REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TECHNIRAIL, S.A.,
Petitioner,

C.T.A. EB NO. 254
(C.T.A. Case Nos. 6127 & 6174)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 0 1 2007 GADApolinario

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D E C I S I O N

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review filed pursuant to Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals, seeking the annulment and setting aside of:

1. the Decision dated October 5, 2006 rendered by the First Division of the Court ("Court in Division") in consolidated CTA Case Nos. 6127 and 6174, which denied petitioner's claim for tax refund or issuance of a tax credit certificate in the amount of ₱4,013,388.72, representing the total amount of petitioner's unutilized creditable value-added tax ("VAT") withheld for the Second (2nd), Third (3rd) and Fourth (4th) Quarters of 1998; and
2. the Resolution of the Court in Division promulgated on December 20, 2006, which denied petitioner's Motion for Reconsideration.

In the deliberations of this case, Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova concurred with the opinion of the *ponente* that the assailed Decision and Resolution of the Court in Division should be affirmed.

However, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Erlinda P. Uy, and Associate Justice Olga Palanca-Enriquez voted to reverse the assailed Decision and Resolution of the Court in Division.

Section 2 of Republic Act No. 1125, as amended by Republic Act No. 9282, requires the affirmative votes of four (4) members of the Court *En Banc* for the rendition of a decision or resolution. Considering that the required number of votes was not obtained in this case, the appealed Decision shall stand AFFIRMED, pursuant to Section 3 of Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA) which provides as follows:

> "SECTION 3. *Court En Banc; Quorum and Voting.* — The presiding justice or, in his absence, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of four

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justices of the Court shall constitute a, quorum for its session en banc. The presence at the deliberation and the affirmative vote of four justices of the Court *en banc* shall be necessary for the rendition of a decision or resolution on any case or matter submitted for its consideration. **Where the necessary majority vote cannot be had**, the petition shall be dismissed**; in appealed cases, the judgment or order appealed from shall stand affirmed**; and on all incidental matters, the petition or motion shall be denied.

No decision of a Division of the Court may be reversed or modified except by the affirmative vote of four justices of the Court *en banc* acting on the case.

Interlocutory orders or resolutions shall be acted upon by majority vote of the justices present constituting a quorum." *(Emphasis supplied)*

Antecedent Facts

The petition at bench stemmed from the following factual milieu as summarized by the Court in Division:

"Petitioner is a branch of Technirail S.A. (Belgium), duly authorized and licensed to do business in the Philippines, with its principal place of business located at the 3/F Raha Sulayman Bldg., 108 Benavidez Street, Legaspi Village, Makati City. It is a duly registered Value-Added Tax (VAT) taxpayer as evidenced by its 'Certificate of Registration' dated March 9, 1999 (*Exhibit 'P'*). It is engaged in the business of supplying mass transport equipment and repair and rehabilitation of rail transit system. The Light Rail Transit Authority (LRTA), a Philippine government agency, was among the entities with whom petitioner rendered construction and rail rehabilitation services.

During the Second, Third and Fourth Quarters of 1998, petitioner provided various construction services to the LRTA. In consideration for said construction and rail rehabilitation services, the LRTA paid to petitioner the following amounts: P3,421,404.00 for the Second Quarter; P31,906,800.60 for the Third Quarter; and P11,888,133.20 for the Fourth Quarter of 1998.

Petitioner filed its Quarterly VAT Returns for the Second, Third and Fourth Quarters of 1998 on June 23, 2000, July 3, 2000 and July 4, 2000, in that order, which showed, among others, the following:

	2nd Quarter *(Exhibit "A")*	3rd Quarter *(Exhibit "KK")*	4th Quarter *(Exhibit "LL")*
Sales/Receipts	P 3,421,404.00	P31,906,800.60	P11,888,133.20

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Output Tax		P 342,140.40	P 3,190,680.06	P 1,188,813.32
Less:	Input Tax			
	Carried-Over from previous qtr.	P 109,627.37	P 3,071,568.54	P 1,764,986.64
	Domestic Purchases for the quarter	1,084,061.86	1,687,893.01	1,752,728.86
	Importation of goods for the quarter	1,997,470.83	196,205.15	1,608,086.79
	Total Available Input Tax	P 3,191,160.06	P 4,955,666.70	P 5,125,802.29
VAT Payable/(Excess Input Tax)		P(2,849,019.66)	(1,764,986.64)	P(3,936,988.97)
Less: Creditable VAT Withheld		290,819.34	P 2,712,078.05	1,010,491.33
Tax Payable/(Overpayment)		P(3,139,839.00)	P(4,477,064.69)	P(4,947,480.30)

Subsequently, petitioner filed amended Quarterly VAT Returns for the Second and Fourth Quarters of 1998 on June 26, 2000 and August 10, 2000, respectively, which are detailed hereunder, thus:

			Second Quarter (Exhibit "B")	Fourth Quarter (Exhibit "MM")
Sales/Receipts			P3,421,404.00	P11,888,133.20
Output Tax			P 342,140.40	P 1,188,813.32
	Less:	Input Tax		
		Carried-Over from previous qtr.	P 109,327.37	1,764,886.67
		Domestic Purchases for the quarter	1,087,082.12	1,881,513.13
		Importation of goods for the quarter	2,216,999.46	1,608,086.79
		Total Available Input Tax	3,413,708.94	5,254,586.59
VAT Payable/(Excess Input Tax)			(3,071,568.54)	(4,065,773.27)
Less: Creditable VAT Withheld			290,819.34	1,010,491.33
Tax Payable/(Overpayment)			P(3,362,387.88)	P(5,076,264.60)

In accordance with **Section 114 (C) of the National Internal Revenue Code of 1997**, the LRTA withheld Creditable VAT at the rate of 8.5% of said payments to petitioner. The LRTA withheld the following amounts for the Second, Third, and Fourth Quarters of 1998: P290,819.34; P2,712,078.05; and P1,010,491.33, respectively. The said Section 114 (C) of the 1997 Tax Code is hereunder quoted for ready reference, to wit:

> **"Sec. 114.** ***Return and Payment of Value-Added Tax.* —**
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> xxx
>
> **(C)** ***Withholding of Creditable Value-Added Tax.*** **— The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned *or* controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due** at the rate of three percent (3%) of the gross payment for the purchase of goods and six (6%) on gross receipts for services rendered by contractors on every sale or installment payment **which shall be creditable against the value-added tax liability of the seller or contractor:** Provided, however, **"That in the case of government public works contractors, the withholding**

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> **rate shall be eight and one-half percent (8.5%):** Provided, further, That the payment for lease or use of properties or property rights to non-resident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.
>
> The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made."

Aside from the requirement of withholding the Creditable VAT, the same Section 114 (C) of the 1997 Tax Code provides that the VAT withheld by LRTA from its payments to petitioner is creditable against its VAT liability. However, petitioner alleged that it did not incur VAT liability for the same periods against which the subject Creditable VAT withheld for the Second, Third, and Fourth Quarters of 1998 may be credited. Likewise, the subject Creditable VAT withheld by LRTA were supposedly not carried over to the succeeding taxable quarters. Hence, the same remain unutilized.

On June 29, 2000, petitioner, through counsel, filed with respondent Commissioner of Internal Revenue, through RDO No. 47 (East Makati), a claim for refund of the Creditable VAT Withheld for the Second Quarter of 1998, attributable to its transaction with the LRTA, amounting to P290,819.34 (*Paragraph 3, Joint Stipulation of Facts and Issues, CTA Case No. 6127, page 43, Records*). On the same date, petitioner elevated its claim to this Court, by way of a Petition for Review and the case was docketed as CTA Case No. 6127.

