Significant Court of Tax Appeals Decisions
April 2019

The presence of zero-rated or effectively zero-rated sales is very critical for VAT refund.

The taxpayer filed a VAT refund for the alleged unutilized input VAT for the taxable year 2013. BIR counter-argues that the taxpayer is not entitled for refund considering that petitioner is not yet selling its geothermal energy power.

The CTA ruled that, the presence of zero-rated or effectively zero-rated sales is very critical. This is so because the said fourth, eighth, and ninth requisites are entirely dependent on the said presence of such zero-rated or effectively zero-rated sales. The fourth requisite, it is explicit that taxpayer must be engaged in zero-rated or effectively zero-rated sales. As regards the eighth requisite, the presence of zero-rated or effectively sales are indispensable because the input VAT being refunded must be attributable thereto. In the same vein, the ninth requisite entails the existence of zero-rated or effectively zero-rated sales despite that there are also taxable or exempt sales, because the proportionate allocation on the basis of sales volume cannot be had in the absence the said zero-rated or effectively zero-rated sales.

In the instant case, there are no zero-rated sales yet unto which the subject input VAT can be attributed for the year 2013. Correspondingly, the taxpayer failed to comply with the eighth and fourth requisite. *(Maibarara Geothermal Inc., vs. Commissioner of Internal Revenue, CTA Case Nos. 9119, 9201, 9254 and 933, March 4, 2019)*

Direct denial of receipt of PAN shifts the burden to the party favored by the presumption to establish that the subject mailed letter was actually received by the taxpayer.

The Commissioner of Internal Revenue (CIR) filed a Motion for Reconsideration assailing the CTA's Decision, that the assessments are void for the alleged failure on the part of CIR to prove service of the Preliminary Assessment Notice (PAN) to the taxpayer. Likewise, the CIR assailed that he is entitled to the benefit of the presumption that the PAN was received in the ordinary course of mail.

The CTA ruled that the presumption that the notice was received in the regular course of mail is disputable subject to controversion and direct denial thereof shifts the burden to the party favored by the presumption to establish that the subject mailed letter was actually received by the taxpayer. Furthermore, Registry Return Receipts must be authenticated to serve as proof of receipt of letters sent through registered mail. Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.

In this case, the subject mail matter of Registry Return Receipt is insufficient to prove that CIR was able to strictly comply with the requirements set forth under the law. The revenue officer presented had no personal knowledge on whether the subject mail matter Registry Return Receipt is indeed the PAN or said PAN was mailed or actually delivered to the addressee or the latter's duly authorized representative since she merely sends said PAN to the Administrative Office. *(Far East Seafood, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8909, March 4, 2019)*

A request for reconsideration is not the same as a request for reinvestigation which suspends the running of the statute of limitations.

The BIR issued an assessment notice against the taxpayer on January 15, 1996. On February 6, 1996, the taxpayer filed its protest. Although there was no allegation of a Final Decision on Disputed Assessment, the taxpayer, on August 4, 1998, filed a supplemental protest. On February 1, 2018, petitioner received a letter dated November 6, 2017 from the BIR as the latter's final action to the taxpayer's assessment.

When the assessment was elevated to the CTA, the BIR argued that its right to collect the deficiency taxes has not yet prescribed since the request for reinvestigation filed by the taxpayer effectively suspended the running of the prescriptive period to collect.

The CTA ruled that, the law is categorical that the suspension of the statute of limitations shall only take effect when a taxpayer files a protest letter with a request for reinvestigation and the respondent granted the request for reinvestigation made by a taxpayer.

In the instant case, petitioner's supplemental protest letter dated August 4, 1998 did not request for reinvestigation. Rather, it is asking the concerned BIR Revenue District Officer that the "examiner's findings be properly reconsidered." Thus, it is a request for reconsideration which was not among the circumstances in the above-mentioned provision that will suspend the running of the statute of limitations. Further, the waiver of the taxpayer of the defense of prescription shall only be effective when there is a written agreement between both the taxpayer and the respondent. However, the facts and circumstances in the records of this case had no written agreement for such waiver of the defense of prescription. The running of the statute of limitations has not been effectively suspended. *(WPP Marketing Communications Inc. (formerly known as J. Walter Thompson Company (Philippines) Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 9778, March 5, 2019)*

The BIR must present evidence to justify the application of the ten-year prescriptive period.

