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SECOND DIVISION

[G.R. No. 172129, September 12, 2008]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MIRANT PAGBILAO CORPORATION (FORMERLY SOUTHERN ENERGY QUEZON, INC.), RESPONDENT.

D E C I S I O N

VELASCO JR., J.:

Before us is a Petition for Review on Certiorari under Rule 45 assailing and seeking to set aside the Decision[1] dated December 22, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 78280 which modified the March 18, 2003 Decision[2] of the Court of Tax Appeals (CTA) in CTA Case No. 6133 entitled *Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue* and ordered the Bureau of Internal Revenue (BIR) to refund or issue a tax credit certificate (TCC) in favor of respondent Mirant Pagbilao Corporation (MPC) in the amount representing its unutilized input value added tax (VAT) for the second quarter of 1998. Also assailed is the CA's Resolution[3] of March 31, 2006 denying petitioner's motion for reconsideration.

The Facts

MPC, formerly Southern Energy Quezon, Inc., and also formerly known as Hopewell (Phil.) Corporation, is a domestic firm engaged in the generation of power which it sells to the National Power Corporation (NPC). For the construction of the electrical and mechanical equipment portion of its Pagbilao, Quezon plant, which appears to have been undertaken from 1993 to 1996, MPC secured the services of Mitsubishi Corporation (Mitsubishi) of Japan.

Under Section 13[4] of Republic Act No. (RA) 6395, the NPC's revised charter, NPC is exempt from all taxes. In *Maceda v. Macaraig*,[5] the Court construed the exemption as covering both direct and indirect taxes.

In the light of the NPC's tax exempt status, MPC, on the belief that its sale of power generation services to NPC is, pursuant to Sec. 108(B)(3) of the Tax Code,[6] zero-rated for VAT purposes, filed on December 1, 1997 with Revenue District Office (RDO) No. 60 in Lucena City an Application for Effective Zero Rating. The application covered the construction and operation of its Pagbilao power station under a Build, Operate, and Transfer scheme.

Not getting any response from the BIR district office, MPC refiled its application in the form of a "request for ruling" with the VAT Review Committee at the BIR national office on January 28, 1999. On May 13, 1999, the Commissioner of Internal Revenue issued VAT Ruling No. 052-99, stating that "the supply of electricity by

Hopewell Phil. to the NPC, shall be subject to the zero percent (0%) VAT, pursuant to Section 108 (B) (3) of the National Internal Revenue Code of 1997."

It must be noted at this juncture that consistent with its belief to be zero-rated, MPC opted not to pay the VAT component of the progress billings from Mitsubishi for the period covering April 1993 to September 1996--for the E & M Equipment Erection Portion of MPC's contract with Mitsubishi. This prompted Mitsubishi to advance the VAT component as this serves as its output VAT which is essential for the determination of its VAT payment. Apparently, it was only on April 14, 1998 that MPC paid Mitsubishi the VAT component for the progress billings from April 1993 to September 1996, and for which Mitsubishi issued Official Receipt (OR) No. 0189 in the aggregate amount of PhP 135,993,570.

On August 25, 1998, MPC, while awaiting approval of its application aforestated, filed its quarterly VAT return for the second quarter of 1998 where it reflected an input VAT of PhP 148,003,047.62, which included PhP 135,993,570 supported by OR No. 0189. Pursuant to the procedure prescribed in Revenue Regulations No. 7-95, MPC filed on December 20, 1999 an administrative claim for refund of unutilized input VAT in the amount of PhP 148,003,047.62.

Since the BIR Commissioner failed to act on its claim for refund and obviously to forestall the running of the two-year prescriptive period under Sec. 229 of the National Internal Revenue Code (NIRC), MPC went to the CTA via a petition for review, docketed as CTA Case No. 6133.

Answering the petition, the BIR Commissioner, citing *Kumagai-Gumi Co. Ltd. v. CIR*, [7] asserted that MPC's claim for refund cannot be granted for this main reason: MPC's sale of electricity to NPC is not zero-rated for its failure to secure an approved application for zero-rating.

Before the CTA, among the issues stipulated by the parties for resolution were, in gist, the following:

1. Whether or not [MPC] has unapplied or unutilized creditable input VAT for the 2nd quarter of 1998 attributable to zero-rated sales to NPC which are proper subject for refund pursuant to relevant provisions of the NIRC;

2. Whether the creditable input VAT of MPC for said period, if any, is substantiated by documents; and

3. Whether the unutilized creditable input VAT for said quarter, if any, was applied against any of the VAT output tax of MPC in the subsequent quarter.

To provide support to the CTA in verifying and analyzing documents and figures and entries contained therein, the Sycip Gorres & Velayo (SGV), an independent auditing firm, was commissioned.

The Ruling of the CTA

On the basis of its affirmative resolution of the first issue, the CTA, by its Decision

dated March 18, 2003, granted MPC's claim for input VAT refund or credit, but only for the amount of PhP 10,766,939.48. The *fallo* of the CTA's decision reads:

> In view of all the foregoing, the instant petition is PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to REFUND or in the alternative, ISSUE A TAX CREDIT CERTIFICATE in favor of the petitioner its unutilized input VAT payments directly attributable to its effectively zero-rated sales for the second quarter of 1998 in the reduced amount of P10,766,939.48, computed as follows:

Claimed Input VAT		P148,003,047.62
Less: Disallowances		
a.) As summarized by SGV & Co. in its initial report (Exh. P)		
I. Input Taxes on Purchases of Services:		
1. Supported by documents other than VAT Ors	P 10,629.46	
2. Supported by photocopied VAT OR	879.09	
II. Input Taxes on Purchases of Goods:		
1. Supported by documents other than VAT invoices	165,795.70	
2. Supported by Invoices with TIN only	1,781.82	
3. Supported by photocopied VAT invoices	3,153.62	
III. Input Taxes on Importation of Goods:		
1. Supported by photocopied documents [IEDs and/or Bureau of Customs (BOC) Ors]	716,250.00	
2. Supported by broker's computations	91,601.00	990,090.69
b.) Input taxes without supporting documents as summarized in Annex A of SGV & Co.'s supplementary report (CTA records, page 134)		252,447.45
c.) Claimed input taxes on purchases of services from Mitsubishi Corp. for being substantiated by dubious OR		135,996,570.00[8]
Refundable Input		P10,766,939.48

SO ORDERED.[9]

Explaining the disallowance of over PhP 137 million claimed input VAT, the CTA stated that most of MPC's purchases upon which it anchored its claims for refund or tax credit have not been amply substantiated by pertinent documents, such as but not limited to VAT ORs, invoices, and other supporting documents. Wrote the CTA:

> We agree with the above SGV findings that out of the remaining taxes of P136,246,017.45, the amount of P252,477.45 was not supported by any document and should therefore be outrightly disallowed.
>
> As to the claimed input tax of P135,993,570.00 (P136,246,017.45 less P252,477.45) on purchases of services from Mitsubishi Corporation, Japan, the same is found to be of doubtful veracity. While it is true that said amount is substantiated by a VAT official receipt with **Serial No. 0189** dated April 14, 1998 x x x, it must be observed, however, that said VAT allegedly paid pertains to the services which were rendered for the period 1993 to 1996. x x x

The Ruling of the CA

Aggrieved, MPC appealed the CTA's Decision to the CA via a petition for review under Rule 43, docketed as CA-G.R. SP No. 78280. On December 22, 2005, the CA rendered its assailed decision modifying that of the CTA decision by granting most of MPC's claims for tax refund or credit. And in a Resolution of March 31, 2006, the CA denied the BIR Commissioner's motion for reconsideration. The decretal portion of the CA decision reads:

> WHEREFORE, premises considered, the instant petition is GRANTED. The assailed Decision of the Court of Tax Appeals dated March 18, 2003 is hereby MODIFIED. Accordingly, respondent Commissioner of Internal Revenue is ordered to refund or issue a tax credit certificate in favor of petitioner Mirant Pagbilao Corporation its unutilized input VAT payments directly attributable to its effectively zero-rated sales for the second quarter of 1998 in the total amount of P146,760,509.48.
>
> SO ORDERED.[10]

The CA agreed with the CTA on MPC's entitlement to (1) a zero-rating for VAT purposes for its sales and services to tax-exempt NPC; and (2) a refund or tax credit for its unutilized input VAT for the second quarter of 1998. Their disagreement, however, centered on the issue of proper documentation, particularly the evidentiary value of OR No. 0189.

The CA upheld the disallowance of PhP 1,242,538.14 representing zero-rated input VAT claims supported only by photocopies of VAT OR/Invoice, documents other than VAT Invoice/OR, and mere broker's computations. But the CA allowed MPC's refund claim of PhP 135,993,570 representing input VAT payments for purchases of goods and/or services from Mitsubishi supported by OR No. 0189. The appellate court ratiocinated that the CTA erred in disallowing said claim since the OR from Mitsubishi was the best evidence for the payment of input VAT by MPC to Mitsubishi as required under Sec. 110(A)(1)(b) of the NIRC. The CA ruled that the legal

requirement of a VAT Invoice/OR to substantiate creditable input VAT was complied with through OR No. 0189 which must be viewed as conclusive proof of the payment of input VAT. To the CA, OR No. 0189 represented an undisputable acknowledgment and receipt by Mitsubishi of the input VAT payment of MPC.

The CA brushed aside the CTA's ruling and disquisition casting doubt on the veracity and genuineness of the Mitsubishi-issued OR No. 0189. It reasoned that the issuance date of the said receipt, April 14, 1998, must be taken conclusively to represent the input VAT payments made by MPC to Mitsubishi as MPC had no real control on the issuance of the OR. The CA held that the use of a different exchange rate reflected in the OR is of no consequence as what the OR undeniably attests and acknowledges was Mitsubishi's receipt of MPC's input VAT payment.

The Issue

Hence, the instant petition on the sole issue of "whether or not respondent [MPC] is entitled to the refund of its input VAT payments made from 1993 to 1996 amounting to [PhP] 146,760,509.48."[11]

The Court's Ruling

As a preliminary matter, it should be stressed that the BIR Commissioner, while making reference to the figure PhP 146,760,509.48, joins the CA and the CTA on their disposition on the propriety of the refund of or the issuance of a TCC for the amount of PhP 10,766,939.48. In fine, the BIR Commissioner trains his sight and focuses his arguments on the core issue of whether or not MPC is entitled to a refund for PhP 135,993,570 (PhP 146,760,509.48 - PhP 10,766,939.48 = PhP 135,993,570) it allegedly paid as creditable input VAT for services and goods purchased from Mitsubishi during the 1993 to 1996 stretch.

The divergent factual findings and rulings of the CTA and CA impel us to evaluate the evidence adduced below, particularly the April 14, 1998 OR 0189 in the amount of PhP 135,996,570 [for US$ 5,190,000 at US$1: PhP 26.203 rate of exchange]. Verily, a claim for tax refund may be based on a statute granting tax exemption, or, as *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*[12] would have it, the result of legislative grace. In such case, the claim is to be construed *strictissimi juris* against the taxpayer,[13] meaning that the claim cannot be made to rest on vague inference. Where the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, the claimant must show that he clearly falls under the exempting statute. On the other hand, a tax refund may be, as usually it is, predicated on tax refund provisions allowing a refund of erroneous or excess payment of tax. The return of what was erroneously paid is founded on the principle of *solutio indebiti*, a basic postulate that no one should unjustly enrich himself at the expense of another. The caveat against unjust enrichment covers the government.[14] And as decisional law teaches, a claim for tax refund proper, as here, necessitates only the preponderance-of-evidence threshold like in any ordinary civil case.[15]

We apply the foregoing elementary principles in our evaluation on whether OR 0189, in the backdrop of the factual antecedents surrounding its issuance, sufficiently