814 Phil. 616

SECOND DIVISION

[G.R. No. 197526, July 26, 2017]

CE LUZON GEOTHERMAL POWER COMPANY, INC., PETITIONER, COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

[G.R. No. 199676-77, July 26, 2017]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE BUREAU OF INTERNAL REVENUE, PETITIONER, V. CE LUZON GEOTHERMAL POWER COMPANY, INC., RESPONDENT.

DECISION

LEONEN, J.:

The 120-day and 30-day reglementary periods under Section 112(C) of the National Internal Revenue Code are both mandatory and jurisdictional. Non-compliance with these periods renders a judicial claim for refund of creditable input tax premature.

Before this Court are two (2) consolidated Petitions for Review concerning the prescriptive period in filing judicial claims for unutilized creditable input tax or input Value Added Tax (VAT).

The first Petition,[1] docketed as G.R. No. 197526, was filed by CE Luzon Geothermal Power Company, Inc. (CE Luzon) against the Commissioner of Internal Revenue. The second Petition,[2] docketed as G.R. Nos. 199676-77, was instituted by the Bureau of Internal Revenue, on behalf of the Republic of the Philippines, against CE Luzon.

CE Luzon is a domestic corporation engaged in the energy industry.[3] It owns and operates the CE Luzon Geothermal Power Plant, which generates power for sale to the Philippine National Oil Company-Energy Development Corporation by virtue of an energy conversion agreement.[4] CE Luzon is a VAT-registered taxpayer with Tax Identification Number 003-924-356-000.[5]

The sale of generated power by generation companies is a zero-rated transaction under Section 6 of Republic Act No. 9136.[6]

In the course of its operations, CE Luzon incurred unutilized creditable input tax amounting to P26,574,388.99 for taxable year 2003.[7] This amount was duly reflected in its amended quarterly VAT returns.[8] CE Luzon then filed before the Bureau of Internal Revenue an administrative claim for refund of its unutilized creditable input tax as follows:

Quarter	Date of Filing	Unutilized Creditable Input Tax

1st	January 20, 2005	[P]4,785,234.70
2th	March 31, 2005	[P]4,568,458.49
3rd	June 7, 2005	[P]7,455,413.97
4th	June 7, 2005	[P]9,765,281.83
	Total	[P]26,574,388.99[9]

Without waiting for the Commissioner of Internal Revenue to act on its claim, or for the expiration of 120 days, CE Luzon instituted before the Court of Tax Appeals a judicial claim for refund of its first quarter unutilized creditable input tax on March 30, 2005.[10] The petition was docketed as CTA Case No. 7180.[11]

Meanwhile, on June 24, 2005, CE Luzon received the Commissioner of Internal Revenue's decision denying its claim for refund of creditable input tax for the second quarter of 2003.[12]

On June 30, 2005, CE Luzon filed before the Court of Tax Appeals a judicial claim for refund of unutilized creditable input tax for the second to fourth quarters of taxable year 2003.[13] The petition was docketed as CTA Case No. 7279.[14]

The material dates are summarized below:

Period of Claim Taxable Year 2003	Date of Filing Administrative Claim	Expiration of 120 days	Date of Receipt of Denial of Claim	Date of Filing of Petition for Review
1st quarter	January 20, 2005	May 20, 2005	-	March 30, 2005
2nd quarter	May 31, 2005	-	June 24, 2005	June 30, 2005
3rd quarter	June 7, 2005	October 5, 2005	-	June 30, 2005
4th quarter	June 7, 2005	October 5, 2005	-	June 30, 2005[15]

In his Answer,[16] the Commissioner of Internal Revenue asserted, among others, that CE Luzon failed to comply with the invoicing requirements under the law.[17]

In the Decision[18] dated April 21, 2009, the Court of Tax Appeals Second Division partially granted CE Luzon's claim for unutilized creditable input tax. It ruled that both the administrative and judicial claims of CE Luzon were brought within the two (2)-year prescriptive period.[19] However, the Court of Tax Appeals Second Division disallowed the amount of P3,084,874.35 to be refunded.[20] CE Luzon was only able to substantiate P22,647,638.47 of its claim.[21] The Court of Tax Appeals Second Division ordered the Commissioner of Internal Revenue to issue a tax credit

certificate or to refund CE Luzon the amount of P22,647,63 8.47 representing CE Luzon's creditable input tax for taxable year 2003.[22]

CE Luzon and the Commissioner of Internal Revenue both moved for reconsideration.[23] In the Resolution[24] dated October 19, 2009, the Court of Tax Appeals Second Division denied both motions for lack of merit.

