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FIRST DIVISION

[G.R. No. 198928, December 18, 2014]

CBK POWER COMPANY LIMITED, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated July 20, 2011 and the Resolution[3] dated October 5, 2011 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 639, which reversed and set aside the Decision[4] dated February 6, 2009, the Amended Decision[5] dated February 8, 2010, and the Resolution[6] dated May 20, 2010 of the CTA Second Division in C.T.A. Case No. 7220 and dismissed the claim for refund of excess input value-added tax (VAT) of petitioner CBK Power Company Limited (CBK Power) for being prematurely filed.

The Facts

CBK Power, a partnership duly organized and existing under Philippine laws, is a special purpose entity formed for the sole purpose of engaging in all aspects of: (a) the design, financing, construction, testing, commissioning, operation, maintenance, management, and ownership of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna; and (b) the rehabilitation, upgrade expansion, testing, commissioning, operation, maintenance, and management of the Caliraya, Botocan, and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna. It is registered as a VAT entity since April 10, 2000 and on January 29, 2003, its application for a VAT zero-rate status was approved pursuant to VAT Review Committee Ruling No. 018-13.[7]

On April 24, 2003, July 25, 2003, October 24, 2003, and January 26, 2004, CBK Power submitted its quarterly VAT returns for the period covering January 1, 2003 to December 31, 2003.Subsequently, CBK Power amended its April 24, 2003 VAT return on June 10, 2003 and March 23, 2005. Similarly, CBK Power made amendments in its July 25, 2003, October 24, 2003, and January 26, 2004 VAT returns on March 23, 2005. These amendments reflected unutilized/excess input VAT in the amount of P298,430,362.42.[8]

On March 29, 2005, CBK Power filed before the Bureau of Internal Revenue (BIR) District Office No. 55 of Laguna an administrative claim for the issuance of a tax credit certificate for a total amount of P295,994,518.00, representing unutilized input VAT on its purchase of capital goods, as well as unutilized input VAT on its local purchase of goods and services other than capital goods, all for the calendar year 2003. Thereafter, on April 18, 2005, CBK Power filed its judicial claim for tax

refund/credit before the CTA, docketed as CTA Case No. 7220.[9]

For its part, respondent Commissioner of Internal Revenue (CIR) claimed, *inter alia*, that the amount being claimed by CBK Power as alleged unutilized input VAT for the period January 1, 2003 to December 31, 2003 must be denied for not being properly documented.[10]

The CTA Second Division Ruling

In a Decision[11] dated February 6, 2009, the CTA Second Division ruled in favor of CBK Power and accordingly awarded it a tax credit certificate, albeit in the reduced amount of P215,998,263.13.[12] In disallowing certain portions of CBK Power's claim for refund/credit, the CTA Second Division found that CBK Power failed to prove that the purchases under scrutiny pertained to its capital purchases as reflected in its audited financial statements for the calendar year 2003.[13]

On partial reconsideration from both parties, the CTA Second Division rendered an Amended Decision[14] dated February 8, 2010, increasing CBK Power's entitlement to a tax credit certificate in the amount of P286,783,847.37.[15]

The CIR again moved for reconsideration,[16] which was, however, denied in a Resolution[17] dated May 20, 2010. Dissatisfied, the CIR appealed to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision[18] dated July 20, 2011, the CTA *En Banc* reversed and set aside the CTA Second Division's ruling and thereby denied CBK Power's claim for refund in its entirety.[19] It found that CBK Power filed its judicial claim for refund/credit on April 18, 2005 or just 20 days after it filed its administrative claim on March 29, 2005.As such, it failed to observe the mandatory and jurisdictional 120-day period provided under Section 112(D) of the National Internal Revenue Code[20] (NIRC). Consequently, it ruled that such non-observance resulted in the prematurity of CBK Power's claim,warranting a dismissal thereof for lack of jurisdiction.[21]

Aggrieved, CBK Power moved for reconsideration,[22] which was, however, denied in a Resolution[23] dated October 5, 2011,hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CTA *En Banc* correctly denied CBK Power's claim for refund for being prematurely filed.

The Court's Ruling

The petition is meritorious.

Executive Order No. 273, Series of 1987[24] or the original VAT law first allowed the refund or credit of unutilized excess input VAT. Thereafter, the provision on refund or

credit was amended several times by Republic Act No. (RA) 7716,[25] RA 8424, and RA 9337,[26] which took effect on November 1, 2005.[27] Since CBK Power's claims for refund covered periods before the effectivity of RA 9337, *i.e.,* January 1, 2003 to December 31, 2003, Section 112 of the NIRC, as amended by RA 8424 should apply, to wit:

> Section 112. *Refunds or Tax Credits of Input Tax.* –
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> > (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 xx.
> >
> > 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**.
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> x x x x (Emphases and underscoring supplied)

In *CIR v. Aichi Forging Company of Asia, Inc. (Aichi)*,[28] the Court held 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, its non-observance would lead to the dismissal of the judicial claim on the ground of lack of jurisdiction. *Aichi* also clarified that the two (2)-year prescriptive period applies only to administrative claims and not to judicial claims.[29] Succinctly put, once the administrative claim is filed within the two (2)-year prescriptive period, the claimant must wait for the 120-day period to end; 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.[30]

However, in *CIR v. San Roque Power Corporation (San Roque)*,[31] the Court