721 Phil. 202

FIRST DIVISION

[G.R. No. 188260, November 13, 2013]

LUZON HYDRO CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

This case involves a claim for refund or tax credit to cover petitioner Luzon Hydro Corporation's unutilized Input Value-Added Tax (VAT) worth P2,920,665.16 corresponding to the four quarters of taxable year 2001.

The Case

The petitioner brought this action in the Court of Tax Appeals (CTA) after the Commissioner of Internal Revenue (respondent) did not act on the claim (CTA Case No. 6669). The CTA 2nd Division denied the claim on May 2, 2008 on the ground that the petitioner did not prove that it had zero-rated sales for the four quarters of 2001.[1] The CTA *En Banc* denied the petitioner's motion for reconsideration, and affirmed the decision of the CTA 2nd Division through its decision dated May 5, 2009.[2] Hence, the petitioner appeals the decision of the CTA *En Banc.*

Antecedents

The petitioner, a corporation duly organized under the laws of the Philippines, has been registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under Taxpayer Identification No. 004-266-526. It was formed as a consortium of several corporations, namely: Northern Mini Hydro Corporation, Aboitiz Equity Ventures, Inc., Ever Electrical Manufacturing, Inc. and Pacific Hydro Limited.

Pursuant to the Power Purchase Agreement entered into with the National Power Corporation (NPC), the electricity produced by the petitioner from its operation of the Bakun Hydroelectric Power Plant was to be sold exclusively to NPC.[3] Relative to its sale to NPC, the petitioner was granted by the BIR a certificate for Zero Rate for VAT purposes in the periods from January 1, 2000 to December 31, 2000; February 1, 2000 to December 31, 2000 (Certificate No. Z-162-2000); and from January 2, 2001 to December 31, 2001 (Certificate No. 2001-269). [4]

The petitioner alleged herein that it had incurred input VAT in the amount of P9,795,427.89 on its domestic purchases of goods and services used in its generation and sales of electricity to NPC in the four quarters of 2001;[5] and that it had declared the input VAT of P9,795,427.89 in its amended VAT returns for the four quarters on 2001, as follows:[6]

Exhibit	Date Filed	Period Covered	Input VAT (P)
F	May 25, 2001	1st quarter- 2001	1,903,443.96
I	July 23, 2001	2nd quarter- 2001	2,166,051.96
L	July 23, 2002	3rd quarter- 2001	1,598,482.39
O	July 24, 2002	4th quarter- 2001	4,127,449.58
			Total 9,795,427.89

On November 26, 2001, the petitioner filed a written claim for refund or tax credit relative to its unutilized input VAT for the period from October 1999 to October 2001 aggregating P14,557,004.38.[7] Subsequently, on July 24, 2002, it amended the claim for refund or tax credit to cover the period from October 1999 to May 2002 for P20,609,047.56.[8]

The BIR, through Revenue Examiner Felicidad Mangabat of Revenue District Office No. 2 in Vigan City, concluded an investigation, and made a recommendation in its report dated August 19, 2002 favorable to the petitioner's claim for the period from January 1, 2001 to December 31, 2001.[9]

Respondent Commissioner of Internal Revenue (Commissioner) did not ultimately act on the petitioner's claim despite the favorable recommendation. Hence, on April 14, 2003, the petitioner filed its petition for review in the CTA, praying for the refund or tax credit certificate (TCC) corresponding to the unutilized input VAT paid for the four quarters of 2001 totalling P9,795,427.88.[10]

Answering on May 29, 2003,[11] the Commissioner denied the claim, and raised the following special and affirmative defenses, to wit:

> x x x x
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> 7. The petitioner has failed to demonstrate that the taxes sought to be refunded were erroneously or illegally collected;
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> 8. In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;
>
> 9. It is incumbent upon petitioner to show compliance with the provisions of Section 112 and Section 229, both of the National Internal Revenue Code, as amended;
>
> 10. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such they are looked upon [with] disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121);
>
> 11. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence, not refundable.[12]

x x x x

On October 30, 2003, the parties submitted a Joint Stipulation of Facts and Issues, [13] which the CTA in Division approved on November 10, 2003. The issues to be resolved were consequently the following:

> 1. Whether or not the input value added tax being claimed by petitioner is supported by sufficient documentary evidence;
>
> 2. Whether petitioner has excess and unutilized input VAT from its purchases of domestic goods and services, including capital goods in the amount of P9,795,427.88;
>
> 3. Whether or not the input VAT being claimed by petitioner is attributable to its zero-rated sale of electricity to the NPC;
>
> 4.Whether or not the operation of the Bakun Hydroelectric Power Plant is directly connected and attributable to the generation and sale of electricity to NPC, the sole business of petitioner; and
>
> 5. Whether or not the claim filed by the petitioner was filed within the reglementary period provided by law.[14]

While the case was pending hearing, the Commissioner, through the Assistant Commissioner for Assessment Services, informed the petitioner by the letter dated March 3, 2005 that its claim had been granted in the amount of P6,874,762.72, net of disallowances of P2,920,665.16. Accompanying the letter was the TCC for P6,874,762.72 (TCC No. 00002618).[15]

