REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SONY ERICSSON MOBILE COMMUNICATIONS INTERNATIONAL AB,
Respondent.

CTA EB NO. 1268
(CTA CASE NO. 8579)

Present:

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

Promulgated:

OCT 12 2015

3:25 p.m.

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue (CIR), assailing the October 9, 2014 Decision and the January 21, 2015 Amended Decision of the First Division of this Court in CTA Case No. 8579.

The October 9, 2014 Decision partially granted the claim for refund or tax credit of Sony Ericsson Mobile Communications International AB (Sony Ericsson) in the amount of Two Million One Hundred Thirty Nine Thousand Four Hundred Fifty One Pesos (P2,139,451.00) representing its unutilized input Value-Added Tax (VAT) attributable to its zero-rated sales of marketing services to its affiliate for the second, third and fourth quarters of 2010.

The January 21, 2015 Amended Decision increased the amount of refund or tax credit to Two Million Four Hundred Seventy Four Thousand Two Hundred and 93/100 Pesos (P2,474,200.93).

FACTS

The facts narrated by the Court in Division are as follows:[1]

"Petitioner is licensed by the SEC in accordance with the Corporation Code of the Philippines to establish a branch office in the Philippines. It is primarily engaged in providing marketing services to companies located outside the Philippines by organizing promotional events to launch new products and services under the brand name of 'Sony Ericsson' in the local market pursuant to its Sales Promotional and Marketing Services Agreement dated January 1, 2006 executed between petitioner and Sony Ericsson Mobile Communications AB, a corporation organized and existing under the laws of Sweden.

On the following dates, petitioner filed its Quarterly VAT Returns for the taxable period of April 2010 to December 2010, as follows:

Exhibit	Period	Date of Filing
L	April to June 2010	July 26, 2010
M	July to September 2010	October 26, 2010
N	July to September 2010 (amended)	July 28, 2011
O	October to December 2010	January 25, 2011

On June 29, 2012, petitioner filed with the Revenue District Office No. 43A-Pasig an administrative claim for refund or issuance of TCC of its unutilized input VAT for the 2nd to 4th quarters of 2010. It allegedly has incurred unutilized input VAT from its purchases of non-capital goods, importation of non-capital goods and domestic purchases of service in the total amount of P3,911,144.55.

Due to the alleged inaction of respondent in deciding the administrative claim for refund or issuance of TCC within the 120-day period provided for by Section 112(C) of the National

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[11] October 9, 2014 Decision, Rollo, pp. 17-19.

Internal Revenue Code (NIRC) of 1997, as amended, petitioner filed the subject Petition for Review on November 26, 2012.

In her Answer filed on January 7, 2013, respondent raised by way of special and affirmative defenses that: (a) petitioner's contention that it is entitled to a refund/tax credit certificate is erroneous; (b) petitioner failed to substantiate and prove that its input taxes have not been applied against output taxes during and in the succeeding quarters and that the same were attributable to zero-rated or effectively zero-rated sales; (c) the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund; and, (d) refund/tax credit certificate are construed strictly against the taxpayer as they partake the nature of tax exemption.

During trial, petitioner presented Patrick Emmanuel S. Larraga, petitioner's resident agent; Jocelyn Calma, manager-in-charge of Villaruz, Villaruz & Co.; and, Atty. Clifford Chua, independent Certified Public Accountant (ICPA), as its witnesses.

Thereafter, petitioner filed its Formal Offer of Evidence on August 22, 2013, submitting Exhibits 'A' to 'NNN-1', inclusive of sub-markings; which this Court admitted in the Resolution dated December 17, 2013, except Exhibits 'VV-76' to 'VV-91', 'VV-99', 'VV-109' and 'YY-16'.

On February 4, 2014, respondent presented her witness, Atty. Carmencita G. Villanueva, Revenue Officer II-Assessment Section of RDO 43-A, East Pasig.

Respondent filed her Formal Offer of Evidence on February 5, 2014, submitting Exhibits 'R-1' to 'R-8-1', inclusive of sub-markings, all of which were admitted in the Resolution dated March 27, 2014.

With the filing of petitioner's Memorandum on June 9, 2014 and respondent's Memorandum on May 6, 2014, the case was considered submitted for decision on June 18, 2014." (citations omitted)

On October 9, 2014, the Court in Division partially granted the claim of Sony Ericsson.[2] It ruled that Sony Ericsson:

1) filed the administrative and judicial claims on time;[3] ✓

[2] October 9, 2014 Decision, Division Docket, Volume II, pp. 844-859.
[3] October 9, 2014 Decision, Division Docket, Volume II, pp. 848-851.

