625 Phil. 644

SECOND DIVISION

[G.R. No. 180042, February 08, 2010]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. IRONCON BUILDERS AND DEVELOPMENT CORPORATION, RESPONDENT.

D E C I S I O N

ABAD, J.:

This addresses the question of whether or not creditable value-added tax (VAT) withheld from a taxpayer in excess of its output VAT liability may be the subject of a tax refund in place of a tax credit.

The Facts and the Case

On May 10, 2001 respondent Ironcon Builders and Development Corporation (Ironcon) sought the refund by the Bureau of Internal Revenue (BIR) of its income tax overpayment and excess creditable VAT. When petitioner Commissioner of Internal Revenue (CIR) continued not to act on its claims, on July 1, 2002 Ironcon filed a petition for review with the Court of Tax Appeals (CTA) in CTA Case 6502, which was raffled to its Second Division.

After hearing, the Second Division held that in regard to the claim for overpaid income taxes, taxpayers have the option to either carry over the excess credit or ask for a refund. Here, respondent Ironcon filed two income tax returns for the year 2000, an original and an amended one. In the original return, Ironcon placed an "x" mark in a box corresponding to the option "To be carried over as tax credit next year/quarter." Although Ironcon's amended return indicated a preference for "refund" of the overpaid tax, the Second Division ruled that Ironcon's original choice is regarded as irrevocable, pursuant to Section 76 of Republic Act (R.A.) 8424 (the National Internal Revenue Code of 1997 or NIRC). Further, the Second Division found that Ironcon actually carried over the credit for overpaid income taxes and applied it to the tax due for the year 2001. It, therefore, denied Ironcon's claim for its refund.

As to the claim for VAT refund, the Second Division found that by the end of 2000, Ironcon had excess tax credit of P3,135,990.69 carried over from 1999, allowable input tax of P15,242,271.43, and 6% creditable VAT of P11,027,758.51, withheld and remitted by its clients. These amounts were deductible from Ironcon's total output VAT liability of

P20,073,422.63. Consequently, by the end of 2000 Ironcon's actual excess creditable VAT was P9,332,597.99 only as against its claim for refund of P18,053,715.64.

The CTA held, however, that input VAT payments should first be applied to the reported output VAT liability. Only after this deduction has been made will the 6% VAT withheld be applied to the amount of VAT payable. Thus, the excess of P9,332,597.99 mentioned above represents the excess 6% creditable VAT withheld, not creditable input VAT.

The CTA further ruled that since Ironcon had no more output VAT against which the excess creditable VAT withheld may be applied or credited, the VAT withheld had been excessively paid. Thus, the Court ruled that the excess amount may be refunded under Section 204(C) in relation to Section 229 of the NIRC. Before a refund may be granted, however, it must be shown that the claim was not used or carried over to the succeeding quarters.

Ironcon did not present before the Second Division its VAT returns for the succeeding quarters of 2001. Without this, the Second Division could not verify whether the tax credit was applied to output VAT liability in 2001. Thus, the Second Division also denied Ironcon's claim for refund of excess creditable VAT.

Ironcon filed a motion for reconsideration, attaching to it its amended quarterly VAT returns for 2001. These were marked in open court as Exhibits "A-1," "B-1," "C-1," and "D-1." The CTA promulgated an Amended Decision on July 31, 2006, admitting the exhibits and ruling that Ironcon sufficiently proved that its excess creditable VAT withheld was not carried over or applied to any output VAT for 2001. Thus, the Court granted its application for the refund of unutilized excess creditable VAT of P9,332,597.99.

Petitioner CIR filed a motion for reconsideration of the amended decision, which the Second Division denied, prompting the CIR to elevate the matter to the CTA *En Banc* by way of a petition for review in CTA EB 235. The CTA *En Banc* denied the petition in a Decision dated August 9, 2007. It also denied the CIR's motion for reconsideration, hence, this petition for review.[1]

Issue Presented

Simply put, the only issue the petition raises is whether or not the CTA erred in granting respondent Ironcon's application for refund of its excess creditable VAT withheld.

The Court's Ruling

Respondent Ironcon's excess creditable VAT in this case consists of amounts withheld and remitted to the BIR by Ironcon's clients. These clients were government agencies that applied the 6% withholding rate on their payments to Ironcon pursuant to Section 114 of the NIRC (prior to its amendment by R.A. 9337). Petitioner CIR's main contention is that, since these amounts were withheld in accordance with what the law provides, they cannot

be regarded as erroneously or illegally collected as contemplated in Sections 204(C) and 229 of the NIRC.

Petitioner CIR also points out that since the NIRC does not specifically grant taxpayers the option to refund excess creditable VAT withheld, it follows that such refund cannot be allowed. Excess creditable VAT withheld is much unlike excess income taxes withheld. In the latter case, Sections 76 and 58(D) of the NIRC specifically make the option to seek a refund available to the taxpayer. The CIR submits thus that the only option available to taxpayers in case of excess creditable VAT withheld is to apply the excess credits to succeeding quarters.

