REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

EG & G OMNI, INC.,
Petitioner,

C.T.A. En Banc Case No. 30
(C.T.A. Case No. 5987)

Present:

- versus -

ACOSTA, *Presiding Justice*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 28 2006

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on October 1, 2004 pursuant to Republic Act No. 9282, seeking a review of the Decision and Resolution of the Interim Division of the Court of Tax Appeals, which is now a Division of the current Court of Tax Appeals, in CTA Case No. 5987, entitled *"EG & G Omni, Inc., vs. Commissioner of Internal Revenue"*, to wit:

1.) Decision promulgated on March 26, 2004 denying petitioner's claim for refund or issuance of a tax credit certificate in the amount of P2,357,514.86 allegedly representing unutilized input Value-Added Tax (VAT) for the 4th quarter of 1996 on account of prescription; and

2.) Resolution promulgated on August 20, 2004 denying petitioner's Motion for Reconsideration of the aforesaid decision.

The facts as found by the Interim Division of the Court of Tax Appeals are undisputed:

> "Petitioner is a domestic corporation duly organized and existing by virtue of Philippines laws with principal office located at No. 3 Ampere St., Light Industry Science Park, Barangay Diezmo, Cabuyao, Laguna *(as admitted in Respondent's Answer)*. It is an exporter of semiconductor, electronic and optoelectronic products and registered as a Value-Added Tax (VAT) Taxpayer with the Bureau of Internal Revenue (BIR) RDO 57 on May 10, 1995, as evidenced by BIR Certificate of Registration No. 95-570-000439 *(par. 1, Facts Admitted; Exhibit A)*.
>
> Petitioner filed its Value-Added Tax (VAT) Return for the 4th Quarter of 1996 on January 20, 1997 as appearing on the stamped marking of the said return *(Exhibit O)*.
>
> On December 29, 1997, petitioner availed of the Voluntary Assessment Program *(page 122, CTA records)* offered by the BIR under Revenue Memorandum Order (RMO) No. 63-97 and paid input taxes in the amount of P2,357,514.86 *(Exhibit L)* arising from a royalty agreement *(Exhibit C)* between petitioner and Vactec, Inc., as licensee and licensor respectively.
>
> On January 19, 1999, petitioner filed an Application for Tax Credit/Refund of Value-Added Tax Paid with the One-Stop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for its alleged unapplied input taxes on royalties paid under the BIR's Voluntary Assessment Program in the amount of P2,357,514.86 *(Exhibits D & E)*.
>
> Since there was no action from the respondent on petitioner's claim for tax refund or tax credit, the latter, on December 28, 1999, filed instant petition citing as legal basis therefor Section 106 [now 112] in relation to Section 100(a)(2)(A) [now 106(A)(2)(a)] of the Tax Code."

The CTA Division denied petitioner's claim for refund or issuance of a tax credit certificate on account of prescription. Its motion for reconsideration of the said decision was likewise dismissed for lack of merit.

Hence, this Petition for Review *en banc*.

Petitioner submits the following grounds in support of the instant petition:

> "1.) The Honorable Court of Tax Appeals erred when it failed to consider the time of payment of the tax on December 28, 1997 as the start of the running of the prescriptive period in the instant claim for refund under Section 230 of the National Internal Revenue Code;
>
> 2.) The Court of Tax Appeals erred when it ruled that the availment of the Voluntary Assessment Program (VAP) is not a special circumstance that should be given consideration in the instant claim for refund;
>
> 3.) The Court of Tax Appeals erred when it ruled that the petitioner is not worthy to be awarded the refund on the basis of justice, equity and fair play;
>
> 4.) The Honorable Court of Tax Appeals erred when it denied petitioner's claim for refund."

For failure of both parties to file their respective memorandum within the prescribed period, the case was submitted for decision on October 25, 2005.

Petitioner argues that its availment of the Voluntary Assessment Program (VAP) alters the reckoning date of prescriptive period for the filing of a claim for refund or issuance of tax credit. It maintains that the prescriptive period should be reckoned from the date of filing of the VAT return on December 29, 1997 upon its filing of an application for the VAP under Revenue Memorandum (RMO) No. 63-97 because it is at that time that: 1) recognition of the transaction; and 2) payment of the tax due was made. Petitioner emphasizes that in the original 4th quarter VAT return of 1996 filed on January 20, 1997, the amount of input tax declared was only P589,539.19 arising from its purchases of domestic goods and services for the period. Such amount clearly excluded the input VAT in the amount of P2,357,514.85.

