797 Phil. 647

FIRST DIVISION

[G.R. No. 193321, October 19, 2016]

TAKENAKA CORPORATION-PHILIPPINE BRANCH, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

The petitioner as taxpayer appeals before the Court the adverse decision entered on March 29, 2010[1] and the resolution issued on August 12, 2010[2] in C.T.A. EB No. 514, whereby the Court of Tax Appeals (CTA) *En Banc* respectively denied its claim for refund of excess input value-added tax (VAT) arising from its zero-rated sales of services for taxable year 2002, and denied its ensuing motion for reconsideration.

The factual and procedural antecedents, as narrated by the CTA *En Banc*, are quoted below:

> Respondent Takenaka, as a subcontractor, entered into an On-Shore Construction Contract with Philippine Air Terminal Co., Inc. (PIATCO) for the purpose of constructing the Ninoy Aquino Terminal III (NAIA-IPT3).
>
> PIATCO is a corporation duly organized and existing under the laws of the Philippines and was duly registered with the Philippine Economic Zone Authority (PEZA), as an Ecozone Developer/Operator under RA 7916.
>
> Respondent Takenaka filed its Quarterly VAT Returns for the four quarters of taxable year 2002 on April 24, 2002, July 22, 2002, October 22, 2002 and January 22, 2003, respectively. Subsequently, respondent Takenaka amended its quarterly VAT returns several times. In its final amended Quarterly VAT Returns, the following were indicated thereon:

Exh.	Year	Zero-rate Sales/Receipts	Taxable Sales	Output VAT	Input VAT	
	2002				This Quarter	Excess
Q	1st	P854,160,170.42	P5,292,340.00	P529,234.00	P52,044,766.05	P51,515,532.05
II	2nd	599,459,273.90			60,588,638.09	60,588,638.09
DDD	3rd	480,168,744.90			55,234,736.15	55,234,736.15
VVV	4th	304,283,730.15			30,494,993.51	30,494,993.51
TOTAL		P2.23 8,071,899.37	P5,292,340.00	P529,234.00	P198,363,133.80	P197,833,899.80

> On January 13, 2003, the BIR issued VAT Ruling No. 011-03 which states that the sales of goods and services rendered by respondent Takenaka to PIATCO are subject to zero-percent (0%) VAT and requires no prior approval for zero rating based on Revenue Memorandum Circular 74-99.
>
> On April 11, 2003, respondent Takenaka filed its claim for tax refund covering the aforesaid period before the BIR Revenue District Office No. 51, Pasay City Branch.
>
> For failure of the BIR to act on its claim, respondent Takenaka filed a Petition for Review with this Court, docketed as C.T.A. Case No. 6886.
>
> After trial on the merits, on November 4, 2008, the Former First Division rendered a

> Decision partly granting the Petition for Review and ordering herein petitioner CIR to refund to respondent Takenaka the reduced amount of P53,374,366.52, with a Concurring and Dissenting Opinion from Presiding Justice Ernesto D. Acosta.
>
> Not satisfied, on November 26, 2008, respondent Takenaka filed a "Motion for Reconsideration".
>
> During the deliberation of respondent Takenaka's "Motion for Reconsideration", Associate Justice Caesar A. Casanova changed his stand and concurred with Presiding Justice Ernesto D. Acosta, while the original *Ponente*, Associate Justice Lovell R. Bautista, maintained his stand. Thus, respondent Takenaka's "Motion for Reconsideration" was granted by the Former First Division in its Amended Decision dated March 16, 2009, with a Dissenting Opinion from Associate Justice Lovell R. Bautista.
>
> On April 7, 2009, petitioner CIR filed a "Motion for Reconsideration" of the Amended Decision, which the Former First Division denied in a Resolution dated June 29, 2009, with Associate Justice Lovell R. Bautista reiterating his Dissenting Opinion.[3]

Consequently, the respondent filed a petition for review in the CTA *En Banc* to seek the reversal of the March 16, 2009 decision and the June 29, 2009 resolution of the CTA Former First Division.[4]

On March 29, 2010, the CTA En Banc promulgated its decision disposing thusly:

> **WHEREFORE**, premises considered, the present Petition for Review is hereby **GRANTED**. Accordingly, the Amended Decision dated March 16, 2009 and Resolution dated June 29, 2009 rendered by the Former First Division are hereby **REVERSED** and **SET ASIDE,** and another one is hereby entered **DENYING** respondent Takenaka's claimed input tax attributable to its zero rated sales of services for taxable year 2002 in the amount of P143,997,333.40.
>
> **SO ORDERED**.[5]

Later on, through the resolution dated August 12, 2010,[6] the CTA *En Banc* denied the petitioner's motion for reconsideration.

Hence, this petition for review on *certiorari.*

Issue

The lone issue is whether or not the sales invoices presented by the petitioner were sufficient as evidence to prove its zero-rated sale of services to Philippine Air Terminal Co., Inc. (PIATCO), thereby entitling it to claim the refund of its excess input VAT for taxable year 2002.

Ruling of the Court

We deny the appeal

First of all, the Court deems it appropriate to determine the timeliness of the petitioner's judicial claim for refund in order to ascertain whether or not the CTA properly acquired jurisdiction thereof. Well-settled is the rule that the issue of jurisdiction over the subject matter may at any time either be raised by the parties or considered by the Court *motu proprio*. As such, the jurisdiction of the CTA over the appeal could still be determined by this Court despite its not being raised as an issue

by the parties.[7]

In *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*,[8] the Court has underscored that:

(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, 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, as an exception to the mandatory and jurisdictional 120+30 day periods.

In this case, the following dates are relevant to determine the timeliness of the petitioner's claim for refund, to wit:

Amount Claimed and Taxable Period covered	**Close of quarter when sales were made**	**Last day for filing administrative claim for refund (2 years)**	**Actual date of filing of administrative claim for refund**	**Last day for filing judicial claim with CTA (120+30)**	**Actual filing of judicial claim with CTA**
P51,515,532.05, 1st quarter of 2002	March 31, 2002	March 31, 2004	April 11, 2003	September 8, 2003	**March 10, 2004**
P60,588,638.09, 2nd quarter of 2002	June 30, 2002	June 30, 2004			
P55,234,736.15, 3rd quarter of 2002	September 30, 2002	September 30, 2004			
P30,494,993.51, 4th quarter of 2002	December 31, 2002	December 31, 2004			

Based on the foregoing, the petitioner's situation is actually a case of late filing and is similar with the case of Philex Mining Corporation in *Commissioner of Internal Revenue v. San Roque Power Corporation*.[9]

The petitioner timely filed its administrative claim on April 11, 2003, within the two-year