Significant Court of Tax Appeals Decisions
May 2018

Sales of services of an ecozone enterprise within the customs territory are not subject to VAT so long as such sales do not exceed the 30% threshold.

The taxpayer argues that, as a registered enterprise in the Clark Special Economic Zone, it enjoys the preferential tax rate of 5% in lieu of all local and national taxes, unless it breaches the 30% threshold on its sales within the customs territory. Since its revenues from enterprises located outside the ecozone constitute only 7.12% of its total revenue, the taxpayer contends that its sales within the customs territory should not be subject to VAT.

The BIR, on the other hand, insists that the sales rendered to a customer from the customs territory is subject to VAT. The CTA ruled in favour of the taxpayer.

The CTA noted that the taxpayer was being assessed for failure to pay alleged taxes on sales of services made outside the ecozone. The assessment was anchored on Section 3 (Q9/A9) of RMC No. 50-2007 which provides that the sale of service shall be exempt from VAT if the service is performed or rendered within the free port zone. The CTA further noted that no distinction was made between a service done within the free port zone and outside the free port zone. The RMC merely stated that tax implication of the sale of service within the free port zone. Thus, it is proper to relate the same to Section 3 (Q7/A7) of same RMC, which states that should a free port zone-registered enterprise's income from sources within the customs territory exceed 30% of its total income, then it shall be subject to the income tax laws of the customs territory. Since the taxpayer's sales within the customs territory do not exceed the aforesaid 30% threshold, then it follows that it is entitled to enjoy the 5% special tax regime in lieu of national and local taxes, including VAT. (*Clark Water v. Commissioner of Internal Revenue, CTA Case No. 9286, May 3, 2018)*

Note: **This is a novel decision as it clarifies that; it is only when the 30% income threshold is breached that VAT can be imposed on a PEZA enterprise.**

Applying the principle of solutio indebiti, inaction of the Commissioner of Customs is within the CTA's exclusive appellate jurisdiction.

The Commissioner of Customs (COC) argues that the CTA has no jurisdiction over the inaction of the Commissioner of Customs. The Court held that it could take jurisdiction. The failure or inaction of the COC should not be allowed to prejudice the right of a taxpayer. Technicalities and legalisms should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of taxpayers. It would be anomalous, if not highly iniquitous, if the taxpayer will be totally at the mercy of the COC. Such possible inaction can deprive lawful tax refund claimants of a positive and expedient relief from the courts of justice. The provisions of the law on *solutio indebiti* are applicable.
(AGC Flat v. BOC CTA Case No. 8752, May 9, 2018)

Note: **This theory may be applied in the current rules on VAT refund. The TRAIN law states that the BIR is given 90 days to process a VAT refund. But if there is no decision on the part of the BIR within those 90 days, the taxpayer cannot elevate its claim to the CTA. Unlike in the previous law and jurisprudence, the BIR's inaction after 90 days is not tantamount to denial of a claim for refund, which can be the basis of elevating the said claim to the CTA.**

Using this case as basis, taxpayers may use the argument of *solutio indebiti* in elevating a claim for refund, if the BIR does not act after 90 days.

In a refund of excise taxes paid in advance for locally manufactured products which are subsequently exported, the 2-year period to file the administrative and judicial claims as provided in Sections 204 and 229 of the Tax Code applies.

In compliance with Revenue Regulations No. 03-08, the taxpayer advanced the excise tax on tobacco and cigarette products it exported. The taxpayer filed with the BIR a claim for refund on said advanced excise taxes on its exported tobacco. Claiming inaction on the administrative claim and the six-year prescriptive period under Article 1145(2) of the Civil Code is about to expire, the taxpayer elevated the same to the CTA. Before the CTA, the taxpayer claims that the amounts it advanced or deposited under Revenue Regulations No. 03-08 should be returned to it pursuant to the principle of solutio indebiti. The taxpayer contends that the two-year prescriptive period under Section 204(C) and 229 of the Tax Code is not applicable. The CTA disagreed.

In claiming a refund of excise taxes paid in advance for locally manufactured products which were subsequently exported, the two (2)-year period to file the administrative and judicial claims as provided in Sections 204 and 229 of the NIRC of 1997, as amended applies - - the excise taxes paid in advance having become illegally paid or erroneously collected upon exportation of the locally manufactured products. The two-year prescriptive period found in Sections 204 and 229 of the Tax Code, which is a special law, should prevail over the prescriptive period under the Civil Code. Further, there is no *solutio indebiti*, in this case, as the payment pursuant to RR No. 03-08 was not made through mistake. Thus, the taxpayer failed to timely file its administrative and judicial claims for refund. *(Philip Morris v. CIR CTA Case No. 8791, May 9, 2018).*

Services rendered by a local supplier to a RE developer as part of the whole process of exploration and development of renewable energy sources are VAT zero-rated.

The taxpayer contends that its sales to registered RE developers are subject to zero percent (0%) VAT under the Tax Code and the Renewable Energy Act of 2008. The CTA agreed. Under the Renewable Energy Act, the whole process of exploration and development of renewable energy sources up to its conversion into power, including the services performed by contractors or subcontractors is a zero-rated transaction. Moreover, the law is categorical in stating that RE Developers are entitled to zero-rated VAT on their purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities. The taxpayer's rendition

of services for the engineering, procurement and construction of the wind power plant of the registered RE developer may be treated as part of the whole process of exploration and development of renewable energy sources. As a local supplies of services needed for the development, construction and installation of the RE facilities, the services qualify as zero-rated. (*Vestas Services v. CIR CTA Case No. 9382 May 9, 2018).*

Note: **Since development of a renewable energy plant takes years to complete, when should be the reckoning date when the taxpayer decides to refund its input VAT related to zero rated sales? Is it within two (2) years when the input VAT was incurred or it must be within two (2) years when the first zero-rated sales were made?**

An original special civil action for certiorari directed against an Order of the Central Board of Assessment Appeals is within the Court of Tax Appeal's exclusive appellate jurisdiction.

