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THIRD DIVISION

[G.R. No. 205279, April 26, 2017]

VISAYAS GEOTHERMAL POWER COMPANY, PETITIONER, V. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

RESOLUTION

REYES, J.:

Subjects of this Petition for Review on *Certiorari*[1] are the Decision[2] dated October 8, 2012 and Resolution[3] dated January 7, 2013 of the Court of Tax Appeals (CTA) *en banc* in CTA EB Case No. 864. The CTA *en banc* affirmed *via* the challenged issuances the CTA First Division's dismissal of Visayas Geothermal Power Company's (petitioner) petition for review on the ground of premature filing.

The Antecedents

The petitioner is a special purpose limited partnership established primarily to "invest in, acquire, finance, complete, construct, develop, improve, operate, maintain and hold that certain partially constructed power production geothermal electrical generating facility in Malitbog, Leyte Province, Philippines (the "Project"), and other property incidental thereto, for the production and sale of electricity from geothermal resources, to sell or otherwise dispose of the Project and such other property."[4] It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer with Taxpayer Identification No. 003-832-538-000.[5]

On February 13, 2009, the petitioner filed with the BIR an administrative claim for refund of unutilized input VAT covering the taxable year 2007 in the amount of P11,902,576.07. On March 30, 2009, it proceeded to immediately file a petition for review with the CTA, as it claimed that the BIR failed to act upon the claim for refund.[6]

Proceedings ensued before the CTA. To substantiate its claim for refund, the petitioner cited, among other laws, Section 6 of Republic Act (R.A.) No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001," which provides in part that "[p]ursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be [VAT] zero-rated." It also referred to the 1997 National Internal Revenue Code (NIRC), as amended by R.A. No. 9337, which imposes a zero percent VAT rate on sale of power generated through renewable sources of energy.[7]

Ruling of the CTA Division

On October 19, 2011, the CTA First Division rendered its Decision,[8] with dispositive portion that reads:

> **WHEREFORE**, the instant Petition for Review is hereby **DENIED** for being prematurely filed.
>
> **SO ORDERED.**[9]

Cited in the decision is Section 112(C) of the 1997 NIRC, which provides that the Commissioner of Internal Revenue (CIR) has 120 days within which to decide on an application for refund or tax credit, to be reckoned from the date of submission of complete documents in support of the application. Since the administrative claim for refund was filed on February 13, 2009, the CIR had until June 13, 2009 within which to act on the claim. The petition for review, however, was prematurely filed on March 30, 2009, or a mere 45 days from the filing of the administrative claim with the BIR. The dismissal of the case was based solely on this ground, as the tax court found it needless to still address the petitioner's compliance with the requisites for entitlement to tax refund or credit.[10]

The petitioner moved to reconsider,[11] as it explained that it no longer waited for the CIR's action on the administrative claim to be able to still satisfy the two-year prescriptive period for filing a judicial claim for tax refund. The petitioner's motion for reconsideration was still denied by the CTA First Division *via* a Resolution[12] dated January 16, 2012, prompting the petitioner to elevate the case to the CTA *en banc*.

The CTA *en banc*, in its Decision[13] dated October 8, 2012, affirmed *in toto* the rulings of the CTA First Division. It stated, thus:

> In the case at bench, the CTA First Division is correct in its findings that petitioner's administrative claim for refund/credit of its unutilized input VAT was timely filed on February 13, 2009. Applying subsections (A) and (C) of Section 112 of the 1997 NIRC, as amended, the [CIR] has one hundred twenty (120) days or until June 13, 2009 to act on the said application. However, as can be gleaned from the records, its judicial claim was prematurely filed on March 30, 2009 or barely forty five (45) days after it filed its application for refund with the [BIR]. For this reason, applying the ruling in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi case)*, this Court acquires no jurisdiction to act on the said claim in view of the premature filing of the instant Petition for Review.
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> x x x x
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> **WHEREFORE**, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the October 19, 2011 Decision and the January 16, 2012 Resolution of the CTA First Division in CTA Case No. 7889 entitled, "*Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*", are hereby **AFFIRMED *in toto.***
>
> **SO ORDERED.**[14] (Citation omitted)

Hence, this petition for review on *certiorari.*

The Present Petition

The petitioner asks the Court to, first, reverse the rulings of the CTA *en banc* and, *second*, to order the CIR to grant the refund or tax credit certificate being applied for.[15]

The petitioner insists that when it sought an immediate recourse to the CTA without waiting for the decision of the CIR in the administrative claim, it merely relied on the guidelines that were set forth in BIR Ruling No. DA-489-03, which provides that a taxpayer-claimant need not wait for the lapse of the 120-day period before seeking judicial relief. The petitioner also cites the Court's ruling in *CIR v. San Roque Power Corporation*,[16] which recognized the effects of a taxpayer's reliance on the said BIR ruling.

The CIR, on the other hand, maintains that the petition for review filed with the CTA was prematurely filed, as the petitioner still had to wait for the lapse of the 120-day period allowed for the resolution of its administrative claim.

Ruling of the Court

The petition is partly granted. The CTA erred in ruling that the petitioner's judicial claim was prematurely filed. However, considering that the tax court had not made a disposition on the merits of the claim for tax refund, the case needs to be remanded to the CTA First Division, so that it may decide on the issue.

120+30-Day Periods; Exception

In a line of cases,[17] the Court has underscored the need to strictly comply with the 120+30-day periods provided in Section 112 of the 1997 NIRC, which reads:

> Sec. 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 x x x.
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> 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.
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> 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.
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> x x x x (Emphasis ours)