826 Phil. 329

SECOND DIVISION

[G.R. No. 222428, February 19, 2018]

COCA-COLA BOTTLERS PHILIPPINES, INC., PETITIONER, V. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Resolution[1] dated January 14, 2016 and Decision[2] dated August 12, 2015 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1111, which affirmed the Decision[3] dated September 16, 2013 and Resolution[4] dated December 4, 2013 of the CTA Division in CTA Case No. 8099 denying petitioner's claim for refund or issuance of tax credit.

The antecedent facts are as follows:

On April 24, 2008, petitioner Coca-Cola Bottlers Philippines, Inc., a Value-Added Tax (*VAT*)-registered, domestic corporation engaged in the business of manufacturing and selling beverages, filed its Quarterly VAT Return for the period of January 1, 2008 to March 31, 2008 and amended the same a few times thereafter.[5] On May 27, 2009, the Bureau of Internal Revenue (*BIR*) issued a Letter of Authority to examine petitioner's books of accounts for all internal revenue taxes for the period January 1, 2008 to December 31, 2008. Subsequently, on April 20, 2010, petitioner filed with the BIR's Large Taxpayers Service an administrative claim for refund or tax credit of its alleged over/erroneous payment of VAT for the quarter ended March 31, 2008 in the total amount of P123,459,647.70.[6] Three (3) days thereafter, or on April 23, 2010, petitioner filed with the CTA a judicial claim for refund or issuance of tax credit certificate presenting its financial employees as witnesses in support of its case. According to the witnesses, all of petitioner's records and documents, including invoices and official receipts for the period January 1 to March 31, 2008 subject of the instant claim were completely destroyed. They were, however, able to determine petitioner's input and output VAT through its computerized accounting system.[7]

In a Decision dated September 16, 2013 and Resolution dated December 4, 2013, the CTA Division denied petitioner's claim for lack of merit.[8] Subsequently, the CTA *En Banc* affirmed the ruling of the CTA Division in its Decision dated August 12, 2015. According to the CTA *En Banc*, Section 110 (B)[9] of the 1997 National Internal Revenue Code (*NIRC*), as amended, is clear that when input tax exceeds the output tax, the excess shall be carried over to the succeeding quarters. But when input tax, attributable to zero-rated sales, exceeds the output tax, it may be refunded or credited.[10] Section 112[11] is also categorical that there are only two (2) instances when excess input taxes may be claimed for refund and/or issuance of

tax credit certificate: (1) when the claimant is a VAT-registered person, whose sales are zero-rated or effectively zero-rated under Section 112(A); and (2) when the VAT registration of the claimant has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 112(B). But since the amount sought to be credited or refunded in the instant case essentially represents undeclared input taxes for the first quarter of 2008, and not erroneously paid VAT or understatement of VAT overpayment, then it does not fall under the instances enumerated in Section 112 which pertain to excess taxes only.[12]

In addition, the CTA *En Banc* also cited jurisprudence which provide that Sections 204(C)[13] and 229[14] of the NIRC similarly apply only to instances of erroneous payment or illegal collection of internal revenue taxes. In claims for refund or credit of excess input VAT under Sections 110(B) and 112 (A), the input VAT is not "excessively" collected as understood under Section 229. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due.[15] Section 229, therefore, is inapplicable to the instant claim for refund or credit.

The CTA *En Banc* further held that for input taxes to be available as tax credits, they must be substantiated and reported in the VAT Return of the taxpayer.[16] Petitioner, being well-aware of the law allowing the amendment of a VAT Return within three (3) years from its filing provided that an LOA has not yet been served on the taxpayer, was not prompt enough to include the alleged omitted input VAT in this case.[17] Moreover, even if the substantiated input taxes were declared in the VAT Return for the first (1st) quarter of 2008, the same would still be not enough to offset petitioner's output tax liabilities for the same period leaving no balance that may be refunded.[18]

When the CTA *En Banc* denied its Motion for Reconsideration in a Resolution dated January 14, 2016, petitioner filed the instant petition invoking the following arguments:

I.

THE CTA *EN BANC* GRAVELY ERRED IN RULING THAT PETITIONER'S CLAIM FOR REFUND/TAX CREDIT DOES NOT FALL WITHIN THE PURVIEW OF SECTION 229 OF THE NIRC OF 1997, AS AMENDED, IN RELATION TO SECTION 204(C) OF THE SAME CODE.

II.

THE CTA *EN BANC* GRAVELY ERRED IN RULING THAT THE UNDECLARED INPUT VAT IN THE AMOUNT OF P123,459,674.70 FOR THE QUARTER ENDED MARCH 31, 2008 IS REQUIRED TO BE REPORTED IN THE QUARTERLY VAT RETURN AS A REQUISITE FOR PETITIONER'S CLAIM FOR REFUND OF TAX UNDER SECTION 229 OF THE NIRC OF 1997, AS AMENDED, IN RELATION TO SECTION 204(C) OF THE SAME CODE.

III.

THE CTA *EN BANC* GRAVELY ERRED IN FAILING TO CONSIDER THAT PETITIONER'S CLAIM FOR REFUND SHALL NOT BE CONSTRUED IN

STRICTISSIMI JURIS AGAINST THE PETITIONER.

IV.

THE CTA *EN BANC* GRAVELY ERRED IN FAILING TO CONSIDER THAT THE OMITTED INPUT VAT IN THE AMOUNT OF P123,459,674.70 MAY BE INCLUDED IN THE CURRENT AND AVAILABLE INPUT VAT OF THE PETITIONER FOR THE QUARTER ENDED MARCH 31, 2008 IN ORDER TO PREVENT UNJUST ENRICHMENT OF THE GOVERNMENT TO THE DETRIMENT OF HEREIN PETITIONER.

Petitioner posits that its claim for refund/tax credit is hinged not on the basis of "excess" input tax *per se* but on the basis of the inadvertence of applying the undeclared input tax against the output VAT. It asserts that through relevant evidence, it has substantially proven that due to its employees' inadvertence, the input tax amounting to P123,459,674.70 was not credited against the corresponding output tax during the quarter. Thus, by virtue of Section 229 of the 1997 NIRC, petitioner may claim for refund/tax credit of its erroneous payment of output VAT due to its failure to apply the P123,459,674.70 input VAT in the computation of its excess allowable input VAT.[19]

Petitioner also avers that since it is already barred from amending its VAT Return due to the fact that the BIR had already issued an LOA, it is left with no other recourse but to apply for a claim for refund for the undeclared input VAT, still, under Section 229. But contrary to the CTA *En Banc*, its claim for refund or issuance of tax credit under Sections 229 and 204(C) of the NIRC only requires that the same be in writing and filed with the Commissioner within two (2) years after the payment of tax or penalty, and that the claim must categorically demand for reimbursement and show proof of payment of the tax.[20] Nowhere is it provided in said provisions a mandatory requirement that a VAT Return must show the undeclared input tax in order to claim a refund.[21] In support of its assertion, petitioner cites the ruling in *Fort Bonifacio Development Corporation v. CIR*[22] which adopts the principle that input taxes not reported in the VAT Return may still be credited against output tax due for as long as the same were properly substantiated.[23]

Furthermore, petitioner maintains that its claim for refund, being based on erroneous payment of output VAT, should not be construed against it and, in fact, necessitates only a preponderance of evidence for its approbation like any other ordinary civil case.[24] In the end, it is only just and proper to allow petitioner's claim for refund so as not to violate the principle of unjust enrichment as enshrined in our laws.[25]

The petition is devoid of merit.

Petitioner, in advancing its claim for refund or tax credit, cannot rely on Section 229 of the 1997 NIRC, as amended. Time and again, the Court had consistently ruled on the inapplicability of Section 229 to claims for the recovery of unutilized input VAT.[26] In *Commissioner of Internal Revenue v. San Roque Power Corporation (San Roque)*,[27] the Court explained that input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected, the amount paid is correct and proper. If said input VAT is in fact "excessively" collected as understood under Section 229, then it is the person legally liable to pay the input

VAT, and not the person to whom the tax is passed on and who is applying the input VAT as credit for his own output VAT, who can file the judicial claim for refund or credit outside the VAT system. The Court, in *San Roque*, explained as follows:

> III. **"Excess" Input VAT and "Excessively" Collected Tax**
>
> **The input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper.** The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. **If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person - the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT - who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System.** In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.
>
> In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. **Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due.** The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. **Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.**
>
> x x x x
>
> **x x x Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229.**
>
> x x x x
>
> **Any suggestion that the "excess" input VAT under the VAT System is an "excessively" collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System.** Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or

subsequent sale of goods, properties, or services using materials subject to input VAT.

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, xxx illegally, xxx excessively or in any manner wrongfully collected." In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should "apply only to instances of erroneous payment or illegal collection of internal revenue taxes." Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due. Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT. This will upend the present VAT System as we know it.**[28]

Thus, the CTA *En Banc* and CTA Division are correct in holding that, based on the San Roque doctrine above, Section 229 of the 1997 NIRC is inapplicable to the instant claim for refund or issuance of tax credit. In addition, neither can petitioner advance its claim for refund or tax credit under Sections 110 (B) and 112 (A) of the 1997 NIRC. For clarity and reference, said Sections are reproduced below:

SEC. 110. *Tax Credits*.-

x x x x

(B) Excess Output or Input Tax. - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. **If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Provided, however, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.**

x x x x

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**: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the