528 Phil. 639

FIRST DIVISION

[G.R. NO. 149671, July 21, 2006]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. SEKISUI JUSHI PHILIPPINES, INC., RESPONDENT.

D E C I S I O N

PANGANIBAN, CJ:

Business enterprises registered with the Philippine Export Zone Authority (PEZA) may choose between two fiscal incentive schemes: (1) to pay a five percent preferential tax rate on its gross income and thus be exempt from all other taxes; or (b) to enjoy an income tax holiday, in which case it is not exempt from applicable national revenue taxes including the value-added tax (VAT). The present respondent, which availed itself of the second tax incentive scheme, has proven that all its transactions were export sales. Hence, they should be VAT zero-rated.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, challenging the August 16, 2001 Decision[2] of the Court of Appeals (CA) in CA-GR SP No. 64679. The assailed Decision upheld the April 26, 2001 Decision[3] of the Court of Tax Appeals (CTA) in CTA Case No. 5751. The CA Decision disposed as follows:

> "WHEREFORE, premises considered, the present petition for review is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. The Decision dated April 26, 2001 of the Court of Tax Appeals in CTA Case No. 5751 is hereby AFFIRMED and UPHELD."[4]

On the other hand, the dispositive portion of the CTA Decision reads:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED.** [Petitioner] is hereby ordered to refund or to issue a Tax Credit Certificate in favor of the [Respondent] in the amount of P4,377,102.26 representing excess input taxes paid for the period covering January 1 to June 30, 1997."[5]

The Facts

The uncontested[6] facts are narrated by the CA as follows:

> "Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office located at the Special Export Processing Zone, Laguna Technopark, Biñan, Laguna. It is principally engaged in the business of manufacturing, importing, exporting, buying, selling, or otherwise dealing in, at wholesale such goods as strapping bands and other packaging materials and goods of similar nature, and any and all equipment, materials, supplies used or employed in or related to the manufacture of such finished products.
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> "Having registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer, respondent filed its quarterly returns with the BIR, for the period January 1 to June 30, 1997, reflecting therein input taxes in the amount of P4,631,132.70 paid by it in connection with its domestic purchase of capital goods and services. Said input taxes remained unutilized since respondent has not engaged in any business activity or transaction for which it may be liable for output tax and for which said input taxes may be credited.
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> "On November 11, 1998, respondent filed with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (CENTER-DOF) two (2) separate applications for tax credit/refund of VAT input taxes paid for the period January 1 to March 31, 1997 and April 1 to June 30, 1997, respectively. There being no action on its application for tax credit/refund under Section 112 (B) of the 1997 National Internal Revenue Code (Tax Code), as amended, private respondent filed, within the two (2)-year prescriptive period under Section 229 of said Code, a petition for review with the Court of Tax Appeals on March 26, 1999.
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> "Petitioner filed its Answer to the petition asseverating that: (1) said claim for tax credit/refund is subject to administrative routinary investigation by the BIR; (2) respondent miserably failed to show that the amount claimed as VAT input taxes were erroneously collected or that the same were properly documented; (3) taxes due and collected are presumed to have been made in accordance with law, hence, not refundable; (4) the burden of proof is on the taxpayer to establish his right to a refund in an action for tax refund. Failure to discharge such duty is fatal to his action; (5) respondent should show that it complied with the provisions of Section 204 in relation to Section 229 of the 1997 Tax Code; and (6) claims for refund are strictly construed against the taxpayer as it partakes of the nature of a tax exemption. Hence, petitioner prayed for the denial of respondent's petition."[7]

Ruling of the Court of Tax Appeals

The CTA ruled that respondent was entitled to the refund. While the company was

registered with the PEZA as an ecozone and was, as such, exempt from income tax, it availed itself of the fiscal incentive under Executive Order No. 226. It thereby subjected itself to other internal revenue taxes like the VAT.[8] The CTA then found that only input taxes amounting to P4,377,102.26 were duly substantiated by invoices and Official Receipts,[9] while those amounting to P254,313.43 had not been sufficiently proven and were thus disallowed.[10]

Ruling of the Court of Appeals

The Court of Appeals upheld the Decision of the CTA. According to the CA, respondent had complied with the procedural and substantive requirements for a claim by 1) submitting receipts, invoices, and supporting papers as evidence; 2) paying the subject input taxes on capital goods; 3) not applying the input taxes against any output tax liability; and 4) filing the claim within the two-year prescriptive period under Section 229 of the 1997 Tax Code.[11]

Hence, this Petition.[12]

The Issue

Petitioner raises this sole issue for our consideration:

> "Whether or not respondent is entitled to the refund or issuance of tax credit certificate in the amount of P4,377,102.26 as alleged unutilized input taxes paid on domestic purchase of capital goods and services for the period covering January 1 to June 30, 1997."[13]

The Court's Ruling

The Petition has no merit.

Sole Issue:
Entitlement to Refund

To support the issue raised, petitioner advances the following arguments:

> "I. The Court of Appeals erred in not holding that respondent being registered with the Philippine Economic Zone Authority (PEZA) as an [e]cozone [e]xport [e]nterprise, its business is not subject to VAT pursuant to Section 24 of Republic Act No. 7916 in relation to Section 103 (now Sec. 109) of the Tax Code, as amended by R.A. 7716.
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> "II. The Court of Appeals erred in not holding that since respondent is EXEMPT from Value-Added Tax (VAT), the capital goods and services it

purchased are considered not used in VAT taxable business, hence, is not allowed any tax credit/refund on VAT input tax previously paid on such capital goods pursuant to Section 4.106-1 of Revenue Regulations No. 7-95, and of input taxes paid on services pursuant to Section 4.103-1 of the same regulations.

