REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner, **CTA Case No. 8183**

- versus-

Members:

Bautista, *Chairperson*
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 17 2014
9:50 a.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.:*

This Petition for Review filed by Coca-Cola Bottlers Philippines, Inc. is a claim for refund or issuance of tax credit certificate under Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 110(A)(b) of the same Code, in the amount of ₱72,738,183.31, allegedly representing erroneously paid value-added tax (VAT) for the quarter ended September 30, 2008.

FACTS

Petitioner Coca-Cola Bottlers Philippines, Inc. is a corporation duly organized and existing by virtue of Philippine laws, with principal office at No. 1890, Paz Guazon Street, Paco, Manila. It is primarily engaged in the business of manufacturing and selling at wholesale beverages such as Coca-Cola, Sprite, Royal True Orange, Minute Maid, etc.[1] Petitioner is a VAT-registered entity as evidenced by its Certificate of Registration No. 0000019025, with Tax Identification No. 000-112-104-000.[2]

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[1] Par. 2, Joint Stipulation of Facts and Issues (JSFI), docket, pp. 84 to 85.
[2] Annex "C", Pre-Trial Brief (For Petitioner), docket, p. 64; Exhibit "A".

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On October 25, 2008, petitioner e-filed with the BIR its Quarterly VAT Return for the quarter ended September 30, 2008[3] and paid value-added tax in the amount of ₱128,486,308.29[4] for the said quarter.

On October 19, 2010, petitioner filed with respondent's Large Taxpayers Service an administrative claim for refund or tax credit of its alleged over/erroneous payment of VAT for the quarter ended September 30, 2008 in the total amount of ₱72,738,183.31.[5]

Petitioner filed a judicial claim for refund or issuance of tax credit certificate by way of a Petition for Review before this Court on October 26, 2010.

Respondent filed her Answer[6] on December 3, 2010 and interposed the following special and affirmative defenses:

> "5. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
>
> 6. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.
>
> 8. Petitioner must prove compliance with the following in order to be entitled to the claim for refund:

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[3] Exhibit "E".
[4] Exhibit "E-1".
[5] Exhibits "L" and "M".
[6] Docket, pp. 36-46.

a. That the alleged Value-Added Tax was erroneously or illegally collected.

b. That it has complied with the governing rules and regulations with regard to recovery of taxes erroneously or illegally collected/received as provided in Sections 204 and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

c. Submission of complete records in support of the administrative claim for refund otherwise there would be no compliance with regard to the filing of administrative claim for tax credit/refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 229 of the NIRC of 1997, as amended.

9. Petitioner's basis to support its claim for refund or issuance of tax credit is Section 204 of the National Internal Revenue Code, hereunder quoted for reference:

xxx xxx xxx

It is very implausible for petitioner to omit the date of payment of value-added tax erroneously or illegally paid when in fact Section 204 of NIRC which served as the basis of petitioner's claim clearly and palpably mandates. The foregoing constituted ultimate fact supporting petitioner's cause of action. For failure to allege the date of payment, the instant claim for refund has no leg to stand on.

10. Petitioner cannot justify the date of filing of instant petition on October 26, 2010 on the supposition that the amount of the said over/erroneous payment of VAT was only finally determined in July 2009 and that petitioner is barred from amending its VAT return for the quarter ended September 30, 2008 by reason of the issuance of the Letter of Authority. Section 229 of the NIRC provides that the claim for refund must be filed within the two (2) year period *regardless of any supervening cause that may arise after payment*. Hence, it is the date of payment that is material.

11. Taxes are essential to government's existence; **(CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003)** hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. **(CIR v. Fortune Tobacco Corporation, G.R. No. 167274-75, July 21, 2008)** Since tax refunds are regarded as tax exemptions and these are to be considered ***strictissimi juris*** against the person of entity claiming the exemption. **(Philippine Phosphate Fertilizer Corporation v. CIR. G.R. No. 141973, June 28, 2005)**

12. In an action for refund, the **burden of proof is on the taxpayer who claims the exemption** and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications **(BPI Leasing Corporation v. Hon. Court of Appeals, G.R. 127624, November 18, 2003)** The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund **(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc. G.R. 163835 July 7, 2010).**

13. The amount of Seventy-Two Million, Seven Hundred Thirty-Eight Thousand, One Hundred Eighty-Three and 31/100 (P72,738,183.31) being claimed by petitioner arising from unutilized input value-added tax ('VAT') incurred for the taxable year 2008 is not properly documented.

14. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

After the parties submitted their Joint Stipulation of Facts and Issues on February 4, 2011, the Court issued a Pre-trial Order[7] on February 17, 2011, declaring the pre-trial terminated.

During trial, petitioner presented its documentary evidence and its witnesses, namely: Gerardo Espiridion, Katherine Constantino, Noel Anore, Rosemarie Gamboa, and Nelson Empalmado. On the other hand, respondent presented her documentary evidence and her sole witness, Miguel Sulit.

The case was submitted for decision on March 11, 2013[8], considering the memoranda filed by respondent and petitioner on February 22, 2013 and March 4, 2013, respectively.

ISSUES

The parties submitted the following issues[9] for this Court's resolution:

[7] Pre-Trial Order, docket, pp. 88 to 91.
[8] Docket, p. 455.
[9] Docket, p. 85.

1. Whether petitioner has complied with the governing rules and regulations with regard to recovery of taxes collected/received as provided in Section 229 of the National Internal Revenue Code of 1997, as amended;

2. Whether petitioner's claim for refund of value-added tax for the quarter ended September 30, 2008 was filed within the period prescribed by law;

3. Whether petitioner is entitled to refund or issuance of tax credit certificate in the amount of ₱72,738,183.31 allegedly representing over/erroneous payment of value-added tax for the quarter ended September 30, 2008.

4. Whether petitioner has complied with the submission of complete documents in support of its administrative claim for refund.

The above-enumerated issues can be summarized as follows:

"Whether petitioner is entitled to the refund or issuance of tax credit certificate in the amount of ₱72,738,183.31, purportedly representing its over/erroneous payment of value-added tax for the quarter ended September 30, 2008."

DISCUSSION/RULING

Respondent argues that petitioner is not entitled to refund or tax credit for alleged erroneous payment of VAT for the quarter ended September 30, 2008. She asserts that petitioner's claim for refund was due to an alleged inadvertence that certain official receipts evidencing payment of services during the quarter ended September 30, 2008 were not uploaded in the system. Consequently, input tax was not recorded and not credited against the output tax for the quarter, resulting in the understatement of allowable input tax for the quarter. It is clear that no payment was made by petitioner; and that it is not a tax payment contemplated in Section 204(C) of the NIRC of 1997 that would warrant refund or tax credit, but only a case of erroneous recording of input tax.

Furthermore, respondent alleges that only those input taxes attributable to zero-rated sales made by a VAT-registered person may be the subject of a claim for refund or tax credit of excess input VAT, and petitioner's claim is not attributable to zero-rated sales.

Respondent points out that petitioner did not give respondent the opportunity to evaluate its claim for refund, as seven days after filing the administrative claim for refund on October 19, 2010, petitioner filed a Petition for Review with the Court of Tax Appeals on October 26, 2010. As such, petitioner violated the doctrine of exhaustion of administrative remedies. The doctrine calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. It is settled that non-observance of the doctrine results in lack of cause of action which is one of the grounds allowed by the Rules of Court for the dismissal of the complaint.

Petitioner contends that the Petition for Review was timely filed in accordance with Section 229 of the NIRC of 1997, as amended. It further argues that it had until October 26, 2010 within which to file the instant Petition for Review; and if the Petition for Review would be filed later than said date, petitioner will be barred from filling such Petition because no such suit or proceeding can be filed after the expiration of the two (2)-year prescriptive period. As the two-year prescriptive period was expiring without a decision from respondent, petitioner was constrained to file with this Court the corresponding Petition for Review.

Petitioner asserts that the administrative and the judicial claims for refund were filed on time based on Sections 204(C) and 229 of the NIRC of 1997, which provide:

> "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."

