Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **September 9, 2020**, *which reads as follows:*

"**G.R. No. 247792 (*Commissioner of Internal Revenue v. Honda Cars Makati, Inc.*).** – This Petition for Review on *Certiorari*[1] under Rule 45 assails the Decision[2] dated January 24, 2019and the Resolution[3] dated May 29, 2019 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1738 which affirmed the Decision[4] dated June 27, 2017 of the CTA Second Division partially granting the petition filed by respondent Honda Cars Makati, Inc. (HCMI) and ordering the Commissioner of Internal Revenue (CIR) to refund or issue a tax credit certificate (TCC) in favor of HCMI in the amount of ₱17,614,110.27.

Facts of the Case

On July 24, 2012, HCMI filed with the Bureau of Internal Revenue (BIR) an electronic copy of its Annual Income Tax Return (ITR) for calendar year 2011, reporting, among others, its gross sales/revenues in the amount of ₱4,693,023,533.00.[5]

On April 2, 2014, HCMI filed with the BIR Large Taxpayers Excise Audit Division II its administrative claim for refund or issuance of TCC for its excess and unutilized creditable withholding tax (CWT) for calendar year 2011 in the total amount of ₱22,415,723.00. Because of the CIR's failure to act on HCMI's administrative claim, the latter filed a petition for review before the CTA on April 14, 2014.[6]

In its petition, the HCMI avers that its administrative and judicial claims for refund were both filed within the two-year prescriptive period

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1 *Rollo*, pp. 12-28.

2 Penned by Associate Justice Cielito N. Mindaro-Grulla, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan; id. at 34-48.

3 Id. at 50-55.

4 Penned by Juanito C. Castañeda, Jr., with the concurrence of Associate Justice Catherine T. Manahan; Associate Justice Caesar A. Casanova, on leave; id. at 56-69.

5 Id. at 36.

6 Id.

under Sections 204(C) and 229 of the National Internal Revenue Code (NIRC), as amended. HCMI insists that the excess and unutilized CWT for 2011 is duly substantiated by documentary evidence. It asserts that the income, upon which the CWTs being claimed for refund were withheld, was reported as part of the revenues declared in its Annual ITR. Moreover, HCMI claims that it did not carry over its excess and unutilized CWTs for 2011 to the succeeding taxable periods.[7]

On the other hand, the CIR in its Answer[8] filed on July 9, 2014, contends that HCMI failed to exhaust administrative remedies prior to the filing of its petition for review. The CIR avers that the claim for refund should be denied because HCMI failed to submit complete documents in support of its administrative claim for refund.[9]

HCMI presented two witnesses including the court commissioned independent certified public accountant. The CIR manifested that he will no longer present any evidence.[10]

On June 27, 2017, the CTA in Division rendered its Decision partially granting the petition of HCMI for the refund or issuance of TCC in the amount of ₱17,614,110.27. According to the CTA in Division, the following requirements must be complied with in order that a claim for refund or TCC shall be granted: (1) the claim must be filed within the two-year prescriptive period provided under Sections 204(C) and 229 of the NIRC, as amended; (2) the fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and (3) the income upon which the taxes were withheld must be included in the return of the recipient.[11]

The CTA in Division held that all the foregoing requisites were complied with in this case. *First*, HCMI was able to file its claim for refund or issuance of TCC within the two-year prescriptive period allowed under the NIRC. Since HCMI electronically filed its 2011 Annual ITR on July 24, 2012, it has until July 24, 2014 within which to file its administrative claim as well as its judicial claim. Thus, HCMI's administrative claim filed on April 2, 2014 and its subsequent petition for review to the CTA on April 14, 2014 are well within the two-year period provided by law.[12]

In compliance with the second and third requisites, HCMI submitted a Schedule of Creditable Taxes Withheld for 2011 and various Certificates of Creditable Tax Withheld at Source to prove the fact of withholding of the subject claim. However, HCMI's substantiated unutilized excess CWTs for

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7 Id. at 59-60.
8 See id. at 60.
9 Id. at 60.
10 Id. at 58.
11 Id. at 64.
12 Id. at 66.

2011 amounts only to ₱17,614,110.27.[13]

In its Resolution[14] dated October 18, 2017, the CTA in Division denied the CIR's motion for reconsideration. The CTA in Division further discussed that proof of actual remittance by HCMI of the taxes to CIR is not required because the proof of remittance is the responsibility of the withholding agent and not the taxpayer-refund claimant. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents are *prima facie* proof of actual payment by HCMI to the government through the withholding agent.[15] Also, the CTA in Division explained that contrary to the CIR's contention that HCMI must first prove that it is entitled to Minimum Corporate Income Tax (MCIT) instead of the regular corporate income tax – which it paid using a portion of its prior year's excess credits – the correct venue for raising the propriety of the availment of the MCIT is not with the CTA but in an audit or investigation of HCMI's books by the CIR.[16]

Aggrieved, the CIR filed a Petition for Review to the CTA *En Banc*. In a Decision dated January 24, 2019 of the CTA *En Banc* affirmed the ruling of the CTA in Division. The CTA *En Banc* agreed that HCMI filed its administrative and judicial claims for refund or issuance of TCC within the two-year period allowed by the NIRC. The CTA *En Banc* also affirmed that proof of actual remittance of withholding taxes is not a condition for the claim of refund or issuance of TCC and that in order to determine the propriety of the availment of the MCIT, the CIR should issue an assessment notice to HCMI.[17]

Unsatisfied, the CIR filed this Petition for Review on *Certiorari*[18] reiterating that it must have been given reasonable period to determine the veracity of the factual allegations of the taxpayer-claimant in proving its entitlement to a tax refund. Here, the administrative claim for refund or issuance of TCC was filed on April 2, 2014 and after just 12 days or on April 14, 2014, HCMI filed its petition for review to the CTA. The CIR argues that such circumstance indicates that the claim was merely *pro forma* and shows lack of genuine intention to pursue it or to give the CIR an opportunity to perform its mandate.[19] The CIR also insists that proof of actual remittance to the BIR of the taxes withheld is indispensable in a claim for refund of unutilized or excess CWTs.[20] *Lastly*, the CIR argues that HCMI must prove that it is indeed liable for MCIT and not the regular corporate income tax.[21]

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13 Id. at 66-67.
14 Penned by Juanito C. Castañeda, Jr., with the concurrence of Associate Justices Caesar A. Casanova and Catherine T. Manahan; id. at 77-83.
15 Id. at 80.
16 Id. at 79-82.
17 Id. at 44-47.
18 Id. at 12-25.
19 Id. at 19-20.
20 Id. at 22.
21 Id. at 23.

In its Comment[22] dated December 27, 2019, HCMI contends that it has exhausted all relevant administrative remedies and that it is not required to await the decision of the CIR on the administrative claim for refund or issuance of TCC before filing a judicial claim with the CTA especially when the two-year period provided by the NIRC is about to expire.[23] HCMI also insists that consistent to the findings of both the CTA in Division and CTA *En Banc*, it has complied with all the requisites for refund or issuance of TCC of its excess and unutilized CWT for 2011.[24]

The Court's Ruling

After a perusal of the records of the case, this Court resolves to deny the Petition for Review on *Certiorari* for failure of the CIR to show that the CTA *En Banc* committed a reversible error in ordering the refund or issuance of a TCC in favor of HCMI in the amount of ₱17,614,110.27.

First, the argument of the CIR that there was no genuine exhaustion of administrative remedies because HCMI filed its judicial claim with the CTA merely 12 days after the filing of the administrative claim for refund or issuance of TCC, is unmeritorious. The factual antecedents of this case are similar to *CBK Power Company Limited v. Commissioner of Internal Revenue*.[25] Here, it was established that HCMI filed its Annual ITR on July 24, 2012. Counting from this date, HCMI has until July 24, 2014 to file both its administrative and judicial claims for refund or issuance of TCC. HCMI filed its administrative claim to the CIR on April 2, 2014 and its judicial claim to the CTA on April 14, 2014 or merely 12 days from the filing of its administrative claim.

In the *CBK case* on the other hand, the expiration of the two-year period for filing a refund or issuance of TCC was until June 10, 2005. CBK filed its administrative claim on March 4, 2005 and merely five days thereafter or on March 9, 2005, it filed its judicial claim to the CTA. In ruling that there was nothing wrong with this, We held that:

> Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court **cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC**. There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.

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22 Id. at 107-121.
23 Id. at 110-111.
24 Id. at 14.
25 750 Phil. 748 (2015).

(Emphasis supplied)

Consistent with the *CBK case*, while HCMI could have waited for at most 3 months from April 2, 2014 as the two-year prescriptive period would expire on July 24, 2014, nevertheless, this fact alone will not be the basis for the denial of the judicial claim for refund or issuance of TCC because is suffices that both the administrative and judicial claims are filed within the two-year period as required under the NIRC.

Second, proof of actual remittance to the BIR of the taxes withheld is not indispensable in claims for refund or issuance of TCC. As held by the Court in *Commissioner of Internal Revenue v. Philippine National Bank*,[26] citing *Commissioner of Internal Revenue v. Asian Transmission Corporation*,[27] to wit:

> x x x **[P]roof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner**. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the **withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee**. Therefore, respondent x x x has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents. (Emphasis supplied)

Lastly, in cases of tax refunds of excess CWT, income tax returns filed by taxpayers are presumed to be correct in the absence of controverting evidence. The correct venue for raising the propriety of the availment of MCIT instead of the regular corporate income tax is in an audit or investigation of HCMI's books. In *Citibank N.A. v. Court of Appeals*,[28] We ruled that:

> A refund claimant is required to prove the inclusion of the income payments which were the basis of the

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26 744 Phil. 299 (2014).
27 655 Phil. 186 (2011).
28 345 Phil. 695 (1997).

> withholding taxes and the fact of withholding. However, detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the commissioner of internal revenue by the NIRC which requires the commissioner to **assess internal revenue taxes within three years** after the last day prescribed by law for the filing of the return. (Emphasis supplied)

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated January 24, 2019 and the Resolution dated May 29, 2019 of the Court of Tax Appeals in CTA EB Case No. 1738 is **AFFIRMED**.

SO ORDERED."

By authority of the Court:

MisRDCBatt
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11/24/20

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