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EN BANC

[G.R. No. 187485, February 12, 2013]

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

[G.R. NO. 196113]

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

[G.R. NO. 197156]

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

D E C I S I O N

CARPIO, J.:

The Cases

G.R. No. 187485 is a petition for review[1] assailing the Decision[2] promulgated on 25 March 2009 as well as the Resolution[3] promulgated on 24 April 2009 by the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB No. 408. The CTA EB affirmed the 29 November 2007 Amended Decision[4] as well as the 11 July 2008 Resolution[5] of the Second Division of the Court of Tax Appeals (CTA Second Division) in CTA Case No. 6647. The CTA Second Division ordered the Commissioner of Internal Revenue (Commissioner) to refund or issue a tax credit for P483,797,599.65 to San Roque Power Corporation (San Roque) for unutilized input value-added tax (VAT) on purchases of capital goods and services for the taxable year 2001.

G.R. No. 196113 is a petition for review[6] assailing the Decision[7] promulgated on 8 December 2010 as well as the Resolution[8] promulgated on 14 March 2011 by the CTA EB in CTA EB No. 624. In its Decision, the CTA EB reversed the 8 January 2010 Decision[9] as well as the 7 April 2010 Resolution[10] of the CTA Second Division and granted the CIR's petition for review in CTA Case No. 7574. The CTA EB dismissed, for having been prematurely filed, Taganito Mining Corporation's (Taganito) judicial claim for P8,365,664.38 tax refund or credit.

G.R. No. 197156 is a petition for review[11] assailing the Decision[12] promulgated on 3 December 2010 as well as the Resolution[13] promulgated on 17 May 2011 by the CTA EB in CTA EB No. 569. The CTA EB affirmed the 20 July 2009 Decision as well as the 10 November 2009 Resolution of the CTA Second Division in CTA Case No. 7687. The CTA Second Division denied, due to prescription, Philex Mining Corporation's (Philex) judicial claim for P23,956,732.44 tax refund or credit.

On 3 August 2011, the Second Division of this Court resolved[14] to consolidate G.R. No.

197156 with G.R. No. 196113, which were pending in the same Division, and with G.R. No. 187485, which was assigned to the Court *En Banc*. The Second Division also resolved to refer G.R. Nos. 197156 and 196113 to the Court En Banc, where G.R. No. 187485, the lower-numbered case, was assigned.

G.R. No. 187485
CIR v. San Roque Power Corporation

The Facts

The CTA EB's narration of the pertinent facts is as follows:

> [CIR] is the duly appointed Commissioner of Internal Revenue, empowered, among others, to act upon and approve claims for refund or tax credit, with office at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.
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> [San Roque] is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Barangay San Roque, San Manuel, Pangasinan. It was incorporated in October 1997 to design, construct, erect, assemble, own, commission and operate power-generating plants and related facilities pursuant to and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation, or other entity engaged in the development, supply, or distribution of energy.
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> As a seller of services, [San Roque] is duly registered with the BIR with TIN/VAT No. 005-017-501. It is likewise registered with the Board of Investments ("BOI") on a preferred pioneer status, to engage in the design, construction, erection, assembly, as well as to own, commission, and operate electric power-generating plants and related activities, for which it was issued Certificate of Registration No. 97-356 on February 11, 1998.
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> On October 11, 1997, [San Roque] entered into a Power Purchase Agreement ("PPA") with the National Power Corporation ("NPC") to develop hydro-potential of the Lower Agno River and generate additional power and energy for the Luzon Power Grid, by building the San Roque Multi-Purpose Project located in San Manuel, Pangasinan. The PPA provides, among others, that [San Roque] shall be responsible for the design, construction, installation, completion, testing and commissioning of the Power Station and shall operate and maintain the same, subject to NPC instructions. During the cooperation period of twenty-five (25) years commencing from the completion date of the Power Station, NPC will take and pay for all electricity available from the Power Station.
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> On the construction and development of the San Roque Multi-Purpose Project which comprises of the dam, spillway and power plant, [San Roque] allegedly incurred, excess input VAT in the amount of P559,709,337.54 for taxable year 2001 which it declared in its Quarterly VAT Returns filed for the same year. [San Roque] duly filed with the BIR separate claims for refund, in the total amount of P559,709,337.54, representing unutilized input taxes as declared in its VAT returns for taxable year 2001.

> However, on March 28, 2003, [San Roque] filed amended Quarterly VAT Returns for the year 2001 since it increased its unutilized input VAT to the amount of P560,200,283.14. Consequently, [San Roque] filed with the BIR on even date, separate amended claims for refund in the aggregate amount of P560,200,283.14.
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> [CIR's] inaction on the subject claims led to the filing by [San Roque] of the Petition for Review with the Court [of Tax Appeals] in Division on April 10, 2003.
>
> Trial of the case ensued and on July 20, 2005, the case was submitted for decision.[15]

The Court of Tax Appeals' Ruling: Division

The CTA Second Division initially denied San Roque's claim. In its Decision[16] dated 8 March 2006, it cited the following as bases for the denial of San Roque's claim: lack of recorded zero-rated or effectively zero-rated sales; failure to submit documents specifically identifying the purchased goods/services related to the claimed input VAT which were included in its Property, Plant and Equipment account; and failure to prove that the related construction costs were capitalized in its books of account and subjected to depreciation.

The CTA Second Division required San Roque to show that it complied with the following requirements of Section 112(B) of Republic Act No. 8424 (RA 8424)[17] to be entitled to a tax refund or credit of input VAT attributable to capital goods imported or locally purchased: (1) it is a VAT-registered entity; (2) its input taxes claimed were paid on capital goods duly supported by VAT invoices and/or official receipts; (3) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and (4) its claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels.

The CTA Second Division found that San Roque complied with the first, third, and fourth requirements, thus:

> The fact that [San Roque] is a VAT registered entity is admitted (*par. 4, Facts Admitted, Joint Stipulation of Facts, Records, p. 157*). It was also established that the instant claim of P560,200,823.14 is already net of the P11,509.09 output tax declared by [San Roque] in its amended VAT return for the first quarter of 2001. Moreover, the entire amount of P560,200,823.14 was deducted by [San Roque] from the total available input tax reflected in its amended VAT returns for the last two quarters of 2001 and first two quarters of 2002 (*Exhibits M-6, O-6, OO-1 & QQ-1*). This means that the claimed input taxes of P560,200,823.14 did not form part of the excess input taxes of P83,692,257.83, as of the second quarter of 2002 that was to be carried-over to the succeeding quarters. Further, [San Roque's] claim for refund/tax credit certificate of excess input VAT was filed within the two-year prescriptive period reckoned from the dates of filing of the corresponding quarterly VAT returns.
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> For the first, second, third, and fourth quarters of 2001, [San Roque] filed its

> VAT returns on April 25, 2001, July 25, 2001, October 23, 2001 and January 24, 2002, respectively (*Exhibits "H, J, L, and N"*). These returns were all subsequently amended on March 28, 2003 (*Exhibits "I, K, M, and O"*). On the other hand, [San Roque] originally filed its separate claims for refund on July 10, 2001, October 10, 2001, February 21, 2002, and May 9, 2002 for the first, second, third, and fourth quarters of 2001, respectively, (*Exhibits "EE, FF, GG, and HH"*) and subsequently filed amended claims for all quarters on March 28, 2003 (*Exhibits "II, JJ, KK, and LL"*). Moreover, the Petition for Review was filed on April 10, 2003. Counting from the respective dates when [San Roque] originally filed its VAT returns for the first, second, third and fourth quarters of 2001, the administrative claims for refund (original and amended) and the Petition for Review fall within the two-year prescriptive period.[18]

San Roque filed a Motion for New Trial and/or Reconsideration on 7 April 2006. In its 29 November 2007 Amended Decision,[19] the CTA Second Division found legal basis to partially grant San Roque's claim. The CTA Second Division ordered the Commissioner to refund or issue a tax credit in favor of San Roque in the amount of P483,797,599.65, which represents San Roque's unutilized input VAT on its purchases of capital goods and services for the taxable year 2001. The CTA based the adjustment in the amount on the findings of the independent certified public accountant. The following reasons were cited for the disallowed claims: erroneous computation; failure to ascertain whether the related purchases are in the nature of capital goods; and the purchases pertain to capital goods. Moreover, the reduction of claims was based on the following: the difference between San Roque's claim and that appearing on its books; the official receipts covering the claimed input VAT on purchases of local services are not within the period of the claim; and the amount of VAT cannot be determined from the submitted official receipts and invoices. The CTA Second Division denied San Roque's claim for refund or tax credit of its unutilized input VAT attributable to its zero-rated or effectively zero-rated sales because San Roque had no record of such sales for the four quarters of 2001.

The dispositive portion of the CTA Second Division's 29 November 2007 Amended Decision reads:

> WHEREFORE, [San Roque's] "Motion for New Trial and/or Reconsideration" is hereby PARTIALLY GRANTED and this Court's Decision promulgated on March 8, 2006 in the instant case is hereby MODIFIED.
>
> Accordingly, [the CIR] is hereby ORDERED to REFUND or in the alternative, to ISSUE A TAX CREDIT CERTIFICATE in favor of [San Roque] in the reduced amount of Four Hundred Eighty Three Million Seven Hundred Ninety Seven Thousand Five Hundred Ninety Nine Pesos and Sixty Five Centavos (P483,797,599.65) representing unutilized input VAT on purchases of capital goods and services for the taxable year 2001.
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> SO ORDERED.[20]

The Commissioner filed a Motion for Partial Reconsideration on 20 December 2007. The CTA Second Division issued a Resolution dated 11 July 2008 which denied the CIR's

motion for lack of merit.

The Court of Tax Appeals' Ruling: En Banc

The Commissioner filed a Petition for Review before the CTA EB praying for the denial of San Roque's claim for refund or tax credit in its entirety as well as for the setting aside of the 29 November 2007 Amended Decision and the 11 July 2008 Resolution in CTA Case No. 6647.

The CTA EB dismissed the CIR's petition for review and affirmed the challenged decision and resolution.

The CTA EB cited *Commissioner of Internal Revenue v. Toledo Power, Inc*.[21] and Revenue Memorandum Circular No. 49-03,[22] as its bases for ruling that San Roque's judicial claim was not prematurely filed. The pertinent portions of the Decision state:

> More importantly, the Court *En Banc* has squarely and exhaustively ruled on this issue in this wise:
>
> > **It is true that Section 112(D) of the abovementioned provision applies to the present case. However, what the petitioner failed to consider is Section 112(A) of the same provision.** The respondent is also covered by the two (2) year prescriptive period. We have repeatedly held that the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period.
> >
> > Accordingly, the Supreme Court held in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* that the two-year prescriptive period for filing a claim for input tax is reckoned from the date of the filing of the quarterly VAT return and payment of the tax due. **If the said period is about to expire but the BIR has not yet acted on the application for refund, the taxpayer may interpose a petition for review with this Court within the two year period**.
> >
> > In the case of *Gibbs vs. Collector*, the Supreme Court held that if, however, the Collector (now Commissioner) takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector.
> >
> > Furthermore, in the case of *Commissioner of Customs and Commissioner of Internal Revenue vs. The Honorable Court of Tax Appeals and Planters Products, Inc.*, **the Supreme Court held that the taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect**. It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector (now Commissioner) of Internal