

SECOND DIVISION

[G.R. Nos. 201225-26 (From CTA-EB Nos. 649 & 651), April 18, 2018]

TEAM SUAL CORPORATION (FORMERLY MIRANT SUAL CORPORATION), PETITIONER, V. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

[G.R. No. 201132 (From CTA-EB No. 651), April 18, 2018]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V. TEAM SUAL CORPORATION (FORMERLY MIRANT SUAL CORPORATION), RESPONDENT.

[G.R. No. 201133 (From CTA-EB No. 649), April 18, 2018]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, V. TEAM SUAL CORPORATION (FORMERLY MIRANT SUAL CORPORATION), RESPONDENT.

D E C I S I O N

REYES, JR., J:

Nature of the Petitions

Challenged before the Court via Petitions for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court is the Consolidated Decision^[2] of the Court of Tax Appeals (CTA) *En Banc* dated September 15, 2011 and its subsequent Resolution^[3] dated March 21, 2012 in CTA-EB Nos. 649 and 651. The assailed Decision and Resolution modified the Amended Decision^[4] of the CTA Special First Division dated June 7, 2010 and partially granted Team Sual Corporation's (TSC) claim for refund in the amount of P123,110,001.68 representing unutilized input Value Added Tax (VAT) for the second, third, and fourth quarters of taxable year 2001.

The Antecedent Facts

TSC is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Barangay Pangascasan, Sual, Pangasinan. It is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC) under a *Build, Operate, and Transfer* scheme. TSC was originally registered with the Securities and Exchange Commission under the name "Pangasinan Electric Corporation." On August 17, 1999, it changed its name to "Southern Energy Pangasinan, Inc.," which was then changed to "Mirant Sual Corporation" on June 28, 2001, and finally to "Team Sual" on July 23, 2007.^[5]

As a seller of services, TSC is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 05-0181 and Taxpayer's Identification No. 003-841-103.^[6]

On December 6, 2000, TSC filed with the BIR Revenue District Office No. 5-Alaminos, Pangasinan an application for zero-rating arising from its sale of power generation services to NPC for the taxable year 2001. The same was subsequently approved. As a result, TSC filed its VAT returns covering the four quarters of taxable year 2001.^[7]

For the first, second, third, and fourth quarters of 2001, TSC reported excess input VAT amounting to P37,985,009.25, P29,298,556.12, P32,869,835.40, and P66,566,967.02, respectively. The total excess input VAT claimed by TSC for the taxable year amounted to P166,720,367.79.^[8]

On March 20, 2003, TSC filed with the BIR an administrative claim for refund in the aggregate amount of P166,720,367.79 for its unutilized input VAT for taxable year 2001.^[9]

On March 31, 2003, without waiting for the resolution of its administrative claim for refund or tax credit, TSC filed with the CTA Division a petition for review docketed as CTA Case No. 6630. It prayed for the refund or issuance of a tax credit certificate for its alleged unutilized input VAT for the first quarter of taxable year 2001 in the amount of P37,985,009.25.^[10]

On July 23, 2003, TSC filed another petition for review docketed as CTA Case No. 6733, seeking the refund or issuance of a tax credit certificate for its alleged unutilized input VAT for the second, third, and fourth quarters of taxable year 2001 in the amount of P128,735,358.54. Both cases were consolidated on August 7, 2003.^[11]

Trial of the case ensued.

In its Decision dated June 9, 2006, the CTA Division partially granted TSC's claim. It allowed the refund of unutilized input VAT for the first, third, and fourth quarters of taxable year 2001, but disallowed the refund for the second quarter. The CTA Division ruled that the claim for the second quarter did not fall within the two-year prescriptive period. The dispositive portion of the CTA Division's decision reads:

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED. ACCORDINGLY**, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE HUNDRED SEVENTEEN MILLION THREE HUNDRED THIRTY THOUSAND FIVE HUNDRED FIFTY PESOS AND 62/100 (P117,330,550.62)** to petitioner Mirant Sual Corporation, representing unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales to the National Power Corporation for the first, third, and fourth quarters of taxable year 2001.^[12]

The Commissioner of Internal Revenue (CIR) filed a Motion for Partial Reconsideration on July 3, 2009, praying that the entire claim for refund be denied. The CIR argued that TSC has not sufficiently proven its entitlement to refund and

that the CTA had no jurisdiction to act on the judicial claim for refund because the same was prematurely filed.^[13]

Likewise, in its Motion for Partial Reconsideration dated July 7, 2009 and Supplemental Motion for Partial Reconsideration dated July 31, 2009, TSC prayed that the CTA, in addition to the amount already granted, refund the amounts of: (1) P29,298,556.12 representing input VAT for the second quarter of taxable year 2001, and (2) P12,761,224.50 for input VAT on local purchases of goods and services for the same year.^[14]

On June 7, 2010, the CTA Division promulgated an Amended Decision which partially granted TSC's additional claim for refund. In said decision, the CTA denied the claim for input VAT on local purchases of goods and services, but allowed the refund for input VAT for the second quarter of taxable year 2001. However, the grant was reduced from P29,298,556.12 to P27,233,561.57 for failure to substantiate the difference.^[15] The dispositive portion of the amended decision states:

WHEREFORE, respondent's *Motion for Partial Reconsideration* filed on July 3, 2009 and petitioner's *Supplemental Motion for Partial Reconsideration* filed on July 31, 2009 are hereby **DENIED** for lack of merit. Petitioner's *Motion for Partial Reconsideration* filed on July 7, 2009 is hereby **PARTIALLY GRANTED** and this Court's Decision dated June 9, 2009 denying petitioner's claim for refund of unutilized input VAT for the second quarter of 2001 is hereby **MODIFIED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE HUNDRED FORTY FOUR MILLION FIVE HUNDRED SIXTY FOUR THOUSAND ONE HUNDRED TWELVE PESOS AND 19/100 (P144,564,112.19)** to petitioner Team Sual Corporation (formerly: Mirant Sual Corporation), representing unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales to the National Power Corporation for the first, second, third, and fourth quarters of taxable year 2001.

SO ORDERED.^[16]

Dissatisfied, TSC filed a Petition for Review docketed as CTA EB No. 649 before the CTA *En Banc*. It posits that the CTA Division erred in disallowing the amount of P12,761,224.50 for input VAT on local purchases of goods and services on the mere fact that the pertinent supporting documents were issued under TSC's former name. TSC argues that a corporation's change of name does not affect its identity or rights. Thus, it should still be entitled to claim the said input VAT.^[17]

The CIR also filed a petition for review praying that the Decision dated June 9, 2009 and the Amended Decision dated June 7, 2010 be reversed and set aside and another one be rendered denying the entire claim for refund. The CIR reiterated the arguments she raised in her Motion for Partial Reconsideration. The case was docketed as CTA EB No. 651.^[18]

On September 15, 2010, the CTA *En Banc* resolved^[19] to consolidate CTA EB No. 649 with CTA EB No. 651.

On September 15, 2011, the CTA *En Banc* rendered a Consolidated Decision^[20] granting petitioner's claim for refund of input VAT for the second, third, and fourth quarters of taxable year 2001 amounting to P123,110,001.68. Insofar as the refund of the input VAT for the first quarter of taxable year 2001 is concerned, the CTA *En Banc* ruled that the CTA did not acquire jurisdiction over it as it had been filed prematurely. The dispositive portion of said decision reads as follows:

WHEREFORE, all the foregoing considered, the Commissioner's Petition for Review in CTA EB No. 651 is hereby **DENIED**.

On the other hand, Team Sual's Petition for Review in CTA EB No. 649 is hereby **PARTIALLY GRANTED**, but only insofar as the consideration of the portion of the refund claim disallowed by the court *a quo* upon the reason that the supporting documents were in Team Sual's former names.

The Decision promulgated on June 9, 2009 and Amended Decision dated June 7, 2010 by the Court in Division, are therefore **MODIFIED**. Accordingly, the Commissioner is hereby **ORDERED** to **REFUND** to Team Sual the amount of, or to **ISSUE A TAX CREDIT CERTIFICATE** in its favor amounting to, **ONE HUNDRED TWENTY THREE MILLION ONE HUNDRED TEN THOUSAND ONE PESOS and SIXTY EIGHT CENTAVOS (P123,110,001.68)**, representing Team Sual's unutilized input VAT attributable to its effectively zero-rated sales to NPC for the second, third and fourth quarters of taxable year 2001.

SO ORDERED.^[21]

TSC filed a Motion for Partial Reconsideration of the CTA *En Banc*'s decision. It insists that the judicial claim for refund over the first quarter of 2001 was not prematurely filed and that the CTA Division did in fact have jurisdiction to act on it. Similarly, the CIR filed a motion for reconsideration, praying that TSC's claim be denied altogether.^[22]

In its Resolution dated March 21, 2012, the CT A *En Banc* denied the motions of both TSC and the CIR, affirming its September 15, 2011 Decision as follows:

WHEREFORE, premises considered, the Motion for Reconsideration of the Commissioner and the Motion for Partial Reconsideration of Team Sual are hereby **DENIED** for lack of merit.

SO ORDERED.^[23]

Aggrieved, the CIR and TSC filed their respective Petitions for Review on *Certiorari* under Rule 45 before the Court. TSC's petition was docketed as G.R. No. 201225-26,^[24] while the CIR's petitions were docketed as G.R. Nos. 201132^[25] and 201133.^[26]

In the Resolutions dated June 25, 2012^[27] and July 18, 2012,^[28] the Court resolved to consolidate G.R. Nos. 201132, 201133, and 201225-26.

The Issues

On one hand, the CIR argues the following for the total disallowance of TSC's claim:

- I. The Honorable Court of Tax Appeals *En Banc* erred, when it affirmed, with modification, the former First Division's decision promulgated on June 9, 2009 and Amended Decision dated June 7, 2012, granting respondent's claim for refund in the amount of P123,110,001.68 allegedly representing unutilized input VAT attributable to its effectively zero-rated sales to the National Power Corporation for the second, third, and fourth quarters of taxable year 2001, because the Honorable Court of Tax Appeals had no jurisdiction to act on respondent's petitions for review; and
- II. Assuming that the former First Division had jurisdiction, petitioner avers that its denial by inaction was proper and that respondent has not sufficiently proven its entitlement to a refund.^[29]

On the other hand, TSC raises the following grounds for the allowance of its judicial claim for refund covering the first quarter of taxable year 2001:

- I. The CTA acquired jurisdiction over the case filed with and tried by the First Division of the CTA due to the failure of respondent CIR to invoke the rule of non-exhaustion of administrative remedies; and
- II. The CTA *En Banc's* application of the doctrine laid down in the case of *Commissioner Of Internal Revenue vs. Aichi Forging Company of Asia*^[30] to petitioner's claim for refund is erroneous as:
 - A.) It will violate established rules on non-retroactivity of judicial decisions;
 - B.) It will cause injustice to petitioner who relied in good faith on the existing jurisprudence at the time of the filing of the claim for refund; and
 - C.) It will unjustly enrich the government at the expense of the petitioner.^[31]

In sum, the rise or fall of the instant petitions rest upon whether the CTA has jurisdiction to act on TSC's two judicial claims for refund.

The Court's Ruling

The petitions are bereft of merit.

In order for the CTA to acquire jurisdiction over a judicial claim for refund or tax credit arising from unutilized input VAT, the said claim must first comply with the mandatory 120+30-day waiting period. Any judicial claim for refund or tax credit filed in contravention of said period is rendered premature, depriving the CTA of jurisdiction to act on it.^[32]

Pursuant to Section 112, Subsections (A) and (C) of the National Internal Revenue Code (NIRC) of 1997,^[33] the procedure to be followed in claiming a refund or tax credit of unutilized input VAT are as follows:

Sec. 112. *Refunds or Tax Credits of Input Tax.*—