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FIRST DIVISION

[G.R. No. 185969, November 19, 2014]

AT&T COMMUNICATIONS SERVICES PHILIPPINES, 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* seeking to reverse and set aside the 24 September 2008 Decision[1] and the 13 January 2009 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 381 which affirmed the Decision and Resolution dated 12 December 2007 and 12 March 2008, respectively, of the First Division of the CTA (CTA in Division)[3] in C.T.A. Case No. 7221, dismissing the petition for lack of merit; and accordingly, denied petitioner's claim for the refund or issuance of a tax credit certificate (TCC) in the amount of P3,003,265.14 allegedly representing excess or unutilized input Value-Added Tax (VAT) attributable to its zero-rated sales of services for the period covering 1 January 2003 to 31 December 2003.

The Facts

The factual antecedents of this case reveal that petitioner AT&T Communications Services Philippines, Inc. (petitioner), being a domestic corporation principally engaged in the business of rendering information, promotional, supportive and liaison service, entered into a Service Agreement with AT&T Communications Services International, Inc. (AT&T-CSI), a non-resident foreign corporation, on 1 January 1999, whereby compensation for such services is paid in US Dollars.[4]

Petitioner has an Assignment Agreement with AT&T Solutions, Inc. (AT&T-SI) where the latter assigned to petitioner the performance of services AT&T-SI was supposed to provide Mastercard International, Inc. (a non-resident foreign corporation) under a Virtual Private Network Service Agreement. Likewise, the compensation for such services is paid in US Dollars to be inwardly remitted to the Philippines by AT&T-SI, which acts as the collecting agent of petitioner.[5]

Thereafter, a second Assignment Agreement was executed and entered into by petitioner with AT&T-SI for the purpose of performing the latter's obligation to Lexmark International, Inc. (also a non-resident foreign corporation) by providing services to its affiliates in the Philippines, namely: Lexmark Research and Development Corporation and Lexmark International (Philippines), Inc. (both Philippine Economic Zone Authority [PEZA]-registered enterprises). Payment of petitioner's aforesaid services is as well paid in US Dollars through telegraphic transfer.[6]

Consequently, petitioner filed its Quarterly VAT Returns with the Bureau of Internal Revenue (BIR) for the taxable year period covering 1 January 2003 to 31 December 2003, detailed hereunder as follows:

Date of Filing	Period Covered
22 April 2003	1st Quarter
23 July 2003	2nd Quarter
22 October 2003	3rd Quarter
26 January 2004	4th Quarter

On 5 February 2004, petitioner filed its first Amended Quarterly VAT Return for the Fourth Quarter of taxable year 2003; while on 26 April 2004, petitioner filed its Amended Quarterly VAT Returns for the First to Fourth Quarters of the taxable year 2003.[8]

Petitioner filed on 13 April 2005 with the BIR an application for refund and/or tax credit of its unutilized VAT input taxes for the aforesaid taxable period amounting to P3,003,265.14. However, there being no action on said administrative claim, petitioner filed a Petition for Review before the CTA in Division on 20 April 2005 (or exactly seven [7] days from the time it filed its administrative claim) in order to suspend the running of the prescriptive period provided under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.[9]

The Ruling of the CTA in Division

In C.T.A. Case No. 7221, the CTA in Division rendered a Decision dated 12 December 2007[10] dismissing petitioner's claim for the refund or issuance of a TCC. It ruled that in order to be entitled to its refund claim, petitioner must show proof of compliance with the substantiation requirements as mandated by law and regulations. Therefore, considering that the subject revenues pertain to gross receipts from services rendered by petitioner, valid official receipts and not mere sales invoices should have been presented and submitted in evidence in support thereof. Without proper VAT official receipts, the foreign currency payment received by petitioner from services rendered for the four (4) quarters of taxable year 2003 cannot qualify for zero-rating for VAT purposes. Since it is clear from the provisions of Section 112(A) of the NIRC of 1997, as amended, that there must be zero-rated sales or effectively zero-rated sales in order for a refund claim of input VAT could prosper, the claimed input VAT payments allegedly attributable thereto in the amount of P3,003,265.14 cannot be granted.[11]

On 12 March 2008, the CTA in Division denied petitioner's Motion for Reconsideration for lack of merit considering that no new matter was raised which were not taken into consideration in arriving at the subject Decision that would warrant its reversal or modification.[12]

Unsatisfied, petitioner filed a Petition for Review before the CTA *En Banc* pursuant to Section 18 of Republic Act (R.A.) No. 1125, as amended by Section 11 of R.A. No.

9282, docketed as C.T.A. EB No. 381.[13]

The Ruling of the CTA En Banc

Finding no merit in petitioner's contentions, the CTA *En Banc* rendered the assailed 24 September 2008 Decision which affirmed both the Decision and Resolution rendered by the CTA in Division in C.T.A. Case No. 7221. It categorically pronounced that official receipt cannot be interchanged with sales invoice.[14] It further emphasized that proof of inward remittances like bank credit advices cannot be used in lieu of VAT official receipts to demonstrate petitioner's zero-rated transactions. Under Section 113 of the NIRC of 1997, as amended, irrespective of the nature of transaction, be it taxable, exempt or zero-rated sale, the law mandates that the taxpayer "for every sale, issue an invoice or receipt." Thus, the enumerated zero-rated transactions under Sections 106 and 108 are those which are duly covered by VAT invoices (in the case of sales of goods), and VAT official receipts (in the case of sales of services).[15] In other words, the law itself clearly specified that an official receipt shall cover sales of services, and did not provide for any other document which can be used as an alternative to or in lieu thereof.

Upon denial of petitioner's Motion for Reconsideration thereof, it filed the instant Petition for Review on *Certiorari* before this Court seeking the reversal of the aforementioned Decision and the 13 January 2009 Resolution[16] rendered in C.T.A. EB No. 381.

In support thereof, petitioner raises the following grounds: (1) the NIRC of 1997, as amended, does not limit the proof of input or output VAT to a single document. There is no distinction of the evidentiary value of the supporting documents. Hence, it is clear that invoices or receipts may be used interchangeably to substantiate VAT; (2) the use of the VAT official receipt as proof of payment of the sale of service loses its significance due to the requirement that petitioner must prove the validity of its inward remittances; (3) petitioner presented substantial evidence that unequivocally proved its zero-rated transactions for the taxable year 2003; and (4) in civil cases, such as claims for refund or issuance of a TCC, a mere preponderance of evidence will suffice to justify the grant of the claim.[17]

The Issue

The sole issue for this Court's consideration is whether or not petitioner is entitled to a refund or issuance of a TCC in its favor amounting to P3,003,265.14 allegedly representing unutilized input VAT attributable to petitioner's zero-rated sales for the period of 1 January 2003 to 31 December 2003, in accordance with the provisions of the NIRC of 1997, as amended, other pertinent laws, and applicable jurisprudential proclamations.

Our Ruling

At this juncture, it bears emphasis that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[18] and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action

cannot be cured by the silence, acquiescence, or even by express consent of the parties.[19] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[20] Needless to state, to obviate the possibility that its decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties.[21] As a corollary thereto, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[22] Therefore, even if there was no jurisdictional issue raised by any party, the Court may look into it at anytime of the proceedings, even during this appeal.

It has long been established that the CTA is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[23] Hence, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[24]

Relevant thereto, the Court sitting *En Banc* 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-rates sales. Thus, in view of the jurisprudential pronouncements rendered in *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue (San Roque case),*[25] this Court finds it imperative to first look into the factual findings of the CTA for the purpose of achieving a complete . determination of the issue presented, particularly as to the timeliness of its administrative and judicial claims.

In C.T.A. Case No. 7221, the CTA in Division solely ruled on petitioner's non-compliance with the substantiation requirements, expressing that the evidence submitted by petitioner to prove its zero-rated sales were insufficient so as to entitle it to the claim for refund or issuance of a TCC. Similar declaration was made by the CTA *En Banc* in the assailed 24 September 2008 Decision and 13 January 2009 Resolution in C.T.A. EB No. 381.

Nonetheless, although it is true that the substantiation requirements in establishing a refund claim is a valid issue for this Court to rule upon, the prior determination of whether or not the CTA properly acquired jurisdiction over petitioner's claim covering the four (4) quarters of taxable year 2003, taking into consideration the timeliness of the filing of the administrative and judicial claims pursuant to Section 112 of the NIRC of 1997, as amended, and consistent with the pronouncements made in the *San Roque* case, is still our primary concern. Clearly, petitioner's claim can only proceed upon compliance with the aforesaid jurisdictional requirement.

Section 112 of the NIRC of 1997, as amended, 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)[26] *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 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 (Emphases and underscoring supplied)

As mentioned earlier, the proper interpretation of the afore-quoted provision was finally settled in the *San Roque case*[27] by this Court sitting *En Banc*. The relevant portions of the discussion pertinent to the focal issue presented in this case are quoted hereunder, to wit:

First, Section 112(A) clearly, plainly, and unequivocally provides that the taxpayer "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 the creditable input tax due or paid to such sales." In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit **"within two (2) years," which means at anytime within two years**. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription.

Second, Section 112(C) provides that the Commissioner shall decide the application for refund or credit "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)." The reference in Section 112(C) of the submission of documents "in support of the application filed in accordance with Subsection A" means that the application in Section 112(A) is the administrative claim that the Commissioner must decide within the 120-day period. **In short, the**