Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

CE CASECNAN WATER AND ENERGY COMPANY, INC.,
Respondent.

G.R. No. 212727

Present:

GESMUNDO, *C.J.*, *Chairperson*,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:

FEB 01 2023

x---x

D E C I S I O N

HERNANDO, *J.*:

This is an appeal[1] by the Commissioner of Internal Revenue, through the Office of the Solicitor General, from the January 7, 2014 Decision[2] of the Court of Tax Appeals (CTA) *En Banc* (CTA *En Banc*) and its May 27, 2014 Resolution[3] in CTA EB No. 971, affirming *in toto* the September 11, 2012

---

[1] *Rollo*, pp. 44-130.

[2] Id. at. 68-88. Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Roman G. Del Rosario, and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindoro-Grulla, Amelia R. Contangco-Manalastas, and Ma. Belen M. Ringpis-Liban.

[3] Id. at 89-96. Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Roman G. Del Rosario, and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy (on leave), Caesar A. Casanova, Cielito N. Mindaro-Grulla, Amelia R. Contangco-Manalastas, and Ma. Belen M. Ringpis-Liban.

EXHIBIT	PERIOD COVERED	DATE OF FILING
H	January to March	April 25, 2008
I	January to March (Amended Return)	February 23, 2009
J	April to June	July 25, 2008
K	April to June (Amended Return)	February 11, 2010
L	July to September	October 24, 2008
M	July to September (Amended Return)	February 11, 2010
N	October to December	January 26, 2009
O	October to December (Amended Return)	February 11, 2010[12]

On November 11, 2009, respondent filed an administrative claim for refund/tax credit with the Large Taxpayers Audit and Investigation Division I of the BIR for alleged unutilized input VAT payments in the amount of PHP 6,264,758.82 attributable to its zero-rated sales to NIA covering the first quarter of taxable year 2008.[13] Respondent likewise filed a separate claim for refund/tax credit with the same office on February 16, 2010 in the aggregate amount of PHP 13,917,771.50, covering the second to fourth quarters of taxable year 2008.[14] On March 5, 2010, respondent amended/reduced this claim to PHP 13,798,917.42.[15]

Then, on March 26, 2010 and June 24, 2010, respondent filed two separate petitions for review with the CTA Division docketed as CTA Cases Nos. 8041 and 8111, respectively, alleging that its claims for refund/tax credit were not acted upon by petitioner.[16] At the instance of respondent, these cases were consolidated by the CTA Third Division, which was confirmed by the CTA Second Division in its November 22, 2010 Resolution.[17] In total, respondent was claiming refund in the amount of PHP 20,063,676.24.

Petitioner invoked the burden on the part of respondent to prove its entitlement to the claim for refund/tax credit by presenting clear and convincing evidence that all the requirements for that purpose have been satisfied.[18]

Ruling of the Court of Tax Appeals Division

In its September 11, 2012 Decision,[19] the CTA Division partially granted respondent's claim for refund, to wit:

---

[12] Id. at 70.
[13] Id.
[14] Id.
[15] Id.
[16] Id.
[17] Id.
[18] Id.
[19] Id. at 97-118.

and that the 120-day period should be reckoned from the filing of the administrative claim for refund by the taxpayer.[31]

Ruling of the Court of Tax Appeals *En Banc*

In its January 7, 2014 Decision,[32] the CTA *En Banc* dismissed petitioner's Petition for Review and affirmed *in toto* the CTA Division's findings, *viz.*:

> **WHEREFORE**, the Petition for Review posted on January 3, 2013 by the Commissioner of Internal Revenue is **DENIED**, for lack of merit.
>
> Accordingly, the assailed Decision dated September 11, 2012 and the Resolution dated November 29, 2012 of the Court in Division in CTA Case Nos. 8041 and 8111 are hereby **AFFIRMED *in toto***.
>
> **SO ORDERED.**[33]

The appellate court found that respondent's administrative claims for refund for the year 2008 were filed within two years after the close of the pertinent taxable quarters;[34] its judicial claims were both timely filed with the CTA Division;[35] and that it was able to sufficiently substantiate its claim justifying the grant of the refund.[36] Petitioner's Motion for Reconsideration of the said Decision was likewise denied by the appellate court in its May 27, 2014 Resolution.[37]

Hence, this instant Petition for Review on *Certiorari* (Petition)[38] under Rule 45 of the Rules of Court where petitioner argues that the 120-day period under Sec. 112(C) of the Tax Code had not yet commenced to run due to the insufficiency of supporting documents in respondent's application for tax refund/credit before the BIR;[39] that respondent's petition for review docketed as CTA Case No. 8111 was prematurely filed due to the non-observance of the 120-day period under Sec. 112(C) of the Tax Code;[40] and that respondent did not rely on BIR Ruling No. DA-489-03 when it filed the petition for review before the CTA Division, docketed as CTA Case No. 8111.[41] Petitioner reiterates these in the Memorandum dated July 21, 2021.[42]

---

31 Id.
32 Id. at. 68-88.
33 Id. at 87.
34 Id. at 80.
35 Id.
36 Id. at 86.
37 Id. at 89-96.
38 Id. at 44-130.
39 Id. at 50-56.
40 Id. at 56-59.
41 Id. at 59-61.
42 Id. at 251-269.

> Subsequently, a motion for reconsideration dated February 3, 2014 of said Decision was filed but the CTA *En Banc* denied the same in its May 27, 2014 Resolution, received by the OSG on June 6, 2014.
>
> X x x. Thus, petitioner has fifteen (15) days from June 6, 2014, or until June 21, 2014, within which to appeal the assailed Decision and Resolution of the CTA *En Banc* to this Honorable Court via petition for review on *certiorari*.
>
> On June 19, 2014, the OSG seasonably filed a motion praying that it be given an additional period of thirty (30) days from June 21, 2014 or until July 21, 2014, within which to file the petition for review.[50]

Petitioner was able to timely file the instant Petition on July 21, 2014. Thus, there is no basis for the outright denial of the Petition.

II

The CTA *En Banc* did not commit an error in affirming *in toto* the findings of the CTA Division.

It is undisputed that respondent's sale of generated power to NIA is considered as VAT zero-rated under the Tax Code. The CTA Division held that the sale of power or fuel generated through a renewable source of energy continued to be VAT zero-rated under Sec. 108(B)(7) of the Tax Code.[51] Since respondent, under its Amended and Restated Casecnan Project Agreement with NIA, generates power and subsequently sells it to NIA, it can accordingly treat its sale of generated power to NIA as VAT zero-rated sales.[52] Petitioner does not contest this finding and instead, anchors the arguments mainly on whether respondent is entitled to its claim for refund of its unutilized input VAT payments out of its zero-rates sales for taxable year 2008, considering the sufficiency of the documents it presented and the timeliness of its administrative and judicial claims.

Respondent timely filed its claims for refund of unutilized input VAT for taxable year 2008

Sec. 112 of the Tax Code, as amended, provides for the rules on refunds or tax credits of input tax attributable to zero-rated or effectively zero-rated sales, *viz.*:

> *Section 112. Refunds or Tax Credits of Input Tax. -*

---

[50] Id. at 45.
[51] Id. at 108.
[52] Id. at 109.

Nonetheless, RR 13-2018[57] implementing the VAT provisions of the TRAIN Law, provides that all claims for refund/tax credit certificate filed prior to January 1, 2018 will be governed by the 120-day processing period.[58] Since respondent filed its claims for refund before 2018, the 120-day period under the old text of Sec. 112(C) of the Tax Code shall still be applied.

Thus, to summarize, Sec. 112 of the Tax Code (before the TRAIN Law amendments) provides for three relevant periods governing claims for refund of input tax attributable to zero-rated or effectively zero-rated sales:

> 1) the VAT-registered taxpayer must file its application for refund or issuance of tax credit certificate within two years from the close of the taxable quarter when the sales were made;
>
> 2) the BIR Commissioner has 120 days to grant or deny such claim for refund from the date of submission of complete documents in support of the application that has been timely filed within the two-year period under Sec. 112(A) of the Tax Code; and
>
> 3) the taxpayer must file an appeal with the CTA within 30 days from the receipt of the decision denying the claim or after the expiration of the 120-day period.

Based on the foregoing, any taxpayer seeking a refund or tax credit arising from unutilized input VAT from zero-rated or effectively zero-rated sales should first file an initial administrative claim with the BIR, which claim should be filed within two years after the close of the taxable quarter when the sales were made. If the claim is denied by the BIR or the latter has not acted on it within the 120-day period, the taxpayer is then given a period of 30 days to file a judicial claim with the CTA.

In the consolidated cases of *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue* and *Republic v. CE Luzon Geothermal Power Company (CE Luzon)*,[59] the Court held that the 120-day and 30-day periods in Sec. 112(C) of the Tax Code are both mandatory and jurisdictional such that non-compliance with these periods renders a judicial claim for refund of creditable input tax premature.

---

[57] Regulations Implementing the Value-Added Tax Provisions under the Republic Act No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)", Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended; March 15, 2018.

[58] Sec. 2, Regulations Implementing the Value-Added Tax Provisions under the Republic Act No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)", Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended; March 15, 2018.

[59] 814 Phil. 616, 619 (2017).

Revenue and *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*.[63] The CTA cited the case of *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*,[64] where the Court discussed that the term "relevant supporting documents" should be understood as "those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer."[65] The BIR can only inform the taxpayer to submit additional documents; it cannot dictate what type of supporting documents should be submitted.[66] Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[67]

The CTA applied this interpretation to the term "complete documents" under Sec. 112(C) of the Tax Code and held that should the taxpayer decide to submit only certain documents, or should the taxpayer fail or opt not to submit any document at all in support of its application for refund or tax credit certificate under Sec. 112 of the Tax Code, it is reasonable and logical to conclude that the 120-day period should be reckoned from the filing of the application. The CTA concluded that the submission of supporting documents lies within the sound discretion of the taxpayer. As the affected party, the taxpayer is in best position to determine which documents are necessary and essential to garnering a favorable decision. The CTA further held that a taxpayer's noncompliance with the submission of documentary requirements prescribed under RMO 53-98 does not render the refund claim premature as long as the taxpayer filed its judicial claim for refund within the 120+30-day period under Sec. 112(C) of the Tax Code, reckoned from the filing of its application for refund with the BIR.

We agree. The completeness of the documents to support a claim for refund under Sec. 112(C) of the Tax Code should be determined by the taxpayer, and not by the BIR. Echoing the CTA, should the taxpayer decide to submit only certain documents, or should the taxpayer fail, or opted not to submit any document at all, in support of its application for refund under Sec. 112(C) of Tax Code, the 120-day period should be reckoned from the filing of the said application. Otherwise, taxpayers will be at the mercy of the BIR and the period within which they can elevate their case to the CTA will never run, to their extreme prejudice.

Petitioner's heavy reliance on the completion of the requirements under RMO 53-98 in commencing the 120-day period should not be countenanced since the said order merely provides for the guidelines to be observed by BIR

---

63 830 Phil. 141, 154 (2018).
64 607 Phil. 227 (2009).
65 Id. at 251.
66 Id.
67 Id.

> entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
>
> In this case, it was the inaction of petitioner CIR which prompted respondent to seek judicial recourse with the CTA. Petitioner CIR did not send any written notice to respondent informing it that the documents it submitted were incomplete or at least require respondent to submit additional documents. As a matter of fact, petitioner CIR did not even render a Decision denying respondent's administrative claim on the ground that it had failed to submit all the required documents.
>
> Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal *per se*. However, this does not preclude the CTA from considering evidence that was not presented in the administrative claim with the BIR.
>
> x x x x
>
> The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.
>
> Cases filed in the CTA are litigated *de novo* as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim." Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.[69]

As aptly observed by the CTA, petitioner never required respondent to submit additional documents to support the latter's application for refund.[70] Neither did the petitioner render any decision resolving respondent's administrative claims. Thus, it was petitioner's inaction which prompted respondent to elevate its claims with the CTA. Consistent with the above-cited doctrine, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted before the BIR, as it becomes the taxpayer's right to present additional or even an entirely new evidence before the CTA to support its case.

---

[69] Id. at 1088-1090.
[70] *Rollo*, p. 122.

Respondent duly substantiated its entitlement to the refund as conclusively found by the CTA

Lastly, the determination of whether respondent duly substantiated its claim for refund of creditable input tax for the taxable year 2008 is a factual matter that is generally beyond the scope of a petition for review on *certiorari*. Unless a case falls under any of the exceptions, this Court will not undertake a factual review and look into the parties' evidence and weigh them anew. With that being said, the issue of whether a claimant has actually presented the necessary documents that would prove its entitlement to a tax refund or tax credit, is indubitably a question of fact.[76] Here, the CTA, based on their appreciation of the evidence presented to them, unequivocally ruled that respondent has sufficiently proven its entitlement to the refund or the issuance of a tax credit certificate in its favor for unutilized input VAT for taxable year 2008 in the amount of PHP 19,219,165.31.[77]

It is well settled that factual findings of the CTA when supported by substantial evidence, will not be disturbed on appeal. Due to the nature of its functions, the tax court dedicates itself to the study and consideration of tax problems and necessarily develops expertise thereon. Unless there has been an abuse of discretion on its part, the Court accords the highest respect to the factual findings of the CTA.[78]

As a final note, We acknowledge that tax refunds or tax credits, just like tax exemptions, are strictly construed against the taxpayer. A claim for tax refund is a statutory privilege and rules and procedure in claiming a tax refund should be faithfully complied with. It is clear in this case that respondent sufficiently discharged this burden, and has duly complied with the requirements under the law.

WHEREFORE, the petition is **DENIED**. The January 7, 2014 Decision of the Court of Tax Appeals *En Banc* and its May 27, 2014 Resolution in CTA EB No. 971 are **AFFIRMED** *in toto*.

---

[76] See *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, 655 Phil. 499, 508 (2011).

[77] *Rollo*, pp. 115-116.

[78] See *Commissioner of Internal Revenue v. San Miguel Corporation*, 804 Phil. 293, 340 (2017).

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice