569 Phil. 483

SECOND DIVISION

[G.R. No. 159490, February 18, 2008]

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.

D E C I S I O N

VELASCO JR., J.:

The Case

Before us is a Petition for Review on Certiorari under Rule 45 assailing the May 16, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 46494, which affirmed the October 13, 1997 Decision[2] of the Court of Tax Appeals (CTA) in CTA Case No. 5205 entitled *Atlas Consolidated Mining and Development Corporation (Atlas) v. The Commissioner of Internal Revenue (CIR)*, involving petitioner Atlas' application for issuance of tax credit certificate or refund of value-added tax (VAT) payments in accordance with Section 106(b) of the Tax Code on zero-rated VAT payers. Also assailed is the August 11, 2003 Resolution[3] of the CA denying Atlas' motion for reconsideration.

The Facts

Atlas is a corporation duly organized and existing under Philippine laws engaged in the production of copper concentrates for export. It registered as a VAT entity and was issued VAT Registration Certificate No. 32-0-004622 effective August 15, 1990.

For the first quarter of 1993, Atlas' export sales amounted to PhP 642,685,032.24. Its proceeds were received in acceptable foreign currency and inwardly remitted in accordance with Central Bank regulations. For the same period, Atlas paid PhP 7,907,662.53 for input taxes, as follows:

Local	PhP 7, 117,222.53
Importation	790,440.00
Total	PhP 7 , 907,662.53

Thereafter, Atlas filed a VAT return for the first quarter of 1993 with the Bureau of Internal

Revenue (BIR) on April 20, 1993, and also filed an amended VAT return.

On September 20, 1993, Atlas applied with the BIR for the issuance of a tax credit certificate or refund under Section 106(b) of the Tax Code. The certificate would represent the VAT it paid for the first quarter of 1993 in the amount of PhP 7,907,662.53, which corresponded to the input taxes not applied against any output VAT.

Atlas then filed a petition for review with the CTA on February 22, 1995 to prevent the running of the prescriptive period under Sec. 230 of the Tax Code.

The Ruling of the Court of Tax Appeals

The petition for review before the CTA was docketed as CTA Case No. 5205. On October 13, 1997, the CTA rendered a Decision denying Atlas' claim for tax credit or refund. The *fallo* reads:

> WHEREFORE, in the light of all the foregoing, [Atlas'] claim for issuance of tax credit certificate or refund of value-added taxes for the first quarter of 1993 is hereby DENIED for insufficiency of evidence. No pronouncement as to costs.
>
> SO ORDERED.[4]

We note that respondent CIR filed his May 24, 1995 Answer asserting that Atlas has the burden of proving erroneous or illegal payment of the tax being claimed for refund, as claims for refund are strictly construed against the taxpayer. However, the CIR did not present any evidence before the CTA nor file a memorandum, thus constraining the CTA to resolve the case before it solely on the basis of the evidence presented by Atlas.

In denying Atlas' claim for tax credit or refund, the CTA held that Atlas failed to present sufficient evidence to warrant the grant of tax credit or refund for the alleged input taxes paid by Atlas. Relying on Revenue Regulation No. (RR) 3-88 which was issued to implement the then VAT law and list the documents to be submitted in actions for refunds or tax credits of input taxes in export sales, it found that the documents submitted by Atlas did not comply with said regulation. It pointed out that Atlas failed to submit photocopies of export documents, invoices, or receipts evidencing the sale of goods and others. Moreover, the Certification by Atlas' bank, Hongkong Shanghai Banking Corporation, did not indicate any conversion rate for US dollars to pesos. Thus, the CTA could not ascertain the veracity of the contents indicated in Atlas' VAT return as export sales and creditable or refundable input VAT.

