REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILIPPINE NATIONAL BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8268

Members:

UY, *Chairperson, and*
FABON-VICTORINO, *JJ.*

Promulgated:

SEP 27 2016, 3:40 pm

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RESOLUTION

UY, *J.*:

For resolution is respondent's **Motion for Partial Reconsideration (Re: Amended Decision Promulgated 6 May 2016)**, filed through registered mail on May 26, 2016 and received by the Court on June 2, 2016, with petitioner's **Comment on the Motion for Partial Reconsideration**, filed on June 27, 2016.

Respondent seeks reconsideration of the Amended Decision[1] promulgated by this Court on May 6, 2016, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of

[1] Docket, vol. VI, pp. 3925-3934.

petitioner Philippine National Bank the reduced amount of **ONE HUNDRED EIGHTY-THREE MILLION FIVE HUNDRED FOUR THOUSAND FOUR HUNDRED SEVENTY-TWO AND 42/100 (₱183,504,472.42)**, representing petitioner's excess creditable withholding taxes (CWT) for taxable year 2008.

SO ORDERED."[2]

In assailing the Amended Decision, respondent anchors his arguments on the sole ground that this Court erred in ordering respondent to refund or to issue a tax credit certificate (TCC) in favor of petitioner representing the excess and unutilized creditable withholding taxes for taxable year 2008.

It is respondent's contention that petitioner failed to exhaust administrative remedies, hence, the judicial claim is premature. Respondent alleges that petitioner failed to discharge the burden of proving its entitlement to a refund which deprives the former the opportunity to fully exercise his function to decide claims for refund, correct, modify or affirm the findings of his subordinates. Respondent cites the ruling of the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,*[3] (*Atlas* case) that a taxpayer must not only show its entitlement to substantive law to the grant of its claims, but also it satisfied all the documentary and evidentiary requirements for an administrative claim for refund. According to respondent, the taxpayer is required to submit complete documents in support of the application filed with the Bureau of Internal Revenue (BIR) before the one hundred twenty (120)-day audit period shall apply, and before the taxpayer could avail the judicial remedies provided for in the law.

Respondent further cites the ruling in the case of *Jesus A. Jariol, et al. vs. The Commission on Elections, et al.*[4], (*Jariol* case) where the Supreme Court held that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative body an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court. Thus, when petitioner failed to substantiate its claim for

[2] Docket, vol. VI, p. 3933.
[3] G.R. No. 145526, March 16, 2007.
[4] G.R. No. 127456, March 20, 1997.

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refund/issuance of TCC at the administrative and judicial levels, it failed to discharge its burden of proving its entitlement to a refund.

On the other hand, petitioner posits that respondent's arguments are mere rehash and the same have already been ruled upon by this Court in the Decision dated December 10, 2013 and Amended Decision dated May 6, 2016. It maintains that it presented sufficient evidence to prove its entitlement to a refund or issuance of TCC.

Petitioner points out that *Atlas* and *Jariol* cases are inapplicable to the instant case. According to petitioner, the *Atlas* case involves a claim for refund or tax credit of creditable input value added tax (VAT) from zero-rated transactions; while the instant case involves a claim for refund or tax credit of excess and unutilized income tax erroneously paid or illegally collected by the Commissioner of Internal Revenue (CIR). While the CIR is given a mandatory period of 120 days within which to grant a claim for refund of input VAT and during which the taxpayer may not file its judicial claim, there is allegedly no such mandatory period in claims for erroneously paid or illegally collected income taxes. Petitioner further alleges that the claim for refund in the *Atlas* case was denied due to the taxpayer's failure to present the VAT invoices and receipts before the Court of Tax Appeals (CTA). As such, the denial of the claim is not due to non-exhaustion of administrative remedies but due to insufficiency of evidence.

Meanwhile, the *Jariol* case involves the validity of a Resolution issued by the Commission on Elections (COMELEC) on the scheduling of a recall election. Petitioner contends that the action in *Jariol* was dismissed on account of prematurity because petitioners therein did not move for reconsideration in the COMELEC before filing a special civil action. It maintains that there is no requirement under the law that an administrative claim should be decided first by the CIR before the taxpayer may file a judicial claim, lest the taxpayer's exercise of its remedy be barred by the inaction of the CIR on its claim.

The Motion for Partial Reconsideration is bereft of merit.

To emphasize, this case involves the recovery of excess creditable withholding taxes (CWT) for taxable year 2008, <u>and not</u> a claim for refund of unutilized input VAT attributable to zero-rated sales.

As already held in the Decision dated December 10, 2013[5] and Amended Decision dated May 6, 2016[6], in claiming excess CWT, the specific requirements for refund thereof or issuance of TCC therefor are provided in Section 76[7] of the National Internal Revenue Code (NIRC) of 1997, in relation to Sections 204(C)[8] and 229[9] of the NIRC of 1997.

The requirements under the law were enumerated in several Supreme Court cases[10], one of which is in the recent case of

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[5] Docket, vol. VI, pp. 3644-3663.

[6] Docket, vol. VI. pp. 3925-3934.

[7] SEC. 76. *Final Adjustment Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of tax still due; or
(B) Carry-over the excess credit; or
(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

[8] SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

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(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.

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[9] 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.

[10] *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.,* G.R. No. 155682, March 27, 2007; *Commissioner of Internal Revenue vs. Perf Realty Corporation,* G.R. No. 163345,

Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue,[11] to wit:

> "As implemented by the applicable rules and regulations and as interpreted in a vast array of decisions, a taxpayer who seeks a refund of excess and unutilized CWT must:
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> 1) File the claim with the CIR within the two year period from the date of payment of the tax;
>
> 2) Show on the return that the income received was declared as part of the gross income; and
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> 3) Establish the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld."

In the case of *Commissioner of Internal Revenue vs. TeaM (Philippines) Operations Corporation [Formerly Mirant (Philippines) Operations Corporation*[12], the Supreme Court further explained the basis of the conditions for a claim of refund or tax credit of CWT, to wit:

> "The first requirement is based on Section 229 of the <u>National Internal Revenue Code of 1997</u> which provides that:
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> > 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

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July 4, 2008; *Commissioner of Internal Revenue vs. Far East Bank & Trust Co. (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010; *Commissioner of Internal Revenue vs. TeaM (Philippines) Operations Corporation [formerly Mirant (Phils.) Operations Corporation]*, G.R. No. 185728, October 16, 2013; and *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils.) Operations Corporation]*, G.R. No. 179260, April 2, 2014.

[11] G.R. No. 206526, January 28, 2015.

[12] G.R. No. 185728, October 16, 2013.

> 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. (Underscoring supplied.)"

The second and third conditions are specifically imposed under Section 10 of Revenue Regulation No. 6-85 (as amended), which provides:

> Section 10. *Claims for tax credit or refund.* – (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only **when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom** xxx. (Emphasis supplied.)"

The Court finds the *Atlas and Jariol* cases inapplicable to the instant case.

We shall first discuss the *Atlas* case. In the said case, what the Supreme Court found fatal to the taxpayer's cause was its failure to submit sufficient evidence such as invoices and receipts in support of its claim before the CTA. In contrast, petitioner here was able to submit the requisite documents, schedules and reconciliations in order to substantiate its claims.

Also, *Atlas* involves a claim for refund of creditable input VAT; while the instant case involves a claim for refund or tax credit of CWT which falls under Section 229 of the NIRC of 1997 on recovery of taxes erroneously or illegally collected. In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[13], the Supreme extensively discussed the difference between an "excess input VAT" and an "excessively collected tax", and the applicable provisions of the NIRC of 1997, as amended, affecting the manner of refunding these taxes, to wit:

> "II. ***'Excess' Input VAT and 'Excessively' Collected Tax***
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> The input VAT is **not** 'excessively' collected as understood under Section 229 because **at the time the input VAT is collected the amount paid is correct and proper**. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. xxx
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> In a claim for refund or credit of 'excess' input VAT under Section 110(B) and Section 112(A), the input VAT is not 'excessively' collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is 'excessively' collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an 'excess' input VAT. The term 'excess' input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of

[13] G.R. No. 187485, February 12, 2013.

the input VAT as 'excessively' collected under Section 229.

Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax 'erroneously,. . . illegally, . . . excessively or in any manner wrongfully collected.' The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact 'excessively' collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. **Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229**.

Under Section 110(B) and Section 112(A), the prescriptive period for filing a judicial claim for 'excess' input VAT is two years from the close of the taxable quarter when the sale was made by the person legally liable to pay the ***output*** VAT. This prescriptive period has no relation to the date of payment of the 'excess' ***input*** VAT. The 'excess' input VAT may have been paid for more than two years but this does not bar the filing of a judicial claim for 'excess' VAT under Section 112(A), which has a different reckoning period from Section 229. Moreover, the person claiming the refund or credit of the input VAT is not the person who legally paid the input VAT. Such person seeking the VAT refund or credit does not claim that the input VAT was 'excessively' collected from him, or that he paid an input VAT that is more than what is legally due. He is not the taxpayer who legally paid the input VAT.

