569 Phil. 483

SECOND DIVISION

[G.R. No. 159490, February 18, 2008]

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent.

D E C I S I O N

VELASCO JR., J.:

The Case

Before us is a Petition for Review on Certiorari under Rule 45 assailing the May 16, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 46494, which affirmed the October 13, 1997 Decision[2] of the Court of Tax Appeals (CTA) in CTA Case No. 5205 entitled *Atlas Consolidated Mining and Development Corporation (Atlas) v. The Commissioner of Internal Revenue (CIR)*, involving petitioner Atlas' application for issuance of tax credit certificate or refund of value-added tax (VAT) payments in accordance with Section 106(b) of the Tax Code on zero-rated VAT payers. Also assailed is the August 11, 2003 Resolution[3] of the CA denying Atlas' motion for reconsideration.

The Facts

Atlas is a corporation duly organized and existing under Philippine laws engaged in the production of copper concentrates for export. It registered as a VAT entity and was issued VAT Registration Certificate No. 32-0-004622 effective August 15, 1990.

For the first quarter of 1993, Atlas' export sales amounted to PhP 642,685,032.24. Its proceeds were received in acceptable foreign currency and inwardly remitted in accordance with Central Bank regulations. For the same period, Atlas paid PhP 7,907,662.53 for input taxes, as follows:

Local	PhP 7, 117,222.53
Importation	790,440.00
Total	PhP 7 , 907,662.53

Thereafter, Atlas filed a VAT return for the first quarter of 1993 with the Bureau of Internal Revenue (BIR) on April 20, 1993, and also filed an amended VAT return.

On September 20, 1993, Atlas applied with the BIR for the issuance of a tax credit certificate or refund under Section 106(b) of the Tax Code. The certificate would represent the VAT it paid for the first quarter of 1993 in the amount of PhP 7,907,662.53, which corresponded to the input taxes not applied against any output VAT.

Atlas then filed a petition for review with the CTA on February 22, 1995 to prevent the running of the prescriptive period under Sec. 230 of the Tax Code.

The Ruling of the Court of Tax Appeals

The petition for review before the CTA was docketed as CTA Case No. 5205. On October 13, 1997, the CTA rendered a Decision denying Atlas' claim for tax credit or refund. The *fallo* reads:

> WHEREFORE, in the light of all the foregoing, [Atlas'] claim for issuance of tax credit certificate or refund of value-added taxes for the first quarter of 1993 is hereby DENIED for insufficiency of evidence. No pronouncement as to costs.
>
> SO ORDERED.[4]

We note that respondent CIR filed his May 24, 1995 Answer asserting that Atlas has the burden of proving erroneous or illegal payment of the tax being claimed for refund, as claims for refund are strictly construed against the taxpayer. However, the CIR did not present any evidence before the CTA nor file a memorandum, thus constraining the CTA to resolve the case before it solely on the basis of the evidence presented by Atlas.

In denying Atlas' claim for tax credit or refund, the CTA held that Atlas failed to present sufficient evidence to warrant the grant of tax credit or refund for the alleged input taxes paid by Atlas. Relying on Revenue Regulation No. (RR) 3-88 which was issued to implement the then VAT law and list the documents to be submitted in actions for refunds or tax credits of input taxes in export sales, it found that the documents submitted by Atlas did not comply with said regulation. It pointed out that Atlas failed to submit photocopies of export documents, invoices, or receipts evidencing the sale of goods and others. Moreover, the Certification by Atlas' bank, Hongkong Shanghai Banking Corporation, did not indicate any conversion rate for US dollars to pesos. Thus, the CTA could not ascertain the veracity of the contents indicated in Atlas' VAT return as export sales and creditable or refundable input VAT.

Atlas timely filed its Motion for Reconsideration of the above decision contending that it relied on Sec. 106 of the Tax Code which merely required proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines. Consequently, Atlas asserted that the documents it presented, coupled with the testimony of its Accounting and Finance Manager, Isabel Espeno, sufficiently proved its case. It argued that RR 3-88 was issued for claims for refund of input VAT to be processed by the BIR, that is, for administrative claims, and not for judicial claims as in the present case. Anyhow, Atlas prayed for a re-trial, even as it admitted that it has committed a mistake or excusable negligence when the CTA ruled that RR 3-88 should be the one applied for Atlas to submit the basis required under the regulation.

Atlas' motion for reconsideration was rejected by the CTA through its January 5, 1998 Resolution, ruling that it is within its discretion to ascertain the veracity of the claims for refund which must be strictly construed against Atlas. Moreover, it also

rejected Atlas' prayer for a re-trial under Sec. 2 of Rule 37 of the Rules of Court, as Atlas failed to submit the required affidavits of merits.

The Ruling of the Court of Appeals

On Atlas' appeal, the CA denied and dismissed Atlas' petition on the ground of insufficiency of evidence to support Atlas' action for tax credit or refund. Thus, through its May 16, 2003 Decision, the CA sustained the CTA; and consequently denied Atlas' motion for reconsideration.

The CA ratiocinated that the CTA cannot be faulted in denying Atlas' action for tax credit or refund, and in denying Atlas' prayer for a new trial. The CA concurred with the CTA in the finding that Atlas' failure to submit the required documents in accordance with RR 3-88 is fatal to Atlas' action, for, without these documents, Atlas' VAT export sales indicated in its amended VAT return and the creditable or refundable input VAT could not be ascertained. The CA struck down Atlas' contention that it has sufficiently established the existence of its export sales through the testimony of its Accounting and Finance Manager, as her testimony is not required under RR 3-88 and is self-serving.

Also, the CA rejected Atlas' assertion that RR 3-88 is applicable only to administrative claims and not to a judicial proceeding, since it is clear under Sec. 245 (now Sec. 244 of the NIRC) that "[t]he Secretary of Finance, upon the recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code." Thus, according to the CA, RR 3-88 implementing the VAT law is applicable to judicial proceedings as this Court held in *Eslao v. COA* that "administrative policies enacted by administrative bodies to interpret the law have the force of law and are entitled to great weight."[5] The CA likewise agreed with the CTA in denying a new trial for Atlas' failure to attach the necessary affidavits of merits required under the rules.

The Issues

Hence, the instant petition of Atlas raising the following grounds for our consideration:

> A. In rendering the assailed Decision and Resolution, the Court of Appeals failed to decide this matter in accordance with law or with the applicable decisions of the Supreme Court.
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> B. In rendering the assailed Decision and Resolution the Court of Appeals is guilty of grave abuse of discretion amounting to a lack or excess of jurisdiction when it violated Atlas' right to due process and sanctioned a similar error from the Court of Tax Appeals' (CTA), calling for the exercise of this Honorable Court's power of supervision.[6]

The foregoing issues can be simplified as follows: first, whether Atlas has sufficiently proven entitlement to a tax credit or refund; and second, whether Atlas should have been accorded a new trial.

The Court's Ruling