706 Phil. 48

SECOND DIVISION

[G.R. No. 193301, March 11, 2013]

MINDANAO II GEOTHERMAL PARTNERSHIP, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

[G.R. NO. 194637]

MINDANAO I GEOTHERMAL PARTNERSHIP, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

CARPIO, J.:

The Cases

G.R. No. 193301 is a petition for review[1] assailing the Decision[2] promulgated on 10 March 2010 as well as the Resolution[3] promulgated on 28 July 2010 by the Court of Tax Appeals En Banc (CTA En Banc) in CTA EB No. 513. The CTA En Banc affirmed the 22 September 2008 Decision[4] as well as the 26 June 2009 Amended Decision[5] of the First Division of the Court of Tax Appeals (CTA First Division) in CTA Case Nos. 7227, 7287, and 7317. The CTA First Division denied Mindanao II Geothermal Partnership's (Mindanao II) claims for refund or tax credit for the first and second quarters of taxable year 2003 for being filed out of time (CTA Case Nos. 7227 and 7287). The CTA First Division, however, ordered the Commissioner of Internal Revenue (CIR) to refund or credit to Mindanao II unutilized input value-added tax (VAT) for the third and fourth quarters of taxable year 2003 (CTA Case No. 7317).

G.R. No. 194637 is a petition for review[6] assailing the Decision[7] promulgated on 31 May 2010 as well as the Amended Decision[8] promulgated on 24 November 2010 by the CTA En Banc in CTA EB Nos. 476 and 483. In its Amended Decision, the CTA En Banc reversed its 31 May 2010 Decision and granted the CIR's petition for review in CTA Case No. 476. The CTA En Banc denied Mindanao I Geothermal Partnership's (Mindanao I) claims for refund or tax credit for the first (CTA Case No. 7228), second (CTA Case No. 7286), third, and fourth quarters (CTA Case No. 7318) of 2003.

Both Mindanao I and II are partnerships registered with the Securities and Exchange Commission, value added taxpayers registered with the Bureau of Internal Revenue (BIR), and Block Power Production Facilities accredited by the Department of Energy. Republic Act No. 9136, or the Electric Power Industry Reform Act of 2000 (EPIRA), effectively amended Republic Act No. 8424, or the Tax Reform Act of 1997 (1997 Tax Code),[9] when it decreed that sales of power by generation companies shall be subjected to a zero rate of VAT.[10] Pursuant to EPIRA, Mindanao I and II filed with the CIR claims for refund or tax credit of accumulated unutilized and/or excess input taxes due to VAT zero-rated sales in 2003. Mindanao I and II filed their claims in 2005.

G.R. No. 193301

The Facts

G.R. No. 193301 covers three CTA First Division cases, CTA Case Nos. 7227, 7287, and 7317, which were consolidated as CTA EB No. 513. CTA Case Nos. 7227, 7287, and 7317 claim a tax refund or credit of Mindanao II's alleged excess or unutilized input taxes due to VAT zero-rated sales. In CTA Case No. 7227, Mindanao II claims a tax refund or credit of P3,160,984.69 for the first quarter of 2003. In CTA Case No. 7287, Mindanao II claims a tax refund or credit of P1,562,085.33 for the second quarter of 2003. In CTA Case No. 7317, Mindanao II claims a tax refund or credit of P3,521,129.50 for the third and fourth quarters of 2003.

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

> x x x x
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> On March 11, 1997, [Mindanao II] allegedly entered into a Built (sic)-Operate-Transfer (BOT) contract with the Philippine National Oil Corporation – Energy Development Company (PNOC-EDC) for finance, engineering, supply, installation, testing, commissioning, operation, and maintenance of a 48.25 megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to [Mindanao II] at no cost. In turn, [Mindanao II] shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and in behalf of PNOC-EDC.
>
> [Mindanao II] alleges that its sale of generated power and delivery of electric capacity and energy of [Mindanao II] to NPC for and in behalf of PNOC-EDC is its only revenue-generating activity which is in the ambit of VAT zero-rated sales under the EPIRA Law, x x x.
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> x x x x
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> Hence, the amendment of the NIRC of 1997 modified the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero (0%) percent.
>
> In the course of its operation, Mindanao II makes domestic purchases of goods and services and accumulates therefrom creditable input taxes. Pursuant to the provisions of the National Internal Revenue Code (NIRC), [Mindanao II] alleges that it can use its accumulated input tax credits to offset its output tax liability. Considering, however that its only revenue-generating activity is VAT zero-rated under RA No. 9136, [Mindanao II's] input tax credits remain unutilized.
>
> Thus, on the belief that its sales qualify for VAT zero-rating, [Mindanao II] adopted the VAT zero-rating of the EPIRA in computing for its VAT payable when it filed its Quarterly VAT Returns on the following dates:

CTA Case No.	Period Covered (2003)	Date of Filing	
		Original Return	Amended Return
7227	1st Quarter	April 23, 2003	July 3, 2002 (sic), April 1, 2004 & October 22, 2004

7287	2nd Quarter	July 22, 2003	April 1, 2004
7317	3rd Quarter	Oct. 27, 2003	April 1, 2004
7317	4th Quarter	Jan. 26, 2004	April 1, 2004

> Considering that it has accumulated unutilized creditable input taxes from its only income-generating activity, [Mindanao II] filed an application for refund and/or issuance of tax credit certificate with the BIR's Revenue District Office at Kidapawan City on April 13, 2005 for the four quarters of 2003.
>
> To date [(September 22, 2008)], the application for refund by [Mindanao II] remains unacted upon by the [CIR]. Hence, these three petitions filed on April 22, 2005 covering the 1st quarter of 2003; July 7, 2005 for the 2nd quarter of 2003; and September 9, 2005 for the 3rd and 4th quarters of 2003. At the instance of [Mindanao II], these petitions were consolidated on March 15, 2006 as they involve the same parties and the same subject matter. The only difference lies with the taxable periods involved in each petition.[11]

The Court of Tax Appeals' Ruling: Division

In its 22 September 2008 Decision,[12] the CTA First Division found that Mindanao II satisfied the twin requirements for VAT zero rating under EPIRA: (1) it is a generation company, and (2) it derived sales from power generation. The CTA First Division also stated that Mindanao II complied with five requirements to be entitled to a refund:

> 1. There must be zero-rated or effectively zero-rated sales;
> 2. That input taxes were incurred or paid;
> 3. That such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
> 4. That the input VAT payments were not applied against any output VAT liability; and
> 5. That the claim for refund was filed within the two-year prescriptive period. [13]

With respect to the fifth requirement, the CTA First Division tabulated the dates of filing of Mindanao II's return as well as its administrative and judicial claims, and concluded that Mindanao II's administrative and judicial claims were timely filed in compliance with this Court's ruling in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (Atlas)*.[14] The CTA First Division declared that the two-year prescriptive period for filing a VAT refund claim should not be counted from the close of the quarter but from the date of the filing of the VAT return. As ruled in Atlas, VAT liability or entitlement to a refund can only be determined upon the filing of the quarterly VAT return.

CTA Case No.	Period Covered (2003)	Date of Filing			
		Original Return	Amended Return	Administrative Claim	Judicial Claim
7227	1st Quarter	23 April 2003	1 April 2004	13 April 2005	22 April 2005
7287	2nd Quarter	22 July 2003	1 April 2004	13 April 2005	7 July 2005
7317	3rd Quarter	25 Oct. 2003	1 April 2004	13 April 2005	9 Sept. 2005
7317	4th Quarter	26 Jan. 2004	1 April 2004	13 April 2005	9 Sept.

					2005[15]

Thus, counting from 23 April 2003, 22 July 2003, 25 October 2003, and 26 January 2004, when Mindanao II filed its VAT returns, its administrative claim filed on 13 April 2005 and judicial claims filed on 22 April 2005, 7 July 2005, and 9 September 2005 were timely filed in accordance with Atlas.

The CTA First Division found that Mindanao II is entitled to a refund in the modified amount of P7,703,957.79, after disallowing P522,059.91 from input VAT[16] and deducting P18,181.82 from Mindanao II's sale of a fully depreciated P200,000.00 Nissan Patrol. The input taxes amounting to P522,059.91 were disallowed for failure to meet invoicing requirements, while the input VAT on the sale of the Nissan Patrol was reduced by P18,181.82 because the output VAT for the sale was not included in the VAT declarations.

