736 Phil. 591

SECOND DIVISION

[G.R. No. 197591, June 18, 2014]

TAGANITO MINING CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated January 11, 2011 and the Resolution[3] dated June 27, 2011 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 609 which reversed and set aside the Decision[4] dated November 24, 2009 and the Resolution[5] dated March 12, 2010 of the CTA First Division (CTA Division) in C.T.A. Case No. 7428, and ordered the dismissal of petitioner Taganito Mining Corporation's (Taganito) claim for refund of excess input value-added tax (VAT) for having been prematurely filed.

The Facts

Taganito is a duly-registered Philippine corporation and a VAT-registered entity primarily engaged in the business of exploring, extracting, mining, selling, and exporting precious metals, such as nickel, chromite, cobalt, gold, silver, iron, and all kinds of ores and metals and their by-products. For the 1st, 2nd, 3rd, and 4th quarters of the year 2004, Taganito filed its Quarterly VAT Returns on April 20, 2004, July 20, 2004, October 20, 2004, and January 18, 2005, respectively. Subsequently, it filed Amended Quarterly VAT Returns on July 20, 2005 for the 4th quarter of 2004 and on December 28, 2005 for the first three quarters of 2004.[6]

On December 28, 2005, Taganito filed before the Bureau of Internal Revenue (BIR) an administrative claim for the refund of input VAT paid on its domestic purchases of taxable goods and services and importation of goods in the amount of P1,885,140.22 covering the period January 1, 2004 to December 31, 2004, in accordance with Section 112, subsections (A) and (B) of the National Internal Revenue Code (NIRC).[7] Thereafter, or on March 31, 2006, fearing that the period for filing a judicial claim for refund was about to expire, Taganito proceeded to file a petition for review before the CTA Division, docketed as C.T.A. Case No. 7428.[8]

The CTA Division Ruling

In a Decision[9] dated November 24, 2009, the CTA Division partially granted Taganito's claim for refund, ordering respondent, the Commissioner of Internal Revenue (CIR), to refund to Taganito the amount of P537,645.43 representing its unutilized input VAT for the period January 1, 2004 to March 9, 2004. It found that Taganito's export sales qualified as VAT zero-rated sales. However, of the P1,885,140.22 claimed refund for excess input VAT, the CTA Division disallowed

P10,263.37[10] for being based on non-VAT official receipts.[11]

Moreover, it observed that the Board of Investments (BOI) issued a certification in Taganito's favor, stating that it is a BOI-registered entity with 100% exports. In effect, for the period March 10, 2004 to December 31, 2004, Taganito's local suppliers may avail of zero-rating benefits on their sales to Taganito, and, thus, no output VAT should be shifted from the former to the latter. Considering the absence of sufficient proof that said suppliers did not avail of such benefits, Taganito cannot therefore claim input VAT on its domestic purchases for the aforesaid period.[12]

Lastly, the CTA Division found that Taganito's refund claims were filed within the two (2)-year prescriptive period and the 120-day period provided under Section 112(D) of the NIRC, considering that its administrative claim was filed on December 28, 2005, and its judicial claim was filed on March 31, 2006.[13]

The CIR filed a motion for reconsideration praying for the reversal of the partial refund granted in Taganito's favor, which was, however, denied in a Resolution[14] dated March 12, 2010.

Dissatisfied, the CIR elevated the matter to the CTA En Banc. Records are bereft of any showing that Taganito appealed the partial denial of its claim of refund which had, thus, lapsed into finality.

The CTA *En Banc* Ruling

In a Decision[15] dated January 11, 2011, the CTA *En Banc* reversed and set aside the Decision of the CTA Division, and ordered that Taganito's claim of refund be denied in its entire amount. It found that Taganito filed its judicial claim for refund on March 31, 2006, or a mere 93 days after it filed its administrative claim on December 28, 2005. Explaining that the observance of the 120-day period provided under Section 112(D) of the NIRC is mandatory and jurisdictional to the filing of a judicial claim for refund pursuant to the case of *CIR v. Aichi Forging Company of Asia, Inc. (Aichi),*[16] it held that Taganito's filing of a judicial claim was premature, and, thus, the CTA Division had yet to acquire jurisdiction over the same.[17]

Aggrieved, Taganito moved for reconsideration, which was, however, denied in a Resolution[18] dated June 27, 2011, hence, this petition.

The Issues Before the Court

The issues for the Court's resolution are as follows: (a) whether or not the CTA *En Banc* correctly dismissed Taganito's judicial claim for refund of excess input VAT; and (b) whether or not Taganito should be entitled to its claim for refund in the total amount of P1,885,140.22.

The Court's Ruling

The petition is partly meritorious.

The first provision that allowed the refund or credit of unutilized excess input VAT is

found in Executive Order No. 273, series of 1987,[19] the original VAT Law. Since then, this provision was amended numerous times, by Republic Act No. (RA) 7716, [20] RA 8424, and, lastly, by RA 9337[21] which took effect on July 1, 2005. Since Taganito's claim for refund covered periods before the effectivity of RA 9337, Section 112 of the NIRC, as amended by RA 8424, should apply.[22] The pertinent parts of the said provision read as follows:

> Section 112. *Refunds 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: x x x.
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> x x x x
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> (D) *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 Subsections (A) and (B) 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**. (Emphases and underscoring supplied)
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> x x x x

As correctly pointed out by the CTA *En Banc,* the Court, in the 2010 *Aichi* case, ruled that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund before the CTA. Consequently, non-observance thereof would lead to the dismissal of the judicial claim due to the CTA's lack of jurisdiction. The Court, in the same case, also clarified that the two (2)-year prescriptive period applies only to administrative claims and not to judicial claims. In other words, the *Aichi* case instructs that once the administrative claim is filed within the prescriptive period, the claimant must wait for the 120-day period to end and, thereafter, he is given a 30-day period to file his judicial claim before the CTA, even if said 120-day and 30-day periods would exceed the aforementioned two (2)-year prescriptive period.

In the recent case of *CIR v. San Roque Power Corporation (San Roque),*[23] the Court, however, recognized an exception to the mandatory and jurisdictional