CE Luzon and the Commissioner of Internal Revenue then filed their respective Petitions for Review before the Court of Tax Appeals En Banc. The Petitions were docketed as C.T.A. EB No. 553 and C.T.A. EB No. 554, respectively.[25]

In the Decision[26] dated July 20, 2010, the Court of Tax Appeals En Banc partially granted CE Luzon's Petition for Review.[27] The Court of Tax Appeals En Banc ordered the Commissioner of Internal Revenue to issue a tax credit certificate or to refund CE Luzon the amount of P23,489,514.64, representing CE Luzon's duly substantiated creditable input tax for taxable year 2003.[28]

However, on November 22, 2010, the Court of Tax Appeals En Banc rendered an Amended Decision,[29] setting aside its Decision dated July 20, 2010.[30] The Court of Tax Appeals En Banc ruled that CE Luzon failed to observe the 120-day period under Section 112(C) of the National Internal Revenue Code. Hence, it was barred from claiming a refund of its input VAT for taxable year 2003.[31] The Court of Tax Appeals En Banc held that CE Luzon's judicial claims were prematurely filed.[32] CE Luzon should have waited either for the Commissioner of Internal Revenue to render a decision or for the 120-day period to expire before instituting its judicial claim for refund:[33]

> WHEREFORE, premises considered:
>
> 1) the Commissioner of Internal Revenue's "Motion for Reconsideration" is hereby GRANTED. Accordingly, our Decision dated July 20, 2010 in the above[-Jcaptioned case is hereby RECALLED and SET ASIDE, and a new one is hereby entered DISMISSING CE Luzon's Petition for Review in C.T.A. EB No. 553 and GRANTING CIR's Petition for Review in C.T.A. EB No. 554. Accordingly, the Decision dated April 21, 2009 and Resolution dated October 19, 2009 rendered by the Former Second Division in C.T.A. CASE Nos. 7180 and 7279 are hereby REVERSED and SET ASIDE.
>
> 2) For being moot and academic, CE LUZON'S "Motion for Partial Reconsideration" is hereby DENIED.
>
> SO ORDERED.[34]

CE Luzon moved for partial reconsideration.[35] On June 27, 2011, the Court of Tax Appeals En Banc rendered a second Amended Decision,[36] partially granting CE Luzon's claim for unutilized creditable input tax but only for the second quarter of taxable year 2003 and only up to the extent of P3,764,386.47.[37] The Court of Tax Appeals En Banc relied on *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc*.[38] in partially granting the petition.

The Court of Tax Appeals En Banc found that CE Luzon's judicial claim for refund of input tax for the second quarter of 2003 was timely filed.[39] However, the Court of Tax Appeals En Banc disallowed P804,072.02 to be refunded because of CE Luzon's non-compliance with the documentation and invoicing requirements:[40]

> WHEREFORE, premises considered, CE Luzon Geothermal Power Company, Inc.'s "Motion for Reconsideration" is PARTLY GRANTED. Accordingly, our Amended Decision dated November 22, 2010 only in so far as it dismissed CE Luzon Geothermal Power Company, Inc.'s 2nd quarter claim, is hereby LIFTED and SET ASIDE, and another one is hereby entered ordering the Commissioner of Internal Revenue to REFUND or to ISSUE A TAX CREDIT CERTIFICATE in favor of CE Luzon Geothermal Power, Inc. in the reduced amount of THREE MILLION SEVEN HUNDRED SIXTY FOUR THOUSAND THREE HUNDRED EIGHTY SIX AND 47/100 PESOS (P3,764,386.47), representing its unutilized input VAT for the second quarter of taxable year 2003.
>
> SO ORDERED.[41]

On September 2, 2011, CE Luzon filed before this Court a Petition for Review on Certiorari[42] challenging the second Amended Decision dated June 27, 2011 of the Court of Tax Appeals En Banc.[43] The Petition was docketed as G.R. No. 197526.[44]

On January 27, 2012, the Commissioner of Internal Revenue filed a Petition for Review on Certiorari[45] assailing the second Amended Decision dated June 27, 2011 and the Resolution dated December 1, 2011 of the Court of Tax Appeals En Banc[46] insofar as it granted CE Luzon's second quarter claim for refund.[47] The Petition was docketed as G.R. Nos. 199676-77.[48]

