560 Phil. 322

SECOND DIVISION

[G.R. No. 146221, September 25, 2007]

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

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review[1] of the Decision[2] dated 19 June 2000 and the Resolution dated 24 November 2000 of the Court of Appeals in CA-G.R. SP No. 50068.

The Facts

Petitioner Atlas Consolidated Mining and Development Corporation (petitioner) is a domestic corporation engaged in the business of mining, production, and sale of various mineral products consisting principally of copper concentrates and gold. Petitioner is registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) entity with Registration No. 32-A-6-002224.

In 1988, petitioner filed VAT returns for the four quarters of 1988. Petitioner submitted corresponding applications for excess input VAT refunds resulting from the claimed zero-VAT nature of its sales of gold to the Bangko Sentral ng Pilipinas (BSP), copper concentrates to the Philippine Smelting and Refining Corporation (PASAR), and pyrite to the Philippine Phosphate, Inc. (Philphos).

When BIR failed to act on its request, petitioner filed with the Court of Tax Appeals (CTA) four separate petitions corresponding to the four quarters in 1988, reiterating its claims for refund. Petitioner claimed the following amounts representing its excess input VAT: (1) P33,489,768 for the first quarter of 1988; (2) P54,633,476.07 for the second quarter of 1988; (3) P30,190,111.06 for the third quarter of 1988; and (4) P49,048,911.76 for the fourth quarter of 1988. The four cases were later consolidated.

On 11 September 1998, the CTA rendered a decision, the dispositive portion of which reads:

> IN THE LIGHT OF ALL THE FOREGOING, petitioner's claim for refund or issuance of a tax credit certificate is hereby GRANTED, but only up to the amount of P13,451,536.15, because this was clearly admitted by the respondent in her Answer in CTA Case No. 4416 and therefore need not be proven. However, the rest of the claims of petitioner as adverted to is DENIED due to insufficiency of evidence.
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> SO ORDERED.[3]

Petitioner and the Commissioner of Internal Revenue (respondent) separately filed their motions for reconsideration. In a Resolution dated 3 December 1998, the CTA modified its Decision, thus:

> WHEREFORE, in view of the foregoing, Respondent's motion to modify a portion of Our Decision, dated September 11, 1998, is GRANTED. Accordingly, the decretal portion of said Decision is modified as follows:
>
> > "IN THE LIGHT OF ALL THE FOREGOING, petitioner's claim for refund or issuance of a tax credit certificate is hereby DENIED, considering that the tax credit previously granted by this Court in the amount of P13,451,536.15 has already been given by respondent and the rest of the claim was denied due to insufficiency of evidence. No pronouncement as to costs.
> >
> > SO ORDERED."
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> With respect to Petitioner's Motion for Reconsideration/New Trial, We hereby DENY the same for lack of merit.
>
> SO ORDERED.[4]

Petitioner appealed to the Court of Appeals. On 19 June 2000, the Court of Appeals dismissed the petition and affirmed the CTA Resolution dated 3 December 1998. Petitioner filed a motion for reconsideration, which the Court of Appeals denied in its Resolution dated 24 November 2000.

Hence, this petition for review.

The Ruling of the Court of Tax Appeals

The CTA held that the sale of gold, copper concentrates, and pyrite to BSP, PASAR, and Philphos, respectively, is exempt from the 10% VAT output tax. However, the exemption does not automatically entitle petitioner to the amount of refund sought because petitioner is required by law to present evidence showing payment of the input taxes during the period for which petitioner is claiming refund. The CTA found that petitioner failed to show proof that it had paid input taxes in 1988. Section 2(c)(1) of Revenue Regulations No. 3-88 requires that a photocopy of the purchase invoice or receipt evidencing the VAT paid should be submitted with the application for tax credit or refund. Petitioner failed to submit such evidence which prevented the CTA from confirming the veracity of the amount claimed by petitioner as excess input VAT payments.

However, since respondent already admitted in his Answer that petitioner is entitled to VAT credit for the first quarter of 1988 in the amount of P13,451,536.15, the CTA granted petitioner's claim for refund for this amount. Upon motion for reconsideration, the CTA modified its decision to reflect respondent's payment to petitioner on 28 March 1990 of the amount of P13,451,536.15 through Tax Credit Certificate No. SN-000026.

The Ruling of the Court of Appeals

The Court of Appeals agreed with the CTA that petitioner failed to substantiate its claim of overpayment to the BIR of input VAT for zero-rated transactions. The Court of Appeals found that the lists of alleged VAT documents and the report of petitioner's independent auditor were made without the examination of the actual invoices and receipts which would support petitioner's claims. The Court of Appeals quoted the letter of the accounting firm which petitioner hired for independent audit in which it admitted that it did not compare the total of the input tax claimed for the quarter against the pertinent VAT returns and books of accounts. The Court of Appeals concluded that the listing and the report made by petitioner's independent auditor are unreliable proofs of petitioner's claims. Likewise, the Summary Amount of VAT Listings submitted by petitioner cannot be relied upon in the absence of the actual receipts and invoices which petitioner never offered as evidence.