"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."

Records confirm that petitioner filed its claim for refund in accordance with Sections 204(C) and 229 of the NIRC of 1997. As shown in its eFPS Payment Details[10] for Quarterly VAT Return, petitioner paid the amount of ₱128,486,308.29 on October 26, 2008. Records show that petitioner filed its administrative and judicial claims for refund on October 19, 2010 and October 26, 2010, respectively, which are both within the two-year period prescribed by Sections 204(C) and 229 of the NIRC of 1997.

The Court will now proceed to discuss whether petitioner has complied with the governing rules and regulations with regard to recovery of taxes collected/paid as provided in

[10] Annex "D", Petition for Review, docket, p. 17.

Section 229 of the NIRC of 1997, as amended, and whether petitioner is entitled to refund.

It is represented that petitioner's accounting practice concerning purchases of services on credit consists of charging the input tax component into a temporary account called Input Tax-Services-Clearing upon receipt of the invoice from its supplier of services. When petitioner pays the account, the input taxes recorded in the temporary account is transferred to Input Tax-Services account, which is subsequently closed to Output Tax Payable at the end of the taxable quarter.[11]

In its Quarterly VAT Return[12] for the quarter ended September 30, 2008, petitioner reflected an output tax due of ₱1,357,219,175.12 that was offset against the allowable input tax of ₱1,060,387,183.68, leaving a net output tax payable of ₱296,831,991.44 which was paid through the BIR's Electronic Filing and Payment System on September 24, 2008 and October 26, 2008 in the respective amounts of ₱168,345,683.58[13] and ₱128,486,308.29[14] as detailed below:

Vatable Sales/Receipts	₱ 11,310,159,792.67
Zero-Rated Sales/Receipts	15,524,164.31
Total Sales/Receipts	₱ 11,325,683,956.98
Output Tax Due	**₱ 1,357,219,175.12**
Less: Allowable Input Tax	
Input Tax Carried Over from Previous Quarter	39,431,863.36
Input Tax Deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter	409,422,842.51
Total	₱ 448,854,705.87
Current Transactions	
Purchase of Capital Goods exceeding ₱1M	89,463,048.10
Domestic Purchase of Goods Other than Capital Goods	701,688,570.81
Importation of Goods Other than Capital Goods	81,126,061.88
Domestic Purchase of Services	208,267,914.45
Total	₱ 1,080,545,595.24
Total Available Input Tax	1,529,400,301.11
Less: Deductions from input tax	
Input Tax on Purchases of Capital Goods	469,013,117.43

[11] Exhibit "FF".
[12] Exhibit "E".
[13] Exhibits "D" to "D-1".
[14] Exhibit "E-1".

exceeding ₱1 Million deferred for the succeeding period	
Total Allowable Input Tax	**₱1,060,387,183.68**
Net VAT Payable	**296,831,991.44**
Less: Tax Credits/Payments	
Monthly VAT Payments – previous two months	168,345,683.58*
Tax Still Payable	₱ 128,486,308.29

*Reflected in Quarterly VAT Return as 168,345,683.15.

Petitioner asserts that due to inadvertence, several purchases of services on credit with input taxes amounting to ₱72,738,183.31 that have been paid in the third quarter of 2008 were **not** transferred to the Input Tax-Services account and consequently **not** declared in its Quarterly VAT Return and **not** charged to the output tax payable for the quarter ended September 30, 2008. This resulted in the alleged overpayment of VAT for the same quarter amounting to ₱72,738,183.31, computed as follows:[15]

	Should be	**Per Quarterly VAT Return**
Output tax due	₱1,357,219,175.12	₱1,357,219,175.12
Less: Allowable Input Tax		
Input Tax Carried over from previous Quarter	₱ 39,431,863.36	₱ 39,431,863.36
Input Tax Deferred on Capital Goods from previous Quarter	409,422,842.51	409,422,842.51
Input Tax on Purchase of Capital Goods exceeding ₱1Million	89,463,048.10	89,463,048.10
Input Tax on Domestic Purchases of Goods Other than Capital Goods	701,688,570.81	701,688,570.81
Input Tax on Importation of Goods Other than Capital Goods	81,126,061.88	81,126,061.88
Input Tax on Domestic Purchases of Services:		
1. Paid upon presentation of the Invoice	28,510,178.19	28,510,178.19
2. Purchased on credit and paid during the quarter	252,495,919.57	179,757,736.26
Total Available Input Tax	₱1,602,138,484,.42	₱ 1,529,400,301.11
Less: Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period	469,013,117.43	469,013,117.43
Total Allowable Input Tax	₱ 1,133,125,366.99	₱ 1,060,387,183.68
VAT Paid/Should be Paid	**₱ 224,093,808.13**	**₱ 296,831,991.44**
Over/Erroneously paid VAT for the quarter		**₱ 72,738,183.31**

Due to a Letter of Authority (LOA)[16] to examine petitioner's books of accounts for all internal revenue taxes for

[15] Exhibit "M".
[16] Exhibit "N".

taxable year 2008, petitioner could not amend its VAT Return for the subject quarter to include the input taxes in the amount of ₱72,738,183.31 when the error was discovered. Hence, this claim for refund.

Petitioner anchors its claim on Sections 204(C) and 229 of the NIRC of 1997, as earlier quoted, and the doctrine of *solutio indebiti* thus obliging respondent to refund or return the amount erroneously paid or delivered to him.

Petitioner claims that it has erroneously overpaid output tax, which it is claiming for refund. The claimed overpayment arose from petitioner's inadvertence in accounting for and reporting some of its input taxes on purchases of services on credit.

Under Section 110 of the NIRC of 1997, as amended, output and input taxes are defined as follows:

> "The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.
>
> The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code."

Under our VAT system, output tax and input tax interplay such that input taxes from certain transactions that are evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC, shall be creditable against the output tax.[17] If at the end of any taxable quarter, the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. On the other hand, if the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarters or quarters.[18]

[17] Section 110(A)(1), National Internal Revenue Code of 1997, as amended.
[18] *Ibid.*

Clearly then, any increase in the input tax shall lead to a decrease in the output tax, while a decrease in input tax leads to an increase in output tax. If there is an error in the computation of input taxes, such that less input tax is recognized, there is a higher output tax liability. Such error when corrected, i.e. a higher input tax is recognized, results to a lower output tax than that already paid and thus provides a justifiable claim for refund of erroneously paid output tax.

By analogy, the ruling of the Supreme Court in *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue et al.*[19], is instructive:

> "In this case, when petitioner realized that its transitional input tax credit was not applied in computing its output VAT for the 1st quarter of 1997, it filed a claim for refund to recover the output VAT it erroneously or excessively paid for the 1st quarter of 1997. In filing a claim for tax refund, petitioner is simply applying its transitional input tax credit against the output tax it has paid. Hence, it is merely availing of the tax credit incentive given by law to first time VAT taxpayers."

In the instant case, petitioner failed to consider in its computation of output tax liability certain input taxes on some of its purchases of services on credit, thus leading to a payment of higher output taxes than it otherwise should have paid. When petitioner realized this and could no longer amend its VAT returns due to the issuance of the Letter of Authority, petitioner applied for refund of erroneously/excessively paid output tax. In filing for tax refund, petitioner is simply applying its input tax credit against the output VAT, *hence*, petitioner is merely availing of the creditable input tax mechanism provided for in Section 110.

We now determine the veracity of the output taxes and input taxes involved for the quarter ending September 30, 2008.

There appears to be no issue with respect to the amount of Output Tax Due of P1,357,219,175.12 for the 3rd quarter of taxable year 2008.

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[19] G.R. No. 173425, September 4, 2012.