During the pendency of CTA Case No. 6127, petitioner, through counsel, filed on September 29, 2000 with respondent Commissioner of Internal Revenue, through RDO No. 47 (East Makati), a claim for refund of the Creditable VAT Withheld for the Third and Fourth Quarters of 1998, attributable to its transactions with the LRTA, in the respective amounts of P1,010,491.33 and P2,712,078.05 or a total of P3,722,569.38 (*Paragraph 3, Joint Stipulation of Facts and Issues, CTA Case No. 6174, page 41, Records*). The petitioner elevated its claim with this Court on even date, via Petition for Review, which was docketed as CTA Case No. 6174.

In his Answers to the two Petitions for Review for the two cases of Technirail S.A. vs. CIR, docketed as CTA Case Nos. 6127 and 6174, respondent asserted the following Special and Affirmative Defenses, to wit:

> '4. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
>
> 5. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (**Commissioner of Internal Revenue vs. Ledesma,** *31 SCRA 95*; **Manila Electric Co. vs. Commissioner of Internal Revenue**, *67 SCRA 35*);

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6. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (**Asiatic Petroleum vs. Llanes**, *49 Phil. 466*; **Union Garment Co. vs. Court of Tax Appeals**, *4 SCRA 304*);

7. In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

8. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;

9. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable.'

On March 1, 2001, petitioner filed a Motion to Consolidate Court of Tax Appeals Case Nos. 6127 and 6174, on the ground that these cases involved the same parties, same facts, and issues. The said Motion was granted in open court on March 16, 2001 and confirmed in a Resolution dated March 23, 2001 (*Pages 50-53, 55, and 58, Records*).

On September 15, 2005, after the trial, this Court issued a Resolution directing the parties to file their respective Memorandum within thirty (30) days from receipt of said Resolution.

In a Resolution dated December 1, 2005, the case was ordered submitted for decision, with only the petitioner filing its Memorandum.

Based on the Joint Stipulation of Facts and Issues dated February 2, 2001 and February 20, 2001, the following are the issues to be resolved by the Court:

1. Whether petitioner is entitled to a total refund of P4,013,388.72 representing the Creditable VAT Withheld from payments to petitioner from its sale of various construction services attributable to LRTA, a government agency;

2. Whether petitioner has unutilized or excess Creditable VAT Withheld for the 2nd, 3rd and 4th quarters of taxable year 1998; and

3. Whether petitioner has no VAT liability which can be credited against the VAT withheld for 2nd, 3rd and 4th quarters of taxable year 1998."[1]

[1] Pages 1 to 6, Decision, C.T.A. Case Nos. 6127 and 6174, October 5, 2006.

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The Ruling of the Court in Division

In a Decision dated October 5, 2006, the Court in Division denied the Petition for Review. The Court in Division found that petitioner's transaction with Light Rail Transit Authority ("LRTA") is not zero-rated or effectively zero-rated sales nor involves capital goods. There is also no evidence indicating that petitioner has retired from or ceased doing business, or has qualified under any special law. Thus, the Court in Division ruled that although petitioner was able to establish the existence of its excess unutilized input VAT in the amount of ₱4,013,388.72, it is not entitled to a refund or issuance of a tax credit certificate for its excess input tax because the transaction from which the said unutilized amount arose is not among the specified instances when the remedy of refund or issuance of a tax credit certificate is permitted.

The Court in Division also held that the remedy of petitioner is to carry-over the excess input VAT to the succeeding taxable months or quarters.

The dispositive portion of the aforementioned Decision reads as follows:

> "**WHEREFORE**, petitioner's claim for refund or issuance of a tax credit certificate in the amount of P4,013,388.72 is hereby **DENIED**.
>
> **SO ORDERED."**

Aggrieved, petitioner filed a Motion for Reconsideration on October 26, 2006, which was denied for lack of merit by the Court in Division in its Resolution promulgated on December 20, 2006.

Hence, the present recourse.

The Issue

In its Petition for Review, petitioner presents for this Court's consideration, a solitary issue:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO THE TAX REFUND/CREDIT OF P4,013,388.72 REPRESENTING THE CREDITABLE VAT WITHHELD FROM PAYMENTS TO PETITIONER FROM ITS SALE OF VARIOUS CONSTRUCTION SERVICES TO THE LRTA FOR THE SECOND, THIRD AND FOURTH QUARTERS OF 1998"

Petitioner argues that its unutilized creditable VAT withheld constitutes "taxes erroneously or illegally received" which may be refunded or credited to petitioner in accordance with Section 204 (C) of the National Internal Revenue Code ("NIRC") of 1997.

