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THIRD DIVISION

[G.R. No. 180434, January 20, 2016]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MIRANT PAGBILAO CORPORATION (NOW TEAM ENERGY CORPORATION),* RESPONDENT.

DECISION

REYES, J.:

This appeal by Petition for Review on *Certiorari*[1] seeks to reverse and set aside the Decision[2] dated September 11, 2007 and Resolution[3] dated November 7, 2007 of the Court of Tax Appeals (CTA) *en banc* in E.B. Case Nos. 216 and 225, affirming the Decision[4] dated August 31, 2005 of the CTA Second Division in CTA Case No. 6417, ordering petitioner Commissioner of Internal Revenue (CIR) to issue a refund or a tax credit certificate in the amount of P118,756,640.97 in favor of Mirant Pagbilao Corporation[5] (MPC).

The Facts

JV1PC is a duly-registered Philippine corporation located at Pagbilao Grande Island in Pagbilao, Quezon, and primarily engaged in the generation and distribution of electricity to the National Power Corporation (NAPOCOR) under a Build, Operate, Transfer Scheme. As such, it is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, with Taxpayer Identification No. 0001-726-870, and registered under RDO Control No. 96-600-002498.[6]

On November 26, 1999, the BIR approved MPC's application for Effective Zero-Rating for the construction and operation of its power plant.[7]

For taxable year 2000, the quarterly VAT returns filed by MPC on April 25, 2000, July 25, 2000, October 24, 2000, and August 27, 2001 showed an excess input VAT paid on domestic purchases of goods, services and importation of goods in the amount of P127,140,331.85.[8]

On March 11, 2002, MPC filed before the BIR an administrative claim for refund of its input VAT covering the taxable year of 2000, in accordance with Section 112, subsections (A) and (B) of the NIRC. Thereafter, or on March 26, 2002, fearing that the period for filing a judicial claim for refund was about to expire, MPC proceeded to file a petition for review before the CTA, docketed as CTA Case No. 6417,[9] without waiting for the CIR's action on the administrative claim.

On August 31, 2005, the CTA Second Division rendered a Decision[10] partially

granting MPC's claim for refund, and ordering the CIR to grant a refund or a tax credit certificate, but only in the reduced amount of P118,749,001.55, representing MPC's unutilized input VAT incurred for the second, third and fourth quarters of taxable year 2000.

The CTA Second Division held that by virtue of NAPOCOR's exemption from direct and indirect taxes as provided for in Section 13[11] of Republic Act No. 6395,[12] MPC's sale of services to NAPOCOR is subject to VAT at 0% rate. The Secretary of Finance even issued a Memorandum dated January 28, 1998, addressed to the CIR, espousing the Court's ruling that purchases by NAPOCOR of electricity from independent power producers are subject to VAT at 0% rate, to wit:

> As explained by the Supreme Court, the rationale for the [NAPOCOR's] tax exemption is to ensure cheaper power. If the BIR's recent view is to be implemented, the VAT being an indirect tax, may be passed on by the seller of electricity to [NAPOCOR]. Effectively, this means that electricity will be sold at a higher rate to the consumers. Estimates show that a 10% VAT on electricity which is purchased by [NAPOCOR] from its independent power producers will increase power cost, by about P1.30 billion a year. The effect on the consumer is an additional charge of P0.59 per kilowatt-hour. The recognition of [NAPOCOR's] broad privilege will inure to the benefit of the Filipino consumer.
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> In view of the foregoing and using the power of review granted to the Secretary of Finance under Section 4 of Republic Act No. 8424, the DOF upholds the ruling of the Supreme Court that the [NAPOCOR] is exempt under its charter and subsequent laws from all direct and indirect taxes on its purchases of petroleum products and electricity. Thus, the purchases by [NAPOCOR] of electricity from independent power producers are subject to VAT at zero-rate.[13]

In arriving at the reduced amount of P118,749,001.55, the CTA Second Division found out that: (a) P2,116,851.79 input taxes claimed should be disallowed because MPC failed to validate by VAT official receipts and invoices the excess payment of input taxes; (b) P6,274,478.51 of input taxes was not properly documented; and (c) the input taxes of P127,140,331.85 for the year 2000 were already deducted by MPC from the total available input VAT as of April 25, 2002 as evidenced by the 2002 first quarterly VAT return. Thus, the input taxes sought to be refunded were not applied by MPC against its output VAT liability as of April 25, 2002 and can no longer be used as credit against its future output VAT liability.[14]

Undaunted, MPC filed a motion for partial reconsideration and new trial in view of the additional amount it sought to be approved.

In an Amended Decision dated August 30, 2006, the CTA Second Division found that MPC is entitled to a modified amount of P118,756,640.97 input VAT, upon allowing the amount of P7,639.42 in addition to the VAT input tax. However, MPC's motion for new trial was denied. Dissatisfied, MPC elevated the matter to the CTA *en banc*, particularly in E.B. Case No. 216.[15]

Meanwhile, the CIR filed a motion for reconsideration of the amended decision. However, on November 13, 2006, the CTA Second Division issued a Resolution

denying the motion. Thereafter, the CIR filed a petition for review before the CTA *en banc*, docketed as E.B. Case No. 225.[16]

In a Decision[17] dated September 11, 2007, the CTA *en banc* affirmed *in toto* the assailed amended decision and resolved the issues presented in E.B. Case Nos. 216 and 225.

In sustaining the decision of the CTA Second Division in E.B. Case No. 216, the CTA *en banc* ruled that:

> (a) MPC's claim tor the refund of P810,047.31 is disallowed for lack of supporting documents. Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the claimant. Thus, a mere summary list submitted by MPC is considered immaterial to prove the amount of its claimed unutilized input taxes.[18]
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> (b) MPC's claim for the refund of P836,768.00 as input taxes is denied due to lack of proof of payment. As a rule, "input tax on importations should be supported with Import Entry and Internal Revenue Declarations (IEIRDs) duly validated for actual payment of input tax" and that other documents may be adduced to determine its payment.[19] Here, the IEIRDs presented by MPC did not show payment of the input taxes and the amounts indicated therein differed from the bank debit advice. More so, the bank debit advice did not properly describe the mode of payment of the input tax which made it difficult to determine which payee, and to what kind of payment did the bank debit advices pertain to.[20]
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> (c) The denial of MPC's motion for new trial was correct since it was pointless to require MPC to submit additional documents in support of the unutilized input tax of P3,310,109.20, in view of MPC's admission that the VAT official receipts and invoices were not even pre-marked and proffered before the court. Regrettably, without such documents, the CTA could not in any way properly verify the correctness of the certified public accountant's conclusion.[21]

As regards E.B. Case No. 225, the CTA *en banc* upheld the ruling of the CTA Second Division that VAT at 0% rate may be imposed on the sale of services of MPC to NAPOCOR on the basis of NAPOCOR's exemption from direct and indirect taxes.[22]

Disagreeing with the CTA *en banc*'s, decision, both parties filed their respective motions for reconsideration, which were denied in the CTA *en banc* Resolution[23] dated November 7, 2007.

Feeling aggrieved by the adverse ruling of the CTA *en banc*, the CIR now seeks recourse to the Court via a petition for review on *certiorari*.

The Issues

The OR raises in the petition the sole issue of whether or not the CTA erred in granting MPC's claim for refund of its excess input VAT payments on domestic

purchases of goods, services and importation of goods attributable to zero-rated sales for taxable year 2000.[24]

The Court, however, points out that given the factual antecedents, the case also raises a jurisdictional issue inasmuch as MPC instituted the CTA action 15 days from the filing of its administrative claim for refund and without waiting for the CIR's action thereon. Thus, towards a full and proper resolution of the issue on the tax court's action on MPC's case, the Court finds it necessary to likewise resolve the issue of whether or not the CIA had jurisdiction to entertain MPC's judicial claim.

Ruling of the Court

The Court shall first address the issue on jurisdiction. While the matter was not raised by the CIR in its petition, it is settled that a jurisdictional issue may be invoked by either party or even the Court *motu proprio*, and may be raised at any stage of the proceedings, even on appeal. Thus, the Court emphasized in *Sales, et al. v. Barro*:[25]

> It is well-settled that a court's jurisdiction may be raised at any stage of the proceedings, even on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action. x x x [E]ven if [a party] did not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that it has no jurisdiction over the case. In this sense, dismissal for lack of jurisdiction may even be ordered by the court *motu proprio*.[26] (Citations omitted)

In the present dispute, compliance with the requirements on administrative claims with the CIR, which are to precede judicial actions with the CTA, indubitably impinge on the tax court's jurisdiction. In *CIR v. Aichi Forging Company of Asia, Inc.*,[27] the Court ruled that the premature filing of a claim for refund or credit of input VAT before the CTA warrants a dismissal, inasmuch as no jurisdiction is acquired by the tax court.[28] Pertinent thereto are the provisions of Section 112 of the NIRC at the time of MPC's filing of the administrative and judicial claims, and which prescribe the periods within which to file and resolve such claims, to wit:

> Sec. 112. *Refunds or Tax Credits of Input Tax*. —
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> (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 x x x.
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> x x x x
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> (D) *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 Subsections (A) and (B) hereof.