805 Phil. 464

FIRST DIVISION

[G.R. No. 201326, February 08, 2017]

SITEL PHILIPPINES CORPORATION (FORMERLY CLIENTLOGIC PHILS., INC.), PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

CAGUIOA, J:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Sitel Philippines Corporation (Sitel) against the Commissioner of Internal Revenue (CIR) seeks to reverse and set aside the Decision dated November 11, 2011[2] and Resolution dated March 28, 2012[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 644, which denied Sitel's claim for refund of unutilized input value-added tax (VAT) for the first to fourth quarters of taxable year 2004 for being prematurely filed.

Facts

Sitel, a corporation organized and extsting under the laws of the Philippines, is engaged in the business of providing call center services from the Philippines to domestic and offshore businesses. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, as well as with the Board of Investments on pioneer status as a new information technology service firm in the field of call center.[4]

For the period from January 1, 2004 to December 31, 2004, Sitel filed with the BIR its Quarterly VAT Returns as follows:

Period Covered	**Date Filed**
1st Quarter 2004	26 April 2004
2nd Quarter 2004	26 July 2004
3rd Quarter 2004	25 October 2004
4th Quarter 2004	25 January 2005[5]

Sitel's Amended Quarterly VAT Returns for the first to fourth quarters of 2004 declared as follows:

Taxable Sales (A)	Zero-Rated Sales (B)	Total Sales (C=A+B)	Input Tax for the [Quarter] (D)	Input Tax from Capital Goods (E)	Input Tax from Regular Transactions (F+D-E)	Input Tax Allocated to Taxable Sales [G=(A/C) x (F)]	Input Ta Allocated Zero-Rated [H=(B/C) x
509,799.74	180,450,030.29	180,957,830.03	3,842,714.21	2,422,090.40	1,400,623.81	3,930.40	1,396,69
0	142,664,271.00	142,664,271.00	3,554,922.94	2,846,225.66	708,696.58	-	708,69
517,736.36	205,021,590.46	205,539,326.82	9,568,047.25	7,629,734.40	1,938,312.85	4,882.45	1,933,43
0	334,384,766.48	334,384,766.48	6,137,028.74	3,005,573.11	3,313,455.63	-	3,313,45
1,025,536.10	**862,520,658.23**	**863,546,194.33**	**23,102,712.44**	**15,923,623.57**	**7,179,088.87**	**8,812.85**	**7,170,276.**

On March 28, 2006, Sitel filed separate formal claims for refund or issuance of tax credit with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance for its unutilized input VAT arising from domestic purchases of goods and services attributed to zero-rated transactions and purchases/importations of capital goods for the 1st, 2nd, 3rd and 4th quarters of 2004 in the aggregate amount of P23,093,899.59.[7]

On March 30, 2006, Sitel filed a judicial claim for refund or tax credit via a petition for review before the CTA, docketed as CTA Case No. 7423.

Ruling of the CTA Division

On October 21, 2009, the CTA Division rendered a Decision[8] partially granting Sitel's claim for VAT refund or tax credit, the dispositive portion of which reads as follows:

> In view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Petitioner is entitled to the instant claim in the reduced amount of P11,155,276.59 computed as follows:

Amount of Input VAT Claim		P 23,093,899.59
Less:	Input VAT Claim on Zero-Rated Sales	7,170,276.02
Input VAT Claim on Capital Goods Purchases		P 15,923,623.57
Less:	Not Properly Substantiated Input VAT Claim on Capital Goods Purchases	
	Per ICPA Report (*P15,923,623.57 less P13,824,129.14*)	2,099,494.43
	Per this Court's further verification	2,668,852.55
Refundable Input VAT on Capital Goods Purchases		**P 11,155,276.59**

> Accordingly, respondent is **ORDERED to REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **P11,155,276.59** representing unutilized input VAT arising from petitioner's domestic purchases of goods and services

which are attributable to zero-rated transactions and purchases/importations of capital goods for the taxable year 2004.

SO ORDERED.[9]

The CTA Division denied Sitel's P7,170,276.02 claim for unutilized input VAT attributable to its zero-rated sales for the four quarters of 2004. Relying upon the rulings of this Court in *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[10] (*Burmeister*), the CTA Division found that Sitel failed to prove that the recipients of its services are doing business outside the Philippines, as required under Section 108(B)(2) of the National Internal Revenue Code of 1997 (NIRC), as amended.[11]

The CTA Division also disallowed the amount of P2,668,852.55 representing input VAT paid on capital goods purchased for taxable year 2004 for failure to comply with the invoicing requirements under Sections 113, 237, and 238 of the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations No. 7-95 (RR 7-95).[12]

Aggrieved, Sitel filed a motion for partial reconsideration[13] and Supplement (To Motion for Reconsideration [of Decision dated October 21, 2009]),[14] on November 11, 2009 and March 26,2010, respectively.

