

THIRD DIVISION

[G.R. No. 190928, January 13, 2014]

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

DECISION

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 Decision^[1] dated August 14, 2009 and Resolution^[2] dated January 5, 2010 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 422, which modified the Decision^[3] dated May 16, 2008 and Resolution^[4] dated September 8, 2008 of the CTA First Division, insofar as it reduced the amount of refund granted from P69,618,971.19 to P51,134,951.40.

The facts follow.

On the following dates, petitioner filed with the Bureau of Internal Revenue (BIR) its first to fourth quarterly value-added tax (VAT) returns for the calendar year 2002:

| <u>Quarter</u> | <u>Date Filed</u> |
|----------------|-------------------|
| First | April 25, 2002 |
| Second | July 23, 2002 |
| Third | October 25, 2002 |
| Fourth | January 27, 2003 |

Subsequently, on December 22, 2003, petitioner filed an administrative claim for refund of unutilized input VAT with Revenue District Office No. 60, Lucena City, in the total amount of P79,918,002.95 for calendar year 2002.

However, due to respondent's inaction, petitioner elevated its claim before the CTA First Division on April 22, 2004.

In his Answer, respondent interposed the following special and affirmative defenses:

5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the respondent;
6. To support its claim, it is imperative for petitioner to prove the following, *viz.*:
 - a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of

Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

- 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, as amended;
- c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, 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. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.
- d. That the input taxes of P79,918,002.95 allegedly paid by the petitioner on its purchases of goods and services for the four (4) quarters of the year 2002 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;
- e. That petitioner's administrative and judicial claims for tax credit or refund of 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 Sections 112 (A) and (D) and 229 of the TAX Code, as amended;
- f. That petitioner's domestic purchases of goods and services were made in the course of its trade and business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);
- g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits);

7. Furthermore, in an 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;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and, as such, they are looked upon with disfavor.^[5]

After trial on the merits, the CTA First Division rendered judgment as follows:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Thus, Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **SIXTY NINE MILLION SIX HUNDRED EIGHTEEN THOUSAND NINE HUNDRED SEVENTY-ONE AND 19/100 PESOS (P69,618,971.19)**, representing unutilized input value-added taxes paid by petitioner on its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales of power generation services to the National Power Corporation for the taxable year 2002.

SO ORDERED.^[6]

Not satisfied, respondent filed his Motion for Partial Reconsideration against said decision, which the CTA First Division denied in a Resolution dated September 8, 2008.

On October 10, 2007, respondent filed a Petition for Review with the CTA *En Banc*.

In a Decision dated August 14, 2009, the CTA *En Banc* affirmed the CTA First Division's decision with the modification that the refundable amount be reduced to P51,134,951.40. The *fallo* reads:

WHEREFORE, premises considered, the petition is hereby **PARTLY GRANTED**. The assailed Decision dated May 16, 2008 and Resolution dated September 8, 2008 are hereby **AFFIRMED**, with modification that only P51,134,951.40 is the refundable amount to respondent for taxable year 2002. Accordingly, the Commissioner of Internal Revenue is hereby **ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE** in favor of Team Energy Corporation the reduced amount of **FIFTY-ONE MILLION ONE HUNDRED THIRTY- FOUR THOUSAND NINE HUNDRED FIFTY-ONE AND 40/100 (P51,134,951.40)**, representing the latter's excess and unutilized input VAT for the period covering calendar year 2002.

SO ORDERED.^[7]

Unfazed, petitioner filed a motion for reconsideration against said Decision, but the same was denied in a Resolution dated January 5, 2010.

Hence, the present petition wherein petitioner raises the following issues for our resolution:

THE CTA *EN BANC* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISALLOWED PETITIONER'S INPUT VAT FOR THE FIRST QUARTER AMOUNTING TO P18,484,019.79 BASED ON PRESCRIPTION BECAUSE:

- A. PETITIONER FILED ITS JUDICIAL CLAIM FOR REFUND WELL WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD RECKONED FROM THE DATE OF FILING OF THE QUARTERLY VAT RETURN PURSUANT TO LONG STANDING JURISPRUDENCE, WHICH THE HONORABLE COURT EXPRESSLY RECOGNIZED IN *ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION V. COMMISSIONER OF INTERNAL REVENUE*, G.R. NOS. 141104 & [148763], JUNE 8, 2007 ("ATLAS CASE").
- B. THE CTA *EN BANC* SHOULD NOT HAVE HASTILY RELIED ON THE CONTRARY RULING OF THE HONORABLE COURT IN *COMMISSIONER OF INTERNAL REVENUE V. MIRANT PAGBILAO CORPORATION*, G.R. NO. 172129, SEPTEMBER 12, 2008 ("MIRANT PAGBILAO CASE") AS THE HONORABLE COURT COULD NOT HAVE INTENDED TO REVERSE THE DOCTRINE IN THE ATLAS CASE IN THE LIGHT OF ARTICLE VIII, SECTION 4 (3) OF THE CONSTITUTION.
- C. ASSUMING, BUT WITHOUT CONCEDING, THAT THE MIRANT PAGBILAO CASE REVERSED THE DOCTRINE IN THE ATLAS CASE, THE SAME SHOULD BE APPLIED PROSPECTIVELY AND NOT RETROACTIVELY TO THE PREJUDICE OF PETITIONER WHO RELIED IN GOOD FAITH ON PREVAILING JURISPRUDENCE AT THE TIME OF FILING OF ITS JUDICIAL CLAIM FOR REFUND.^[8]

Simply, the sole issue for our resolution is whether or not petitioner timely filed its judicial claim for refund of input VAT for the first quarter of 2002.

To appropriately address this issue, it is relevant to quote Sections 112 (A) and (C) of the Tax Code, viz.:

SEC. 112. *Refund or Tax Credits of Input Tax.* –

(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax; *Provided, however,* That in the case of zero-rated sales under Section 106 (A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP); *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of good of properties or services, and the amount of creditable input tax due or paid cannot be

directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

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 a 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.

In its assailed decision, the CTA *En Banc* reduced petitioner's claim for refund of its excess or unutilized input VAT to P51,134,951.40 on the ground that petitioner's judicial claim for the first quarter of 2002 was filed beyond the two-year period prescribed under Section 112 (A) of the Tax Code, to wit:

As regards the fifth requisite, *Section 112 (A) of the NIRC of 1997, as amended*, provides that a VAT-registered taxpayer whose sale is zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for refund or issuance of a TCC of its creditable input tax or paid attributable to such sales.

In the recent case of *Commissioner of Internal Revenue v. Mirant Pagbilao (Formerly Southern Energy Quezon, Inc.)*, 565 SCRA 154 (hereafter referred to as the "Mirant Case"), the Supreme Court definitely settled the issue on the reckoning of the prescriptive period on claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales, as follows:

x x x x

Pursuant to the above ruling of the Supreme Court, it is clear that the two-year prescriptive period provided in *Section 112 (A) of the NIRC of 1997, as amended*, should be counted not from the payment of the tax, but from the close of the taxable quarter when the sales were made.

Pursuant to the above ruling of the Supreme Court, the following are the pertinent dates relevant to petitioner's claim for refund:

| Period (2002) | Close of Taxable Quarter | Last Day for Filing of the Claim |
|-------------------------|---------------------------------|---|
| 1 st Quarter | March 31, 2002 | March 31, 2004 |
| 2 nd Quarter | June 30, 2002 | June 30, 2004 |
| 3 rd Quarter | September 30, 2002 | September 30, 2004 |
| | December 31, 2002 | December 31, 2004 |