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From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is 'erroneously, x x x illegally, x x x excessively or **in any manner wrongfully** collected.' In short, there must be a **wrongful payment** because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should '**apply only to instances of erroneous payment or illegal collection of internal revenue taxes**.' Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due**. Under the VAT System, there is no claim or issue that the 'excess' input VAT is 'excessively or in any manner wrongfully collected.' In fact, if the 'excess' input VAT is an 'excessively' collected tax under Section 229, then the taxpayer claiming to apply such 'excessively' collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such 'excessively' collected tax, and thus there will no longer be any 'excess' input VAT. xxx"

As discussed in the above-cited case, the law governing the claim for refund of excess or unutilized CWT is different from that of excess or unutilized creditable input VAT. For refund of excessively collected tax, Section 229 of the NIRC of 1997, as amended, requires that there must be an administrative claim prior to the filing of a judicial claim; and that <u>both</u> administrative and judicial claims <u>should be filed within the two-year prescriptive period</u>.

Respondent confuses this case for a refund of excess input VAT falling under Section 112 of the NIRC of 1997 when it asserts that petitioner should have submitted the complete documents in support of the application filed with the BIR before the one hundred twenty (120)-day audit period applies. Again, Section 229 of the NIRC of 1997 applies in this case. There is no mention of 120-day period in Section 229 of the NIRC of 1997, as amended.

Moreover, contrary to respondent's allegations, petitioner was able to show its compliance with the exhaustion of administrative remedies when it filed an administrative claim prior to the filing of a judicial claim. Its administrative claim, filed on January 14, 2011, and the amendment thereto, filed on March 29, 2011, were both filed prior to the filing of the Petition for Review and were both made within the two-year prescriptive period provided by law.[14]

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[14] Decision, docket, vol. VI, p. 3658.

Likewise, the ruling of *Jariol* on exhaustion of administrative remedies does not find application in this case since it pertains to an election suit and its proceedings before the COMELEC. The petitioners therein immediately filed a special civil action for certiorari under Rule 65 of the Rules of Court without filing a Motion for Reconsideration of the COMELEC's Resolution No. 2879. Here, the law provides specific procedures in filing a claim for refund.

While respondent insists that petitioner must not merely initiate the prescribed administrative procedure to obtain relief, but also must pursue it to its appropriate conclusion before seeking judicial intervention, the law on refund of excessively collected taxes is clear on the procedure for filing claims on the administrative and judicial levels. In the early case of *Gibbs vs. Collector*,[15] the Supreme Court held that if, however, the Collector (now Commissioner) takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the CTA before the end of the two (2)-year period without awaiting the decision of the Commissioner.

Furthermore, in the case of *Commissioner of Customs and Commissioner of Internal Revenue vs. The Honorable Court of Tax Appeals and Planters Products, Inc.,*[16] the Supreme Court held that the taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect. It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector (now Commissioner) of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the Commissioner, would have, at his personal convenience, given his go signal.

Thus, the *Jariol* ruling on exhaustion of administrative remedies cannot be applied in this case.

As regards the argument on sufficiency of evidence, both in the administrative and judicial levels, the recent case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[17], is instructive, to wit:

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[15] L-13453, February 29, 1960, 107 Phil. 232.
[16] G.R. No. 82618, March 16, 1989 citing the case of *Paracale-Gamaus vs. Biaquera* (CTA Case No. 211, Resolution of August 22, 1956).
[17] G.R. No. 207112, December 8, 2015.

> "A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
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> In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim."

Here, the Petition for Review was filed due to the inaction of respondent on petitioner's administrative claim.[18] Thus, the question of whether or not the evidence submitted by petitioner is sufficient to warrant the granting of a claim for refund lies within the sound

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[18] Paragraphs 4 and 5, Joint Stipulation of Facts and Issues, docket, vol. V, 2771; Par. 8, Petition for Review, docket, vol. I., p. 5.

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discretion and judgment of this Court. As extensively discussed in the assailed Amended Decision, the Court found petitioner's evidence sufficient to grant its claim for refund.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Amended Decision Promulgated 6 May 2016)** is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice