BDB Law wts

DU-BALADAD AND ASSOCIATES

SUMMARY OF SIGNIFICANT SC TAX DECISIONS (APRIL-JULY 2014)

1. There is no need for a writ of execution to enforce a decision granting a refund or credit of excessively paid local business tax, provided that the taxpayer complies with the requirements set by law for a tax refund or tax credit, whichever is applicable.

Taxpayer was granted a favorable decision by the Court for its claim for tax refund or credit after finding that there was double taxation in the imposition of the local business tax. An entry of judgment was later issued declaring the same final and executory. The taxpayer then filed a motion for execution with the RTC for the enforcement of the decision. The clerk of court of the RTC issued a writ of execution directing the sheriff to cause the execution of the decision. The City of Manila filed a motion to quash the writ of execution. The motion was granted by the RTC.

On appeal to the Supreme Court ('SC'), the SC ruled that the issuance of a writ of execution is superfluous. Instead of moving for a writ of execution, the taxpayer should have merely requested for the approval of the City of Manila in implementing the tax refund or tax credit, whichever is appropriate. In other words, no writ is necessary for the execution thereof since the implementation of the tax refund will effectively be a return of funds by the City of Manila in favor of the taxpayer while a tax credit will merely serve as a deduction of taxpayer's tax liability in the future. The issuance of a writ of execution is superfluous because the judgment can neither be considered a judgment for a specific sum of money susceptible of execution by levy or garnishment under Section 9, Rule 39 of the Rules of Court nor a specific judgment under Section 11, Rule 39 thereof. ***(Coca-Cola Bottlers Philippines, Inc. vs. City of Manila; Liberty M. Toledo, in her capacity as Officer-in-Charge (OIC), Treasurer of the City of Manila; Joseph Santiago, in his capacity as OIC, Chief License Division of the City of Manila; Reynaldo Montalbo, in his capacity as City Auditor of the City of Manila, G.R. No. 197561, April 7, 2014)***

2. **Registration with the Cooperative Development Authority is not necessary for the enjoyment of exemption from percentage tax and DST of mutual life insurance company under Section 199(a) of the Tax Code.**

Taxpayer is a registered non-stock mutual life insurer. It was assessed by the BIR for deficiency DST on direct business/sums assured for the year 2002. It is the BIR's contention that since taxpayer is not registered with the Cooperative Development Authority ('CDA'), it should not be considered a cooperative company that is entitled to the exemption provided under Section 199(a) of the NIRC. According to the Court, although the taxpayer is a cooperative, it is not necessary in order for it to be exempt from the payment of both the percentage taxes on insurance premiums under Section 121 and documentary stamp taxes on policies of insurance or annuities on its grants under Section 199 of the NIRC. ***(Commissioner of Internal Revenue vs. The Insular Life Assurance Co. Ltd., G.R. No. 197192, June 4, 2014)***

3. Presentation of preliminary assessment notice as evidence of a taxpayer's liability is not a mere procedural technicality.

In this case involving assessments for deficiency withholding taxes, the Court of Tax Appeals noted that the Preliminary Assessment Notices (PANs) were not formally offered in evidence. Accordingly, pursuant to Section 34, Rule 132 of the Revised Rules of Court, the Court did not consider the same as evidence nor ruled on their validity. On appeal to the Supreme Court, the BIR argued that technical rules of evidence should not be strictly applied, considering that the mandate of the Court of Tax Appeals explicitly provides that its proceedings shall not be governed by the technical rules of evidence. The BIR further averred that while it failed to formally offer the PANs, their existence and due execution were duly tackled during the presentation of its witnesses. It also claims that although the PANs were not marked as exhibits, their existence and value were properly established, since the BIR records were forwarded to the CTA in compliance with the latter's directives and were in fact made part of the CTA records.

According to the Supreme Court, while the CTA is not governed by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of PANs as evidence of the taxpayer's liability is not mere procedural technicality. It is a means by which a taxpayer is informed of his liability for deficiency taxes. It serves as basis for the taxpayer to answer the notices, present his case and adduce supporting evidence. More so, the same is the only means by which the CTA may ascertain and verify the truth of tax taxpayer's claims. Thus, a formal offer of the PAN is necessary. ***[Commissioner of Internal Revenue vs. United Salvage and Towage (Phils), Inc., G.R. No. 197515, July 2, 2014]***

4. If the assessment is barred by prescription, the Court is mandated to dismiss the same even if prescription is not raised as a defense.

On June 16, 1989, the taxpayer received the assessment notice issued by the BIR on May 19, 1989, for which it filed a protest on June 23, 1989 requesting for reinvestigation and/or reconsideration. The BIR denied the request for reconsideration in a letter dated August 4, 1998. The Court found that the tax assessment may be invalidated because the statute of limitations on the collection of the alleged deficiency DST had already prescribed. The Court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case. Moreso, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after reasonable period of time. Any internal revenue tax which had been assessed within the period of limitation may be collected by distraint or levy, and/or court proceeding within three years following the assessment of the tax. The assessment of tax is deemed made and the 3-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer. In this case, although there was no allegation as to when the assessment notice had been released, mailed or sent to the taxpayer, still, the latest date the BIR could have released, mailed or sent the assessment notice was on the date the taxpayer received the same on June 16, 1989. Thus, the BIR had only until June 15, 1992 to collect the tax. Evidently, prescription has set in to bar the collection of the assessed tax. (***Bank of the Philippine Islands vs. Commissioner of Internal Revenue, G.R. No. 181836, July 9, 2014)***

5. In a claim for refund of input taxes, compliance with the requirements under Revenue Memorandum Order No. 53-88 is not a requirement.

On December 21, 2005, taxpayer filed an administrative claim for the refund of input taxes incurred for the year 2004 related to its zero-rated sales. Due to the inaction of the BIR, taxpayer filed a petition for review with the Court of Tax Appeals on April 24, 2006. The BIR argued that the 120-day period provided under Section 112 of the NIRC has not started to run for failure of the taxpayer to submit the complete documents required under Revenue Memorandum Order (RMO) NO. 53-98. Hence, the petition was prematurely filed with the CTA.

According to the Court, the BIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires the submission of the complete documents enumerated in RMO 53-9 for a grant of refund or credit of input VAT. The subject of RMO 53-98 is the checklist to be submitted by a taxpayer upon audit of his tax liabilities. This present case is a claim for refund or input tax, not an audit of tax liabilities. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer, "if applicable". Thus, there is no merit it the taxpayer's claim that the judicial claim was prematurely filed. (***Commissioner of Internal Revenue vs. Team Sual Corporation, G.R. No. 205055, July 18, 2014)***