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SECOND DIVISION

[G.R. No. 197519, November 08, 2017]

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

DECISION

CAGUIOA, J:

The Case

This is a Petition for Review[1] on *Certiorari* (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated January 12, 2011 (Assailed Decision) and Resolution[3] dated June 30, 2011 (Assailed Resolution) rendered by the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 630.

The Assailed Decision and Resolution stem from an appeal from the Amended Decision[4] dated April 30, 2010 rendered by the CTA Special First Division in C.T.A. Case No. 7506, directing the issuance of a Tax Credit Certificate (TCC) in the amount of Five Million Two Hundred Seventy-Eight Thousand Thirty-Six Pesos and 6/100 (P5,278,036.06) in the name of petitioner Mindanao I Geothermal Partnership (M1).

The Facts

The undisputed facts, summarized by the CTA First Division, and thereafter adopted by the CTA *En Banc,* are as follows:

> [M1] entered into a Build-Operate-Transfer [BOT] contract with the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) for the finance, design, construction, testing, commissioning, operation, maintenance, and repair of a 47-megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to [M1] at no cost. In turn, [M1] 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. [M1's] 47-megawatt geothermal power plant project has been accredited by the Department of Energy (DOE) as a Private Sector Generation Facility, pursuant to the provision of Executive Order No. 215 and evidenced by Certificate of Accreditation No. 95-03-07. In order to facilitate the operations and management of the said geothermal plant, it entered into an Operations and Maintenance Agreement with Marubeni Energy Services Corporation (MESC).

For the second to fourth quarters of taxable year 2004, [M1] filed its Quarterly [Value-Added Tax (VAT)] Returns on the following dates:

Quarter	Date filed	Date Amended
Second	July 22, 2004	June 22, 2005
Third	October 22, 2004	June 22, 2005
Fourth	January 25, 2005	June 22, 2005

On August 16, 2005, [M1] filed a letter-request for the issuance of [TCC] with the BIR Large Taxpayers Service arising from its excess and unutilized creditable input taxes in the amount of [P]9,470,500.39, accumulated from the first to fourth quarters of taxable year 2004. However, said application for issuance of [TCC] remains unacted (sic) upon by respondent [Commissioner of Internal Revenue (CIR)] despite the lapse of the one hundred twenty (120)-day period provided under Section 112(D) of the National Internal Revenue Code (NIRC) of 1997, as amended.

On July 21, 2006, [M1] filed [its] Petition for Review, praying for the issuance of [a TCC] in the amount of [P]6,199,278.90 instead of the amount of [P]9,470,500.39, which covers merely the second to fourth quarters of taxable year 2004.[5]

On September 18, 2006, [the CIR] filed his Answer interposing the following counter-arguments:

> "4. [M1's] claim for refund is subject to administrative investigation by the Bureau;
> 5. [M1] must prove that it paid the alleged VAT input taxes for the period in question;
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> 6. [M1] must prove that the same alleged input VAT was not utilized against any output VAT liability;
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> 7. [M1] must prove that its sales are VAT zero-rated as contemplated under Section 112 (A) of the Tax Code of 1997;
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> 8. [M1] must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated sales;
>
> 9. [M1] must prove that the claim was filed within [the] period prescribed by law;
>
> 10. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund; [and]

11. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption of (sic) taxation."[6]

CTA First Division Rulings

On May 12, 2009, the CTA First Division rendered a Decision,[7] the dispositive portion of which reads:

> **WHEREFORE,** [M1's] claim for issuance of [TCC] is hereby **PARTIALLY GRANTED.** Accordingly, [the CIR] is hereby **ORDERED TO ISSUE A [TCC]** in favor of [M1] in the reduced amount of [P]2,279,821.99, representing its excess and unutilized input VAT for the period covering the third and fourth quarters of taxable year 2004.
>
> **SO ORDERED.**[8]

The CTA First Division granted M1's claim for unutilized input value-added tax (VAT) for the third and fourth quarters of 2004, but denied M1's claim corresponding to the second quarter of the same year for having been filed out of time.[9]

Citing *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*[10] *(Mirant),* the CTA First Division held that under Section 112(A) of the National Internal Revenue Code of 1997 (NIRC), administrative *and* judicial claims for issuance of a TCC or refund of unutilized creditable input VAT arising from VAT zero-rated sales must be filed within two (2) years from the end of the quarter when the pertinent sales were made, regardless of when the corresponding input VAT had been paid.[11]

Considering that the last day of the second quarter of 2004 fell on June 30, 2004, the CTA First Division found that M1 only had until June 30, 2006 within which to file its administrative and judicial claims. Thus, the CTA First Division found that while M1's administrative claim (filed on August 16, 2005) was filed within the said period, its judicial claim (filed on July 21, 2006) was not.[12]

Subsequently, both parties filed their respective motions for partial reconsideration (MPR).

For its part, M1 argued that its claim for VAT refund for the second quarter of 2004 should not have been denied on the basis of *Mirant,* as this case was promulgated two (2) years after M1's judicial claim was filed before the CTA. Instead, M1 maintains that the two (2)-year prescriptive period should have been reckoned from the filing of the relevant Quarterly VAT Returns, in accordance with the Court's earlier pronouncement in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[13] *(Atlas).*[14]

On the other hand, the CIR argued that M1 failed to comply with Section 112(C), since M1 elevated its judicial claim before the CTA beyond the thirty (30)-day period following the expiration of the CIR's period to act. The CIR maintains that since this requirement is mandatory, M1's non-compliance precludes the CTA from assuming jurisdiction over its judicial claim.[15]

The parties' MPRs were resolved by the CTA First Division in its Amended Decision dated April 30, 2010, in this wise:

> **WHEREFORE,** premises considered, [the CIR's] [MPR] is hereby **DENIED** for lack of merit; while [M1's] [MPR] is hereby **PARTIALLY GRANTED.** [The CTA First Division's] *Decision* dated May 12, 2009 is hereby **MODIFIED.** Accordingly, [the CIR] is hereby **ORDERED TO ISSUE A [TCC]** in the amount of [P]5,278,036.06 in favor of [M1], representing its unutilized input VAT for the second, third, and fourth quarters of taxable year 2004.
>
> **SO ORDERED.**[16]

Aggrieved, the CIR elevated the case to the CTA *En Banc* through a Petition for Review[17] filed under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals.[18]

On January 12, 2011, the CTA *En Banc* granted CIR's Petition for Review through the Assailed Decision, thus:

> **WHEREFORE,** premises considered, the instant petition is hereby **GRANTED.** Accordingly, the Amended Decision dated April 30, 2010 rendered by the Former First Division of this Court in C.T.A. Case No. 7506 is hereby **REVERSED** and **SET ASIDE,** and another one is hereby entered dismissing the Petition for Review filed in C.T.A. Case No. 7506 for having been filed late.
>
> **SO ORDERED.**[19]

M1 filed a motion for reconsideration, which the CTA *En Banc* denied through the Assailed Resolution[20] dated June 30, 2011. M1 received a copy of the Assailed Resolution on July 7, 2011.[21]

On July 22, 2011, M1 filed before the Court a Motion for Additional Time to File Petition for Review,[22] praying for an additional period of thirty (30) days, or until August 21, 2011, within which to file a petition for review.

Subsequently, M1 filed the present Petition on August 22, 2011, to which the CIR

filed its Comment[23] on March 12, 2012. Thereafter, M1 filed its Reply to CIR's Comment on October 10, 2012.[24]

The Issue

The sole issue for this Court's resolution is whether the CTA *En Banc* erred when it dismissed M1's judicial claim for being filed out of time.

The Court's Ruling

The Petition lacks merit.

Section 112 of the NIRC provides the procedure for filing claims for VAT refunds, and prescribes the corresponding periods therefor. The provision states, in part:

> SEC. 112. *Refunds or Tax Credits of Input Tax. –*
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the **Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof.
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> **In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer**