

## SECOND DIVISION

[ G.R. No. 226556, July 03, 2019 ]

### POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, PETITIONER, V. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

#### DECISION

**CARPIO, J.:**

##### The Case

This petition for review<sup>[1]</sup> assails the Decision<sup>[2]</sup> promulgated on 17 May 2016 as well as the Resolution<sup>[3]</sup> promulgated on 12 August 2016 by the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB Case No. 1282. The CTA EB affirmed the Decision<sup>[4]</sup> dated 2 December 2014 and Resolution<sup>[5]</sup> dated 25 February 2015 of the Third Division of the Court of Tax Appeals (CTA Third Division) in CTA Case No. 8475. The CTA Third Division found petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) liable to pay the amount of P9,566,062,571.44 as deficiency value-added tax (VAT) for the taxable year 2008, inclusive of the deficiency interest and delinquency interest.

##### The Facts

PSALM, a government-owned and controlled corporation created under Republic Act No. (RA) 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA),<sup>[6]</sup> is mandated to manage the orderly sale, disposition, and privatization of the National Power Corporation (NPC) generation assets, real estate and other disposable assets, and Independent Power Producer contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.<sup>[7]</sup>

On 9 June 2011, the Bureau of Internal Revenue (BIR) issued a Final Assessment Notice (FAN) covered by Assessment No. VT-08-00072<sup>[8]</sup> alleging that, for taxable year ending 31 December 2008, PSALM is liable to pay a deficiency VAT amounting to P10,103,158,715.06, inclusive of penalties and interests, computed as follows:

Taxable Sales per VAT Returns		
Add: Adjustments		
Proceeds from Sales of Generating Asset	P53,859,322,483.00	

Proceeds from Lease of Naga Complex	172,096,188.00	
Collection of Income	9,183,364.00	
Collection of receivables	<u>1,148,257.00</u>	<u>54,041,750,292.00</u>
Total Proceeds to be subjected to VAT		P54,041,750,292.00
Output Tax		P6,485,010,035.04
Less: Creditable Input Tax		
Input Tax Carried Over from Previous Quarter	P30,364,192.07	
Input Tax Claimed per VAT Return	<u>14,932,013.06</u>	
Total Input Tax per VAT Return	45,296,205.13	
Less: Excess Input Tax Carried Over to Succeeding Period	<u>45,296,205.13</u>	
Value Added Tax		P6,485,010,035.34
Less: VAT Payments		_____
Deficiency Value Added Tax		P6,485,010,035.34
Add: Increments		
Interest	P3,618,098,680.02	

Penalty	50,000.00	<u>3,618,148,680.02</u>
Total Amount Due		P10,103,158,715.06

On 7 July 2011, PSALM filed its administrative protest against the FAN, alleging that the privatization of NPC assets is an original mandate of PSALM and not subject to VAT. On 5 September 2011, PSALM filed its supplemental protest reiterating its substantive defenses.

On 19 March 2012, respondent Commissioner of Internal Revenue (CIR) issued its Final Decision on Disputed Assessment,<sup>[9]</sup> which denied PSALM's protest for lack of factual and legal bases. The CIR held that the sale of electricity is subject to VAT under RA 9337<sup>[10]</sup> and the real properties sold by PSALM are regarded as real properties used in trade or business.

Thus, on 18 April 2012, PSALM filed a petition for review before the CTA.

### **The Ruling of the CTA Third Division**

In a Decision dated 2 December 2014, the CTA Third Division partially granted PSALM's petition, allowing PSALM to claim input tax credits, and holding that PSALM is not liable to pay the compromise penalty of P50,000.00.

