

## EN BANC

[ G.R. No. 207112, December 08, 2015 ]

### PILIPINAS TOTAL GAS, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

#### DECISION

##### MENDOZA, J.:

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court assailing the October 11, 2012 Decision<sup>[2]</sup> and the May 8, 2013 Resolution<sup>[3]</sup> of the Court of Tax Appeals (CTA) *En Banc*, in CTA EB Case No. 776, which affirmed the January 13, 2011 Decision<sup>[4]</sup> of the CTA Third Division (CTA Division) in CTA Case No. 7863.

#### The Facts

Petitioner Pilipinas Total Gas, Inc. (*Total Gas*) is engaged in the business of selling, transporting and distributing industrial gas. It is also engaged in the sale of gas equipment and other related businesses. For this purpose, Total Gas registered itself with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) taxpayer.

On April 20, 2007 and July 20, 2007, Total Gas filed its Original Quarterly VAT Returns for the First and Second quarters of 2007, respectively with the BIR.

On May 20, 2008, it filed its Amended Quarterly VAT Returns for the first two quarters of 2007 reflecting its sales subject to VAT, zero-rated sales, and domestic purchases of non-capital goods and services.

For the First and Second quarters of 2007, Total Gas claimed it incurred unutilized input VAT credits from its domestic purchases of noncapital goods and services in the total amount of P8,124,400.35. Of this total accumulated input VAT, Total Gas claimed that it had P7,898,433.98 excess unutilized input VAT.

On **May 15, 2008**, Total Gas filed an administrative claim for refund of unutilized input VAT for the first two quarters of taxable year 2007, inclusive of supporting documents.

On **August 28, 2008**, Total Gas submitted additional supporting documents to the BIR.

On January 23, 2009, Total Gas elevated the matter to the CTA in view of the inaction of the Commissioner of Internal Revenue (CIR).

During the hearing, Total Gas presented, as witnesses, Rosalia T. Yu and Richard Go, who identified documentary evidence marked as Exhibits "A" to "ZZ-1," all of which

were admitted. Respondent CIR, on the other hand, did not adduce any evidence and had the case submitted for decision.

### *Ruling of the CTA Division*

In its January 13, 2011 Decision,<sup>[5]</sup> the CTA Division dismissed the petition for being prematurely filed. It explained that Total Gas failed to complete the necessary documents to substantiate a claim for refund of unutilized input VAT on purchases of goods and services enumerated under Revenue Memorandum Order (RMO) No. 53-98. Of note were the lack of Summary List of Local Purchases and the certifications from the Office of the Board of Investment (BOD), the Bureau of Customs (BOC), and the Philippine Economic Zone Authority (PEZA) that the taxpayer had not filed any similar claim for refund covering the same period.<sup>[6]</sup>

Believing that Total Gas failed to complete the necessary documents to substantiate its claim for refund, the CTA Division was of the view that the 120-day period allowed to the CIR to decide its claim under Section 112 (C) of the National Internal Revenue Code of 1997 (NIRC), had not even started to run. With this, the CTA Division opined that the petition for review was prematurely filed because Total Gas failed to exhaust the appropriate administrative remedies. The CTA Division stressed that tax refunds partake of the nature of an exemption, putting into operation the rule of strict interpretation, with the taxpayer being charged with the burden of proving that he had satisfied all the statutory and administrative requirements.<sup>[7]</sup>

Total Gas sought for reconsideration<sup>[8]</sup> from the CTA Division, but its motion was denied for lack of merit in a Resolution, dated April 19, 2011.<sup>[9]</sup> In the same resolution, it reiterated that "that the complete supporting documents should be submitted to the BIR before the 120-day period for the Commissioner to decide the claim for refund shall commence to run. It is only upon the lapse of the 120-day period that the taxpayer can appeal the inaction [to the CTA.]"<sup>[10]</sup> It noted that RMO No. 53-98, which provides a checklist of documents for the BIR to consider in granting claims for refund, also serves as a guideline for the courts to determine if the taxpayer had submitted complete supporting documents.<sup>[11]</sup> It also stated that Total Gas could not invoke Revenue Memorandum Circular (RMC) No. 29-09 because it was issued after the administrative claim was filed and could not be applied retroactively.<sup>[12]</sup> Thus, the CTA Division disposed:

WHEREFORE, premises considered, the present Petition for Review is hereby DENIED DUE COURSE, and, accordingly DISMISSED for having been prematurely filed.

SO ORDERED.<sup>[13]</sup>

### *Ruling of the CTA En Banc*

In its assailed decision, the CTA *En Banc* likewise denied the petition for review of Total Gas for lack of merit. It condensed its arguments into two core issues, to wit: (1) whether Total Gas seasonably filed its judicial claim for refund; and (2) whether it was unable to substantiate its administrative claim for refund by failing to submit

the required documents that would allow respondent to act on it.<sup>[14]</sup>

As to the first issue, the CTA *En Banc* ruled that the CTA Division had no jurisdiction over the case because Total Gas failed to seasonably file its petition. Counting from the date it filed its administrative claim on May 15, 2008, the CTA *En Banc* explained that the CIR had 120 days to act on the claim (until September 12, 2008), and Total Gas had 30 days from then, or until October 12, 2008, to question the inaction before the CTA. Considering that Total Gas only filed its petition on January 23, 2009, the CTA *En Banc* concluded that the petition for review was belatedly filed. For the tax court, the 120-day period could not commence on the day Total Gas filed its last supporting document on August 28, 2008, because to allow such would give the taxpayer unlimited discretion to indefinitely extend the 120-day period by simply filing the required documents piecemeal.<sup>[15]</sup>

As to the second issue, the CTA *En Banc* affirmed the CTA Division that Total Gas failed to submit the complete supporting documents to warrant the grant of its application for refund. Quoting the pertinent portion of the decision of its division, the CTA *En Banc* likewise concurred in its finding that the judicial claim of Total Gas was prematurely filed because the 120-day period for the CIR to decide the claim had yet to commence to run due to the lack of essential documents.<sup>[16]</sup>

Total Gas filed a motion for reconsideration,<sup>[17]</sup> but it was denied in the assailed resolution of the CTA *En Banc*.<sup>[18]</sup>

Hence, the present petition.

## **ISSUES**

**(a) whether the judicial claim for refund was belatedly filed on 23 January 2009, or way beyond the 30-day period to appeal as provided in Section 112(c) of the Tax Code, as amended; and**

**(b) whether the submission of incomplete documents at the administrative level (BIR) renders the judicial claim premature and dismissible for lack of jurisdiction.<sup>[19]</sup>**

In its petition, Total Gas argues that its judicial claim was filed within the prescriptive period for claiming excess unutilized input VAT refund as provided under Section 112 of the NIRC and expounded in the Court's ruling in *CIR v. Aichi Forging Company of Asia*<sup>[20]</sup> (*Aichi*) and in compliance with Section 112 of the NIRC. In addition to citing Section 112 (C) of the Tax Code, Total Gas points out that in one of its previous claims for refund of excess unutilized input VAT, the CTA *En Banc* in CTA *En Banc* Case No. 674,<sup>[21]</sup> faulted the BIR in not considering that the reckoning period for the 120-period should be counted from the date of submission of complete documents.<sup>[22]</sup> It then adds that the previous ruling of the CTA *En Banc* was in accordance with law because Section 112 (C) of the Tax Code is clear in providing that the 120-day period should be counted from the date of its submission of the complete documents or from August 28, 2008 and not from the date it filed its administrative claim on May 15, 2008.<sup>[23]</sup> Total Gas argues that, since its claim was filed within the period of exception provided in *CIR v. San Roque Power*

Corporation<sup>[24]</sup> (*San Roque*), it did not have to strictly comply with 120+30 day period before it could seek judicial relief.<sup>[25]</sup>

Moreover, Total Gas questions the logic of the CTA *En Banc* which stated that the petition was filed both belatedly and prematurely. Total Gas points out that on the one hand, the CTA *En Banc* ruled that it filed the judicial claim belatedly as it was way beyond the 120+30 day period. Yet, it also affirmed the findings of its division that its petition for review was prematurely filed since the 120-day period did not even commence to run for lack of complete supporting documents.<sup>[26]</sup>

For Total Gas, the CTA *En Banc* violated the doctrine of stare decisis because the tax tribunal had, on numerous occasions, held that the submission of incomplete supporting documents should not make the judicial appeal premature and dismissible for lack of jurisdiction. In these decisions, the CTA *En Banc* had previously held that non-compliance with RMO No. 53-98 should not be fatal since the requirements listed therein refer to requirements for refund or tax credit in the administrative level for purposes of establishing the authenticity of a taxpayer's claim; and that in the judicial level, it is the Rules of Court that govern and, thus, whether or not the evidence submitted by the party to the court is sufficient lies within the sound discretion of the court. Total Gas emphasizes that RMO No. 53-98 does not state that non-submission of supporting documents will nullify the judicial claim. It posits that once a judicial claim is filed, what should be examined are the evidence formally offered in the judicial proceedings.<sup>[27]</sup>

Even assuming that the supporting documents submitted to the BIR were incomplete, Total Gas argues that there was no legal basis to hold that the CIR could not decide or act on the claim for refund without the complete supporting documents. It argues that under RMC No. 29-09, the BIR is tasked with the duty to notify the taxpayer of the incompleteness of its supporting documents and, if the taxpayer fails to complete the supporting supporting documents despite such notice, the same shall be denied. The same regulation provides that for purposes of computing the 120-day period, it should be considered tolled when the taxpayer is notified. Total Gas, however, insists that it was never notified and, therefore, was justified in seeking judicial relief.<sup>[28]</sup>

Although Total Gas admits that RMC No. 29-09 was not yet issued at the time it filed its administrative claim, the BIR still erred for not notifying them of their lack of supporting documents. According to Total Gas, the power to notify a taxpayer of lacking documents and to deny its claim if the latter would not comply is inherent in the CIR's power to decide refund cases pursuant to Section 4 of the NIRC. It adds "[s]ound policy also dictates that it should be the taxpayer who should determine whether he has already submitted all documents pertinent to his claim. To rule otherwise would result into a never-ending conflict/issue as to the completeness of documents which, in turn, would delay the taxpayer's claim, and would put to naught the protection afforded by Section 112 (C) of the Tax Code."<sup>[29]</sup>

In her Comment,<sup>[30]</sup> the CIR echoed the ruling of the CTA *En Banc*, that Total Gas filed its petition out of time. She countered that the 120-day period could not be counted from the time Total Gas submitted its additional documents on August 28, 2008 because such an interpretation of Section 112(D) would indefinitely extend the

prescriptive period as provided in favor of the taxpayer.

In its Reply,<sup>[31]</sup> Total Gas insisted that Section 112(C) stated that the 120-day period should be reckoned from the date of submission of complete documents, and not from the date of the filing of the administrative claim.

### **Ruling of the Court**

The petition has merit.

*Judicial claim timely filed*

Section 112 (C) of the NIRC provides:

#### **SEC. 112. Refunds or Tax Credits of Input Tax. -**

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 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.

X X X X

[Emphasis and Underscoring Supplied]

From the above, it is apparent that the CIR has 120 days **from the date of submission of complete documents** to decide a claim for tax credit or refund of creditable input taxes. The taxpayer may, within 30 days from receipt of the denial of the claim or after the expiration of the 120-day period, which is considered a "denial due to inaction," appeal the decision or unacted claim to the CTA.

To be clear, Section 112(C) categorically provides that the 120-day period is counted "**from the date of submission of complete documents** in support of the application." Contrary to this mandate, the CTA *En Banc* counted the running of the period from the date the application for refund was filed or May 15, 2008, and, thus, ruled that the judicial claim was belatedly filed.

This should be corrected.

Indeed, the 120-day period granted to the CIR to decide the administrative claim under the Section 112 is primarily intended to benefit the taxpayer, to ensure that