Prior thereto, or on January 8, 2010, Sitel filed a Motion for Partial Execution of Judgment[15] seeking the execution pending appeal of the portion of the Decision dated October 21, 2009 granting refund in the amount of P11,155,276.59, which portion was not made part of its motion for partial reconsideration.

On May 31, 2010, the CTA Division denied Sitel's Motion for Reconsideration and Supplement (To Motion for Reconsideration [of Decision dated October 21, 2009]) for lack of merit.[16]

Undaunted, Sitel filed a Petition for Review[17] with the CTA *En Banc* claiming that it is entitled to the amount denied by the CTA Division.

Ruling of the CTA *En Banc*

In the assailed Decision, the CTA *En Banc* reversed and set aside the ruling of the CTA Division. Citing the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[18] (*Aichi*), the CTA *En Banc* ruled that the 120-day period for the CIR to act on the administrative claim for refund or tax credit, under Section 112(D) of the NIRC of 1997, as amended, is mandatory and jurisdictional. Considering that Sitel filed its judicial claim for VAT refund or credit without waiting for the lapse of the 120-day period for the CIR to act on its administrative claim, the CTA did not acquire jurisdiction as there was no decision or inaction to speak of.[19] Thus, the CTA *En Banc* denied Sitel's entire refund claim on the ground of prematurity. The dispositive portion of the CTA *En Banc*'s Decision reads as follows:

> **WHEREFORE**, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **DISMISSED**. Accordingly, the Decision of the CTA First Division dated October 21, 2009 and the Resolution issued by the Special First Division dated May 31, 2010, are hereby reversed and set aside. Petitioner's refund claim of P19,702,880.80 is **DENIED** on the ground that the judicial claim for the first to fourth quarters of taxable year 2004 was prematurely filed.
>
> **SO ORDERED.**[20]

Aggrieved, Sitel moved for reconsideration,[21] but the same was denied by the Court *En Banc* for lack of merit.[22]

Hence, the instant petition raising the following issues:

> x x x WHETHER OR NOT THE *AICHI RULING* PROMULGATED ON OCTOBER 6, 2010 MAY BE APPLIED RETROACTIVELY TO THE INSTANT CLAIM FOR REFUND OF INPUT VAT INCURRED IN 2004.
>
> x x x WHETHER OR NOT THE CTA EN BANC CAN VALIDLY WITHDRAW AND REVOKE THE PORTION OF THE REFUND CLAIM ALREADY GRANTED TO PETITIONER IN THE AMOUNT OF P11,155,276.59 AFTER TRIAL ON THE MERITS, NOTWITHSTANDING THAT SUCH PORTION OF THE DECISION HAD NOT BEEN APPEALED.
>
> x x x WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OR TAX CREDIT OF ITS UNUTILIZED INPUT VAT ARISING FROM PURCHASES OF GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES AND PURCHASES/IMPORTATIONS OF CAPITAL GOODS FOR THE 1^{ST}, 2^{ND}, 3^{RD}, [AND] 4^{TH} QUARTERS OF TAXABLE YEAR 2004 IN THE AGGREGATE AMOUNT OF P20,994,405.16.[23]

In the Resolution[24] dated July 4, 2012, the CIR was required to comment on the instant petition. In compliance thereto, the CIR filed its Comment[25] on November 14, 2012.

On January 16, 2013, the Court issued a Resolution[26] denying Sitel's petition for failure to sufficiently show that the CTA *En Banc* committed reversible error in denying its refund claim on the ground of prematurity based on prevailing jurisprudence.

Soon thereafter, however, or on February 12, 2013, the Court *En Banc* decided the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue*[27] (*San Roque*). In that case, the Court recognized BIR Ruling No. DA-489-03 as an exception to the mandatory and jurisdictional nature of the 120-day waiting period.

Invoking *San Roque*, Sitel filed a Motion for Reconsideration.[28]

In the Resolution[29] dated June 17, 2013, the Court granted Sitel's motion and reinstated the instant petition.

In the instant petition, Sitel claims that its judicial claim for refund was timely filed following the Court's pronouncements in *San*

Roque; thus, it was erroneous for the CTA *En Banc* to reverse the ruling of the CTA Division and to dismiss its petition on the ground of prematurity. Sitel further argues that the previously granted amount for refund of P11,155,276.59 should be reinstated and declared final and executory, the same not being the subject of Sitel's partial appeal before the CTA *En Banc*, nor of any appeal from the CIR.

Finally, Sitel contends that insofar as the denied portion of the claim is concerned, which the CTA *En Banc* failed to pass upon with the dismissal of its appeal, speedy justice demands that the Court resolved the same on the merits and Sitel be declared entitled to an additional refund in the amount of P9,839,128.57.

The Court's Ruling

The Court finds the petition partly meritorious.

Sitel's Judicial Claim for VAT Refund was deemed timely filed pursuant to the Court's pronouncement in San Roque.

Section 112(C) of the NIRC, as amended, provides:

> SEC. 112. *Refunds or Tax Credits of Input Tax*. -
>
> x x x x
>
> (C) *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 Subsection (A) 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)

Based on the plain language of the foregoing provision, the CIR is given 120 days within which to grant or deny a claim for refund. Upon receipt of CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has thirty (30) days within which to file a petition for review with the CTA.

In *Aichi*, the Court ruled that the 120-day period granted to the CIR was mandatory and jurisdictional, the non-observance of which was fatal to the filing of a judicial claim with the CTA. The Court further explained that the two (2)-year prescriptive period under Section 112(A) of the NIRC pertained only to the filing of the administrative claim with the BIR; while the judicial claim may be filed with the CTA within thirty (30) days from the receipt of the decision of the CIR or the expiration of the 120-day period of the CIR to act on the claim. Thus:

> Section 112 (D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
>
> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim.
>
> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.
>
> x x x x
>
> In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.[30]

However, in *San Roque*, the Court clarified that the 120-day period does **not** apply to claims for refund that were prematurely filed during the period from the issuance of BIR Ruling No. DA-489-03, on December 10, 2003, until October 6, 2010, when *Aichi* was promulgated. The Court explained that BIR Ruling No. DA-489-03, which expressly allowed the filing of judicial claims with the CTA

even before the lapse of the 120-day period, provided for a valid claim of equitable estoppel because the CIR had misled taxpayers into prematurely filing their judicial claims before the CTA:

> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. **The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.**
>
> x x x x
>
> BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.
>
> **Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.**[31] (Emphasis supplied).

In *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*,[32] the Court came up with an outline summarizing the pronouncements in *San Roque*, to wit:

> For clarity and guidance, the Court deems it proper to outline the rules laid down in *San Roque* with regard to claims for refund or tax credit ofunutilized creditable input VAT. They are as follows:
>
> 1. When to file an administrative claim with the CIR:
>
>   a. General rule- Section 112(A) and *Mirant*
>
>   Within 2 years from the close of the taxable quarter when the sales were made.
>
>   b. Exception - *Atlas*
>
>   Within 2 years from the date of payment of the output VAT, if the administrative claim was filed from June 8, 2007 (promulgation of *Atlas*) to September 12, 2008 (promulgation of *Mirant*).
>
> **2. When to file a judicial claim with the CTA:**
>
>   a. **General rule-Section 112(D); *not* Section 229**
>
>   i. **Within 30 days from the full or partial denial of the administrative claim by the CIR; or**
>
>   ii. **Within 30 days from the expiration of the 120-day period provided to the CIR to decide on the claim. This is mandatory and jurisdictional beginning January 1, 1998 (effectivity of 1997 NIRC).**
>
>   b. **Exception - BIR Ruling No. DA-489-03**
>
>   **The judicial claim need not await the expiration of the 120-day period, if such was filed from December 10, 2003 (issuance of BIR Ruling No. DA-489-03) to October 6, 2010 (promulgation of *Aichi*).**[33] (Emphasis and underscoring supplied).

In this case, records show that Sitel filed its administrative and judicial claim for refund on March 28, 2006 and March 30, 2006, respectively, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though Sitel filed its judicial claim prematurely, *i.e.*, without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in *San Roque*. In other words, Sitel's judicial claim was deemed timely filed and should have not been dismissed by the CTA *En Banc*. Consequently, the October 21, 2009 Decision[34] of the CTA Division partially granting Sitel's judicial claim for refund in the reduced amount of P11,155,276.59, which is not subject of the instant appeal, should be reinstated. In this regard, since the CIR did not appeal said decision to the CTA *En Banc*, the same is now considered final and beyond this Court's review.

Sitel now questions the following portions of its refund claim which the CTA Division denied: (1) P7,170,276.02, representing unutilized input VAT on purchases of goods and services attributable to zero-rated sales, which was denied because Sitel failed to prove that the call services it rendered for the year 2004 were made to non-resident foreign clients doing business outside the Philippines; and (2) P2,668,852.55 representing input VAT on purchases of capital goods, because these are supported by invoices and official receipts with pre-printed TIN-V instead of TIN-VAT, as required under Section 4.108-1 of RR 7-95.

Sitel claims that testimonial and documentary evidence sufficiently established that its clients were non-resident foreign corporations not doing business in Philippines. It also asserts that the input VAT on its purchases of capital goods were duly substantiated because the supporting official receipts substantially complied with the invoicing requirements provided by the rules.