655 Phil. 499

SECOND DIVISION

[G.R. No. 159471, January 26, 2011]

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

PERALTA, J.:

For this Court's resolution is the Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Civil Procedure assailing the Decision[1] dated April 19, 2001 and Resolution[2] dated August 6, 2003 of the Court of Appeals (CA).

The facts, as shown in the records, are the following:

Under Section 100 of the Tax Code of the Philippines, petitioner is a zero-rated Value Added Tax (VAT) person for being an exporter of copper concentrates. According to petitioner, on January 20, 1994, it filed its VAT return for the fourth quarter of 1993, showing a total input tax of P863,556,963.74 and an excess VAT credit of P842,336,291.60 and, on January 25, 1996, it applied for a tax refund or a tax credit certificate for the latter amount with respondent Commissioner of Internal Revenue (CIR). On the same date, petitioner filed the same claim for refund with the Court of Tax Appeals (CTA), claiming that the two-year prescriptive period provided for under Section 230 of the Tax Code for claiming a refund was about to expire. The CIR failed to file his answer with the CTA; thus, the former declared the latter in default.

On August 24, 1998, the CTA rendered its Decision[3] denying petitioner's claim for refund due to petitioner's failure to comply with the documentary requirements prescribed under Section 16 of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, dated April 7, 1988. The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby DISMISSED for lack of merit.
>
> SO ORDERED.[4]

Petitioner filed a Motion for Reconsideration[5] praying for the reopening of the case in order for it to present the required documents, together with its proof of non-availment for prior and succeeding quarters of the input VAT subject of petitioner's claim for refund. The CTA granted the motion in its Resolution[6] dated October 29, 1998. Thereafter, in a Resolution[7] dated June 21, 2000, the CTA denied petitioner's claim. It ruled that the action has already prescribed and that petitioner has failed to substantiate its claim that it has not applied its alleged excess input taxes to any of its subsequent quarter's output tax liability.

The CTA's Decision and Resolution were questioned in the CA. However, the CA affirmed *in toto* the said Decision and Resolution, disposing the case as follows:

> WHEREFORE, the petition is DISMISSED for lack of merit. The questioned Decision of the CTA dated August 24, 1998 and the Resolution dated June 21, 2000 are AFFIRMED *in toto*.
>
> SO ORDERED.[8]

Subsequently, petitioner's Motion for Reconsideration[9] of the CA's Decision was denied in a Resolution[10] dated August 6, 2003.

Thus, the present petition.

Petitioner lists the following as grounds for his petition:

> I
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> THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S CLAIM FOR REFUND HAS PRESCRIBED, DESPITE FAILURE OF RESPONDENT AND THE COURT OF TAX APPEALS TO RAISE THE ISSUE OF PRESCRIPTION IN RESPONDENT'S ANSWER OR IN THE CTA'S ORIGINAL DECISION DATED 16 SEPTEMBER 1998.
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> II
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> THE COURT OF APPEALS ERRED IN UPHOLDING THE COURT OF TAX APPEALS' FINDING IN ITS DECISION DATED 24 AUGUST 1998 THAT PETITIONER, IN NOT SUBMITTING ITS EXPORT DOCUMENTS, FAILED TO PRESENT ADEQUATE PROOF THAT ITS INPUT TAXES ARE DIRECTLY ATTRIBUTABLE TO ITS EXPORT SALES.

III

THE COURT OF APPEALS ERRED IN UPHOLDING THE COURT OF TAX APPEALS' FINDING THAT PETITIONER FAILED TO PRESENT ADEQUATE PROOF THAT IT HAD NOT APPLIED THE CLAIMED INPUT TAX TO ITS OUTPUT TAXES FROM PRIOR AND SUCCEEDING QUARTERS.[11]

Petitioner herein had, in the past, similar petitions with this Court regarding the denial of its claims for tax refund of the input VAT on its purchases of capital goods and on its zero-rated sales. In *Atlas Consolidated Mining and Development Corporation v. CIR*,[12] petitioner filed with the Bureau of Internal Revenue (BIR) its VAT Return for the first quarter of 1992 and also alleged that it filed with the BIR the corresponding application for the refund/credit of its input VAT on its purchases of capital goods and on its zero-rated sales in the amount of P26,030,460.00. Its application for refund/credit remained having been unresolved by the BIR, petitioner filed with the CTA, on April 20, 1994, a Petition for Review. Claiming to be a "zero-rated VAT person," petitioner prayed that the CTA order the CIR to refund/credit petitioner with the amount of P26,030,460.00, representing the input VAT it had paid for the first quarter of 1992. Both, the CTA and the CA denied the claims of petitioner, ratiocinating that its claim has been filed beyond the prescriptive period provided by law and that evidence presented was insufficient.

