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SIGNIFICANT DECISIONS OF THE COURT OF TAX APPEALS June 2013

VAT Refund

1. **In an application for refund of input taxes related to zero-rated sales, compliance with the 120-day waiting period is mandatory and jurisdictional, with the exception of the period from December 10, 2003 to December 6, 2010.**

Applying the Supreme Court En Banc decision in the case of Commissioner of Internal Revenue vs. San Roque Power Corporation, G. R. No. 187485; Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113; and Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 197156 promulgated on February 12, 2013, compliance with the mandatory and jurisdictional 120+30 day period is necessary whether before, during, or after the effectivity of the Atlas and Mirant doctrine. However, there is an exception - the period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional. Since the administrative claim was filed on April 20, 2005 and the petition was filed with the Court of Tax Appeals on the following day, it falls squarely within this exception. ***[Marubeni Philippines Corporation vs. CIR, CTA EB No. 799, June 19, 2013[1]]***

2. VAT incurred prior to VAT registration cannot be claimed as input tax.

On August 3, 2009, taxpayer purchased parcels of land for which it incurred VAT. As this was related to its zero-rated sales, it applied for a claim for refund. The Court denied the claim on the ground that it was only registered as a VAT entity on the following day, August 04, 2009. When the purchase was made, taxpayer was not yet a VAT-registered entity. Being a non-VAT taxpayer, it cannot claim that it incurred input taxes. ***(Crescent Park 14-678 Property Holdings, Inc. vs. CIR, CTA Case No. 8326, June 13, 2013)***

3. **Undeclared input taxes in the VAT returns will not result in erroneous payment of output taxes and therefore not refundable under Section 229 of the 1997 Tax Code.**

Taxpayer allegedly failed to include input taxes paid on its purchases of services in the amounts of P60,420,422.20 and P112,341,092.68 in its 2007 3rd and 4th quarter returns, respectively, or for a total of P172,761,514.88. Taxpayer then filed a claim for refund with the BIR and subsequently, a petition for review before the CTA, for the alleged erroneous overpayment of VAT. Taxpayer claims that with the non-inclusion of the input taxes in the VAT returns, this resulted to the over/erroneously paid output taxes.

The Court ruled that in order for input taxes to be available as tax credits, they must be substantiated and reported in the VAT returns of the taxpayer. The claimed P60, 420,422.20 and P112, 341,092.68 represent undeclared input taxes and not the so-called "erroneously paid taxes" as contemplated under Section 229 of the Tax Code, since they were not

[1] This case was remanded to the Court in Division for further proceedings to determine petitioner's entitlement to the relief sought. The same decision was made in the cases of *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue, June 19, 2013; Manulife Data Services, Inc. (Philippines) vs. CIR, CTA Case Nos. 7913, 7977 and 8018, June 13, 2013* .

declared in the VAT returns. The circumstance does not fall within the purview of Section 229 of the 1997 Tax Code. **(*Coca-Cola Bottlers Philippines, Inc. vs. CIR, CTA Case Nos. 7986 and 8028, June 14, 2013)***

4. Proof or supporting documents for export sales.

Taxpayer filed a claim for refund of input taxes related to its export sales. The claim was denied by the Court. According to the Court, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three types of documents, to wit:

1) The sales invoice as proof of sale of goods;
2) The export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3) The bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In other words, only export sales supported by these documents shall qualify for VAT zero-rating. Further, the sales invoice supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

While the taxpayer presented official receipts and bank certifications, the same cannot be possibly linked to export sales since taxpayer failed to submit VAT zero-rated sales invoices and export documents such as export declarations and bills of lading or airway bills. ***(Phil. Gold Processing & Refining Corp. vs. CIR, CTA Case No. 8270, June 11, 2013)***

Income Tax Refund

5. **Presentation of subsequent year's quarterly income tax return is necessary in a claim for refund of excess income tax payments.**

This case involves a claim for refund or issuance of tax credit certificate for the taxpayer's excess income tax payment for the year 2005. The petition was denied by the Court in Division on the ground that the petitioner failed to present its quarterly income tax return for the following year 2006. The *Court En Banc* agreed that the presentation of the quarterly income tax return is vital, without which the Court cannot fully ascertain whether the petitioner did not carry over the excess/unutilized creditable withholding taxes to the subsequent quarters of 2006. ***(Philippine National Bank vs. Commissioner of Internal Revenue, CTA EB Case No. 859, June 05, 2013[2])***

[2] Note that four Justices voted to affirm the decision of the Court in Division while four Justices, including the presiding Justice, voted to reverse it. Considering that the 5 votes required to reverse a decision of division was not obtained, the appealed decision and resolution stand affirmed. A similar case is *Jardine Lloyd Thomson Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 861*, promulgated on the same date, June 05, 2013.

Assessments

6. **For a waiver of the statute of limitations to be valid and binding, all the requirements of RMO No. 20-90 must be strictly complied with.**

In this case, the waiver of the statute of limitations does not show the date when the BIR officer accepted the waiver and there is no indication that the taxpayer received its copy of the said waiver. The Court ruled that the waiver is invalid and did not extend the prescriptive period under Section 203 of the 1997 Tax Code. ***(CIR vs. East Asia Power Resources Corporation, CTA EB Case No. 887, June 19, 2013[3])***

Local Taxes

7. National Power Corporation is not exempt from local franchise tax.

NPC is liable for franchise tax under the Local Government Code (LGC) because it satisfied the two requisites, namely: (1) that NPC has a "franchise" in the sense of secondary franchise or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of the local government unit. As long as NPC exercises its rights and privileges bestowed by its Charter, aside from performing its missionary electrification function, it is considered a business enjoying a franchise that comes within the ambit of Sections 137 and 192 of the LGC. ***(National Power Corporation vs. The Province of Nueva Vizcaya and Perfecto B. Martinez, Jr., CTA AC No. 94, June 3, 2013)***

Others

8. **The Court *En Banc* does not have jurisdiction over interlocutory orders of a Court in Division.**

The Court in Division promulgated resolutions disallowing the admittance of a number of petitioner's exhibits for (1) failure to identify the exhibit during trial; (2) failure to indicate whether the exhibits are the originals, photocopies or certified true copies; or (3) failure to submit copies of exhibits to the Court. Petitioner filed a petition for review before the Court *En Banc* seeking a review of the said resolutions. The Court *En Banc* ruled that while it does have jurisdiction on decisions and resolutions from the Court in Division, this does not include interlocutory orders. Since the resolutions of the Court in Division are merely interlocutory orders, they are outside the jurisdiction of the Court *En Banc*. ***(Medicard Philippines, Inc. vs. CIR, CTA EB Case No. 925, June 19, 2013)***

9. There is forum shopping when taxpayer files multiple cases based on the same cause of action and with the same prayer, while the first case has not been resolved.

Taxpayer was assessed by a joint audit team of the Bureau of Customs (BOC) and Subic Bay Metropolitan Authority (SBMA). The joint audit team recommended the assessment of duties, taxes and penalties in the total amount of P4,236,530,193.00 (P470,720,577 corresponds to the assessed duties and taxes and the P3,765,804,606 corresponds to the penalties imposed). Taxpayer sent a letter to the BOC requesting a reconsideration or

[3] The same decision was earlier made in a case involving the same taxpayer and entitled *CIR vs. East Asia Power Resources Corporation, CTA EB No. 879, June 17, 2013*

reinvestigation of the SBMA-BOC joint audit team's conclusions and recommendations. Subsequently, taxpayer paid to the BOC under protest the amount of P117,681,394. However, on November 7, 2007, the BOC wrote a letter to the taxpayer finally demanding the settlement of the alleged deficiency assessment of basic duties, taxes and penalties. On November 20, 2007, taxpayer filed a petition for review with the CTA, assailing the BOC's demand to pay the assessed duties, taxes and penalties, and was docketed as CTA Case No. 7707. Aside from praying for the Court to cancel and declare the assessment null and void, taxpayer also prayed for the refund of the deposit of P117, 681,394. While CTA Case No. 7707 is pending, taxpayer filed on September 30, 2009 another petition for review with the CTA praying for the refund of the P117, 681,394 allegedly representing erroneously paid taxes and customs duties, and was docketed as CTA Case No. 7981.

The CTA in Division granted the BOC's motion to dismiss CTA Case No, 7981, on the ground that taxpayer is guilty of forum shopping. The CTA *En Banc* confirmed the CTA in Division's dismissal on the ground of forum shopping. According to the Court, forum shopping can be committed in three ways: (1) filing multiple cases based on the same causes of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendencia)*; (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendencia* or *res judicata)*. The Court noted that the relief sought in CTA Case No. 7707 seems to be more than the relief sought in CTA Case No. 7981. But the cause of action which serves as the foundation of the reliefs sought remains the same – the alleged nullity of the assessment and the final demand of the deficiency basic duties, taxes and penalties. What is involved in this case is the first way of committing forum shopping. ***(PTT Philippines Trading Corporation vs. Bureau of Customs, CTA EB No. 852, June 17, 2013)***