BDB Law wts
DU-BALADAD AND ASSOCIATES

SIGNIFICANT DECISIONS OF THE COURT OF TAX APPEALS
July 2013

VAT Refund

1. **Late filing of a petition for the refund of input taxes after the inaction of the Commissioner renders the Court without jurisdiction to entertain the petition.**

Taxpayer filed its administrative claim for refund of unutilized input taxes for the year 2009 on April 12, 2010. Due to the inaction of the Commissioner, taxpayer filed its judicial claim before the Court of tax Appeals (CTA) on March 31, 2011.

The Court ruled that in accordance with Section 112(D) of the 1997 Tax Code, the Commissioner had 120 days or until August 10, 2010 to rule on the administrative claim, Taxpayer then had 30 days after August 10, 2010 or until September 10, 2010 to file its judicial claim. For failure of taxpayer to file its judicial claim within 30 days from the lapse of the mandatory 120-day period, the Court dismissed the petition on the ground of lack of jurisdiction. ***[Mindanao Geothermal Partnership vs. CIR, CTA EB Case No. 855, July 15, 2013[1]]***

Refund of Excise Tax

2. **The seller is not entitled to a refund of excise taxes paid on petroleum products sold to international carriers.**

Taxpayer, a corporation engaged in the sale of petroleum products, imported Jet A-1 fuel where it paid excise taxes. These were later sold to various international carriers. It then sought to claim through a refund of the excise taxes it paid on the Jet A-1 fuel it sold to international carriers on the basis of Section 135 of the 1997 Tax Code.

The Tax Court denied the claim. According to the Court, there is nothing in Section 135 of the 1997 Tax Code that expressly grants the taxpayer, a seller of petroleum products, exemption from the payment of excise taxes. Citing the case of *Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue (G.R. No. L-19707, August 17, 1967),* the Court noted that a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer/importer of the goods for any tax due to it as the manufacturer/importer. The excise taxes on petroleum products under Section 148 of the 1997 Tax Code is the direct liability of the manufacturer/importer who cannot invoke the excise tax exemption granted to its buyers who are international carriers. ***(Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8049, July 11, 2013)***

[1] The same decision was made in the case of *Denso Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 875, July 09, 2013*

Refund of Withholding Tax

3. **Grant of incentives to PEZA registered entities covers not only the activities explicitly listed under the entity's certificate of registration but extends to activities necessarily related to the registered activities.**

This case involves a claim for refund of taxes withheld on the payments made to a PEZA registered entity on the ground that the payment to a PZEZA registered entity is not subject to withholding tax. The payments pertain to the lease of transmission facilities. The BIR argued that the lease of transmission facilities is not one of those listed in the payee's Registration Agreement with PEZA. Hence, the income arising from the lease is subject to income tax and creditable withholding tax. The payee's registered activity is the establishment of a contact center or outsourced customer care services and business process outsourcing services.

The Court found that under the PEZA registered entity's Registration Agreement with PEZA, it undertook to supply the whole package or infrastructure and information technology support services, which necessarily includes the lease of transmission facilities. Hence, the payment is exempt from withholding tax. ***(Commissioner of Internal Revenue vs. JP Morgan Chase Bank, N.A. - Philippine Customer Center, C.T.A. EB No. 876, July 15, 2013)***

Assessments

4. **Failure to comply with the due process requirements in the issuance of an assessment renders the assessment void.**

The due process requirement in the issuance of a deficiency tax assessment are laid down in Section 3 of RR No. 12-99, which provides the need for (1) notice for informal conference, (2) a preliminary assessment notice, and (3) a formal letter of demand and assessment notice sent to the taxpayer. For failure of the BIR to prove that it complied with the first two requirements, such failure violated the taxpayer's right to due process. Said failure renders the assessment invalid. The Court noted that service of the assessment notice to the taxpayer may be by registered mail or by personal delivery. If the assessment is served by registered mail, and the original was not returned to the BIR, the presumption is that the taxpayer received the assessment in the regular course of business. The facts to be proved in order to raise this presumption are: (1) that the letter was properly addressed with postage prepaid, and (2) that it was mailed. In this case, the BIR failed to present in evidence the registry receipt as proof of mailing and receipt. ***(Alpha Rigging & Moving Systems, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8135, July 12, 2013)***

5. **The Court has no jurisdiction to entertain a petition for review that is filed out of time.**

On March 28, 2011, taxpayer received a Final Decision on Disputed Assessment (FDDA) amending a previously issued Assessment Notice and Details of Discrepancies. On April 28, 2011, taxpayer filed a request for reconsideration of the FDDA and amended assessment notice. The BIR sent a letter-reply, dated May 09, 2011, denying the request and informing the taxpayer that the case has become final, executory and demandable. On May 27, 2011, the taxpayer filed a petition for relief from judgment with the BIR. On June 29, 2011, taxpayer received a preliminary collection letter from the BIR, which it deemed a denial of its petition for relief from judgment. Accordingly, on July 29, 2011, taxpayer filed its petition for review with the CTA. The Court dismissed the petition for lack of jurisdiction, the same having been

filed out of time. ***(Misnet, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 915, July 15, 2013)***

6. **The tenor of the letter of the BIR clearly showing the firm stand against the reconsideration of a disputed assessment should be considered as the final decision of the BIR on taxpayer's administrative protest.**

Taxpayer, being one of the top 10,000 corporations, was assessed for deficiency withholding tax for its failure to withhold 1% tax on its payments to suppliers of agricultural products in the year 2005. On November 5, 2008, the regional director issued notice of assessment, for which the taxpayer timely filed its protest. Subsequently, in a letter dated December 3, 2008, the regional director reiterated his demand for the payment of the deficiency withholding tax. Taxpayer filed another letter with the regional director requesting cancellation of the assessment. In a letter dated January 21, 2009, the regional director reiterated his demand and informed taxpayer that the whole case docket was forwarded to the revenue district office for the enforcement of the collection. The taxpayer filed with the Office of the Commissioner a motion for reconsideration/appeal against the regional director's letter dated January 21, 2009. On February 23, 2012, the Commissioner dismissed the appeal on the ground that is was filed out of time. Taxpayer filed the petition for review with the CTA on May 14, 2012.

The Court dismissed the petition for the petition for lack of jurisdiction. According to the Court, the decision of the Commissioner or his duly authorized representative shall be the decision appealable to the CTA within 30 days from receipt thereof. Otherwise, the assessment shall become final, executory and demandable. The decision of the authorized representative will not attain finality if the taxpayer appeals the same to the Commissioner, who shall then be required to decide the protest. According to the Court, the letter of the regional director dated December 3, 2008 should be considered as the final decision by the BIR on the taxpayer's administrative protest. The said letter made reference to the protest filed by taxpayer and reiterated the demand for payment. The tenor of said letter clearly shows the firm stand of the BIR against the reconsideration of the disputed assessment and therefore should be considered as the final decision. Thus, counting from said date, the taxpayer had until January 21, 2009 within which to appeal to the CTA. Accordingly, the disputed assessment had already become final and executory. ***(Cagayan Corn Products Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8491, July 08, 2013)***