

SECOND DIVISION

[G.R. No. 179260, April 02, 2014]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. TEAM
[PHILIPPINES] OPERATIONS CORPORATION [FORMERLY
MIRANT (PHILS) OPERATIONS CORPORATION], RESPONDENT.**

D E C I S I O N

PEREZ, J.:

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the 19 June 2007 Decision^[1] and the 13 August 2007 Resolution^[2] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 224 which affirmed *in toto* the Decision and Resolution dated 4 August 2006 and 8 November 2006, respectively, of the First Division of the CTA (CTA in Division)^[3] in C.T.A. Case No. 6623, granting Team (Philippines) Operations Corporation's (respondent) claim for refund in the amount of P69,562,412.00 representing unutilized tax credits for taxable period ending 31 December 2001.

The Facts

The factual antecedents of the case are undisputed:

Petitioner is the duly appointed Commissioner of Internal Revenue, charged with the duty of enforcing the provisions of the National Internal Revenue Code (NIRC), including the power to decide and approve administrative claims for refund.

Respondent, on the other hand, is a corporation duly organized and existing under and virtue of the laws of the Republic of the Philippines, with its principal office at Bo. Ibabang Pulo, Pagbilao Grande Island, Pagbilao, Quezon Province. It is primarily engaged in the business of designing, constructing, erecting, assembling, commissioning, operating, maintaining, rehabilitating and managing gas turbine and other power generating plants and related facilities for the conversion into electricity of coal, distillate and other fuels provided by and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government owned or controlled corporations or other entity engaged in the development, supply or distribution of energy.

On 30 April 2001, respondent secured from the Securities and Exchange Commission (SEC) its Certificate of Filing of Amended Articles of Incorporation, reflecting its change of name from Southern Energy Asia-Pacific Operations (Phils.), Inc. to Mirant (Philippines) Operations Corporation. Prior to its use of the name Southern Energy Asia-Pacific Operations (Phils.), Inc., respondent operated under the corporate names CEPA Operations (Philippines) Corporation, CEPA Tileman Project Management Corporation and Hopewell Tileman Project Management Corporation. The changes in respondent's corporate name from CEPA Operations

(Philippines) Corp. to Southern Energy Asia-Pacific Operations (Phils.) Inc., from CEPA Tileman Project Management Corporation to CEPA Operations (Philippines) Corp. and from Hopewell Tileman Project Management Corporation to CEPA Tileman Project Management Corp., were approved by the SEC on 24 November 2000, 21 November 1997 and 29 July 1994, respectively.

Under its original corporate name, Hopewell Tileman Project Management Corp., respondent was registered with the Bureau of Internal Revenue (BIR) with Tax Identification No. 003-057-796 as shown by its original BIR Certificate of Registration issued on 29 March 1994.

In line with its primary purpose, respondent entered into Operating and Management Agreements with Mirant Pagbilao Corporation (MPC) [formerly Southern Energy Quezon, Inc.] and Mirant Sual Corporation (MSC) [formerly Southern Energy Pangasinan, Inc.] to provide MPC and MSC with operation and maintenance services in connection with the operation, construction and commissioning of the coal-fired thermal power stations situated in Pagbilao, Quezon and Sual, Pangasinan, respectively. Payments received by respondent from MPC and MSC relative to the said agreements were allegedly subjected to creditable withholding taxes.

On 15 April 2002, respondent filed its 2001 income tax return with the BIR, reporting an income tax overpayment in the amount of P69,562,412.00 arising from unutilized creditable taxes withheld during the year, detailed as follows:^[4]

Sales/Revenues	P922,569,303.00
Less: Cost of Sales/Services	<u>938,543,252.00</u>
Gross Income from Operation	(P15,973,949.00)
Add: Non-Operating & Other Income	<u>74,995,982.00</u>
Total Gross Income	P 59,022,033.00
Less: Deductions	<u>59,022,033.00</u>
Taxable Income	-
Tax Rate	<u>32%</u>
Income Tax	NIL
Less: Tax Credits/Payments	
Creditable Tax Withheld for the First Three Quarters	
Creditable Tax Withheld for the Fourth Quarter	P 27,784,217.00
Total Tax Credits/Payments	<u>41,778,195.00</u>
Tax Payable/(Overpayment)	<u>P 69,652,412.00</u>
	<u>(P69,562,412.00)</u>

Respondent marked the appropriate box manifesting its intent to have the above overpayment refunded.