Petitioner also contends that the Decision of the Court in Division stated that petitioner has sufficiently established the existence of its unutilized input VAT in the amount of ₱4,013,388.72 but the Court in Division ruled that the remedy of the petitioner is to carry-over the claimed amount to the succeeding taxable months or quarters. Records of the case show however, that petitioner has not incurred VAT liability to which the unutilized/excess creditable VAT may be carried over. Thus, it would be unjust, unfair and inequitable if petitioner would not be given a tax refund or credit for said unutilized/excess creditable VAT.

Lastly, petitioner requests that the subject Decision be modified and set aside to be consistent with the recent Decision dated January 18, 2007 rendered by the Second Division of the Court in CTA Case Nos. 6265 and 6313, which involves the same facts and circumstances as in this case and wherein petitioner's claim for tax refund/credit was partially granted.

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Respondent did not file his Comment and Memorandum. Thus, the case was submitted for decision on July 5, 2007.

The Ruling of the Court En Banc

The Petition for Review is devoid of merit.

The crux of the controversy hinges on the legal basis of petitioner's claim for refund or tax credit for its unutilized creditable VAT withheld by LRTA.

We agree with the Court in Division that Sections 110(A)(1) and (B) as well as 112(A) of the 1997 NIRC pertaining to VAT refunds are the applicable provisions with respect to petitioner's claim for refund or tax credit. The exact language of Sections 110(A)(1) and (B) are as follows:

> "**SEC. 110. Tax Credits**. —
>
> **(A) Creditable Input Tax**. —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> xxx xxx xxx
>
> **(B) Excess Output or Input Tax.** — 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. **If the input tax exceeds the output tax, the excess shall be <u>carried over to the succeeding quarter or quarters</u>. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.** *(Emphasis and underscoring supplied)*

Based on the foregoing, if the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters and any input tax attributable to the purchase of capital goods or to zero-rated sales by

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a VAT-registered person may, at his option, be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112 of the same Code.[2]

The general rule is that if there is excess input tax, the excess shall be carried over to the succeeding quarter or quarters, except for the instances mentioned under Section 112 of the NIRC of 1997, *viz*:

> "**SEC. 112. Refunds or Tax Credits of Input Tax. —**
>
> **(A) Zero-rated or effectively Zero-rated Sales**. — Any VAT registered persons, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, **That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2)**, the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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> **(B) Capital Goods**. — A VAT-registered person may **apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased**, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years, after the close of the taxable quarter when the importation or purchase was made.
>
> **(C) 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." *(Emphasis supplied)*

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[2] Technirail S.A. --- Philippine Branch v. Commissioner of Internal Revenue, C.T.A. Case No. 6638, March 9, 2007.

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As correctly pointed out by the Court in Division, there are only three specific cases when a refund or the issuance of a tax credit certificate of input tax may be granted or allowed, *to wit*:

1. zero rated or effectively zero-rated sales, such as (a) export sales[3] and (b) foreign currency denominated sales;[4]
2. input taxes paid on imported or locally purchased capital goods; and
3. cancellation of VAT registration due to retirement from or cessation of business or due to changes in or cessation of VAT status.

Under Sections 106(A)(2)(a)(1) and (2) of the 1997 NIRC, the term "zero-rated" or "effectively zero-rated" sales contemplates export sales, which can either be a (a) sale and actual shipment of goods from the Philippines to a foreign country, or (b) sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods.

It is apparent from the records of this case that petitioner's situation does not fall under any of the aforementioned instances when a tax refund or credit may be granted or allowed. It is undisputed that petitioner is a resident foreign corporation engaged in the supply of mass transport equipment and of repair and rehabilitation of the light rail transit system. It does not fall under the

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[3] Section 106(A)(2)(a), National Internal Revenue Code of 1997.
[4] Section 106(A)(2)(b), *ibid.*

definition of export sales, nor does its claim refer to its importation or local purchase of capital goods, and definitely not under the category of Section 112(C)[5] of the 1997 NIRC.