On May 3, 2005, the petitioner filed a Motion for Leave of Court to Amend Petition for Review in consideration of the partial grant of the claim through TCC No. 00002618. The CTA in Division granted the motion on May 11, 2005, and admitted the Amended Petition for Review, whereby the petitioner sought the refund or tax credit in the reduced amount of P2,920,665.16. The CTA in Division also directed the respondent to file a supplemental answer within ten days from notice.[16]

When no supplemental answer was filed within the period thus allowed, the CTA in Division treated the answer filed on May 16, 2003 as the Commissioner's answer to the Amended Petition for Review.[17]

Thereafter, the petitioner presented testimonial and documentary evidence to support its claim. On the other hand, the Commissioner submitted the case for decision based on the pleadings.[18] On May 2, 2007, the case was submitted for decision without the memorandum of the Commissioner.[19]

Ruling of the CTA in Division

The CTA in Division promulgated its decision in favor of the respondent denying the petition for review, *viz*:

> In petitioner's VAT returns for the four quarters of 2001, no amount of zero-rated sales was declared. Likewise, petitioner did not submit any VAT official receipt of payments for services rendered to NPC. The only proof submitted by petitioner is a letter from Regional Director Rene Q. Aguas, Revenue Region No. 1, stating that the financial statements and annual income tax return constitute sufficient secondary proof of effectively zero-rated and that based on their examination and evaluation of the financial statements and annual income tax return of petitioner for taxable year 2000, it had annual gross receipts of PhP187,992,524.00. This Court cannot give credence to the said letter as it refers to taxable year 2000, while the instant case refers to taxable year 2001.
>
> Without zero-rated sales for the four quarters of 2001, the input VAT payments of PhP9,795,427.88 (including the present claim of PhP2,920,665.16) allegedly attributable thereto cannot be refunded. It is clear under Section 112 (A) of the NIRC of 1997 that the refund/tax credit of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales.
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> x x x x
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> For petitioner's non-compliance with the first requisite of proving that it had effectively zero-rated sales for the four quarters of 2001, the claimed unutilized input VAT payments of PhP 2,920,665.16 cannot be granted.
>
> **WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.
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> **SO ORDERED.**[20]

On May 21, 2008, the petitioner moved to reconsider the decision of the CTA in Division.[21] However, the CTA in Division denied the petitioner's motion for reconsideration on September 5, 2008.[22]

Decision of the CTA *En Banc*

On October 17, 2008, the petitioner filed a petition for review in the CTA *En Banc* (CTA E.B No. 420), posing the main issue whether or not the CTA in Division erred in denying its claim for refund or tax credit upon a finding that it had not established its having effectively zero-rated sales for the four quarters of 2001.

On May 5, 2009, the CTA *En Banc* promulgated the assailed decision affirming the Division, and denying the claim for refund or tax credit, stating:

> The other argument of petitioner that even if the tax credit certificate will not be used as evidence, it was able to prove that it has zero-rated sale

as shown in its financial statements and income tax returns quoting the letter opinion of Regional Director Rene Q. Aguas that the statements and the return are considered sufficient to establish that it generated zero-rated sale of electricity is bereft of merit. As found by the Court *a quo*, the letter opinion refers to taxable year 2000, while the instant case covers taxable year 2001; hence, cannot be given credence. Even assuming for the sake of argument that the financial statements, the return and the letter opinion relates to 2001, the same could not be taken plainly as it is because there is still a need to produce the supporting documents proving the existence of such zero-rated sales, which is wanting in this case.

Considering that there are no zero-rated sales to speak of for taxable year 2001, petitioner is, therefore, not entitled to a refund of PhP2,920,665.16 input tax allegedly attributable thereto since it is basic requirement under Section 112 (A) of the NIRC that there should exists a zero-rated sales in order to be entitled to a refund of unutilized input tax.

It is settled that tax refunds, like tax exemptions, are construed strictly against the taxpayer and that the claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund. Failure in this regard, petitioner's claim must therefore, fail.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.[23]

On June 10, 2009, the CTA En Banc also denied the petitioner's motion for reconsideration.[24]

Issue

Aggrieved, the petitioner has appealed, urging as the lone issue: –

WHETHER THE CTA EN BANC COMMITTED A REVERSIBLE ERROR IN AFFIRMING THE DECISION OF THE CTA.

In its August 3, 2009 petition for review,[25] the petitioner has argued as follows:

(1) Its sale of electricity to NPC was automatically zero-rated pursuant to Republic Act No. 9136 (EPIRA Law); hence, it need not prove that it had zero-rated sales in the period from January 1, 2001 to December 31, 2001 by the presentation of VAT official receipts that would contain all the necessary information required under Section 113 of the National Internal Revenue Code of 1997, as implemented by Section 4.108-1 of Revenue Regulations No. 7-95. Evidence of sale of