REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MITSUI & CO., LTD. (MANILA BRANCH),
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9536

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

Promulgated:

JAN 22 2020
3:15 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

This *Petition for Review* filed on February 17, 2017 by Mitsui & Co., Ltd. (Manila Branch) against the Commissioner of Internal Revenue, prays for the refund of the amount of ₱40,645,507.21, allegedly representing the former's excess and unused input value-added tax (VAT) due to the cancellation of its VAT registration as a result of the closure/cessation of its business operation in the Philippines, covering the period of April 1, 2008 to March 31, 2015.[1]

[1] Summary of the Case, Pre-Trial Order dated August 30, 2017, Docket – Vol. II, p. 967.

THE FACTS

Petitioner Mitsui & Co., Ltd. (Manila Branch) is a foreign company organized and existing under the laws of Japan, and was licensed by the Securities and Exchange Commission (SEC) under SEC License No. F-000000490.[2]

Respondent Commissioner of Internal Revenue is empowered to perform the duties of his office, including acting upon protests cases and approval of claims for refund of tax credit as provided by law and implementing regulations.[3]

On February 20, 2015, petitioner filed an *Application for Registration Information Update* (BIR Form No. 1905) with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 50-South Makati, for the cessation of petitioner's registration.[4]

Thereafter, on July 26, 2016, petitioner received the *Letter of Authority* No. eLA201200035889 dated July 21, 2016, authorizing Revenue Officer Moises Besol and Group Supervisor Praxedio Tulio of the said RDO, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from April 1, 2013 to February 20, 2015, pursuant to Sections 6(A) & 10(C) of the National Internal Revenue Code of 1997, as amended (1997 NIRC).[5]

On September 23, 2016, petitioner filed an *Application for Tax Credits/Refunds* (BIR Form No. 1914) with the BIR for VAT refund under Section 112(B) of the 1997 NIRC, covering the period from April 1, 2008 to March 31, 2015 in the amount of ₱40,645,507.21.[6]

Alleging respondent's inaction on its administrative claim for refund, petitioner filed before this Court the present *Petition for Review* on February 17, 2017.[7]

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[2] Exhibits "P-1" to "P-3", Docket – Vol. III, pp. 1193 to 1214.
[3] Par. A(1), *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 634.
[4] Exhibit "P-31", Docket – Vol. III, p. 1266.
[5] Exhibit "P-33", Docket – Vol. III, p. 1280.
[6] Exhibit "P-34", Docket – Vol. III, p. 1282.
[7] Docket – Vol. I, pp. 11 to 45.

On April 19, 2017, respondent filed his *Answer*,[8] interposing the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

6. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to his defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition, most respectfully avers THAT:

7. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent Commissioner of Internal Revenue.

8. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

9. Petitioner's claim for refund or issuance of tax credit certificate, if any, in the amount of 40,645,507.21, representing alleged excess/unused input VAT due to cancellation of its VAT registration as a result of the closure/cessation of its business operation in the Philippines, covering the period April 1, 2008 to March 31, 2015, were not substantiated by proper documents, such sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

10. Petitioner failed to prove that it has no pending internal revenue tax liabilities.

11. Petitioner has no proof of cancellation of VAT registration.

12. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit. *gr*

[8] Docket – Vol. I, pp. 399 to 402.

13. It is incumbent upon petitioner to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

14. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp., vs. Commissioner of Internal Revenue, 124 SCRA 1211).***"

The pre-trial conference was initially set on June 8, 2017.[9] However, upon the respective motion to reset the same filed by the parties,[10] which were separately granted by the Court,[11] the said pre-trial conference was eventually reset to, and held on, August 3, 2017.[12]

The *Pre-Trial Brief (for the Respondent)* was filed on June 16, 2017,[13] while the *Pre-Trial Brief for the Petitioner* was submitted on July 28, 2017.[14]

On August 18, 2017, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[15] Thereafter, the Pre-Trial Order dated August 30, 2017 was issued, approving the said JSFI, and deeming the termination of the Pre-Trial.[16]

Respondent transmitted the *BIR Records* for the present case on September 19, 2017.[17]

The trial of the case proceeded.

[9] *Notice of Pre-Trial Conference* dated May 11, 2017, Docket – Vol. I, pp. 404 to 405.
[10] Respondent's *Motion to Reset* filed on May 19, 2017, Docket – Vol. I, pp. 406 to 407; Petitioner's *Motion to Reset The Pre-Trial Conference* filed on June 16, 2017, Docket – Vol. I, pp. 410 to 413.
[11] Order dated June 2, 2017, Docket – Vol. I, p. 409; Minutes of the hearing held on, and Order dated, June 22, 2017, Docket – Vol. I, pp. 416 and 417, respectively.
[12] Minutes of the hearing held on, and Order dated, August 3, 2017, Docket – Vol. II, p. 631, and 633, respectively.
[13] Docket – Vol. I, pp. 419 to 420.
[14] Docket – Vol. I, pp. 431 to 449.
[15] Docket – Vol. II, pp. 634 to 647.
[16] Docket – Vol. II, pp. 967 to 976.
[17] Respondent's *Compliance* filed on September 19, 2017, Docket – Vol. III, p. 999.

During trial, petitioner presented the following witnesses: (1) Mr. Masanori Sato,[18] petitioner's former General Manager of the Corporate Planning & Administration Division, and Authorized Representative; (2) Ms. Alona Galang,[19] petitioner's Accounting Staff; and (3) Atty. Adan T. Delamide,[20] the Court-commissioned Independent Certified Public Accountant (ICPA).[21]

On December 5, 2017, the ICPA Report was submitted.[22] On December 7, 2017, the Annexes to the ICPA Report, and four (4) compact discs, containing the scanned copies of the exhibits and schedules attached to the ICPA Report, were submitted.[23]

On March 14, 2018, petitioner filed its *Formal Offer of Evidence.*[24] In the Resolution dated October 4, 2018,[25] the Court admitted petitioner's Exhibits, but denied the admission of the following:

1. Exhibits "P-5", "P-87", "P-6939" to "P-6947", and "P-7639" to "P-7656", for failure to present their originals for comparison;

2. Exhibits "P-11", "P-12", "P-13", "P-14", and "P-15", for not being found in the records of the case; and

3. Exhibit "P-66", for failure of the exhibit formally offered to correspond with the document actually marked.

Consequently, on October 24, 2018, petitioner filed a *Motion for Partial Reconsideration,*[26] praying that the denial of Exhibit "P-66" be reconsidered and the same be admitted as evidence for petitioner. In the Resolution dated December 19, 2018,[27] the Court granted

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[18] *Judicial Affidavit of Mr. Masanori Sato* dated August 4, 2017; Docket – Vol. II, pp. 656 to 678; Minutes of the hearing held on, and Order dated, September 6, 2017, Docket – Vol. II, pp. 990 and 991, respectively.
[19] Exhibit "P-111", Docket – Vol. II, pp. 461 to 471; Minutes of the hearing held on October 30, 2017, Docket – Vol. III, p. 1013.
[20] *Judicial Affidavit of Adan T. Delamide* dated January 17, 2018, Docket – Vol. II, pp. 1120 to 1126; Minutes of the hearing held on, and Order dated, January 22, 2018, Docket – Vol. III, pp. 1134 and 1135, respectively.
[21] *Judicial Affidavit of Adan T. Delamide* dated August 31, 2017, Docket – Vol. II, pp. 981 to 986; *Oath of Commission* dated September 6, 2017, Docket – Vol. II, p. 989; Minutes of the hearing held on, and Order dated, September 6, 2017, pp. 990 and 991, respectively.
[22] Docket – Vol. III, pp. 1094 to 1111.
[23] Exhibits "P-114" and "P-115 to P-56210".
[24] Docket – Vol. III, pp. 1168 to 1191.
[25] Docket – Vol. III, pp. 1415 to 1416.
[26] Docket – Vol. III, pp. 1417 to 1420.
[27] Docket – Vol. III, pp. 1430 to 1431.

petitioner's *Motion for Partial Reconsideration,* and admitted Exhibit "P-66".

On October 25, 2018, respondent filed a *Manifestation,*[28] stating therein that the BIR revenue examiner who handled petitioner's application for refund has no final report; and thus, respondent will no longer present any evidence in this case.

Petitioner filed its *Memorandum* on January 24, 2019.[29] Respondent, however, failed to file his memorandum.[30]

In the Resolution dated February 11, 2019,[31] the case was considered submitted for decision.

THE ISSUE

The parties submitted the following issue for this Court's resolution,[32] to wit:

> "WHETHER PETITIONER IS ENTITLED FOR TAX REFUND FOR THE EXCESS AND UNUSED INPUT VALUE ADDED TAX (VAT) DUE TO THE CANCELLATION OF ITS VAT REGISTRATION DUE TO CLOSURE/CESSATION OF BUSINESS COVERING THE PERIOD 01 APRIL 2008 TO 31 MARCH 2015 IN THE AMOUNT OF P40,645,507.21."

Petitioner's arguments:

Petitioner argues that all the requisites in the application for refund of excess and unused input taxes under Section 112(B) of the 1997 NIRC are present in the case at bar, and thus, the present *Petition for Review* should be granted. Petitioner avers that it was a VAT-registered entity; that its VAT registration has been cancelled due to retirement from or cessation of business; that it has unused input taxes; and that it has applied with the BIR for the issuance of a tax ✓

[28] Docket – Vol. III, pp. 1422 to 1423.
[29] Docket – Vol. III, pp.1432 to 1466.
[30] Records Verification dated February 7, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1468.
[31] Docket – Vol. III, p. 1469.
[32] Par. B(2), JSFI, Docket – Vol. II, pp. 634 to 635.

credit certificate of such unused input taxes within two (2) years form the date of the cancellation of its VAT registration.

Respondent's counter-arguments:

In his *Answer*, respondent argues that petitioner's alleged claim for issuance of tax credit certificate is still subject to his administrative routinary investigation/examination.

According to respondent, petitioner's claim for refund or issuance of tax credit certificate is not substantiated by proper documents such as sales invoices, official receipts, and others, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 NIRC.

He also alleges that petitioner failed to prove that it has no pending internal revenue tax liabilities, and that it has no proof of cancellation of VAT registration.

Lastly, respondent avers that in an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

THIS COURT'S RULING

The present *Petition for Review* lacks merit.

Petitioner's basis for it claim for refund is Section 112(B) of the 1997 NIRC, which provides:

> Section 112. 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 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.

In relation thereto, Section 236(F) of the 1997 NIRC states:

SECTION 236. *Registration Requirements.—*

(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:

(a) He makes written application and can demonstrate to the Commissioner's satisfaction that his gross sales or receipts for the following twelve (12) months, other than those that are exempt under Section 109 (A) to (U), will not exceed One million five hundred thousand pesos (P1,500,000); or

(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. *(Emphasis supplied)*

Pertinent facts of this case are as follows:

On February 20, 2015, petitioner filed an Application Information Update (BIR Form No. 1905) with the BIR RDO No. 50-South Makati, for the cessation for petitioner's registration.[33]

On September 23, 2016, petitioner filed an Application for Tax Credits/Refund (BIR Form No. 1914) based on Section 112(B) of the 1997 NIRC covering the period from April 1, 2008 to March 31, 2015 in the amount of ₱40,645,507.21.[34]

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[33] Exhibit "P-31", Docket, Vol. III, p. 1266.
[34] Exhibit "P-34", Docket, Vol. III, p. 1282.

Due to respondent's inaction on its administrative claim for refund, petitioner filed before this Court the present Petition for Review on February 17, 2017.[35]

Thus, pursuant to Section 236(F) of the 1997 NIRC, petitioner's registration was cancelled effective March 1, 2015, which is the first day of the month following February 20, 2015. Accordingly, reckoned from March 1, 2015, petitioner had until March 1, 2017 to apply for a refund for any unused input tax.

The Court finds that the administrative claim filed with respondent on September 23, 2016, and the present Petition for Review filed on February 17, 2017, were made within the prescribed period.

However, the Court must deny the present claim.

Section 4.112-1(b) of Revenue Regulations No. 16-2005, as amended, states:

> 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.** *(Emphasis supplied)*

It is clear from the foregoing that to be entitled to a refund, petitioner must have no internal revenue tax liabilities. It is incumbent upon petitioner to prove that it has satisfied all its tax liabilities.[36] In

[35] Docket, Vol. I, pp. 11-45.
[36] *SMI-ED Philippines Landholdings, Inc. v. Commissioner of Internal Revenue,* CTA EB No. 208 (CTA Case No. 6740), February 27, 2008.

this regard, petitioner should have presented a Certificate of Tax Clearance showing that it has settled all its tax obligations with the BIR.[37]

It is noted that petitioner received a Letter of Authority No. eLA201200035889 dated July 21, 2016, authorizing Revenue Officer Moises Besol and Group Supervisor Praxedio Tulio to examine of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period April 1, 2013 to February 20, 2015.[38]

Petitioner did not mention of the results of the said investigation, though it submitted the following documents:

1. Sworn Certification of the petitioner certifying that the Company did not file a claim for issuance of TCC/Application for Refund or any similar claim with the BOI, BOC, and DOF-OSS[39]

2. Certification issued by the petitioner that it has no similar claim filed with other processing/investigative office[40]

3. Original Certifications issued by the Bureau of Customs providing that they have not issued any refund on VAT in favor of petitioner for the period covering April 1, 2008 to March 31, 2015[41]

4. Certification issued by the Department of Finance providing that petitioner has no similar, previous and/or outstanding application for tax credit and duty drawback for the period January 1, 2009 to December 31, 2015[42]

Still, the foregoing do not prove that petitioner has no outstanding internal revenue tax liabilities.

[37] *Dumex Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7790, April 3, 2012 (Entry of Judgment dated December 16, 2015).
[38] Exhibit "P-33", Docket, Vol. III, p. 1280.
[39] Exhibit "P-94", Docket, Vol. III, pp. 1395-1396.
[40] Exhibit "P-95", Docket, Vol. III, p. 1397.
[41] Exhibits "P-97" to "P-103", Docket, Vol. III, pp. 1399-1405.
[42] Exhibits "P-104" to "P-110", Docket, Vol. III, pp. 1406-1412.

Section 52 of the 1997 NIRC provides:

> SECTION 52. *Corporation Returns.*
>
> xxx xxx xxx
>
> (C) *Return of 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, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.** *(Emphasis supplied)*

Petitioner failed to submit evidence that it complied with the foregoing.

It has been consistently reiterated by the Court that strict compliance with the requisites set forth by law and regulations is imperative for claims for tax refund, considering that such claims are "not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling the taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven."[43]

Further, the Supreme Court ruled in the case of *Harte-Hanks Philippines, Inc. v. Commissioner of Internal Revenue*:[44] jr

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[43] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018, quoting *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, 569 Phil. 483, 496 (2008).

[44] G.R. No. 205721, September 14, 2016.

> "Tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. **A refund is not a matter of right by the mere fact that a taxpayer has undisputed excess input VAT** or that such tax was admittedly illegally, erroneously or excessively collected." *(Emphasis supplied)*

In fine, petitioner failed to sufficiently prove that it is entitled to a tax refund of its excess and unused input taxes covering the period April 1, 2008 to March 31, 2015 due to the cancellation of its VAT registration.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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.

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

ROMAN G. DEL ROSARIO
Presiding Justice