2) proved:
   a) the existence of zero-rated sales;[4]
   b) that the input VAT paid were attributable to the corporation's zero-rated sales;[5] and,
   c) that the input VAT subject of the claim was not applied against any output VAT liability in the succeeding quarters.[6]

However, it reduced the input VAT claim because of disallowances by the Court-commissioned independent Certified Public Accountant (ICPA) and of further disallowances due to other substantiation issues.[7]

The CIR moved for partial reconsideration[8] while Sony Ericsson moved for partial reconsideration or new trial.[9] The Court in Division denied the CIR's motion and partially granted Sony Ericsson's motion by reconsidering the disallowance of P361,237.22 less P26,487.29, or a total of P334,749.93.[10] Thus, in the Amended Decision, the Court in Division held that Sony Ericsson has proven its entitlement to a refund or tax credit of P2,474,200.93.[11]

Accordingly, on February 5, 2015, the CIR filed a Petition for Review with the Court *En Banc*.

ISSUE

Petitioner CIR raised one assignment of error:

"The Majority in the 1st Division erred in deciding that Respondent was able to substantiate its claim for refund."

DISCUSSION

Petitioner CIR submits that the Court in Division committed error in partially granting Sony Ericsson's claim in view of the following factual issues: ℊℯ

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[4] October 9, 2014 Decision, Division Docket, Volume II, pp. 852-854.
[5] October 9, 2014 Decision, Division Docket, Volume II, pp. 854-857.
[6] October 9, 2014 Decision, Division Docket, Volume II, p. 858.
[7] October 9, 2014 Decision, Division Docket, Volume II, pp. 854-857.
[8] CIR's Motion for Partial Reconsideration filed on October 24, 2014, Division Docket, Volume II, pp. 863-869.
[9] Sony Ericsson's Motion for Partial Reconsideration/New Trial filed on October 29, 2014, Division Docket, Volume II, pp. 870-881.
[10] January 21, 2015 Amended Decision, Division Docket, Volume II, pp. 898-901.
[11] January 21, 2015 Amended Decision, Division Docket, Volume II, p. 901.

(a) Despite receipt of the Checklist of Requirement attached to the Letter of Authority, Sony Ericsson failed to submit the pertinent documents;[12]

(b) Sony Ericsson also failed to substantiate its zero-rated sales specifically stating that "a perusal upon the invoices submitted by Respondent would show that said invoices failed to comply with the requirement provided under Sec. 4.108-1b [Revenue Regulations 7-95] because of the absence of the word 'zero-rated' on the face of its invoices."[13] and,

(c) Lastly, Sony Ericsson failed to substantiate its input VAT, i.e. purchase invoice and official receipts, according to the requirements in Revenue Memorandum Circular No. 42-2003.[14]

We shall discuss the issues in the order stated above.

First, the CIR insists that Sony Ericsson "despite receipt of requirements, xxx <u>did not submit the required documents</u>."[15] We note that she already raised this point in her May 6, 2014 Memorandum[16] before the Court in Division and reiterated the same point in her June 9, 2015 Memorandum[17] before this Court.

However, the decision of the Court in Division squarely addressed this matter when it noted that when Sony Ericsson filed its administrative claim (Exhibit I),[18] it also attached all the pertinent documents it deemed sufficient to support the claim, thus:

> "<u>Records, however, show that when petitioner [Sony Ericsson] filed the administrative claim</u> on June 29, 2012, <u>petitioner simultaneously submitted the documents in support thereof</u>. This is evident from petitioner's letter claim which stated:
>
> 'For your immediate reference, we attached the following documents:
>
> 1. Application for Tax Refund/Credit (BIR Form No. 1914);
> 2. Authorization Letter issued by the Company in favor of Du-Baladad & Associates;
> 3. SEMCI's Certification showing amount of zero-rated sales;

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[12] CIR's Petition for Review, Rollo, pp. 5-6.
[13] CIR's Petition for Review, Rollo, p. 8.
[14] CIR's Petition for Review, Rollo, p. 6.
[15] CIR's Petition for Review, Rollo, p. 5, paragraph 4.
[16] CIR's May 6, 2014 Memorandum, Division Docket, Volume II, p. 832-FF, paragraph 3.
[17] CIR's June 9, 2015 Memorandum, Rollo, p. 55, paragraph 3.
[18] Sony Ericsson's Formal Offer of Evidence, Division Docket, Volume II, pp. 657-663.

4. BIR Certificate of Registration of SEMCI (BIR Form No. 2303);
5. SEC License to Transact Business in the Philippines of SEMCI;
6. Sales Promotion and Marketing Services Agreement dated January 1, 2006;
7. Duly filed quarterly VAT returns (BIR Form No. 2550-Q) for 2010 (2nd, 3rd, & 4th);
8. Duly filed quarterly VAT returns (BIR Form No. 2550-Q) for 2011 (1st, 2nd, 3rd, & 4th);
9. Summary of importations made during the period;
10. Summary list of purchases/input tax schedule;
11. Summary of Sales transactions;
12. Invoices, official receipts, and other documents evidencing payment of input VAT or input taxes incurred on local purchases and importations; (3 binders); and,
13. Import entry documents (1 binder).'

