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FIRST DIVISION

[G.R. No. 190506, June 13, 2016]

CORAL BAY NICKEL CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

This appeal is brought by a taxpayer whose claim for the refund or credit pertaining to its alleged unutilized input tax for the third and fourth quarters of the year 2002 amounting to P50,124,086.75 had been denied by the Commissioner of Internal Revenue. The Court of Tax Appeals (CTA) *En Banc* and in Division denied its appeal.

We sustain the denial of the appeal.

Antecedents

The petitioner, a domestic corporation engaged in the manufacture of nickel and/or cobalt mixed sulphide, is a VAT entity registered with the Bureau of Internal Revenue (BIR). It is also registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise at the Rio Tuba Export Processing Zone under PEZA Certificate of Registration dated December 27, 2002.[1]

On August 5, 2003,[2] the petitioner filed its Amended VAT Return declaring unutilized input tax from its domestic purchases of capital goods, other than capital goods and services, for its third and fourth quarters of 2002 totalling P50,124,086.75. On June 14, 2004,[3] it filed with Revenue District Office No. 36 in Palawan its Application for Tax Credits/Refund (BIR Form 1914) together with supporting documents.

Due to the alleged inaction of the respondent, the petitioner elevated its claim to the CTA on July 8, 2004 by petition for review, praying for the refund of the aforesaid input VAT (CTA Case No. 7022).[4]

After trial on the merits, the CTA in Division promulgated its decision on March 10, 2008[5] denying the petitioner's claim for refund on the ground that the petitioner was not entitled to the refund of alleged unutilized input VAT following Section 106(A)(2)(a)(5) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Article 77(2) of the Omnibus Investment Code and conformably with the Cross Border Doctrine. In support of its ruling, the CTA in Division cited *Commissioner of Internal Revenue v.*

Toshiba Information Equipment (Phils) Inc. (Toshiba)[6] and Revenue Memorandum Circular ("RMC") No. 42-03.[7]

After the CTA in Division denied its Motion for Reconsideration[8] on July 2, 2008,[9] the petitioner elevated the matter to the CTA *En Banc* (CTA EB Case No. 403), which also denied the petition through the assailed decision promulgated on May 29, 2009.[10]

The CTA *En Banc* denied the petitioner's Motion for Reconsideration through the resolution dated December 10, 2009.[11]

Hence, this appeal, whereby the petitioner contends that *Toshiba* is not applicable inasmuch as the unutilized input VAT subject of its claim was incurred from May 1, 2002 to December 31, 2002 as a VAT-registered taxpayer, not as a PEZA-registered enterprise; that during the period subject of its claim, it was not yet registered with PEZA because it was only on December 27, 2002 that its Certificate of Registration was issued;[12] that until then, it could not have refused the payment of VAT on its purchases because it could not present any valid proof of zero-rating to its VAT-registered suppliers; and that it complied with all the procedural and substantive requirements under the law and regulations for its entitlement to the refund.[13]

Issue

Was the petitioner, an entity located within an ECOZONE, entitled to the refund of its unutilized input taxes incurred before it became a PEZA registered entity?

Ruling of the Court

The appeal is bereft of merit.

We first explain why we have given due course to the petition for review on *certiorari* despite the petitioner's premature filing of its judicial claim in the CTA.

The petitioner filed with the BIR on June 10, 2004 its application for tax refund or credit representing the unutilized input tax for the third and fourth quarters of 2002. Barely 28 days later, it brought its appeal in the CTA contending that there was inaction on the part of the petitioner despite its not having waited for the lapse of the 120-day period mandated by Section 112 (D) of the 1997 NTRC. At the time of the petitioner's appeal, however, the applicable rule was that provided under BIR Ruling No. DA-489-03,[14] issued on December 10, 2003, to wit:

> It appears, therefore, that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case. This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.

> Incidentally, the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund [with the Commissioner of Internal Revenue]. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal. xxx

As pronounced in *Silicon Philippines Inc. vs. Commissioner of Internal Revenue*,[15] the exception to the mandatory and jurisdictional compliance with the 120+30 day-period is when the claim for the tax refund or credit was filed in the period between December 10, 2003 and October 5, 2010 during which BIR Ruling No. DA-489-03 was still in effect. Accordingly, the premature filing of the judicial claim was allowed, giving to the CTA jurisdiction over the appeal.

As to the main issue, we sustain the assailed decision of the CTA *En Banc*.

