743 Phil. 302

FIRST DIVISION

[G.R. No. 190198, September 17, 2014]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. CE LUZON GEOTHERMAL POWER COMPANY, INC., RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated September 1, 2009 and the Resolution[3] dated November 6, 2009 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 474 which affirmed the Decision[4] dated November 25, 2008 and the Resolution[5] dated March 9, 2009 of the CTA Second Division (CTA Division) in C.T.A. Case Nos. 6792 and 6837 ordering petitioner Commissioner of Internal Revenue (CIR) to issue a refund or a tax credit certificate in the amount of P13,926,697.51 in favor of respondent CE Luzon Geothermal Power Company Inc. (CE Luzon).

The Facts

CE Luzon is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and engaged in the business of power generation. Being one of the generating companies recognized by the Department of Energy – and pursuant to the provisions of Republic Act No. (RA) 9136,[6] otherwise known as the "Electric Power Industry Reform Act of 2001," which took effect on June 26, 2001 – it treated the delivery and supply of electric energy to the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) as value-added tax (VAT) zero-rated.[7]

On October 25, 2001, CE Luzon timely filed its VAT return for the third quarter of 2001, in which it declared unutilized input VAT in the amount of P2,921,085.31. On January 10, 2002, April 10, 2002, May 15, 2003, May 15, 2003, and April 1, 2003, respectively, it likewise filed its VAT returns for the fourth quarter of 2001 and all quarters of 2002 whereby it declared unutilized input VAT in the amount of P21,229,990.80.[8]

On September 26, 2003, CE Luzon filed an administrative claim for refund of unutilized input VAT for the third quarter of 2001 before the Bureau of Internal Revenue (BIR). Alleging inaction on the part of the CIR, it filed a judicial claim for refund before the CTA on September 30, 2003, docketed as C.T.A. Case No. 6792.[9]

Thereafter, on December 18, 2003, CE Luzon likewise filed an administrative claim for refund of unutilized input VAT for the fourth quarter of 2001 and all quarters of 2002 before the BIR. It then filed a judicial claim for such refund before the CTA on December 19, 2003, docketed as C.T.A. Case No. 6837.[10]

In its answer to the judicial claims in both C.T.A. Case Nos. 6792 and 6837, the CIR alleged, *inter alia*, that CE Luzon's claims for refund are subject to its administrative investigation/examination; and that CE Luzon has the burden to prove its entitlement thereto.[11]

On oral motion of CE Luzon, the CTA First Division issued a Resolution dated March 1, 2004 ordering the consolidation of C.T.A. Case Nos. 6792 and 6837.[12]

The CTA Division Ruling

In a Decision[13] dated November 25, 2008, the CTA Division partially granted CE Luzon's claims for refund, ordering the CIR to refund or issue a tax credit certificate in favor of CE Luzon in the amount of P13,926,697.51, representing the unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters of 2001 and all quarters of 2002.[14]

The CTA Division found that while CE Luzon incurred input VAT in the amount of P25,749,880.18, only P13,926,697.51 should be allowed as refund for the following reasons: (a) input VAT in the amount of P10,199,791.42 was disallowed for failure to meet the substantiation requirements laid down by law; and (b) input VAT in the amount of P1,598,804.08 was offset against the output VAT liability of CE Luzon.[15]

The CTA Division further found that petitioner timely filed its administrative and judicial claims for refund as they were filed within the prescriptive period provided by law, *i.e.,* within two (2) years from the date of filing of the corresponding quarterly VAT returns.[16]

Both parties moved for partial reconsideration, which were, however, denied in a Resolution[17] dated March 9, 2009. Aggrieved, the CIR appealed to the CTA *En Banc*, contending that: (a) CE Luzon's administrative claims are *pro forma* in that it failed to submit at the administrative level all the necessary documents to prove entitlement to their claims for refund; and (b) CE Luzon filed its judicial claims prematurely in violation of Section 112(D) of the National Internal Revenue Code (NIRC).[18]

On the other hand, records are bereft of any showing that CE Luzon appealed the partial denial of its claims for refund which had, thus, lapsed into finality.

The CTA *En Banc* Ruling

In a Decision[19] dated September 1, 2009, the CTA *En Banc* denied the CIR's appeal, and accordingly affirmed the CTA Division's Ruling.[20] It held that CE Luzon's non-submission of the complete supporting documents at the administrative level did not make its administrative claims *pro forma*, holding that their non-submission will not necessarily result in the dismissal of its judicial claims for lack of jurisdiction. In this relation, the CTA *En Banc* opined that all that is required is for the taxpayer to elevate its claim for refund to the CTA within 30 days from receipt of the denial of its administrative claim or after the expiration of the 120-day period granted to the CIR to decide on such administrative claim, which must all be done

within two (2) years from payment of the tax.[21]

Corollary thereto, the CTA *En Banc* further held that CE Luzon's judicial claims were not prematurely filed, despite the fact that it filed its petitions for review before the CTA only days after it filed its administrative claims before the BIR. It opined that the use of the word "may" in Section 112 (D) of the NIRC indicates that judicial recourse within 30 days after the lapse of the 120-day period is directory and permissive, and is neither mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period enshrined in Section 229 of the NIRC.[22]

Aggrieved, the CIR moved for reconsideration which was, however, denied in a Resolution[23] dated November 6, 2009, hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CTA *En Banc* correctly ruled that CE Luzon did not prematurely file its judicial claims for refund.

The Court's Ruling

The petition is partly meritorious.

Executive Order No. 273, series of 1987,[24] or the original VAT law first allowed the refund or credit of unutilized excess input VAT. Thereafter, the provision on refund or credit was amended several times by RA 7716,[25] RA 8424,[26] and RA 9337,[27] which took effect on July 1, 2005. Since CE Luzon's claims for refund covered periods before the effectivity of RA 9337, Section 112 of the NIRC, as amended by RA 8424, should apply, to wit:

> Section 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: x xx.
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> x x x x
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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.
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> 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