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FIRST DIVISION

[G.R. No. 203774, March 11, 2015]

CARGILL PHILIPPINES, INC., 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 June 18, 2012 and the Resolution[3] dated September 27, 2012 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 779, which affirmed the Amended Decision[4] dated April 20, 2011 of the CTA Special First Division (CTA Division) in CTA Case Nos. 6714 and 7262, dismissing petitioner Cargill Philippines, Inc.'s (Cargill) claims for refund of unutilized input value-added tax (VAT) for being prematurely filed.

The Facts

Cargill is a domestic corporation duly organized and existing under Philippine laws whose primary purpose is to own, operate, run, and manage plants and facilities for the production, crushing, extracting, or otherwise manufacturing and refining of coconut oil, coconut meal, vegetable oil, lard, margarine, edible oil, and other articles of similar nature and their by-products. It is a VAT-registered entity with Tax Identification No./VAT Registration No.000-110-659-000.[5] As such, it filed its quarterly VAT returns for the second quarter of calendar year 2001 up to the third quarter of fiscal year 2003, covering the period April 1, 2001 to February 28, 2003, which showed an overpayment of P44,920,350.92 and, later, its quarterly VAT returns for the fourth quarter of fiscal year 2003 to the first quarter of fiscal year 2005, covering the period March 1, 2003 to August 31, 2004 which reflected an overpayment of P31,915,642.26.[6] Cargill maintained that said overpayments were due to its export sales of coconut oil, the proceeds of which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentralng Pilipinas and, thus, are zero-rated for VAT purposes.[7]

On June 27, 2003, Cargill filed an administrative claim for refund of its unutilized input VAT in the amount of P26,122,965.81 for the period of April 1, 2001 to February 28, 2003 (**first refund claim**) before the Bureau of Internal Revenue (BIR). Thereafter, or **on June 30, 2003**, it filed a judicial claim for refund, by way of a petition for review, before the CTA, docketed as CTA Case No. 6714. On September 29, 2003, it subsequently filed a supplemental application with the BIR increasing its claim for refund of unutilized input VAT to the amount of P27,847,897.72.[8]

On **May 31, 2005**, Cargill filed a second administrative claim for refund of its

unutilized input VAT in the amount of P22,194,446.67 for the period of March 1, 2003 to August 31, 2004 (second refund claim) before the BIR. **On even date**, it filed a petition for review before the CTA, docketed as CTA Case No. 7262.[9]

For its part, respondent Commissioner of Internal Revenue (CIR) claimed, *inter alia*, that the amounts being claimed by Cargill as unutilized input VAT in its first and second refund claims were not properly documented and, hence, should be denied.[10]

On Cargill's motion for consolidation,[11] the CTA Division, in a Resolution[12] dated July 10, 2007, ordered the consolidation of CTA Case No. 6714 with CTA Case No. 7262 for having common questions of law and facts.[13]

The CTA Division Ruling

In a Decision[14] dated August 24, 2010 (August 24, 2010 Decision), the CTA Division partially granted Cargill's claims for refund of unutilized input VAT and thereby ordered the CIR to issue a tax credit certificate in the reduced amount of P3,053,469.99, representing Cargill's unutilized input VAT attributable to its VAT zero-rated export sales for the period covering April 1, 2001 to August 31, 2004.[15] It found that while Cargill timely filed its administrative and judicial claims within the two (2)-year prescriptive period,[16] as held in the case of *CIR v. Mirant Pagbilao Corp.*,[17] it, however, failed to substantiate the remainder of its claims for refund of unutilized input VAT, resulting in the partial denial thereof.[18]

Dissatisfied, CIR respectively moved for reconsideration,[19] and for the dismissal of Cargill's petitions,claiming that they were prematurely filed due to its failure to exhaust administrative remedies.[20] Cargill likewise sought for reconsideration,[21] maintaining that the CTA Division erred in disallowing the rest of its refund claims.

In an **Amended Decision**[22] **dated April 20, 2011**, the CTA Division preliminarily denied the individual motions of both parties, to wit: (a) CIR's motion for reconsideration for lack of notice of hearing; (b) CIR's motion to dismiss on the ground of *estoppel*; and (c) Cargill's motion for reconsideration for lack of merit.[23]

Separately, however, the CTA Division superseded and consequently reversed its August 24, 2010 Decision. Citing the case of *CIR v. Aichi Forging Company of Asia, Inc. (Aichi)*,[24] it held that the 120-day period provided under Section 112(D) of the National Internal Revenue Code (NIRC) must be observed prior to the filing of a judicial claim for tax refund.[25] As Cargill failed to comply therewith, the CTA Division, without ruling on the merits, dismissed the consolidated cases for being prematurely filed.[26]

Aggrieved, Cargill elevated its case to the CTA *En Banc.*

The CTA En Banc Ruling

In a Decision[27] dated June 18, 2012, the CTA *En Banc* affirmed the CTA Division's April 20, 2011 Amended Decision, reiterating that Cargill's premature filing of its

claims divested the CTA of jurisdiction, and perforce, warranted the dismissal of its petitions. To be specific, it highlighted that Cargill's petition in CTA Case No. 6714 was filed on June 30, 2003, or after the lapse of three (3) days from the time it filed its administrative claim with the BIR; while its petition in CTA Case No. 7672 was filed on the same date it filed its administrative claim with the BIR, *i.e.*, on May 31, 2005. As such, the CTA *En Banc* ruled that Cargill's judicial claims were correctly dismissed for being filed prematurely.[28]

Cargill moved for reconsideration[29] which was, however, denied by the CTA *En Banc* in a Resolution[30] dated September 27, 2012, hence, this petition.

The Issue Before the Court

The core issue in this case is whether or not the CTA *En Banc* correctly affirmed the CTA Division's outright dismissal of Cargill's claims for refund of unutilized input VAT on the ground of prematurity.

The Court's Ruling

The petition is partly meritorious.

Allowing the refund or credit of unutilized input VAT finds its genesis in Executive Order No. 273,[31] series of 1987, which is recognized as the "Original VAT Law." Thereafter, it was amended through the passage of Republic Act No. (RA) 7716,[32] RA 8424,[33] and, finally by RA 9337,[34] which took effect on November 1, 2005. Considering that Cargill's claims for refund covered periods before the effectivity of RA 9337, Section 112 of the NIRC, as amended by RA 8424, should, therefore, be the governing law,[35]the pertinent portions of which read:

> Section 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: x x x.
>
> x x x x
>
> (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.
>
> 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.** (Emphases and underscoring supplied)
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> x x x x

In the landmark case of *Aichi*, it was 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. As such, its non-observance would warrant the dismissal of the judicial claim for lack of jurisdiction. It was, withal, delineated in *Aichi* that the two (2)-year prescriptive period would only apply to administrative claims, and not to judicial claims.[36] Accordingly, once the administrative claim is filed within the two (2)-year prescriptive period, the taxpayer-claimant must wait for the lapse of the 120-day period and, thereafter, he has a 30-day period within which 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.[37]

Nevertheless, the Court, in the case of *CIR v. San Roque Power Corporation*[38] (*San Roque*), recognized an exception to the mandatory and jurisdictional nature of the 120-day period. *San Roque* enunciated that BIR Ruling No. DA-489-03 dated December 10, 2003, which expressly declared that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of petition for review," provided a valid claim for equitable estoppel under Section 246[39] of the NIRC.[40]

In the more recent case of *Taganito Mining Corporation v. CIR*,[41] the Court reconciled the pronouncements in *Aichi* and *San Roque*, holding that from **December 10, 2003 to October 6, 2010** which refers to the interregnum when BIR Ruling No. DA-489-03 was issued until the date of promulgation of *Aichi*, taxpayer-claimants need not observe the stringent 120-day period; but before and aftersaid window period, the mandatory and jurisdictional nature of the 120-day period remained in force, *viz*.:

> Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that **during the period December 10, 2003** (when BIR Ruling No. DA-489-03 was issued) to October 6, 2010 (when the *Aichi* case was promulgated), **taxpayers-claimants need not observe the 120-day period** before it could file a judicial claim for refund of excess input VAT before the CTA. **Before and after the aforementioned period (*i.e.*, December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim**.[42] (Emphases and underscoring supplied)

In this case, records disclose that anent Cargill's first refund claim, it filed its administrative claim with the BIR on June 27, 2003, and its judicial claim before the