However, the CTA Third Division ruled that PSALM is liable to pay the deficiency VAT, because the enactment of RA 9337 superseded BIR Ruling No. 020-2002, on which PSALM relied for its VAT exemption. The CTA Third Division found that the sale of generating assets of PSALM - the Masinloc, Ambuklao-Binga and Pantabangan power plants - fall under "all kinds of goods and properties" subject to VAT under Section 106 of the National Internal Revenue Code of 1997 (NIRC). The CTA Third Division thereafter modified the computation of the penalty interest and computed it from the last day prescribed by law for filing a return. Thus, the CTA Third Division computed PSALM's liability as follows:

Output Tax		P6,485,010,035.04
Less: Credible Input Tax		
Input tax carried over from previous Quarter	P30,364,192.07	
Input tax claimed per VAT Return	<u>14,932,013.06</u>	45,296,205.13
Value Added Tax		P6,439,713,829.91
Less: VAT Payments		-

Deficiency Value Added Tax		P6,439,713,829.91
Add: Increments		
Interest (01-25-2009 to 06-30-2011)	P3,126,348,741.53	
Compromise Penalty	-	P3,126,348,741.53
<b>Total Deficiency VAT</b>		<b>P9,566,062,571.44</b>

Thus, the dispositive portion of its Decision reads:

WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, the assessments issued by respondent against petitioner covering taxable year 2008 for deficiency value-added tax are UPHELD but in the MODIFIED AMOUNT of NINE BILLION FIVE HUNDRED SIXTY SIX MILLION SIXTY TWO THOUSAND FIVE HUNDRED SEVENTY ONE and 44/100 PESOS (P9,566,062,571.44), inclusive of twenty percent (20%) interest imposed upon Section 249(A) of the Tax Code, as amended.

In addition, petitioner is hereby ORDERED TO PAY:

- a) Deficiency interest at the rate of 20% per annum on the basic deficiency VAT of P6,439,713,829.91 computed from June 30, 2011 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997;
- b) Delinquency interest at the rate of 20% per annum on the basic deficiency VAT of P6,439,713,829.91 [computed from] June 30, 2011 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended; and
- c) Delinquency interest at the rate of 20% per annum on the deficiency interest which have accrued as afore-stated in (a) computed from June 30, 2011 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED. <sup>[11]</sup>

PSALM filed a motion for partial reconsideration, which was denied for lack of merit by the CTA Third Division in its 25 February 2015 Resolution. Hence, PSALM appealed to the CTA EB.

### **The Ruling of the CTA En Banc**

In a Decision dated 17 May 2016, the CTA EB affirmed the decision of the CTA Third Division and held that PSALM is subject to VAT for its sale of generating assets, lease of Naga Complex, and collection of income and receivables, because these were done in the course of trade or business, and RA 9337 placed the electric power industry under the VAT system.

Thus, the dispositive portion of the CTA EB decision reads:

WHEREFORE premises considered, the petition is DENIED for lack of merit. The Decision of the Third Division of this Court in CTA Case No. 8475, promulgated on December 2, 2014 and its Resolution, promulgated on February 25, 2015, are hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.<sup>[12]</sup>

In a Dissenting Opinion, Presiding Justice Roman G. Del Rosario (Justice Del Rosario) opined that the assessment issued by the CIR against PSALM should be cancelled, insofar as it relates to the proceeds from sales of generating assets and from collection of income and receivables, because: (1) PSALM relied in good faith on BIR Ruling No. 020-02 dated 13 May 2002 declaring that the disposition or sale of assets as a consequence of PSALM's mandate is not subject to VAT; and (2) the collection of receivables is not in the nature of sale, barter, exchange, lease of goods or properties, performance of service, and importation of goods, so as to fall under a transaction subject to VAT under Section 105 of the NIRC.

However, Justice Del Rosario opined that the lease of Naga Complex should be excluded from the coverage of BIR Ruling No. 020-02, absent any showing that the property involved is among those transferred from NPC to PSALM. Also, he opined that the deficiency interest may not be imposed on the deficiency VAT assessed against PSALM, because deficiency interest may be imposed only on income tax, donor's tax and estate tax, under the NIRC.

In a Concurring and Dissenting Opinion, Associate Justice Erlinda P. Uy concurred with the majority opinion that PSALM is liable to pay VAT, but dissented as to the imposition of the deficiency interest, reasoning out that deficiency interest should be imposed only in cases of deficiency income tax, donor's tax and estate tax.

On 12 August 2016, the CTA EB denied the motion for reconsideration filed by PSALM, due to lack of merit. Hence, PSALM filed the present petition before the Court.

### **The Issues**

PSALM raises the following issues for resolution:

A. WHETHER PSALM'S PRIVATIZATION ACTIVITIES ARE SUBJECT TO VAT[;]