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FIRST DIVISION

[G.R. No. 205543, June 30, 2014]

SAN ROQUE CORPORATION, PETITIONER, POWER VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 16, Section1 of A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals, in relation to Rule 45 of the Rules of Court, filed by San Roque Power Corporation (San Roque), seeking the reversal of the Decision[1] dated June 4, 2012 and Resolution[2] dated January 21, 2013 of the Court of Tax Appeals (CTA) *en banc* in C.T.A. EB No. 789. The CTA *en banc*, in its assailed Decision, affirmed the Decision[3] dated January 10, 2011 of the CTA First Division in C.T.A. Case Nos. 7744 & 7802, which dismissed the judicial claims of San Roque for the refund or tax credit of its excess/unutilized creditable input taxes for the four quarters of 2006; and in its assailed Resolution, denied the Motion for Reconsideration of San Roque.

San Roque is a domestic corporation principally engaged in the power-generation business. It is registered with the Board of Investments on a preferred pioneer status for the construction and operation of hydroelectric power-generating plants, as well as with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer.

On October 11, 1997, San Roque entered into a Power Purchase Agreement (PPA) with the National Power Corporation (NPC) to develop the San Roque hydroelectric facilities located at Lower Agno River in San Miguel, Pangasinan (Project) on a build-operate-transfer basis. During the co-operation period of 25 years, commencing from the completion date of the power station, all the electricity generated by the Project would be sold to and purchased exclusively by NPC. San Roque commenced commercial operations in May 2003.

San Roque alleged that in 2006, it incurred creditable input taxes from its purchase of capital goods, importation of goods other than capital goods, and payment for the services of non-residents. San Roque subsequently filed with the BIR separate claims for refund or tax credit of its creditable input taxes for all four quarters of 2006. San Roque averred that it did not have any output taxes to which it could have applied said creditable input taxes because: (a) the sale by San Roque of electricity, generated through hydropower, a renewable source of energy, is subject to 0% VAT under Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended; and (b) NPC is exempted from all taxes, direct and indirect, under Republic Act No. 6395, otherwise known as the NPC Charter, so the sale by San Roque of electricity exclusively to NPC, under the PPA dated October 11, 1997, is effectively zero-rated under Section 108(B)(3) of the NIRC of 1997, as amended.

[4] When the Commissioner of Internal Revenue (CIR) failed to take action on its administrative claims, San Roque filed two separate Petitions for Review before the CTA, particularly, C.T.A. Case No. 7744 (covering the first, third, and fourth quarters of 2006) and C.T.A. Case No. 7802 (covering the second quarter of 2006). The two cases were consolidated before the CTA First Division.

The details concerning the administrative and judicial claims of San Roque for refund or tax credit of its creditable input taxes for the four quarters of 2006 are summarized in table form below:

Tax Period 2006	**VAT Return**	**Administrative Claim**	**Judicial Claim**
First Quarter	Filed: April 21, 2006 Amended: November 7, 2006	Filed: April 11, 2007 Amount: P2,857,174.95 Amended: March 10, 2008 Amount: P3,128,290.74	Filed: March 28, 2008 CTA Case No. 7744 Amount: P12,114,877.34 (for 1st, 3rd, and 4th Quarters of 2006)
Second Quarter	Filed: July 15, 2006 Amended: November 8, 2006 Amended: February 5, 2007	Filed: July 10, 2007 Amount: P15,044,030.82 Amended: March 10, 2008 Amount: P15,548,630.55	Filed: June 27, 2008 CTA Case No. 7802 Amount: P15,548,630.55
Third Quarter	Filed: October 19, 2006 Amended: February 5, 2007	Filed: August 31, 2007 Amount: P4,122,741.54 Amended: September 21, 2007 Amount: P3,675,574.21	Filed: March 28, 2008 CTA Case No. 7744 Amount: P12,114,877.34 (for 1st, 3rd, and 4th Quarters of 2006)
Fourth Quarter	Filed: January 22, 2007 Amended: May 12, 2007	Filed: August 31, 2007 Amount: P6,223,682.61 Amended: September 21, 2007 Amount: P5,311,012.39	Filed: March 28, 2008 CTA Case No. 7744 Amount: P12,114,877.34 (for 1st, 3rd, and 4th Quarters of 2006)

On January 10, 2011, the CTA First Division rendered a Decision on the consolidated judicial claims of San Roque, with the following findings:

As to [San Roque's] original applications for refund is concerned, the Commissioner of Internal Revenue has one hundred twenty days or until August 9, 2007, November 7, 2007 and December 29, 2007 within which to make decision. After the lapse of the one hundred twenty[-]day period, [San Roque] should have elevated its claim with the Court within thirty (30) days starting from August 10, 2007 to September 8, 2007 for its first quarter claim, November 8, 2007 to December 7, 2007 for its second quarter claim, and December 30, 2007 to January 28, 2008 for its third and fourth quarters claims pursuant to Section 112(D) of the NIRC in relation to Section 11 of [Republic Act No.] 1125, as amended by Section 9 of [Republic Act No.] 9282. Unfortunately, the Petitions for Review on March 28, 2008 for the first, third and fourth quarters claims and on June 27, 2008 for the second quarter claim, were filed beyond the 30-day period set by law and therefore, the Court has no jurisdiction to entertain the subject matter of the case considering that the 30-day appeal period provided under Section 11 of [Republic Act No.] 1125 is a jurisdictional requirement as held in the case of *Ker & Co., Ltd. vs. Court of Tax Appeals,* x x x:

x x x x

Likewise, if we reckoned the one hundred twenty[-]day period from the date of the amended applications for refund on March 10, 2008 for the first and second quarters claims and September 21, 2007 for the third and fourth quarters claims, both Petitions for Review would still be denied.

With respect to the amended application for refund of input tax for the first and second quarters of 2006 on March 10, 2008, the Commissioner of Internal Revenue has one hundred twenty days or until July 8, 2008 within which to make a decision. After the lapse of the said

120-day period, [San Roque] had thirty days or until August 7, 2008 within which to appeal to this Court. [San Roque], however, appealed via Petitions for Review on March 28, 2008 for its first quarter claim and on June 27, 2008 for its second quarter claim, which are clearly before the lapse of the 120-day period. This violates the rule on exhaustion of administrative remedies.

x x x x

The premature invocation of the court's intervention, *like the instant Petitions for Review*, is fatal to one's cause of action; and the case is susceptible of dismissal for failure to state a cause of action. Moreover, such premature appeal will also warrant the dismissal of the Petitions for Review inasmuch as no jurisdiction was acquired by the Court in line with the recent pronouncement made by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*

As far as the amended application for refund covering the third and fourth quarter[s] filed on September 21, 2007 is concerned, the

> Commissioner of Internal Revenue has one hundred twenty days or until January 19, 2008 within which to make a decision. After the lapse of the said one hundred twenty day[-]period, [San Roque] should have elevated its claim with the Court within thirty (30) days starting from January 20, 2008 to February 18, 2008. Unfortunately, the Petition for Review covering said third and fourth quarter[s] was filed March 28, 2008 beyond the 30-day period set by law and therefore, the Court has no jurisdiction to entertain the subject matter of the case.
>
> Other issues raised now become moot and academic.[5]

The dispositive portion of the foregoing Decision of the CTA First Division reads:

> **WHEREFORE**, these consolidated Petitions for Review, CTA Case Nos. 7744 covering the first, third and fourth quarter[s] and 7802 covering [the] second quarter are hereby **DISMISSED** since the Court has no jurisdiction thereof.[6]

San Roque filed a Motion for Reconsideration but it was denied by the CTA First Division in a Resolution[7] dated May 31, 2011.

San Roque filed a Petition for Review before the CTA *en banc*, protesting against the retroactive application of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc*.[8] In *Aichi*, promulgated on October 6, 2010, the Supreme Court strictly required compliance with the 120+30 day periods under Section 112 of the NIRC of 1997, as amended.

In its Decision dated June 4, 2012, the CTA *en banc* upheld the application of *Aichi* and explained that there was no retroactive application of the same. The 120+30 day periods had already been provided in the NIRC of 1997, as amended, even before the promulgation of *Aichi. Aichi* merely interpreted the provisions of Section 112 of the NIRC of 1997, as amended.

The CTA *en banc* applied the 120+30 day periods and found, same as the CTA First Division, that while San Roque timely filed its administrative claims for refund or tax credit of creditable input taxes for the four quarters of 2006, it filed its judicial claims beyond the 30-day prescriptive period, reckoned from the lapse of the 120-day period for the CIR to act on the original administrative claims. The CTA *en banc* stressed that the 30-day period within which to appeal with the CTA is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction.[9]

The CTA *en banc* further stated in its Decision that even if it counted the 120-day period from the filing of the amended administrative claims for refund on March 10, 2008 for the first and second quarter claims, and on September 21, 2007 for the third and fourth quarter claims, the CTA still did not acquire jurisdiction over C.T.A. Case Nos. 7744 and 7802. Following the 120+30 day periods, the judicial claims of San Roque for the first and second quarters were prematurely filed, while the judicial claims for the third and fourth quarters were filed late.

Lastly, the CTA *en banc* adjudged that San Roque cannot rely on *San Roque Power Corporation v. Commissioner of Internal Revenue,* promulgated on November 25, 2009 [*San Roque (2009)*],[10] which granted the claims for refund or tax credit of the creditable input taxes of San Roque for the four quarters of 2002, on the following grounds: (a) The main issue in *San Roque (2009)* was whether or not San Roque had zero-rated or effectively zero-rated sales in 2002, to which the creditable input taxes could be attributed, while the pivotal issue in the instant case is whether or not San Roque complied with the prescriptive periods under Section 112 of the NIRC of 1997, as amended, when it filed its administrative and judicial claims for refund or tax credit of its creditable input taxes for the four quarters of 2006; (b) The claims for refund or tax credit in *San Roque (2009)* involved the four quarters of 2002, when sales of electric power by generation companies to the NPC were explicitly VAT zero-rated under Section 6 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA) of 2001. Eventually, Republic Act No. 9337, otherwise known as the Extended VAT Law (EVAT Law), took effect on November 1, 2005, and Section 24 of said law already expressly repealed Section 6 of the EPIRA; and (3) In *San Roque (2009*), San Roque failed to comply with Section 112(A)[11] of the NIRC of 1997, as amended, and prematurely filed its administrative claim for the third quarter of 2002 on October 25, 2002, when its zero-rated sales of electric power to NPC were made only in the fourth quarter of 2002, which closed on December 31, 2002. In the instant case, San Roque did not comply with the 120+30 day periods under Section 112(C) of the NIRC, as amended, thus, the CTA did not acquire jurisdiction over the judicial claims.

In the end, the CTA *en banc* decreed:

> Finding no reversible error, we affirm the assailed Decision dated January 10, 2011 and Resolution dated May 31, 2011 rendered by the First Division in C.T.A. Case Nos. 7744 and 7802.
>
> **WHEREFORE**, premises considered, the present Petition for Review is hereby DENIED, and accordingly **DISMISSED** for lack of merit.[12]

In its Resolution dated January 21, 2013, the CTA *en banc* denied the Motion for Reconsideration of San Roque.

Hence, San Roque filed the Petition at bar assigning six reversible errors on the part of the CTA *en banc, viz*:

I.

> THE HONORABLE CTA *EN BANC* COMMITTED REVERSIBLE ERROR IN DISMISSING [SAN ROQUE'S] PETITIONS FOR REVIEW AND APPLYING RETROACTIVELY THE AICHI RULING IN THAT AT THE TIME IT FILED ITS PETITIONS FOR REVIEW, [SAN ROQUE] ACTED IN GOOD FAITH IN ACCORDANCE WITH THE THEN PREVAILING RULE AND JURISPRUDENCE CONSISTENTLY UPHELD FOR ALMOST A DECADE BY THE HONORABLE CTA IN THE ABSENCE THEN OF A RULING FROM THIS HONORABLE