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FIRST DIVISION

[G.R. No. 184266, November 11, 2013]

APPLIED FOOD INGREDIENTS COMPANY, INC., 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 Applied Food Ingredients, Company, Inc. (petitioner). The Petition assails the Decision[2] dated 4 June 2008 and Resolution[3] dated 26 August 2008 of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in C.T.A. EB No. 359. The assailed Decision and Resolution affirmed the Decision[4] dated 13 June 2007 and Resolution[5] dated 16 January 2008 rendered by the CTA First Division in C.T.A. Case No. 6513 which denied petitioner's claim for the issuance of a tax credit certificate representing its alleged excess input taxes attributable to zero-rated sales for the period 1 April 2000 to 31 December 2000.

THE FACTS

Considering that there are no factual issues in this case, we adopt the findings of fact of the CTA *En Banc*, as follows:

> Petitioner is registered with the Regional District Office (RDO) No. 43 of the BIR in Pasig City (BIR-Pasig) as, among others, a Value-Added Tax (VAT) taxpayer engaged in the importation and exportation business, as a pure buy-sell trader.
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> Petitioner alleged that from September 1998 to December 31, 2000, it paid an aggregate sum of input taxes of P9,528,565.85 for its importation of food ingredients, as reported in its Quarterly Vat Return.
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> Subsequently, these imported food ingredients were exported between the periods of April 1, 2000 to December 31, 2000, from which the petitioner was able to generate export sales amounting to P114,577,937.24. The proceeds thereof were inwardly remitted to petitioner's dollar accounts with Equitable Bank Corporation and with Australia New Zealand Bank-Philippine Branch.
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> Petitioner further claimed that the aforestated export sales which transpired from April 1, 2000 to December 31, 2000 were "zero-rated" sales, pursuant to Section 106(A (2)(a)(1) of the N1RC of 1997.
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> Petitioner alleged that the accumulated input taxes of P9,528,565.85 for

> the period of September 1, 1998 to December 31, 2000 have not been applied against any output tax.
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> On March 26, 2002 and June 28, 2002, petitioner filed two separate applications for the issuance of tax credit certificates in the amounts of P5,385,208.32 and P4,143,357.53, respectively.
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> On July 24, 2002, in view of respondent's inaction, petitioner elevated the case before this Court by way of a Petition for Review, docketed as C.T.A. Case No. 6513.
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> In his Answer filed on August 28, 2002, respondent alleged by way of special and affirmative defenses that the request for tax credit certificate is still under examination by respondent's examiners; that taxes paid and collected are presumed to have been made in accordance with law and regulations, hence not refundable; petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not ipso facto warrant the refund/credit or the issuance of a certificate thereto; petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204(C) and 229 of the Tax Code, as amended.[6]

Trial ensued and the CTA First Division rendered a Decision on 13 June 2007. It denied petitioner's claim for failure to comply with the invoicing requirements prescribed under Section 113 in relation to Section 237 of the National Internal Revenue Code (NIRC) of 1997 and Section 4.108-1 of Revenue Regulations No. 7-95.

On appeal, the CTA *En Banc* likewise denied the claim of petitioner on the same ground and ruled that the latter's sales for the subject period could not qualify for VAT zero-rating, as the export sales invoices did not bear the following: 1) the imprinted word "zero-rated;" 2) "TIN-VAT;" and 3) BIR's permit number, all in violation of the invoicing requirements.

THE ISSUES

Petitioner raises this sole issue for the consideration of this Court:

> WHETHER OR NOT THE PETITIONER IS ENTITLED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE OR REFUND OF THE AMOUNT OF P9,528,565.85 REPRESENTING CREDITABLE INPUT TAXES INCURRED FOR THE PERIOD OF SEPTEMBER 1, 1998 TO DECEMBER 31, 2000 WHICH ARE ATTRIBUTABLE TO ZERO-RATED SALES FOR THE PERIOD OF APRIL 1, 2000 TO DECEMBER 31, 2000.[7]

THE COURT'S RULING

The Petition has no merit.

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.

In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*,[8] this Court explained that "the VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. Under the VAT method of taxation, which is invoice-based, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports."

For zero-rated or effectively zero-rated sales, although the sellers in these transactions charge no output tax, they can claim a refund of the VAT that their suppliers charged them.[9]

At the outset, bearing in mind that tax refunds or credits - just like tax exemptions - are strictly construed against taxpayers,[10] the latter have the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.

Section 112 of the NIRC of 1997 laid down the manner in which the refund or credit of input tax may be made, to wit:

> 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 of 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.

This Court finds it appropriate to first determine the timeliness of petitioner's claim in accordance with the above provision.

Well-settled is the rule that the issue of jurisdiction over the subject matter may, at any time, be raised by the parties or considered by the Court *motu proprio*.[11] Therefore, the jurisdiction of the CTA over petitioner's appeal may still be considered and determined by this Court.

Although the *ponente* in this case expressed a different view on the mandatory application of the 120+30 day period as prescribed in the above provision, with the advent, however, of this Court's pronouncement on the consolidated tax cases of *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* [12](hereby collectively referred as San Roque), we are constrained to apply the dispositions therein to similar facts as those in the present case.

To begin with, Section 112(A) provides for a two-year prescriptive period after the close of the taxable quarter when the sales were made, 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.

In this case, petitioner claims that from April 2000 to December 2000 it had zero-rated sales to which it attributed the accumulated input taxes it had incurred from September 1998 to December 2000.

Applying Section 112(A), petitioner had until 30 June 2002, 30 September 2002 and 31 December 2002 - or the close of the taxable quarter when the zero-rated sales were made - within which to file its administrative claim for refund. Thus, we find sufficient compliance with the two-year prescriptive period when petitioner filed its claim on 26 March 2002[13] and 28 June 2002[14] covering its zero-rated sales for the period April to September 2000 and October to December 2000, respectively.

The Commissioner of Internal Revenue (CIR) had one hundred twenty (120) days from the date of submission of complete documents in support of the application within which to decide on the administrative claim.

In relation thereto, absent any evidence to the contrary and 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 filed on 26 March 2002 and 28 June 2002. Therefore, the CIR's 120-day period to decide on petitioner's administrative claim commenced to run on 26 March 2002 and 28 June