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FIRST DIVISION

[G.R. No. 203351, January 21, 2015]

PANAY POWER CORPORATION (FORMERLY AVON RIVER POWER HOLDINGS CORPORATION), PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 17, 2012 and the Resolution[3] dated August 29, 2012 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 709, which affirmed the Amended Decision[4] dated December 6, 2010 of the CTA Special First Division (CTA Division)in CTA Case No. 7402and dismissed the claim for refund/credit of excess input value-added tax (VAT) of petitioner Panay Power Corporation, formerly Avon River Power Holdings Corporation (petitioner), for being prematurely filed.

The Facts

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws and a VAT-registered entity with Tax Identification No. 223-606-641-000. It is engaged in the business of acquiring, holding, owning, and operating power generation assets for lighting and power purposes and whole selling the electric power to the National Power Corporation, private electric utilities and electric cooperatives, and for the carrying on of all business incident thereto.[5]

On January 26, 2004, petitioner filed its quarterly VAT return[6] for the fourth quarter of 2003. Subsequently, petitioner filed two (2) amendments to its quarterly VAT return for the said period on January 28, 2005[7] and January 19, 2006,[8] respectively, with the latter amendment reflecting a total unutilized input VAT amounting to P14,122,347.21.[9] According to petitioner, the aforesaid amount pertains to the input VAT that it paid on its purchases of capital goods and services consisting of power generation assets located in Iloilo City (subject purchases)which input VAT has not been utilized against any output VAT liability for the fourth quarter of 2003 or even for subsequent quarters.[10]

On December 29, 2005, petitioner filed an administrative claim for refund/credit of its unutilized input VAT in the amount of P14,122,347.21 before the Revenue District Office No. 51 of the Bureau of Internal Revenue (BIR). Thereafter, on January 20, 2006, petitioner filed a judicial claim for tax refund/credit by way of a petition for review before the CTA, docketed as CTA Case No. 7402.[11]

For its part, respondent Commissioner of Internal Revenue (CIR) averred, *inter alia,* that the amount being claimed by petitioner as the alleged unutilized input VAT for the fourth quarter of 2003 must be denied for not being properly documented.[12]

The CTA Division Ruling

In a Decision[13] dated February 18, 2010, the CTA Division denied petitioner's claim for tax refund/credit for lack of merit.[14] The CTA Division found that while petitioner presented the testimony of its Senior Accounting Manager stating that the subject purchases were for capital goods and services which were capitalized and reflected in petitioner's books as depreciable assets, it nevertheless failed to submit any evidence to corroborate the same since petitioner did not submit its books of accounts and audited financial statements for the calendar year 2003. Hence, on account of such failure, the input VAT arising therefrom cannot be recovered thru a tax refund/credit or an issuance of tax credit certificates in favor of petitioner.[15]

Aggrieved, petitioner moved for reconsideration, as well as for leave of court to present supplemental evidence to bolster its claim for tax refund/credit.[16] The CTA Division granted petitioner's leave of court.[17] After the presentation of the supplemental evidence, the CTA Division, in an Amended Decision[18] dated December 6, 2010, denied petitioner's motion for reconsideration and dismissed its claim for tax refund/credit outright albeit on a different ground. It found that petitioner filed its judicial claim for tax refund/credit on January 20, 2006, or a mere 22 days after it filed its administrative claim on December 29, 2005.[19] Citing the case of *CIR v. Aichi Forging Company of Asia, Inc. (Aichi)*,[20] the CTA Division held that the observance of the 120-day period provided under Section 112(D) of the National Internal Revenue Code (NIRC) is mandatory and jurisdictional to the filing of a judicial claim for tax refund/credit, thus concluding that petitioner's judicial claim for tax refund/credit must be dismissed for being prematurely filed.[21]

Dissatisfied, the CIR appealed to the CTA *En Banc.*

The CTA *En Banc* Ruling

In a Decision[22] dated May 17, 2012, the CTA *En Banc* affirmed the Amended Decision of the CTA Division.[23] Also citing *Aichi*, it held that the CTA did not acquire jurisdiction over petitioner's judicial claim for tax refund/credit, since the latter failed to comply with the aforesaid 120-day period. As such, petitioner's claim was correctly dismissed for being prematurely filed.[24]

Aggrieved, petitioner moved for reconsideration,[25] which was, however, denied in a Resolution[26] dated August 29, 2012, hence, this petition.[27]

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CTA *En Banc* correctly affirmed the CTA Division's outright dismissal of petitioner's claim for tax refund/credit on the ground of prematurity.

The Court's Ruling

The petition is partly meritorious.

Section 112 of the NIRC, as amended by RA 9337,[28] provides:

> 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, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x.
>
> x x x x
>
> (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.
>
> 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 affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**
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> x x x x (Emphases and underscoring supplied)

In the *Aichi* case cited by both the CTA Division and the CTA *En Banc*, the Court held that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund before the CTA. Consequently, its non-observance would lead to the dismissal of the judicial claim on the ground of lack of jurisdiction. *Aichi* also clarified that the two (2)-year prescriptive period applies only to administrative claims and not to judicial claims.[29] Succinctly put, once the administrative claim is filed within the two (2)-year prescriptive period, the claimant must wait for the 120-day period to end and, thereafter, he is given a 30-day period to file his judicial claim before the CTA, even if said 120-day and 30-day periods would exceed the aforementioned two (2)-year prescriptive period.[30]

However, in *CIR v. San Roque Power Corporation* (*San Roque*),[31] the Court recognized an exception to the mandatory and jurisdictional nature of the 120-day period. It ruled that BIR Ruling No. DA-489-03 dated December 10, 2003 provided a