Significant Court of Tax Appeals Decisions
July 2019

The CTA can rule on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.

This case involves a claim for refund of erroneous, excessive or illegal payments of excise taxes based on RMC No. 90-2012 and RR No. 17-2012. Taxpayer, assailed the validity of RMC No. 90-2012 and RR No. 17-2012. The BIR opposed, arguing that the CTA has no jurisdiction since taxpayer is collaterally assailing the validity of revenue issuances. It argued that the validity or constitutionality of a revenue issuance cannot be collaterally attacked in claims for refund. A separate action must be filed solely for that purpose.

In upholding its jurisdiction over this case, the CTA ruled that it has the power of *certiorari* in cases within its appellate jurisdiction. Thus, the CTA can rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based. *(San Miguel Brewery Inc. v. Commissioner of Internal Revenue, CTA Case No. 9513, June 13, 2019)*

The *prima facie* evidence of false or fraudulent return will not apply if taxpayer did not substantially overstate its deductions.

The BIR invoked the 10-year period to assess. But the CTA ruled that the 10-year period to assess only applies if there is a filing of a false or fraudulent return with intent to evade tax or if there is a failure to file a tax return.

What is constitutive of a *prima facie* evidence of a false or fraudulent return is either a substantial under-declaration of sales, receipts or income, or a substantial overstatement of deductions. There is a substantial under-declaration of sales, receipts or income, when there is failure to report sales, receipts or income exceeding 30% of the one declared per return; and there is a substantial overstatement of deductions when it exceeds 30% of the actual deductions.

In this case, there is neither substantial under-declaration of sales, receipts or income nor a substantial overstatement of deductions, based on the 30% threshold established by law. Thus, the 10-year period to assess cannot apply. *(Commissioner of Internal Revenue v. Banff Realty Development Corp., CTA EB Case No. 1710 (CTA Case No. 8803), June 10, 2019)*

In sales of other services subject to 0% VAT, it must be established that the recipient is a non-resident foreign corporation doing business outside the Philippines.

To be considered as a non-resident foreign corporation doing business outside the Philippines, the following documents must be presented: (a) Certificate of Non-registration of Corporation/ Partnership issued by the Philippine Securities and Exchange Commission (SEC) to establish that the recipient of the service has no registered business in the Philippines and (b) a Certificate/Articles of Foreign Incorporation/Association to prove that the recipient is a indeed foreign entity.

The Intra Group Service Agreements presented by the taxpayer, showing the names of its customers to whom it rendered services, would not establish that the service recipients are non-resident foreign corporations doing business outside the Philippines. *(Deutsche Knowledge Services, Pte. Ltd. v. Commissioner of Internal Revenue CTA EB Case No. 1763 (CTA Case Nos. 8623, 8656, 8661 & 8685), June 7, 2019)*

Where the disputing parties are all public entities, the dispute shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.

Where the disputing parties are all public entities, the dispute shall be administratively settled or adjudicated by the Secretary of Justice (SOJ), the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.

Cases involving questions of law between and among departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned-and-controlled corporations (GOCCs), shall be submitted to and settled or adjudicated by the SOJ. On the other hand, cases involving mixed questions of law and of fact, or purely factual issues shall be submitted to the Solicitor General if the latter if the principal law officer or general counsel of the parties; otherwise, the issues shall be submitted to and resolved by the SOJ.

Based on the foregoing, the CTA denied the claim for refund of taxpayer, which is a public entity, of its VAT on importation of alcohol and tobacco merchandise, for lack of jurisdiction. *(Commissioner of Internal Revenue v. Duty Free Philippines Corporation, CTA EB Case No. 1833 (CTA Case No. 9136), June 13, 2019)*

The disallowed/denied claim for input tax may be recovered and deducted as loss.

In this case, the CTA allowed taxpayer to recover as loss the amount of its claim for refund of unutilized input VAT, which was denied for failure to comply with the invoicing requirements. The amount of claim was allowed as deduction from taxpayer's gross income in the year of denial of claim (2010).

The CTA held that under RR No. 09-89, which provides the journal entries for the recording of transactions if there are disallowed/denied input taxes, the disallowed/denied claim for input tax is recorded as Purchases or Cost of Sales, which is classified as an expense account and a deduction from the taxpayer's sales/revenue.

The CTA further held that the requisites for deductibility of such claim as a loss were all complied with. The taxpayer actually sustained a loss when its claim for refund was denied and the same can no longer be recovered. The loss was sustained in 2010 when the taxpayer received the denial letter. Taxpayer was not compensated for the loss. It also incurred the loss in the conduct of its trade or business as the denied input taxes arose from its zero-rated sales of services. Finally, the loss arose from a closed and completed transaction in that it was specifically stated in the denial letter that taxpayer's claim "cannot be given due course." *(Commissioner of Internal Revenue v. Maersk Global Service Centres (Philippines) Ltd. CTA EB Case No. 1786 (CTA Case No. 8934), June 13, 2019)*

Note: In this case, the CTA applied the old RR No. 09-89 since there is no explicit rule as to the treatment of disallowed/denied application for refund or issuance of tax credit certificate on input VAT attributable to zero-rated sales under the Tax Code. This position runs counter that contained in RMC No. 57-2013, which circularizes BIR Ruling No. 123-2013 dated March 25, 2013, stating that unutilized creditable input taxes attributable to VAT zero-rated sales cannot be claimed as a deduction for income tax purposes.

The law created a presumption of ownership of imported articles, which is vested with the consignee.

The accused, a sole proprietor engaged in the business of dealing and importing surplus auto parts and merchandise, was charged of violation of the Tariff and Customs Code by fraudulently misdeclaring and misrepresenting the nature of the articles it imported when it declared the goods to be 'pastries' and 'dough" when it were, in fact, onions. The prosecutor argued that based on the testimony of the witnesses and the pieces of documents submitted, he was able to convincingly establish the fact of illegal importation and the identity of the importer, who is the accused. The accused claimed that the prosecution failed to establish that he is the author of the illegal smuggling, and thus, should be acquitted.

The CTA found the accused guilty. It explained that the law created a presumption of ownership of imported articles, which is vested with the consignee. Whether or not the taxpayer participated in the preparation of the bill of lading is immaterial in this case to disprove ownership, due to the aforesaid presumption. It was imperative for the taxpayer to disprove ownership of the said articles by showing proof to the contrary. Since the accused was unable to do so, the shipments in this case are considered his property, and the misdeclaration as to the nature of the articles imported made him guilty of the offense charged. *(Moises Bagan Rodriguez v. People of the Philippines, CTA EB Crim No. 043 (CTA Crim Case No. O-282), June 18, 2019)*

In claims for tax refund, the CTA as a court of record is required to conduct a formal trial (trial de novo) to prove every minute aspect of the claim.

The CTA, in denying the taxpayer's claim, reiterated that in claims for tax refund, it is required to conduct a formal trial to prove the claim. The claims are litigated and decided based on what has been presented and formally offered and presented during the trial. The CTA held that the exhibits presented by the taxpayer were denied since these were not identified and authenticated by a competent witness. Thus, the CTA cannot consider the documents as evidence since evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments. *(Philippine Associated Smelting and Refining Corporation v. Commissioner of Internal Revenue, CTA Case Nos. 9579 & 9580, June 24, 2019)*

Only the Regional Directors, Deputy Commissioners and the Commissioner of Internal Revenue have the authority to sign LOAs. A waiver with no indication of date of acceptance is void.

In this case, the CTA reiterated some common technical defects in the issuance of a Final Letter of Demand (FLD) and Final Assessment Notice (FAN).

According to the CTA, only the Regional Directors, Deputy Commissioners and the Commissioner of Internal Revenue have the authority to sign LOAs. Thus, a Letter of Authority (LOA) is void when it is signed by the OIC-Assistant Regional Director. The fact that the OIC subsequently became the Regional Director did not cure the defect. Since the LOA is void, the deficiency tax assessment is likewise void.

The CTA further added that the BIR's right to assess the taxpayer's liabilities had already prescribed since the FLD/FAN was issued beyond the three-year prescriptive period. This period was not validly extended since the waivers did not indicate the date of acceptance by the BIR. *(Amparo Shipping Corporation v. Commissioner of Internal Revenue, CTA Case No. 9387, June 28, 2019)*