The taxpayers argue that the CTA does not have jurisdiction over an original special civil action for certiorari directed against a mere Order of the CBAA and the CTA's power to issue writs of certiorari is limited only to cases clearly falling within the Court's exclusive appellate jurisdiction. The Court disagreed. In *City of Manila v. Hon. Grecia-Cuerdo, G.R. No. 175723, February 4, 2014*, notwithstanding that there is no categorical statement under the CTA's original charter, *i.e.,* RA No. 1125, and the amendatory law thereto, *i.e.,* RA No. 9282, the CTA is endowed with jurisdiction to entertain petitions for *certiorari* questioning interlocutory orders issued by regional trial courts in local tax cases. While the *City of Manila* case referred only to, and merely tackled, the jurisdiction of the CTA over a special civil action for *certiorari* assailing an interlocutory order issued by the RTC in a local tax case, the CTA ruled that it can also be reasonably concluded that based on the premise of the said *The City of Manila* case, the CTA is likewise endowed with jurisdiction to entertain the instant case, which is a special civil action for *certiorari* assailing an interlocutory order issued by public respondent CBAA. Further, it is clear that the CTA *En Banc* has appellate jurisdiction to review decisions of the CBAA pursuant to Section 7(a)(5), in relation to Section 11, both of RA No. 1125, as amended by RA No. 9282. (*The Local Board of Assessment Appeals of Bulacan v. Central Board of Assessment Appeals, Manila Water Co. and Maynila Water Services, CTA EB No. 1505 (CBAA Case Nos. L-82 & L-83, May 10, 2018).*

In case of the CIR's inaction, the CTA may give credence to all evidence presented even those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.

The CIR contends that the CTA has no jurisdiction to entertain the Petition for Review on the ground that no valid administrative claim for refund was instituted by the taxpayer as it failed to submit complete supporting documents particularly those required under RMO No. 53-98. Thus, the judicial claim for refund was prematurely filed. The CTA disagreed with the CIR's contention. The CTA held that the documents submitted, or the lack thereof, at the administrative level regarding a claim for refund of unutilized input VAT, is irrelevant when the claim has already reached the Court, especially when there is inaction on the part of the CIR at the administrative level. Further, it has long been settled that compliance

with RMO No. 53-98, especially at the judicial level, is not required for the claim of refund to prosper. (*Commissioner of Internal Revenue v. Coral Bay, CTA EB No. 1418, May 17, 2018*)

Note: **The BIR has issued RMC No. 54-2014 on June 14, 2014, which superseded by RMC No. 17-2018 on February 27, 2018. The said RMCs list down all documents that must be submitted in a claim for VAT refund. It is interesting to know if the court will still apply its ruling in this case, when it decides on claims for refund that were filed during the effectivity of RMC No. 54-2014 and after the effectivity of RMC No. 17-2018.**

An appeal to the CTA En Banc of an Amended Decision of the CTA in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

The CTA in Division partially granted the taxpayer's petition. The taxpayer timely filed a Motion for Reconsideration. The CTA in Division partially granted the taxpayer's Motion for Reconsideration and modified its earlier Decision by issuing an Amended Decision. The taxpayer filed an appeal with the CTA En Banc. The Court held that before an appeal may be filed with the Court *En Bane* by an aggrieved party, the appeal must be preceded by the filing of a timely motion for reconsideration or new trial with the Division that rendered the questioned amended decision. An amended decision which modifies or reverse a decision, is a new and different decision, thus, is a proper subject of a motion for reconsideration. Failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of a petition before the CTA En Banc. Here, the taxpayer did not file a motion for reconsideration of the Amended Decision and thus the case should be dismissed. (*Greenhills Properties, Inc. v. Commissioner of Internal Revenue, CTA EB No. 1604 (CTA Case No. 8295), May 17, 2018)*

Machineries and equipment actually, directly, and exclusively used in the generation and transmission of electric power are exempt from real property tax under the Local Government Code only if the actual, direct and exclusive user of the said properties is a government-owned or controlled corporation and not a private corporation.

The National Power Corporation (NPC) insists that it is entitled to the real property exemption on the machineries comprising one of its power plants, built under a Build-Operate-Transfer (BOT) scheme with Luzon Hydro Corporation (LHC). Under Section 234 of the Local Government Code, machineries and equipment actually, directly, and exclusively used by government-owned or controlled corporations engaged in the generation and transmission of electric power are exempt from real property tax. The CTA En Banc ruled that the NPC was not entitled to the said exemption, as there must be actual, direct, and exclusive use of the machineries. While it is undisputed that the subject properties, machineries and equipment are actually, directly, and exclusively used in the generation and transmission of electric power, the actual, direct, and exclusive user of the subject properties in the generation and transmission of electric power is LHC, which is not GOCC. By the express terms of the BOT Agreement, LHC has complete ownership - both legal and beneficial - of the project, including the machineries and equipment used, subject only to the transfer of these properties to NPC after the lapse of the period agreed upon. (*NPC v. Luzon Hydro, CTA EB No. 1020, May 22, 2018)*