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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 19, 2021** *which reads as follows:*

"G.R. No. 221694 (Coca-Cola Bottlers Philippines, Inc., *Petitioner,* **v. Commissioner of Internal Revenue,** *Respondent*). – This Petition for Review on *Certiorari*[1] seeks to reverse and set aside the Decision[2] dated 10 April 2015 and Resolution[3] dated 25 November 2015 of the Court of Tax Appeals (CTA) *En Banc* in CTA Case No. 1061. The CTA affirmed the denial[4] of the CTA Special Second Division of Coco-Cola Bottlers Philippines, Inc. (petitioner)'s claim for refund or issuance of tax credit in the total amount of Php172,761,514.88, representing over/erroneous payment of output Value-Added Tax (VAT) for the quarters ending on 30 September 2007 and 31 December 2007.

Antecedents

Petitioner averred that due to inadvertence, several purchases of services on credit with input taxes amounting to Php60,420,422.20 and Php112,341,092.68, that have been paid in the third and fourth quarters of 2007 respectively, were not transferred to the Input Tax-Services account, and, consequently, not declared in its Quarterly VAT Returns. Thus, the same were not charged to the output tax payable for the quarters ended 30 September 2007 and 31 December

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1 *Rollo*, pp. 48-78.

2 *Id.* at 8-40; penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cieltio N. Mindaro-Grulla, Amelia R. Cotangco-Manalasta, and Ma. Belen M. Ringpis-Liban of the Court of Tax Appeals *En Banc*, with a Separate Concurring Opinion by Presiding Justice Roman G. Del Rosario.

3 *Id.* at 42 - 46.

4 *Id.* at 172-196; penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla of the CTA Special Second Division. [5] *Id.* at 38.

2007, respectively. This resulted to the alleged over/erroneously paid output tax for the same quarters.[5]

However, because of the issuance of a Letter of Authority dated 29 August 2008 authorizing the examination of petitioner's books of accounts for all internal revenue taxes for the taxable year 2007, petitioner could no longer amend its VAT Returns to include these input taxes when the error was discovered in July 2009. Hence, petitioner resorted to filing claims for refund.[6]

Consequently, petitioner filed its administrative claim for refund of the alleged VAT overpayment for the third quarter of 2007 on 21 October 2009.[7]Two (2) days after, or on 23 October 2009, it filed a petition for review before the CTA, docketed as CTA Case No. 8028.

On the other hand, petitioner filed with the Commissioner of Internal Revenue (respondent) its claim for refund/tax credit on 20 January 2010, for its alleged erroneous overpayment of VAT for the fourth quarter of 2007. On 22 January 2010, it filed a petition for review before the CTA, docketed as
CTA Case No. 7986.[8]

The CTA ordered the consolidation of the two (2) cases and trial on the merits ensued. The case was submitted for decision on 31 August 2012.[9]

Ruling of the CTA Division

On 14 July 2013, the CTA Special Second Division promulgated a Decision denying the Petitions for Review, *viz*:

> **WHEREFORE**, premises considered, petitioner's Petitions for Review are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[10]

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[5] *Id.* at 38.
[6] *Id.*
[7] *Id.* at 9.
[8] *Id.* at 10.
[9] *Id.* at 22.
[10] *Id.* at 196.

The CTA Division held that petitioner is not entitled to a tax refund or issuance of tax credit, whether it be under Section 229 or Section 112 of the Tax Code.[11] It emphasized that Sections 204 and 229 of the Tax Code must be read together with the provision of Section 4.110-8 of Revenue Regulations No. (RR) 16-2005, which states that in order for input taxes to be available as tax credits, they must be substantiated and reported in the VAT returns of the taxpayer.[12]

Further, the Court-commissioned Independent Certified Public Accountant (ICPA) found that out of petitioner's alleged unclaimed input tax credits for the third and fourth quarters of 2007, only the input taxes of Php19,342,803.07 and Php34,440,405.24 for the third and fourth quarters of 2007, respectively, were properly supported by VAT official receipts.[13]

However, while records show that the substantiated input taxes for the third and fourth quarters of 2007 were recorded in petitioner's books of accounts, they were not reported in petitioner's VAT returns due to alleged inadvertence. Therefore, petitioner cannot credit or offset the undeclared input taxes against output taxes for the said taxable periods, pursuant to Section 4.110-8 of RR No. 16-2005 and Section 110 (A) (2) and (B).[14] More importantly, records show that **petitioner would not have had enough input taxes to offset against its output taxes for the taxable periods in issue.**[15]