The Commissioner of Internal Revenue filed a Comment on the Petition for Review[49] in G.R. No. 197526 on February 7, 2012. On April 11, 2012, the Petitions were consolidated.[50]

In the Resolution dated August 1, 2012, CE Luzon was required to file a comment on the Petition in G.R. Nos. 199676-77 and a reply to the comment in G.R. No. 197526.[51]

On November 14, 2012, CE Luzon filed its Comment on the Petition in G.R. Nos. 199676-77[52] and its Reply to the comment on the Petition in GR.No. 197526.[53]

In the Resolution[54] dated June 26, 2013, this Court gave due course to the petitions and required the parties to submit their respective memoranda. Meanwhile, on July 19, 2013, CE Luzon filed a Supplement to its Petition.[55]

The Commissioner of Internal Revenue filed his Memorandum[56] on September 16, 2013 while CE Luzon filed its Memorandum[57] on September 20, 2013.

In its Petition docketed as G.R. No. 197526, CE Luzon asserts that its judicial claims for refund of input VAT attributable to its zero-rated sales were timely filed.[58] Relying on *Atlas Consolidated Mining and Development Corporation v. Commissioner*

of Internal Revenue,[59] CE Luzon argues that the two (2)-year prescriptive period under Section 229 of the National Internal Revenue Code[60] governs both the administrative and judicial claims for refund of creditable input tax.[61] CE Luzon contends that creditable input tax attributable to zero-rated sales is excessively collected tax.[62]

CE Luzon asserts that since the prescriptive periods in Section 112(C) of the National Internal Revenue Code are merely permissive, it should yield to Section 229.[63] Moreover, Section 112(C) does not state that a taxpayer is barred from filing a judicial claim for non-compliance with the 120-day period.[64] CE Luzon emphasizes that the doctrine in *Atlas* directly addressed the correlation between Section 229 and Section 112(C) of the National Internal Revenue Code. *Atlas* stated that a taxpayer seeking a refund of input VAT may invoke Section 229 because input VAT was an "erroneously collected national internal revenue tax."[65] CE Luzon points out that *Aichi* never established a binding rule regarding the prescriptive periods in filing claims for refund of creditable input tax.[66]

Assuming that *Aichi* correctly interpreted Section 112(C) of the National Internal Revenue Code, CE Luzon states that it should not be applied in this case because CE Luzon's claims for refund were filed before *Aichi's* promulgation.[67] The prevailing rule at the time when CE Luzon instituted its judicial claim for refund was that both the administrative and judicial claims should be filed within two (2) years from the date the tax is paid.[68]

In any case, CE Luzon argues that the Commissioner of Internal Revenue is estopped from assailing the timeliness of its judicial claims.[69] The Commissioner of Internal Revenue categorically stated in several of its rulings that taxpayers need not wait for the expiration of 120 days before instituting a judicial claim for refund of creditable input tax.[70] CE Luzon relies on the following Bureau of Internal Revenue issuances: (1) Section 4.104-2, Revenue Regulations No. 7-95; (2) Revenue Memorandum Circular No. 42-99; (3) Revenue Memorandum Circular No. 42-2003, as amended by Revenue Memorandum Circular No. 49-2003; (4) Revenue Memorandum Circular No. 29-2009; and (5) Bureau of Internal Revenue Ruling DA-489-03.[71]

On the other hand, the Commissioner of Internal Revenue argues that Sections 112(C) and 229 of the National Internal Revenue Code need not be harmonized because they are clear and explicit.[72] Laws should only be construed if they are "ambiguous or doubtful in meaning."[73] Section 112(C) clearly provides that in claims for refund of creditable input tax, taxpayers can only elevate their judicial claim upon receipt of the decision denying their administrative claim or upon the lapse of 120 days.[74] Moreover, the tax covered in Section 112 is different from the tax in Section 229. Section 112(C) covers unutilized input tax. In contrast, Section 229 pertains to national internal revenue tax that is erroneously or illegally collected.[75]

The Commissioner of Internal Revenue further contends that CE Luzon's reliance on *Atlas* is misplaced.[76] *Atlas* neither directly nor indirectly raised the issue of prescriptive periods in filing claims for refund of input VAT. In addition, *Atlas* was