The BIR filed a petition for review with the CTA *En Banc* on the decision of the CTA's First Division dated January 22, 2018. The BIR contends that it's right to assess respondent deficiency taxes has not yet prescribed. It argued that there was falsity in the cost of goods sold declared per the taxpayer's tax returns justifying the application of the ten-year prescriptive period.

The CTA noted that the present Petition for Review is nearly a word-for-word rehash of the CIR's Motion for Reconsideration submitted before the Court in Division. The CTA thus ruled that the BIR did not present any evidence to prove the falsity of taxpayer's tax returns in order to justify the application of the ten-year prescriptive period. *(Commissioner of Internal Revenue vs. Parity Packaging Corporation, CTA EB No. 1783 (CTA Case No. 8825), March 5, 2019)*

The taxpayer must receive the PAN, and the FAN to comply with the due process requirement.

The taxpayer is being assessed for deficiency income tax and VAT for taxable year 2005. During the course of its assessment, the BIR issued a PAN, and a FAN. However, the PAN, and the FAN bore different addresses. Further, the said addresses are not the registered address of the taxpayer.

The CTA ruled that, in compliance with the requirements of due process, not only must formal assessment notices be issued and received by the taxpayer, but such taxpayer must also receive a preliminary assessment notice or PAN. Also, denial by the taxpayer of receipt of any of these notices shifts the burden of proving receipt of said notices on respondent.

In the instant case, taxpayer consistently denied receipt of the PAN, FAN, and FLD because they were sent to the wrong address. Thus, it was incumbent upon the BIR to prove, not only that the PAN, and the FAN were validly issued and mailed, but that they were duly received by the taxpayer. As the PAN, and the PAN were never received by taxpayer, there was no valid service of said notices depriving taxpayer of the facts and the law upon which the assessment issued against it was based in violation of its right to due process. *(Bostik Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9019, March 05, 2019)*

The absence of a valid LOA originating from the CIR or the Revenue Regional Director renders the assessment void.

The Commissioner of Internal Revenue (CIR) asserts that RMO Nos. 8-2006 and 62-2010 allowed the head of investigating office to issue a Memorandum of Assignment (MOA) in cases of reassignment/retirement or resignation of the previously assigned Revenue Officer (RO) named in the LOA. Since the ROs named under the LOA were transferred/reassigned, the Chief of LT-Regular Audit Division I had the authority to issue a MOA authorizing a new RO to continue the audit/examination of taxpayer's books of account or accounting records for TY 2009.

The CTA ruled that, Sections 6(A) and 13 of the NIRC, as amended, mandates that a valid LOA originating from the CIR or the Revenue Regional Director is a condition sine qua non for a RO to legally conduct a verification/audit of a taxpayer for potential deficiency taxes. Conversely, the absence of such authority renders the assessment void.

In the case at hand, the record is bereft of any showing that a valid LOA was issued by the CIR or the concerned Revenue Regional Director in favor of the new RO for the latter to continue the examination of petitioner's books of account or accounting records for potential tax liabilities for the relevant period. Being a product of an unauthorized tax audit/examination, the subject assessment predicated upon the findings of the new RO should be deemed a complete nullity and without any legal consequence, thereby warranting its cancellation and withdrawal. *(Central Luzon Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8952, March 6, 2019)*

In case the basic tax exceeds P1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the compromise must be approved by the Evaluation Board.

The taxpayer filed a motion to withdraw petition for review because an application for compromise settlement of the deficiency income tax and documentary stamp tax for taxable year 2013 to the BIR, which the latter accepted.

The CTA noted that, the Commissioner of Internal Revenue (CIR) is empowered to compromise the payment of internal revenue taxes, under certain conditions. The payment of any internal revenue tax may be compromised by respondent on either of the two (2) instances, namely: (1) a reasonable doubt as to the validity of the claim against the taxpayer exists; or (2) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax. In case the basic tax exceeds P1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the compromise must be approved by the National Evaluation Board (NEB).