Petitioner further contends that the present action is a claim for refund of unutilized input VAT from royalty payments that are directly attributable to its zero-rated sales. As such, the primary evidence for its claim for refund would be the VAT return covering the transaction filed on December 29, 1997 pursuant to its application of the VAP where the royalty payments were recognized and taxes were paid to the government.

It is also the view of petitioner that under Section 230 of the National Internal Revenue Code (NIRC) of 1993, the phrase "payment of tax or penalty", by implication, embraces situations where the filing of the tax returns was made late or erroneously. Corrolarily, the filing of the VAT return pursuant to RMO No. 63-97 or the Voluntary Assessment Program on December 29, 1997 should be the reckoning of the prescriptive period, otherwise, the late declaration of the transaction and the late payment of the VAT would have made the petitioner liable for penalties, if not for the VAP.

As already held in the assailed Resolution, petitioner misinterpreted the reason behind the VAP. The subject VAP is an act of clemency on the part of the Executive Department through the Bureau of Internal Revenue, which gives the taxpayers a final opportunity with a clean slate before they will be dealt with strictly for not paying their correct taxes. It was enacted to encourage taxpayers to pay the correct taxes. As highlighted in the background of the Revenue Memorandum Order No. 63-97 dated November 27, 1997, "Expanding the Coverage of Revenue Memorandum Order Nos. 59-97 and 60-97 on the Voluntary Assessment Program, Clarifying Issues Related Thereto and Extending the Deadline for Availment Thereof":

> "The abatement of civil penalties is intended to accelerate collection of taxes from this group of taxpayers and at the same time saving on administration and collection costs in (1) identifying these erring taxpayers/non-filers; (2) conducting a full blown audit against them; (3) instituting collection proceedings; and (4) prosecuting cases in court, by instead encouraging taxpayers to pay voluntarily pursuant to Section 204 of the National Internal Revenue Code, as amended."

Nowhere in RMO No. 63-97 was it provided that the taxpayers who availed of the Program, would be allowed to claim a refund, nor did it extend the prescriptive period for filing a refund for the taxable years covered by the VAP. Thus, reckoning the prescriptive period from the time of the filing of the quarterly VAT return for 4th quarter of the taxable year 1996, which was January 20, 1997, the Court finds that petitioner failed to meet the deadline in judicially contesting its claim for refund on January 20, 1999, as it only filed its petition for review before the CTA Division on December 28, 1999.

In the case of Commissioner of Internal Revenue, *et al.* vs. Julieta Ariete, CTA Case No. 5880, January 15, 2002 (affirmed by the Court of Appeals on June 14, 2004 in CA-G.R. SP No. 70693) which was cited in the assailed Resolution, the reason behind the VAP was stressed, to wit:

> "The rational behind the VAP is to give taxpayers a final opportunity to come up with a clean slate before they will be dealt with strictly for not paying their correct taxes. Therefore, it was enacted to encourage taxpayers to pay the correct taxes. Note that under the said Revenue Memorandum Orders, among the benefits that can be availed by the taxpayer-applicant are:
>
> 1) A bonafide rectification of filing errors and assessment of tax liabilities under the VAP shall relieve the taxpayer-applicant from any criminal or civil liability incident to the misdeclarations of incomes, purchases, deductions, etc., and non-filing of a return.
>
> 2) The taxpayer who shall avail of the VAP shall be liable only for the payment of tax due. xxx
>
> Granting at the outset there was a violation of the Internal Revenue Code (non-filing of income tax returns), yet, by virtue of the VAP, **petitioner was given the chance to rectify her fault and be absolved of any criminal or civil liabilities incident to her non-filing of income tax returns**. *(Emphasis supplied)*

Petitioner likewise reiterates its argument that it is entitled to the claim for refund on the basis of justice, equity and fair play. Equity is available only in the absence of law and not as its replacement *(Aguila vs. Court of First Instance of Batangas, Branch 1, 160 SCRA 352).* The decision was rendered based on the evidence presented by petitioner and the applicable laws and jurisprudence. Thus, fair play was observed and justice was administered in this case.

WHEREFORE, the instant petition is hereby **DENIED DUE COURSE** and is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

([illegible])
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice