655 Phil. 499

SECOND DIVISION

[G.R. No. 159471, January 26, 2011]

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

D E C I S I O N

PERALTA, J.:

For this Court's resolution is the Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Civil Procedure assailing the Decision[1] dated April 19, 2001 and Resolution[2] dated August 6, 2003 of the Court of Appeals (CA).

The facts, as shown in the records, are the following:

Under Section 100 of the Tax Code of the Philippines, petitioner is a zero-rated Value Added Tax (VAT) person for being an exporter of copper concentrates. According to petitioner, on January 20, 1994, it filed its VAT return for the fourth quarter of 1993, showing a total input tax of P863,556,963.74 and an excess VAT credit of P842,336,291.60 and, on January 25, 1996, it applied for a tax refund or a tax credit certificate for the latter amount with respondent Commissioner of Internal Revenue (CIR). On the same date, petitioner filed the same claim for refund with the Court of Tax Appeals (CTA), claiming that the two-year prescriptive period provided for under Section 230 of the Tax Code for claiming a refund was about to expire. The CIR failed to file his answer with the CTA; thus, the former declared the latter in default.

On August 24, 1998, the CTA rendered its Decision[3] denying petitioner's claim for refund due to petitioner's failure to comply with the documentary requirements prescribed under Section 16 of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, dated April 7, 1988. The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby DISMISSED for lack of merit.
>
> SO ORDERED.[4]

Petitioner filed a Motion for Reconsideration[5] praying for the reopening of the case in order for it to present the required documents, together with its proof of non-availment for prior and succeeding quarters of the input VAT subject of petitioner's claim for refund. The CTA granted the motion in its Resolution[6] dated October 29,

1998. Thereafter, in a Resolution[7] dated June 21, 2000, the CTA denied petitioner's claim. It ruled that the action has already prescribed and that petitioner has failed to substantiate its claim that it has not applied its alleged excess input taxes to any of its subsequent quarter's output tax liability.

The CTA's Decision and Resolution were questioned in the CA. However, the CA affirmed *in toto* the said Decision and Resolution, disposing the case as follows:

> WHEREFORE, the petition is DISMISSED for lack of merit. The questioned Decision of the CTA dated August 24, 1998 and the Resolution dated June 21, 2000 are AFFIRMED *in toto*.
>
> SO ORDERED.[8]

Subsequently, petitioner's Motion for Reconsideration[9] of the CA's Decision was denied in a Resolution[10] dated August 6, 2003.

Thus, the present petition.

Petitioner lists the following as grounds for his petition:

> I
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> THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S CLAIM FOR REFUND HAS PRESCRIBED, DESPITE FAILURE OF RESPONDENT AND THE COURT OF TAX APPEALS TO RAISE THE ISSUE OF PRESCRIPTION IN RESPONDENT'S ANSWER OR IN THE CTA'S ORIGINAL DECISION DATED 16 SEPTEMBER 1998.
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> II
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> THE COURT OF APPEALS ERRED IN UPHOLDING THE COURT OF TAX APPEALS' FINDING IN ITS DECISION DATED 24 AUGUST 1998 THAT PETITIONER, IN NOT SUBMITTING ITS EXPORT DOCUMENTS, FAILED TO PRESENT ADEQUATE PROOF THAT ITS INPUT TAXES ARE DIRECTLY ATTRIBUTABLE TO ITS EXPORT SALES.
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> III
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> THE COURT OF APPEALS ERRED IN UPHOLDING THE COURT OF TAX APPEALS' FINDING THAT PETITIONER FAILED TO PRESENT ADEQUATE PROOF THAT IT HAD NOT APPLIED THE CLAIMED INPUT TAX TO ITS OUTPUT TAXES FROM PRIOR AND SUCCEEDING QUARTERS.[11]

Petitioner herein had, in the past, similar petitions with this Court regarding the denial of its claims for tax refund of the input VAT on its purchases of capital goods and on its zero-rated sales. In *Atlas Consolidated Mining and Development Corporation v. CIR*,[12] petitioner filed with the Bureau of Internal Revenue (BIR) its

VAT Return for the first quarter of 1992 and also alleged that it filed with the BIR the corresponding application for the refund/credit of its input VAT on its purchases of capital goods and on its zero-rated sales in the amount of P26,030,460.00. Its application for refund/credit remained having been unresolved by the BIR, petitioner filed with the CTA, on April 20, 1994, a Petition for Review. Claiming to be a "zero-rated VAT person," petitioner prayed that the CTA order the CIR to refund/credit petitioner with the amount of P26,030,460.00, representing the input VAT it had paid for the first quarter of 1992. Both, the CTA and the CA denied the claims of petitioner, ratiocinating that its claim has been filed beyond the prescriptive period provided by law and that evidence presented was insufficient.

