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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **June 15, 2022** *which reads as follows:*

"**G.R. No. 229078** ***(Commissioner of Internal Revenue, petitioner vs. Unisys Public Sector Services Corporation, respondent).*** — This is an appeal by *certiorari* seeking to reverse and set aside the September 9, 2016 Decision[1] and the January 3, 2017 Resolution[2] of the Court of Tax Appeals *(CTA) En Banc* in CTA EB No. 1429. The CTA *En Banc* affirmed the September 22, 2015 Decision[3] and February 10, 2016 Resolution[4] of the CTA Third Division *(CTA Division)* in CTA Case No. 8293, which partially granted Unisys Public Sector Services Corporation's *(respondent)* claim for tax refund or credit of erroneously overpaid value- added tax *(VAT)* for the 2nd, 3rd, and 4th quarters of calendar year *(CY)* 2009 and the succeeding three quarters of CY 2010 in the amount of ₱51,187,799.96.

- over – eleven (11) pages ...

[1] *Rollo*, pp. 36-52; penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Roman G. Del Rosario, Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban, concurring.

[2] Id. at 53-57; penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Roman G. Del Rosario, Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring; Associate Justice Ma. Belen M. Ringpis-Liban, on leave and Associate Justice Catherine T. Manahan, no part.

[3] Accessed at: https://cta.judiciary.gov.ph/home/download/ddcd7ef980294f3c686cdfeaa394a965; penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justices Lovell R. Bautista and Ma. Belen M. Ringpis-Liban, concurring.

[4] Accessed at: https://cta.judiciary.gov.ph/home/download/34f65723ae4e93b809268185e59d46df; penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justices Lovell R. Bautista and Ma. Belen M. Ringpis-Liban, concurring.

Antecedents

Respondent is a domestic corporation, VAT-registered taxpayer engaged in the business of manufacturing and supplying of computer hardware, systems and programs, and providing support and consultancy services in the use and application of such products.[5] On December 23, 1999, Unisys Australia Limited, Philippine Branch *(Unisys Australia)* entered into a contract with the National Statistics Office *(NSO)* in relation to the latter's Civil Registry System-Information Technology Project *(CRS-ITP)*. The CRS-ITP Contract provides, among others, that Unisys Australia would be responsible for the design, development, construction, installation, testing, and commissioning of NSO's Civil Registry System-Information Technology.[6]

On July 1, 2001, respondent and Unisys Australia, with the consent of NSO, executed an assignment and assumption agreement by virtue of which Unisys Australia unconditionally and irrevocably assigned to respondent all its rights, title, benefits, obligations, undertakings, and liabilities that may have accrued and have not been fully performed under the 1999 CRS-ITP Contract.[7] In accordance with Section 114(C) of the National Internal Revenue Code of 1997 *(Tax Code)*, 5% of respondent's gross sales to NSO was withheld by the latter as withholding agent.[8]

Respondent filed its VAT returns for the four quarters of CY 2009 and for the succeeding three quarters of CY 2010, and paid the total amount of ₱148,031,890.38. Subsequently, however, respondent discovered that it erroneously paid VAT to the Bureau of Internal Revenue *(BIR)* when it used its actual accumulated input VAT instead of the 7% standard input VAT in computing its net VAT payable. As a consequence, respondent claims that it overpaid VAT for CY 2009 and the succeeding three quarters of CY 2010 in the amount of ₱76,091,087.98.[9]

On February 11, 2011, respondent filed with the BIR Large Taxpayers Regular Audit Division III a claim for refund or issuance of a tax credit certificate *(TCC)* for the alleged erroneously overpaid

[5] *Rollo*, pp. 18-19.
[6] Id. at 19.
[7] Id. at 19-20.
[8] Id. at 20.
[9] Id.

VAT for CY 2009 and the succeeding three quarters of CY 2010. Thereafter, on May 30, 2011, respondent filed its judicial appeal with the CTA Division claiming inaction on the part of the Commissioner of Internal Revenue *(petitioner)*.[10]

Ruling of the CTA Division

In its Decision dated September 22, 2015, the CTA Division partially granted respondent's claim for refund or issuance of TCC in the amount of ₱51,187,799.96, representing the second to fourth quarters of CY 2009 and the succeeding three quarters of CY 2010. The claim for refund for the VAT overpayment pertaining to the first quarter of CY 2009 was denied on the basis of prescription.[11] The CTA Division ruled that respondent's overpayment due to the erroneous application of its actual accumulated input VAT for the period claimed instead of the 7% standard input VAT is refundable as erroneously paid tax under Sec. 229[12] of the Tax Code.

Both parties filed their respective motions for reconsideration of the CTA Division's decision. However, they were denied in a Resolution dated February 10, 2016. Aggrieved, petitioner filed an appeal with the CTA *En Banc*, while respondent no longer pursued an appeal.

Ruling of the CTA *En Banc*

In its Decision dated September 9, 2016, the CTA *En Banc* affirmed the ruling of the CTA Division and dismissed petitioner's appeal for lack of merit. The CTA *En Banc* found that the CTA Division's interpretation of Sec. 4.114-2(a) of Revenue Regulations

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[10] Id.
[11] CTA Decision in CTA Case No. 8293, pp. 12 and 23. Accessed at: https://cta.judiciary.gov.ph /home/download/ddcd7ef980294f3c686cdfeaa394a965.
[12] Section 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment. *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears to have been erroneously paid.

(RR) No. 16-2005,[13] as amended by RR No. 4-2007,[14] was correct, and likewise ruled that petitioner's argument that respondent had no legal personality to file a claim for refund had no legal basis.

Petitioner filed a motion for reconsideration of the CTA *En Banc*'s decision, but the same was denied in a Resolution dated January 3, 2017, hence this appeal.

Issue

The sole issue for the Court's consideration is whether the CTA *En Banc* erred in finding respondent entitled to a partial refund of its allegedly erroneous payment of VAT for the second to fourth quarters of CY 2009 and the succeeding three quarters of CY 2010, in the amount of ₱51,187,799.96.

In arguing that the CTA erred in partially granting the refund, petitioner insists that there was no erroneous payment of VAT and that respondent failed to prove its entitlement to a refund. Petitioner similarly insists that respondent has no legal personality to file a claim for refund and that respondent failed to comply with the requirements for a valid claim of refund.[15]

The Court's Ruling

The petition must be denied for lack of merit.

At the outset, the Court notes that petitioner merely rehashed its arguments before the CTA Division and the CTA *En Banc* — all of which have already been passed upon exhaustively by the courts *a quo*. It is worth noting that the CTA Division and the CTA *En Banc* were one in finding that respondent made an overpayment of VAT in the amount of ₱51,187,799.96 and is entitled to the refund of the same. As a specialized court dedicated exclusively to the resolution of tax problems, the CTA has accordingly developed an expertise on the subject of taxation. Thus, its decisions are presumed valid in every aspect and will not be overturned on appeal, unless the Court finds that the questioned decision is not supported by substantial evidence or there has been an abuse or improvident exercise of authority on the

[13] Entitled, "Consolidated Value-Added Tax Regulations of 2005."
[14] Entitled, "Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005."
[15] *Rollo*, pp. 28-30.

part of the tax court.[16] To this end, the Court finds no cogent reason to disturb the CTA *En Banc*'s assailed rulings on respondent's VAT overpayment.

Respondent erroneously made VAT overpayment in the amount of ₱51,187,799.96.

Before this Court, petitioner insists that the standard input tax of 7% is only a standard, which is simply the limit by which actual input tax is compared to determine if it exceeds, or if it is below the standard of 7% of gross sales to the government.[17] Petitioner argues that the CTA erred in finding that this 7% standard input tax can be considered as allowable input tax creditable against output VAT. Petitioner is mistaken because the law is clear on the matter.

Sec. 114(C) of the Tax Code provides:

> SEC. 114. *Return and Payment of Value-Added Tax.* –
>
> x x x x
>
> (C) *Withholding of Value-Added Tax.* – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: x x x For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.

In line with this, Sec. 4.112-2(a) of RR No. 16-2005, as amended by RR No. 4-2007 reads:

> SEC. 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* —
>
> (a) The government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) shall, before making payment on

[16] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, 826 Phil. 329, 346-347 (2018).
[17] *Rollo*, pp. 26-27.

> account of each purchase of goods and/or of services taxed at *twelve percent (12%)* VAT pursuant to Secs. 106 and 108 of the Tax Code, deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof.
>
> The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. **The remaining *seven percent (7%)* effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs in lieu of the actual input VAT directly attributable or ratably apportioned to such sales.** Should actual input VAT *attributable to sale to government* exceeds *seven percent (7%)* of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT *attributable to sale to government* is less than *seven percent (7%)* of gross payment, the difference must be closed to expense or cost. x x x (italics and emphases supplied)

Undoubtedly, sales to the government or any of its political subdivisions, instrumentalities or agencies of goods and services are subject to 12% VAT. However, the language of Sec. 4.112-2(a) of RR No. 16-2005 clearly provides that the government is mandated to withhold a final VAT at the rate of 5% on its gross payment, and that the remaining 7% standard input tax is allowable as input tax, in lieu of the actual input tax of the seller directly attributable to sales to the government. The amount withheld by the government represents the net VAT payable by the seller, and the seller is not required to pay the difference between the 12% VAT and the 5% final VAT withheld by the government. Thus, the seller's actual input VAT which is attributable to its sales to the government remains unutilized.

The CTA's interpretation is likewise consistent with that of this Court in *Abakada Guro Party List v. Ermita*[18] *(Abakada)*, where We ruled that the 5% final VAT withheld by the government represents the **full payment of the tax payable on the transaction, and that the remaining 5% (now 7%) is allowable as input tax**. The Court, in *Abakada*, ruled:

> Section 114(C) merely provides a method of collection, or as stated by respondents, a more simplified VAT withholding system. The government in this case is constituted as a withholding agent with respect to their payments for goods and services.

[18] 506 Phil. 1 (2005).

> Prior to its amendment, Section 114(C) provided for different rates of value-added taxes to be withheld — 3% on gross payments for purchases of goods; 6% on gross payments for services supplied by contractors other than by public works contractors; 8.5% on gross payments for services supplied by public work contractors; or 10% on payment for the lease or use of properties or property rights to nonresident owners. Under the present Section 114(C), these different rates, except for the 10% on lease or property rights payment to nonresidents, were deleted, and a uniform rate of 5% is applied.
>
> **The Court observes, however, that the law used the word *final*. In tax usage, *final*, as opposed to creditable, means full. Thus, it is provided in Section 114(C): "final value-added tax at the rate of five percent (5%)."**
>
> In Revenue Regulations No. 02-98, implementing R.A. No. 8424 (The Tax Reform Act of 1997), the concept of final withholding tax on income was explained, to wit:
>
> > SECTION 2.57. Withholding of Tax at Source
> >
> > (A) Final Withholding Tax. — Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as **full and final payment** of the income tax due from the payee on the said income. The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of underwithholding, the deficiency tax shall be collected from the payor/withholding agent. x x x
> >
> > x x x x
>
> **As applied to value-added tax, this means that taxable transactions with the government are subject to a 5% rate, which constitutes as full payment of the tax payable on the transaction. This represents the net VAT payable of the seller. The other 5% effectively accounts for the standard input VAT (deemed input VAT), in lieu of the actual input VAT directly or attributable to the taxable transaction.**[19] (emphases supplied)

Here, the CTA found merit in respondent's arguments and documentary submissions that it failed to take into account the 7% standard input tax as provided in Sec. 4.112-2(a) of RR No. 16-2005

[19] Id. at 126-127.

and that its actual input VAT attributable to its sales to NSO was lower than the 7% standard input tax. Accordingly, the CTA correctly ruled that respondent erroneously made VAT overpayment in the reduced amount of ₱51,187,799.96.

Respondent's legal personality to file the claim for refund.