While the CIR's power to compromise is sanctioned under the NIRC of 1997, the exercise thereof is subject to the determination of the CTA, whether the same is "within the parameters of law." In this case, it was not shown that there is full compliance with the requirements set forth by law. Specifically, there is no showing that the compromise settlement has been duly approved by a majority of all the members of the NEB, considering that the basic assessed taxes in the instant case are more than P1,000,000.00. *(C.F. Sharp Crew Management Inc., vs. Commissioner of Internal Revenue, CT A Case No. 9707, March 6, 2019)*

Note: Although the taxpayer failed to show its full compliance with the legal parameters for the grant of a compromise settlement, the CTA nonetheless granted the motion to withdraw. The CTA said that considering that the taxpayer is no longer interested in pursuing the petition, the motion to withdraw must be granted.

Under the VAT System, compliance with the 120+30 day is mandatory and jurisdictional periods.

Taxpayer filed its administrative claim for refund of unutilized input VAT which was subsequently denied by the BIR. Taxpayer filed its corresponding appeal with the CTA but it was contested by the BIR on the ground that the petition was filed out of time.

The CTA ruled that one of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper.

The 120-30 day periods are no longer applicable. The TRAIN law has amended the period for the CIR to decide VAT refund claim to 90 days. It is not clear however, if a taxpayer can elevate a claim for refund to the CTA if the CIR fails to decide within the said 90 day period.

In the instant case, the taxpayer filed its administrative claim for refund or issuance of TCC on November 27, 2013. It had 30 days therefrom, or until December 27, 2013, within which to submit all pertinent supporting documents. The 120-day period shall be reckoned from November 27, 2013 and shall run until March 27, 2014. Considering that BIR failed to act on the subject claim

within March 27, 2014, the taxpayer had thirty (30) days from March 27, 2014, or until April 28, 2014, within which to file a judicial appeal before the CTA. However, the present Petition for Review was filed only on September 28, 2015. Clearly, Taxpayer's judicial claim was belatedly filed. *(Northwind Power Development Corporation vs. Commissioner Internal Revenue, CTA CASE NO. 9152, March 6, 2019)*

A BOI-registered entity with 100% exports is not entitled to refund of input VAT. Otherwise, the taxpayer would unjustly be enriched at the expense of the government.

Taxpayer seeks the refund or issuance of a tax credit certificate representing unutilized input value-added tax (VAT) on its domestic purchases of goods and services and importation of goods. BIR denied the claim due to the alleged failure of Taxpayer to show substantial proof of the factual and legal bases of its claim for refund and that the Taxpayer is not the proper party who can claim the Refund.

The CTA ruled that the taxpayer was issued a Certification by the BOI attesting to the fact that it is a BOI-registered entity with 100% exports. Under Section 3.4 of RMO No. 9-00, said Certification shall serve as authority for the local suppliers of taxpayer to avail of the benefits of zero-rating on their sales to taxpayer. On the basis of said Certification, no output tax should be shifted by the local suppliers to latter. Thus, it follows that taxpayer is not entitled to a refund of input VAT from the said domestic purchases. Otherwise, to allow taxpayer a refund or issuance of tax credit certificate of input VAT on its domestic purchases of goods and services, where there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich taxpayer at the expense of the government. In instances when taxpayer paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, the taxpayer's recourse is not against the government, but against the seller. Thus, taxpayer is not entitled to the refund. *(Hinatuan Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9287, March 6, 2019)*

The presentation of the registry return receipt with an unauthenticated signature is not equivalent to proof of actual receipt of notices by Taxpayer.

Accused, as the Corporate Officer of Almarey Construction Co., Inc., was prosecuted for violation of Section 254 in relation to Sections 252(d) and 255 of the NIRC of 1986, as amended. He claimed that his right to due process was violated since he did not receive any FAN for the alleged deficiency taxes of the company, hence, he was not notified of the alleged tax deficiency. BIR on the hand presented a Registry Return Receipt allegedly signed by the taxpayer, acknowledging the receipt of the Notices.