The dispositive portion of the CTA First Division's 22 September 2008 Decision reads:

> WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, [the CIR] is hereby ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE in the modified amount of SEVEN MILLION SEVEN HUNDRED THREE THOUSAND NINE HUNDRED FIFTY SEVEN AND 79/100 PESOS (P7,703,957.79) representing its unutilized input VAT for the four (4) quarters of the taxable year 2003.
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> SO ORDERED.[17]

Mindanao II filed a motion for partial reconsideration.[18] It stated that the sale of the fully depreciated Nissan Patrol is a one-time transaction and is not incidental to its VAT zero-rated operations. Moreover, the disallowed input taxes substantially complied with the requirements for refund or tax credit.

The CIR also filed a motion for partial reconsideration. It argued that the judicial claims for the first and second quarters of 2003 were filed beyond the period allowed by law, as stated in Section 112(A) of the 1997 Tax Code. The CIR further stated that Section 229 is a general provision, and governs cases not covered by Section 112(A). The CIR countered the CTA First Division's 22 September 2008 decision by citing this Court's ruling in *Commisioner of Internal Revenue v. Mirant Pagbilao Corporation (Mirant)*,[19] which stated that unutilized input VAT payments must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made regardless of whether said tax was paid.

The CTA First Division denied Mindanao II's motion for partial reconsideration, found the CIR's motion for partial reconsideration partly meritorious, and rendered an Amended Decision[20] on 26 June 2009. The CTA First Division stated that the claim for refund or credit with the BIR and the subsequent appeal to the CTA must be filed within the two-year period prescribed under Section 229. The two-year prescriptive period in Section 229 was denominated as a mandatory statute of limitations. Therefore, Mindanao II's claims for refund for the first and second quarters of 2003 had already prescribed.

The CTA First Division found that the records of Mindanao II's case are bereft of evidence that the sale of the Nissan Patrol is not incidental to Mindanao II's VAT zero-rated operations. Moreover, Mindanao II's submitted documents failed to substantiate the requisites for the refund or credit claims.

The CTA First Division modified its 22 September 2008 Decision to read as follows:

> WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, [the CIR] is hereby ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE [to Mindanao II Geothermal Partnership] in the modified amount of TWO MILLION NINE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED EIGHTY SEVEN AND 77/100 PESOS (P2,980,887.77) representing its unutilized input VAT for the third and fourth quarters of the taxable year 2003.
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> SO ORDERED.[21]

Mindanao II filed a Petition for Review,[22] docketed as CTA EB No. 513, before the CTA En Banc.

The Court of Tax Appeals' Ruling: En Banc

On 10 March 2010, the CTA En Banc rendered its Decision[23] in CTA EB No. 513 and denied Mindanao II's petition. The CTA En Banc ruled that (1) Section 112(A) clearly provides that the reckoning of the two-year prescriptive period for filing the application for refund or credit of input VAT attributable to zero-rated sales or effectively zero-rated sales shall be counted from the close of the taxable quarter when the sales were made; (2) the Atlas and Mirant cases applied different tax codes: Atlas applied the 1977 Tax Code while Mirant applied the 1997 Tax Code; (3) the sale of the fully-depreciated Nissan Patrol is incidental to Mindanao II's VAT zero-rated transactions pursuant to Section 105; (4) Mindanao II failed to comply with the substantiation requirements provided under Section 113(A) in relation to Section 237 of the 1997 Tax Code as implemented by Section 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulation No. 7-95; and (5) the doctrine of *strictissimi juris* on tax exemptions cannot be relaxed in the present case.

The dispositive portion of the CTA En Banc's 10 March 2010 Decision reads:

> WHEREFORE, on the basis of the foregoing considerations, the Petition for Review en banc is DISMISSED for lack of merit. Accordingly, the Decision dated September 22, 2008 and the Amended Decision dated June 26, 2009 issued by the First Division are AFFIRMED.
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> SO ORDERED.[24]

The CTA En Banc issued a Resolution[25] on 28 July 2010 denying for lack of merit Mindanao II's Motion for Reconsideration.[26] The CTA En Banc highlighted the following bases of their previous ruling:

> 1. The Supreme Court has long decided that the claim for refund of unutilized input VAT must be filed within two (2) years after the close of the taxable quarter when such sales were made.
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> 2. The Supreme Court is the ultimate arbiter whose decisions all other courts should take bearings.