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THIRD DIVISION

[G.R. Nos. 141104 & 148763, June 08, 2007]

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court are the consolidated cases involving the unsuccessful claims of herein petitioner Atlas Consolidated Mining and Development Corporation (petitioner corporation) for the refund/credit of the input Value Added Tax (VAT) on its purchases of capital goods and on its zero-rated sales in the taxable quarters of the years 1990 and 1992, the denial of which by the Court of Tax Appeals (CTA), was affirmed by the Court of Appeals.

Petitioner corporation is engaged in the business of mining, production, and sale of various mineral products, such as gold, pyrite, and copper concentrates. It is a VAT-registered taxpayer. It was initially issued VAT Registration No. 32-A-6-002224, dated 1 January 1988, but it had to register anew with the appropriate revenue district office (RDO) of the Bureau of Internal Revenue (BIR) when it moved its principal place of business, and it was re-issued VAT Registration No. 32-0-004622, dated 15 August 1990.[1]

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Petitioner corporation filed with the BIR its VAT Return for the first quarter of 1992.[2] It alleged that it likewise filed with the BIR the corresponding application for the refund/credit of its input VAT on its purchases of capital goods and on its zero-rated sales in the amount of P26,030,460.00.[3] When its application for refund/credit remained unresolved by the BIR, petitioner corporation filed on 20 April 1994 its Petition for Review with the CTA, docketed as CTA Case No. 5102. Asserting that it was a "zero-rated VAT person," it prayed that the CTA order herein respondent Commissioner of Internal Revenue (respondent Commissioner) to refund/credit petitioner corporation with the amount of P26,030,460.00, representing the input VAT it had paid for the first quarter of 1992. The respondent Commissioner opposed and sought the dismissal of the petition for review of petitioner corporation for failure to state a cause of action. After due trial, the CTA promulgated its Decision[4] on 24 November 1997 with the following disposition –

> **WHEREFORE,** in view of the foregoing, the instant claim for refund is hereby **DENIED** on the ground of prescription, insufficiency of evidence and failure to comply with Section 230 of the Tax Code, as amended. Accordingly, the petition at bar is hereby **DISMISSED** for lack of merit.

The CTA denied the motion for reconsideration of petitioner corporation in a Resolution[5] dated 15 April 1998.

When the case was elevated to the Court of Appeals as CA-G.R. SP No. 47607, the appellate court, in its Decision,[6] dated 6 July 1999, dismissed the appeal of petitioner corporation, finding no reversible error in the CTA Decision, dated 24 November 1997. The subsequent motion for reconsideration of petitioner corporation was also denied by the Court of Appeals in its Resolution,[7] dated 14 December 1999.

Thus, petitioner corporation comes before this Court, *via* a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, assigning the following errors committed by the Court of Appeals –

I

> THE COURT OF APPEALS ERRED IN AFFIRMING THE REQUIREMENT OF REVENUE REGULATIONS NO. 2-88 THAT AT LEAST 70% OF THE SALES OF THE [BOARD OF INVESTMENTS (BOI)]-REGISTERED FIRM MUST CONSIST OF EXPORTS FOR ZERO-RATING TO APPLY.

II

> THE COURT OF APPEALS ERRED IN AFFIRMING THAT PETITIONER FAILED TO SUBMIT SUFFICIENT EVIDENCE SINCE FAILURE TO SUBMIT PHOTOCOPIES OF VAT INVOICES AND RECEIPTS IS NOT A FATAL DEFECT.

III

> THE COURT OF APPEALS ERRED IN RULING THAT THE JUDICIAL CLAIM WAS FILED BEYOND THE PRESCRIPTIVE PERIOD SINCE THE JUDICIAL CLAIM WAS FILED WITHIN TWO (2) YEARS FROM THE FILING OF THE VAT RETURN.

IV

> THE COURT OF APPEALS ERRED IN NOT ORDERING CTA TO ALLOW THE RE-OPENING OF THE CASE FOR PETITIONER TO PRESENT ADDITIONAL EVIDENCE.[8]

G.R. No. 148763

G.R. No. 148763 involves almost the same set of facts as in G.R. No. 141104 presented above, except that it relates to the claims of petitioner corporation for refund/credit of input VAT on its purchases of capital goods and on its zero-rated sales made in the last three taxable quarters of 1990.

Petitioner corporation filed with the BIR its VAT Returns for the second, third, and fourth quarters of 1990, on 20 July 1990, 18 October 1990, and 20 January 1991, respectively. It submitted separate applications to the BIR for the refund/credit of the input VAT paid on its purchases of capital goods and on its zero-rated sales, the

details of which are presented as follows –

Date of Application	Period Covered	Amount Applied For
21 August 1990	2nd Quarter, 1990	P 54,014,722.04
21 November 1990	3rd Quarter, 1990	75,304,774.77
19 February 1991	4th Quarter, 1990	43,829,766.10

When the BIR failed to act on its applications for refund/credit, petitioner corporation filed with the CTA the following petitions for review –

Date Filed	Period Covered	CTA Case No.
20 July 1992	2nd Quarter, 1990	4831
9 October 1992	3rd Quarter, 1990	4859
14 January 1993	4th Quarter, 1990	4944

which were eventually consolidated. The respondent Commissioner contested the foregoing Petitions and prayed for the dismissal thereof. The CTA ruled in favor of respondent Commissioner and in its Decision,[9] dated 30 October 1997, dismissed the Petitions mainly on the ground that the prescriptive periods for filing the same had expired. In a Resolution,[10] dated 15 January 1998, the CTA denied the motion for reconsideration of petitioner corporation since the latter presented no new matter not already discussed in the court's prior Decision. In the same Resolution, the CTA also denied the alternative prayer of petitioner corporation for a new trial since it did not fall under any of the grounds cited under Section 1, Rule 37 of the Revised Rules of Court, and it was not supported by affidavits of merits required by Section 2 of the same Rule.

Petitioner corporation appealed its case to the Court of Appeals, where it was docketed as CA-G.R. SP No. 46718. On 15 September 2000, the Court of Appeals rendered its Decision,[11] finding that although petitioner corporation timely filed its Petitions for Review with the CTA, it still failed to substantiate its claims for the refund/credit of its input VAT for the last three quarters of 1990. In its Resolution, [12] dated 27 June 2001, the appellate court denied the motion for reconsideration of petitioner corporation, finding no cogent reason to reverse its previous Decision.

Aggrieved, petitioner corporation filed with this Court another Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, docketed as G.R. No. 148763, raising the following issues –

A.

> WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S CLAIM IS BARRED UNDER REVENUE REGULATIONS NOS. 2-88 AND 3-88 I.E., FOR FAILURE TO PTOVE [sic] THE 70% THRESHOLD FOR ZERO-RATING TO APPLY AND FOR FAILURE TO ESTABLISH THE FACTUAL BASIS FOR THE INSTANT CLAIM.

B.

> WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THERE IS NO BASIS TO GRANT PETITIONER'S MOTION FOR NEW TRIAL.

There being similarity of parties, subject matter, and issues, G.R. Nos. 141104 and 148763 were consolidated pursuant to a Resolution, dated 4 September 2006, issued by this Court. The ruling of this Court in these cases hinges on how it will resolve the following key issues: (1) prescription of the claims of petitioner corporation for input VAT refund/credit; (2) validity and applicability of Revenue Regulations No. 2-88 imposing upon petitioner corporation, as a requirement for the VAT zero-rating of its sales, the burden of proving that the buyer companies were not just BOI-registered but also exporting 70% of their total annual production; (3) sufficiency of evidence presented by petitioner corporation to establish that it is indeed entitled to input VAT refund/credit; and (4) legal ground for granting the motion of petitioner corporation for re-opening of its cases or holding of new trial before the CTA so it could be given the opportunity to present the required evidence.

Prescription

The prescriptive period for filing an application for tax refund/credit of input VAT on zero-rated sales made in 1990 and 1992 was governed by Section 106(b) and (c) of the Tax Code of 1977, as amended, which provided that –

> SEC. 106. *Refunds or tax credits of input tax.* – x x x.
>
> (b) *Zero-rated or effectively zero-rated sales.* – Any person, except those covered by paragraph (a) above, whose sales are zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.
>
> x x x x
>
> (e) *Period within which refund of input taxes may be made by the Commissioner.* – The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c) as the case may be.

By a plain reading of the foregoing provision, the two-year prescriptive period for filing the application for refund/credit of input VAT on zero-rated sales shall be determined from the close of the quarter when such sales were made.

Petitioner contends, however, that the said two-year prescriptive period should be counted, not from the close of the quarter when the zero-rated sales were made, but from the date of filing of the quarterly VAT return and payment of the tax due 20 days thereafter, in accordance with Section 110(b) of the Tax Code of 1977, as amended, quoted as follows –

> SEC. 110. *Return and payment of value-added tax.* – x x x.
>
> (b) *Time for filing of return and payment of tax.* – The return shall be filed and the tax paid within 20 days following the end of each quarter specifically prescribed for a VAT-registered person under regulations to be promulgated by the Secretary of Finance: *Provided, however,* That any person whose registration is cancelled in accordance with paragraph (e) of Section 107 shall file a return within 20 days from the cancellation of such registration.

It is already well-settled that the two-year prescriptive period for instituting a suit or proceeding for recovery of corporate income tax erroneously or illegally paid under Section 230[13] of the Tax Code of 1977, as amended, was to be counted from the filing of the final adjustment return. This Court already set out in *ACCRA Investments Corporation v. Court of Appeals,*[14] the rationale for such a rule, thus –

> Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of *Commissioner of Internal Revenue v. Asia Australia Express, Ltd.* (G.R. No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund.
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> Considering that ACCRAIN filed its claim for refund as early as December 29, 1983 with the respondent Commissioner who failed to take any action thereon and considering further that the non-resolution of its claim for refund with the said Commissioner prompted ACCRAIN to reiterate its claim before the Court of Tax Appeals through a petition for review on April 13, 1984, the respondent appellate court manifestly committed a reversible error in affirming the holding of the tax court that ACCRAIN's claim for refund was barred by prescription.
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> It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The "date of payment", therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982.

In another case, *Commissioner of Internal Revenue v. TMX Sales, Inc.,*[15] this Court further expounded on the same matter –