In other words, in filing the administrative claim for refund, petitioner already attached all the supporting documents it perceived to be sufficient and necessary in resolving the claim."[19] (underscoring supplied)

In fact, in her Answer, the CIR admitted the filing of the letter-administrative claim including the supporting documents with Revenue District Office No. 43A, which was alleged under paragraph II-7 of Sony Ericsson's Petition for Review and was attached as Annex D thereof.[20]

More importantly, the CIR thereafter stipulated jointly with Sony Ericsson, the same facts, thus:

"I.
Summary of Admitted Facts

xxx xxx xxx

5. Petitioner filed its application for tax refund for its unutilized VAT input taxes in the amount of THREE MILLION NINE HUNDRED ELEVEN THOUSAND ONE HUNDRED FOURTY-FOUR AND 55/100 PESOS (Php 3,911,144.55) covering the 2nd, 3rd and 4th quarters of calendar year 2010, along with all supporting documents on June 29, 2012, with the Revenue District Office No. 43A- Pasig.

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[19] October 9, 2014 Decision, Division Docket, Volume II, pp. 849-850.
[20] Paragraph 3, Answer, Division Docket, Volume I, p. 94. The CIR *correctly* referred to the allegation as paragraph II-7, regarding the Letter Request for Refund, which was incorrectly labelled as paragraph III-7 in Sony Ericsson's Petition for Review, Division Docket, Volume I, pp.7-11.

A copy of Petitioner's Letter Request for tax refund and Application for Tax Refund (BIR Form 1914) are attached in the Petition for Review as **Annexes 'D'** and **'E'**, respectively, and made integral parts hereof."[21] (underscoring supplied)

Paragraph five (5) of the Pre-Trial Order[22] also contains said admitted and stipulated facts, which the CIR cannot deny at the eleventh hour.

Finally, in the Judicial Affidavit of Atty. Carmencita G. Villanueva, Revenue Officer II, witness for the CIR, she stated that there was partial compliance with the request for documents:

"17. Q: Did the Petitioner submit the documents required for the investigation? Why?
A: Yes because the same was already attached to their application for VAT refund. However, the documents were incomplete and not sufficient to enable me to properly determine if the Petitioner is entitled to their claim for refund.

18. Q: Did your office issue another document, if any, to the Petitioner?
A: Yes. The 2nd Request for Presentation of Books & Other Accounting Records was issued and was served on December 7, 2012.

19. Q: I am showing to you this 2nd Request for Presentation of Books & Other Accounting Records dated December 5, 2012 marked as Annex "1-c", what relation does this document have with the notice you provided the Petitioner?
A: This is the notice that I mentioned earlier.

20. Q: Did they submit the documents enumerated in the 2nd Request for Presentation of Books & Other Accounting Records?
A: No.

21. Q: What did you do next, if any?
A: I served a final notice to the Petitioner on December 17, 2012.

22. Q: I am showing to you this Final Notice dated December 17, 2012 marked as Annex "1-d", what relation does this document have with the notice you provided the Petitioner?

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[21] Joint Stipulation of Facts and Issues, Division Docket, Volume I, p. 326.
[22] Division Docket, Volume I, p. 340.

A: This is the notice I mentioned earlier.

23. Q: Did the Petitioner submit the necessary documents mentioned in the Notice?
A: Yes, but only photocopies of their Bank Statements and Official Receipts which are still not enough to enable me to determine whether or not Petitioner is entitled to VAT refund."[23] (underscoring supplied)

To be sure, the CIR clearly chose to be bound by this fact in her admission, in her joint stipulation, in the Pre-Trial Order of the Court in Division and in the evidence she presented in court.

Section 1, Rule 11 of the Revised Rules of the Court of Tax Appeals makes Rule 18 of the Rules of Court applicable to the instant case. Section 7, Rule 18 of the Rules of Court reads:

"Rule 18
PRE-TRIAL

xxx xxx xxx

Sec. 7. *Record of pre-trial.* --- The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. Should the action proceed to trial, the order shall explicitly **define and limit the issues to be tried**. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice." (underscoring and emphases supplied)

Her admission made in a stipulation of facts at pre-trial by the parties must be treated as a judicial admission.[24] Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof and draws the following consequence:

"Sec. 4 . *Judicial admissions.* — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made." (underscoring supplied) *fr*

[23] Judicial Affidavit of Atty. Carmencita G. Villanueva, Division Docket, Volume I, pp. 302-303.
[24] *Commissioner of Internal Revenue v. Manila Electric Company (MERALCO)*, G.R. No. 181459, June 9, 2014.