In the present case, petitioner is basically asking this Court to review the factual findings of the CTA and the CA. Petitioner insists that it had presented the necessary documents or copies thereof with the CTA that would prove that it is entitled to a tax refund. Again, citing the earlier case of *Atlas Consolidated Mining and Development Corporation v. CIR,* [13] this Court has expounded the nature and bases of claiming tax refund, thus:

> Applications for refund/credit of input VAT with the BIR must comply with the appropriate revenue regulations. As this Court has already ruled, Revenue Regulations No. 2-88 is not relevant to the applications for refund/credit of input VAT filed by petitioner corporation; nonetheless, the said applications must have been in accordance with Revenue Regulations No. 3-88, amending Section 16 of Revenue Regulations No. 5-87, which provided as follows -
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> SECTION 16. *Refunds or tax credits of input tax*. -
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> x x x x
>
> (c) *Claims for tax credits/refunds*. - Application for Tax Credit/Refund of Value-

Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

x x x x

3. Effectively zero-rated sale of goods and services.

i) photocopy of approved application for zero-rate if filing for the first time.

ii) sales invoice or receipt showing name of the person or entity to whom the sale of goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered.

iii) evidence of actual receipt of goods or services.

4. Purchase of capital goods.

i) original copy of invoice or receipt showing the date of purchase, purchase price, amount of value-added tax paid and description of the capital equipment locally purchased.

ii) with respect to capital equipment imported, the photocopy of import entry document for internal revenue tax purposes and the confirmation receipt issued by the Bureau of Customs for the payment of the value-added tax.

5. In applicable cases,

where the applicant's zero-rated transactions are regulated by certain government agencies, a statement therefrom showing the amount and description of sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold, and date of transaction shall also be submitted.

In all cases, the amount of refund or tax credit that may be granted shall be

limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

Where the applicant is engaged in zero-rated and other taxable and exempt sales of goods and services, and the VAT paid (inputs) on purchases of goods and services cannot be directly attributed to any of the aforementioned transactions, the following formula shall be used to determine the creditable or refundable input tax for zero-rated sale:

Amount of Zero-rated Sale
Total Sales
x
Total Amount of Input Taxes
= Amount Creditable/Refundable

In case the application for refund/credit of input VAT was denied or remained unacted upon by the BIR, and before the lapse of the two-year prescriptive period, the taxpayer-applicant may already file a Petition for Review before the CTA. If the taxpayer's claim is supported by voluminous documents, such as receipts, invoices, vouchers or long accounts, their presentation before the CTA shall be governed by CTA Circular No. 1-95, as amended, reproduced in full below -

> In the interest of speedy administration of justice, the Court hereby promulgates the following rules governing the presentation of voluminous documents and/or long accounts, such as receipts, invoices and vouchers, as evidence to establish certain facts pursuant to Section 3(c), Rule 130 of the Rules of Court and the doctrine enunciated in *Compania Maritima vs. Allied Free Workers Union* (77 SCRA 24), as well as Section 8 of Republic Act No. 1125:
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> 1. The party who desires to introduce as evidence such voluminous documents must, after motion and approval by the Court, present:
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> (a) a Summary containing, among others, a chronological listing of the numbers, dates and amounts covered by the invoices or receipts and the amount/s of tax paid; and (b) a Certification of an independent Certified Public Accountant attesting to the correctness of the contents of the summary after making an examination, evaluation and audit of the voluminous receipts and invoices. The name of the accountant or partner of the firm in charge must be stated in the motion so that he/she can be commissioned by the Court

to conduct the audit and, thereafter, testify in Court relative to such summary and certification pursuant to Rule 32 of the Rules of Court.