It bears emphasis however, that petitioner is not without any remedy. In accordance with Section 110(B) above-quoted and as implemented by Section 4.104-4 of Revenue Regulations No. 7-95, petitioner can carry over the excess or unutilized input VAT to the succeeding taxable months or quarters.

We agree with the Court in Division that in the absence of a special law under which petitioner qualifies for a tax refund of its claim for excess creditable VAT withheld, petitioner cannot be entitled to its claim. The enumerations in Sections 110 and 112 of the 1997 NIRC are explicit. Where the law enumerates the subject or condition upon which it applies, it is to be construed as excluding from its effects all those not expressly mentioned. *Expressio unius est exclusio alterius*. Anything that is not included in the enumeration is excluded therefrom and a meaning that does not appear nor is intended or reflected in the very language of the statute cannot be placed therein. The rule proceeds from the premise that the legislature would not have made specific enumerations in a statute if it had the intention not to restrict its meaning and confine its terms to those expressly mentioned. The rule of *expressio unius est exclusio alterius* is a canon of restrictive

[5] Section 112 (C), Cancellation of VAT Registration.

interpretation.[6] Its application here is consistent with the settled rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the taxpayer.[7] To allow petitioner's claim for tax refund will violate these established principles and unduly derogate sovereign authority.

As stated at the outset, considering that the required number of votes was not obtained in this case, the appealed Decision shall stand AFFIRMED pursuant to Section 3 of Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA).

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision promulgated on October 5, 2006 and the Resolution dated December 20, 2006 are hereby **DEEMED AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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[6] San Pablo Manufacturing Corporation v. Commissioner of Internal Revenue, G.R. No. 147749, June 22, 2006, 492 SCRA 192, *citing Singapore Airlines Local Employees v. National Labor Relations Commission, 215 Phil. 420 (1984), Canet v. Decena, G.R. No. 155344, 20 January 2004, 420 SCRA 388 and Malinias v. COMELEC, 439 Phil. 319 (2002).*

[7] Commissioner of Internal Revenue v. Juliane Baier-Nickel, as represented by Marina Q. Guzman (Attorney-in-fact), G.R. No. 153793, August 29, 2006, 500 SCRA 87, *citing Calamba Steel Center, Inc. v. Commissioner of Internal Revenue, G.R. No. 151857, April 28, 2005, 457 SCRA 482, 500.*

(Concurs with Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(Concurs with Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(With Dissenting Opinion)
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

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TECHNIRAIL, S.A.,
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COMMISSIONER OF INTERNAL REVENUE,
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C.T.A. EB NO. 254
(C.T.A. Case Nos. 6127 and 6174)

Members:

ACOSTA, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

OCT 0 1 2007 [signature]

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DISSENTING OPINION

PALANCA-ENRIQUEZ, J.:

With all due respect, I cannot concur with the learned ponencia of my esteemed colleague, Justice Lovell R. Bautista, otherwise, the government will be unjustly enriched at the expense of the petitioner.

Under the principle of *solutio indebiti* provided in Article 2154 of the Civil Code, if the BIR received something when there is no right to demand it, the obligation to return it arises *(Citibank, N. A. vs. Court of Appeals, 280 SCRA 475)*. Heavily militating against respondent Commissioner is the ancient principle that no one, not even the state, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes *(Citibank, N. A. vs. Court of Appeals., supra)*.

Records show, as confirmed by the First Division of this Court in its decision in C.T.A. Case Nos. 6127 and 6174, "petitioner was able to establish the fact of withholding of the claimed creditable VAT of P4,013,388.72, which it can validly apply or utilize against its output VAT liability." Furthermore, the First Division found that petitioner's input VAT liability was more than enough to cover its total output VAT liability. Hence, the First Division concluded that "inasmuch as petitioner had no more output VAT liability for the subject period against which the Creditable VAT Withheld may be applied/credited, then such Creditable VAT Withheld amounting to P4,013,388.72, derived from its transactions with the LRTA, constitutes an excessively paid tax."

However, despite the First Division's findings that petitioner was able to prove that it has an excessively paid tax, still the First Division denied petitioner's claim for refund of its unutilized Creditable VAT Withheld, which decision was affirmed by the Ponente. Both the First Division and the Ponente ratiocinated that there is no legal basis to grant petitioner's claim for refund, applying *Sections 110(A)(1) and 112 of the NIRC of 1997, as amended.*

On such ratiocination, I cannot concur.

Sections 110 And 112 Of The NIRC Of 1997, As Amended, Apply To Refund Or Issuance Of Tax Credit Certificate Of Input Tax, And Not To Unutilized Creditable VAT Withheld Arising From Section 114 (C) of the Same Code

Sections 110 and 112 of the NIRC of 1997, as amended, expressly provide:

"SEC. 110. Tax Credits. –

(A) **Creditable Input Tax**. –

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(1) Any **<u>input tax</u>** evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

xxx."

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

(A) Zero-rated or effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or <u>refund of creditable input tax due or paid</u> attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx

(B) Capital Goods — A VAT-registered person may apply for the issuance of a tax credit certificate **<u>or refund of input taxes paid</u> on capital goods imported or locally purchased**, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

(C) 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.

xxx" (Emphasis and underscoring supplied).

As can be gleaned from the aforequoted *Sections 110 and 112 of the NIRC of 1997, as amended*, I agree with the Ponente that there are only three specific cases when a refund or issuance of a tax credit certificate of input tax may be granted or allowed, to wit: (1) in zero rated or effectively zero-rated sales; (2) input taxes paid on imported or locally purchased capital goods; and (3) cancellation of VAT registration due to retirement from or cessation of business or due to changes in or cessation of VAT status.

A plain reading, however, of *Sections 110 and 112* shows that the above enumerated instances allowing the refund or issuance of a tax credit certificate all pertain to unused input taxes paid. An 'input tax', as distinguished from an 'output 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 the same Code (Section 110 (3) (b), second paragraph of the NIRC of 1997, as amended)*. On the other hand, an '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 the same Code (Section 110 (3) (b), third paragraph of the NIRC of the 1997, as amended)*.

As correctly enunciated by the Ponente, the enumerations in *Sections 110 and 112 of the NIRC of 1997, as amended*, are explicit. Being explicit in their wordings, the provisions cannot be amplified to cover creditable VAT withheld imposed under *Section 114 (C) of the NIRC of 1997, as amended*, since creditable VAT withheld under *Section 114 (C)* does not partake of the nature of an input vat. Basic is the rule that where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters.

Since *Sections 110 and 112* expressly provide for refunds or issuance of tax credit certificate on input tax, the Court is not empowered to change the literal import of the law by including therein refunds of creditable VAT withheld arising from the sale of service by a VAT registered contractor to government instrumentalities or government-owned or controlled corporations, which has the nature of a creditable

VAT withheld on output tax. For the first duty of the court is to apply the law *(Villanueva, Jr. vs. Estoque, 346 SCRA 234)*.

Accordingly, with due respect to the Ponente, the provisions of *Sections 110 and 112 of the NIRC of 1997, as amended*, cannot be applied to petitioner's case, considering that it involves a refund of unutilized creditable VAT withheld arising from the sale of service.

It is my view that what applies to petitioner's case are the 'catch-all' provisions of *Sections 204 and 229 of the NIRC of 1997, as amended*, which categorically allow refund of erroneously or illegally collected tax.

<u>Sections 204 And 229 Of The NIRC Of 1997, As Amended, Are The Applicable Provisions To Unutilized Creditable VAT Withheld Imposed By Section 114 Of The Same Code.</u>

Section 204 of the NIRC of 1997, as amended, provides:

> "SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. – The Commissioner may –
>
> 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.

xxx xxx"

Corollary thereto, *Section 229 of the NIRC of 1997, as amended* provides:

"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."

Pursuant to the aforequoted provisions, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be present:

1) There must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2) A claim for refund has been duly filed with the Commissioner, within two years after the payment of tax or penalty;

3) The suit or proceeding is instituted with the Court within the two years from the date of payment of the tax or penalty.

Additionally, to be entitled to a refund, a refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding *(Citibank, N.A. vs. Court of Appeals, 280 SCRA 472)*.

Applying the said requisites to the case at bench, it is clear that all the requisites are obtaining here. *Anl*

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First, unutilized creditable VAT withheld partakes of the nature of an erroneously collected tax. In *Citibank, N.A. vs. Court of Appeals, 280 SCRA 471*, the Supreme Court ruled:

> "In this case, the payments of the withholding taxes for 1979 and 1980 were creditable to the income tax liability, if any, of petitioner-bank, determined after the filing of the corporate income tax returns on April 15, 1980 and April 15, 1981. As petitioner posted net losses in its 1979 and 1980 returns, it was not liable for any income taxes. Consequently and clearly, the taxes withheld during the course of the taxable year, while collected legally under the aforesaid revenue regulation, became untenable and took on the nature of erroneously collected taxes at the end of the taxable year."

Pursuant to the aforequoted decision, an erroneously collected tax is one which, although legally collected, becomes untenable because there is no more tax liability on the part of the taxpayer to which said creditable tax withheld can be applied.

Since in the instant case, the unutilized creditable VAT withheld in the amount of P4,013,388.72 was legally collected pursuant to *Section 114 of the NIRC of 1997, as amended*, but the same remained unutilized at the end of the subject period because petitioner's input VAT was more than enough to cover its total output VAT liability, the amount of P4,013,388.72 partakes of the nature of an erroneously collected tax.

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Second, petitioner complied with the two year prescriptive period to file an administrative claim for refund with the Commissioner. As stipulated upon by the parties, petitioner filed on June 29, 2000 with the CIR, through RDO No. 47 (East Makati), a claim for refund of creditable VAT withheld for the second quarter of 1998 *(paragraph 3, Joint Stipulation of Facts and Issues, CTA Case No. 6127, page 43, Orig. Docket)*, and on September 29, 2000 for the third and fourth quarters of 1998 *(paragraph 3, Joint Stipulation of Facts and Issues, CTA Case No. 6174, page 41, Orig. Docket).*

Third, petitioner filed a judicial claim for refund with this Court within the two-year prescribed period. On June 29, 2000, petitioner instituted a judicial claim for refund of its creditable VAT withheld for the second quarter of 1998 with the First Division of this Court, docketed as C.T.A. Case No. 6127. And on September 29, 2000, petitioner filed a judicial claim for refund of its creditable VAT withheld for the third and fourth quarters of 1998 with the First Division of this Court, docketed as C.T.A. Case No. 6174.

Also, there is no dispute that petitioner declared the gross receipts related to the creditable VAT withheld of P4,013,388.72 and the fact that LRTA indeed withheld the said amount.

Petitioner having sufficiently proved that the amount of P4,013,388.72 constitutes an erroneously collected tax, I therefore vote to grant the refund of the same. It consists of monetary amounts which are currently in the hands of the government, but must rightfully be returned to the taxpayer. As ruled by the Supreme Court in the recent case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763,* promulgated on June 8, 2007:

> "Lastly, although the taxpayer's refundable or creditable input VAT may not be considered as illegally or erroneously collected, its refund/credit is a privilege extended to qualified and registered taxpayers by the very VAT system adopted by the Legislature. Such input VAT, the same as any illegally or erroneously collected national internal revenue tax, consists of monetary amounts which are currently in the hands of the government but must rightfully be returned to the taxpayer. Therefore, whether claiming refund/credit illegally or erroneously collected national internal revenue tax, or input VAT, the taxpayer must be given equal opportunity for filing and pursuing its claim."

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WHEREFORE, with due respect to the Ponente, I vote to **GRANT** the instant Petition For Review.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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