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FIRST DIVISION

[G.R. No. 185666, February 04, 2015]

NIPPON EXPRESS (PHILIPPINES) CORP., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

PEREZ, J.:

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 20 August 2008 Decision[1] and the 16 December 2008 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. No. 335 which affirmed *in toto* the Decision and Resolution dated 15 June 2007[3] and 13 November 2007,[4] respectively, of the First Division of the CTA (CTA in Division)[5] in C.T.A. Case No. 6464, denying due course petitioner's claim for the issuance of a Tax Credit Certificate (TCC) in the amount of P24,826,667.61 allegedly representing accumulated excess or unutilized input taxes attributable to its zero-rated sales for the calendar year 2000, and therefore dismissing the petition for failure to comply with the substantiation requirements.

The Facts

As aptly found by the CTA in Division, the factual antecedents of the case are undisputed:

> Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, registered with the Securities and Exchange Commission (SEC) under Certificate of Registration No. ASO95-005669, and with principal office at U-2701 Yuchengco Tower, RCBC Plaza, 6819 Ayala Ave., Salcedo Village, Makati City.
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> Likewise, petitioner is registered with the Large Taxpayers District Office of the Bureau of Internal Revenue in Makati City as, among others, a Value-Added Tax (VAT) taxpayer rendering freight forwarding services.
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> Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law and holds office and may be served with summons, orders, pleadings, and other processes at BIR Revenue Region 8, 5/F Atrium Bldg., Makati Ave., Makati City.
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> The precedent facts, as culled from the records are as follows:
>
> For the calendar year 2000, petitioner's gross receipts were primarily

derived from rendering its services to Philippine Economic Zone Authority (PEZA)-registered clients. Likewise, it incurred total sales of P1,063,357,608.74, which as shown in petitioner's Amended Quarterly VAT Return, is made up of the following:

Taxable Sales		
1st quarter (Annex B, Petition for Review)	P19,416,405.90	
2nd quarter (Annex C, Petition for Review)	21,727,369.30	
3rd quarter (Annex D, Petition for Review)	25,478,221.80	
4th quarter (Annex E, Petition for Review)	19,106,829.00	P85,728,826.00
Zero-Rated Sales		
1st quarter (Annex B, Petition for Review)	163,837,757.11	
2nd quarter (Annex C, Petition for Review)	189,237,849.49	
3rd quarter (Annex D, Petition for Review)	228,507,608.58	
4th quarter (Annex E, Petition for Review)	247,387,949.22	828,971,164.40
Exempt Sales		
1st quarter (Annex B, Petition for Review)	45,234,485.51	
2nd quarter (Annex C, Petition for Review)	27,632,934.35	
3rd quarter (Annex D, Petition for Review)	49,971,632.54	
4th quarter (Annex E, Petition for Review)	25,818,565.94	148,657,618.34
Grand Total		**P1,063,357,608.74**

Also, for the same year, petitioner paid input taxes amounting to P31,846,253.57 and apportioning this amount with its total sales above in accordance with Section 112 of the 1997 Tax Code, as amended; the amount of total sales attributable to zero-rated sales would be P24,826,667.61.

Under the premise that it is entitled to a refund of the amount of P24,826,667.61, petitioner filed four separate applications for tax credit/refund with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (OSSAC-DOF) on September 24, 2001.

Receiving no resolution from OSSAC-DOF, petitioner filed the instant

petition for review on April 24, 2002 pursuant to Section 112 in relation to Section 229 of the 1997 Tax Code, as amended.[6]

Docketed as C.T.A. Case No. 6464, trial ensued having both parties submitted various documentary and testimonial evidence during the proceedings, as well as rebuttal and sur-rebuttal evidence, in order to establish their respective claim.

The Ruling of the CTA in Division

In a Decision dated 15 June 2007,[7] the CTA in Division denied due course and accordingly dismissed petitioner's claim for the issuance of a TCC on the ground of its failure to comply with the substantiation requirements. It explained that the sales invoices, transfer slips, and credit memos presented in support thereof did not comply with the substantiation requirements provided for under Sections 106, 108, and 113[8] of the National Internal Revenue Code (NIRC) of 1997, as amended, considering that petitioner's sales are sales of services which should only be supported by official receipts. Consequently, without the VAT official receipts evidencing its zero-rated revenues, the input VAT payment alleged to be directly attributable thereto cannot be refunded or a TCC cannot be issued in its favor in accordance with Revenue Memorandum Circular (RMC) No. 42-2003. Having rendered such ruling, the CTA in Division decided not to pass upon other incidental issues raised before it for being moot.

On 13 November 2007, the CTA in Division denied both petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration for lack of merit.[9]

Aggrieved, petitioner appealed to the CTA *En Banc* by filing a Petition for Review under Section 18 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282,[10] on 21 December 2007, docketed as C.T.A. E.B. No. 335.

