

## SECOND DIVISION

**[ G.R. No. 205055, July 18, 2014 ]**

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

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a petition for review<sup>[1]</sup> assailing the Decision<sup>[2]</sup> promulgated on 27 July 2012 as well as the Resolution<sup>[3]</sup> promulgated on 6 December 2012 by the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB No. 768. The CTA EB affirmed the 5 April 2011 Amended Decision<sup>[4]</sup> of the Special First Division of the Court of Tax Appeals (CTA Special First Division) in CTA Case No. 7470. The CTA Special First Division granted the claim for refund or issuance of tax credit certificate filed by respondent Team Sual Corporation (TSC).<sup>[5]</sup>

#### The Facts

TSC is a value-added tax (VAT) payer duly registered with the Bureau of Internal Revenue (BIR). It is principally engaged in the business of electric power generation and the sale of electric power to National Power Corporation (NPC) under a Build-Operate-Transfer (BOT) Scheme.

On 19 December 2003, TSC applied for the VAT zero-rating of its sale of electric power to NPC for the taxable year 2004. TSC's application was subsequently approved by the BIR.

On 26 April 2004, 26 July 2004, 25 October 2004 and 25 January 2005, TSC filed its quarterly VAT returns for the four quarters of 2004 with the BIR, through the Electronic Filing and Payment Scheme (EFPS). On 26 July 2004 and on 3 August 2005, TSC filed its amended quarterly VAT returns for the first and fourth quarters of 2004, respectively.

The quarterly VAT returns for the four quarters of 2004 provide:

Exh.	Zero-Rated Sales/ Receipts	Taxable Sales	Output VAT	Input VAT	Excess Input VAT
D	P 3,698,654,169.48	P 0.00	P 0.00	P 13,134,435.00	P 13,134,435.00
E	3,653,185,715.68	202,558.14	20,255.81	31,973,996.35	31,953,740.54
F	3,744,693,428.11	465,744.07	46,574.41	19,967,007.14	19,920,432.73

H	3,819,303,147.15	1,044,107.15	104,410.71	38,227,189.38	38,122,778.67
Total	P 14,915,836,460.42	P 1,712,409.36	P 171,240.93	P 103,302,627.87	P 103,131,386.94

On 21 December 2005, TSC filed an administrative claim for refund of its input VAT, which it incurred for the four quarters of 2004.

On 24 April 2006, due to the BIR's inaction, TSC filed a petition for review with the Court of Tax Appeals (CTA). TSC prayed for the refund or issuance of tax credit certificate for its alleged unutilized input VAT for year 2004.

### **The Court of Tax Appeals' Ruling: Division**

In its 4 March 2010 Decision,<sup>[6]</sup> the CTA Special First Division ruled that TSC's sale of electric power to NPC was effectively zero-rated. The CTA Special First Division found that TSC complied with the five requirements to be entitled to a refund or issuance of tax credit certificate on its input VAT, to wit:

1. That there must be zero-rated or effectively zero-rated sales;
2. That input taxes were incurred or paid;
3. That such input taxes are attributable to zero-rated sales or effectively zero-rated sales;
4. That the input taxes were not applied against any output VAT liability; and
5. That the claim for refund was filed within the two-year prescriptive period.<sup>[7]</sup>

The CTA Special First Division found that TSC is entitled to a refund or issuance of tax credit certificate in the amount of P78,009,891.56<sup>[8]</sup> input VAT, upon disallowance of the amounts of: (1) P568,628,238.98 for being sales of electric power to Mirant Philippines Energy Corporation, Mirant Philippines Industrial Power Corporation, and Mirant Philippines Industrial Power II Corporation; (2) P2,430,229,567.30 zero-rated sales to NPC for not being properly supported by VAT official receipts; and (3) P5,490,632.64 input VAT for failure to meet the substantiation requirement. The CTA Special First Division likewise ruled that both the administrative and the judicial claims of TSC were filed within the two-year prescriptive period.

The dispositive portion of the CTA Special First Division's 4 March 2010 Decision reads:

WHEREFORE, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE in the amount of SEVENTY EIGHT MILLION NINE THOUSAND EIGHT HUNDRED NINETY ONE PESOS AND 56/100 (P78,009,891.56) to petitioner, representing unutilized excess input VAT attributable to its effectively zero-rated sales to NPC for the four quarters of taxable year 2004.

SO ORDERED.<sup>[9]</sup>

On 19 May 2010, the CTA Special First Division granted the motion for partial new trial filed by TSC and allowed it to present in evidence the correct official receipts supporting the P2,430,229,567.30 zero-rated sales made to NPC. The CTA Special First Division likewise held in abeyance the resolution of the motion for reconsideration filed by both parties.

In an Amended Decision dated 5 April 2011, the CTA Special First Division found that TSC is entitled to a modified amount of P96,846,234.31 input VAT,<sup>[10]</sup> upon: (1) allowing the amount of P2,430,229,567.30 zero-rated sales made to NPC; (2) disallowing the amount of P7,232,794.92 zero-rated sales because its official receipt was dated outside the period of claim; and (3) allowing the amount of P3,094,606.10 input VAT for being properly substantiated.

The dispositive portion of the CTA Special First Division's 5 April 2011 Amended Decision reads:

WHEREFORE, premises considered, respondent's "Motion for Partial Reconsideration" is hereby DENIED for lack of merit while petitioner's "Motion for Partial Reconsideration" is hereby PARTIALLY GRANTED.

Accordingly, petitioner's claim for refund or issuance of tax credit certificate representing unutilized input VAT for taxable year 2004 is GRANTED in the total adjusted amount of NINETY SIX MILLION EIGHT HUNDRED FORTY SIX THOUSAND AND TWO HUNDRED THIRTY FOUR PESOS AND 31/100 (P96,846,234.31) or an additional EIGHTEEN MILLION EIGHT HUNDRED THIRTY SIX THOUSAND AND THREE HUNDRED FORTY TWO PESOS AND 75/100 (P18,836,342.75) on its previously granted claim of SEVENTY EIGHT MILLION NINE THOUSAND EIGHT HUNDRED NINETY ONE PESOS AND 56/100 (P78,009,891.56).

SO ORDERED.<sup>[11]</sup>

Thus, the Commissioner of Internal Revenue (CIR) filed a petition for review with the CTA EB.

### **The Court of Tax Appeals' Ruling: En Banc**

In a Decision dated 27 July 2012, the CTA EB found that TSC submitted the relevant documents applicable to its claim. According to the CTA EB, the submitted documents constituted compliance with the requirements of Revenue Memorandum Order No. (RMO) 53-98. Thus, the CTA EB ruled that the judicial claim was not prematurely filed.

The dispositive portion of the CTA EB's 27 July 2012 Decision reads:

WHEREFORE, premises considered, the present Petition for Review is hereby DENIED DUE COURSE, and, accordingly DISMISSED for lack of merit. The Amended Decision dated April 5, 2011 is hereby AFFIRMED.

SO ORDERED.<sup>[12]</sup>

In a Resolution dated 6 December 2012, the CTA EB denied the motion for reconsideration filed by the CIR for lack of merit. Hence, this petition.

### **The Issue**

The CIR raises this sole issue for resolution:

THE [CTA EB] GRAVELY ERRED IN DENYING DUE COURSE TO [CIR]'S PETITION FOR REVIEW IN [CTA] EB NO. 768 AND IN AFFIRMING THE DECISION OF ITS SPECIAL FIRST DIVISION THAT [TSC] IS ENTITLED TO A REFUND OR TAX CREDIT CERTIFICATE IN THE AMOUNT OF P96,846,234.31 BECAUSE IT WAS ABLE TO SUBMIT THE LEGALLY REQUIRED DOCUMENTS IN ITS APPLICATION FOR REFUND.<sup>[13]</sup>

### **The Ruling of the Court**

The petition lacks merit.

The relevant portions of Section 112 of the National Internal Revenue Code (NIRC), which provide the requirements to enable the taxpayer to claim a refund or credit of its input tax, state:

*Sec. 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: *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 goods or 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 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.

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.<sup>[14]</sup>

Under Section 112(C) of the NIRC, the CIR has 120 days to decide the taxpayer's claim from the date of submission of complete documents in support of the application filed in accordance with Section 112(A) of the *NIRC*. In *Intel Technology v. Commissioner of Internal Revenue*,<sup>[15]</sup> we ruled that once the taxpayer has established by sufficient evidence that it is entitled to a refund or issuance of a tax credit certificate, in accordance with the requirements of Section 112(A) of the NIRC, its claim should be granted.

In *Atlas Consolidated Mining v. Commissioner of Internal Revenue*,<sup>[16]</sup> we held that applications for refund or credit of input tax with the BIR must comply with the appropriate revenue regulations. Thus, applications must be in accordance with Section 2 of Revenue Regulations No. 3-88 (RR 3-88), amending Section 16 of Revenue Regulations No. 5-87, to wit:

SECTION 2. Section 16 of Revenue Regulations 5-87 is hereby amended to read as follows:

SECTION 16. Refunds or tax credits of input tax. –

x x x x

(c) Claims for tax credits/refunds. – Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

x x x x

3. Effectively zero-rated sale of goods and services.