BDB Law wts

DU-BALADAD AND ASSOCIATES

SIGNIFICANT DECISIONS OF THE COURT OF TAX APPEALS
September 2013

VAT Refund

1. **When additional document is submitted after the filing of the administrative claim, the 120-day period is reckoned from the filing of the additional document.**

Taxpayer filed its administrative claim for refund of input taxes related to zero-rated sales on March 11, 2011. On July 1, 2011, taxpayer filed additional documents in support of its claim for refund. On August 5, 2011, taxpayer filed its petition for review with the CTA. The BIR argued that since the taxpayer filed additional documents on July 1, 2011, the 120-day period should be counted from said date. Accordingly, the filing of the petition with the CTA on August 05, 2011 was premature. The taxpayer, on the other hand, argued that the judicial claim is not premature for the reckoning of the 120-day period is on March 11, 2011 and not July 1, 2011.

In resolving the issue, the Court ruled that the taxpayer submitted its documents twice. The first was when it filed its administrative claim on March 11, 2011. And the second was on July 1, 2011, when it submitted additional documents in support of its application for refund. This only shows that on March 11, 2011, the documents submitted were incomplete. For if taxpayer finds the documents submitted on March 11, 2011 are already complete, taxpayer would not have submitted additional documents. Hence, the reckoning period is not on March 11, 2011 but on July 1, 2011 when additional documents were submitted. Hence, the BIR has 120 days from July 1, 2011 or until October 29, 2011 to act on taxpayer's claim. Since the petition was filed on August 8, 2011 or before the 120-day period has lapsed, the Court has no jurisdiction to entertain the petition. ***(WNS Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 899, September 10, 2013)***

2. **Input taxes not reported in the VAT returns cannot be the subject of a refund on the ground of over or erroneous payment.**

Taxpayer filed its quarterly VAT return for the quarter ended March 31, 2008 allegedly understating its reported input VAT by P123,459,647.70, because of its failure to upload the transactions in its accounting system. However, when the error was discovered, it was not able to amend its quarterly VAT returns since a Letter of Authority was already issued by the BIR. Accordingly, the omission was not included in the tax overpayment (excess input tax) for the same quarter and accordingly did not form part of the carry-over to the succeeding quarter. Taxpayer then filed an administrative claim for refund or tax credit of its alleged over/erroneous payment of VAT with the BIR and subsequently filed a petition for review with the CTA.

According to the CTA, the unreported input taxes essentially represent undeclared input taxes in the VAT returns, and not erroneously paid VAT or understatement of VAT overpayment. Section 112 of the NIRC of 1997 explicitly provides the following instances when input taxes may be claimed for refund: (1) when they are attributable to zero-rated or effectively zero-rated sales, and (2) upon cancellation of VAT registration due to retirement from or cessation of business. Taxpayer's claim of its undeclared input taxes does not fall under any of the foregoing instances. Thus, it is not entitled to a refund or issuance of tax credit certificate. ***(Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8099, September 18, 2013)***

3. **Cancellation of VAT registration of any person ceasing to do business is effective on the first day of the month following the filing of the application for registration information update.**

On March 29, 2010, the Securities and Exchange Commission (SEC) approved the merger of Marubeni Pacific Energy Holdings Corporation (MPEHC), Marubeni Pacific II Energy Holdings Corporation and Marubeni Energy Holdings Corporation with Axia Power Holdings Philippines Holding Corporation. On account of the merger, MPEHC withdrew as one of the partners in Mindanao I Geothermal Partnership (MGP). The SEC also approved the withdrawal on March 29, 2010, which resulted in the dissolution of MGP. Following its dissolution, MGP filed its Application for Cancellation of TIN and Issuance of Tax Clearance Certificate with a claim for Refund of Excess Input Tax on April 15, 2010.

Section 112(B) of the NIRC of 1997 allows a taxpayer whose registration has been cancelled due to cessation of business to apply for the issuance of tax credit certificate for excess and unutilized input VAT. This should be done within 2 years, which is reckoned from the date of cancellation of registration. In relation thereto, pursuant to Section 236(F)(1) and (2)(b) of the NIRC of 1997, the general rule is that the registration of any person who ceases to be liable to a tax type shall be cancelled upon the filing of an application for registration information update. However, cancellation of VAT registration will be effective from the 1st day of the following month. Since MGP's application for cancellation of registration was filed on April 15, 2010, its VAT registration is considered cancelled on May 1, 2010. Counting 2 years from the said date of cancellation, MGP may apply for issuance of tax credit certificate of its unused input tax until May 1, 2012. Hence, the filing of the administrative claim on April 15, 2010 was premature. Thus, no administrative claim for refund was properly filed with the BIR. ***(Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue, CTA EB No. 956, September 16, 2013)***

Local Taxes

4. **The Regional Trial Court does not have jurisdiction to rule on the validity or constitutionality of local tax ordinance.**

The taxpayer was assessed by the city treasurer of Makati City for local business tax on dividend income, gain on sale of shares and interest income. Taxpayer filed a protest disputing the assessment on the ground that the income subject of the assessment are not subject to local business tax as these are generated from passive investment. The city treasurer granted the protest in so far as the gain on sale of shares and interest income were

concerned but sustained the assessment on dividend income. Taxpayer then filed a complaint with the RTC praying for the cancellation of the assessment on dividend income. The RTC dismissed the complaint on the ground that the complaint is a direct attack on the constitutionality and validity of Section 3A.02(p) of The Revised Makati Revenue Code, the basis of the deficiency tax assessment.

On appeal to the CTA, the latter Court agreed with the RTC. The RTC does not have jurisdiction to rule on the constitutionality of Section 3a.02(p) of the Revised Makati Revenue Code. Instead, the authority to decide on the said issue is lodged in the Secretary of Justice, pursuant to the provisions of the Local Government Code and its Implementing Rules and Regulations. ***(Michigan Holdings, Inc. vs. The City Treasurer of Makati, Nelia Barlis, CTA AC Case No. 99, September 19, 2013)***