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FIRST DIVISION

[G.R. No. 185115, February 18, 2015]

NORTHERN MINDANAO POWER CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

SERENO, C.J.:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by Northern Mindanao Power Corporation (petitioner). The Petition assails the Decision[2] dated 18 July 2008 and Resolution[3] dated 27 October 2008 issued by the Court of Tax Appeals *En Banc* (CTA *En Banc*) in C.T.A. EB No. 312.

The Facts

Petitioner is engaged in the production sale of electricity as an independent power producer and sells electricity to National Power Corporation (NPC). It allegedly incurred input value-added tax (VAT) on its domestic purchases of goods and services that were used in its production and sale of electricity to NPC. For the 3rd and the 4th quarters of taxable year 1999, petitioner's input VAT totaled to P2,490,960.29, while that incurred for all the quarters of taxable year 2000 amounted to
P3,920,932.55.[4]

Petitioner filed an administrative claim for a refund on 20 June 2000 for the 3rd and the 4th quarters of taxable year 1999, and on 25 July 2001 for taxable year 2000 in the sum of P6,411,892.84.[5]

Thereafter, alleging inaction of respondent on these administrative claims, petitioner filed a Petition[6] with the CTA on 28 September 2001.

The CTA First Division denied the Petition and the subsequent Motion for Reconsideration for lack of merit. The Court in Division found that the term "zero-rated" was not imprinted on the receipts or invoices presented by petitioner in violation of Section 4.108-1 of Revenue Regulations No. 7-95. Petitioner failed to substantiate its claim for a refund and to strictly comply with the invoicing requirements of the law and tax regulations.[7] In his Concurring and Dissenting Opinion, however, then Presiding Justice Ernesto D. Acosta opined that the Tax Code does not require that the word "zero-rated" be imprinted on the face of the receipt or invoice. He further pointed out that the absence of that term did not affect the admissibility and competence of the receipt or invoice as evidence to support the claim for a refund.[8]

On appeal to the CTA En Banc, the Petition was likewise denied. The court ruled that for every sale of services, VAT shall be computed on the basis of gross receipts indicated on the official receipt. Official receipts are proofs of sale of services and cannot be interchanged with sales invoices as the latter are used for the sale of goods. Further, the requirement of issuing duly registered VAT official receipts with the term "zero-rated" imprinted is mandatory under the law and cannot be substituted, especially for input VAT refund purposes. Then Presiding Justice Acosta maintained his dissent.

Hence, this appeal before us.

Issues

Petitioner's appeal is anchored on the following grounds:

> Section 4.108-1 of Revenue Regulations (RR) No. 7-95 which expanded the statutory requirements for the issuance of official receipts and invoices found in Section 113 of the 1997 Tax Code by providing for the additional requirement of the imprinting of the terms "zero-rated" is unconstitutional.
>
> Company invoices are sufficient to establish the actual amount of sale of electric power services to the National Power Corporation and therefore sufficient to substantiate Petitioner's claim for refund.[9]

The Court's Ruling

To start with, this Court finds it appropriate to first determine the timeliness of petitioner's judicial claim in order to determine whether the tax court properly acquired jurisdiction, although the matter was never raised as an issue by the parties. Well-settled is the rule that the issue of jurisdiction over the subject matter may, at any time, be raised by the parties or considered by the Court *motu proprio*. [10] Therefore, the jurisdiction of the CTA over petitioner's appeal may still be considered and determined by this Court.

Section 112 of the National Internal Revenue Code (NIRC) of 1997 laid down the manner in which the refund or credit of input tax may be made. For a VAT-registered person whose sales are zero-rated or effectively zero-rated, Section 112(A) specifically provides for a two-year prescriptive period after the close of the taxable quarter when the sales were made within which such taxpayer may apply for the issuance of a tax credit certificate or refund of creditable input tax. In the consolidated tax cases *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*[11] (hereby collectively referred to as *San Roque*), the Court clarified that the two-year period refers to the filing of an administrative claim with the BIR.

In this case, petitioner had until 30 September 2001 and 31 December 2001 for the claims covering the 3rd and the 4th quarters of taxable year 1999; and 31 March, 30 June, 30 September and 31 December in 2002 for the claims covering all four quarters of taxable year 2000 - or the close of the taxable quarter when the zero-rated sales were made - within which to file its administrative claim for a refund. On

this note, we find that petitioner had sufficiently complied with the two-year prescriptive period when it filed its administrative claim for a refund on 20 June 2000 covering the 3rd and the 4th quarters of taxable year 1999 and on 25 July 2001 covering all the quarters of taxable year 2000.

Pursuant to Section 112(D) of the NIRC of 1997, respondent had one hundred twenty (120) days from the date of submission of complete documents in support of the application within which to decide on the administrative claim. The burden of proving entitlement to a tax refund is on the taxpayer. Absent any evidence to the contrary, it is presumed that in order to discharge its burden, petitioner attached to its applications complete supporting documents necessary to prove its entitlement to a refund.[12] Thus, the 120-day period for the CIR to act on the administrative claim commenced on 20 June 2000 and 25 July 2001.

As laid down in *San Roque*, judicial claims filed from 1 January 1998 until the present should strictly adhere to the 120+30-day period referred to in Section 112 of the NIRC of 1997. The only exception is the period 10 December 2003 until 6 October 2010. Within this period, BIR Ruling No. DA-489-03 is recognized as an equitable estoppel, during which judicial claims may be filed even before the expiration of the 120-day period granted to the CIR to decide on a claim for a refund.

For the claims covering the 3rd and the 4th quarters of taxable year 1999 and all the quarters of taxable year 2000, petitioner filed a Petition with the CTA on 28 September 2001.

Both judicial claims must be disallowed.

a) Claim for a refund of input VAT covering the 3rd and the 4th quarters of taxable year 1999

Counting 120 days from 20 June 2000, the CIR had until 18 October 2000 within which to decide on the claim of petitioner for an input VAT refund attributable to its zero-rated sales for the period covering the 3rd and the 4th quarters of taxable year 1999. If after the expiration of that period respondent still failed to act on the administrative claim, petitioner could elevate the matter to the court within 30 days or until 17 November 2000.

Petitioner belatedly filed its judicial claim with the CTA on 28 September 2001. Just like in *Philex*, this was a case of late filing. The Court explained thus:

> Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the