The CTA Division likewise emphasized that the claimed amounts in the instant cases represent undeclared input taxes for the third and fourth quarters of 2007, and not the so-called erroneously paid taxes as contemplated under Section 229 of the Tax Code. Hence, it does not fall within the purview of Section 229.[16]

Petitioner's Motion for Reconsideration was denied by the CTA Division in its Resolution[17] dated 15 August 2013. Dissatisfied, petitioner filed a Petition for Review before the CTA *En Banc* on 23 September 2013.[18]

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[11] *Id.* at 191, and 195.
[12] *Id.* at 191.
[13] *Id.* at 192.
[14] *Id.* at 193-194.
[15] *Id.* at 195.
[16] *Id.*
[17] *Id.* at 153-155.
[18] *Id.* at 128-151.

Ruling of the CTA *En Banc*

On 10 April 2015,[19] the CTA *En Banc* denied the petition, to wit:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**. Accordingly, the Decision and Resolution dated June 14, 2013 and August 15, 2013, respectively, are hereby **AFFIRMED**.
>
> **SO ORDERED.**[20]

The CTA *En Banc* ruled that in order to determine if input taxes can be creditable against output taxes, Section 110 of the Tax Code must be read with Section 4.110-8 of RR 16-2005. In this regard, these provisions are clear that only input tax declared in petitioner's Quarterly VAT Return can be credited against the output tax for the same taxable year.[21] Applying the foregoing, the claimed input taxes for the subject quarters cannot be credited against petitioner's output taxes since said input taxes were not declared in the return.[22]

Further, the ICPA determined that the amount of petitioner's input tax payments are insufficient to cover the alleged output tax in the periods in issue. Therefore, petitioner could not have possibly made excessive output VAT payments.[23]

Likewise, the CTA *En Banc* emphasized that for Section 229 to apply, there must be a wrongful excessive payment because what is paid, or part of it, is not legally due.[24] Since petitioner failed to substantiate its claim that its undeclared input VAT payments resulted to overpayment of output VAT, the CTA *En Banc* cannot grant petitioner's claim.[25]

Petitioner filed a motion for reconsideration, which was denied by the CTA *En Banc* in its Resolution[26] dated 25 November 2015. Hence, this Petition for Review on *Certiorari*.[27]

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[19] Id. at 8 – 36..
[20] *Id.* at 35.
[21] *Id.* at 32.
[22] *Id.* at 33.
[23] *Id.*
[24] *Id.* at 34.
[25] *Id.* at 35.
[26] *Id.* at 114-117.
[27] *Id.* at 48-71.

Issues

Petitioner now raises the following issues for the Court's discussion:

> I.
> The court *a quo* gravely erred in affirming the ruling of the CTA Special Second Division which held that input tax for the quarters ended September 30, 2007 and December 31, 2007 in the amounts of Php60,420,422.20 and Php112,341,092.68 are required to be declared in the Quarterly VAT Returns for the said quarters to be able to claim for refund of output VAT erroneously paid under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended.
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> II.
> The court *a quo* gravely erred in ruling that petitioner's claim for refund/tax credit does not fall within the purview of Section 229 of the NIRC of 1997, as amended.
>
> III.
> The court *a quo* gravely erred in ruling that petitioner failed to substantiate its claim that it made an overpayment of output tax as a result of its undeclared input tax.
>
> IV.
> The court *a quo* gravely erred in ruling that petitioner is not entitled to tax refund or issuance of tax credit certificate in the amount of Php60,420,422.20 and Php112,341,092.68 representing over/erroneous payment of output VAT for the quarters ended September 30, 2007 and December 31, 2007, respectively, or a total amount of Php172,761,514.88[28]

Essentially, the issue is whether or not petitioner is entitled to its claim for refund or issuance of tax credit certificate.

Ruling of the Court

The petition is without merit.

The findings and conclusions of the CTA are accorded with the highest respect

At the outset, it bears stressing that this Court is not a trier of facts. As a specialized court dedicated exclusively to the resolution of

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[28] *Id.* at 56-57.

tax problems, the CTA has developed an expertise on the subject of taxation. Accordingly, the Court confers findings and conclusions of the CTA with the highest respect. Its decisions are presumed valid in every aspect and will not be overturned on appeal, unless the Court finds that the questioned decision is not supported by substantial evidence or there has been an abuse or improvident exercise of authority on the part of the tax court. [29]

Upon careful review of the instant case, We find no cogent reason to reverse or modify the findings of the CTA Division, as affirmed by the CTA *En Banc*.

