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FIRST DIVISION

[G.R. No. 195175, August 10, 2015]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. TOLEDO POWER COMPANY, RESPONDENT.

[G.R. NO. 199645]

TOLEDO POWER COMPANY, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

SERENO, C.J.:

Before the Court are consolidated Petitions for review on *certiorari* assailing the Decisions of the Court of Tax Appeals *En Banc* (CTA *En Banc*) dated 15 September 2010[1] and 7 July 2011[2] and Resolutions dated 12 January 2011[3] and 7 December 2011[4] in C.T.A. EB Nos. 589 and 708, respectively.

THE FACTS

Toledo Power Company (TPC) is engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation, and Atlas Fertilizer Corporation.

Pursuant to Section 6, Chapter II[5] of Republic Act (R.A.) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA),[6] value-added tax (VAT) on sales of generated power by generation companies are zero-rated.

C.T.A. EB No. 589[7]

On 23 December 2004, TPC filed a claim for refund with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 83, for alleged unutilized input VAT for the four quarters of 2004 in the total amount of P17,443,855.22.

TPC's claim was elevated to the CTA on 24 April 2006 and docketed as C.T.A. Case No. 7471.

The CTA First Division partly granted the Petition and ordered the refund of P8,617,425.41 to TPC.

In its Motion for Reconsideration, the CIR raised the issue of failure to submit the legally required documents in its administrative application for a refund; but on 15

September 2010, the CTA *En Banc* denied the CIR's appeal. The court ruled that the non-submission of supporting documents to the administrative level is not fatal to the claim for a refund. Since the CTA is a court of record, cases filed before it are litigated *de novo*, and party litigants should prove every minute aspect of their cases. Finally, the appellate court found that the issue of non-submission of complete documents was belatedly raised by the CIR in its Motion for Reconsideration of the Decision of the CTA First Division. The appellate court held that parties cannot be permitted to change their theory on appeal, because to do so will be unfair to the adverse party.

C.T.A. EB No. 708[8]

On 23 December 2004, TPC filed with BIR RDO No. 83 an administrative claim for the refund of the alleged unutilized input VAT for the four quarters of 2003 in the total amount of P15,838,539.48.

On 22 April 2005, TPC filed the first Petition with the CTA for the refund of unutilized input VAT in the amount of P3,907,783.80 for the first quarter of 2003. The Petition was docketed as C.T.A. Case No. 7233.

Also filed by TPC on 22 July 2005 was another Petition docketed as C.T.A. Case No. 7294. Claimed therein was the refund of alleged unutilized input VAT for the second quarter of 2003 in the total amount of P2,124,847.14.

The two Petitions filed by TPC were consolidated. On 15 December 2009, the First Division partly granted the refund, but only in the amount of P185,395.11 (original Decision). [9]

Upon Motion for Reconsideration of both parties, the Special First Division rendered an Amended Decision on 1 December 2010. The original Decision was set aside and the Motion for Reconsideration of the CIR, granted. Citing *CIR v. Aichi Forging Company of Asia, Inc.* (*Aichi*),[10] the CTA Special First Division ruled that it had no jurisdiction over TPC's Petitions, which were thus dismissed.

The appeal of TPC to the CTA *En Banc* was also dismissed on 7 July 2011. The appellate court ruled that in accordance with this Court's Decision in Aichi, the Petition in C.T.A. Case No. 7233 was considered prematurely filed, while that in C.T.A. Case No. 7294 was filed late.

The Petitions

The CIR filed a Petition before this Court assailing the Decision of the CTA *En Banc* in C.T.A. EB No. 589, docketed as G.R. No. 195175. The CIR mainly points out that the law requires the submission of complete supporting documents to the BIR before the 120-day audit period shall apply, and before the taxpayer can avail itself of the judicial remedies provided for by law. In this case, TPC failed to submit complete documents in support of its application for a tax refund. To the CIR, such disregard of a mandatory requirement warranted the denial of TPC's claim for a refund.[11]

On the other hand, TPC appealed the denial of its claim in C.T.A. EB No. 708, which

was docketed as G.R. No. 199645. TPC alleged that Section 229 of the NIRC of 1997, which gives taxpayers two years within which to claim a refund, should be applied to this case, considering that the prevailing rule at the time the Petitions were filed was that the 120-30 day period was neither mandatory nor compulsory. Also, TPC posits that Aichi should not be applied retroactively, and that there are differences between the factual milieu of this case and that of *Aichi*.[12]

ISSUE

The Petitions raise the common issue of whether TPC is entitled to the refund of its alleged unutilized input VAT for the first and the second quarters of taxable year 2003, as well as for the four quarters of taxable year 2004.

THE COURT'S RULING

The consolidated cases involve a claim for input VAT pursuant to Section 112 of the National Internal Revenue Code (NIRC) of 1997. Pursuant to this provision, the requisites for claiming unutilized/excess input VAT, except transitional input VAT, are as follows:

1) The taxpayer-claimant is VAT registered;

2) The taxpayer-claimant is engaged in zero-rated or effectively zero-rated sales;

3) There are creditable input taxes due or paid attributable to the zero-rated or effectively zero-rated sales;

4) This input tax has not been applied against the output tax; and

5) The application and the claim for a refund have been filed within the prescribed period.

With regard to the first and the second requisites, it is undisputed that TPC is VAT-registered and is engaged in the sale of generated power, which is effectively zero-rated. The third and the fourth requisites are purely factual and the CTA has the jurisdiction to determine compliance therewith.

As to the prescriptive period, the Court 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* (hereby collectively referred as *San Roque*),[13] ruled that the observance of the 120+30 day period is mandatory and jurisdictional.

A summary of rules on prescriptive periods involving claims for the refund of input VAT was provided in *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue and Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue*[14] as follows:

Summary of Rules on Prescriptive Periods Involving VAT

> We summarize the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code, as follows:
>
> (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.

Considering that the date of filing of the Petitions will have an effect on the jurisdiction of the courts over taking cognizance of a claim for a refund, the Court shall first discuss the timeliness of the judicial claims.

G.R. No. 195175

Since the filing of the administrative and judicial claims was done in 2004 and 2006, respectively, it would seem that compliance with the prescriptive period in this case falls within the exception period[15] within which the Court recognizes the validity of BIR Ruling No. DA-489-03. However, records would show that TPC will have the same fate as *Philex* in *San Roque*.

It is not disputed that the administrative claim for a refund of unutilized input VAT for all quarters of taxable year 2004 was filed on 23 December 2004. Claiming that TPC made zero-rated or effectively zero-rated sales within the four quarters of 2004, the administrative claim for the refund of unutilized input VAT attributable to the sales in those periods was timely filed on 23 December 2004. That date was clearly within two years from the close of the taxable quarters when the sales were made.

Theoretically, from 23 December 2004, the CIR had 120 days or until 22 April 2005 within which to decide the administrative claim. Thereafter, since it rendered no