"III. The Court of Appeals erred in not holding that tax refunds being in the nature of tax exemptions are construed *strictissimi juris* against claimants."[14]

These issues have previously been addressed by this Court in *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.),*[15] *Commissioner of Internal Revenue v. Cebu Toyo Corporation,*[16] *and Commissioner of Internal Revenue v. Seagate Technology (Philippines).*[17]

An entity registered with the PEZA as an ecozone[18] may be covered by the VAT system. Section 23 of Republic Act 7916, as amended, gives a PEZA-registered enterprise the option to choose between two fiscal incentives: a) a five percent preferential tax rate on its gross income under the said law; or b) an income tax holiday provided under Executive Order No. 226 or the Omnibus Investment Code of 1987, as amended. If the entity avails itself of the five percent preferential tax rate under the first scheme, it is exempt from all taxes, including the VAT;[19] under the second, it is exempt from income taxes for a number of years,[20] but not from other national internal revenue taxes like the VAT.[21]

The CA and CTA found that respondent had availed itself of the fiscal incentive of an income tax holiday under Executive Order No. 226. This Court respects that factual finding. Absent a sufficient showing of error, findings of the CTA as affirmed by the CA are deemed conclusive.[22] Moreover, a perusal of the pleadings and supporting documents before us indicates that when it registered as a VAT-entity -- a fact admitted by the parties -- respondent intended to avail itself of the income tax holiday.[23] Verily, being a question of fact, the type of fiscal incentive chosen cannot be a subject of this Petition, which should raise only questions of law.

By availing itself of the income tax holiday, respondent became subject to the VAT. It correctly registered as a VAT taxpayer, because its transactions were not VAT-exempt.

Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory[24] and is regarded in law as foreign soil.[25] Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports[26] and treated as export sales.[27] These sales are zero-rated or subject to a tax rate of zero percent.[28]

Notwithstanding the fact that its purchases should have been zero-rated, respondent was able to prove that it had paid input taxes in the amount of P4,377,102.26. The CTA found,

and the CA affirmed, that this amount was substantially supported by invoices and Official Receipts;[29] and petitioner has not challenged the computation. Accordingly, this Court upholds the findings of the CTA and the CA.

On the other hand, since 100 percent of the products of respondent are exported,[30] all its transactions are deemed export sales and are thus VAT zero-rated. It has been shown that respondent has no output tax with which it could offset its paid input tax.[31] Since the subject input tax it paid for its domestic purchases of capital goods and services remained unutilized, it can claim a refund for the input VAT previously charged by its suppliers.[32] The amount of P4,377,102.26 is excess input taxes that justify a refund.

WHEREFORE, the Petition is ***DENIED*** and the assailed Decision ***AFFIRMED***. No costs, as petitioner is a government agency.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Callejo, Sr., and *Chico-Nazario, JJ.,* concur.

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[1] *Rollo*, pp. 8-18.

[2] Id. at 22-27. Special Twelfth Division. Penned by Justice Martin S. Villarama, Jr., with the concurrence of Justices Conrado M. Vasquez, Jr. (Division chair) and Eliezer R. de los Santos (member).

[3] Id. at 28-39. Penned by Judge Amancio Q. Saga and concurred in by Presiding Judge Ernesto D. Acosta (now CTA Presiding Justice).

[4] Assailed CA Decision, p. 6; *rollo*, p. 27.

[5] CTA Decision, p. 11; *rollo*, p. 38.

[6] The Petition quoted them in full.

[7] Assailed CA Decision, pp. 1-2; *rollo*, pp. 22-23.

[8] CTA Decision, p. 10; id. at 37.

[9] Id. at 11; id. at 38.

[10] Id. at 10-11; id. at 37-38.

[11] Assailed CA Decision, p. 5; *rollo*, p. 26.

[12] To resolve old cases, the Court created the Committee on Zero Backlog of Cases on January 26, 2006. Consequently, the Court resolved to prioritize the adjudication of long-pending cases by redistributing them among all the justices. This case was recently re-raffled and assigned to the undersigned *ponente* for study and report.

[13] Petition, p. 4; *rollo*, p. 11.

[14] Id. at 4-5; id. at 11-12.

[15] 466 SCRA 211, August 9, 2005.

[16] 451 SCRA 447, February 16, 2005.

[17] 451 SCRA 132, February 11, 2005.

[18] An ecozone refers to a selected area that is or has a potential to be developed as agro-industrial, industrial, tourist/recreational, commercial, banking, investment and financial centers. *See* Republic Act No. 7916, otherwise known as "The Special Economic Zone Act of 1995," Chapter I, Sec. 4(a).

[19] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.,* supra note 15; *Commissioner of Internal Revenue v. Cebu Toyo Corporation,* supra note 16.

[20] The income tax holiday is for a period of 6 years for pioneer enterprises and 4 years for non-pioneer enterprises. (Executive Order No. 226, as amended, Art. 39).

[21] Supra note 19.

[22] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.,* supra note 15.
While Republic Act No. 9282, elevated the CTA to the level of the CA, the rule stands, because findings of trial courts -- for which specialization is conferred -- are accorded respect and finality when supported by substantial evidence.

[23] CTA Decision, p. 6; *rollo*, p. 33.

[24] Republic Act No. 7916, as amended, Sec. 8.

[25] *Commissioner of Internal Revenue v. Seagate Technology (Philippines),* supra note 17.

[26] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.),* supra note 15.

[27] Id.

[28] TAX CODE, Sec. 106(A)(2)(a)(5).

[29] CTA Decision, pp. 6 and 11; *rollo,* pp. 33 and 38.

[30] Id. at 7; id. at 34.

[31] Assailed CA Decision, p. 5; id. at 26.

[32] *Commissioner of Internal Revenue v. Seagate Technology (Philippines),* supra note 17.
