REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

UNISYS PHILIPPINES LIMITED – PHILIPPINE BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8355

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JUL 3 1 2014
1:35 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution are:

1. respondent's **"Motion for Reconsideration"** filed through registered mail on April 14, 2014 and received by this Court on April 23, 2014, with petitioner's **"Comment (RE: Respondent's Motion for Reconsideration dated 14 April 2014)"** filed on May 23, 2014; and

2. petitioner's **"Motion for Partial Reconsideration (RE: 28 March 2014 Decision of the Honorable Court)"** submitted through registered mail on April 15, 2014, which was received by the Court on April 25, 2014, *sans* any comment on the part of respondent.

In assailing the Decision dated March 28, 2014, respondent raised the argument that this Court erred when it partially granted the instant Petition for Review and ordered the refund and/or issuance of a tax credit certificate to petitioner in the reduced amount of P4,125,838.32, representing erroneous Value-Added Tax (VAT) payments for the first three quarters of calendar year (CY) 2010.

Respondent argues that the revenues derived by petitioner from the BOC, PPA, and AFP were subjected to the corresponding 5% final VAT and the amount thereof were withheld by the aforesaid government agencies pursuant to Section 114(C) of the National Internal Revenue Code (NIRC) of 1997, as amended. As such, it cannot be gainsaid that the same was erroneously or illegally collected as contemplated in Sections 204(C) and 229 of the NIRC. Otherwise stated, the withholding of the 5% final VAT was in accordance with the law; thus, it cannot be regarded as erroneously or illegally collected. And, Section 229 does not apply to refunds/credits of input VAT.

Petitioner counter argues that the instant petition sought refund of erroneous or overpaid output VAT relating to sale of services to a government agency and not refund of excess input VAT credits. Petitioner alleges that there was erroneous overpayment of VAT liabilities when it used its actual accumulated input VAT for the quarter instead of the 7% standard input VAT in computing the net output VAT payable.

On the other hand, petitioner assails the aforesaid Decision contending that its accumulated amount of actual input VAT and the compliance of the actual input VAT with the invoicing requirements do not have relevance in the resolution of the crux of the controversy, which is, the claim for refund of its erroneous payment of tax pursuant to Section 229 of the NIRC of 1997, as amended.

Petitioner argues that the only requirements which must be satisfied to support its entitlement to the refund of its erroneously overpaid output VAT liabilities are the following:

a) that petitioner is a registered VAT taxpayer;
b) that petitioner sold services to government agency;
c) that the government agency withheld VAT on its payment to the petitioner equivalent to 5% thereof;
d) that petitioner erroneously overpaid its output VAT liabilities; and
e) that the administrative and judicial claim for refund was filed within two (2) years from the date of erroneous payment of tax.

The Court finds both Motions bereft of merit.

As correctly pointed out by petitioner, the erroneous overpayment of VAT liabilities was incurred when it used its actual accumulated input VAT for the first three quarters of CY 2010 instead of the 7% standard input VAT in computing the net output VAT payable. It is likewise indicated in the assailed Decision, *viz*:

> "In computing its output VAT liability, petitioner credited the actual amount of its input VAT accumulated for the period instead of the seven percent (7%) standard input VAT which is prescribed for payments received from the Government, *i.e.* BOC, PPA and AFP, even though its actual accumulated input VAT attributable to its government sales was lower than the 7% standard input VAT. Thus, petitioner filed its original Quarterly VAT Returns for the first three quarters of CY 2010 and paid the corresponding tax aggregating to P17,598,927.46, broken down as follows:

Period 2010	Total Amount of Output VAT	5% Creditable Withholding VAT	Amount of VAT paid upon filing of VAT Returns
Q1	P 17,212,029.10	P 6,743,232.42	P 10,468,796.68
Q2	3,571,619.38	32,829.62	3,538,789.76
Q3	6,306,334.35	2,714,993.33	3,591,341.02
Total	**P 27,089,982.83**	**P 9,491,055.37**	**P 17,598,927.46**

> Subsequently, petitioner discovered that it erroneously computed its VAT liabilities, as shown above, which resulted in overpayment in the total amount of P8,600,892.14. The erroneously paid VAT is presented below by comparing the original and the amended Quarterly VAT Returns:

Particulars	Original VAT Returns (using Actual Input)	Amended VAT Return (using Standard Input)	Difference
Output VAT			
Private Sales *(Line 15B of VAT Returns)*	P 36,245,082.89	P 9,737,689.67	P 26,507,393.22
Sales to Government *(Line 16B of VAT Returns)*		26,507,389.54	(26,507,389.54)
Total Output VAT	**P 36,245,082.89**	**P 36,245,079.21**	**P 3.68**
Input VAT			
Actual Input VAT:			
Carried Over from Previous Period	P 807,754.40		P 807,754.40
For 1st to 3rd quarter of CY 2010 *(Annex A Table 2 of this Court's Findings)*			
Private Sales	8,347,345.66	P 2,224,184.71	P 6,123,160.95

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Sales to Government		7,064,797.12	(7,064,797.12)
Zero-Rated Sales		69,159.91	(69,159.91)
Excess of Standard over Actual Input VAT on Sales to Government		8,397,846.77	(8,397,846.77)
Total Allowable Input VAT	**9,155,100.06**	**17,755,988.51**	**P (8,600,888.45)**
Net VAT Payable	**P 27,089,982.83**	**P 18,489,090.70**	**P 8,600,892.13**
Less: VAT Payments			
Actual Payments *(Table 2 and 23 of Exhibit MM)*	17,598,927.46	17,598,927.46	-
Creditable VAT Withheld *(Line 26B of VAT Returns)*	9,491,055.37		9,491,055.37
VAT Withheld on Sales to Government *(Line 26D of VAT Returns)*		9,491,055.37	(9,491,055.37)
Total VAT Payments	**27,089,982.83**	**27,089,982.83**	**-**
VAT Overpayment	**-**	**P (8,600,892.13)**	**P 8,600,892.13**

Based on the above comparison, the total allowable Input VAT reported in the amended VAT Returns is significantly higher than the amount claimed as deductions against output VAT in the originally filed VAT Returns. It must be noted that the net amount of VAT overpayment is due to the net effect of the following:

1. The use of Actual Input VAT as deduction against Output VAT in computing for the Net VAT Payable in the originally filed VAT Returns instead of the 7% Standard Input VAT. Thus, the amount of overpayment is significantly attributable to the excess (difference) of Standard Input VAT over Actual Input VAT which amounted to P8,397,846.77;

2. A lower amount of the total Actual input VAT reported in the originally filed VAT Return for the third quarter of CY 2010 due to the non-reporting of the input VAT on services rendered by non-resident service provider which amounted to P1,010,796.08.[1] The lower amount of Actual Input VAT increased the Net VAT Payable in the originally filed VAT Returns; and

3. The exclusion in the amended VAT Returns of the Input VAT carry-over from previous period which amounted to P807,754.40[2] for the first quarter of CY 2010."

[1] Line 21L of Exhibit "L".
[2] Line 20A of Exhibits "G" and "J".

Based on the foregoing, the 5% final VAT was not regarded as erroneously or illegally collected but erroneously collected when petitioner erroneously overpaid its VAT liabilities as shown above. Thus, Section 229 of the NIRC of 1997, as amended, is applicable in this case.

Anent petitioner's allegation that the accumulated amount of actual input VAT and the compliance of the actual input VAT with the invoicing requirements do not have relevance in the resolution of the crux of the controversy, the same is unmeritorious.

In order that petitioner be entitled for refund, it must, among others, prove that it erroneously overpaid its output VAT liabilities.

Based on its amended Quarterly VAT Returns for taxable year 2010, petitioner's VAT transactions may be summarized as follows:

Vatable Sales/Receipt - Private	P 81,147,413.89
Sale to Government	220,894,912.74
Zero-Rated Sales/Receipts	1,803,297.33
Total Sales	**P 303,845,623.96**
Output Tax Due	
Vatable Sales/Receipt	P 9,737,689.67
Sale to Government	26,507,389.54
Total Output Tax	**P 36,245,079.21**
Less: Input Tax	
Domestic Purchases of Goods Other than Capital Goods	P 407,760.62
Importation of Goods Other than Capital Goods	657,183.00
Domestic Purchases of Service	7,282,402.04
Services Rendered by Non-Residents	1,010,796.08
Total Input Tax for the Current Period	9,358,141.74
Input Tax on Sale to Government closed to expense	8,397,846.77
Total Available Input Tax	**P 17,755,988.51**
Net VAT Payable	**P 18,489,090.70**
Less: Tax Credits/Payments	
Monthly VAT Payments - Previous 2 months	P 5,619,310.76
VAT Withheld on Sales to Government	9,491,055.37
Advance Payments made	11,979,616.70
Total Tax Credits/Payments	**P 27,089,982.83**
Overpayment	**P (8,600,892.13)**

The above summary indicates that petitioner had an output VAT liability for the year 2010 in the amount of P36,245,079.21, which was partially offset against the total available input VAT of P17,755,988.51, leaving an amount of P18,489,090.70 output VAT still payable. After deducting the remaining output VAT due of P18,489,090.70 from its reported total tax credits/payments of P27,089,982.83, which comprised of the monthly VAT payments of P5,619,310.76, VAT withheld on sales to government of P9,491,055.37, and advance payments of P11,979,616.70, petitioner was still left with the balance of P8,600,892.13 in excess tax credits/payments, which is the subject of the present claim for refund.

Clearly, the claimed overpaid output VAT of P8,600,892.13 resulted from the utilization of petitioner's input VAT of P17,755,988.51 to partially cover its output VAT liability for the year 2010. It is therefore necessary for petitioner to prove the existence of the input VAT of P17,755,988.51 through VAT invoices or official receipts as required under Section Sections 110(A) and 113(A) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-3, 4.110-8, and 4.113-1 of Revenue Regulations No. 16-2005, as amended.

Contrary to petitioner's assertion, the input VAT of P17,755,988.51 is material in determining petitioner's overpaid output VAT for taxable year 2010 because the same formed part of petitioner's total tax credits/payments of P44,845,971.34, which were applied against its output tax due of P36,245,079.21 and that the overpayment of P8,600,892.13 resulted from its Total Tax Credits/Payments less Ouput VAT, as shown below:

Input VAT	P 17,755,988.51
Monthly VAT Payments	5,619,310.76
VAT Withheld on Sales to Government	9,491,055.37
Advance Payments made	11,979,616.70
Total Tax Credits/Payments	P 44,845,971.34
Less: Output VAT	36,245,079.21
Tax Overpayment	**P 8,600,892.13**

It is inevitable that each and every component of petitioner's total tax credits/payments of P44,845,971.34, including the input VAT of P17,755,988.51, must be substantiated because ultimately the remaining balance of the total tax credits/payments, after deducting its output VAT liability becomes its overpaid output VAT, subject of the instant claim.

Considering the foregoing, the Court finds no cogent reason to disturb the assailed Decision.

WHEREFORE, respondent's **"Motion for Reconsideration"** and petitioner's **"Motion for Partial Reconsideration (Re: 28 March 2014 Decision of the Honorable Court)"** are **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice