

## THIRD DIVISION

**[ G.R. No. 183880, January 20, 2014 ]**

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

### D E C I S I O N

**PERALTA, J.:**

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Court of Tax Appeals (CTA) *En Banc* Decision<sup>[1]</sup> dated May 7, 2008, and Resolution<sup>[2]</sup> dated July 18, 2008.

The pertinent facts, as narrated by the CTA First Division, are as follows:

Petitioner (*herein respondent Toledo Power, Inc.*) is a general partnership duly organized and existing under Philippine laws, with principal office at Sangi, Toledo City, Cebu. It is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc., and is registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) with Tax Identification No. 003-883-626-VAT and BIR Certificate of Registration bearing RDO Control No. 94-083-000300.

On June 20, 2002, petitioner filed an application with the Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance pursuant to the Implementing Rules and Regulations of R.A. 9136, otherwise known as the "Electric Power Industry Reform Act of 2007" (EPIRA).

On October 25, 2001, petitioner filed with the BIR Revenue District Office (RDO) No. 83 at Toledo City, Province of Cebu, its Quarterly VAT Return for the third quarter of 2001, declaring among others, the following:

Zero-rated	P
Sales/Receipts	143,000,032.37
Taxable Sales-Sale of	
Scrap/Others	378,651.74
Output Tax	34,422.89
Less: Input Tax	
On	4,765,458.58
Domestic	
Purchases	

On Importation of Goods	1,242,792.00
Total Available Input Tax	<u>6,008,250.58</u>
Excess Input Tax & Overpayment	<u>P 5,973,827.69</u>

However, an amended Quarterly VAT Return for the same quarter of 2001 was filed on November 22, 2001. The amended return shows unutilized input VAT credits of P5,909,588.96 arising from petitioner's taxable purchases for the third quarter of 2001 and the following other information:

Zero-rated Sales/Receipts	P 143,000,032.37
Taxable Sales-Sale of Scrap/Others	378,651.74
Output Tax	34,422.89
Less: Input Tax On Domestic Purchases	4,718,099.85
On Importation of Goods	1,225,912.00
Total Available Input Tax	<u>5,944,011.85</u>
Excess Input Tax & Overpayment	<u>P 5,909,588.96</u>

Thus, for the third quarter of 2001, petitioner allegedly has unutilized input VAT in the total amount of P5,909,588.96 on its domestic purchase of taxable goods and services and importation of goods, which purchases and importations are all attributable to its zero-rated sale of power generation services to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc. Said input VAT of P5,909,588.96 paid by petitioner on its domestic purchase of goods and services for the third quarter of 2001 allegedly remained unutilized against output VAT liability in said period or even in subsequent matters.

On January 25, 2002, petitioner filed with the BIR RDO No. 83 at Toledo City, Province of Cebu, its Quarterly VAT Return for the fourth quarter of 2001 declaring, among others, the following:

Zero-Rated Sales/Receipts	P 127,259,720.44
Taxable Sales-Sale of	309,697.50

Scrap/Others	
Output Tax	28,154.33
Less: Input Tax	
On	
Domestic	
Purchases	1,374,608.64
On	
Importation	
of Goods	1,873,327.00
Total Available Input	
Tax	<u>3,247,935.64</u>
Excess Input Tax &	
Overpayment	<u>P 3,219,781.31</u>

Thus, petitioner allegedly had an excess input VAT credits of P3,219,781.31 for the fourth quarter of 2001 which remained unutilized against output VAT liability in said period or even in the subsequent quarters.

For the third and fourth quarters of 2001, petitioner incurred and accumulated input VAT from its domestic purchase of goods and services, which are all attributable to its zero-rated sales of power generation services to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development Inc., in the total amount of P9,129,370.27. Said excess and unutilized input VAT was allegedly not utilized against any output VAT liability in the subsequent quarters nor carried over to the succeeding taxable quarters.

On September 30, 2003, pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed with the BIR RDO No. 83, an administrative claim for refund or unutilized input VAT for the third and fourth quarter of 2001 in the amounts of P5,909,588.96 and P3,219,781.31, respectively, or the aggregate amount of P9,129,370.27.

Respondent (*herein petitioner Commissioner of Internal Revenue*) has not ruled upon petitioner's administrative claim and in order to preserve its right to file a judicial claim for the refund or issuance of a tax credit certificate of its unutilized input VAT, petitioner filed a Petition for Review to suspend the running of the two-year prescriptive period under Section 112(D) of the 1997 NIRC and Section 4.106-2(c) of Revenue Regulations No. 7-95, as amended. On October 24, 2003, petitioner filed a Petition for Review for the refund or issuance of a tax credit certificate in the amount of P5,909,588.96 for the third quarter of 2001, docketed as CTA Case No. 6805 and, on January 22, 2004, filed another Petition for Review for the refund or issuance of tax credit certificate in the amount of P3,219,781.31 for the fourth quarter of 2001, docketed as CTA Case No. 6851, both for its unutilized input VAT paid by petitioner on its domestic purchases of goods and services and importation of goods attributable to zero-rated sales.

On January 30, 2004, petitioner filed a Motion for Consolidation CTA Case Nos. 6805 and 6851, since these cases involve the same parties, same facts and issues. The said Motion was granted in open court on February 27, 2004 and confirmed in a Resolution dated March 8, 2004.

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After presenting its testimonial and documentary evidence, petitioner formally offered its evidence on February 16, 2006. On March 24, 2006, this Court promulgated a Resolution admitting all the exhibits offered by petitioner. Respondent, on the other hand, failed to adduce any evidence.

In a Resolution dated July 6, 2006, this consolidated case was ordered submitted for decision with only petitioner's Memorandum, as respondent failed to file one within the period given by the Court.<sup>[3]</sup>

Acting on the petition, the CTA First Division issued a Decision dated May 17, 2007 partially granting Toledo Power, Inc.'s (*TPI*) refund claim or issuance of tax credit certificate. Pertinent portions of the Decision read:

In sum, petitioner was able to show its entitlement to the refund or issuance of tax credit certificate in the amount of P8,553,050.44 computed as follows:

Total Available Input VAT	P 9,191,947.49
Less: Disallowed Input VAT	
(P20,696.34+P52,363.64+P277,207.50)	<u>350,267.48</u>
Substantiated available input VAT	P 8,841,680.01
Less: Output VAT	<u>62,577.22</u>
Substantiated Unutilized Input VAT	P 8,779,102.79

Multiply by the ratio of substantiated zero-rated sales to the total zero-rated sales

Substantiated zero-rated sales	<u>263,300,858.02</u>
Total zero-rated sales	270,259,752.81

Refundable Input VAT	<u>P 8,553,050.44</u>
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**IN VIEW OF THE FOREGOING**, the Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to refund or to issue a tax credit certificate in favor of petitioner in the reduced amount of P8,553,050.44 representing the substantiated unutilized input VAT for the third and fourth quarters of 2001.

**SO ORDERED.**<sup>[4]</sup>

The Commissioner of Internal Revenue (CIR), thereafter, filed a Motion for Reconsideration against said Decision. However, the same was denied in a Resolution dated October 15, 2007.

On appeal to the CTA *En Banc*, the CIR argued that TPI failed to comply with the invoicing requirements to prove entitlement to the refund or issuance of tax credit certificate. In addition, he challenged the jurisdiction of the CTA First Division to entertain respondent's petition for review for failure on its part to comply with the provisions of Section 112 (C) of the Tax Code.

In a Decision dated May 7, 2008, the CTA *En Banc* affirmed with modification the First Division's assailed decision. It held –

x x x after re-examination of the records of this case, out of the alleged Zero-rated sales amounting to P270,259,752.81, only the amount of P248,989,191.87 is fully substantiated. Therefore, respondent is entitled to the refund or issuance of tax credit certificate in the amount of P8,088,151.07 computed as follows:

Total Available Input VAT	P 9,191,947.49
Less: Disallowed Input VAT (P20,696.34+P52,363.64+P277,207.50)	<u>350,267.48</u>
Substantiated available input VAT	P 8,841,680.01
Less: Output VAT	62,577.22
Substantiated Unutilized Input VAT	<u>P 8,779,102.79</u>

Multiply by the ratio of substantiated  
zero-rated sales to the total zero-rated  
sales

Substantiated zero-rated sales	<u>248,989,191.87</u>
Total zero-rated sales	270,259,752.81

Refundable Input VAT	<u>P 8,088,151.07</u>
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**WHEREFORE**, premises considered, the Petition for Review *En Banc* is **DENIED** for lack of merit. Accordingly, the Decision dated May 17, 2007 and Resolution dated October 15, 2007 are **AFFIRMED with MODIFICATION**. Petitioner is hereby **ORDERED TO REFUND** to respondent the sum of **EIGHT MILLION EIGHTY-EIGHT THOUSAND ONE HUNDRED FIFTY-ONE PESOS AND SEVEN CENTAVOS (P8,088,151.07)** only for the third and fourth quarters of taxable year 2001.

**SO ORDERED.**<sup>[5]</sup>

In a Resolution dated July 18, 2008, the CTA *En Banc* denied the CIR's motion for reconsideration.