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# SECOND DIVISION

# [ G.R. No. 180042, February 08, 2010 ]

## COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. IRONCON BUILDERS AND DEVELOPMENT CORPORATION, RESPONDENT.

## D E C I S I O N

**ABAD, J.:**

This addresses the question of whether or not creditable value-added tax (VAT) withheld from a taxpayer in excess of its output VAT liability may be the subject of a tax refund in place of a tax credit.

### ***The Facts and the Case***

On May 10, 2001 respondent Ironcon Builders and Development Corporation (Ironcon) sought the refund by the Bureau of Internal Revenue (BIR) of its income tax overpayment and excess creditable VAT. When petitioner Commissioner of Internal Revenue (CIR) continued not to act on its claims, on July 1, 2002 Ironcon filed a petition for review with the Court of Tax Appeals (CTA) in CTA Case 6502, which was raffled to its Second Division.

After hearing, the Second Division held that in regard to the claim for overpaid income taxes, taxpayers have the option to either carry over the excess credit or ask for a refund. Here, respondent Ironcon filed two income tax returns for the year 2000, an original and an amended one. In the original return, Ironcon placed an "x" mark in a box corresponding to the option "To be carried over as tax credit next year/quarter." Although Ironcon's amended return indicated a preference for "refund" of the overpaid tax, the Second Division ruled that Ironcon's original choice is regarded as irrevocable, pursuant to Section 76 of Republic Act (R.A.) 8424 (the National Internal Revenue Code of 1997 or NIRC). Further, the Second Division found that Ironcon actually carried over the credit for overpaid income taxes and applied it to the tax due for the year 2001. It, therefore, denied Ironcon's claim for its refund.

As to the claim for VAT refund, the Second Division found that by the end of 2000, Ironcon had excess tax credit of P3,135,990.69 carried over from 1999, allowable input tax of P15,242,271.43, and 6% creditable VAT of P11,027,758.51, withheld and remitted by its clients. These amounts were deductible from Ironcon's total output VAT liability of P20,073,422.63. Consequently, by the end of 2000 Ironcon's actual excess creditable VAT was P9,332,597.99 only as against its claim for refund of P18,053,715.64.

The CTA held, however, that input VAT payments should first be applied to the reported output VAT liability. Only after this deduction has been made will the 6%

VAT withheld be applied to the amount of VAT payable. Thus, the excess of P9,332,597.99 mentioned above represents the excess 6% creditable VAT withheld, not creditable input VAT.

The CTA further ruled that since Ironcon had no more output VAT against which the excess creditable VAT withheld may be applied or credited, the VAT withheld had been excessively paid. Thus, the Court ruled that the excess amount may be refunded under Section 204(C) in relation to Section 229 of the NIRC. Before a refund may be granted, however, it must be shown that the claim was not used or carried over to the succeeding quarters.

Ironcon did not present before the Second Division its VAT returns for the succeeding quarters of 2001. Without this, the Second Division could not verify whether the tax credit was applied to output VAT liability in 2001. Thus, the Second Division also denied Ironcon's claim for refund of excess creditable VAT.

Ironcon filed a motion for reconsideration, attaching to it its amended quarterly VAT returns for 2001. These were marked in open court as Exhibits "A-1," "B-1," "C-1," and "D-1." The CTA promulgated an Amended Decision on July 31, 2006, admitting the exhibits and ruling that Ironcon sufficiently proved that its excess creditable VAT withheld was not carried over or applied to any output VAT for 2001. Thus, the Court granted its application for the refund of unutilized excess creditable VAT of P9,332,597.99.

Petitioner CIR filed a motion for reconsideration of the amended decision, which the Second Division denied, prompting the CIR to elevate the matter to the CTA *En Banc* by way of a petition for review in CTA EB 235. The CTA *En Banc* denied the petition in a Decision dated August 9, 2007. It also denied the CIR's motion for reconsideration, hence, this petition for review.[1]

## ***Issue Presented***

Simply put, the only issue the petition raises is whether or not the CTA erred in granting respondent Ironcon's application for refund of its excess creditable VAT withheld.

## ***The Court's Ruling***

Respondent Ironcon's excess creditable VAT in this case consists of amounts withheld and remitted to the BIR by Ironcon's clients. These clients were government agencies that applied the 6% withholding rate on their payments to Ironcon pursuant to Section 114 of the NIRC (prior to its amendment by R.A. 9337). Petitioner CIR's main contention is that, since these amounts were withheld in accordance with what the law provides, they cannot be regarded as erroneously or illegally collected as contemplated in Sections 204(C) and 229 of the NIRC.

Petitioner CIR also points out that since the NIRC does not specifically grant taxpayers the option to refund excess creditable VAT withheld, it follows that such refund cannot be allowed. Excess creditable VAT withheld is much unlike excess income taxes withheld. In the latter case, Sections 76 and 58(D) of the NIRC specifically make the option to seek a refund available to the taxpayer. The CIR submits thus that the only option available to taxpayers in case of excess creditable