724 Phil. 127

THIRD DIVISION

[G.R. No. 197760, January 13, 2014]

TEAM ENERGY CORPORATION (FORMERLY MIRANT PAGBILAO CORPORATION), PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the May 2, 2011[1] and the July 15, 2011[2] Resolutions of the Court of Tax Appeals *(CTA) En Banc* in CTA EB Case No. 706. The assailed resolutions affirmed the November 26, 2010 Amended Decision[3] of the CTA Special First Division in CTA Case No. 7617, which dismissed petitioner's claim for tax refund or issuance of a tax credit certificate for failure to comply with the 120-day period provided under Section 112 (C) of the National Internal Revenue Code *(NIRC)*.

The facts, as found by the CTA, follow:

> Petitioner is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, Transfer (BOT) scheme. As such, it is registered with the BIR as a VAT taxpayer in accordance with Section 107 of the National Internal Revenue Code (NIRC) of 1977 (now Section 236 of the NIRC of 1997), with Tax Identification No. 001-726-870-000, as shown on its BIR Certificate of Registration No. OCN8RC0000017854.
>
> On December 17, 2004, petitioner filed with the BIR Audit Information, Tax Exemption and Incentives Division an Application for VAT Zero-Rate for the supply of electricity to the NPC from January 1, 2005 to December 31, 2005, which was subsequently approved.
>
> Petitioner filed with the BIR its Quarterly VAT Returns for the first three quarters of 2005 on April 25, 2005, July 26, 2005, and October 25, 2005, respectively. Likewise, petitioner filed its Monthly VAT Declaration for the month of October 2005 on November 21, 2005, which was subsequently amended on May 24, 2006. These VAT Returns reflected, among others, the following entries:

Exhibit	Period Covered	Zero-Rated Sales/Receipts	Taxable Sales	Output VAT	Input VAT
"C"	1st Qtr-2005	P 3,044,160,148.16	P 1,397,107.80	P 139,710.78	P 16,803,760.82
"D"	2nd Qtr-2005	3,038,281,557.57	1,241,576.30	124,157.63	32,097,482.29
"E"	3rd Qtr-2005	3,125,371,667.08	452,411.64	45,241.16	16,937,644.73
"G" (amended)	October 2005		910,949.50	91,094.95	14,297,363.76
	Total	**P 9,207,813,372.81**	**P 4,002,045.24**	**P 400,204.52**	**P 80,136,251.60**

> On December 20, 2006, petitioner filed an administrative claim for cash refund or issuance of tax credit certificate corresponding to the input VAT reported in its Quarterly VAT Returns for the first three quarters of 2005 and Monthly VAT Declaration for October 2005 in the amount of P80,136,251.60, citing as legal bases Section 112 (A), in relation to Section 108 (B)(3) of the NIRC of 1997, Section 4.106-2(c) of Revenue Regulations No. 7-95, Revenue Memorandum Circular No. 61-2005, and the case of **Maceda v. Macaraig**.

Due to respondent's inaction on its claim, petitioner filed the instant Petition for Review before this Court on April 18, 2007.

In his Answer filed on May 27, 2007, respondent interposed the following Special and Affirmative Defenses:

5. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.

6. Petitioner's alleged claim for refund is subject to administrative investigation/examination by respondent.

7. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law.

8. To support its claim for refund, it is imperative for petitioner to prove the following, viz.:

    a. The registration requirements of a value-added taxpayer in compliance with the pertinent provision of the Tax Code, of 1997, as amended, and its implementing revenue regulations;

    b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code of 1997, as amended;

    c. Proof of compliance with the submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (D) of the Tax Code of 1997, as amended, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended;

    d. That the input taxes of P80,136,261.60 allegedly representing unutilized input VAT from its domestic purchases of capital goods, domestic purchases of goods other than capital goods, domestic purchases of services, services rendered by nonresidents, importation of capital goods and importation of goods other than capital goods were:

        d.i paid by petitioner;
        d.ii attributable to its zero-rated sales;
        d.iii used in the course of its trade or business; and
        d.iv such have not been applied against any output tax;

    e. That petitioner's claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code of 1997, as amended;

    f. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code, as amended.

    g. Petitioner failed to prove compliance with the aforementioned requirements.

9. Furthermore, in action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications. (*Asiatic Petroleum Co. [P.I.] v. Llanes, 49 Phil 446,* cited in *Collector of Internal Revenue v. Manila Jockey Club, 98 Phil. 670*);

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

> During trial, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, waived his right to present evidence.
>
> This case was submitted for decision on July 13, 2009, after the parties filed their respective Memorandum.[4]

In a Decision[5] dated July 13, 2010, the CTA Special First Division partially granted petitioner's claim for refund or issuance of tax credit certificate. It held as follows:

> WHEREFORE, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND or in the alternative, ISSUE A TAX CREDIT CERTIFICATE in the amount of SEVENTY-NINE MILLION ONE HUNDRED EIGHTY-FIVE THOUSAND SIX HUNDRED SEVENTEEN AND 33/100 PESOS (P79,185,617.33) in favor of petitioner, representing unutilized input VAT, attributable to its effectively zero-rated sales of power generation services to NPC for the period covering January 1, 2005 to October 31, 2005.
>
> SO ORDERED.

Disgruntled, respondent filed a Motion for Reconsideration against said decision.

On November 26, 2010, the CTA Special First Division rendered an Amended Decision granting respondent's Motion for Reconsideration. In light of this Court's ruling in *Commissioner of Internal Revenue v. Aichi Forging Company, Inc.*[6] *(Aichi)*, it reversed and set aside the earlier decision of the CTA Special First Division. Thus:

> In the case at bench, petitioner's administrative claim was filed on December 20, 2006 which is well within the two-year [prescriptive] period prescribed under Section 112 (A) of the NIRC. Observing the 120-day period for the Commissioner to render a decision on the administrative claim, as required under Section 112 (D) of the NIRC, petitioner's judicial claim should have been filed not earlier than April 19, 2007. Petitioner, however, filed its judicial claim on April 18, 2007 or only 199 days from December 20, 2006, thus, prematurely filed.
>
> Accordingly, petitioner's claim for refund/credit of excess input VAT, covering the period January 1 to October 31, 2005, warrants a dismissal for having been prematurely filed.
>
> **WHEREFORE**, the Motion for Reconsideration (Re: Decision promulgated 13 July 2010) of the respondents is hereby **GRANTED**. The assailed July 13, 2010 Decision is hereby **REVERSED** and **SET ASIDE** and CTA Case No. 7617 is hereby considered **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED.**[7]

Petitioner then filed a Petition for Review with the CTA *En Banc* arguing that the requirement to exhaust the 120-day period for respondent to act on its administrative claim for input VAT refund/credit under Section 112 (C) of the NIRC is merely a species of the doctrine of exhaustion of administrative remedies and is, therefore, not jurisdictional.

In a Resolution dated May 2, 2011, the CTA *En Banc* denied the petition for lack of merit. Its *fallo* reads:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED DUE COURSE** for lack of merit.
>
> Attys. Rachel P. Follosco and Froilyn P. Doyaoen-Pagayatan are hereby **ADMONISHED** to be more careful in the discharge of their duty to the court as a lawyer under the Code of Professional Responsibility.
>
> **SO ORDERED.**[8]

Unfazed, petitioner filed a Motion for Reconsideration. However, the same was denied in a Resolution dated July 15, 2011.

Hence, the present petition.