2. The method of individual presentation of each and every receipt, invoice or account for marking, identification and comparison with the originals thereof need not be done before the Court or Clerk of Court anymore after the introduction of the summary and CPA certification. It is enough that the receipts, invoices, vouchers or other documents covering the said accounts or payments to be introduced in evidence must be pre-marked by the party concerned and submitted to the Court in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. Likewise, the originals of the voluminous receipts, invoices or accounts must be ready for verification and comparison in case doubt on the authenticity thereof is raised during the hearing or resolution of the formal offer of evidence.[14]

As to the evidence that must be presented, the provisions of the pertinent laws provide:

Section 106, Tax Code

Refunds or tax credits of input tax. - (a) Any VAT-registered person, whose sales are zero-rated, may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in case of zero-rated sales under Section 100 (a) (2) (A) (I), (ii) and (b) and Section 102 (b) (1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

Section 16 of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, dated April 7, 1988

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the

issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

1. Export Sales

i) Photocopy of export document showing the amount of export, the date and destination of the goods exported. With respect to foreign currency denominated sale, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of the person to whom the goods were delivered.

ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.

x x x x

In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

The CTA, applying the abovementioned rules, in its Decision dated August 24, 1998, came out with the following factual findings:

The formal offer of evidence of the petitioner failed to include photocopy of its export documents, as required. There is no way therefore, in determining the kind of goods and actual amount of export sales it allegedly made during the quarter involved. This finding is very crucial when we try to relate it with the requirement of the aforementioned regulations that the input tax being claimed for refund or tax credit must be shown to be entirely attributable to the zero-rated transaction, in this case, export sales of goods. Without the export documents, the purchase invoice/receipts submitted by the petitioner as proof of its input taxes cannot be verified as being directly attributable to the goods so exported.

Lastly, We cannot grant petitioner's claim for credit or refund of input taxes due to its failure to show convincingly that the same has not been applied to any of its output tax liability as provided under Section 106 (a) of the Tax Code. There is no evidence to show that the amount herein claimed for refund when applied for on January 25, 1996 has not been priorly or thereafter applied to its output

tax liability.[15]

The above factual findings of the CTA were even bolstered when it granted petitioner's motion for reconsideration allowing petitioner to submit the necessary documents and other pieces of evidence, so as to comply with the requirements provided for by law. However, despite such allowance, petitioner still failed to comply. Thus, in its Resolution[16] dated June 21, 2000, the CTA finally disposed the case by ruling that:

> The Court finds and so holds that Petitioner failed again to present proof that it has not applied the alleged excess input taxes to any of its subsequent quarter's output tax liability. In this Court's decision dated August 24, 1998, We already mentioned that petitioner failed to convince us that its input taxes have not been applied to any of its output tax liability as provided under Section 106 (a). Now on its second opportunity to substantiate its claim, Petitioner again failed to prove this particular allegation. Petitioner merely presented in evidence the following documents to show that it has not applied the amount of P4,534,933.74, subject of the claim, to its 1994 first quarter output tax liability, to wit:
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> | | Exhibits |
> |---|---|
> | 1.) Output/Input VAT (Per Return) Listings for the firstT quarter of 1994 | |
> | 2.) Schedule of Output Taxes for the month of January 1994 | U, U-1 to U-2
U-3 to U-5 |
> | 3.) Schedule of Materials and Supplies for for the first quarter of 1994 | V, V-1 to V-9 |
> | 4.) Schedule of Output Taxes for the month of February 1994 | W, W-1 to W-4 |
>
> Nowhere in all the documents submitted to this Court by the Petitioner can We find its 1994 first quarter VAT return which, to Our mind and as repeatedly ruled in a litany of cases, is necessary for purposes of determining with particular certainty whether or not the claimed input taxes were applied to any of its output tax liability in the first quarter or in the succeeding quarters of 1994. And there is no reason at this point for Us to digress from this ruling.[17]

The above factual findings were affirmed and accorded respect by the CA. Nevertheless, petitioner insists that it has submitted documents and other pieces of evidence, except those required by law, that would establish the existence of the input VAT for the fourth quarter

of 1993 and that the excess input VAT claimed for refund or tax credit has not been applied to its output tax liability for prior and succeeding quarters.

The above argument, however, is flawed. It must be remembered that when claiming tax refund/credit, the VAT-registered taxpayer must be able to establish that it does have refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities - information which are supposed to be reflected in the taxpayer's VAT returns. Thus, an application for tax refund/credit must be accompanied by copies of the taxpayer's VAT return/s for the taxable quarter/s concerned.[18] The CTA and the CA, based on their appreciation of the evidence presented, committed no error when they declared that petitioner failed to prove that it is entitled to a tax refund and this Court, not being a trier of facts, must defer to their findings. Again, as aptly ruled by this Court in *Atlas*:[19]

> This Court is, therefore, bound by the foregoing facts, as found by the appellate court, for well-settled is the general rule that the jurisdiction of this Court in cases brought before it from the Court of Appeals, by way of a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, is limited to reviewing or revising errors of law; findings of fact of the latter are conclusive. This Court is not a trier of facts. It is not its function to review, examine and evaluate or weigh the probative value of the evidence presented.
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> The distinction between a question of law and a question of fact is clear-cut. It has been held that "[t]here is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts."
>
> Whether petitioner corporation actually made zero-rated sales; whether it paid input VAT on these sales in the amount it had declared in its returns; whether all the input VAT subject of its applications for refund/credit can be attributed to its zero-rated sales; and whether it had not previously applied the input VAT against its output VAT liabilities, are all questions of fact which could only be answered after reviewing, examining, evaluating, or weighing the probative value of the evidence it presented, and which this Court does not have the jurisdiction to do in the present Petitions for Review on *Certiorari* under Rule 45 of the Revised Rules of Court.
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> Granting that there are exceptions to the general rule, when this Court looked into questions of fact under particular circumstances, none of these exist in the instant cases. The Court of Appeals, in both cases, found a dearth of evidence to support the claims for refund/credit of the input VAT of petitioner corporation, and the records bear out this finding. Petitioner corporation itself cannot dispute its non-compliance with the requirements set forth in Revenue Regulations No. 3-88 and CTA Circular No. 1-95, as amended. It concentrated its arguments on

its assertion that the substantiation requirements under Revenue Regulations No. 2-88 should not have applied to it, while being conspicuously silent on the evidentiary requirements mandated by other relevant regulations.[20]

Taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. And, since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception.[21]

Anent the issue of prescription, wherein petitioner questions the ruling of the CA that the former's claim for refund has prescribed, disregarding the failure of respondent Commissioner of Internal Revenue and the CTA to raise the said issue in their answer and original decision, respectively, this Court finds the same moot and academic. Although it may appear that the CTA only brought up the issue of prescription in its later resolution and not in its original decision, its ruling on the merits of the application for refund, could only imply that the issue of prescription was not the main consideration for the denial of petitioner's claim for tax refund. Otherwise, the CTA would have just denied the application on the ground of prescription.

WHEREFORE, the Petition is hereby **DENIED** for lack of merit. The Decision and Resolution of the Court of Appeals, dated April 19, 2001 and August 6, 2003, respectively, are hereby **AFFIRMED**.

SO ORDERED.

Carpio, (Chairperson), Abad, Perez,[*] and *Mendoza, JJ*., concur.

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[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated January 24, 2011.

[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Eloy R. Bello, Jr. and Mercedes Gozo-Dadole, concurring; *rollo*, pp. 32- 36.

[2] *Id.* at 38-40.

[3] CTA records, pp. 116-120.

[4] *Id.* at 119.

[5] *Id*. at 122-128.

[6] *Id*. at 131-136.

[7] *Id*. at 189-195.

[8] *Rollo*, p. 36.

[9] CA *rollo*, pp. 64-70.

[10] *Rollo*, pp. 38-40.

[11] *Id*. at 15.

[12] G.R. Nos. 141104 and 148763, June 8, 2007, 524 SCRA 73.

[13] *Id*.

[14] *Id*. at 107-110. (Emphasis supplied.)

[15] CTA records, pp. 118-119.

[16] *Id*. at 189-195.

[17] *Id*. at 194-195.

[18] *Atlas Consolidated Mining and Development Corporation v. CIR*, *supra* note 12.

[19] *Id*.

[20] *Id*. at 118-120, citing *Sps. Rosario v. Court of Appeals,* 369 Phil. 729, 738 (1999), *Bautista v. Puyat Vinyl Products, Inc*., 416 Phil. 305, 309 (2001), *Commissioner of Internal Revenue v. Court of Appeals,* 358 Phil. 562, 575 (1998) and *Sps. Sta. Maria v. Court of Appeals,* 349 Phil. 275, 282-283 (1998).

[21] *Paseo Realty and Development Corporation v. Court of Appeals*, 483 Phil. 254, 272-273 (2004), citing *Mactan Cebu International Airport Authority v. Marcos*, 330 Phil. 392

(1996), *citations omitted; See also Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc.*, 368 Phil. 388 (1999).
