764 Phil. 161

FIRST DIVISION

[G.R. No. 207575, July 15, 2015]

HEDCOR, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

R E S O L U T I O N

SERENO, C.J.:

This is a Petition for Review filed by Hedcor, Inc. (petitioner) assailing the Court of Tax Appeals (CTA) en banc Decision[1] dated 1 October 2012 and Resolution[2] dated 28 May 2013 in C.T.A. EB No. 785. The CTA *en banc* affirmed the CTA Second Division Resolutions dated 19 January 2011[3] and 12 May 2011[4] of the in C.T.A. Case No. 8129. The latter granted the Motion to Dismiss filed by the Commissioner of Internal Revenue (CIR) and dismissed the Petition for being filed out of time.

The Facts

The facts, as culled from the records, are as follows:

Petitioner is a domestic corporation primarily engaged in the operation of hydro-electric power plants and the generation of hydro-electric power. It is a value-added tax (VAT) payer duly registered with the Bureau of Internal Revenue (BIR).

Petitioner alleged that in the course of operating its business, it purchased domestic goods and services, as well as capital goods, and paid the corresponding VAT as part of the purchase price. For the period covering taxable year 2008, its purchases amounted to P35,467,773.00 on which the corresponding input VAT was P4,256,132.80. However, after deductions of output tax due from the accumulated input tax, petitioner still had an unused or excess input VAT in the total amount of P4,217,955.84.

Being in the business of generating of renewable sources of energy through hydro power, petitioner maintained that it was entitled to zero-percent (0%) VAT, as the sales of electric power to National Power Corporation (NPC) qualified as zero-rated sales pursuant to Section 108(B) (7) of the National Internal Revenue Code (NIRC).

Thus, on 28 December 2009, petitioner filed with the BIR an administrative claim for the refund of excess and unused input VAT in the amount of P4,217,955.84 for the second quarter of taxable year 2008. On 23 March 2010, it admittedly received from the BIR a Letter of Authority or request for the presentation of records.[5] Nevertheless, petitioner filed on 6 July 2010 a Petition for Review docketed as CTA Case No. 8129 because of its apprehension that the two (2) years provided by law to file a judicial claim would lapse on 21 July 2010 in view of *Atlas*.[6]

Petitioner filed on 29 October 2010 a Motion for Leave to File Supplemental Petition

for Review. In its motion, it manifested that it had submitted to the BIR on 20 September 2010 the last set of supporting documents related to its administrative claim for a refund. The motion was granted by the CTA Division, which then required petitioner to file the Supplemental Petition for Review and respondent, a Supplemental Answer.[7]

Meanwhile, respondent CIR filed a Motion to Dismiss on 8 November 2010 on the ground of lack of jurisdiction. The CTA Second Division granted the motion and dismissed the Petition for being filed out of time.

On appeal, following this Court's disposition in *Aichi*,[8] the CTA *en banc* denied the Petition and ruled that the judicial claim had been filed out of time. It held that, under Section 112(C) of the NIRC, the 120-day period for the BIR to act on the claim should be reckoned from 28 December 2009 or the date of filing of petitioner's administrative claim with the tax agency. Counting 120 days from 28 December 2009, the BIR had until 27 April 2010 to decide the administrative claim. Thereafter, petitioner had until 27 May 2010 or 30 days to appeal to the CTA either the decision or the inaction of the BIR. Thus, the filing of the Petition for Review with the CTA Division on 6 July 2010 was clearly beyond the period allowed by law.[9]

The Motion for Reconsideration filed by petitioner was also denied by the CTA *en banc* for lack of merit.[10]

Hence, this Petition.

The Issues

Petitioner's appeal is anchored on the following grounds:

1. That the CTA gravely erred and has no authority to deviate from the clear and literal meaning of Section 112 (D) of the NIRC by counting the 120-day period from the filing of the administrative claim and not from the last submission of complete documents in the administrative proceedings with the BIR;

2. That the CTA gravely erred when it dismissed CTA Case No. 8129/CTA EB No. 785 and granted respondent's motion to dismiss on ground of insufficiency of evidence although trial proceedings have not even started; and

3. That the CTA gravely erred when it dismissed its petition for insufficiency of evidence and on ground of prescription when there is no such allegation in the pleading which would support such conclusion.[11]

The Court's Ruling

The Petition lacks merit.

The requirements for a taxpayer be able to claim a refund or credit of its input tax

are found in Section 112 of the NIRC, as amended, the relevant portions of which read:

> 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.

Pursuant to Section 112(C) of the NIRC, respondent had 120 days from the date of submission of complete documents in support of the application within which to decide on the administrative claim. Thereafter, the taxpayer affected by the CIR's decision or inaction may appeal to the CTA within 30 days from the receipt of the decision or from the expiration of the 120-day period. Compliance with both periods is jurisdictional, considering that the 30-day period to appeal to the CTA is dependent on the 120-day period. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal.

Strict compliance with the 120+30 day period is necessary for a claim for a refund or credit of input VAT to prosper. An exception to that mandatory period was, however, recognized in *San Roque*[12] during the period between 10 December 2003, when BIR Ruling No. DA-489-03 was issued, and 6 October 2010, when the Court promulgated Aichi declaring the 120+30 day period mandatory and jurisdictional, thus reversing BIR Ruling No. DA-489-03.

Since the claim of petitioner fell within the exception period, it did not have to observe the 120+30 day mandatory period under the *San Roque* doctrine. The present case, though, is not a case of premature filing.

The CTA here found that the judicial claim was filed beyond the mandatory 120+30 day prescriptive period; hence, it did not acquire jurisdiction over the case.

Petitioner is similarly situated as *Philex*, which is also a case of late filing:

> 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