The Issues

Petitioner raises the following issues:

1. WHETHER THE COURT A QUO ERRED IN RULING THAT CTA CIRCULAR 1-95 REQUIRES THE SUBMISSION OF PHOTOCOPIES OF INVOICES AND RECEIPTS IN SUPPORT OF A JUDICIAL CLAIM FOR EXCESS INPUT VAT REFUND.

2. WHETHER ZERO-RATED SALES OF GOODS TO BOI- AND EPZA-REGISTERED ENTERPRISES ARE LIMITED TO THE PROPORTION WHICH SUCH ZERO-RATED SALES HAVE TO THE ACTUAL EXPORTATION OF BOI- AND EPZA-REGISTERED ENTERPRISES.

3. WHETHER THE REQUIREMENT OF REVENUE REGULATION NO. 2-88 THAT BOI- AND EPZA-REGISTERED ENTERPRISES MUST HAVE AT LEAST 70% EXPORT SALES IN ORDER FOR THE SALES TO SAID ENTERPRISES BE CONSIDERED ZERO-RATED IS VALID.

4. WHETHER THE COURT A QUO ERRED IN NOT REMANDING THE CASE TO THE COURT OF TAX APPEALS FOR PETITIONER TO PRESENT ADDITIONAL EVIDENCE.[5]

The Ruling of the Court

The petition is without merit.

Submission of Purchase Invoices or Receipts

Petitioner asserts that it has adduced sufficient evidence to support its claim for input VAT refund. Petitioner claims that CTA Circular No. 1-95 requires only the submission of a summary listing of the invoices and receipts and a certification of an independent certified public accountant (CPA) attesting to the correctness of the summary listing in lieu of the presentation of voluminous documentary evidence.

We disagree with petitioner's contention. CTA Circular No. 1-95 clearly requires that photocopies of the receipts or invoices must be pre-marked and submitted to the CTA to verify the correctness of the summary listing and the CPA certification. CTA Circular No. 1-95, issued on 25 January 1995, reads:

CIRCULAR NO. 1-95

SUBJECT: CTA Rules governing the presentation of voluminous documents as evidence such as receipts, invoices and vouchers

In accordance with the announced policy of the court and 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.

1. The party who desires to introduce as evidence such voluminous documents must present: (a) Summary containing the total amount/s of the tax account or tax paid for the period involved and a chronological or numerical list of the numbers, dates and amounts covered by the invoices or receipts; and (b) a Certification of an independent Certified Public Accountant attesting to the correctness of the contents of the summary after making an examination and evaluation of the voluminous receipts and invoices. Such summary and certification must properly be identified by a competent witness from the accounting firm.

2. The method of individual presentation of each and every receipt or invoice or other documents for marking, identification and comparison with the originals thereof need not be done before the Court or the Commissioner anymore after the introduction of the summary and CPA certification. It is enough that **the receipts, invoices and other documents covering the said accounts or payments must be pre-marked by the party concerned and submitted to the Court in order to be made accessible to the adverse party whenever he/she desires to check and verify the correctness of the summary and CPA certification.** However, the originals of the said receipts, invoices or documents should be ready for verification and comparison in case doubt on the authenticity of the particular documents presented is raised during the hearing of the case. (Emphasis supplied)

Thus, in *Commissioner of Internal Revenue v. Manila Mining Corporation*,[6] the Court held:

> There is nothing, however, in CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, which either expressly or impliedly suggests that summaries and schedules of input VAT payments, even if certified by an independent CPA, suffice as evidence of input VAT payments.
>
> x x x x
>
> The circular, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the court. It does not relieve respondent of its imperative task of pre-marking photocopies of sales receipts and invoices and submitting the same to the court after the independent CPA shall have examined and

compared them with the originals. Without presenting these pre-marked documents as evidence - from which the summary and schedules were based, the court cannot verify the authenticity and veracity of the independent auditor's conclusions.

There is, moreover, a need to subject these invoices or receipts to examination by the CTA in order to confirm whether they are VAT invoices. Under Section 21 of Revenue Regulation No. 5-87, all purchases covered by invoices other than a VAT invoice shall not be entitled to a refund of input VAT.[7]

The submission of photocopies of purchase invoices and receipts is indispensable when applying for tax credit or refund. In fact, the original copy of the invoices or receipts must be presented for cancellation prior to the issuance of a tax credit certificate or refund. The requisites for claiming refunds or tax credits for input tax are set forth in Section 2 of Revenue Regulations No. 3-88:[8]

SECTION 2. Section 16 of Revenue Regulations 5-87 is hereby amended to read as follows:

Section 16. Refunds or tax credits of input tax. â"€

(a) Zero-rated sales of goods and services. â"€ Only a VAT-registered person may be granted a tax credit or refund of value-added taxes paid corresponding to zero-rated sales of goods or services, to the extent that such taxes have not been applied against output taxes, upon showing of proof of compliance with the conditions stated in Section 8 of these Regulations.