The petitioner's insistence, that *Toshiba* is not applicable because *Toshiba* Information Equipment (Phils) Inc., the taxpayer involved thereat, was a PEZA-registered entity during the time subject of the claim for tax refund or credit, is unwarranted. The most significant difference between *Toshiba* and this case is that Revenue Memorandum Circular No. 74-99[16] was not yet in effect at the time *Toshiba* Information Equipment (Phils) Inc. brought its claim for refund. Regardless of the distinction, however, *Toshiba* actually discussed the VAT implication of PEZA-registered enterprises and ECOZONE-located enterprises in its entirety, which renders *Toshiba* applicable to the petitioner's case.

Prior to the effectivity of RMC 74-99, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives, namely: (1) if the PEZA-registered enterprise chose the 5% preferential tax on its gross income in lieu of all taxes, as provided by Republic Act No. 7916, as amended, then it was VAT-exempt; and (2) if the PEZA-registered enterprise availed itself of the income tax holiday under Executive Order No. 226, as amended, it was subject to VAT at 10%[17] (now, 12%). Based on this old rule, *Toshiba* allowed the claim for refund or credit on the part of *Toshiba* Information Equipment (Phils) Inc.

This is not true with the petitioner. With the issuance of RMC 74-99, the distinction under the old rule was disregarded and the new circular took into consideration the two important principles of the Philippine VAT system: the Cross Border Doctrine and the Destination Principle. Thus, *Toshiba* opined:

> The rule that any sale by a VAT-registered supplier from the Customs Territory to a PEZA-registered enterprise shall be considered an export sale and subject to zero percent (0%) VAT was clearly established only on 15 October 1999, upon the issuance of RMC No. 74-99. Prior to the said date, however, whether or not a PEZA-registered enterprise was VAT-exempt depended on the type of fiscal incentives availed of by the said enterprise. This old rule on VAT-exemption or liability of PEZA-registered enterprises, followed by the BIR, also recognized and affirmed by the CTA, the Court of Appeals, and even this

Court, cannot be lightly disregarded considering the great number of PEZA-registered enterprises which did rely on it to determine its tax liabilities, as well as, its privileges.

According to the old rule, Section 23 of Rep. Act No. 7916, as amended, gives the PEZA-registered enterprise the option to choose between two sets of fiscal incentives: (a) The five percent (5%) preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and (b) the income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.

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This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory. It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. Again, for emphasis, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives: (1) If the PEZA-registered enterprise chose the five percent (5%) preferential tax on its gross income, in lieu of all taxes, as provided by Rep. Act No. 7916, as amended, then it would be VAT-exempt; (2) If the PEZA-registered enterprise availed of the income tax holiday under Exec. Order No. 226, as amended, it shall be subject to VAT at ten percent (10%). ***Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the tatter's type or class of PEZA registration; and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as a VAT-exempt entity.***[18] (underscoring and emphasis supplied)

Furthermore, Section 8 of Republic Act No. 7916 mandates that PEZA shall manage and operate the ECOZONE as a separate customs territory. The provision thereby establishes the fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an ECOZONE will be considered as exportations. Following the Philippine VAT system's adherence to the Cross Border Doctrine and Destination Principle, the VAT implications are that "no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority"[19] Thus, *Toshiba* has discussed that:

This Court agrees, however, that PEZA-registered enterprises, **which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.

It is important to note herein that respondent Toshiba is located within an ECOZONE. An ECOZONE or a Special Economic Zone has been described as —

> . . . [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
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> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
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> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; **thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory**. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.[20] (underscoring and emphasis are supplied)

The petitioner's principal office was located in Barangay Rio Tuba, Bataraza, Palawan.[21] Its plant site was specifically located inside the Rio Tuba Export Processing Zone — a special economic zone (ECOZONE) created by Proclamation No. 304, Series of 2002, in relation to Republic Act No. 7916. As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-03,[22] which provides:

> In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
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> In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.

We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer.[23] However, reporting and remittance of the VAT paid to

the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.

In view of the foregoing considerations, the Court must uphold the rejection of the appeal of the petitioner. This Court has repeatedly pointed out that a claim for tax refund or credit is similar to a tax exemption and should be strictly construed against the taxpayer. The burden of proof to show that he is ultimately entitled to the grant of such tax refund or credit rests on the taxpayer.[24] Sadly, the petitioner has not discharged its burden.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on May 29, 2009 in CTA EB Case No. 403; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C. J., Leonardo-De Castro, Perlas-Bernabe, and *Caguioa, JJ.*, concur.

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[1] *Rollo*, p. 54.

[2] Id. at 63, 69.

[3] Id. at 73.

[4] Id. at 132.

[5] Id. at 85-101; penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy concurring.

[6] G.R. No. 350154, August 9, 2005, 466 SCRA 221.

[7] *Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters*; dated July 15, 2003.

[8] *Rollo*, pp. 102-106.

[9] Id. at 307-108.

[10] Id. at 130-144.

[11] Id. at 43-45.

[12] Id. at 22.