In the present case, petitioner is basically asking this Court to review the factual findings of the CTA and the CA. Petitioner insists that it had presented the necessary documents or copies thereof with the CTA that would prove that it is entitled to a tax refund. Again, citing the earlier case of *Atlas Consolidated Mining and Development Corporation v. CIR,*[13] this Court has expounded the nature and bases of claiming tax refund, thus:

> Applications for refund/credit of input VAT with the BIR must comply with the appropriate revenue regulations. As this Court has already ruled, Revenue Regulations No. 2-88 is not relevant to the applications for refund/credit of input VAT filed by petitioner corporation; nonetheless, the said applications must have been in accordance with Revenue Regulations No. 3-88, amending Section 16 of Revenue Regulations No. 5-87, which provided as follows -
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> > SECTION 16. *Refunds or tax credits of input tax*. -
> >
> > x x x x
>
> (c) *Claims for tax credits/refunds*. - 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.
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> **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 the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:
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> > x x x x
> >
> > 3. Effectively zero-rated sale of goods and services.
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> > i) photocopy of approved application for zero-rate if filing for the first time.

ii) sales invoice or receipt showing name of the person or entity to whom the sale of goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered.

iii) evidence of actual receipt of goods or services.

4. Purchase of capital goods.

i) original copy of invoice or receipt showing the date of purchase, purchase price, amount of value-added tax paid and description of the capital equipment locally purchased.

ii) with respect to capital equipment imported, the photocopy of import entry document for internal revenue tax purposes and the confirmation receipt issued by the Bureau of Customs for the payment of the value-added tax.

5. In applicable cases,

where the applicant's zero-rated transactions are regulated by certain government agencies, a statement therefrom showing the amount and description of sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold, and date of transaction shall also be submitted.

In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

Where the applicant is engaged in zero-rated and other taxable and exempt sales of goods and services, and the VAT paid (inputs) on purchases of goods and services cannot be directly attributed to any of the aforementioned transactions, the following formula shall be used to determine the creditable or refundable input tax for zero-rated sale:

$$\frac{\text{Amount of Zero-rated Sale}}{\text{Total Sales}} \times \text{Total Amount of Input Taxes} = \text{Amount Creditable/Refundable}$$

In case the application for refund/credit of input VAT was denied or remained unacted upon by the BIR, and before the lapse of the two-year prescriptive period, the taxpayer-applicant may already file a Petition for Review before the CTA. If the taxpayer's claim is supported by voluminous documents, such as receipts, invoices, vouchers or long

accounts, their presentation before the CTA shall be governed by CTA Circular No. 1-95, as amended, reproduced in full below -

> 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:
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> 1. The party who desires to introduce as evidence such voluminous documents must, after motion and approval by the Court, present:
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> (a) a Summary containing, among others, a chronological listing of the numbers, dates and amounts covered by the invoices or receipts and the amount/s of tax paid; and (b) a Certification of an independent Certified Public Accountant attesting to the correctness of the contents of the summary after making an examination, evaluation and audit of the voluminous receipts and invoices. The name of the accountant or partner of the firm in charge must be stated in the motion so that he/she can be commissioned by the Court to conduct the audit and, thereafter, testify in Court relative to such summary and certification pursuant to Rule 32 of the Rules of Court.
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> 2. The method of individual presentation of each and every receipt, invoice or account for marking, identification and comparison with the originals thereof need not be done before the Court or Clerk of Court anymore after the introduction of the summary and CPA certification. It is enough that the receipts, invoices, vouchers or other documents covering the said accounts or payments to be introduced in evidence must be pre-marked by the party concerned and submitted to the Court in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. Likewise, the originals of the voluminous receipts, invoices or accounts must be ready for verification and comparison in case doubt on the authenticity thereof is raised during the hearing or resolution of the formal offer of evidence.[14]

As to the evidence that must be presented, the provisions of the pertinent laws provide: