REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

COLT COMMERCIAL, INC.,
Respondent.

CTA EB NO. 2074
(CTA Case No. 9356)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

Promulgated:

DEC 03 2020
4:18 p.m.

x---x

DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) which seeks the reversal of the Decision dated December 18, 2018,[2] (Assailed Decision) as well as the Resolution dated May 9, 2019[3] (Assailed Resolution) of the Special Third Division (Court in Division)[4] of this Court in CTA Case No. 9356 entitled *Colt Commercial, Inc. v. Commissioner of Internal Revenue.*

---

[1] Court *En Banc's* Docket, pp.5-13.
[2] *Id.*, pp. 17-40.
[3] *Id.*, pp. 42-45.
[4] Composed of Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban as members.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, the instant Petition for Review filed by petitioner Colt Commercial, Inc., on May 23, 2016, is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱3,155,032.77**, representing its unutilized and excess input VAT attributable to its zero-rated sales for the 1st and 2nd quarters of TY 2014.
>
> **SO ORDERED.**"

Assailed Resolution:

> "**WHEREFORE**, there being no formidable argument warranting a reversal, much less a modification of the assailed Decision of December 18, 2018, respondent's Motion for Reconsideration dated January 18, 2019 is **DENIED**.
>
> **SO ORDERED.**"

THE FACTS

As found by the Court in Division in its Decision dated December 18, 2018, the facts of the present case are as follows:[5]

> "Petitioner is a domestic corporation, with office address at Suite 508 Padilla Delos Reyes Bldg., 232 Juan Luna St., Brgy. 289, Zone 027, Binondo, Manila. It is principally engaged in the business of selling cutting tools and hardware. It is a VAT-registered taxpayer with Taxpayer Identification No. (TIN) 008-327-264-000.
>
> Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), authorized to act on claims for refund or issuance of tax credit certificate in accordance with

[5] Court *En Banc's* Docket, pp. 17-21 (Citations omitted).

the law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner states that it incurred unutilized input tax payments attributable to its zero-rated sales for the 1st and 2nd quarters of TY 2014 in the amounts of ₱2,000,256.32 and ₱1,445,784.19, respectively.

On March 30, 2016, petitioner filed with BIR Revenue District Office (RDO) No. 30, an administrative claim for refund of the cited excess input VAT for the 1st and 2nd quarters of TY 2014 in the sum of ₱3,446,040.51.

The said claim for refund was however denied through the Letter dated April 21, 2016 of Revenue District Officer Leonora R. Ruizol, hence, this Petition for Review filed on May 23, 2016.

On July 12, 2016, respondent filed his Answer arguing that the present claim for refund is premature since its case is still pending investigation with Revenue Region No. 6, BIR Manila. Besides, per record, petitioner has already applied the entire amount of input tax, subject of the claim for refund, against its output tax by carrying over the same to succeeding taxable quarters, specifically from taxable quarters ending March 31, 2013 up to March 31, 2015. Verification of petitioner's VAT Returns revealed that the input taxes amounting to ₱2,000,256.32 and ₱1,445,784.19 were not deducted from available input tax corresponding to the period of claim.

Respondent also argues that pursuant to Section 112 of the NIRC of 1997, as amended, the remedies of tax refund and input tax carry-over are alternative in nature and the choice of one precludes the other. Finally, respondent invokes the principle that claims for refund are construed strictly against the claimant since they are in the nature of tax exemptions.

After the Pre-trial Conference on October 11, 2016, the parties filed their Joint Stipulation of Facts and Issues on October 26, 2016, on the basis of which a Pre-Trial Order was issued on November 23, 2016.

To substantiate its case, petitioner presented as its witnesses, Cyrus S. Chung Jr., Cherilyn R. Chung, Jennifer S. Mañago and the Court-commissioned Independent Certified Public Accountant (ICPA) Sonny S. Bonilla.

Petitioner's President, **Cyrus S. Chung** testified that petitioner was established on July 17, 2012. It is engaged in the business of selling cutting tools and hardware. It supplies business enterprises in need of cutting tools and other hardware, most of which are within the ecozone and are PEZA and SBMA-registered entities. Petitioner is a VAT-registered entity registered with BIR-RDO No. 30 in Binondo, Manila, as evidenced by its BIR Certificate of Registration dated August 31, 2012.