But the amounts involved in this case are creditable withholding taxes, not final taxes subject to withholding. As the CTA correctly points out, taxes withheld on certain payments under the creditable withholding tax system are but intended to approximate the tax due from the payee.[2] The withheld taxes remitted to the BIR are treated as deposits or advances on the actual tax liability of the taxpayer, subject to adjustment at the proper time when the actual tax liability can be fully and finally determined.[3]

For the year 2000, Ironcon's actual VAT liability payable may be computed as follows:

Output taxes	P 20,073,422.63
Less: allowable input taxes	P 15,242,271.43
	P 4,831,151.20
Less: tax credit (1999)	P 3,135,990.69
VAT payable	P 1,695,160.51

Respondent Ironcon's clients had, however, already withheld and remitted P11,027,758.51 to the BIR in compliance with Section 114. As stated above, this withheld amount is to be treated as advance payment for Ironcon's VAT liability payable and, therefore, the difference of P9,332,597.99 should be treated as Ironcon's overpaid taxes.

The ruling in *Citibank N.A. v. Court of Appeals*, while dealing with excessive income taxes withheld, is also applicable to this case: "Consequently and clearly, the tax withheld during the course of the taxable year, while collected legally under the aforesaid revenue regulation, became untenable and took on the nature of erroneously collected taxes at the end of the taxable year."[4]

Even if the law does not expressly state that Ironcon's excess creditable VAT withheld is refundable, it may be the subject of a claim for refund as an erroneously collected tax under Sections 204(C) and 229. It should be clarified that this ruling only refers to creditable VAT withheld pursuant to Section 114 prior to its amendment. After its amendment by R.A. 9337, the amount withheld under Section 114 is now treated as a final

VAT, no longer under the creditable withholding tax system.[5]

The rule is that before a refund may be granted, respondent Ironcon must show that it had not used the creditable amount or carried it over to succeeding taxable quarters. Originally, the CTA's Second Division said in its January 5, 2006 decision that Ironcon's failure to offer in evidence its quarterly returns for 2001 was fatal to its claim. Ironcon filed a motion for reconsideration, attaching its 2001 returns, and, at the hearing of the motion, had these returns marked as Exhibits "A-1," "B-1," "C-1," and "D-1." Petitioner CIR argues that these Exhibits should be deemed inadmissible considering that they were offered only after trial had ended and should be treated as forgotten evidence.

Citing *BPI-Family Savings Bank v. Court of Appeals*,[6] the CTA ruled that once a claim for refund has been clearly established, it may set aside technicalities in the presentation of evidence. Petitioner CIR points out, however, that the present case is not on all fours with *BPI*. The latter case dealt with the refund of creditable income taxes withheld, for which the NIRC specifically grants taxpayers the option to apply for refund of any excess.

But, considering the CTA's finding in the present case that Ironcon had excess creditable VAT withheld for which it was entitled to a refund, it makes no sense to deny Ironcon the benefit of the *BPI* ruling that overlooks technicalities in the presentation of evidence. In *BPI*, this Court admitted an exhibit attached to the claimant's motion for reconsideration, even if the claimant submitted it only after the trial.

> "[The claimant] may have failed to strictly comply with the rules of procedure; it may have even been negligent. These circumstances, however, should not compel the Court to disregard this cold, undisputed fact: that [the claimant] x x x could not have applied the amount claimed as tax credits."[7]

Substantial justice dictates that the government should not keep money that does not belong to it at the expense of citizens.[8] Since he ought to know the tax records of all taxpayers, petitioner CIR could have easily disproved the claimant's allegations.[9] That he chose not to amounts to a waiver of that right.[10] Also, the CIR failed in this case to make a timely objection to or comment on respondent Ironcon's offer of the documents in question despite an opportunity to do so.[11] Taking all these circumstances together, it was sufficiently proved that Ironcon's excess creditable VAT withheld was not carried over to succeeding taxable quarters.

WHEREFORE, the Court **DENIES** the petition and **AFFIRMS** the Court of Tax Appeals' *En Banc*'s decision in CTA EB 235 dated August 9, 2007, its resolution dated October 11, 2007, as well as the amended decision of the Court of Tax Appeals' Second Division in CTA Case 6502 dated July 31, 2006.

SO ORDERED.

Carpio, Brion, Del Castillo, and *Perez, JJ*., concur.

---

[1] Under Rule 45 of the Rules of Court.

[2] Records, p. 616.

[3] *Citibank N.A. v. Court of Appeals*, 345 Phil. 695, 708-709 (1997).

[4] Id.

[5] See *Abakada Guro Party List v. Ermita*, G.R. Nos. 168056, 168207, 168461, 168463, & 168730, September 1, 2005, 469 SCRA 1, 135-138.

[6] 386 Phil. 719 (2000).

[7] Id. at 728.

[8] Id. at 729.

[9] Id. at 725-726.

[10] Records, p. 476.

[11] Id. at 577-579.
