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THIRD DIVISION

[G.R. No. 183531, March 25, 2015]

EASTERN TELECOMMUNICATIONS PHILIPPINES, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

REYES, J.:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision[2] dated April 30, 2008 and Resolution[3] dated July 2, 2008 of the Court of Tax Appeals (CTA) *en banc* in C.T.A. EB No. 327 affirming the denial of Eastern Telecommunications Philippines, Inc.'s (ETPI) claim for refund of its unutilized input value-added tax (VAT) in the amount of P9,265,913.42 allegedly attributable to ETPI's zero-rated sales of services to non-resident foreign corporation for the taxable year 1998.

The Antecedents

ETPI is a domestic corporation located at the Telecoms Plaza Building, No. 316, Sen. Gil Puyat Avenue, Salcedo Village, Makati City. It registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 49-490-000205 dated June 10, 1994.[4]

As a telecommunications company, ETPI entered into various international service agreements with international telecommunications carriers and handles incoming telecommunications services for non-resident foreign telecommunication companies and the relay of said international calls within and around other places in the Philippines. Consequently, to broaden its distribution coverage of telecommunications services throughout the country, ETPI entered into various interconnection agreements with local carriers that can readily relay the said foreign calls to the intended local end-receiver.[5]

The non-resident foreign corporations pays ETPI in US dollars inwardly remitted through the Philippine local banks, Metropolitan Banking Corporation, HongKong and Shanghai Banking Corporation and Citibank through the manner and mode of payments based on an internationally established standard which is embodied in a Blue Book, or Manual, prepared by the Consultative Commission of International Telegraph and Telephony and implemented between the contracting parties in consonance with a set of procedural guidelines denominated as Traffic Settlement Procedure.[6]

ETPI seasonably filed its Quarterly VAT Returns for the year 1998 which were, however, simultaneously amended on February 22, 2001 to correct its input VAT on

domestic purchases of goods and services and on importation of goods and to reflect its zero-rated and exempt sales for said year.[7]

On January 25, 2000, ETPI filed an administrative claim with the BIR for the refund of the amount of P9,265,913.42 representing excess input tax attributable to its effectively zero-rated sales in 1998 pursuant to Section 112[8] of the Republic Act (R.A.) No. 8424, also known as the National Internal Revenue Code of 1997 (NIRC), as implemented by Revenue Regulations (RR) No. 5-87 and as amended by RR No. 7-95.[9]

Pending review by the BIR, ETPI filed a Petition for Review[10] before the CTA on February 21, 2000 in order to toll the two-year reglementary period under Section 229[11] of the NIRC. The case was docketed as C.T.A. Case No. 6019. The BIR Commissioner opposed the petition and averred that no judicial action can be instituted by a taxpayer unless a claim has been duly filed before it. Considering the importance of such procedural requirement, the BIR stressed that ETPI did not file a formal/written claim for refund but merely submitted a quarterly VAT return for the 4th quarter of 1998 contrary to what Section 229 of the NIRC prescribes.[12]

In a Decision[13] dated November 19, 2003, the CTA denied the petition because the VAT official receipts presented by ETPI to support its claim failed to imprint the word "zero-rated" on its face in violation of the invoicing requirements under Section 4.108-1 of RR No. 7-95 which reads:

> **Sec. 4.108-1**. *Invoicing Requirements.*– All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
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> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. **the word "zero-rated" imprinted on the invoice covering zero-rated sales**; and
> 6. the invoice value or consideration. x x x (Emphasis ours)

The CTA further mentioned that even if ETPI is entitled to a refund, it still failed to present sales invoices covering its VATable and exempt sales for purposes of allocating its input taxes. It also criticized ETPI for filing its 1998 audited financial records on February 22, 2001 when the same should have been reported to the BIR as early as February 22, 1999. It being so, the CTA ratiocinated that tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer.[14] Thus, ETPI's non-compliance with what the tax laws and regulations require resulted to the denial of its claim for VAT refund.

ETPI moved for the CTA's reconsideration[15] but it was denied in the Resolution[16] dated March 19, 2004. It was discussed: (1) that ETPI's failure to imprint the word

"zero-rated" on the face of its receipts and invoices gives the presumption that it is 10% VATable; (2) that its validly supported input VAT may still be claimed as an automatic tax credit in payment of its future output VAT liability; (3) that the total sales appearing on its 1998 Quarterly Return affects the determination of its allowable refund even if the amounts of the reported zero-rated sales indicated in the amended Quarterly VAT Returns and company-provided zero-rated sales are the same; (4) that there is a need to verify the truthfulness regarding ETPI's claim that the discrepancy in the sales was due to "write off" accounts; and (5) that the denial of the claim for refund was based on the allocation it provided to its independent certified public accountant (CPA) which it failed to support and which the independent CPA failed to include in its audit.

Undaunted, ETPI filed a petition before the Court of Appeals (CA) which referred the case to the CTA *en banc* due to the passage of R.A. No. 9282.[17]

On April 30, 2008, the CTA *en banc* rendered a Decision[18] which affirmed the decision of the old CTA. In its disquisition, the CTA *en banc* stated that VAT-registered persons must comply with the invoicing requirements prescribed in Sections 113(A)[19] and 237[20] of the NIRC. Moreover, the invoicing requirements enumerated in Section 4.108-1 of RR No. 7-95 are mandatory due to the word "shall" and not "may". Hence, non-compliance with any thereof would disallow any claim for tax credit or VAT refund.

CTA Presiding Justice Ernesto Acosta (PJ Acosta) filed a Concurring and Dissenting Opinion[21] wherein he disagreed with the majority's view regarding the supposed mandatory requirement of imprinting the term "zero-rated" on official receipts or invoices. He stated that Section 113 in relation to Section 237 of the NIRC does not require the imprinting of the phrase "zero-rated" on an invoice or official receipt for the document to be considered valid for the purpose of claiming a refund or an issuance of a tax credit certificate. Hence, the absence of the term "zero-rated" in an invoice or official receipt does not affect its admissibility or competency as evidence in support of a refund claim. Assuming that stamping the term "zero-rated" on an invoice or official receipt is a requirement of the current NIRC, the denial of a refund claim is not the imposable penalty for failure to comply with that requirement. Nevertheless, PJ Acosta agreed with the majority's decision to deny the claim due to ETPI's failure to prove the input taxes it paid on its domestic purchases of goods and services during the period involved.

ETPI filed a motion for reconsideration which was denied in the Resolution[22] dated July 2, 2008. Hence, this petition.

The Issue

Whether or not the CTA erred in denying ETPI's claim for refund of input taxes resulting from its zero-rated sales.

Ruling of the Court

The petition is bereft of merit.

Foremost, it should be noted that the CTA has developed an expertise on the subject

of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems. As such, its findings of fact are accorded the highest respect and are generally conclusive upon this Court, in the absence of grave abuse of discretion or palpable error. Its decisions shall not be lightly set aside on appeal, unless this Court finds that the questioned decision is not supported by substantial evidence or there is a showing of abuse or improvident exercise of authority.[23]

The word "zero-rated" is required on the invoices or receipts issued by VAT-registered taxpayers.

ETPI posits that the NIRC allows VAT-registered taxpayers to file a claim for refund of input taxes directly attributable to zero-rated transactions subject to compliance with certain conditions. To bolster its averment, ETPI pointed out that the imprint of the word "zero-rated" on the face of the sales invoice or receipt is merely required in RR No. 7-95 which cannot prevail over a taxpayer's substantive right to claim a refund or tax credit for its input taxes. And, that the lack of the word "zero-rated" on its invoices and receipts does not justify an outright denial of its claim for refund or tax credit considering that it has presented equally relevant and competent evidence to prove its claim. Moreover, its clients are non-resident foreign corporations which are exempted from paying VAT. Thus, it cannot take advantage of its omission to print the word "zero-rated" on its invoices and sales receipts.

The Secretary of Finance has the authority to promulgate the necessary rules and regulations for the effective enforcement of the provisions of the NIRC. Such rules and regulations are given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields.[24]

An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[25] Consequently, the old CTA, as affirmed by the CTA *en banc*, correctly ruled that a claim for the refund of creditable input taxes must be evidenced by a VAT invoice or official receipt in accordance with Section 110(A)(1) [26] of the NIRC. Sections 237 and 238[27] of the same Code as well as Section 4.108-1 of RR No. 7-95 provide for the invoicing requirements that all VAT-registered taxpayers should observe, such as: (a) the BIR Permit to Print; (b) the Tax Identification Number of the VAT-registered purchaser; and (c) the word "zero-rated" imprinted thereon. Thus, the failure to indicate the words "zero-rated" on the invoices and receipts issued by a taxpayer would result in the denial of the claim for refund or tax credit. Revenue Memorandum Circular No. 42-2003 on this point reads:

> A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> **If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g.**

> **failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales**. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer. (Emphasis ours)

In this respect, the Court has consistently ruled on the denial of a claim for refund or tax credit whenever the word "zero-rated" has been omitted on the invoices or sale receipts of the taxpayer-claimant as pronounced in *Panasonic Communications Imaging Corporation of the Philippines v. CIR*[28] wherein it was ratiocinated, *viz*:

> **Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services**. As aptly explained by the CTA's First Division, **the appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid**. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect.
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> **Further, the printing of the word "zero-rated" on the invoice helps segregate sales that are subject to 10% (now 12%) VAT from those sales that are zero-rated**. Unable to submit the proper invoices, petitioner Panasonic has been unable to substantiate its claim for refund.[29] (Citations omitted and emphasis ours)

ETPI failed to substantiate its claim for refund or tax credit.

ETPI argues that its quarterly returns for the year 2008 substantiate the amounts of its taxable and exempt sales which show the amounts of its taxable sales, zero-rated sales and exempt sales. Moreover, the submission of its invoices and receipts including the verification of its independent CPA are all sufficient to support its claim.

The Court is not persuaded.

ETPI failed to discharge its burden to prove its claim. Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's burden to prove