On appeal before us, the foregoing admissions can no longer be contradicted insofar as the CIR has failed to deny making such admissions or to show that she made the admissions through palpable mistake. As a general rule, admissions made by the parties during a pre-trial conference and incorporated in their joint stipulation of facts and issues, submitted and thereafter admitted by this Court are binding.

The Supreme Court in *CIR v. Petron Corporation*, where the CIR jointly stipulated with Petron during the trial at the Court in Division, held that said stipulations are judicial admissions that cannot be disregarded without valid cause, thus:

> "This stipulation of fact by the CIR amounts to an admission and, having been made by the parties in a stipulation of facts at pretrial, is treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. **The Court cannot lightly set it aside**, especially when the opposing party relies upon it and accordingly dispenses with further proof of the fact already admitted. The exception provided in Rule 129, Section 4 is that an admission may be contradicted only by a showing that it was made through a palpable mistake, or that no such admission was made. In this case, however, exception to the rule does not exist.
>
> We agree with the pronouncement of the CTA En Banc that Petron has not been shown or proven to have participated in the alleged fraudulent acts involved in the transfer and utilization of the subject TCCs. Petron had the right to rely on the joint stipulation that absolved it from any participation in the alleged fraud pertaining to the issuance and procurement of the subject TCCs. The joint stipulation made by the parties consequently obviated the opportunity of the CIR to present evidence on this matter, as no proof is required for an admission made by a party in the course of the proceedings. Thus, the CIR cannot now be allowed to change its stand and renege on that admission."[25] (underscoring and emphases supplied)

On the second issue, the CIR maintains that the word "zero-rated" does not appear on the sales receipts issued by Sony Ericsson to its affiliate Sony Ericsson Mobile Communications AB, particularly Exhibits NN to NN-23.

To dispel any doubt and to put this issue to rest, we again reviewed Exhibits NN to NN-23. There is no doubt that each one of these official

[25] *Commissioner of Internal Revenue v. Petron Corporation*, G.R. No. 185568, March 21, 2012.

receipts which evidenced the sale of services to Sony Ericsson's affiliate bear the words "zero-rated" on their lower right hand corners. The CIR's reliance on *Panasonic Communications Imaging Corporation of the Philippines v. CIR* is, therefore, misplaced since in that case the Supreme Court upheld the denial of claim for refund by the Court *En Banc* on the ground that the taxpayer's sales invoice did not state the words "zero-rated" on their faces.[26] The facts in this case clearly do not correspond to those in *Panasonic.*

On the third issue, the CIR likewise reiterates that Sony Ericsson failed to comply with the invoicing requirements of Revenue Memorandum Circular (RMC) No. 42-2003. However, other than this general assertion, she does not spell out which invoicing requirements were violated and which documentary evidence among those offered by Sony Ericsson failed to comply with such requirements. This point, unless anchored upon more than mere allegations, cannot prevail upon the findings of the Court in Division which had the opportunity to examine and weigh upon the testimonial and documentary evidence presented by the parties including the report of the Court-commissioned ICPA and the voluminous documents which formed the basis of the report.

Findings of fact of the Court in Division are entitled to great weight and will not be disturbed absent any findings that would support a contrary conclusion. We find no cogent reason to deviate from these findings. The Court will not just set aside the conclusions reached by the Court in Division which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[27]

Indeed, facts are stubborn things[28] inspite of the inclination and duty of the CIR. The efforts of the CIR to protect the interest of the government in this case, however laudable, must nonetheless be counterbalanced by our mandate to provide adequate judicial remedy for taxpayers such as the refund of Sony Ericsson's unutilized input VAT.[29] Jr

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[26] *Panasonic Communications Imaging Corporation of the Philippines v. CIR*, G.R. No. 178090, February 8, 2010.
[27] *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011; *Commissioner of Internal Revenue v. TeaM (Philippines) Operations Corporation* [formerly Mirant (Philippines) Operations Corporation], G.R. No. 185728, October 16, 2013.
[28] "Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence."---John Adams, first Vice President of the United States, from *http://www.thefederalistpapers.org/founders/john-adams.*
[29] "To achieve its vision, the Court is guided by the following principles:

1. Fair and speedy collection of taxes by the Government;
2. Adequate judicial remedies to taxpayers against unreasonable/unjust tax assessments and refund of excessive/erroneous taxes collected;
3. Proper interpretation of tax statutes;
4. Adherence to the independence of the judiciary; and
5. Utmost deference for public trust and confidence in the judiciary."

from the Mission Statements of the Court of Tax Appeals, *http://cta.judiciary.gov.ph/thecourt*

After a careful review of the case, we find no reason to disturb the holding by the Court in Division.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the January 21, 2015 Amended Decision is **AFFIRMED**.

SO ORDERED.

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON- VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice