654 Phil. 492

FIRST DIVISION

[G.R. No. 172378, January 17, 2011]

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

D E C I S I O N

DEL CASTILLO, J.:

The burden of proving entitlement to a refund lies with the claimant.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the September 30, 2005 Decision[1] and the April 20, 2006 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc*.

Factual Antecedents

Petitioner Silicon Philippines, Inc., a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, is engaged in the business of designing, developing, manufacturing and exporting advance and large-scale integrated circuit components or "IC's."[3] Petitioner is registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) taxpayer [4] and with the Board of Investments (BOI) as a preferred pioneer enterprise.[5]

On May 21, 1999, petitioner filed with the respondent Commissioner of Internal Revenue (CIR), through the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF), an application for credit/refund of unutilized input VAT for the period October 1, 1998 to December 31, 1998 in the amount of P31,902,507.50, broken down as follows:

	Amount
Tax Paid on Imported/Locally Purchased Capital Equipment	P 15,170,082.00
Total VAT paid on Purchases per Invoices Received During the Period for which this Application is Filed	16,732,425.50
Amount of Tax Credit/Refund Applied For	P 31,902,507.50[6]

Proceedings before the CTA Division

On December 27, 2000, due to the inaction of the respondent, petitioner filed a Petition for Review with the CTA Division, docketed as CTA Case No. 6212.

Petitioner alleged that for the 4th quarter of 1998, it generated and recorded zero-rated export sales in the amount of P3,027,880,818.42, paid to petitioner in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;[7] and that for the said period, petitioner paid input VAT in the total amount of P31,902,507.50,[8] which have not been applied to any output VAT.[9]

To this, respondent filed an Answer[10] raising the following special and affirmative defenses, to wit:

> 8. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded/credited were actually paid;
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> 9. It is incumbent upon herein petitioner to show that it complied with the provisions of Section 229 of the Tax Code as amended;
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> 10. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);
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> 11. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);
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> 12. In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for refund. Furthermore, as pointed out in the case of William Li Yao vs. Collector (L-11875, December 28, 1963), amounts sought to be recovered or credited should be shown to be taxes which are erroneously or illegally collected; that is to say, their payment was an independent single act of voluntary payment of a tax believed to be due and collectible and accepted by the government, which had therefor become part of the State moneys subject to expenditure and perhaps already spent or appropriated; and
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> 13. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable.[11]

On November 18, 2003, the CTA Division rendered a Decision[12] partially granting petitioner's claim for refund of unutilized input VAT on capital goods. Out of the amount of P15,170,082.00, only P9,898,867.00 was allowed to be refunded because training materials, office supplies, posters, banners, T-shirts, books, and other similar items purchased by petitioner were not considered capital goods under Section 4.106-1(b) of Revenue Regulations (RR) No. 7-95 (Consolidated Value-Added Tax Regulations).[13] With regard to petitioner's claim for credit/refund of input VAT attributable to its zero-rated export sales, the CTA Division denied the same because petitioner failed to present an Authority to Print (ATP) from the BIR;

[14] neither did it print on its export sales invoices the ATP and the word "zero-rated."[15] Thus, the CTA Division disposed of the case in this wise:

> WHEREFORE, in view of the foregoing the instant petition for review is hereby PARTIALLY GRANTED. Respondent is ORDERED to ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner in the reduced amount of P9,898,867.00 representing input VAT on importation of capital goods. However, the claim for refund of input VAT attributable to petitioner's alleged zero-rated sales in the amount of P16,732,425.50 is hereby DENIED for lack of merit.
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> SO ORDERED.[16]

Not satisfied with the Decision, petitioner moved for reconsideration.[17] It claimed that it is not required to secure an ATP since it has a "Permit to Adopt Computerized Accounting Documents such as Sales Invoice and Official Receipts" from the BIR.[18] Petitioner further argued that because all its finished products are exported to its mother company, Intel Corporation, a non-resident corporation and a non-VAT registered entity, the printing of the word "zero-rated" on its export sales invoices is not necessary.[19]

On its part, respondent filed a Motion for Partial Reconsideration[20] contending that petitioner is not entitled to a credit/refund of unutilized input VAT on capital goods because it failed to show that the goods imported/purchased are indeed capital goods as defined in Section 4.106-1 of RR No. 7-95.[21]

The CTA Division denied both motions in a Resolution[22] dated August 10, 2004. It noted that:

> [P]etitioner's request for Permit to Adopt Computerized Accounting Documents such as Sales Invoice and Official Receipt was approved on August 31, 2001 while the period involved in this case was October 31, 1998 to December 31, 1998 x x x. While it appears that petitioner was previously issued a permit by the BIR Makati Branch, such permit was only limited to the use of computerized books of account x x x. It was only on August 31, 2001 that petitioner was permitted to generate computerized sales invoices and official receipts [provided that the BIR Permit Number is printed] in the header of the document x x x.
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> x x x x
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> Thus, petitioner's contention that it is not required to show its BIR permit number on the sales invoices runs counter to the requirements under the said "Permit." This court also wonders why petitioner was issuing computer generated sales invoices during the period involved (October 1998 to December 1998) when it did not have an authority or permit. Therefore, we are convinced that such documents lack probative value and should be treated as inadmissible, incompetent and immaterial to

prove petitioner's export sales transaction.

x x x x

ACCORDINGLY, the Motion for Reconsideration and the Supplemental Motion for Reconsideration filed by petitioner as well as the Motion for Partial Reconsideration of respondent are hereby **DENIED** for lack of merit. The pronouncement in the assailed decision is **REITERATED.**

SO ORDERED [23]

Ruling of the CTA En Banc

Undaunted, petitioner elevated the case to the CTA *En Banc* via a Petition for Review,[24] docketed as EB Case No. 23.

On September 30, 2005, the CTA *En Banc* issued the assailed Decision[25] denying the petition for lack of merit. Pertinent portions of the Decision read:

This Court notes that petitioner raised the same issues which have already been thoroughly discussed in the assailed Decision, as well as, in the Resolution denying petitioner's Motion for Partial Reconsideration.

With regard to the first assigned error, this Court reiterates that, the requirement of [printing] the BIR permit to print on the face of the sales invoices and official receipts is a control mechanism adopted by the Bureau of Internal Revenue to safeguard the interest of the government.

This requirement is clearly mandated under Section 238 of the 1997 National Internal Revenue Code, which provides that:

> SEC. 238. *Printing of Receipts or Sales or Commercial Invoice.* - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

The above mentioned provision seeks to eliminate the use of unregistered and double or multiple sets of receipts by striking at the very root of the problem -- the printer *(H. S. de Leon, The National Internal Revenue Code Annotated, 7th Ed., p. 901)*. And what better way to prove that the required permit to print was secured from the Bureau of Internal Revenue than to show or print the same on the face of the invoices. There can be no other valid proof of compliance with the above provision than to show the Authority to Print Permit number [printed] on the sales invoices and official receipts.

With regard to petitioner's failure to print the word "zero-rated" on the

face of its export sales invoices, it must be emphasized that Section 4.108-1 of Revenue Regulations No. 7-95 specifically requires that all value-added tax registered persons shall, for every sale or lease of goods or properties or services, issue duly registered invoices which must show the word "zero-rated" [printed] on the invoices covering zero-rated sales.

It is not enough that petitioner prove[s] that it is entitled to its claim for refund by way of substantial evidence. Well settled in our jurisprudence [is] that tax refunds are in the nature of tax exemptions and as such, they are regarded as in derogation of sovereign authority *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95).* Thus, tax refunds are construed in strictissimi juris against the person or entity claiming the same *(Commissioner of Internal Revenue vs. Procter & Gamble Philippines Manufacturing Corporation, 204 SCRA 377; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332).*

In this case, not only should petitioner establish that it is entitled to the claim but it must most importantly show proof of compliance with the substantiation requirements as mandated by law or regulations.

The rest of the assigned errors pertain to the alleged errors of the First Division: in finding that the petitioner failed to comply with the substantiation requirements provided by law in proving its claim for refund; in reducing the amount of petitioner's tax credit for input vat on importation of capital goods; and in denying petitioner's claim for refund of input vat attributable to petitioner's zero-rated sales.

It is petitioner's contention that it has clearly established its right to the tax credit or refund by way of substantial evidence in the form of material and documentary evidence and it would be improper to set aside with haste the claimed input VAT on capital goods expended for training materials, office supplies, posters, banners, t-shirts, books and the like because Revenue Regulations No. 7-95 defines capital goods as to include even those goods which are indirectly used in the production or sale of taxable goods or services.

Capital goods or properties, as defined under Section 4.106-1(b) of Revenue Regulations No. 7-95, refer "to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services."

Considering that the items (training materials, office supplies, posters, banners, t-shirts, books and the like) purchased by petitioner as reflected in the summary were not duly proven to have been used, directly or indirectly[,] in the production or sale of taxable goods or services, the same cannot be considered as capital goods as defined above[. Consequently,] the same may not x x x then [be] claimed as such.

WHEREFORE, in view of the foregoing, this instant Petition for Review is hereby **DENIED DUE COURSE** and hereby **DISMISSED** for lack of merit. This Court's Decision of November 18, 2003 and Resolution of