500 Phil. 149

SECOND DIVISION

[G.R. NO. 141973, June 28, 2005]

PHILIPPINE PHOSPHATE FERTILIZER CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Once more, we stand by our ruling that:

> If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments. When it is undisputed that a taxpayer is entitled to a refund, the State should not invoke technicalities to keep money not belonging to it. No one, not even the State, should enrich oneself at the expense of another.[1]

The antecedents of this case are as follows:

Philippine Phosphate Fertilizer Corporation (Philphos) is a domestic corporation registered with the Export Processing Zone Authority (EPZA). It manufactures fertilizers for domestic and international distribution and as such, utilizes fuel, oil and other petroleum products which it procures locally from Petron Philippines Corporation (Petron). Petron initially pays the Bureau of Internal Revenue (BIR) and the Bureau of Customs the taxes and duties imposed upon the petroleum products. Petron is then reimbursed by petitioner when Petron sells such petroleum products to the petitioner. In a letter dated August 28, 1995, petitioner sought a refund of specific taxes paid on the purchases of petroleum products from Petron for the period of September 1993 to December 1994 in the total amount of P602,349.00 which claim is pursuant to the incentives it enjoyed by virtue of its EPZA registration. Since the two-year period within which petitioner could file a case for tax refund before the Court of Tax Appeals (CTA) was about to expire and no action had been taken by the BIR, petitioner instituted a petition for review before the CTA against the Commissioner of Internal Revenue (CIR).[2] During the trial, to prove that the duties imposed upon the petroleum products delivered to petitioner by Petron had been duly paid for by petitioner, petitioner presented a Certification from Petron dated August 17, 1995; a schedule of petroleum products sold and delivered to petitioner detailing the volume of sales and the excise taxes paid thereon; photocopies of Authority to Accept Payment for Excise Taxes issued by the CIR pertaining to petroleum products purchased; as well as the testimony of Sylvia Osorio, officer of Petron, to attest to the summary and certification presented.[3] The CIR did not present any evidence to controvert the ones presented by petitioner nor did it file an opposition to petitioner's formal offer of evidence.[4]

On August 11, 1998, the CTA promulgated its Decision finding that while petitioner is exempt from the payment of excise taxes, it failed to sufficiently prove that it is entitled to refund in this particular case since it did not submit invoices to support the summary of petroleum products sold and delivered to it by Petron.[5] The CTA rationalized thus:

> …**[P]etitioner, as an EPZA registered enterprise is exempted from the payment of excise taxes, and if said taxes were passed on by the supplier to EPZA registered enterprise like the petitioner, tax credit shall be granted to the latter. The fact that it was not the petitioner who had paid the taxes directly to the Bureau of Internal Revenue does not have an adverse effect on petitioner's action for refund. The law granting the exemption makes no distinction as to the circumstances when the law shall apply. Since the law makes no distinction, neither should we. The exemption is so broad as to cover the present situation. Since an export processing zone is not considered to be covered by Philippine customs and internal revenue laws, the taxes paid by the petitioner on the petroleum products should be refunded or credited in its favor**. **Thus, the only thing left for us to do is to determine whether or not petitioner is entitled to the amount claimed for refund.** After a careful scrutiny of the evidence presented, however, there appears to be a dispute with respect to the amount claimed. Petitioner submitted in evidence a certification issued by Petron to prove that the duties imposed upon the petroleum products delivered to petitioner by Petron had been duly paid for by petitioner (Exhibit "A", p. 71, CTA records). Petitioner likewise presented a schedule of petroleum products sold and delivered to petitioner detailing the volume of sales and the excise taxes paid thereon (Exhibits "A-1" to "A-1a", pp. 72-73, CTA records). However, to show that Petron had previously paid the excise taxes on these petroleum products, petitioner presented photocopies of Authority to Accept Payment for Excise Taxes issued by respondent pertaining to petroleum products purchased (Exhibits "A-2" to "A-80), pp. 74-152, CTA records).
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> Although these Authority to Accept Payment for Excise Taxes reflect therein the amount of excise taxes paid by Petron to respondent, **this Court cannot verify the exact amount of excise taxes which correspond to the petroleum products delivered to petitioner**. This Authority to Accept Payment for Excise Taxes only proves the payment of millions of pesos in excise taxes made by Petron during the period covered by the claim but they fail to show to this Court which part of this huge amount actually represents the excise taxes paid on the petroleum products actually delivered to herein petitioner. **Petitioner merely presented a summary of petroleum products sold and delivered by Petron during the period covered by the claim. We cannot, by the summary alone, ascertain the veracity of the amount being claimed neither can it prove the existence of the invoices being referred to therein. Petitioner should have submitted the invoices supporting the schedules of petroleum products sold and delivered to it by Petron. These invoices would reveal whether or not the amount claimed for refund by**

petitioner is correct….

> In an action for refund/credits the taxpayer has the burden of showing that the taxes paid are erroneously collected and that failure to meet such a burden is fatal to his cause. Tax refunds partake of the nature of the tax exemptions and therefore cannot be allowed unless granted in the most explicit and categorical language. The grant of refund privileges must be strictly construed against the taxpayer and liberally in favor of the government. (citations omitted)
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> Petitioner has the burden to prove the material allegations in its petition as well as the truth of its claim.[6] (Emphasis supplied)

disposing of the case as follows:

> WHEREFORE, in view of the foregoing, the claim of refund of petitioner in the amount of P602,349.00 is hereby DENIED for lack of merit.[7]

On August 31, 1998, petitioner filed a motion for reconsideration alleging that it failed to submit invoices because it thought that the presentation of said invoices was not necessary to prove the claim for refund, since petitioner's previous claims, in CTA Case Nos. 4654, 4993 and 4994,[8] involving similar facts, were granted by the CTA even without the presentation of invoices. It then prayed that the CTA decision be reconsidered and its claim for refund be allowed, or in the alternative, allow petitioner to present and offer the invoices in evidence to present its claim.[9]

The CTA denied the motion for reconsideration on January 6, 1999, explaining as follows:

> It is important to note at the outset that Petitioner's reliance on CTA Case Nos. 4994, 4654 and 4993 is misplaced because during the hearings of these cases up to the time of formal offer of evidence, CTA Circular No. 1-95 was not yet in effect. The nature and presentation of evidence involving voluminous documents prior to the effectivity of CTA Circular No. 1-95 differ from that which is required by this Court from the effectivity of said Circular beginning January 25, 1995. In the instant case, the Petition for Review was filed on September 1, 1995. It is obviously clear that the provisions of CTA Circular 1-95 already applied to Petitioner's presentation of evidence. Quoted hereunder are portions of CTA Circular 1-95:
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> 1. The party who desires to introduce as evidence such voluminous documents must present: (a) Summary containing the total amount/s of the tax account or tax paid for the period involved and a chronological or numerical list of the numbers, dates and amounts covered by the invoices or receipts; and (b) a Certification of an independent Certified Public Accountant attesting to the correctness of the contents of the summary after making an examination and evaluation of the voluminous receipts and invoices. Such summary and certification must properly be identified by a competent witness from the accounting firm.

2. The method of individual presentation of each and every receipt or invoice or other documents for marking, identification and comparison with the originals thereof need not be done before the Court or the Commissioner anymore after the introduction of the summary and CPA certification. It is enough that the receipts, invoices and other documents covering the said accounts or payments must be pre-marked by the party concerned and submitted to the Court in order to be made accessible to the adverse party whenever she/he desires to check and verify the correctness of the summary and CPA certification. However, the originals of the said receipts, invoices or documents should be ready for verification and comparison in case doubts on the authenticity of the particular documents presented is raised during the hearing of the case.

It can be revealed from the evidence presented by the Petitioner that it failed to present a certification of an independent Certified Public Accountant, as well as the invoices supporting the schedules of petroleum products sold and delivered to it by Petron. From this perspective alone, the claim for refund was correctly denied. Now that an unfavorable decision has been rendered by this Court, Petitioner belatedly seeks to present the invoices as additional evidence.

The prayer to present additional evidence partakes of the nature of a motion for new trial under Section 1 Rule 37 of the 1997 Rules of Civil Procedure. It has already been emphasized in several cases that failure to present evidence already existing at the time of trial does not warrant the grant of a new trial because said evidence can no longer be considered newly discovered but is more in the nature of forgotten evidence. Neither can such inadvertence on the part of the counsel to present said evidence qualify as excusable negligence.[10] (*Emphasis supplied*)

CTA Presiding Judge Ernesto D. Acosta dissented with the view that in the interest of justice, petitioner should be given a chance to prove its case by allowing it to present the invoices of its purchases.[11] He reasoned that:

…A review of the schedule of invoices, Exhibits "A-1" "A-1-a", reveals that there are only about ninety four (94) invoices which does not need the assistance of an independent CPA. It can easily be presented before this Court or before a Clerk of Court for markings and comparison.

The reason advanced by the Petitioner was that they thought the presentation by the Manager of Petron Corporation of a duly notarized certification (supporting the schedules of invoices), coupled with testimonies of witness, Mrs. Sylvia Osorio of Petron Corporation, are enough to prove their case. Respondent did not even controvert said exhibits and testimonies. It is this Court that raised doubts on the veracity of the claim in view of the absence of the invoices. This ground could easily fall under the phrase "mistake or excusable negligence" as a ground for new trial under Sec. 1(a) of Rule 37 and not under the phrase

> "newly discovered evidence" as stated in our said resolution. The denial of this motion is too harsh considering that this case is only civil in nature, govern (sic) merely by the rule on preponderance of evidence. [12]

On January 25, 1999, petitioner filed another motion for reconsideration with motion for new trial praying that it be allowed to present an additional witness and to have invoices and receipts pre-marked in accordance with CTA Circular No. 1-95.[13] The CTA denied the same for the reason that it found no convincing reason to reverse its earlier decision and the motion for new trial was filed beyond the period prescribed by Sec. 1, Rule 37 of the Rules of Court as well as for appeals as provided under Sec. 4, Rule 43.[14]

Petitioner then went to the Court of Appeals (CA) which issued the herein assailed Resolution dismissing the petition for review, to wit:

> Considering that the "AFFIDAVIT OF NON-FORUM SHOPPING" was executed by petitioner's counsel, when under Adm. Circular No. 04-94, the petitioner should be the one to certify as to the facts and undertakings as required; and since any violation of the circular "shall be a cause for the dismissal" of the petition, the petition for review is hereby DENIED DUE COURSE OUTRIGHT, and is DISMISSED.
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> SO ORDERED.[15]

The motion for reconsideration was likewise denied.[16]

Hence the present petition raising the following issues:

1. Whether or not the Court of Tax Appeals should have granted petitioner's claim for refund.

2. Whether or not the Court of Appeals should have given due course to the Petition for Review.[17]

Anent the first issue, petitioner argues that: the CTA erred in denying its claim for refund for its failure to present invoices and receipts; the evidence it adduced, which the CIR did not controvert nor contest, is sufficient to support petitioner's claim for refund or tax credit; as opined by the Presiding Judge of the CTA in his dissenting opinion, the failure of petitioner to present invoices and receipts is a minor infraction of CTA Circular No. 1-95 which should not defeat petitioner's right to refund; there is nothing in said circular which will support the contention of the CTA that the petitioner is mandated to present the invoices in the present case; the CTA, in its previous decisions involving the petitioner, one of which was even affirmed by the CA, held that a refund may be granted solely on the basis of certifications issued by Petron;[18] if it is the avowed purpose of CTA Circular No. 1-95 to ensure the speedy administration of justice, it should not compel petitioner to present additional voluminous evidence which will require the presentation of a Certified Public Accountant (CPA) for court examination aside from entailing additional costs to petitioner; petitioner's counsel was of the honest belief that he was not required to adhere to what is provided in CTA Circular No. 1-95; petitioner should not be burdened by the infraction of its counsel and should be given the fullest opportunity