THIRD DIVISION

[G.R. No. 205282, January 14, 2019]

STEAG STATE POWER, INC. (FORMERLY STATE POWER DEVELOPMENT CORPORATION), PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

RESOLUTION

LEONEN, J.:

In its June 5, 2013 Minute Resolution,[1] this Court denied the Petition for Review on Certiorari[2] filed by Steag State Power, Inc. (Steag State Power) for its failure to show any reversible error in the July 19, 2012 Decision[3] and December 20, 2012 Resolution[4] of the Court of Tax Appeals in CTA EB No. 710. Thus, Steag State Power filed a Motion for Reconsideration, asking this Court to set its Minute Resolution aside and give due course to the Petition. After studying the Motion for Reconsideration, this Court still firmly believes that the Petition should be denied for lack of merit.

Steag State Power is a domestic corporation primarily engaged in power generation and sale of electricity to the National Power Corporation under a Build, Operate, Transfer Scheme.[5] It is registered with the Bureau of Internal Revenue as a value-added tax taxpayer with Tax Identification No. 004-626-938-000.[6]

In 2003, Steag State Power started building its power plant inside the PHIVIDEC Industrial Estate-Misamis Oriental. The construction was completed on November 15, 2006.[7]

During the construction period, Steag State Power filed its quarterly value-added tax returns from the first to fourth quarters of 2004 on April 26, 2004, July 26, 2004, October 25, 2004, and January 25, 2005. It later filed amended value-added tax returns for the taxable quarters on December 16, 2004 and April 22, 2005.[8]

Likewise, for the taxable quarters of 2005, Steag State Power filed its quarterly value-added tax returns on April 22, 2005, July 26, 2005, October 25, 2005, and January 25, 2006.[9]

Steag State Power filed before the Bureau of Internal Revenue District Office No. 50, South Makati administrative claims for refund of its allegedly unutilized input value-added tax payments on capital goods in the total amount of P670,950,937.97:

Date of Application	Period Covered	Amount of Claim
June 30, 2005	January 1, 2004 to May 31, 2005	P408,768,002.82

August 31, 2005	June 1, 2005 to August 31, 2005	162,274,183.32
October 28, 2005	September 1, 2005 to October 31, 2005	44,988,727.50
December 19, 2005	October 2005	54,920,024.33
TOTAL		**P670,950,937.97**[10]

Due to the Commissioner of Internal Revenue's (Commissioner) inaction on its administrative claims, Steag State Power filed a Petition for Review on Certiorari[11] before the Court of Tax Appeals on April 20, 2006, elevating its claim for refund for the taxable year 2004. Through another Petition,[12] filed on December 27, 2006, it sought judicial recourse involving its claim for refund for the taxable year 2005. Eventually, the Petitions were consolidated.[13]

In its August 27, 2009 Decision,[14] the Court of Tax Appeals First Division denied the Petitions due to insufficiency of evidence. It held that the appeals for the administrative claims for refund of input taxes for January 2004 to May 2005, or the first judicial claim, were filed late.[15] Meanwhile, the appeal of the refund claim of input taxes for June 2005 to October 2005, or the second judicial claim, was prematurely filed.[16] Nonetheless, the Court of Tax Appeals First Division denied the second judicial claim for Steag State Power's failure to prove that its purchases and importations related to the claimed input tax payments were treated as capital goods in its books of accounts and were subjected to depreciation.[17]

On September 22, 2009, Steag State Power filed its Motion for Reconsideration (with Motion to Submit Supplemental Evidence).[18] The Motion was partially granted by the Court of Tax Appeals First Division in its January 5, 2010 Resolution.[19]

The dispositive portion of the Resolution read:

> **WHEREFORE**, petitioner's *Motion for Reconsideration (With Motion to Submit Supplemental Evidence)* is hereby **PARTIALLY GRANTED**. Accordingly, let this case be set for hearing for the presentation of Annexes "A" and "A-1" (inclusive of sub-markings [Exhibits EEE to ZZZ], inclusive of sub-markings) on **January 29, 2010** at **9:00 a.m.**
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> Meanwhile, the resolution of petitioner's *Motion for Reconsideration* with regard to the issue of whether petitioner was able to substantiate its claim for a refund or tax credit in the total amount of PhP670,950,937.97, allegedly representing its unutilized input tax paid on purchases and importations of capital goods from January 1, 2004 to October 31, 2005, is **HELD IN ABEYANCE** pending the formal offer of said Annexes. Thereafter, the *Motion* shall be deemed submitted for resolution.
>
> Furthermore, respondent's *Motion to Admit/Opposition* is hereby **GRANTED** and his *Comment/Opposition* is hereby **ADMITTED**.

