

THIRD DIVISION

[G.R. No. 197663, March 14, 2018]

**TEAM ENERGY CORPORATION (FORMERLY: MIRANT PAGBILAO CORPORATION AND SOUTHERN ENERGY QUEZON, INC.),
PETITIONER, V. COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.**

[G.R. No. 197770, March 14, 2018]

**REPUBLIC OF THE PHILIPPINES REP. BY THE BUREAU OF
INTERNAL REVENUE, PETITIONER, V. TEAM ENERGY
CORPORATION, RESPONDENT.**

D E C I S I O N

LEONEN, J.:

For a judicial claim for Value Added Tax (VAT) refund to prosper, the claim must not only be filed within the mandatory 120+30-day periods. The taxpayer must also prove the factual basis of its claim and comply with the 1997 National Internal Revenue Code (NIRC) invoicing requirements and other appropriate revenue regulations. Input VAT payments on local purchases of goods or services must be substantiated with VAT invoices or official receipts, respectively.

The Petitions for Review in G.R. Nos. 197663 and 197770 seek to reverse and set aside the April 8, 2011 Decision^[1] and July 7, 2011 Resolution^[2] of the Court of Tax Appeals En Banc in CTA EB No. 603. The assailed Decision affirmed with modification the October 5, 2009 Decision^[3] and February 23, 2010 Resolution^[4] of the Court of Tax Appeals in Division, granting Team Energy Corporation (Team Energy) a tax refund/credit in the reduced amount of P11,161,392.67, representing unutilized input VAT attributable to zero-rated sales for the taxable year 2003. The assailed Resolution denied the respective motions for reconsideration filed by Team Energy and the Commissioner of Internal Revenue (Commissioner).

Team Energy is a VAT-registered entity with Certificate of Registration No. 96-600-002498. It is engaged in power generation and electricity sale to National Power Corporation (NPC) under a Build, Operate, and Transfer scheme.^[5]

On November 13, 2002, Team Energy filed with the Bureau of Internal Revenue (BIR) "an Application for Effective Zero-Rate of its supply of electricity to the NPC, which was subsequently approved."^[6]

For the year 2003, Team Energy filed its Original and Amended Quarterly VAT Returns on the following dates and with the following details:

Quarter	Original Return	Amended Return	Zero-rated Sales	Input VAT
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1 st	April 25, 2003	July 25, 2003	P3,170,914,604.24	P15,085,320.31
2 nd	July 25, 2003	October 27, 2003	3,034,739,252.93	15,898,643.56
3 rd	October 27, 2003	-	2,983,478,607.66	21,151,308.57
4 th	January 24, 2004	July 26, 2004 ^[7]	3,019,672,908.84	31,330,081.06
Total			P12,208,805,373.67^[8]	P83,465,353.50^[9]

On December 17, 2004, Team Energy filed with the Revenue District Office No. 60 in Lucena City a claim for refund of unutilized input VAT in the amount of P83,465,353.50, for the first to fourth quarters of taxable year 2003.^[10]

On April 22, 2005, Team Energy appealed before the Court of Tax Appeals its 2003 first quarter VAT claim of P15,085,320.31. The appeal was docketed as CTA Case No. 7229.^[11]

Opposing the appeal, the Commissioner averred that the amount claimed by Team Energy was not properly documented and that NPC's exemption from taxes did not extend to its electricity supplier such as Team Energy.^[12]

On July 22, 2005, Team Energy appealed its VAT refund claims for the second to fourth quarters of 2003 in the amount of P68,380,033.19, docketed as CTA Case No. 7298.^[13]

As special and affirmative defenses, the Commissioner alleged that it was imperative upon Team Energy to prove its compliance with the registration requirements of a VAT taxpayer; the invoicing and accounting requirements for VAT-registered persons; and the checklist of requirements for a VAT refund under Revenue Memorandum Order No. 53-98. Furthermore, the Commissioner contended that Team Energy must prove that the claims were filed within the prescriptive periods and that the input taxes being claimed had not been applied against any output tax liability or were not carried over in the succeeding quarters.^[14]

On October 12, 2005, the two (2) cases were consolidated.^[15]

The Court of Tax Appeals First Division partially granted Team Energy's petition.^[16] It held that NPC's exemption from direct and indirect taxes had long been resolved by this Court.^[17] Consequently, NPC's electricity purchases from independent power producers, such as Team Energy, were subject to 0% VAT pursuant to Section 108(B)(3) of the 1997 NIRC.^[18]

The Court of Tax Appeals First Division further ruled that P20,986,302.67 out of the reported zero-rated sales of P12,208,805,373.67 must be excluded for Team Energy's failure to submit the corresponding official receipts, leaving a balance of P12,187,819,071.00 as substantiated zero-rated sales.^[19] Consequently, only 99.83%^[20] of the validly supported input VAT payments being claimed could be considered.

The Court of Tax Appeals First Division likewise disallowed P12,642,304.32 of Team Energy's claimed input VAT for its failure to meet the substantiation requirements under Sections 110(A) and 113(A) of the 1997 NIRC and Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95 or the Consolidated Value Added Tax Regulations.^[21] Team Energy's reported output VAT liability of P776.36 in its Quarterly VAT Return for the third quarter of 2003 was further deducted from the substantiated input VAT.^[22] The Court of Tax Appeals used the following computation in determining Team Energy's total allowable input VAT:

Substantiated Input VAT	P70,823,049.18
Less: Output VAT	776.36
Excess: Input VAT	70,822,272.82
Multiply by rate of substantiated zero-rated sales	99.83%
Excess input VAT attributable to substantiated zero-rated sales	P70,700,533.01^[23]

Finally, on the issue of prescription, the Court of Tax Appeals First Division held that "[t]he reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the date of filing of the corresponding quarterly VAT return."^[24] It explained that this Court's ruling in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,^[25] to the effect that "the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made,"^[26] must be applied to cases filed after the promulgation of *Mirant*. Accordingly, Team Energy's administrative claim filed on December 17, 2004, and judicial claims filed on April 22, 2005 and July 22, 2005 were well within the two (2)-year prescriptive period.^[27]

The dispositive portion of the October 5, 2009 Decision provided:

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. [The Commissioner of Internal Revenue] is hereby **ORDERED** to **REFUND** or **ISSUE** a tax credit certificate to [Team Energy] in the amount of P70,700,533.01.

SO ORDERED.^[28] (Emphasis in the original)

Upon the denial of her Motion for Reconsideration, the Commissioner filed on March 31, 2010 a Petition for Review with the Court of Tax Appeals En Banc.^[29] She argued that the Court of Tax Appeals First Division erred in allowing the tax refund/credit as Team Energy's administrative and judicial claims for the first and second quarters were filed beyond the two (2)-year period prescribed in Section 112(A) of the 1997 NIRC.^[30] Additionally, she averred that Team Energy's judicial

claims for the second, third, and fourth quarters of 2003 were filed beyond the 30-day period to appeal under Section 112 of the 1997 NIRC.^[31] Team Energy filed its Comment/Opposition to the Petition.^[32]

On April 8, 2011, the Court of Tax Appeals En Banc promulgated its Decision, partially granting Team Energy's petition. It held that Team Energy's judicial claim for refund for the second, third, and fourth quarters of 2003 was filed only on July 22, 2005 or beyond the 30-day period prescribed under Section 112(D)^[33] of the 1997 NIRC. Consequently, the claim for these quarters must be denied for lack of jurisdiction. Furthermore, the Court of Tax Appeals En Banc found Team Energy entitled to a refund in the reduced amount of P11,161,392.67, representing unutilized input VAT attributable to its zero-rated sales for the first quarter of 2003.

The dispositive portion of the Court of Tax Appeals En Banc April 8, 2011 Decision read:

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review ... is **PARTIALLY GRANTED**. The assailed Decision and Resolution of the First Division dated October 5, 2009 and February 23, 2010, respectively, are hereby **MODIFIED**. Accordingly, [the Commissioner] is ORDERED to refund in favor of [Team Energy] the reduced amount of Eleven Million One Hundred Sixty[-]One Thousand Three Hundred Ninety[-]Two [Pesos] and Sixty[-]Seven Centavos (P11,161,392.67) representing unutilized input value-added tax (VAT) paid on its domestic purchases of goods and services and importation of goods attributable to its zero-rated sales for the first quarter of taxable year 2003.

SO ORDERED.^[34] (Emphasis in the original)

The separate partial motions for reconsideration of Team Energy and the Commissioner were denied in the Court of Tax Appeals En Banc July 7, 2011 Resolution.^[35]

Team Energy and the Commissioner filed their separate Petitions for Review before this Court, docketed as G.R. Nos. 197663^[36] and 197770,^[37] respectively.

After the parties have filed their respective comments to the petitions and replies to these comments, this Court directed them to submit their respective memoranda in its July 1, 2013 Resolution.^[38]

Team Energy filed its Consolidated Memorandum^[39] while the Commissioner filed a Manifestation,^[40] stating that she was adopting her Comment dated February 21, 2012^[41] as her Memorandum.

The issues for this Court's resolution are as follows:

First, whether or not the Court of Tax Appeals erred in disallowing Team Energy Corporation's claim for tax refund of its unutilized input VAT for the second to fourth quarters of 2003 on the ground of lack of jurisdiction;

Second, whether or not the Court of Tax Appeals erred in failing to recognize the interchangeability of VAT invoices and VAT official receipts to comply with the

substantiation requirements for refunds of excess or unutilized input tax under Sections 110 and 113 of the 1997 National Internal Revenue Code, resulting in the disallowance of P258,874.55; and

Finally, whether or not Team Energy Corporation's failure to submit the Registration and Certificate of Compliance issued by the Energy Regulatory Commission (ERC) disqualifies it from claiming a tax refund/credit.

I

The prescriptive periods regarding judicial claims for refunds or tax credits of input VAT are explicitly set forth in Section 112(D)^[42] of the 1997 NIRC:

Section 112. *Refunds or Tax Credits of Input Tax.* —

....

(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)

The text of the law is clear that resort to an appeal with the Court of Tax Appeals should be made within 30 days either from receipt of the decision denying the claim or the expiration of the 120-day period given to the Commissioner to decide the claim.

It was in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*^[43] where this Court first pronounced that observance of the 120+30-day periods in Section 112(D)^[44] is crucial in filing an appeal with the Court of Tax Appeals. This was further emphasized in *Commissioner of Internal Revenue v. San Roque Power Corporation*^[45] where this Court categorically held that compliance with the 120+30-day periods under Section 112 of the 1997 NIRC is mandatory and jurisdictional. Exempted from this are VAT refund cases that are prematurely filed before the Court of Tax Appeals or before the lapse of the 120-day period between December 10, 2003, when the BIR issued Ruling No. DA-489-03, and October 6, 2010, when this Court promulgated *Aichi*.^[46]

Section 112(D)^[47] is consistent with Section 11 of Republic Act No. 1125, as amended by Section 9 of Republic Act No. 9282 (2004), which provides a 30-day period of appeal either from receipt of the adverse decision of the Commissioner or from the lapse of the period fixed by law for action: