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FIRST DIVISION

[G.R. No. 194105, February 05, 2014]

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

DECISION

REYES, J.:

Before this Court is a petition for review on certiorari[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated June 16, 2010 and the Resolution[3] dated October 14, 2010 of the Court of Tax Appeals (CTA) *en banc* in CTA EB No. 504. The CTA *en banc* affirmed the Decision[4] dated January 26, 2009 as well as the Resolution[5] dated June 19, 2009 of the CTA First Division in CTA Case No. 6421. The CTA First Division ordered the Commissioner of Internal Revenue (CIR) to refund or credit to Team Sual Corporation (TSC) its unutilized input value-added tax (VAT) for the taxable year 2000.

The Facts

TSC is a corporation that is principally engaged in the business of power generation and the subsequent sale thereof solely to National Power Corporation (NPC); it is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer.

On November 26, 1999, the CIR granted TSC's application for zero-rating arising from its sale of power generation services to NPC for the taxable year 2000. As a VAT-registered entity, TSC filed its VAT returns for the first, second, third, and fourth quarters of taxable year 2000 on April 24, 2000, July 25, 2000, October 25, 2000, and January 25, 2001, respectively.

On March 11, 2002, TSC filed with the BIR an administrative claim for refund, claiming that it is entitled to the unutilized input VAT in the amount of 179,314,926.56 arising from its zero-rated sales to NPC for the taxable year 2000.

On April 1, 2002, without awa1tmg the CIR's resolution of its administrative claim for refund/tax credit, TSC filed a petition for review with the CTA seeking the refund or the issuance of a tax credit certificate in the amount of 179,314,926.56 for its unutilized input VAT for the taxable year 2000. The case was subsequently raffled to the CTA First Division.

In his Answer, the CIR claimed that TSC's claim for refund/tax credit should be denied, asserting that TSC failed to comply with the conditions precedent for claiming refund/tax credit of unutilized input VAT. The CIR pointed out that TSC failed to submit complete documents in support of its application for refund/tax

credit contrary to Section 112 (C)[6] of the National Internal Revenue Code (NIRC).

On January 26, 2009, the CTA First Division rendered a Decision,[7] which granted TSC's claim for refund/tax credit of input VAT. Nevertheless, the CTA First Division found that, from the total unutilized input VAT of 179,314,926.56 that it claimed, TSC was only able to substantiate the amount of 173,265,261.30. Thus:

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, [CIR] is hereby **ORDERED** to **REFUND** or to **ISSUE TAX CREDIT CERTIFICATE** in favor of [TSC] in the amount of [P]173,265,261.30.
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> **SO ORDERED.**[8]

The CIR sought a reconsideration of the CTA First Division Decision dated January 26, 2009 maintaining that TSC is not entitled to a refund/tax credit of its unutilized input VAT for the taxable year 2000 since it failed to submit all the necessary and relevant documents in support of its administrative claim.

The CIR further claimed that TSC's petition for review was prematurely filed, alleging that under Section 112(C) of the NIRC, the CIR is given 120 days from the submission of complete documents within which to either grant or deny TSC's application for refund/tax credit of its unutilized input VAT. The CIR pointed out that TSC filed its petition for review with the CTA *sans* any decision on its claim and without waiting for the 120-day period to lapse.

On June 19, 2009, the CTA First Division issued a Resolution,[9] which denied the CIR's motion for reconsideration. The CTA First Division opined that TSC's petition for review was not prematurely filed notwithstanding that the 120-day period given to the CIR under Section 112(C) of the NIRC had not yet lapsed. It ruled that, pursuant to Section 112(A) of the NIRC, claims for refund/tax credit of unutilized input VAT should be filed within two years after the close of the taxable quarter when the sales were made; that the 120-day period under Section 112(C) of the NIRC is also covered by the two-year prescriptive period within which to claim the refund/tax credit of unutilized input VAT. Thus:

> Admittedly, Section 112([C]) of the NIRC of 1997 provides for a one hundred twenty (120)-day period from the submission of the complete documents within which respondent may grant or deny the taxpayer's application for refund or issuance of tax credit certificate. The said 120-day period however is also covered by the two-year prescriptive period to file a claim for refund or tax credit before this Court, as specified in Section 112(A) ofthe same Code.
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> It has been consistently held that the administrative claim and the subsequent appeal to this Court must be filed within the two-year period. In the case of **Allison J. Gibbs, et aL vs. Collector of Internal Revenue, et al.**, the High Tribunal declared that the suit or proceeding must be started in this Court before the end of the two-year period without awaiting the decision of the Collector (now Commissioner). Accordingly, as long as an administrative claim is filed prior to the filing of a judicial case, both within the two-year prescriptive period, this Court

> has jurisdiction to take cognizance of the claim. And once a Petition for Review is filed, this Court already acquires jurisdiction over the claim and is not bound to wait indefinitely for whatever action respondent may take. After all, at stake are claims for refund and unlike assessments, no decision of respondent is required before one can go to this Court.[10] (Citations omitted)

Aggrieved by the foregoing disquisition of the CTA First Division, the CIR filed a Petition for Review[11] with the CTA *en banc*. He maintains that TSC's petition with the CTA First Division was prematurely filed; that TSC can only elevate its claim for refund/tax credit of its unutilized input VAT with the CTA only within 30 days from the lapse of the 120-day period granted to the CIR, under Section 112(C) of the NIRC, within which to decide administrative claims for refund/tax credit or from the CIR decision denying its claim.

On June 16, 2010, the CTA *en banc* rendered the herein assailed Decision,[12] which affirmed the Decision dated January 26, 2009 of the CTA First Division, *viz*:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**. The Commissioner is hereby ordered to refund TSC the aggregate amount of [P]173,265,261.30 representing unutilized input VAT on its domestic purchases and importation of goods and services attributable to zero-rated sales to NPC for the taxable year 2000.
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> **SO ORDERED.**[13]

The CTA *en banc* ruled that, pursuant to Section 112(A) of the NIRC, both the administrative and judicial remedies under Section 112(C) of the NIRC must be undertaken within the two-year period from the close of the taxable quarter when the relevant sales were made. Thus:

> Under the law, the taxpayer-claimant ***may*** seek judicial redress for refund on excess or unutilized input VAT attributable to zero-rated sales or effectively zero-rated sales with the Court of Tax Appeals either within thirty (30) days from receipt of the denial of its claim for refund/tax credit, or after the lapse of the one hundred twenty (120)[-]day period in the event of inaction by the Commissioner; provided that both administrative and judicial remedies must be undertaken within the two (2)[-]year period from the close of the taxable quarter when the relevant sales were made. If the two[-]year period is about to lapse, but the BIR has not yet acted on the application for refund, the taxpayer should file a Petition for Review with this Court within the two[-]year period. Otherwise, the refund claim for unutilized input value added tax attributable to zero-rated sales or effectively zero-rated sales is time-barred.
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> Subsections (A) and ([C]) of Section 112 of the 1997 NIRC under the heading "Refunds or Tax Credits of Input Tax" should be read in its entirety not in separate parts. Subsection ([C]) cannot be isolated from the rest of the subsections of Section 112 of the 1997 NIRC. A statute is passed as a whole, and is animated by one general purpose and intent.

> Its meaning cannot be extracted from any single part thereof but from a general consideration of the statute as a whole.[14] (Citations omitted)

The CIR sought a reconsideration of the CTA *en banc* Decision dated June 16, 2010 but it was denied by the CTA *en banc* in its Resolution[15] dated October 14, 2010.

The Issue

Essentially, the issue presented to the Court for resolution is whether the CTA *en banc* erred in holding that TSC's petition for review with the CTA was not prematurely filed.

The Court's Ruling

The petition is meritorious.

Section 112 of the NIRC provides for the rules to be followed in claiming a refund/tax credit of unutilized input VAT. Subsections (A) and (C) thereof provide that:

> Sec. 112. *Refunds or Tax Credits of Input Tax*.
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> (A) *Zero-Rated or Effectively Zero-Rated Sales*. - Any VATregistered 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)(l), (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 goods 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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> (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.
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> 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.
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Any unutilized input VAT attributable to zero-rated or effectively zero-rated sales may be claimed as a refund/tax credit. Initially, claims for refund/tax credit for unutilized input VAT should be filed with the BIR, together with the complete documents in support of the claim. Pursuant to Section 112(A) of the NIRC, the administrative claim for refund/tax credit must be filed with the BIR within two years after the close of the taxable quarter when the sales were made.

Under Section 112(C) of the NIRC, the CIR is given 120 days from the submission of complete documents in support of the application for refund/tax credit within which to either grant or deny the claim. In case of (1) full or partial denial of the claim or (2) the failure of the CIR to act on the claim within 120 days from the submission of complete documents, the taxpayer-claimant may, within 30 days from receipt of the CIR decision denying the claim or after the lapse of the 120-day period, file a petition for review with the CTA.

The CTA *en banc* and the CTA First Division opined that a taxpayer-claimant is permitted to file a judicial claim for refund/tax credit with the CTA notwithstanding that the 120-day period given to the CIR to decide an administrative claim had not yet lapsed. That TSC, in view of the fact that the two-year prescriptive period for claiming refund/tax credit of unutilized input VAT under Section 112(A) of the NIRC is about to lapse, had the right to seek judicial redress for its claim for refund/tax credit *sans* compliance with the 120-day period under Section 112(C) of the NIRC.

The Court does not agree.

The pivotal question of whether the imminent lapse of the two-year period under Section 112(A) of the NIRC justifies the filing of a judicial claim with the CTA without awaiting the lapse of the 120-day period given to the CIR to decide the administrative claim for refund/tax credit had already been settled by the Court. In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[16] the Court held that:

> However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112([C]) of the NIRC, x x x:
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> xxxx
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> Section 112([C]) of the NIRC clearly provides that the CIR has "120 days, from the date ofthe submission ofthe complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the