The Ruling of the CTA En Banc

The CTA En Banc affirmed *in toto* both the aforesaid Decision and Resolution rendered by the CTA in Division in CTA Case No. 6464, pronouncing that although Sections 113 and 237 of the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations (RR) No. 7-95 use the words "invoice" and "receipt" without distinction, nevertheless, the NIRC of 1997, as amended, provides separate provisions, which must be read in relation thereto: Section 106 for VAT on sale of goods or properties, and Section 108 for VAT on sale of services and use or lease of properties.[11] Clearly therefore, the CTA *En Banc* agreed with the court *a quo's* findings that the evidence submitted by petitioner, i.e. sales invoices, transfer slips, credit memos, cargo manifests, and credit notes, as well as formal report of the independent certified public accountant (ICPA), to prove its zero-rated sales, were insufficient so as to entitle it to the issuance of a TCC since the aforesaid legal provisions do not provide for any other document that can be used as an alternative to, or in lieu of an invoice and official receipts.[12] Ultimately, it ruled that petitioner's sales, being sales of services, shall properly be supported by VAT official receipts only, which unfortunately were not presented and submitted as evidence by petitioner during trial.

Upon denial of petitioner's Motion for Reconsideration thereof, it filed the instant Petition for Review on *Certiorari* before this Court seeking the reversal of the aforementioned Decision and the 16 December 2008 Resolution[13] rendered in C.T.A. E.B. No. 335, based on the following grounds:

1. That nowhere in the NIRC of 1997, as amended, and its regulations does it state that only official receipts support the sale of services or that only sales invoices support the sale of goods;

2. That the NIRC of 1997, as amended, its implementing regulations, and well-established jurisprudence allow other documentary evidence to prove the zero-rated sales;

3. That amendment in the law that requires the issuance of sales invoice for every sale of goods and the issuance of official receipt for every sale of services cannot be given retroactive effect;

4. That the majority of the CTA *En Banc* committed grave abuse of discretion amounting to lack or want of jurisdiction when they made an erroneous interpretation and application of the applicable law and regulations;

5. That denial of petitioner's just and valid claim constitutes unjust enrichment at the expense of the taxpayer and should not be sustained;

6. That even assuming for the sake of argument that the majority of the CTA *En Banc* is correct, petitioner should at least be allowed to introduce its existing official receipts in the interest of justice and equity; and

7. That petitioner has fully complied with all requirements for its claim for refund or TCC considering that:

    a. Petitioner filed both administrative and judicial claims for refund/TCC within the two (2) year prescriptive period;

    b. Petitioner's input taxes amounting to P31,846,253.87 were incurred for the period from January 1, 2000 to December 31, 2000 of which P24,826,667.61 remained unutilized and unapplied against its output tax;

    c. Petitioner's input taxes subject of the present case were not applied against any of its output tax liability;

    d. Petitioner's input taxes subject of the present case are directly attributable to zero-rated sales;

    e. Petitioner's zero-rated sales are supported by documentary evidence in accordance with the NIRC of 1997, as amended, and its implementing regulations; and

    f. The input taxes being claimed are supported by VAT invoices or official receipts in accordance with Section 4.108-5 of RR No. 7-95 in relation to

Sections 110 and 237 of the NIRC of 1997, as amended.[14]

The Issue

The sole issue for this Court's consideration is whether or not petitioner is entitled to a TCC in the amount of P24,826,667.61 allegedly representing its excess and unutilized input VAT for the taxable year 2000, in accordance with the provisions of the NIRC of 1997, as amended, other pertinent laws, and applicable jurisprudential proclamations.

Our Ruling

At the outset, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised.[15] The Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the (CTA) are conclusive and binding on the Court[16] – and they carry even more weight when the (CTA *En Banc*) affirms the factual findings of the trial court.[17] However, this Court had recognized several exceptions to this rule,[18] including instances when the appellate court manifestly overlooked relevant facts not disputed by the parties, which, if properly considered, would probably justify a different conclusion.

In *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue (San Roque case)*,[19] this Court has finally settled the issue on proper observance of the prescriptive periods in claiming for refund of creditable input tax due or paid attributable to any zero-rated or effectively zero-rates sales. In view of the foregoing jurisprudential pronouncements, there appears to be an imperious need for this Court to review the factual findings of the CTA in order to attain a complete determination of the issue presented.

Records reveal that the CTA in Division in C.T.A. Case No. 6464 merely focused on the compliance with the substantiation requirements, which particularly ruled that the evidence submitted by petitioner to prove its zero-rated sales were insufficient so as to entitle it to the issuance of a TCC. The same findings were adopted and affirmed *in toto* by the CTA *En Banc* in the assailed 20 August 2008 Decision.[20]

While it is true that the substantiation requirements in establishing a refund claim is a valid issue, the Court finds it imperative to first and foremost determine whether or not the CTA properly acquired jurisdiction over petitioner's claim covering taxable year 2000, taking into consideration the timeliness of the filing of its judicial claim pursuant to Section 112 of the NIRC of 1997, as amended, and consistent with the pronouncements made in the *San Roque* case. Clearly, the claim of petitioner for the TCC can proceed only upon compliance with the aforesaid jurisdictional requirement.

Relevant to the foregoing, Section 7 of R.A. No. 1125,[21] which was thereafter