REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

DUMEX PHILIPPINES, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7790

Members:
BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
APR 3 2012
11:45 a.m.

x---x

D E C I S I O N

BAUTISTA, J.:

The Petition for Review seeks for the issuance of a tax credit certificate in the total amount of ₱59,970,799.48, representing unutilized/excess input value-added tax ("VAT") on importation of goods and domestic purchases of goods and services from the commencement of its operations until the cancellation of its VAT registration.[1]

FACTS OF THE CASE

Petitioner, Dumex Philippines, Inc., is a corporation duly organized and existing under the laws of the Republic of the Philippines, and duly registered with

[1] *Records*, pp. 1-21, with Annexes.

the Bureau of Internal Revenue ("BIR") Revenue District Office ("RDO") No. 40 - Cubao, Quezon City, as a VAT Taxpayer.

On the other hand, respondent, Commissioner of Internal Revenue, is vested with the power to decide, approve and grant refunds or tax credits of overpaid internal revenue taxes as provided by law.[2]

On July 20, 2007, petitioner's Board of Directors approved the cessation of its operations effective July 31, 2007.[3]

On September 25, 2007, petitioner filed with BIR RDO No. 40 an Application for Tax Clearance, which was received by the BIR on September 26, 2007.[4]

On September 26, 2007, petitioner, likewise, filed an Application for Registration Information Update to cancel its VAT registration due to permanent closure of its business.[5]

On November 5, 2007, petitioner also filed with the BIR an administrative claim for issuance of a tax credit certificate in the amount of ₱59,970,799.48, representing its unused/excess input VAT credits as of August 31, 2007 from importation of goods and domestic purchases of goods and services.[6]

And on May 26, 2008, due to respondent's inaction thereto, petitioner filed the present Petition for Review.[7]

---

[2] *Id.*, at pp. 42-43; Joint Stipulation of Facts and Issues.
[3] *Id.*, at p. 2; Petition for Review.
[4] *Id.*, at p. 3; *Ibid.*
[5] *Id.*
[6] *Id.*
[7] *Id.*; *supra*, note 1. Raffled to the then First Division of the Court, before the issuance of CTA Administrative Circular No. 01-2010, entitled *"Implementing the Fully Expanded Membership in the Court of Tax Appeals,"* dated January 5, 2010.

On June 16, 2008, respondent filed her Answer,[8] interposing the following Special and Affirmative Defenses:

5. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;

6. The [p]etitioner should prove its legal basis for claiming the amount being refunded;

7. The [p]etitioner should show proof that the *(sic)* it has unutilized input taxes; and

8. Failure on the part of the [p]etitioner to prove the same is fatal to its cause of action.

On July 21, 2008, the parties entered their Joint Stipulation of Facts and Issues,[9] which was approved by the Court in a Resolution dated July 25, 2008.[10]

During trial, petitioner presented its evidence, while respondent was deemed to have waived her right to present evidence for failure to appear despite notice.

On January 5, 2010, the Court issued a Resolution transferring the case to the Third Division of the Court, pursuant to CTA Administrative Circular No. 01-2010, entitled *"Implementing the Fully Expanded Membership in the Court of Tax Appeals,"* dated January 5, 2010.[11]

On August 23, 2011, the Court resolving respondent's Motion to Dismiss, with petitioner's Opposition/Comment (to Respondent's Motion to Dismiss), dismissed the same for lack of merit.[12]

---

[8] *Id.*, at pp. 24-26.
[9] *Id.*, at pp. 42-45.
[10] *Id.*, at p. 46.
[11] *Id.*, at pp. 549-530.
[12] *Id.*, at pp. 674-677.

