749 PHIL. 485

FIRST DIVISION

[G.R. No. 204745, December 08, 2014]

MINDANAO II GEOTHERMAL PARTNERSHIP, 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 5, 2012 and the Resolution[3] dated November 29, 2012 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 750, which affirmed the Resolutions dated January 20, 2011[4] and March 15, 2011[5] of the CTA Second Division (CTA Division) in CTA Case Nos. 8082 and 8106 dismissing the claim for refund of excess input value-added tax (VAT) of petitioner Mindanao II Geothermal Partnership (petitioner) in CTA Case No. 8082 for being prematurely filed.

The Facts

Petitioner, a partnership duly registered with the Securities and Exchange Commission, is a VAT-registered entity with VAT/ Tax Identification No. 004-766-953, and is engaged in the generation, collection, and distribution of electricity.[6] On March 11, 1997, it entered into a Build-Operate-Transfer Contract with the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) for the finance, engineering, supply, installation, testing, commissioning, operation, and maintenance of a 48.25 megawatt geothermal power plant, provided that the PNOC-EDC shall supply and deliver steam to petitioner at no cost. In turn, petitioner shall convert the steam into electric capacity and energy for the PNOC-EDC, and shall deliver the same to the National Power Corporation for and on behalf of the PNOC-EDC.[7] For this purpose, petitioner's 48.25 megawatt geothermal power plant was accredited by the Department of Energy as a Block Power Production Facility, pursuant to the provisions of Executive Order No. 215. The Energy Regulatory Commission likewise issued Certificate of Compliance Nos. 03-10-GXT25-0025 and 08-12-GXT25-0025 in petitioner's favor.[8]

On April 24, 2008, July 25, 2008, October 24, 2008, and January 2, 2009, petitioner filed its quarterly VAT returns for the four (4) quarters of 2008 reflecting the amount of P6,149,256.25 as unutilized/excess input VAT.[9]

On December 28, 2009, petitioner filed before the Bureau of Internal Revenue (BIR) District Office No. 108 of Kidapawan City, Cotabato an administrative claim for refund/credit of its unapplied and unutilized input VAT for the year 2008 in the aforesaid amount.[10] Thereafter, or on March 30, 2010, petitioner filed its judicial claim for refund/credit of its unutilized/excess input VAT for the first quarter of 2008 in the amount of P1,624,603.33[11] before the CTA, docketed as CTA Case No.

8082.[12] About two (2) months later, or on May 27, 2010, petitioner filed its judicial claim for refund/credit of its unutilized/excess input VAT for the second to fourth quarters of 2008 in the amount of P4,524,652.92[13] before the CTA, docketed as CTA Case No. 8106. Eventually, the two cases were consolidated by the CTA.[14]

On December 7, 2010, respondent Commissioner of Internal Revenue (CIR) filed a Motion to Dismiss,[15] praying for the dismissal of CTA Case No. 8082 on the ground of lack of jurisdiction.[16] Relying on the case of *CIR v. Aichi Forging Company of Asia, Inc. (Aichi)*,[17] the CIR contended that since the judicial claim for refund/credit in Case No. 8082 was filed only 107 days from the filing of the administrative claim,[18] it should be dismissed for being prematurely filed for petitioner's failure to comply with the 120-day period prescribed under Section 112 (D) of the National Internal Revenue Code (NIRC).[19]

The CTA Division Ruling

In a Resolution[20] dated January 20, 2011, the CTA Division granted the CIR's motion to dismiss, and accordingly, dismissed CTA Case No. 8082 for being prematurely filed.[21] It agreed with the CIR's contention and held that pursuant to jurisprudence laid down in Aichi, the expiration of the 120-day period is crucial before a taxpayer may file a judicial claim for refund before the CTA.[22] The CTA Division then concluded that petitioner's premature filing of its judicial claim for refund/credit warrants a dismissal inasmuch as the CTA acquired no jurisdiction over the same.[23]

Petitioner moved for reconsideration,[24] which was, however, denied in a Resolution[25] dated March 15, 2011. Aggrieved, petitioner appealed to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision[26] dated July 5, 2012, the CTA *En Banc* dismissed petitioner's appeal for lack of merit, and thereby affirmed the ruling of the CTA Division. Also citing *Aichi*, the CTA *En Banc* held that compliance with the 120-day period stated in Section 112 (D) of the NIRC is a mandatory and judicial requisite in the filing of a judicial claim for refund/credit of input VAT before the CTA.[27] Hence, petitioner's non-compliance therewith is fatal to its refund/credit claim in Case No. 8082, and as such, the CTA Division correctly dismissed the same on the ground of prematurity.[28]

Undaunted, petitioner moved for reconsideration,[29] which was, however, denied in a Resolution[30] dated November 29, 2012, 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 affirmed the CTA Division's dismissal of petitioner's judicial claim for

refund/credit of input VAT in CTA Case No. 8082 for being prematurely filed.

The Court's Ruling

The petition is meritorious.

Section 112 of the NIRC, as amended by RA 9337,[31] provides:

> SEC. 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 x x.
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> x x x x
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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.
>
> 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 the *Aichi* case cited by both the CTA Division and the CTA *En Banc*, 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/credit of input VAT 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.[32] 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 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.[33]

However, in *CIR v. San Roque Power Corporation (San Roque)*,[34] the Court recognized an exception to the mandatory and jurisdictional nature of the 120-day