SO ORDERED.[20] (Emphasis in the original)

A hearing was conducted on January 29, 2010. Later, Steag State Power filed its supplemental formal offer of evidence, which was admitted by the Court of Tax Appeals Special First Division on April 26, 2010.[21]

Meanwhile, the Commissioner, dissatisfied with the January 5, 2010 Resolution, filed a Motion for Reconsideration on February 10, 2010. It was also submitted for resolution on Apri1 26, 2010.[22]

In its December 6, 2010 amended Decision, the Court of Tax Appeals Special First Division dismissed the consolidated cases for lack of jurisdiction.[23]

On Steag State Power's appeal, the Court of Tax Appeals En Banc affirmed the dismissal of the cases in its July 19, 2012 Decision.[24] Relying upon *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[25] it denied the appeal for having been filed late.[26]

Steag State Power filed a Motion for Reconsideration, which was denied by the Court of Tax Appeals En Banc in its December 20, 2012 Resolution.[27]

Thus, Steag State Power filed before this Court a Petition for Review on Certiorari, [28] assailing the Court of Tax Appeals En Banc Decision and Resolution. As already mentioned, this Court denied the Petition for failure to show any reversible error in the challenged Decision and Resolution of the Court of Tax Appeals En Banc.[29]

Hence, petitioner filed this Motion for Reconsideration.[30] It urges this Court "to re-study the judicial nuance"[31] of *Commissioner of Internal Revenue v. San Roque Power Corporation*[32] as applied to its claims. Alternatively, it requests that the case be referred to the En Banc, if necessary, for its resolution.[33]

Petitioner insists that its claims are timely. It argues that, although the claims were filed beyond the 120+30-day periods under Section 112 of the National Internal Revenue Code, as amended (Tax Code), they were nonetheless filed within the two (2)-year period under Section 229 of the same law.[34] It contends that the timing was in accordance with Revenue Regulation No. 7-95, which establishes that appeals before the Court of Tax Appeals may be made after the 120-day period and before the lapse of the two (2)-year period.[35]

Petitioner avers that noncompliance with the 120+30-day periods is not a jurisdictional defect, but only a case of a "lack of cause of action,"[36] which may be subject to the equitable principle of waiver.[37] Moreover, since respondent admitted in the consolidated cases that the Petitions were filed within the allowable period, she cannot claim otherwise. Consequently, the Court of Tax Appeals En Banc erred when it still passed upon the issue of the appeals' timeliness.[38]

Petitioner further asserts that the window created in *San Roque Power Corporation*

by BIR Ruling No. DA-489-03, which excludes from the 120+30-day periods prematurely filed judicial claims from December 10, 2003 to October 6, 2010-when *Aichi Forging Company of Asia, Inc.* was promulgated-should also extend to claims belatedly filed.[39] It reasons that taxpayers were misled by respondent's pronouncement in the BIR Ruling that they had the full two (2)-year period to file their Petitions before the Court of Tax Appeals.[40] Even so, it contends that *Aichi Forging Company of Asia, Inc.* and *San Roque Power Corporation* cannot be applied retroactively, as doing so will impair petitioner's substantive rights and deprive it of its right to a refund.[41]

This Court denies the Motion for Reconsideration for its lack of substantial argument to warrant a reversal of the Minute Resolution.

The issue on the timeliness of respondent's filing of judicial claim is anchored on the nature of the prescriptive periods under Section 112 of the Tax Code:

> SECTION 112. Refunds or Tax Credits of Input Tax. -
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> ....
>
> (D) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, *the taxpayer affected may, within thirty (30) days.from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals*. (Emphasis supplied)[42]

A plain reading of this provision reveals that a taxpayer may appeal the Commissioner's denial or inaction only within 30 days when the decision that denies the claim is received, or when the 120-day period given to the Commissioner to decide on the claim expires.

In *Aichi Forging Company of Asia, Inc.*,[43] this Court applied the plain text of the law and declared that the observance of the 120+30-day periods is crucial in filing an appeal before the Court of Tax Appeals. This Court also declared that, following *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[44] claims for refund or tax credit of excess input tax are governed not by Section 229, but by Section 112 of the Tax Code.

These doctrines were reiterated in *San Roque Power Corporation*,[45] where this Court stressed that Section 112, in providing the 120+30 day periods to appeal before the Court of Tax Appeals, "must be applied exactly as worded since it is clear, plain, and unequivocal."[46]

Petitioner's claim that it filed its judicial claims under Revenue Regulation No. 7-95, which supposedly allowed claims for refund filed after the 120-day period but before the lapse of the two (2)-year period, is untenable.

First, petitioner's judicial claims were filed on April 20, 2006 and December 27, 2006;[47] hence, they were governed by the Tax Code, which clearly provided: (1) 120 days for the Commissioner to act on a taxpayer's claim; and (2) 30 days for the taxpayer to appeal either from the Commissioner's decision or from the expiration of the 120-day period in case of the Commissioner's inaction.

Moreover, Revenue Regulation No. 16-2005,[48] not Revenue Regulation No. 7-95, was the prevailing rule when petitioner filed its judicial claims. Its Section 4.112-1 faithfully reflected Section 112 of the Tax Code, as amended by Republic Act No. 9337:

> SEC. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax. -
>
> ....
>
> (d) Period within which refund or tax credit certificate/refund of input taxes shall be made
>
> In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraph (a) above.
>
> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, *if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period*. (Emphasis supplied)

It is misleading for petitioner to raise its supposed reliance in good faith on Revenue Regulation No. 7-95, when the rule had already been superseded and revoked by the time it filed its judicial claims.

Second, under Section 112 of the Tax Code, only the administrative claim for refund of input value-added tax must be filed within the two (2)-year prescriptive period, the judicial claim need not be.

Section 112(A) states that:

> (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