On 19 March 2003, pursuant to Section 76 in relation to Section 204 of the NIRC of 1997, as amended, respondent filed with the BIR, a letter requesting for the refund or issuance of a tax credit certificate corresponding to its reported unutilized creditable withholding taxes for taxable year 2001 in the amount of P69,562,412.00.

Thereafter, on 27 March 2003, respondent filed a Petition for Review before the CTA, in order to toll the running of the two-year prescriptive period provided under

Section 229 of the NIRC of 1997, as amended, which was docketed as C.T.A. Case No. 6623.

The Ruling of the CTA in Division

In a Decision dated 4 August 2006,^[5] the CTA in Division granted respondent's Petition and ordered petitioner to refund or issue a tax credit certificate in favor of the former the entire amount of P69,562,412.00, representing its unutilized tax credits for the taxable year ended 31 December 2001.

The CTA in Division based its ruling on the numerous documentary evidence presented by respondent during the proceedings, such as its Income Tax Returns (ITRs) for taxable years 2001 and 2002, various Certificates of Creditable Tax Withheld at Source for taxable year 2001 duly issued to it by its withholding agents, and Report of the Commissioned Independent Certified Public Accountant dated 15 March 2004, among others. The court *a quo* reasoned that respondent has indeed established its entitlement to a refund/tax credit of its excess creditable withholding taxes in compliance with the following basic requirements: (1) that the claim for refund (or issuance of a tax credit certificate) was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended; (2) that the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and (3) that the income upon which the taxes were withheld was included in the return of the recipient.^[6]

Subsequently, on 8 November 2006, the CTA in Division denied petitioner's Motion for Reconsideration for lack of merit.^[7]

Aggrieved, petitioner appealed to the CTA En Banc by filing a Petition for Review pursuant to Section 18 of Republic Act (RA) No. 1125, as amended by RA No. 9282^[8] on 6 December 2006, docketed as CTA EB No. 224.

The Ruling of the CTA En Banc

The CTA *En Banc* affirmed *in toto* both the aforesaid Decision and Resolution rendered by the CTA in Division in CTA Case No. 6623, pronouncing that there was no cogent reason to disturb the findings and conclusion spelled out therein. It revealed that what the petition seeks to accomplish was for the CTA *En Banc* to view and appreciate the evidence in another perspective, which unfortunately had already been considered and passed upon correctly by the CTA in Division.

Upon denial of petitioner's Motion for Reconsideration of the 19 June 2007 Decision^[9] of the CTA *En Banc*, it filed this Petition for Review on Certiorari before this Court seeking the reversal of the aforementioned Decision and the 13 August 2007 Resolution^[10] rendered in CTA EB No. 224. Petitioner^[11] relies on the sole ground that the CTA En Banc gravely erred on a question of law in affirming the CTA in Division's ruling which ordered a refund or issuance of tax credit certificate in favor of respondent despite the fact that it is not supported by the evidence on

record.^[12]

The Issue and Our Ruling

The core issue for the Court's resolution is whether or not respondent has established its entitlement for the refund or issuance of a tax credit certificate in its favor the entire amount of P69,562,412.00 representing its unutilized tax credits for taxable year ended 31 December 2001, pursuant to the applicable provisions of the NIRC of 1997, as amended.

This is not novel.

In order to be entitled to a refund claim or issuance of a tax credit certificate representing any excess or unutilized creditable withholding tax, it must be shown that the claimant has complied with the essential basic conditions set forth under pertinent provisions of law and existing jurisprudential declarations.

In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*,^[13] this Court had previously articulated that there are three essential conditions for the grant of a claim for refund of creditable withholding income tax, to wit: (1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;^[14] (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income;^[15] and (3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

The *first* condition is pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended, *viz*:

SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may –

x x x x

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction.

No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (Emphasis supplied)

x x x x

SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner;** but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

The *second* and *third* conditions are anchored on Section 2.58.3(B) of Revenue Regulations No. 2-98,^[16] which states:

Sec. 2.58.3.Claim for Tax Credit or Refund

x x x x

(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.** (Emphasis supplied)

In addition to the abovementioned requisites, the NIRC of 1997, as amended, likewise provides for the strict observance of the concept of the irrevocability rule,^[17] the focal provision of which is Section 76 thereof, quoted hereunder for easy reference:

SEC. 76. *Final Adjustment Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

- (A) Pay the balance of tax still due; or
- (B) Carry-over the excess credit; or
- (C) Be credited or refunded with the excess amount paid, as the case may be.