Petitioner claims that respondent has no legal personality to file the claim for refund. Petitioner states that another assignment and assumption agreement was executed in 2008 between respondent and Unisys Australia whereby respondent allegedly transferred all the previously assigned rights under the CRS-ITP Contract back to Unisys Australia.[20]

The Court notes that the resolution of this issue involves the determination of a question of fact and is evidentiary in nature — which is not proper in an appeal by *certiorari*. It is basic that only pure questions of law should be raised in a petition for review under Rule 45 of the Rules of Court.[21] This Court will not entertain questions of fact since factual findings of appellate courts are final, binding or conclusive on the parties and upon this Court when supported by substantial evidence.[22] In the present case, the CTA Division and the CTA *En Banc* were one in finding that petitioner failed to present evidence that respondent's rights and obligations were reassigned to Unisys Australia in 2008. The CTA *En Banc* stated:

> Upon review of the records, it appears that CIR failed to present any evidence to prove the foregoing affirmative allegations. If there is any truth to the CIR's allegation that the rights and obligations of Unisys under the CRS-ITP Contract were [reassigned] to [Unisys Australia] through the Assignment and Assumption Agreement in 2008, he could have presented the said document as evidence before this Court.[23]

[20] *Rollo*, p. 28.
[21] *Pascual v. Burgos*, 776 Phil. 167, 169 (2016).
[22] Id. at 182.
[23] *Rollo*, pp. 47-48.

Indeed, basic is the rule that the one who alleges a fact has the burden of proving it by means other than mere allegations.[24] Mere allegations do not constitute proof.[25] Here, other than the self-serving statement that respondent's rights and obligations under the CRS-ITP Contract were reassigned to Unisys Australia, petitioner showed nothing which may prove the existence and legitimacy of such alleged arrangement. Furthermore, the purported assignment and assumption agreement on which petitioner's allegations were primarily founded was not even presented before the CTA. It is settled that nonproduction of a document which courts almost invariably expect will be produced unavoidably throws suspicion over the cause.[26] Hence, the CTA Division and the CTA *En Banc* did not err in rejecting petitioner's imputations of respondent's lack of legal personality to file the claim for refund on the basis of mere allegations.

Submission of supporting documents.

Finally, petitioner argues that respondent failed to comply with the requisites for the claim for refund, as mandated under the Tax Code and under its implementing regulations, for failure to submit complete documents in support thereof. Once again, petitioner is mistaken. The nonsubmission of complete supporting documents for VAT refund at the administrative level is not fatal to the taxpayer's judicial claim for VAT refund.

The issue is not novel. It is settled that it is the taxpayer who ultimately determines when the supporting documents have been completed for the purpose of commencing and continuing the running of the 120-day period. Should it be that in the course of the investigation and processing of the claim that additional documents are required for the proper determination of the claim, the taxpayer shall submit such documents within 30 days from the request or notice of the investigating office as required under Revenue Memorandum Circular No. 49-2003.[27] **Such notice by way of a request is**

[24] *Municipality of San Mateo, Isabela v. Smart Communications*, G.R. No. 219506, June 23, 2021.
[25] *Cardinez v. Spouses Cardinez*, G.R. No. 213001, August 4, 2021; *Philippine Amusement and Gaming Corp. v. Commissioner of Internal Revenue*, 821 Phil. 508, 531 (2017).
[26] *Republic v. Sandiganbayan*, 325 Phil. 762, 810 (1996).
[27] Entitled, "Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters." Issued on August 15, 2003.

essential.[28] The law accords the claimant sufficient latitude to determine the completeness of his submission, because in the first place, he bears the burden of proving his entitlement to a tax refund or credit.[29] This benefit, a component of the claimant's fundamental right to due process, allows him (a) to declare that he had already submitted complete supporting documents upon filing his claim and that he no longer intends to make additional submissions thereafter; or (b) to further substantiate his application within 30 days from filing, as allowed by Revenue Memorandum Circular No. 49-2003.[30]

Here, there is absence of any showing that petitioner required or even notified respondent of the need to submit additional documents at the administrative level, and that respondent failed to comply with such demand. Petitioner cannot now claim that respondent failed to comply with the requirements for a valid claim for refund at the administrative level when it failed to request for additional documents as required under the law.

WHEREFORE, the Court **DENIES** the petition and **AFFIRMS** the September 9, 2016 Decision and January 3, 2017 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 1429.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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[28] *Commissioner of Internal Revenue v. Philex Mining Corporation*, G.R. No. 218057, January 18, 2021; *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, 774 Phil. 473, 494 (2015).
[29] *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.
[30] Id.

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