Petitioner filed an administrative claim for refund of its unutilized input tax payments attributable to zero-rated sales to its clients for the 1st and 2nd quarters of TY 2014 in the respective amounts of ₱2,000,256.32 and ₱1,445,784.19. It was however denied in a Decision dated April 21, 2016 issued by BIR RDO No. 30 and received by petitioner on April 22, 2016. Upon consultation with its legal counsel, petitioner authorized him to file the instant Petition for Review.

Petitioner's Corporate Secretary and Treasurer, **Cherilyn R. Chung** corroborated the foregoing testimony and added that their counsel advised them to file an administrative claim for refund so that they can utilize their excess input VAT. Hence, they prepared the documents necessary and filed an administrative claim for refund on March 30, 2016 with RDO No. 30. On April 22, 2016, petitioner received a Letter from BIR RDO No. 30 signed by Revenue District Officer, Ms. Leonora Ruizol, denying petitioner's administrative claim for refund prompting them to file the instant case with the Court on May 23, 2016.

Witness **Jennifer S. Mañago** testified that as petitioner's accounting head, she was responsible for the preparation, timely filing, payment and submission of tax returns and other reports to the BIR, Securities and Exchange Commission (SEC) and other government agencies.

She also corroborated the testimonies of the previous two witnesses and further declared that for the 1st Quarter of TY 2014, petitioner's sales allocation consisted of ₱10,362,386.09 vatable sales and ₱23,532,943.34 zero-rated sales with corresponding output tax of ₱1,243,486.33 and input tax of ₱3,243,742.65. For the 2nd Quarter of TY 2014, petitioner had ₱10,190,257.41 vatable sales and ₱22,615,049.31 zero-rated sales, with an output tax of ₱1,222,830.89 and input tax of ₱2,668,615.08. Thus, petitioner incurred an excess input VAT in the amounts of

₱2,000,256.32 for the 1st Quarter of TY 2014 and ₱1,445,784.19 for the 2nd Quarter of TY 2014. To avoid double recovery, petitioner deducted the amount corresponding to the unutilized and excess input VAT from the total available input VAT item in the Quarterly VAT Return for the 3rd Quarter of TY 2014. Petitioner likewise incurred unutilized input VAT in TY 2013 as evidenced by petitioner's VAT Returns for the 1st to 4t Quarters of TY 2013.

The witness admitted that while she prepared most of the documents she identified and is familiar with their contents, she did not have personal knowledge about the transactions involving the said documents as some were either issued by the BIR or prepared by petitioner's counsel or other employees.

On petitioner's application to use pre-numbered loose-leaf forms, she explained that she had no participation in the said application but aware that it was granted. Further, the use of pre-numbered loose-leaf invoices was necessary as petitioner printed sales invoices through the computer. However, for collection purposes, petitioner still used hard bound collection receipts.

The Court-commissioned ICPA, **Sonny S. Bonilla** testified that based on his findings as stated in his ICPA Report dated March 9, 2017, petitioner is entitled to input VAT refund for the 1st and 2nd quarters of TY 2014 but in the reduced amount of ₱3,427,018.36.

He further testified that for the Quarterly VAT Returns for the 1st and 2nd quarter of TY 2014, petitioner did not indicate the amount subject for VAT refund. In any event, in its Amended 3rd Quarter VAT Return, petitioner indicated its intention to claim for VAT refund. He also learned from his audit that in its 4th Quarter VAT Return, petitioner carried over the excess input VAT from the 3rd quarter of TY 2014.

After its last witness, petitioner rested its case per Resolution dated July 5, 2017.

On October 2, 2017, respondent manifested that he would no longer present any evidence.

After respondent filed his Memorandum on November 17, 2017, the case was submitted for decision on December 27, 2017 *sans* any from petitioner."

On December 18, 2018, the Court in Division rendered the Assailed Decision partially granting respondent's Petition for Review.

Aggrieved, petitioner filed a Motion for Reconsideration on January 18, 2019 which the Court in Division denied in the Assailed Resolution.

On June 17, 2019, petitioner filed the present Petition for Review via registered mail.

