THIRD DIVISION

[G.R. No. 216656, April 26, 2021]

TAGANITO MINING CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

LEONEN, J.:

A zero-rated taxpayer is entitled to claim as refund or tax credit the input VAT from its domestic purchases or importation of capital goods used for its trade or business. However, if the acquisition cost exceeds P1,000,000.00, the claim becomes subject to the rule on amortization of its input VAT credit over the useful life span of the capital goods.

This Court resolves the Petition for Review on Certiorari[1] filed by Taganito Mining Corporation (TMC) assailing the Decision[2] and Resolution[3] of the Court of Tax Appeals En Banc, which affirmed the Court of Tax Appeals Division's dismissal of petitioner's claim for refund/tax credit amounting to P7,572,550.29 of its input Value Added Tax (VAT) in its purchase and importation of capital goods from January 1 to December 31, 2007.[4]

TMC is "an exporter of beneficiated nickel silicate ores and chromite ores"[5] and is registered with the Securities and Exchange Commission and the Board of Investments. TMC is also a registered VAT taxpayer.[6] It alleged that from January 1, 2007 to December 31, 2007, it generated "zerorated export sales" in the amount of P4,248,232,289.08.[7] During such period, TMC paid input VAT on its "domestic purchases of taxable goods and services and importation of capital and non-capital goods amounting to P22,795,033.33[.]"[8]

On February 11, 2009, TMC filed an application for refund/credit of its VAT input taxes for 2007 before the Large Taxpayer's Division of the Bureau of Internal Revenue.[9]

Before TMC's application was acted upon, it filed a Petition for Review with the Court of Tax Appeals on March 17, 2009.[10]

On October 13, 2009, the Bureau of Internal Revenue's Large Taxpayers Service wrote to TMC and recommended a refund equivalent to P15,023,736.12, and disallowed the amount of P198,746.93 for being unsubstantiated.[11] The amount of P7,572,550.29 "consisting of deferred input VAT on capital goods"[12] was also disallowed and recommended for amortization over 60 months.[13]

In view of the recommendation, TMC filed a Motion for Partial Withdrawal of Petition

which was granted by the Court of Tax Appeals.[14] It then pursued its petition "with respect to the deferred input taxes pertaining to capital goods" amounting to P7,572,550.29.[15] It alleged that its input VAT being refunded was directly attributable to its zero-rated export sales.[16]

The Court of Tax Appeals Division[17] dismissed the Petition for Review and also denied TMC's motion for reconsideration.[18] Thereafter, TMC filed a Petition for Review with the Court of Tax Appeals En Banc, praying for the reversal of the Court of Tax Appeals Division's ruling. It further prayed that:

> [T]he Court En Banc render judgment declaring petitioner to be entitled to the refund/tax credit in the amount of Seven Million Five Hundred Seventy-Two Thousand Five Hundred Fifty and 29/100 Pesos (Php 7,572,550.29), representing the un-refunded portion of excess input VAT paid by the petitioner on its importation of capital goods from January 1, 2007 to December 31, 2007; and order respondent to issue to petitioners the corresponding tax credit certificate or to refund the aforesaid amount; or in the alternative, to rule that the amount of unamortized and un-refunded excess input VAT of petitioner can be reverted as part of its accumulated input VAT.[19]

The Court of Tax Appeals En Banc denied the Petition for Review and affirmed the decision of the Division.[20] It held that there was nothing in Sections 110 and 112(A) of the NIRC which qualified that the amortization of input VAT on capital goods exceeding P1,000,000.00 does not apply to claims for refund or applications for tax credit certificate.[21] The Court of Tax Appeals En Banc emphasized that since the law does not distinguish, the amortization of input VAT also applied to claims for refund or tax credit.[22]

The Court of Tax Appeals En Banc affirmed that only the amortized amount of P1,277,591.16 is creditable or refundable as of December 31, 2007 and not the full P8,850,141.45 input tax.[23] The remaining P7,572,550.29 was to be amortized during the estimated life of the capital goods.[24] It ruled that the two-year prescriptive period to claim refund was to be "reckoned at the end of the quarter when the pertinent zero-rated sales (to which the amortized input VAT is attributable) were made."[25] The dispositive portion of the Court of Tax Appeals En Banc's Decision reads:

> **WHEREFORE**, in light of the foregoing, the *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the Decision dated November 13, 2012 and the Resolution dated June 5, 2013 rendered by the then First Division of this Court and this Court's Special First Division, respectively, in CTA Case No. 7884 entitled "*Taganito Mining Corporation vs. Commissioner of Internal Revenue*" which denied Taganito Mining Corporation's claim for refund or issuance of a tax credit certificate representing the un-refunded portion of excess input VAT on its importation of capital goods from January 1, 2007 to December 31, 2007 in the total amount of **SEVEN MILLION FIVE HUNDRED SEVENTY-TWO THOUSAND FIVE HUNDRED FIFTY PESOS AND 29/100 (Php7,572,550.29)** are hereby **AFFIRMED**.

SO ORDERED.[26] (Emphasis in the original)

Petitioner filed a motion for reconsideration which was denied in a December 22, 2014 Resolution.[27] Hence, this Petition.

Petitioner claims that the Court of Appeals En Banc erred in reading Section 110(A) on its own, without considering Section 110(B) and (C), which stated that the use of "any" in Section 110(B) referring to "input tax attributable to zero-rated sales" may be refunded or credited at the zero-rated taxpayer's option.[28]

It claims that the terms "creditable input tax" and "input tax credit" are different.[29] The former refers to "input tax on purchases which can be credited against output tax[,]" while the latter pertains to zero-rated transactions with no output tax from which input tax may be credited against.[30] Further, there is nothing in the regulations which provides that the rule on amortization of creditable input tax applies to input tax credit on capital goods.[31]

Further, it avers that since the rules are silent on the application of the amortization on zero-rated sales, the Court of Tax Appeals En Banc committed judicial legislation in filling the gap in the law. It claims that Sections 4.110-3 and 4.110-4 of Revenue Regulations No. 16-05 cannot be construed to amend Section 110(B) of the NIRC. Rather, it should be construed to apply only to taxpayers who do not engage in zero-rated transactions. Here, since all its input taxes are attributable to its zero-rated sales, petitioner claims that its input tax credit/refund is not subject to amortization. Finally, petitioner asserts that it substantiated its claims for refund/tax credit which public respondent did not dispute.[32]

Meanwhile, respondent avers that Section 110(A)(2)(b) in conjunction with Section 4.110-3(a) of Revenue Regulations No. 16-05 provide the rule on amortization of creditable input tax.[33] It points out that since the law does not distinguish, amortization also applies to zero-rated transactions involving capital goods with acquisition cost above P1,000,000.00.[34] Further, considering that tax refunds are in the nature of tax exemption, the law is construed strictly against those who claim exemption.[35]

The crux of the controversy is whether or not the input tax credit for purchase of capital goods above P1,000,000.00, which are directly attributable to zero-rated export sales of petitioner, is required to be amortized over the useful life of the product.

We rule in the affirmative and dismiss the Petition.

I

In a marketplace where different levels and stages of production are involved, a merchant pays VAT when purchasing goods or services used in business from suppliers.[36] This is the merchant's input tax. Meanwhile, in doing business and selling goods or services, the merchant is liable to pay VAT but he or she is allowed to pass the burden of paying the same to the consumers. This is the output tax.[37]

The output tax is collected by the merchant from the consumer who in turn is allowed to deduct from it the amount of input tax paid in order to decrease the amount of their VAT liability. The system of crediting input VAT from output VAT is provided for under Section 110 of the NIRC. As amended,[38] it reads in part:

> SECTION 110. Tax Credits. -
>
> (A) Creditable Input Tax. -
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> > (a) Purchase or importation of goods:
> >
> > (i) For sale; or
> > (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
> > (iii) For use as supplies in the course of business; or
> > (iv) For use as materials supplied in the sale of serv1ce; or
> > (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
> >
> > (b) Purchase of services on which a value-added tax has been actually paid.
>
> (2) The input tax on domestic purchase of goods or properties shall be creditable.
>
> > (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
> >
> > (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): Provided, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: Provided, finally, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.
>
> (3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

(B) Excess Output or Input Tax. - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, ***That any input tax attributable to zero-rated sales by a VAT registered person may at his option be refunded or credited against other internal revenue taxes***, subject to the provisions of Section 112. (Emphasis supplied)

However, a zero-rated taxpayer is given the option to claim the input tax paid through a refund or tax credit.[39] This is because a zero-rated taxpayer does not have output tax for its zero-rated transactions from which it can credit its input tax:

Zero-rated transactions generally refer to the export sale of goods and services. The tax rate in this case is set at zero. When applied to the tax base or the selling price of the goods or services sold, such zero rate results in no tax chargeable against the foreign buyer or customer. But, although the seller in such transactions charges no output tax, he can claim a refund of the VAT that his suppliers charged him. The seller thus enjoys automatic zero rating, which allows him to recover the input taxes he paid relating to the export sales, making him internationally competitive.[40] (Citation omitted)

Thus, under Section 112(A) of the NIRC, a claim for refund or tax credit of input tax should not have been applied against output tax:

SECTION 112. Refunds or Tax Credits of Input Tax. -

(A) Zero-Rated or Effectively Zero-Rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, ***to the extent that such input tax has not been applied against output tax:*** Provided, however, That in the case of zerorated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section