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SECOND DIVISION

[G.R. No. 185432, June 04, 2014]

MIRAMAR FISH COMPANY, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

PEREZ, 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 18 November 2008 Decision[1] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 375 affirming *in toto* the 22 October 2007 Decision and the 19 February 2008 Resolution of the Second Division of the CTA (CTA in Division) in C.T.A. Case No. 6905, which denied due course and dismissed petitioner's claim for the issuance of a tax credit certificate (TCC) in its favor representing the alleged unutilized and/or unapplied input Value Added Tax (VAT) on purchases of goods and services attributable to zero-rated sales in the amount of P12,741,136.81 for taxable years 2002 and 2003.

The Facts

The undisputed factual antecedents of the case, as stipulated by the parties,[2] are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Brgy. Recodo, Zamboanga City. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended, with VAT Registration No. 01-930-001570-V and Tax Identification No. (TIN) 005-847-661. On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.

On 4 June 2002, petitioner was registered with the Board of Investments (BOI) as a new export producer of canned tuna and canned pet food with non-pioneer status, having been issued BOI Certificate of Registration No. EP 2002-077.

Petitioner filed its Quarterly VAT Returns (BIR Form No. 2550Q) for taxable year 2002 with the BIR on the following dates:

Particular Quarter	Date of Filing of Quarterly VAT Return
First Quarter	25 April 2002

Second Quarter	8 July 2002
Third Quarter	22 October 2002
Fourth Quarter	27 January 2003

The administrative claim for refund in the form of a TCC of petitioner's alleged unutilized input VAT in the amount of P6,751,751.65 for taxable year 2002 was filed with the BIR on 24 February 2003.[3]

Petitioner filed its Quarterly VAT Returns (BIR Form No. 2550Q) for taxable year 2003 with the BIR on the following dates:

Particular Quarter	**Date of Filing of Quarterly VAT Return**
First Quarter	10 April 2003
Second Quarter	16 July 2003
Third Quarter	17 October 2003
Fourth Quarter	26 January 2004

Its administrative claim for refund in the form of a TCC of the alleged unutilized input VAT in the amount of P5,895,912.38 for taxable year 2003 was thereafter filed on 15 March 2004.[4]

Subsequently, an administrative claim for the refund or issuance of a TCC in the aggregate amount of P12,741,136.81 allegedly representing unutilized or unapplied VAT input taxes attributable to petitioner's zero-rated transactions or its export sales for taxable years 2002 and 2003, was filed on 25 March 2004.[5]

Consequently, since no final action has been taken by respondent on petitioner's various administrative claims, the latter filed a Petition for Review before the CTA on 30 March 2004 docketed as C.T.A. Case No. 6905.

The Ruling of the CTA in Division

In a Decision dated 22 October 2007,[6] the CTA in Division denied due course and dismissed petitioner's claim for the issuance of a TCC on the sole ground that the sales invoices presented in support thereof did not comply with the invoicing requirements provided for under Section 113[7] of the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations (RR) No. 7-95.[8] The court *a quo* explained that petitioner's failure to indicate that it is a VAT-registered entity and/or to imprint the word "zero-rated" on the subject invoices or receipts were fatal to its claim; hence, it was left with no other recourse but to deny petitioner's claim. Having rendered such ruling, the CTA in Division decided not to pass upon other incidental issues raised before it for being moot.[9]

On 19 February 2008, the CTA in Division denied petitioner's Motion for Reconsideration for lack of merit.

Aggrieved, respondent appealed to the CTA *En Banc* by filing a Petition for Review under Section 18 of Republic Act (RA) No. 1125, as amended by RA No. 9282, on 2 April 2008, docketed as C.T.A. EB No. 375.

The Ruling of the CTA En Banc

The CTA *En Banc* ruled in its 18 November 2008 Decision,[10] that the contentions raised by petitioner are mere reiterations of its arguments contained in its Motion for Reconsideration of the 22 October 2007 Decision in C.T.A. Case No. 6905. Simply put, it dismissed the petition and affirmed in its entirety the subject Decision and Resolution of the CTA in Division considering that it found no cogent reason and justification to disturb the findings and conclusion spelled out therein.

Consequently, this Petition for Review wherein petitioner seeks the reversal of the aforementioned Decision for being not in accord with the law and the applicable Decisions of this Court, constituting a departure from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision, based on the following grounds:

A. PETITIONER HAS COMPLIED WITH THE STATUTORY REQUIREMENTS FOR CLAIMING A REFUND OF EXCESS AND UNUTILIZED INPUT VAT UNDER SECTION 112(A), IN RELATION TO SECTION 106(A)(2)(A)(1), TAX CODE. COMPLIANCE WITH THE INVOICING REQUIREMENTS UNDER THE TAX CODE AND RR NO. 7-95 IS NOT A CONDITION PRECEDENT FOR CLAIMING A REFUND OF EXCESS AND UNUTULIZED INPUT VAT UNDER SECTION 106(A)(2)(A)(1), IN RELATION TO SECTION 112(A) OF THE TAX CODE.

B. THERE IS NOTHING IN THE TAX CODE AND IN RR NO. 7-95 WHICH STATES THAT FAILURE TO COMPLY WITH THE BIR'S INVOICING REQUIREMENTS WILL NULLIFY THE VAT ZERO-RATING OF AN EXPORT SALE UNDER SECTION 106(A)(2)(A)(1) OF THE TAX CODE.

C. BASED ON THE SUPREME COURT'S RULING IN INTEL CASE, FAILURE TO INDICATE THE WORDS "TIN-V" AND "ZERO-RATED" ON THE INVOICES COVERING EXPORT SALES IS NOT FATAL TO A TAXPAYER'S CLAIM FOR REFUND OF EXCESS INPUT VAT UNDER SECTION 112(A), IN RELATION TO SECTION 106(A)(2)(A)(1) OF THE TAX CODE.

D. REVENUE MEMORANDUM CIRCULAR NO. 42-03 IS INVALID BECAUSE IT OVERRIDES THE CLEAR PROVISION OF THE TAX CODE.[11]

The Issue

The issue for this Court's consideration is whether or not petitioner is entitled to a TCC in the amount of P12,741,136.81 allegedly representing its excess and unutilized input VAT for the taxable years 2002 and 2003, in accordance with the provisions of the NIRC of 1997, as amended, other pertinent laws, and applicable

jurisprudential proclamations.

Our Ruling

In view of the recent pronouncements made in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation,*[12] which has finally settled the issue on proper observance of the prescriptive periods in claiming for refund of creditable input tax due or paid attributable to any zero-rated or effectively zero-rated sales, we find a need for this Court to review the factual findings of the CTA in order to attain a complete determination of the issue presented.

At the outset, this Court is not unaware that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised.[13] The Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the [CTA] are conclusive and binding on the Court[14] – and they carry even more weight when the [CTA *En Banc*] affirms the factual findings of the trial court.[15] However, this Court had recognized several exceptions to this rule,[16] including instances when the appellate court manifestly overlooked relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

Records of this case reveal that the CTA in Division in C.T.A. Case No. 6905 merely focused on the strict compliance with the invoicing and accounting requirements set forth under Sections 113 and 237 of the NIRC of 1997, as amended, in relation to Section 4.108-1 of Revenue Regulations (RR) No. 7-95. These same findings were adopted and affirmed *in toto* by the CTA *En Banc* in the assailed 18 November 2008 Decision.[17]

While the invoicing requirements is a valid issue, we find it imperative to first and foremost determine whether or not the CTA properly acquired jurisdiction over petitioner's claim covering taxable years 2002 and 2003, taking into consideration the timeliness of the filing of its judicial claim pursuant to Section 112 of the NIRC of 1997, as amended, and consistent with the pronouncements made in the *San Roque* case. Clearly, the claim of petitioner for the TCC can proceed only upon compliance with the jurisdictional requirement.

Section 7 of RA No. 1125,[18] which was thereafter amended by RA No. 9282,[19] clearly defined the appellate jurisdiction of the CTA:

> **Section 7. *Jurisdiction.*** - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.
>
> > (1) **Decisions of the Collector of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law

administered by the Bureau of Internal Revenue;[20] (Emphasis supplied)

x x x x

Relative thereto, Section 11 of the same law prescribes how the said appeal should be taken, to wit:

Section 11. *Who may appeal; effect of appeal.* – Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals **may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.** [21] (Emphasis and underscoring supplied)

x x x x

The timeliness in the administrative and judicial claims can be found in Section 112 of the NIRC of 1997, as amended. It reads:

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

x x x x

(D)[22] *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 Subsections (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 thirty (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.**

x x x x (Emphasis and underscoring supplied)