On July 29, 2019, respondent filed via registered mail its Comment to Petitioner's Petition for Review dated 17 June 2019.[6]

In a Resolution dated September 2, 2019,[7] the Court *En Banc* gave due course to the Petition for Review and directed the parties to file their respective memoranda within 30 days from notice.

Respondent filed its Memorandum[8] on October 9, 2019 while petitioner filed his Memorandum[9] on October 21, 2019.

In a Resolution dated December 4, 2019,[10] the Court *En Banc* submitted the present Petition for Review for decision.

THE ISSUE

Petitioner filed the present Petition for Review on the basis of the following assignment of error: [11]

> "THE HONORABLE COURT OF TAX APPEALS-SPECIAL THIRD DIVISION ERRED IN PARTIALLY GRANTING RESPONDENT'S PETITION FOR REVIEW, AND ORDERING PETITIONER TO REFUND TO RESPONDENT IN THE REDUCED AMOUNT OF PHP3,155,032.77 REPRESENTING ITS UNUTIL[IZ]ED INPUT TAXES ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE 1ST AND 2ND QUARTERS OF TAXABLE YEAR 2014."

[6] *Id.*, pp. 63-67.
[7] *Id.*, pp. 72-73.
[8] *Id.*, pp. 78-86.
[9] *Id.*, pp. 89-96.
[10] *Id.*, pp. 105-106.
[11] *Id.*, pp. 9-10.

THE COURT *EN BANC*'S RULING

In the present Petition for Review, the CIR essentially assails the Decision of the Court in Division partially granting Colt Commercial, Inc.'s claim for refund of the latter's unutilized and excess input VAT attributable to its zero-rated sales for the 1st and 2nd quarters of taxable year 2014 on the solitary argument that Colt Commercial, Inc. allegedly failed to provide this Court with the original or certified true copies of the PEZA and SBMA certificates of registration of its clients and/or customers.

After thorough evaluation of the factual antecedents of the present case, the arguments of the parties, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* finds that the present Petition for Review should be denied for lack of merit. In other words, there is no substantial matter much less compelling reason to disturb the findings of the Court in Division in the Assailed Decision and Resolution.

In resolving the present Petition for Review, the Court *En Banc* takes its guidance from the ruling of the Supreme Court in *Lorenzana v. Lelina*,[12] as follows:

> "The best evidence rule requires that when the subject of inquiry is the contents of a document, no evidence is admissible other than the original document itself except in the instances mentioned in Section 3, Rule 130 of the Revised Rules of Court. As such, mere photocopies of documents are inadmissible pursuant to the best evidence rule. **Nevertheless, evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment. Courts are not precluded to accept in evidence a mere photocopy of a document when no objection was raised when it was formally offered.**
>
> In order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds specified. Objection to evidence must be made at the time it is formally offered. **In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made. And when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived.**

[12] G.R. No. 187850, August 17, 2016, 800 SCRA 580-581.

> This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time. Moreover, grounds for objection must be specified in any case. Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground. **Thus, even on appeal, the appellate court may not consider any other ground of objection, except those that were raised at the proper time.**" *(Emphasis supplied and citations omitted)*

Consistent with the foregoing, the Court *En Banc* fully agrees with the Court in Division in its finding that:[13]

> "The record shows that in his comment/opposition to petitioner's formal offer of evidence, respondent challenged the admissibility of the subject PEZA/SBMA Certificates of Registration on the ground that they are *hearsay for lack of proper authentication by the issuing office or authority.* It is only now and for the first time via the instant Motion that he is raising the objection against the admission of PEZA/SBMA Certificates of Registration of petitioner's clients on the ground that they were *mere photocopies and/or not originals*. A party's right to impugn the admissibility of evidence is a mere privilege which can be waived. The objection must be made at the earliest opportunity, lest silence when there is opportunity to speak may operate as a waiver of objections.
>
> And granting *ex gratia argumenti* that such PEZA/SBMA Certificates were indeed photocopies, by reason of respondent's failure to object within the period prescribed by the rules, the same may be admitted and considered as sufficient to prove the facts therein asserted, and it is, like any other evidence, to be considered and given the importance it deserves."

WHEREFORE, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

---

[13] Assailed Resolution, Court *En Banc*'s Docket, p. 44.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in above 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