

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

ABB, INC.,

Petitioner,

CTA CASE NOS. 8563, 8594, &
8674

Members:

- versus -

BAUTISTA, Chairperson
FABON-VICTORINO, and
RINGPIS-LIBAN, II.

COMMISSIONER
INTERNAL REVENUE,

OF

Promulgated:

Respondent.

AUG 08 2016

Chair 2:36 p.m.

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RESOLUTION

BAUTISTA, J:

This resolves respondent's Motion for Partial Reconsideration filed by registered mail on June 1, 2016; with petitioner's Comment/Opposition filed by on June 17, 2016.

On May 11, 2016, the Court promulgated a Decision¹, the dispositive portion of which states:²

WHEREFORE, premises considered, the consolidated Petitions for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to refund or issue tax credit certificate in favor of petitioner in the reduced amount of **TWENTY ONE MILLION FIVE HUNDRED THIRTY THOUSAND NINE HUNDRED SIXTY AND 5/100 PESOS (Php21,530,960.05)**.

SO ORDERED.

¹ Records, CTA Case Nos. 8563, 8594, & 8674, pp. 862-892.

² *Id.*, pp. 891-892.

In his Motion for Reconsideration, respondent alleges that petitioner is not entitled to its claim for refund for the latter's failure to prove its claim before the administrative body; that the services claimed by petitioner as tax-exempt do not fall within the exemptions; that a claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken; that the BIR rulings cited by the petitioner cannot and should not be made applicable to the instant case; and that she was deprived of the opportunity to study petitioner's claim for refund and to fully exercise her function due to petitioner's failure to submit complete documents. Respondent thus prays the Decision dated May 11, 2016, be reconsidered and a new one rendered denying petitioner's claim for refund in its entirety.

On the other hand, in its Comment/Opposition, petitioner counter-argues that respondent's Motion for Reconsideration is devoid of merit; that the services it rendered under the offshore component of its contract with National Grid Corporation of the Philippines ("NGCP") are beyond Philippine tax jurisdiction, hence, it is not subject to VAT; that the original notarized contracts with NGCP that it offered in evidence are the best evidence to prove the contents thereof; and that the requirement for the identification of a written contract by one of its signatories only applies to a private document and not to a public document.

The Court finds no cogent reason to reverse or set aside the impugned Decision.

There is no merit in respondent's argument that the services claimed by petitioner as tax-exempt do not fall within the exemptions provided under *Section 109 of Republic Act No. 8424*.

Petitioner is not claiming that the services are tax exempt, but rather, petitioner claims that the offshore component of its contract with the NGCP is not taxable simply because all the materials and equipment listed in the offshore component of the contracts for the New Naga and Wright Calbayog Projects were designed, built and fabricated abroad, hence, it is beyond the taxing jurisdiction of respondent.

Respondent claims that the contracts between petitioner and NGCP cannot be made conclusive as to its contents for being hearsay.

The Court does not agree. Records disclose that respondent did not raise his objection at the time of the presentation of petitioner's evidence, neither did he oppose petitioner's Formal Offer of Exhibits. In fact, he filed his Comment (to Petitioner's Formal Offer of Exhibits)³ on August 11, 2014, and stated that "[s]he has no objection to the admission of *Exhibits* "P-1" to "P-150", including sub-markings thereof and *Exhibits* "P-152" to "P-239-A", including sub-markings thereof."

Well-settled in this jurisdiction that an evidence may be admitted for failure to object to the testimony on the ground that it was hearsay.⁴ Moreover, failure to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived.⁵

There is likewise no merit to respondent's claim that the BIR rulings cited by the petitioner cannot and should not be made applicable to the instant case for BIR rulings are based only on a set of facts represented by a taxpayer and thus, is exclusively applicable only to the facts and circumstances thereto.

Contrary to respondent's claim, the assailed decision was not based on any of the BIR rulings that were previously cited by the petitioner in its Memorandum. As held by the Court in the assailed decision, petitioner was able to comply with the requirements for refund of erroneously paid tax under *Section 229 of the 1997 NIRC*, as amended. Petitioner only needs to prove three things in order to be entitled to the refund or issuance of TCC, to wit:

1. actual payment of the tax that is being claimed;
2. the claim for refund was filed before the BIR; and
3. both the administrative and judicial claims for refund must have been filed within the two (2) year prescriptive period.

³ *Records*, Vol. 6, *Comment (to Petitioner's Formal Offer of Exhibits)*, p. 3790.

⁴ *Leodegario Bayani vs. People of the Philippines*, G.R. No. 155619, August 14, 2007

⁵ *Blas vs. Angeles-Hutalla*, G.R. No. 155594, Sept. 27, 2004, 439 SCRA 273.

As found by the Court, petitioner was able to prove that it paid the VAT for the services rendered by the offshore companies despite such services is not subject to tax; that it filed a claim for refund before the BIR; and that both its administrative and judicial claims for refund were filed within the two (2) year prescriptive period. Records disclose that respondent did not present any evidence that would rebut petitioner's claim.

Lastly, respondent claims that she was deprived of the opportunity to study petitioner's claim for refund. The Court does not agree. In the consolidated cases of *CBK Power Company Limited vs. Commissioner of Internal Revenue ("CIR")* and *CIR vs. CBK Power Company Limited*⁶, the Supreme Court held that pursuant to *Sections 204⁷ and 229⁸ of the 1997 NIRC*, as amended, the taxpayer's claim for refund must be filed within two (2) years from the date of payment of the tax or penalty. *Section 229* further imposes the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner.

Petitioner cannot be faulted for filing its judicial claim for refund without waiting for respondent to act on its administrative

⁶ G.R. Nos. 193383-84, January 14, 2015.

⁷ *Sec. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* – The Commissioner may –

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty. *Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.*

⁸ *SEC. 229. Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment. *Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Underscoring ours)*

claim. The law is clear, no credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty, and no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment.

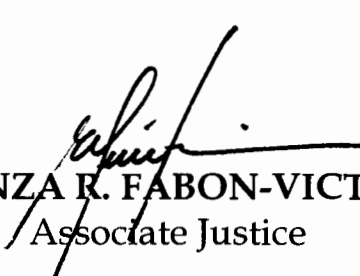
In other words, what the law requires is that the administrative claim for refund must be filed before a judicial claim for refund and both must be filed within two (2) years from date of payment.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Decision dated May 11, 2016 is hereby **AFFIRMED** and **UPHELD**.

SO ORDERED.


LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:


ESPERANZA R. FABON-VICTORINO
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice