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FIRST DIVISION

[G.R. Nos. 198729-30, January 15, 2014]

CBK POWER COMPANY LIMITED, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

SERENO, C.J.:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by CBK Power Company Limited (petitioner). The Petition assails the Decision[2] dated 27 June 2011 and Resolution[3] dated 16 September 2011 of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in C.T.A. EB Nos. 658 and 659. The assailed Decision and Resolution reversed and set aside the Decision[4] dated 3 March 2010 and Resolution[5] dated 6 July 2010 rendered by the CTA Special Second Division in C.T.A. Case No. 7621, which partly granted the claim of petitioner for the issuance of a tax credit certificate representing the latter's alleged unutilized input taxes on local purchases of goods and services attributable to effectively zero-rated sales to National Power Corporation (NPC) for the second and third quarters of 2005.

THE FACTS

Petitioner is engaged, among others, in the operation, maintenance, and management of the Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, Caliraya, Botocan; and the Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna.[6]

On 29 December 2004, petitioner filed an Application for VAT Zero-Rate with the Bureau of Internal Revenue (BIR) in accordance with Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997, as amended. The application was duly approved by the BIR. Thus, petitioner's sale of electricity to the NPC from 1 January 2005 to 31 October 2005 was declared to be entitled to the benefit of effectively zero-rated value added tax (VAT).[7]

Petitioner filed its administrative claims for the issuance of tax credit certificates for its alleged unutilized input taxes on its purchase of capital goods and alleged unutilized input taxes on its local purchases and/or importation of goods and services, other than capital goods, pursuant to Sections 112(A) and (B) of the NIRC of 1997, as amended, with BIR Revenue District Office (RDO) No. 55 of Laguna, as follows:[8]

Period Covered	Date Of Filing

1st quarter of 2005	30-Jun-05
2nd quarter of 2005	15-Sep-05
3rd quarter of 2005	28-Oct-05

Alleging inaction of the Commissioner of Internal Revenue (CIR), petitioner filed a Petition for Review with the CTA on 18 April 2007.

THE CTA SPECIAL SECOND DIVISION RULING

After trial on the merits, the CTA Special Second Division rendered a Decision on 3 March 2010.

Applying *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Mirant)*, [9] the court *a quo* ruled that petitioner had until the following dates within which to file both administrative and judicial claims:

Taxable Quarter		**Last Day to File Claim for Refund**
2005	**Close of the quarter**	
1st quarter	31-Mar-05	31-Mar-07
2nd quarter	30-Jun-05	30-Jun-07
3rd quarter	30-Sep-05	30-Sep-07

Accordingly, petitioner timely filed its administrative claims for the three quarters of 2005. However, considering that the judicial claim was filed on 18 April 2007, the CTA Division denied the claim for the first quarter of 2005 for having been filed out of time.

After an evaluation of petitioner's claim for the second and third quarters of 2005, the court *a quo* partly granted the claim and ordered the issuance of a tax credit certificate in favor of petitioner in the reduced amount of P27,170,123.36.

The parties filed their respective Motions for Partial Reconsideration, which were both denied by the CTA Division.

THE CTA EN BANC RULING

On appeal, relying on *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)*,[10] the CTA *En Banc* ruled that petitioner's judicial claim for the first, second, and third quarters of 2005 were belatedly filed.

The CTA Special Second Division Decision and Resolution were reversed and set aside, and the Petition for Review filed in CTA Case No. 7621 was dismissed. Petitioner's Motion for Reconsideration was likewise denied for lack of merit.

Hence, this Petition.

ISSUE

Petitioner's assigned errors boil down to the principal issue of the applicable prescriptive period on its claim for refund of unutilized input VAT for the first to third quarters of 2005.[11]

THE COURT'S RULING

The pertinent provision of the NIRC at the time when petitioner filed its claim for refund 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: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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> (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.

Petitioner's sales to NPC are effectively zero-rated

As aptly ruled by the CTA Special Second Division, petitioner's sales to NPC are

effectively subject to zero percent (0%) VAT. The NPC is an entity with a special charter, which categorically exempts it from the payment of any tax, whether direct or indirect, including VAT. Thus, services rendered to NPC by a VAT-registered entity are effectively zero-rated. In fact, the BIR itself approved the application for zero-rating on 29 December 2004, filed by petitioner for its sales to NPC covering January to October 2005.[12] As a consequence, petitioner claims for the refund of the alleged excess input tax attributable to its effectively zero-rated sales to NPC.

In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue,*[13] this Court ruled:

> Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes equal to the input taxes that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer.

The crux of the controversy arose from the proper application of the prescriptive periods set forth in Section 112 of the NIRC of 1997, as amended, and the interpretation of the applicable jurisprudence.

Although the *ponente* in this case expressed a different view on the mandatory application of the 120+30 day period as prescribed in Section 112, with the finality of the Court's pronouncement on the consolidated tax cases *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue* [14] (hereby collectively referred as San Roque), we are constrained to apply the dispositions therein to the facts herein which are similar.

Administrative Claim

Section 112(A) provides that after the close of the taxable quarter when the sales were made, there is a two-year prescriptive period within which a VAT-registered person whose sales are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate or refund of creditable input tax.

Our VAT Law provides for a mechanism that would allow VAT-registered persons to recover the excess input taxes over the output taxes they had paid in relation to their sales. For the refund or credit of excess or unutilized input tax, Section 112 is the governing law. Given the distinctive nature of creditable input tax, the law under Section 112 (A) provides for a different reckoning point for the two-year prescriptive period, specifically for the refund or credit of that tax only.

We agree with petitioner that *Mirant* was not yet in existence when their administrative claim was filed in 2005; thus, it should not retroactively be applied to the instant case.

However, the fact remains that Section 112 is the controlling provision for the refund or credit of input tax during the time that petitioner filed its claim with which they ought to comply. It must be emphasized that the Court merely clarified in *Mirant* that Sections 204 and 229, which prescribed a different starting point for the two-year prescriptive limit for filing a claim for a refund or credit of excess input tax, were not applicable. Input tax is neither an erroneously paid nor an illegally collected internal revenue tax.[15]

Section 112(A) is clear that for VAT-registered persons whose sales are zero-rated or effectively zero-rated, a claim for the refund or credit of creditable input tax that is due or paid, and that is attributable to zero-rated or effectively zero-rated sales, must be filed within two years after the close of the taxable quarter when such sales were made. The reckoning frame would always be the end of the quarter when the pertinent sale or transactions were made, regardless of when the input VAT was paid.[16]

Pursuant to Section 112(A), petitioner's administrative claims were filed well within the two-year period from the close of the taxable quarter when the effectively zero-rated sales were made, to wit:

Period Covered	Close of the Taxable Quarter	Last day to File Administrative Claim	Date of Filing
1st quarter 2005	31-Mar-05	31-Mar-07	30-Jun-05
2nd quarter 2005	30-Jun-05	30-Jun-07	15-Sep-05
3rd quarter 2005	30-Sep-05	30-Sep-07	28-Oct-05

Judicial Claim

Section 112(D) further provides that the CIR has to decide on an administrative claim within one hundred twenty (120) days from the date of submission of complete documents in support thereof.

Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary.

Thereafter, the taxpayer affected by the CIR's decision or inaction may appeal to the CTA within 30 days from the receipt of the decision or from the expiration of the 120-day period within which the claim has not been acted upon.

Considering further that the 30-day period to appeal to the CTA is dependent on the 120-day period, compliance with both periods is jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the