The CTA ruled that to sustain a conviction for willful failure to pay a tax under the law, the person must first be required to pay the tax under the NIRC or its rules and regulations. Hence, prior receipt of the notices is required. Here, the Registry Return Receipt bears an unidentified and unauthenticated signature of the supposed addressee. Since the identity and authority of the person whose signature appears on the Registry Return Receipt was not established, it may not reasonably be said that accused indeed received the Assessment Notices. The presentation of the registry return receipt with an unauthenticated signature is not equivalent to proof that a letter sent through registered mail was actually received by the addressee. Hence, the accused is not guilty beyond reasonable doubt. *(People of the Philippines vs. Engr. Reynaldo A. Matanguihan, CTA Crim. No. A-5 (Criminal Case No. 01-194392), March 7, 2019)*

It is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year.

The taxpayer filed a claim for refund of unutilized creditable input tax attributable to its zero-rated sales. The said zero-rated transactions allegedly originated from its sale of goods and services to export-oriented entities registered with the PEZA, such as the SBMA, the CDA the CEZA, and the BOI.

The CTA Special Third Division ruled that applying the laws, regulations and Cross-border doctrine, it is clear that taxpayer's sales of goods and services to its customers, which are entities located inside the Ecozones and/or BOI-registered, whose products are 100°/o exported, are considered "export sales" and therefore, subject to 0°/o VAT rate. Note that in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year. Consequently, there being no excess input VAT which may be the subject of a claim for refund or issuance of tax credit certificate, the instant claim must be denied. *(Maxima Machineries Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9358, March 11, 2019)*

In determining the BIR's right to collect, the validity or invalidity of an assessment, in relation to the due process requirements; or prescription of the right to assess; or the fact of payment of said assessment; may also be reviewed by the Court and are properly included as "other matters".

BIR seeks reconsideration of the Court's Amended Decision (assailed Amended Decision) promulgated on October 29, 2018 which the Court granted the Petition for Review filed by the taxpayer and cancelled and set aside the BIR's assessment. In the Amended decision, the Court found the subject Formal Letter of Demand and Assessment Notices invalid for failure to indicate a definite due date for payment by the taxpayer, which negates respondent's demand for payment.

BIR contends that a challenge to the collection procedure under "other matters" cannot reach back and examine an undisputed assessment as the taxpayer questions the legality of respondent's collection and argues that the assessments upon which the collection proceedings are based on are void.

The Court ruled that can take jurisdiction over the present petition even if there was no disputed assessment. Section 7(a)(1) of RA No. 1125, as amended, confers upon the CTA the jurisdiction to decide not only cases pertaining to disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC of 1997, as amended. It must be emphasized that in determining the BIR's right to collect, the validity or invalidity of an assessment, in relation to the due process requirements; or prescription of the right to assess; or the fact of payment of said assessment; may also be reviewed by the Court and are properly included as "other matters". The failure to protest, or to raise said issues in a protest, should not result to a waiver of said defenses, for the reason that "a void assessment bears no valid fruit."*(Grand Plaza Hotel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8892, March 11, 2019)*

The prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.

The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. Consequently, while there is a presumption of correctness of assessment issued by respondent, being a mere presumption, the same cannot be made to rest on another presumption, which is respondent's presumption that the amount of VATable sales of other wholesaling companies is the same with the VATable sales of petitioner. *(Northern Mindanao Sales Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8959, March 11, 2019)*

DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually an excise tax, because it is imposed on the transaction rather than on the document.

This is a Resolution on the Motion for Reconsideration filed by the taxpayer assailing the Decision of the Court promulgated on October 18, 2019. Taxpayer contends that the cash advances involved in this case, should not be subjected to DST as the BIR merely relied its findings on the Notes to Financial Statements of the taxpayer.

