

FIRST DIVISION

[G.R. No. 157594, March 09, 2010]

**TOSHIBA INFORMATION EQUIPMENT (PHILS.), INC.,
PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

In this Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, petitioner Toshiba Information Equipment (Philippines), Inc. (Toshiba) seeks the reversal and setting aside of (1) the Decision^[2] dated August 29, 2002 of the Court of Appeals in CA-G.R. SP No. 63047, which found that Toshiba was not entitled to the credit/refund of its unutilized input Value-Added Tax (VAT) payments attributable to its export sales, because it was a tax-exempt entity and its export sales were VAT-exempt transactions; and (2) the Resolution^[3] dated February 19, 2003 of the appellate court in the same case, which denied the Motion for Reconsideration of Toshiba. The herein assailed judgment of the Court of Appeals reversed and set aside the Decision^[4] dated October 16, 2000 of the Court of Tax Appeals (CTA) in CTA Case No. 5762 granting the claim for credit/refund of Toshiba in the amount of P1,385,282.08.

Toshiba is a domestic corporation principally engaged in the business of manufacturing and exporting of electric machinery, equipment systems, accessories, parts, components, materials and goods of all kinds, including those relating to office automation and information technology and all types of computer hardware and software, such as but not limited to HDD-CD-ROM and personal computer printed circuit board.^[5] It is registered with the Philippine Economic Zone Authority (PEZA) as an Economic Zone (ECOZONE) export enterprise in the Laguna Technopark, Inc., as evidenced by Certificate of Registration No. 95-99 dated September 27, 1995.^[6] It is also registered with Regional District Office No. 57 of the Bureau of Internal Revenue (BIR) in San Pedro, Laguna, as a VAT-taxpayer with Taxpayer Identification No. (TIN) 004-739-137.^[7]

In its VAT returns for the first and second quarters of 1997,^[8] filed on April 14, 1997 and July 21, 1997, respectively, Toshiba declared input VAT payments on its domestic purchases of taxable goods and services in the aggregate sum of P3,875,139.65,^[9] with no zero-rated sales. Toshiba subsequently submitted to the BIR on July 23, 1997 its amended VAT returns for the first and second quarters of 1997,^[10] reporting the same amount of input VAT payments but, this time, with zero-rated sales totaling P7,494,677,000.00.^[11]

On March 30, 1999, Toshiba filed with the One-Stop Shop Inter-Agency Tax Credit

and Duty Drawback Center of the Department of Finance (DOF One-Stop Shop) two separate applications for tax credit/refund^[12] of its unutilized input VAT payments for the first half of 1997 in the total amount of P3,685,446.73.^[13]

The next day, on March 31, 1999, Toshiba likewise filed with the CTA a Petition for Review^[14] to toll the running of the two-year prescriptive period under Section 230 of the Tax Code of 1977,^[15] as amended.^[16] In said Petition, docketed as CTA Case No. 5762, Toshiba prayed that -

[A]fter due hearing, judgment be rendered ordering [herein respondent Commissioner of Internal Revenue (CIR)] to refund or issue to [Toshiba] a tax refund/tax credit certificate in the amount of P3,875,139.65 representing unutilized input taxes paid on its purchase of taxable goods and services for the period January 1 to June 30, 1997.^[17]

The Commissioner of Internal Revenue (CIR) opposed the claim for tax refund/credit of Toshiba, setting up the following special and affirmative defenses in his Answer^[18] -

5. [Toshiba's] alleged claim for refund/tax credit is subject to administrative routinary investigation/examination by [CIR's] Bureau;

6. [Toshiba] failed miserably to show that the total amount of P3,875,139.65 claimed as VAT input taxes, were erroneously or illegally collected, or that the same are properly documented;

7. Taxes paid and collected are presumed to have been made in accordance with law; hence, not refundable;

8. In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

9. It is incumbent upon [Toshiba] to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code;

10. Well-established is the rule that claims for refund/tax credit are construed in *strictissimi juris* against the taxpayer as it partakes the nature of exemption from tax.^[19]

Upon being advised by the CTA,^[20] Toshiba and the CIR filed a Joint Stipulation of Facts and Issues,^[21] wherein the opposing parties "agreed and admitted" that -

1. [Toshiba] is a duly registered value-added tax entity in accordance with Section 107 of the Tax Code, as amended.

2. [Toshiba] is subject to zero percent (0%) value-added tax on its export sales in accordance with then Section 100(a)(2)(A) of the Tax Code, as amended.

3. [Toshiba] filed its quarterly VAT returns for the first two quarters of 1997 within the legally prescribed period.

x x x x

7. [Toshiba] is subject to zero percent (0%) value-added tax on its export sales.

8. [Toshiba] has duly filed the instant Petition for Review within the two-year prescriptive period prescribed by then Section 230 of the Tax Code.

[22]

In the same pleading, Toshiba and the CIR jointly submitted the following issues for determination by the CTA -

Whether or not [Toshiba] has incurred input taxes in the amount of P3,875,139.65 for the period January 1 to June 30, 1997 which are directly attributable to its export sales[.]

Whether or not the input taxes incurred by [Toshiba] for the period January 1 to June 30, 1997 have not been carried over to the succeeding quarters[.]

Whether or not input taxes incurred by [Toshiba] for the first two quarters of 1997 have not been offset against any output tax[.]

Whether or not input taxes incurred by [Toshiba] for the first two quarters of 1997 are properly substantiated by official receipts and invoices.[23]

During the trial before the CTA, Toshiba presented documentary evidence in support of its claim for tax credit/refund, while the CIR did not present any evidence at all.

With both parties waiving the right to submit their respective memoranda, the CTA rendered its Decision in CTA Case No. 5762 on October 16, 2000 favoring Toshiba. According to the CTA, the CIR himself admitted that the export sales of Toshiba were subject to zero percent (0%) VAT based on Section 100(a)(2)(A)(i) of the Tax Code of 1977, as amended. Toshiba could then claim tax credit or refund of input VAT paid on its purchases of goods, properties, or services, directly attributable to such zero-rated sales, in accordance with Section 4.102-2 of Revenue Regulations No. 7-95. The CTA, though, reduced the amount to be credited or refunded to Toshiba to P1,385,292.02.

The dispositive portion of the October 16, 2000 Decision of the CTA fully reads -

WHEREFORE, [Toshiba's] claim for refund of unutilized input VAT payments is hereby **GRANTED** but in a reduced amount of P1,385,282.08 computed as follows:

| | 1 st Quarter | 2 nd Quarter | Total |
|---|-------------------------|-------------------------|----------------------|
| Amount of claimed input taxes filed with the DOF One Stop Shop Center | <u>P3,268,682.34</u> | <u>P416,764.39</u> | <u>P3,685,446.73</u> |
| Less: Input taxes not | | | |
| 1) properly supported by VAT invoices and official receipts | | | |
| a. Per SGV's P 242,491.45 verification (Exh. I) | P154,391.13 | P 396,882.58 | |
| b. Per this court's further verification (Annex A) | P1,852,437.65 | P 35,108.00 | P1,887,545.65 |
| 2) 1998 4th qtr. Output VAT liability applied against the claimed input taxes | <u>15,736.42</u> | | <u>15,736.42</u> |
| Subtotal | <u>P2,11,665.52</u> | <u>P189,499.13</u> | <u>P2,300,164.65</u> |
| Amount Refundable | <u>P1,158,016.82</u> | <u>P227,265.26</u> | <u>P1,385,282.08</u> |

Both Toshiba and the CIR sought reconsideration of the foregoing CTA Decision.

Toshiba asserted in its Motion for Reconsideration^[25] that it had presented proper substantiation for the P1,887,545.65 input VAT disallowed by the CTA.

The CIR, on the other hand, argued in his Motion for Reconsideration^[26] that Toshiba was not entitled to the credit/refund of its input VAT payments because as a PEZA-registered ECOZONE export enterprise, Toshiba was not subject to VAT. The CIR invoked the following statutory and regulatory provisions -

Section 24 of Republic Act No. 7916^[27]

SECTION 24. *Exemption from Taxes Under the National Internal Revenue Code.* - Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. x x x.

Section 103(q) of the Tax Code of 1977, as amended

Sec. 103. *Exempt transactions.* - The following shall be exempt from the value-added tax:

x x x x

(q) Transactions which are exempt under special laws, except those granted under Presidential Decree Nos. 66, 529, 972, 1491, and 1950, and non-electric cooperatives under Republic Act No. 6938, or international agreements to which the Philippines is a signatory.

Section 4.103-1 of Revenue Regulations No. 7-95

SEC. 4.103-1. *Exemptions.* - (A) *In general.* - An exemption means that the sale of goods or properties and/or services and the use or lease of properties is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid.

The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject to VAT. On the other hand, a VAT-registered purchaser of VAT-exempt goods, properties or services which are exempt from VAT is not entitled to any input tax on such purchase despite the issuance of a VAT invoice or receipt.

The CIR contended that under Section 24 of Republic Act No. 7916, a special law, all businesses and establishments within the ECOZONE were to remit to the government five percent (5%) of their gross income earned within the zone, in lieu of all taxes, including VAT. This placed Toshiba within the ambit of Section 103(q) of the Tax Code of 1977, as amended, which exempted from VAT the transactions that were exempted under special laws. Following Section 4.103-1(A) of Revenue Regulations No. 7-95, the VAT-exemption of Toshiba meant that its sale of goods was not subject to output VAT and Toshiba as seller was not allowed any tax credit on the input VAT it had previously paid.

On January 17, 2001, the CTA issued a Resolution^[28] denying both Motions for Reconsideration of Toshiba and the CIR.

The CTA took note that the pieces of evidence referred to by Toshiba in its Motion for Reconsideration were insufficient substantiation, being mere schedules of input VAT payments it had purportedly paid for the first and second quarters of 1997. While the CTA gives credence to the report of its commissioned certified public accountant (CPA), it does not render its decision based on the findings of the said CPA alone. The CTA has its own CPA and the tax court itself conducts an investigation/examination of the documents presented. The CTA stood by its earlier disallowance of the amount of P1,887,545.65 as tax credit/refund because it was not supported by VAT invoices and/or official receipts.