For export sales, the application should be filed within two years after the close of the quarter when the transaction took place.

x x x x

(c) Claims for tax credits/refunds. â"€ 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 said invoice-receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit certificate or refund. x x x (Emphasis

supplied)

Petitioner's failure to adduce evidence to support its claims for refund cannot be countenanced. We find no plausible reason to remand the case to the CTA for presentation of additional evidence. The invoices and receipts do not constitute newly discovered evidence which would warrant a new trial.

Sales to Export-Oriented Enterprises

Section 100(a) of the National Internal Revenue Code of 1986, as amended by Executive Order No. 273,[9] provides:

> SEC. 100. Value-added tax on sale of goods. â"€ (a) *Rate and base of tax*. â"€ There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, That the following sales by VAT-registered persons shall be subject to 0%:
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> (1) export sales; and
>
> (2) sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.
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> "Export sales" means the sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales. "Foreign currency denominated sales" means sales to non-residents of goods assembled or manufactured in the Philippines, for delivery to residents in the Philippines and paid for in convertible foreign currency remitted through the banking system in the Philippines.

Under Section 2 of Revenue Regulations No. 2-88,[10] zero-rated sales also apply to sales of raw materials to BOI-registered exporters, whose export sales exceed 70% of its total annual production. Revenue Regulations No. 7-95,[11] promulgated to implement the VAT provisions of the National Internal Revenue Code, amended previous revenue regulations by providing that the sale of raw materials or packaging materials by VAT-registered persons to an export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production shall be subject to zero percent (0%) rate. This provision is now incorporated in Section 106(A)(2)(a)(3) of the National Internal Revenue Code of 1997.[12]

Petitioner submits that the zero-rating of sales to export-oriented entities applies in its entirety and should not be limited merely to the proportion of the sales to the actual exports of the export-oriented entities. Petitioner alleges that the Court of Appeals failed to rule on this issue.

The Court of Appeals may have deemed this issue superfluous considering petitioner's failure to offer as evidence the purchase invoices or receipts to substantiate its claim for refund.

Nevertheless, the Court has already resolved this issue in *Atlas Consolidated Mining & Dev't Corp. v. CIR*,[13] which incidentally involves the same parties as in this case. The Court held:

> [A]n examination of Section 4.100.2 of Revenue Regulation 7-95 in relation to Section 102(b) of the Tax Code shows that sales to an export-oriented enterprise whose export sales exceed 70 percent of its annual production are to be zero-rated, provided the seller complies with other requirements, like registration with the BOI and the EPZA. The said regulation does not even hint, much less expressly mention, that only a percentage of the sales would be zero-rated. The Internal Revenue Commissioner cannot, by administrative fiat, amend the law by making compliance therewith more burdensome.[14]

Thus, the 0% rate applies to the total sale of raw materials or packaging materials to an export-oriented enterprise and not just the percentage of the sale in proportion to the actual exports of the enterprise.

Petitioner further questions the validity of the requirement under Revenue Regulations No. 2-88 that BOI- and EPZA-registered enterprises must have at least 70% export sales for the sales to be qualified for zero-rating. Petitioner asserts that such requirement constitutes an amendment to the Omnibus Investment Code and the NIRC of 1986, as amended. This argument is rendered moot by the enactment of Republic Act No. 8424 or the NIRC of 1997 which incorporated the provision that the sale of raw materials or packaging materials by VAT-registered persons to an export-oriented enterprise whose export sales exceed 70% of total annual production shall be subject to 0% rate.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 19 June 2000 and the Resolution dated 24 November 2000 of the Court of Appeals in CA-G.R. SP No. 50068.

SO ORDERED.

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

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Godardo A. Jacinto and Remedios Salazar-Fernando, concurring.

[3] CA *rollo*, p. 55.

[4] Id. at 62.

[5] *Rollo*, pp. 13-14.

[6] G.R. No. 153204, 31 August 2005, 468 SCRA 571.

[7] Id. at 590, 592.

[8] Issued on 7 April 1988.

[9] Issued on 25 July 1987 and which took effect on 1 January 1988.

[10] Regulations governing the application of zero-rate, exemption on certain transactions related to exporters, and refunds of input taxes. Revenue Regulations No. 2-88 was issued on 15 February 1988.

[11] Consolidated Value-Added Tax Regulations, issued on 9 December 1995.

[12] Republic Act No. 8424.

[13] 376 Phil. 495 (1999).

[14] Id. at 511-512.
