amending his tax return after the issuance of a Letter of Authority, it does not prevent a taxpayer from presenting evidence to prove that he is entitled to refund.

In the case of *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue,*[4] the Supreme Court held, which the Court *En Banc* quotes in part, "that proving a carry-over is an evidentiary matter and that the submission of quarterly ITRs is but a means to prove the fact of one's entitlement to a refund and not a condition *sine qua non* for the success of refund."

---

[1] *Rollo,* Decision in CTA EB No. 1044 (CTA Case No. 8136) dated February 12, 2015, pp. 147-148.
[2] *Id.,* p.151.
[3] G.R. No. 112485, August 9, 2001 citing *Sison v. CA,* 286 SCRA 495, February 24, 1998.
[4] G.R. No. 206526, January 28, 2015.

Therefore, petitioner may have failed to amend its tax return as it alleged, still it could have presented evidence to show its entitlement. Having failed to do so, the Court *En Banc* finds no other recourse but to uphold its Decision dated February 12, 2015.

WHEREFORE, in view of the foregoing, the "Motion for Reconsideration," is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

With Separate Concurring Opinion maintained
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda Jr.
With Separate Concurring Opinion maintained
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

TOOK NO PART
ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
I join separate concurring opinion of Justice Castañeda
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
I join PJ del Rosario's separate concurring opinion.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice