646 Phil. 710

FIRST DIVISION

[G.R. No. 184823, October 06, 2010]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. AICHI FORGING COMPANY OF ASIA, INC., RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

A taxpayer is entitled to a refund either by authority of a statute expressly granting such right, privilege, or incentive in his favor, or under the principle of *solutio indebiti* requiring the return of taxes erroneously or illegally collected. In both cases, a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the July 30, 2008 Decision[1] and the October 6, 2008 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc*.

Factual Antecedents

Respondent Aichi Forging Company of Asia, Inc., a corporation duly organized and existing under the laws of the Republic of the Philippines, is engaged in the manufacturing, producing, and processing of steel and its by-products.[3] It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) entity[4] and its products, "close impression die steel forgings" and "tool and dies," are registered with the Board of Investments (BOI) as a pioneer status.[5]

On September 30, 2004, respondent filed a claim for refund/credit of input VAT for the period July 1, 2002 to September 30, 2002 in the total amount of P3,891,123.82 with the petitioner Commissioner of Internal Revenue (CIR), through the Department of Finance (DOF) One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center.[6]

Proceedings before the Second Division of the CTA

On even date, respondent filed a Petition for Review[7] with the CTA for the refund/credit of the same input VAT. The case was docketed as CTA Case No. 7065 and was raffled to the Second Division of the CTA.

In the Petition for Review, respondent alleged that for the period July 1, 2002 to September 30, 2002, it generated and recorded zero-rated sales in the amount of P131,791,399.00,[8] which was paid pursuant to Section 106(A) (2) (a) (1), (2) and

(3) of the National Internal Revenue Code of 1997 (NIRC);[9] that for the said period, it incurred and paid input VAT amounting to P3,912,088.14 from purchases and importation attributable to its zero-rated sales;[10] and that in its application for refund/credit filed with the DOF One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, it only claimed the amount of P3,891,123.82.[11]

In response, petitioner filed his Answer[12] raising the following special and affirmative defenses, to wit:

4. Petitioner's alleged claim for refund is subject to administrative investigation by the Bureau;

5. Petitioner must prove that it paid VAT input taxes for the period in question;

6. Petitioner must prove that its sales are export sales contemplated under Sections 106(A) (2) (a), and 108(B) (1) of the Tax Code of 1997;

7. Petitioner must prove that the claim was filed within the two (2) year period prescribed in Section 229 of the Tax Code;

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

9. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.[13]

Trial ensued, after which, on January 4, 2008, the Second Division of the CTA rendered a Decision partially granting respondent's claim for refund/credit. Pertinent portions of the Decision read:

> For a VAT registered entity whose sales are zero-rated, to validly claim a refund, Section 112 (A) of the NIRC of 1997, as amended, provides:
>
> > SEC. 112. Refunds or Tax Credits of Input Tax. -
> >
> > (A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x
>
> Pursuant to the above provision, petitioner must comply with the following requisites: (1) the taxpayer is engaged in sales which are zero-

rated or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

The Court finds that the first three requirements have been complied [with] by petitioner.

With regard to the first requisite, the evidence presented by petitioner, such as the Sales Invoices (Exhibits "II" to "II-262," "JJ" to "JJ-431," "KK" to "KK-394" and "LL") shows that it is engaged in sales which are zero-rated.

The second requisite has likewise been complied with. The Certificate of Registration with OCN 1RC0000148499 (Exhibit "C") with the BIR proves that petitioner is a registered VAT taxpayer.

In compliance with the third requisite, petitioner filed its administrative claim for refund on September 30, 2004 (Exhibit "N") and the present Petition for Review on September 30, 2004, both within the two (2) year prescriptive period from the close of the taxable quarter when the sales were made, which is from September 30, 2002.

As regards, the fourth requirement, the Court finds that there are some documents and claims of petitioner that are baseless and have not been satisfactorily substantiated.

x x x x

In sum, petitioner has sufficiently proved that it is entitled to a refund or issuance of a tax credit certificate representing unutilized excess input VAT payments for the period July 1, 2002 to September 30, 2002, which are attributable to its zero-rated sales for the same period, but in the reduced amount of P3,239,119.25, computed as follows:

Amount of Claimed Input VAT	P 3,891,123.82
Less:	
Exceptions as found by the ICPA	41,020.37
Net Creditable Input VAT	P 3,850,103.45
Less:	
Excess Creditable Input VAT	P 3,239,119.25

WHEREFORE, premises considered, the present Petition for Review is PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner [in] the reduced amount of THREE MILLION TWO HUNDRED THIRTY NINE THOUSAND ONE HUNDRED NINETEEN AND 25/100 PESOS (P3,239,119.25), representing the unutilized input VAT incurred for the

months of July to September 2002.

SO ORDERED.[14]

Dissatisfied with the above-quoted Decision, petitioner filed a Motion for Partial Reconsideration,[15] insisting that the administrative and the judicial claims were filed beyond the two-year period to claim a tax refund/credit provided for under Sections 112(A) and 229 of the NIRC. He reasoned that since the year 2004 was a leap year, the filing of the claim for tax refund/credit on September 30, 2004 was beyond the two-year period, which expired on September 29, 2004.[16] He cited as basis Article 13 of the Civil Code,[17] which provides that when the law speaks of a year, it is equivalent to 365 days. In addition, petitioner argued that the simultaneous filing of the administrative and the judicial claims contravenes Sections 112 and 229 of the NIRC.[18] According to the petitioner, a prior filing of an administrative claim is a "condition precedent"[19] before a judicial claim can be filed. He explained that the rationale of such requirement rests not only on the doctrine of exhaustion of administrative remedies but also on the fact that the CTA is an appellate body which exercises the power of judicial review over administrative actions of the BIR. [20]

The Second Division of the CTA, however, denied petitioner's Motion for Partial Reconsideration for lack of merit. Petitioner thus elevated the matter to the CTA *En Banc* via a Petition for Review.[21]

Ruling of the CTA En Banc

On July 30, 2008, the CTA *En Banc* affirmed the Second Division's Decision allowing the partial tax refund/credit in favor of respondent. However, as to the reckoning point for counting the two-year period, the CTA *En Banc* ruled:

> Petitioner argues that the administrative and judicial claims were filed beyond the period allowed by law and hence, the honorable Court has no jurisdiction over the same. In addition, petitioner further contends that respondent's filing of the administrative and judicial [claims] effectively eliminates the authority of the honorable Court to exercise jurisdiction over the judicial claim.
>
> We are not persuaded.
>
> Section 114 of the 1997 NIRC, and We quote, to wit:
>
> > SEC. 114. Return and Payment of Value-added Tax. -
> >
> > (A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

[x x x x]

Based on the above-stated provision, a taxpayer has twenty five (25) days from the close of each taxable quarter within which to file a quarterly return of the amount of his gross sales or receipts. In the case at bar, the taxable quarter involved was for the period of July 1, 2002 to September 30, 2002. Applying Section 114 of the 1997 NIRC, respondent has until October 25, 2002 within which to file its quarterly return for its gross sales or receipts [with] which it complied when it filed its VAT Quarterly Return on October 20, 2002.

In relation to this, the reckoning of the two-year period provided under Section 229 of the 1997 NIRC should start from the payment of tax subject claim for refund. As stated above, respondent filed its VAT Return for the taxable third quarter of 2002 on October 20, 2002. Thus, respondent's administrative and judicial claims for refund filed on September 30, 2004 were filed on time because AICHI has until October 20, 2004 within which to file its claim for refund.

In addition, We do not agree with the petitioner's contention that the 1997 NIRC requires the previous filing of an administrative claim for refund prior to the judicial claim. This should not be the case as the law does not prohibit the simultaneous filing of the administrative and judicial claims for refund. What is controlling is that both claims for refund must be filed within the two-year prescriptive period.

In sum, the Court En Banc finds no cogent justification to disturb the findings and conclusion spelled out in the assailed January 4, 2008 Decision and March 13, 2008 Resolution of the CTA Second Division. What the instant petition seeks is for the Court En Banc to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby DENIED DUE COURSE and DISMISSED for lack of merit. Accordingly, the January 4, 2008 Decision and March 13, 2008 Resolution of the CTA Second Division in CTA Case No. 7065 entitled, "AICHI Forging Company of Asia, Inc. petitioner vs. Commissioner of Internal Revenue, respondent" are hereby AFFIRMED in toto.

SO ORDERED.[22]

Petitioner sought reconsideration but the CTA *En Banc* denied[23] his Motion for Reconsideration.

Issue

Hence, the present recourse where petitioner interposes the issue of whether respondent's judicial and administrative claims for tax refund/credit were filed within the two-year prescriptive period provided in Sections 112(A) and 229 of the NIRC.[24]