The Court ruled that even while the document evidencing the transaction is not shown, or no debt instrument was identified by the BIR, DST may still be imposed. A DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually an excise tax, because it is imposed on the transaction rather than on the document. As a corollary, there is no basis in the assertion that a DST is literally a tax on document. Thus, even while the subject document was not shown or no debt instrument was identified by the BIR, DST may still be imposed, so long as the transactions are clearly established. *(Liberty Telecoms Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9311, March 11, 2019)*

It can be inferred from RMC No. 61-05 and Section 4.108-3 (f) of RR No. 16-05 that generation and transmission charges, including the VAT thereon, although billed to the end-user by the distribution companies and electric cooperatives, are not part of their gross receipts; neither can they claim an input tax on such charges

This is a Resolution on the Motion for Reconsideration filed by the taxpayer assailing the Decision of the Court promulgated on June 9, 2017. The taxpayer contends that its sale of power to CEBECO III, which was eventually distributed to a PEZA- registered entity and a BOI-registered 100% export entity are subject to VAT zero-rating. BIR claims that CEBECO III is a non-PEZA registered or BOI -registered entity. Thus, taxpayer's sales to the said entity should not be subject to zero-rating.

The Court ruled that considering that sales of services by a VAT-registered taxpayer to entities located in ecozones and to BOI-registered manufacturers/producers whose products are 100% exported are considered "export sales" subject to zero percent (0%) VAT rate pursuant to Section 108 (B) (3) of the NIRC of 1997, as amended, then, if the end-user who pays for the sale of electricity and related ancillary services through an electric cooperative for remittance to the generation company is a PEZA-registered entity or a BOI- registered 100% exporter, then the transaction should qualify for VAT zero-rating. *(Toledo Power Company vs. Commissioner of Internal Revenue, CTA Case Nos. 8450, 8512, 8547 & 8596, March 15, 2019)*

Repeated acts of paying the principal deficiency taxes by installment and repeated requests for reduction, waiver and abatement of the interest and increments does not justify the suspension of the prescriptive period for collection

The BIR assessed the taxpayer for deficiency DST for the taxable year 2003. The taxpayer requested that the assessed amount be paid in installment and made several installment payments. The request was denied by the BIR and a FAN was issued on January 31, 2006. The taxpayer then made repeated requests for the reduction, waiver, and abatement of interest and increments. On February 28, 2014, the taxpayer questioned the BIR's right to initiate collection proceedings since its right to collect has already prescribed.

CIR argues that the words "reinvestigation" or "reconsideration" are not indispensable in order to suspend the running of the prescriptive period to collect and that the repeated acts of paying principal deficiency DST liability by installment sans interest, and requests for reduction, waiver and abatement of the interest and increments, clearly demonstrate positive acts which justify the suspension of the prescriptive period for collection

The Court ruled that the taxpayer's repeated acts in paying its principal deficiency DST liability by installment sans the interest and repeated requests for the reduction, waiver, and abatement of interest and increments would not justify the suspension of the prescriptive period for collection. Thus, since the taxpayer did not request for reinvestigation, the prescriptive period for collection was not suspended. *(Commissioner of Internal Revenue vs. Asia United Insurance, Inc., CTA EB NO 1725(CTA Case No. 8916), March 17, 2019)*

Unsupported under-declaration of expenses does not automatically result in recognition of income.

The BIR assessed the taxpayer for income tax based on the latter's discrepancies between its declared expanded withholding taxes and the expenses reported in its audited financial statements (AFS). BIR alleged that the undeclared expenses which cannot be explained by the taxpayer through supporting documents constitute undeclared revenue that must be assessed since expenses lower the tax base in computing income tax.

In this Resolution, the CTA has reiterated in its decision the three elements in the imposition of income are the following: (1) there must be gain or profit; (2) that the gain or profit is realized or received, actually or constructively; and (3) it is not exempt by law or treaty from income tax. In

the imposition of the assessed income tax, it must be clear that there was an income, and such income was received by the taxpayer, and not when there is an undeclared purchase or expense. *(Lancaster Colors International, Inc. v Commission of Internal Revenue CTA Case No. 8933 dated March 28, 2019)*