On September 26, 2011, the case was submitted for decision, considering petitioner's Memorandum (of Petitioner Dumex Philippines, Inc.)[13] filed on June 25, 2011, *sans* respondent's Memorandum.[14]

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I. WHETHER THE PETITIONER INDEED CANCELLED ITS VAT REGISTRATION DUE TO CESSATION OF BUSINESS;

II. WHETHER THE PETITIONER HAS ACCUMULATED AND INCURRED EXCESS AND UNUTILIZED INPUT VAT IN THE AMOUNT OF **FIFTY NINE MILLION NINE HUNDRED SEVENTY THOUSAND SEVEN HUNDRED NINETY NINE & 48/100 PESOS (₱59,970,799.48)** ARISING FROM THE IMPORTATION OF GOODS AND DOMESTIC PURCHASES OF GOODS AND SERVICES WHICH WERE NOT APPLIED AT ANY OUTPUT TAX DURING THE PERIOD COVERED BY THE CLAIM; and

III. WHETHER THE UNUTILIZED INPUT VAT OF PETITIONER IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE.[15]

RULING OF THE COURT

In claims for refund or credit of excess and unutilized value-added tax ("VAT"), due to cessation of business, Section 112(B) of the 1997 National Internal Revenue Code ("NIRC"), as amended, to quote:

SEC. 112. *Refunds or Tax Credits of Input Tax.* –

[13] *Id.*, at pp. 631-656.
[14] *Id.*, at p. 680.
[15] *Id.*, at pp. 43-44.

xxx xxx xxx

(B) *Cancellation of VAT Registration.* – A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, **within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.** (*Boldfacing supplied.*)

Corollary thereto, Section 4.112-1(b) of Revenue Regulations No. 16-05,[16] dated September 1, 2005, provides as follows:

SECTION 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.* –

xxx xxx xxx

(b) *Cancellation of VAT registration*

A VAT-registered person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Sec. 106(C) of the Tax Code may, **within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes;** *Provided, however,* **that he shall be entitled to a refund if he has no internal revenue tax liabilities against which the tax credit certificate may be utilized.** (*Boldfacing supplied.*)

From the foregoing, it is clearly stated that a taxpayer whose registration has been cancelled due to, *inter alia*, cessation of business, may within two (2) years from the date of cancellation of its registration, apply for the issuance of a tax credit certificate for any unused input tax which may be used to pay other internal revenue taxes. And in cases where the taxpayer has no internal revenue tax liabilities, he shall be entitled to a refund.

---

[16] Consolidated Value-Added Tax Regulations of 2005.

Section 204 of the 1997 NIRC, as amended, further states that:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. Any request for conversion into refund of unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code: *Provided,* That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: *Provided, further,* That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

Thus, in any case, a duly issued tax credit certificate may still be allowed to be converted into a refund pursuant to the above-quoted provision.

As for the reckoning of the two (2)-year period from the date of cancellation of a taxpayer's registration, Section 236(F)(1) and (2)(b) of the 1997 NIRC, as amended, states:

> SEC. 236. *Registration Requirements.* –
>
> xxx xxx xxx
>
> (F) *Cancellation of Registration.* –
>
> (1) *General Rule.* – The registration of any person who ceases to be liable to a tax type **shall be cancelled upon filing with the Revenue District Office where he is registered, an application for registration information update in a form prescribed therefor;**
>
> (2) *Cancellation of Value-added Tax Registration.* – A VAT-registered person may cancel his registration for VAT if:
>
> xxx xxx xxx

> (b) He has ceased to carry on his trade or business, and does not expect to recommence any trade or business within the next twelve (12) months.
>
> **The cancellation of registration will be effective from the first day of the following month.** (*Boldfacing supplied.*)

Based on the records of the case, in a Board Resolution dated July 20, 2007,[17] petitioner's Board of Directors resolved to cease its operations effective July 31, 2007. Petitioner then filed, on September 26, 2007, an Application for Tax Clearance,[18] and an Application for Registration Information Update to cancel its VAT registration.[19]

From the foregoing, effective October 1, 2007, petitioner's VAT registration is considered cancelled. Counting two (2) years from the said date of cancellation, petitioner may apply for the issuance of a tax credit certificate of its unused input tax until October 1, 2009.