Atlas timely filed its Motion for Reconsideration of the above decision contending that it relied on Sec. 106 of the Tax Code which merely required proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines. Consequently, Atlas asserted that the documents it presented, coupled with the testimony of its Accounting and Finance Manager, Isabel Espeno, sufficiently proved

its case. It argued that RR 3-88 was issued for claims for refund of input VAT to be processed by the BIR, that is, for administrative claims, and not for judicial claims as in the present case. Anyhow, Atlas prayed for a re-trial, even as it admitted that it has committed a mistake or excusable negligence when the CTA ruled that RR 3-88 should be the one applied for Atlas to submit the basis required under the regulation.

Atlas' motion for reconsideration was rejected by the CTA through its January 5, 1998 Resolution, ruling that it is within its discretion to ascertain the veracity of the claims for refund which must be strictly construed against Atlas. Moreover, it also rejected Atlas' prayer for a re-trial under Sec. 2 of Rule 37 of the Rules of Court, as Atlas failed to submit the required affidavits of merits.

The Ruling of the Court of Appeals

On Atlas' appeal, the CA denied and dismissed Atlas' petition on the ground of insufficiency of evidence to support Atlas' action for tax credit or refund. Thus, through its May 16, 2003 Decision, the CA sustained the CTA; and consequently denied Atlas' motion for reconsideration.

The CA ratiocinated that the CTA cannot be faulted in denying Atlas' action for tax credit or refund, and in denying Atlas' prayer for a new trial. The CA concurred with the CTA in the finding that Atlas' failure to submit the required documents in accordance with RR 3-88 is fatal to Atlas' action, for, without these documents, Atlas' VAT export sales indicated in its amended VAT return and the creditable or refundable input VAT could not be ascertained. The CA struck down Atlas' contention that it has sufficiently established the existence of its export sales through the testimony of its Accounting and Finance Manager, as her testimony is not required under RR 3-88 and is self-serving.

Also, the CA rejected Atlas' assertion that RR 3-88 is applicable only to administrative claims and not to a judicial proceeding, since it is clear under Sec. 245 (now Sec. 244 of the NIRC) that "[t]he Secretary of Finance, upon the recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code." Thus, according to the CA, RR 3-88 implementing the VAT law is applicable to judicial proceedings as this Court held in *Eslao v. COA* that "administrative policies enacted by administrative bodies to interpret the law have the force of law and are entitled to great weight."[5] The CA likewise agreed with the CTA in denying a new trial for Atlas' failure to attach the necessary affidavits of merits required under the rules.

The Issues

Hence, the instant petition of Atlas raising the following grounds for our consideration:

A. In rendering the assailed Decision and Resolution, the Court of Appeals failed to decide this matter in accordance with law or with the applicable

decisions of the Supreme Court.

B. In rendering the assailed Decision and Resolution the Court of Appeals is guilty of grave abuse of discretion amounting to a lack or excess of jurisdiction when it violated Atlas' right to due process and sanctioned a similar error from the Court of Tax Appeals' (CTA), calling for the exercise of this Honorable Court's power of supervision.[6]

The foregoing issues can be simplified as follows: first, whether Atlas has sufficiently proven entitlement to a tax credit or refund; and second, whether Atlas should have been accorded a new trial.

The Court's Ruling

The petition has no merit.

First Issue: Atlas failed to show sufficient proof

Consistent with its position before the courts *a quo*, Atlas argues that the requirements under RR 3-88 are only applicable in administrative claims for refunds before the BIR and not for judicial claims, as in the instant case. And that it is CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, which applies and which Atlas asserts it has complied with. It contends that CTA Circular No. 10-97, being the later law, is deemed to have qualified RR 3-88. Thus, it contends that what is only required is a submission of a summary of the invoices and a certification from an independent public accountant.

We are not persuaded.

First, we reiterate the prevailing rule that the findings of fact of the CA are generally conclusive and binding and the Court need not pass upon the supporting evidence. For, it is not this Court's function to analyze or weigh evidence all over again.[7] Stated a bit differently, the CA's findings of fact affirming those of the trial court will not be disturbed by the Court.[8] This is as it should be for the trial court, as trier of facts, is best equipped to make the assessment of issues raised and evidence adduced before it. Therefore, its factual findings are generally not disturbed on appeal unless it is perceived to have overlooked, misunderstood, or misinterpreted certain facts or circumstances of weight, which, if properly considered, would affect the result of the case and warrant a reversal of the decision involved. In the instant case, we find no cogent reason to depart from this general principle.

Second, the Rules of Court, which is suppletory in quasi-judicial proceedings, particularly Sec. 34[9] of Rule 132, Revised Rules on Evidence, is clear that no evidence which has not been formally offered shall be considered. Thus, where the pertinent invoices or receipts purportedly evidencing the VAT paid by Atlas were not submitted, the courts a quo

evidently could not determine the veracity of the input VAT Atlas has paid. Moreover, when Atlas likewise failed to submit pertinent export documents to prove actual export sales with due certification from accredited banks on the export proceeds in foreign currency with the corresponding conversion rate into Philippine currency, the courts *a quo* likewise could not determine the veracity of the export sales as indicated in Atlas' amended VAT return.

It must be noted that the most competent evidence must be adduced and presented to prove the allegations in a complaint, petition, or protest before a judicial court. And where the best evidence cannot be submitted, secondary evidence may be presented. In the instant case, the pertinent documents which are the best pieces of evidence were not presented.

Third, the summary presented by Atlas does not replace the pertinent invoices, receipts, and export sales documents as competent evidence to prove the fact of refundable or creditable input VAT. Indeed, the summary presented with the certification by an independent Certified Public Accountant (CPA) and the testimony of Atlas' Accounting and Finance Manager are merely corroborative of the actual input VAT it paid and the actual export sales. Otherwise, the pertinent invoices, receipts, and export sales documents are the best and competent pieces of evidence required to substantiate Atlas' claim for tax credit or refund which is merely corroborated by the summary duly certified by a CPA and the testimony of Atlas' employee on the export sales. And when these pertinent documents are not presented, these could not be corroborated as is true in the instant case.

Fourth, Atlas' mere allegations of the figures in its amended VAT return for the first quarter of 1993 as well as in its petition before the CTA are not sufficient proof of the amount of its refund entitlement. They do not even constitute evidence[10] adverse to CIR against whom they are being presented.[11] While Atlas indeed submitted several documents, still, the CTA could not ascertain from them the veracity of the figures as the documents presented by Atlas were not sufficient to prove its action for tax credit or refund. Atlas has failed to meet the burden of proof required in order to establish the factual basis of its claim for a tax credit or refund. Neither can we ascertain the veracity of Atlas' alleged input VAT taxes which are refundable nor the alleged actual export sales indicated in the amended VAT return.

Clearly, it would not be proper to allow Atlas to simply prevail and compel a tax credit or refund in the amount it claims without proving the amount of its claim. After all, "[t]ax refunds are in the nature of tax exemptions,"[12] and are to be construed *strictissimi juris* against the taxpayer.

Fifth, it is thus academic whether compliance with the documentary requirements of RR 3-88 is necessary. Suffice it to say that a revenue regulation is binding on the courts as long as the procedure fixed for its promulgation is followed.[13] It has not been disputed that RR 3-88 has been duly promulgated pursuant to the rule-making power of the Secretary of Finance upon the recommendation of the CIR. As aptly held by the courts a quo, citing

Eslao,[14] these RRs or administrative issuances have the force of law and are entitled to great weight.

Sixth, it would not be amiss to point out that Atlas' contention on the applicability of CTA Circular No. 10-97 is misplaced. For one, said circular amended CTA Circular No. 1-95 only in 1997 whereas the proceedings of the instant case were conducted prior to 1997. In fact, Atlas' Formal Offer of Evidence[15] was filed before the CTA on September 2, 1996. For another, even if said circular is retroactively applied for being procedural, still, it does not afford Atlas relief as the documentary and testimonial pieces of evidence adduced before the CTA are insufficient to prove the claim for refund or tax credit.

Second Issue: No denial of due process

Atlas asserts denial of due process when the courts *a quo* denied its prayer to be given the opportunity to present the required documents, asserting that the reliance by the courts *a quo* on Sec. 2 of Rule 37 of the 1997 Revised Rules on Civil Procedure is misplaced as said proviso applies only to a motion for new trial and not to a motion for reconsideration.

We are not convinced.

Clearly, Atlas attempted or showed willingness to submit the required documents only after the CTA rendered its decision. Aside from assailing the applicability of RR 3-88, Atlas argued in its motion for reconsideration before the CTA that, on the alternative, the case be re-opened to allow it to present the required documents as it followed in good faith the requirement under Sec. 106 of the 1977 Tax Code, and alleged that it has committed a mistake or excusable negligence when the CTA ruled that RR 3-88 should be the one applied requiring Atlas to submit the documents needed.

Obviously, Atlas' reliance on Sec. 106 of the 1977 Tax Code is unacceptable for such does not constitute excusable negligence. In short, Atlas is guilty of inexcusable negligence in the prosecution of its case. The courts *a quo* relied on the procedural deficiency of non-compliance with Sec. 2, Rule 37 of the Rules of Court in denying a new trial. In doing so, the courts *a quo* recognized Atlas' motion for reconsideration also as a motion for new trial, which was alternatively prayed for by Atlas.

Be that as it may, even if Atlas has complied with the affidavits-of-merits requirement, its prayer for a new trial would still not prosper. *First*, Atlas is guilty of inexcusable negligence in the prosecution of its case. It is duty-bound to ensure that all proofs required under the rules are duly presented. Atlas has indeed repeatedly asserted that in its action for the instant judicial claim, the CTA is bound by its rules and suppletorily by the Rules of Court. It certainly has not exercised the diligence required of a litigant who has the burden of proof to present all that is required. *Second*, forgotten evidence, not presented during the trial nor formally offered, is not newly found evidence that merits a new trial. *Third*, and most importantly, it goes against the orderly administration of justice to allow a party to submit forgotten evidence which it could have offered with the exercise of ordinary

diligence, more so when a decision has already been rendered.

In fine, we reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.

WHEREFORE, we **DENY** the petition for lack of merit, and **AFFIRM** the CA's May 16, 2003 Decision and August 11, 2003 Resolution in CA-G.R. SP No. 46494. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and *Tinga, JJ.*, concur.

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[1] *Rollo*, pp. 43-51. Penned by Presiding Justice Cancio C. Garcia (Chairperson, now a retired member of this Court) and concurred in by Associate Justices Eloy R. Bello, Jr. and Mariano C. Del Castillo.

[2] Id. at 63-69. Penned by Presiding Judge Ernesto D. Acosta and concurred in by Associate Judges Ramon O. De Veyra and Amancio Q. Saga.

[3] Id. at 54.

[4] Id. at 69.

[5] G.R. No. 108310, September 1, 1994, 236 SCRA 161, 171.

[6] *Rollo*, p. 17.

[7] *Gabriel v. Mabanta*, G.R. No. 142403, March 26, 2003, 399 SCRA 573, 579-580; citing *Alipoon v. Court of Appeals,* G.R. No. 127523, March 22, 1999, 305 SCRA 118.

[8] *Acosta v. Enriquez,* G.R. No. 140967, June 26, 2003, 405 SCRA 55, 59.

[9] SEC. 34. *Offer of evidence.*—The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[10] *Lagasca v. De Vera,* 79 Phil. 376, 381 (1947).

[11] *Sambrano v. Red Line Transportation Co., Inc.*, 68 Phil. 652, 655 (1939).

[12] *Commissioner of Internal Revenue v. Solidbank Corp.,* G.R. No. 148191, November 25, 2003, 416 SCRA 436, 461; citations omitted.

[13] Id. at 448.

[14] Supra note 5.

[15] *Rollo*, pp. 71-73, dated August 28, 1996.