Section 229 is inapplicable to claims for the recovery of unutilized input VAT

This Court had consistently ruled that Section 229 of the Tax Code is inapplicable to claims for the recovery of unutilized input VAT.[30] In *Commissioner of Internal Revenue v. San Roque Power Corporation*,[31] We explained that input VAT is not "excessively" collected as contemplated in Section 229 because at the time the input VAT is collected, the amount paid is correct and proper. Moreover, if said input VAT is in fact "excessively" collected as understood under Section 229, then it is the person legally liable to pay the input VAT, and not the person to whom the tax is passed on and who is applying the input VAT as credit for his own output VAT, who can file the judicial claim for refund or credit outside the VAT system.[32]

Under the VAT System, there is no instance where the input VAT paid is collected "excessively" or 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 outputVAT. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.[33] In fact, if

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[29] *Sitel Philippines Corp. v. Commissioner of Internal Revenue,* G.R. No. 201326, 8 February 2017, 805 Phil. 464 (2017) [per J. Caguioa].

[30] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 222428, 19 February 2018 [per J. Peralta].

[31] G.R. Nos. 187485, 196113 & 197156, 12 February 2013, 703 Phil. 310 (2013) [per J. Carpio, *En Banc*].

[32] *Id.*

[33] *Commissioner of Internal Revenue v. San Roque Power Corp.,* G.R. Nos. 187485, 196113 & 197156,

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.[34]

Under Section 229 of the Tax Code a tax payer can seek the refund or credited of 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 *Commissioner of Internal Revenue v. Mirant*,[35] 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. However, as discussed above, what petitioner claims to be "excess" input VAT in this case does not in fact fall under the category of "erroneous or wrongful payment." Thus, it is clear, that neither law nor jurisprudence authorizes petitioner's claim for refund or issuance of tax credit.

Petitioner has failed to establish that it is entitled to the refund or credit of input VAT it seeks. Petitioner's claim is not governed by Section 229 as an ordinary refund or credit outside of the VAT System since it does not involve a tax that is erroneously, illegally, excessively, or in any manner wrongfully collected. Neither is said claim authorized under Sections 110 (B) and 112 (A) as the same does not seek to refund or credit input tax due or paid attributable to zero-rated or effectively zero-rated sales.[36]

Even assuming, for argument's sake, that petitioner's application for refund or issuance of tax credit has any legal basis, said claim must still fail in view of petitioner's failure to properly substantiate the same. Because of said failure, moreover, the issue of whether input taxes must first be reported in a taxpayer's VAT Return before they can be refunded or credited becomes irrelevant to petitioner's plight. As petitioner itself asserted, input taxes not

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[34] *Supra* at note 30.

[35] *Commissioner of Internal Revenue v. Mirant Pagbilao Corp.*, G.R. No. 172129, 12 September 2008, 586 Phil. 712 (2008) [per J. Velasco].

[36] *See Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018 [per J. Peralta].

reported in the VAT Return may still be credited against output tax due for as long as the same were properly substantiated.[37] But as duly found by both the CTA Division and *En Banc*, the amount that petitioner did substantiate is not even enough to offset petitioner's output tax liabilities, leaving no balance that may be refunded.[38]

Actions for tax refund or credit are in the nature of a claim for exemption, thus, law is construed in strictissimi juris against taxpayer

Actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption. As such, the law is not only construed in *strictissimi juris* against the taxpayer, the pieces of evidence presented entitling a taxpayer to an exemption must also be *strictissimi* scrutinized and duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented. They are not intended to be liberally construed.[39]

WHEREFORE, the foregoing premises considered, the instant petition is hereby **DENIED**. Accordingly, the Decision dated 10 April 2015 and Resolution dated 25 November 2015 rendered by the Court of Tax Appeals *En Banc* in CTA No. 1061 are **AFFIRMED.**

The letter dated July 10, 2020 of Mr. Danilo B. Fernando, Executive Clerk of Court IV, Court of Tax Appeals, Quezon City, in compliance with the Resolution dated November 13, 2019, forwarding the complete records of CTA EB No. 1061, CTA Case No. 7986 and CTA Case No, 8028, is **NOTED.**

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[37] *Supra* at note 30.
[38] *Rollo*, p. 33 and 195.
[39] *Supra* at note 30.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
162-B
& 171-B

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