With respect to the input taxes, the Independent CPA[20] examined petitioner's voluminous documents supporting its input taxes from domestic purchases and importation of goods other than capital goods and purchase of services in the amount of ₱991,082,547.14 and purchase of capital goods in the amount of ₱89,463,048.10 as reported in its Quarterly VAT Return for the third quarter of 2008. Likewise, the Independent CPA verified petitioner's input taxes carried over from the previous quarter and input taxes on purchases of capital goods from the previous quarter (second quarter of 2008) and she found the following to be duly substantiated:

	3rd Quarter 2008	2nd Quarter 2008
Input Taxes from:		
Domestic purchases and importation of goods other than capital goods and purchase of services	₱ 126,238,972.83[21]	₱ 202,392,434.78[22]
Purchase of capital goods	7,939,666.04[23]	5,022,781.33[24]
TOTAL	**₱134,178,638.87**	**₱207,415,216.11**

Comparing the substantiated and declared input taxes to the Output Tax Due, it is clear that petitioner still has a Net VAT Payable in the amount of P1,223,040,536.25:

		3rd Quarter 2008	2nd Quarter 2008
Output Tax Due		₱ 1,357,219,175.12	₱ 1,457,282,180.55
Less:	Substantiated Declared Input Taxes	134,178,638.87	207,415,216.11
Net VAT Payable		**₱ 1,223,040,536.25**	**₱1,249,866,964.44**

Petitioner claims that due to inadvertence, several purchases on credit with input taxes amounting to P72,738,183.31 that has been paid in the third quarter of 2008 were **not** transferred to the Input Tax-Services account and consequently **not** declared in its Quarterly VAT Return and **not** charged to output tax payable for the quarter ended September 30, 2008.

However, even with the alleged undeclared input tax of P72,738,183.31, petitioner would still have no overpayment of Output Tax which may be the subject of a claim for refund on the ground of erroneous overpayment, as shown below:

[20] Ms. Katherine O. Constantino, Partner of Constantino Guadalquiver & Co.
[21] Exhibit W[7], p. 53.
[22] Exhibit W[7], p. 80.
[23] Exhibit W[7], p. 61.
[24] Exhibit W[7], p. 93.

		3rd Quarter 2008	2nd Quarter 2008
Output Tax Due		₱ 1,357,219,175.12	₱ 1,457,282,180.55
Less:	Substantiated Declared Input Taxes	134,178,638.87	207,415,216.11
	Alleged Undeclared Input Taxes, subject of the present claim	72,738,183.31	
Net VAT Payable		**₱ 1,150,302,352.94**	**₱1,249,866,964.44**

Moreover, the Independent CPA found that only the amount of ₱30,940,207.27 is properly supported by VAT official receipts.[25]

Petitioner's Quarterly VAT Return for the third quarter of 2008 shows output taxes due in the amount of ₱1,357,219,175.12. Had petitioner declared the substantiated input taxes of ₱30,940,207.27 in its Quarterly VAT Return for the third quarter of 2008, considering its output taxes and substantiated input taxes for the third quarter of 2008 per the Independent CPA's examination, it would not have enough input taxes to offset against its output taxes for the same taxable period. Thus, petitioner would still not have a VAT overpayment for the third quarter of 2008, which may be the subject of a claim for refund under Section 229 of the NIRC of 1997, as amended. To illustrate, the computation is shown hereunder:

		3rd Quarter 2008	2nd Quarter 2008
Output Tax Due		₱ 1,357,219,175.12	₱ 1,457,282,180.55
Less:	Substantiated Declared Input Taxes	134,178,638.87	207,415,216.11
	Substantiated Undeclared Input Taxes, subject of the present claim	30,940,207.27	
	Actual VAT Paid	296,831,991.44	
Net VAT Payable		**₱ 895,268,337.54**	**₱1,249,866,964.44**

Considering that petitioner's Output Tax Due is P1,357,219,175.12, less the substantiated and reported input tax of P134,178,638.87 and actual VAT payments for the quarter of P296,831,991.44, still results to a Net VAT Payable instead of a VAT Overpayment, this Court cannot grant petitioner's claim for refund of erroneously overpaid output tax for the quarter ended September 30, 2008.

[25] Exhibit W[7], p. 18

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CONCURS:

LOVELL R. BAUTISTA
Associate Justice

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice