BDB Law wts

DU-BALADAD AND ASSOCIATES

SIGNIFICANT DECISIONS OF THE COURT OF TAX APPEALS
January 2014

Assessment

1. Failure to imprint the word "VAT-Exempt Sale" or "ZERO-Rated Sale" makes the transaction VATable.

When a PEZA-registered enterprise engages in activities which are not registered with PEZA, the income or receipts derived from the unregistered activities shall be subject to the regular internal revenue taxes, such as VAT. In such case, the PEZA-registered enterprise is obliged to register as a VAT taxpayer and issue a VAT official receipt or invoice for every sale or transaction which is subject to VAT. Should the PEZA-registered enterprise use its VAT official receipt or invoice to evidence its VAT- exempt sale, Section 113 of the NIRC of 1997 requires it to prominently write or print the term "VAT-exempt sale" on the VAT official receipt or invoice as failure to do so shall make it liable to account for the VAT as if the sale is not VAT-exempt.

Thus, by reason of taxpayer's failure to indicate the words "VAT-exempt sale" on the official receipts that were issued, taxpayer is liable for the sale of services which are supported by official receipts that do not bear the word "VAT-exempt sale". ***(Commissioner of Internal Revenue vs. First Sumiden Realty, Inc., CTA EB No. 975, January 04, 2014)***

2. No taxable income will result from the difference between the amount of income payments reported per alpahlist and expenses per FS and ITR.

The BIR compared the expenses reported by the taxpayer in its FS and ITR with the same nature of expenses reported in the alphalist. With the alphalist showing higher amount, the BIR concluded that the taxpayer had unaccounted sources of cash or undeclared income.

According to the Court, this conclusion lacks merit because assuming that there is unaccounted source of cash or undeclared income, there are also payments or expenses which were unreported. If this is the case, the undeclared income would be effectively offset with the consideration of the related expenses. Consequently, no taxable income will result from the transactions. ***(East Asia Power Resources, Corp. vs. Commissioner of Internal Revenue, CTA Case No. 8182, January 15, 2014)***

3. The Court of Tax Appeals does not have jurisdiction over a petition for review filed before it questioning the validity of an assessment that was not protested before the BIR.

On December 14, 2010, taxpayers were issued Preliminary Assessment Notice (PAN) assessing them for alleged deficiency donor's taxes. On January 18, 2011, taxpayers filed their protest against the PAN. On March 9, 2011, taxpayers received a letter from the Regional Director denying the protest to the PAN. And attached to said letter are the Formal Letter of Demand and the Assessment Notice, reiterating the same assessment for the donor's tax. Without filing any formal protest letter against the Formal Letter of Demand and Assessment Notice, the taxpayers filed a petition for review with the CTA on March 28, 2011. The BIR argued that the CTA is bereft of jurisdiction to try the case on account of the prematurity of filing of the petition for review.

According to the Court, given that the taxpayers did not file a protest against the final assessment notice, there is no inaction or decision of the BIR Commissioner appealable before the Court. Thus, the Court has not acquired jurisdiction over the subject matter of the case. ***(Castalloy Technology Corp., Allied Industrial Corp. and Alinsu Steel Foundry Corp. vs. Atty. Jose N. Tan, CTA Case No. 8244, January 30, 2014)***

4. Error in the carry-over of prior year's excess credits does not give rise to deficiency income tax liability because it does not in any way pertain to an expense or income account which could affect the income tax due.

In the 2006 annual income tax return of taxpayer, it erroneously carried over a prior year's excess tax credits of P12,785,038, instead of the correct amount of P11,278,461.95. The taxpayer was then assessed by the BIR for deficiency income tax for the overstatement in the amount of P1,506,576. The taxpayer explained in its protest that the discrepancy in the prior year's excess credit was adjusted in the ITR of the year 2008 and this had no effect in the amount to be paid in 2006. In the Final Decision on Disputed Assessment, the BIR did not consider the adjustment made in 2008 on the ground that the said adjustment allegedly affected the succeeding year 2007, which is under investigation. Taxpayer then appealed to the CTA. The BIR argued that taxpayer cannot escape liability by adjusting its 2008 ITR to offset the erroneously carried-over excess tax credits in 2006 since an assessment was already issued.

The Court ruled in favor of the taxpayer. The item involved in the assessment, i.e., discrepancy on prior year's excess tax credits claimed, does not pertain to either of the income or cost/expense accounts in the 2006 ITR, which could affect taxpayer's income tax due. Hence, there could be no deficiency income tax so to speak. In fact, taxpayer would still have a tax overpayment after adjustment of prior year's excess credits. ***(Commissioner of Internal Revenue vs. Waterfront Cebu City Hotel & Casino, Inc., CTA EB No. 991, January 29, 2014)***

Tax Refund

5. DST on sale of shares of stock is based on par value and not on the selling price of the shares.

A shareholder sold to another taxpayer its shares of stock held in another company with par value of P93,727,000 for a total consideration of P911,545,000. Taxpayer paid the DST in the amount of P3,418,300 which was computed based on the selling price of P911,545,000. Realizing that it should have paid DST based on the par value, taxpayer filed a claim for refund for the excess tax payment. The BIR argued that the DST on sale of shares should be computed based on the total purchase price and not on the par value. Thus, there was no error in the payment made.

In ruling in favor of the taxpayer, the Court ruled that in accordance with Section 175 of the Tax Code, in computing the DST due on the sale of shares of stock, the tax base is the total par value of the shares and not on the purchase price. ***(Commissioner of Internal Revenue vs. Eco Leisure and Hospitality Holding Company, Inc., CTA EB Case No. 1013, January 14, 2014)***

6. **To be entitled to VAT zero-rating on sale of electricity generated from renewable source of energy, taxpayer must prove that it is a generation company by showing its ERC registration and Certificate of Compliance.**

Taxpayer owns a hydro-electric power plant, which was duly certified by the Department of Energy as consistent with the Power Development Plan of the government. Taxpayer sells its generated power through hydro-electric power to Davao Light and Power Company, Inc. For its unutilized input VAT attributable to its zero-rated sales of generated power covering the first quarter of 2008, taxpayer filed a claim for refund. Due to inaction of the BIR, taxpayer filed a petition for review before the CTA.

As ruled by the Court, one of the requisites in a claim for refund of input taxes related to zero-rated sales is that there must be zero-rated of effectively zero-rated sales. In this regard, the sale of generated power of fuel through renewable source of energy is VAT zero-rated under Section 108(B)(7) of the NIRC of 1997. However, to be qualified for VAT zero-rating, taxpayer must be able to prove that it is a generation company and that it is engaged in the sale of power or fuel generated though renewable source of energy. To be considered a generation company, an entity should be authorized by the Energy Regulatory Commission (ERC). Without a Certificate of Compliance (COC) issued by the ERC, a person cannot be said to be a generation company. Hence, a taxpayer must be able to prove that it is issued a COC by the ERC to be entitled to a refund. ***(Hedcor Sibulan, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8051, January 29, 2014)***