

FIRST DIVISION

[G.R. NO. 154028, August 29, 2005]

PHILIPPINE GEOTHERMAL, INC., PETITIONER, VS. THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

QUISUMBING, J.:

The present petition for review on certiorari assails the September 14, 2001 **Decision**^[1] and June 14, 2002 **Resolution**^[2] of the Court of Appeals in CA-G.R. SP No. 54730, which affirmed the April 21, 1999 **Decision**^[3] of the Court of Tax Appeals in C.T.A. Case No. 5541.

The facts of the case as found by the Court of Appeals and Court of Tax Appeals are as follows:

Petitioner is a resident foreign corporation licensed by the Securities and Exchange Commission (SEC) to engage in the exploration, development and exploitation of geothermal energy and resources in the Philippines. In September 1971, it entered into a service contract with the National Power Corporation (NPC) to supply steam to the latter.

From September 1995 to February 1996, petitioner billed NPC, Value Added Tax (VAT) computed at ten percent of the service fee charged on the supply of steam. NPC did not pay the VAT. To avoid any possible tax deficiency, petitioner remitted VAT equivalent to 1/11 of the fees received from NPC or P39,328,775.41, broken down as follows:

Exhibit	Period covered	Payment Date	VAT Paid
C	7/95 to 9/95	10/18/95	P 8,977,117.26
H	10/95 to 12/95	1/18/96	11,248,194.31
M	11/95	12/13/95	8,243,090.27
S	1/96	2/19/96	5,213,400.45
W	2/96	3/18/96	5,646,973.12
			P 39,328,775.41

Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue on July 10, 1996. According to petitioner, the sale of steam to NPC is a VAT-exempt transaction under Sec. 103 of the Tax Code.^[4] Petitioner claimed that Fiscal Incentives Review Board (FIRB) Resolution No. 17-87, approved by President Aquino pursuant to Executive Order No. 93,^[5] expressly exempted NPC from VAT.

Since respondent failed to act on the claim, on July 2, 1997, petitioner filed a petition to toll the running of the two-year prescriptive period before the Court of

Tax Appeals.

Respondent, in his Answer,^[6] averred:

. . .

4. The claim of petitioner Philippine Geothermal Incorporated (PGI for short) for Value-Added Tax refund has no legal basis.

. . .

6. Fiscal Incentives Review Board (FIRB) Resolution 17-87 specifically restored the tax and duty exemption privileges of the NPC, including those pertaining to its domestic purchases of petroleum and petroleum products granted under the terms and conditions of Commonwealth Act 120 as amended, effective March 10, 1987.

However, the restoration of the tax and duty exemption privileges does not apply to importations of fuel oil (crude equivalents) and coal, commercially-funded importations (i.e. importations which include but are not limited to those foreign-based private financial institutions, etc.) and interest income derived from any source. Such exemption also does not include purchases of goods and services. Hence, any contracting services of NPC is not qualified for zero-rated VAT (VAT Ruling 250-89, October, 1989).

7. It is clear from the aforecited FIRB resolution that the tax exemption privilege granted to NPC does not include purchases of goods and services, such as the supply of steam to NPC.

. . .

10. The subject taxes have been paid and collected in accordance with law and regulation.

11. In a claim for refund, it is incumbent upon petitioner to show that it is indubitably entitled thereto. Petitioner's failure to establish the same is fatal to its claim for refund.

12. The present case is no exception to the basic rule that claims for refund are construed strictly against claimant for the same partake of the nature of exemption from taxation.

Simply put, the sole issue in this case is whether petitioner's supply of steam to NPC is a VAT-exempt transaction.

FIRB Resolution No. 17-87 dated June 24, 1987, on which petitioner anchors its claim for tax exemption, provides as follows:

BE IT RESOLVED, AS IT IS HEREBY RESOLVED, That the tax and duty exemption privileges of the National Power Corporation, including those pertaining to its domestic purchases of petroleum and petroleum

products, granted under the terms and conditions of Commonwealth Act No. 120 (Creating the National Power Corporation, defining its powers, objectives and functions, and for other purposes), as amended, are restored effective March 10, 1987, subject to the following conditions:

1. The restoration of the tax and duty exemption privileges does not apply to the following:

1.1 Importation of fuel oil (crude equivalent) and coal;

1.2 Commercially-funded importations (i.e., importations which include but are not limited to those financed by the NPC's own internal funds, domestic borrowings from any source whatsoever, borrowing from foreign-based private financial institutions, etc.); and

1.3 Interest income derived from any source.^[7]

This Supreme Court has confirmed this exemption. In *Maceda v. Macaraig, Jr.*,^[8] this Court ruled that Republic Act No. 358^[9] exempts the NPC from all taxes, duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, and its provinces, cities and municipalities. This exemption is broad enough to include both direct and indirect taxes the NPC may be required to pay. To limit the exemption granted the NPC to direct taxes, notwithstanding the general and broad language of the statute, will be to thwart the legislative intention in giving exemption from all forms of taxes and impositions, without distinguishing between those that are direct and those that are not.

A chronological review of the NPC laws will show that it has been the lawmakers' intention that the NPC is to be completely tax exempt from all forms of taxes - both direct and indirect.^[10]

The ruling dated March 15, 1996, issued to petitioner by Assistant Commissioner Alicia P. Clemeno of the Bureau of Internal Revenue, likewise confirms this exemption:

In view of the foregoing, this Office is of the opinion as it hereby holds, that the supply of steam by your client, Philippine Geothermal, Inc. (PGI) to National Power Corporation NPC/NAPOCOR to be used in generating electricity is exempt from the value-added tax. (BIR Ruling No. 078-95 dated April 26, 1995)^[11]

On April 21, 1999, the CTA ruled that the supply of steam to NPC by petitioner being a VAT-exempt transaction, neither petitioner nor NPC is liable to pay VAT. Petitioner, therefore, may rightfully claim for a refund of the value-added tax paid. The CTA held,

WHEREFORE, in the light of the foregoing, RESPONDENT is hereby ORDERED to REFUND or in the alternative, ISSUE A TAX CREDIT CERTIFICATE to PETITIONER the sum of P9,012,310.26 representing erroneously paid value added tax.