In addition, in a Resolution dated August 23, 2011, the Court ruled as follows:

> We rule for petitioner.
>
> Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, reads:
>
> xxx xxx xxx
>
> It is apparent that the aforesaid provision categorically referred to its Subsection (A), which deals with refund of input tax attributable to zero-rated or effectively zero-rated sales.
>
> On the other hand, **the instant Petition for Review pertains to petitioner's application for the issuance of tax credit certificate representing its unused/excess input VAT credits on account of**

---

[17] Petition for Review, *Annex "C."*
[18] *Records*, pp. 567-568.
[19] *Exhibit "A."*

> **petitioner's cessation of business operations. Thus, the instant case is clearly covered under Section 112(B) of the NIRC of 1997, as amended.** The pertinent portion of the said provision reads:
>
> xxx xxx xxx
>
> **Consequently, Section 112(C) of the NIRC of 1997, as amended, from which respondent anchored the instant *Motion*, cannot serve as basis for the Court to dismiss the case.**
>
> **WHEREFORE**, the instant "**Motion to Dismiss**" is hereby **DENIED** for lack of merit. Accordingly, respondent is hereby ordered to file her Memorandum, within fifteen (15) days from receipt hereof; afterwhich, the case shall be submitted for decision.
>
> **SO ORDERED.**[20] (*Boldfacing supplied.*)

Thus, the Court finds the administrative claim filed with respondent on November 5, 2007, and the present Petition for Review filed on May 26, 2008, made within the prescribed period.

Nevertheless, the Court must deny the present claim.

In the case of *SMI-ED Philippines Landholdings, Inc. v. Commissioner of Internal Revenue*,[21] the Court penned as follows:

> As to whether petitioner is entitled to the claimed unutilized input VAT for the subject period, We rule in the negative. Petitioner did not submit its VAT returns for taxable year 1998, 1st and 2nd quarters of 1999, 4th quarter of 2000, 3rd and 4th quarters of 2001 and 1st quarter of 2002. Without these documents, this Court cannot ascertain petitioner's actual unutilized input VAT as of November 30, 2002.
>
> In addition, since the subject claim represents unutilized input VAT due to retirement from or cessation of business, it is vital that petitioner submit its audited financial statements in order for this Court to verify with certainty that it properly declared all of its sales/receipts for VAT purposes from the time of commencement of business until

[20] *Records*, pp. 675-677.
[21] CTA Case No. 6740, April 20, 2006.

cessation of its operations. In this connection, **it is also incumbent upon petitioner to prove that it has satisfied all its tax liabilities. Petitioner should have presented a Certificate of Tax Clearance showing that it has settled all its tax obligations with the BIR.**

Section 112 (C) of the 1997 NIRC and Section 4.106-2 of Revenue Regulations No. 7-95 provide:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (C) *Cancellation of VAT Registration.* – A person whose VAT registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.
>
> SEC. 4.106-2. *Procedures for claiming refunds or tax credits of input tax* – (a) . . .
>
> (b) *Cancellation of VAT registration* – A person whose VAT registration has been cancelled due to retirement from or cessation of status under Section 100(c) of the Code may, within two (2) years from the date of cancellation apply for the issuance of a tax credit certificate for any unused internal revenue taxes. *However,* he shall be entitled to a refund if he has no pending internal revenue tax liabilities.

Petitioner though offered in evidence its Letter Request for Tax Clearance to prove that upon its closure, it formally requested for a tax clearance from the BIR. As the document indicates, it was a mere request for a tax clearance. There is no showing that petitioner was indeed issued a Tax Clearance Certificate as required by law and regulations, to prove that it had been cleared of any or all internal revenue tax liabilities.

Thus, even assuming, for the sake of argument, that petitioner was able to substantiate i[t]s claimed unutilized input VAT for the subject period, it is still not entitled to a refund/tax credit thereof considering that it failed to prove that it has no pending internal revenue tax liabilities. (*Boldfacing supplied.*)

The above-quoted ruling was further affirmed by the Court sitting *En Banc*, to quote:[22]

Pertinent to this case are Sections 112 and 236 of the National Internal Revenue Code of 1997 (NIRC) which read, as follows:

xxx xxx xxx

Likewise, pertinent are Sections 4.106-2 and 4.107-6 of Revenue Regulations 7-95, as follows:

SEC. 4.106-2. *Procedures for claiming refunds or tax credits of input tax –*

xxx xxx xxx

(b) *Cancellation of VAT registration* – A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 100(c) of the Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes. *However,* he shall be entitled to a refund if he has no pending internal revenue tax liabilities.

xxx xxx xxx

SEC. 4.107-6. *Cancellation of Registration* – Any subsequent major change in the original registration shall be effected by filing a duly accomplished Application For Cancellation of Registration (BIR Form 1557) with the Revenue District Officer concerned.

Some instances where a VAT-registered person may apply for cancellation of registration are:

---

[22] SMI-ED Philippines Landholdings, Inc. *v.* Commissioner of Internal Revenue, CTA EB Case No. 208 (CTA Case No. 6740), February 27, 2008.

xxx xxx xxx

5. Dissolution of a partnership or corporation;

xxx xxx xxx

Based on the foregoing provisions, it is necessary that the "registration" of a person be cancelled first before a taxpayer could apply for the issuance of a tax credit certificate. It is clear that the date of the cancellation is the reckoning point of the two-year period in which the taxpayer may apply for the issuance of the tax credit certificate. SMI-ED should have offered to the Court in Division its application for registration information update. Unfortunately, no proof of the cancellation of VAT registration was presented to the court.

It is also noteworthy to mention that since SMI-ED is a corporation organized and existing under the laws of the Republic of the Philippines, it must follow the process of dissolution as provided in the Corporation Code. As mentioned at the outset, the majority of SMI-ED's Board of Directors, with the concurrence of the stockholders, resolved to dissolve SMI-ED's corporate existence effective November 30, 2002. However, no other proof was given by SMI-ED to duly establish its cessation of business operations as required by law.

SMI-ED avers that nowhere in the law or the implementing rules and regulations that it is required that the taxpayer must show that it has no pending tax liabilities as a pre-condition to a claim for refund or grant of a tax credit certificate whether it be through the presentation of a tax clearance or audited financial statements.

The contention is bereft of merit.

Sections 52(C) and 235 of the 1997 NIRC read, as follows:

SEC. 52. *Corporation Returns.* – . . .

xxx xxx xxx

(C) *Return of the Corporation, Contemplating Dissolution or Reorganization.* – Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution; or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission; or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.

The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, . . ., **secure a certificate of tax clearance from the Bureau of Internal Revenue** which certificate shall be submitted to the Securities and Exchange Commission.

xxx xxx xxx

SEC. 235. *Preservation of Books of Accounts and Other Accounting Records.* – . . .

xxx xxx xxx

(e) . . . All corporations, partnerships or persons that retire from business shall within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their book of accounts . . . to the Commissioner or any of his deputies for examination, after which they shall be returned. **Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.**

The rationale behind these Sections is to insure that no corporation may escape payment of taxes and other liabilities to the government simply by opting to dissolve the corporation and retire from business or reorganize its business.

xxx xxx xxx

We reiterate that a claim for refund is in the nature of a claim for exemption. As such, they are regarded as a derogation of sovereign authority and is therefore to be considered *strictissimi juris* against the taxpayer. (*Boldfacing supplied.*)

Thus, petitioner's assertions that nowhere in the law requires that the taxpayer must be cleared of all its tax liabilities in order to be entitled to a refund or issuance of tax credit certificate, and that in case, any pending tax liabilities should be the subject of an assessment and be dealt with separately, deserve scant consideration.

And based on the records, and as admitted by petitioner that respondent has yet to issue the required Certificate of Tax Clearance, the Court has no option but to deny the present claim.

In sum, the Court finds the evidence adduced by petitioner to be insufficient to support its claim either for refund or issuance of tax credit certificate, in the total amount of ₱59,970,799.48, representing unutilized/excess input value-added tax on importation of goods and domestic purchases of goods and services from the commencement of its operations until the cancellation of its registration.

WHEREFORE, the Petition for Review is hereby **DENIED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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 Section 13 of Article VIII of the Constitution, 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice