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FIRST DIVISION

[G.R. No. 184360 & 184361, February 19, 2014]

SILICON PHILIPPINES, INC., (FORMERLY INTEL PHILIPPINES MANUFACTURING, INC.), PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

[G.R. No. 184384]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS, SILICON PHILIPPINES, INC., (FORMERLY INTEL PHILIPPINES MANUFACTURING, INC.), RESPONDENT.

DECISION

VILLARAMA, JR., J.:

Before us are three consolidated petitions for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing (1) the Decision[1] dated February 18, 2008 of the Court of Tax Appeals (CTA) *En Banc* in CTA E.B. No. 219; (2) the Decision[2] dated February 20, 2008 of the CTA *En Banc* in CTA E.B. Case No. 209; and (3) the two Resolutions[3] both dated September 2, 2008 of the CTA *En Banc* denying the motions for reconsideration from the aforementioned assailed decisions.

The facts as summarized by the CTA in Division and adopted by the CTA *En Banc* are as follows:

Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is primarily engaged in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components.[4] It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer with Certificate of Registration bearing RDO Control No. 94-048-02621.[5] It is likewise registered with the Board of Investments (BOI) as a preferred pioneer enterprise.[6]

On the other hand, the Commissioner of Internal Revenue (CIR) is the government official vested with the power and authority to refund any internal revenue tax erroneously or illegally assessed or collected under the National Internal Revenue Code of 1997, as amended[7] (hereafter NIRC or Tax Code).

For the 1st quarter of 1999, Silicon seasonably filed its Quarterly VAT Return on April 22, 1999 reflecting, among others, output VAT in the amount of P145,316.96; input VAT on domestic purchases in the amount of P20,041,888.41; input VAT on importation of goods in the amount of P44,560,949.00; and zero-rated export sales

in the sum of P929,186,493.91.[8]

On August 6, 1999, Silicon filed with the CIR, through its One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF), a claim for tax credit or refund of P64,457,520.45 representing VAT input taxes on its domestic purchases of goods and services and importation of goods and capital equipment which are attributable to zero-rated sales for the period January 1, 1999 to March 31, 1999.

Due to the inaction of the CIR, Silicon filed a Petition for Review[9] with the CTA on March 30, 2001, to toll the running of the two-year prescriptive period. The petition was docketed as *CTA Case No. 6263*.

The CIR filed its Answer[10] dated June 1, 2001 raising, among others, the following special and affirmative defenses: (1) that Silicon failed to show compliance with the substantiation requirements under the provisions of Section 16(c)(3)[11] of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88; and (2) that Silicon has not shown proof that the alleged domestic purchases of goods and services and importation of goods/capital equipment on which the VAT input taxes were paid are attributable to its export sales or have not yet been applied to the output tax for the period covered in its claim or any succeeding period and that the alleged total foreign exchange proceeds have been accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

During the pendency of the case, Silicon manifested that it was granted by the DOF a tax credit certificate equivalent to 50% of its total claimed input VAT on local purchases of P19,896,571.45 or for the amount of P9,948,285.73. Hence, the CTA Division limited its review on the amounts of P9,896,571.45[12] and P44,560,949.00.[13]

Meanwhile, on August 10, 2000, Silicon filed a second claim for tax credit or refund in the amount of P20,411,419.07 for the period April 1, 2000 to June 30, 2000.

To toll the running of the two-year prescriptive period, Silicon filed on June 28, 2002 with the CTA a Petition for Review,[14] which was docketed as *CTA Case No. 6493*.

The CIR filed an Answer[15] asserting, among others, that Silicon's claim for refund/tax credit in the amount of P20,411,419.07 was not duly substantiated and that said claim for refund is not subject to zero-percent (0%) rate of VAT under Sections 106(A)(2)(a)(1)[16] and 108(B)(1)[17] of the NIRC. Further, the claim for refund has already prescribed pursuant to Section 112(A) and (B)[18] of the NIRC.

CTA Case Nos. 6263 (Second Division) and 6493 (First Division)

On March 6, 2006, the CTA Second Division rendered a Decision[19] in CTA Case No. 6263 denying Silicon's claim for refund or issuance of tax credit certificate for the first quarter of 1999 in the amount of P9,896,571.45 representing the input VAT on its alleged domestic purchases of goods and services because it failed to substantiate its claimed zero-rated export sales. The CTA Second Division held that the export sales invoices have no probative value in establishing its zero-rated sales

for VAT purposes as the same were not duly registered with the BIR and the required information, particularly the BIR authority to print, was likewise not indicated therein in violation of the provisions of Sections 113,[20] 237[21] and 238[22] of the NIRC. The other evidence presented by Silicon, *i.e.,* the certification of inward remittance, export declarations, and airway bills were likewise found to be insufficient to prove actual exportation of goods.

With respect to the claim of P44,560,949.00 representing Silicon's input VAT paid on imported goods, the same was not granted by the CTA Second Division since Silicon did not present duly machine-validated Import Entry and Revenue Declarations or Bureau of Customs official receipts or any other document proving actual payment of VAT on the imported goods as required under Section 4.104-5[23] of Revenue Regulations No. 7-95. Neither did Silicon submit any evidence to prove that the subject imported capital equipment qualify as capital goods pursuant to Section 4.106-1(b)[24] of Revenue Regulations No. 7-95.

Silicon filed a motion for reconsideration from the aforementioned decision but the motion was denied in a Resolution[25] dated June 22, 2006.

Likewise, in a Decision[26] dated June 14, 2006 in CTA Case No. 6493, the CTA First Division denied Silicon's claim for refund or tax credit of P20,411,419.07 for the second quarter of 2000 on the ground that its reported export sales did not qualify for zero-rating under Section 106(A)(2)(a)(1) of the NIRC since the sales invoices were not duly registered VAT sales invoices containing the required information, particularly the BIR authority to print, Silicon's TIN-VAT number and the imprinted word "zero-rated."

On October 5, 2006, Silicon's motion for reconsideration was denied by the CTA First Division.[27]

Silicon appealed the two decisions of the CTA in Division to the CTA *En Banc* as CTA E.B. No. 209 and CTA E.B. No. 219.

Decision of the CTA En Banc (CTA E.B. Nos. 209 & 219)

On **February 18, 2008**, the CTA *En Banc* rendered the herein first assailed Decision in CTA E.B. No. 219 partially granting the petition for review and ordering the CIR to refund or issue a tax credit certificate in favor of Silicon Philippines in the reduced amount of P2,139,431.00 representing its unutilized input VAT attributable to its zero-rated sales for the period April 1, 2000 to June 30, 2000. After reviewing the records, the CTA *En Banc* stated that the amount of P13,916,752.43 may be a valid claim for tax credit or refund which is composed of input VAT on local purchases of P11,777,321.43 and input VAT on importations of P2,139,431.00. However, because Silicon is a BOI-registered entity with 100% exports and sales of properties or services made by VAT-registered suppliers to Silicon are automatically zero-rated, there is no VAT that has to be passed on to Silicon. Consequently, Silicon would not gain input taxes on its purchases of goods, properties or services. Thus, the CTA *En Banc* ruled that in the absence of any clear and convincing proof that Silicon's local suppliers passed on or shifted the VAT on such domestic purchases to Silicon, Silicon cannot claim the amount of P11,777,321.43 as input tax credits on its domestic

purchases for the period April 1, 2000 to June 30, 2000.

On **February 20, 2008**, the CTA *En Banc* also rendered the second assailed Decision in CTA E.B. No. 209 denying the petition for review for lack of merit. After it reviewed and examined the invoices and other documentary evidence of Silicon for the first quarter of 1999, the CTA *En Banc* found that Silicon's valid input VAT for refund was only P9,531,635.69. But since the DOF had already granted Silicon a tax credit certificate on January 24, 2002 in the amount of P9,948,285.73, the CTA *En Banc* held that Silicon is no longer entitled to refund or issuance of a tax credit certificate for its input tax for the first quarter of 1999.

The Consolidated Petitions before this Court

In **G.R. No. 184360**, petitioner Silicon assails the Decision dated February 20, 2008 and the Resolution dated September 2, 2008 of the CTA *En Banc* in CTA E.B. Case No. 209.

In its Memorandum, Silicon discussed two important issues. One, whether the CTA *En Banc* erred in denying its claim for refund of input VAT derived from domestic purchases of goods and services attributable to its zero-rated sales on the ground of failure to imprint the words "TIN-VAT" and "ZERO-RATED" on its export sales invoices. And two, whether the CTA *En Banc* erred in denying Silicon's claim for refund on the ground that Silicon failed to prove its input VAT derived from its importation of capital goods and equipment and in not considering the recommendation and findings of the Court-commissioned Independent Certified Public Accountant that Silicon has substantially supported its export sales, importation of capital goods/equipment and its input VAT on local purchases.

In **G.R. Nos. 184384 & 184361**, Silicon and the CIR assail the Decision dated February 18, 2008 and the Resolution dated September 2, 2008 of the CTA *En Banc* in CTA E.B. No. 219 which ordered the CIR to refund, or issue a tax credit certificate to Silicon for the amount of P2,139,431.00 (from the original claim of P20,411,419.07) representing its unutilized excess input VAT on domestic purchases of goods and services and importation of goods/capital equipment attributable to its zero-rated sales for the period April 1, 2000 to June 30, 2000.

The issues raised in the three petitions boil down to (1) whether the CTA *En Banc* correctly denied Silicon's claim for refund or issuance of a tax credit certificate for its input VAT for its domestic purchases of goods and services and importation of goods/capital equipment attributable to zero-rated sales for the period January 1, 1999 to March 31, 1999; and (2) whether the CTA *En Banc* correctly ordered the CIR to refund or issue a tax credit certificate in favor of Silicon for the reduced amount of P2,139,431.00 representing Silicon's unutilized input VAT attributable to its zero-rated sales for the period April 1, 2000 to June 30, 2000.

Notwithstanding the above issues, we emphasize that when a case is on appeal, this Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case.[28]

In the present case, while the parties never raised as an issue the timeliness of Silicon's judicial claims, we deem it proper to look into whether the petitions for review filed by Silicon before the CTA were filed within the prescribed period

provided under the Tax Code in order to determine whether the CTA validly acquired jurisdiction over the petitions filed by Silicon.

The pertinent provision, Section 112(C) (formerly subparagraph D)[29] of the NIRC reads:

> SEC. 112. *Refunds or Tax Credits of Input Tax*. –
>
> x x x x
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application **within the period prescribed above, the taxpayer affected may, within (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied.)

The above-mentioned provision expressly grants the CIR 120 days within which to decide the taxpayer's claim for refund or tax credit. In addition, the taxpayer is granted a 30-day period to appeal to the CTA the decision or inaction of the CIR after the 120-day period.

Meanwhile, the charter of the CTA, Republic Act (R.A.) No. 1125, as amended, provides:

> Section 7. Jurisdiction. – The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**;