

SECOND DIVISION

[G.R. No. 196415, December 02, 2015]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
TOLEDO POWER COMPANY, RESPONDENT.**

[G.R. No. 196451]

**TOLEDO POWER COMPANY, PETITIONER, VS. COMMISSIONER OF
INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

The burden of proving entitlement to a tax refund rests on the taxpayer.

Before this Court are Consolidated Petitions for Review on *Certiorari*^[1] assailing the November 22, 2010 Decision^[2] and the April 6, 2011 Resolution^[3] of the Court of Tax Appeals (CTA) in CTA EB Nos. 623 and 629.

Factual Antecedents

Toledo Power Corporation (TPC) is a general partnership principally engaged in the business of power generation and sale of electricity to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation (ACMDC), and Atlas Fertilizer Corporation (AFC).^[4]

On December 22, 2003, TPC filed with the Bureau of Internal Revenue (BIR) Regional District Office (RDO) No. 83 an administrative claim for refund or credit of its unutilized input Value Added Tax (VAT) for the taxable year 2002 in the total amount of P14,254,013.27 under Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) and the National Internal Revenue Code of 1997 (NIRC).^[5]

On April 22, 2004, due to the inaction of the Commissioner of Internal Revenue (OR), TPC filed with the CTA a Petition for Review, docketed as CTA Case No. 6961 and raffled to the CTA First Division (CTA Division).^[6]

In response to the Petition for Review, the CIR argued that TPC failed to prove its entitlement to a tax refund or credit.^[7]

Ruling of the CTA Division

On November 11, 2009, the CTA Division rendered a Decision^[8] partially granting

TPC's claim in the reduced amount of P7,598,279.29.^[9] Since NPC is exempt from the payment of all taxes, including VAT, the CTA Division allowed TPC to claim a refund or credit of its unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the taxable year 2002.^[10] The CTA Division, however, denied the claim attributable to TPC's sales of electricity to CEBECO, ACMDC and AFC due to the failure of TPC to prove that it is a generation company under the EPIRA.^[11] The CTA Division did not consider the said sales as valid zero-rated sales because TPC did not submit a Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC).^[12] Although TPC filed an application for a COC on June 20, 2002 with the ERC, the CTA Division found this insufficient to prove that TPC is a generation company under the EPIRA.^[13] The pertinent portions of the Decision read:

Therefore, out of the P439,660,958.77 zero-rated sales declared by [TPC] in its Quarterly VAT Returns for the four quarters of 2002, only the amount of P280,337,939.83 pertaining to [TPC's] sales of electricity to NPC shall be considered as valid zero-rated sales. x x x

x x x x

[TPC's] sales of electricity to companies other than NPC worth P159,323,018.94 shall be denied VAT zero-rating for [TPC's] failure to present Certificate of Compliance from the ERC, as stated earlier. x x x

x x x x

After finding that [TPC] had VAT zero-rated sales for the four quarters of 2002 in the amount of P280,337,939.83, the Court now determines the amount of input VAT attributable thereto.

[TPC] submitted its summary lists of purchases and corresponding suppliers' invoices/official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC official receipts, and other documentary evidence in support of the following input taxes reported in its Quarterly VAT Returns for the four quarters of 2002:

x x x x

Upon examination of the supporting documents of [TPC], the Court[-]Commissioned Independent CPA recommended that out of the total reported input VAT of P14,558,043.30, only the amount of P11,347,363.55 represents [TPC's] valid claim, while the remaining amount of P3,210,679.75 should be disallowed. x x x

x x x x

The Court finds the disallowance of the above input taxes proper except for input taxes classified under Nos. 3 and 10 in the respective amounts of P6,568.00 and P3,121,787.60.

The input VAT of P6,568.00 represents [TPC's] valid claim because the

same is duly supported by BOC official receipt. As to the input taxes of P3,121,787.60, [TPC] submitted documents marked as Exhibits "SS-3" top "SS-28" but only with respect to the claimed amount of P1,106,820.84 as summarized in Exhibit "SS." Out of the P1,106,820.84 input VAT claim, only the amount of P969,369.59 is valid, while the remaining input VAT of P137,451.25 shall be denied. x x x

x x x x

Therefore, the P3,121,787.60 input VAT disallowed by the Independent CPA for not having supporting documents shall now be reduced to P2,152,418.01 (P3,121,787.60 less P969,369.59).

In addition to the disallowances found by the Independent CPA, the amount of P102,700.85, representing out-of-period claim, shall be denied.

In sum, only the input VAT claim of P12,220,600.29 is duly substantiated in accordance with Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95. The amount of P12,220,600.29 is computed below:

Input VAT per 2002 Quarterly VAT Returns			P14,558,043.30
Less:	Disallowances		
	Per Independent CPA	P3,210,679.75	
	Less: Valid Claim		
	Input VAT on Importation of Goods	6,568.00	
	Input VAT per add'l documents submitted	969,369.59	2,234,742.16
	Per this Court's further verification		102,700.85
Substantiated Input VAT			P12,220,600.29

A portion of the substantiated input VAT of P12,220,600.29, however, shall be applied against [TPC's] reported output VAT liability of P304,030.03. x x x

x x x x

Hence, only the remaining input VAT of P11,916,570.26 can be attributed to the entire zero-rated sales declared by [TPC] in the amount of P439,660,958.77, and only the input VAT of P7,598,279.29 is attributable to the substantiated zero-rated sales of P280,337,939.83, as computed

below:

Substantiated Input VAT	P 12,220,600.29
Less: Output VAT	304,030.03
Excess Input VAT	P 11,916,570.26
Substantiated Zero-Rated Sales	P 280,337,939.83
Divided by Total Reported Zero-Rated Sales	/439,660.958.77
Multiplied by Substantiated Excess Input VAT	x 11,916,570.26
Excess Input VAT attributable to Substantiated Zero-Rated Sales	P 7,598,279.29

As evidenced by its Quarterly VAT Returns from the first quarter of 2003 to the second quarter of 2004, [TPC] was able to prove that the input VAT of P7,598,279.29 was not applied against any output VAT in the succeeding quarters.

x x x x

WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of [TPC] the amount of SEVEN MILLION FIVE HUNDRED NINETY EIGHT THOUSAND TWO HUNDRED SEVENTY NINE PESOS AND 29/100 (P7,598,279.29), representing its unutilized input taxes attributable to zero-rated sales for taxable year 2002.

SO ORDERED.^[14]

TPC moved for partial reconsideration contending that as an existing generation company, it was not required to obtain a COC from the ERC as a prerequisite for its operations, and that the issue of whether it is a generation company was never raised during the trial.^[15] In any case, it attached photocopies of its application for a COC dated June 20, 2002 and its COC dated June 23, 2004.^[16]

The CIR, likewise, sought partial reconsideration arguing that the administrative claim was merely *pro forma* since TPC failed to submit the complete documents required under Revenue Memorandum Order (RMO) No. 53-98,^[17] which were necessary to ascertain the correct amount to be refunded in the administrative claim.^[18]

On April 13, 2010, the CTA Division issued a Resolution^[19] denying both motions for lack of merit. It maintained that TPC timely filed its administrative claim for refund and that its failure to comply with RMO No. 53-98 was not fatal.^[20] The CTA Division also said that in claiming a refund under the EPIRA, the taxpayer must prove that it was duly authorized by the ERC to operate a generation facility and that it derived its sales from power generation.^[21] In this case, TPC failed to present a COC to prove that it was duly authorized by the ERC to operate as a generation facility in 2002.^[22] As to the attached photocopy of the COC, the CTA

Division gave no credence to it as it was not formally offered in evidence and no valid reason was offered by TPC to justify its late submission.^[23]

Unfazed, both parties elevated the case before the CTA *En Banc*.

Ruling of the CTA En Banc

On November 22, 2010, the CTA *En Banc* rendered a Decision dismissing both Petitions. It sustained the findings of the CTA Division that both the administrative and the judicial claims were timely filed and that TPC's non-compliance with RMO No. 53-98 was not fatal to its claim.^[24] Also, since TPC was not yet issued a COC in 2002, the CTA *En Banc* agreed with the CTA Division that TPC's sales of electricity to CEBECO, ACMDC, and AFC for the taxable year 2002 could not qualify for a VAT zero-rating under the EPIRA.^[25] The CTA *En Banc* likewise noted that contrary to the claim of TPC, there is no stipulation in the Joint Stipulation of Facts and Issues (JSFI) that TPC is a generation company under the EPIRA.^[26] Thus:

WHEREFORE, premises considered, the above-captioned petitions are hereby DISMISSED. Hie assailed Decision dated November 11/2009 and Resolution dated April 13, 2010 rendered by the Former First Division in CTA Case No. 6961 are hereby AFFIRMED.

SO ORDERED.^[27]

Both parties moved for partial reconsideration but the CTA *En Banc* denied both motions for lack of merit in its April 6, 2011 Resolution.^[28]

Issues

Hence, the instant Petitions with the following issues:

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Whether x x x the [CTA] *En Banc* committed reversible error in holding that TPC is entitled to a refund or tax credit certificate in the reduced amount of P7,598,279.29, representing alleged unutilized input tax, considering that -

- A. TPC did not comply with the rule on exhaustion of administrative remedies.
- B. TPC is liable for deficiency VAT for those sales of electricity to companies other than NPC that failed to qualify as VAT zero-rated sales under the EPIRA x x x, hence, considered subject to VAT under Section 108 of the [NIRC], as amended.
- C. x x x TPC did not comply with the pertinent provisions of Section 112 (A) of the MRC x x x, as amended.^[29]

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