REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SAN ROQUE POWER CORPORATION, *Petitioner,*

CTA CASE NO. 7744

~ *versus* ~

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

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SAN ROQUE POWER CORPORATION, *Petitioner,*

CTA CASE No. 7802

~ *versus* ~

Members:

Acosta, *PJ,*
Uy, *and*
Fabon-Victorino, *JJ.*

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

Promulgated:

JAN 10 2011 ; 1:57 pm

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DECISION

ACOSTA, ***PJ:***

Before Us are the consolidated Petitions for Review involving the unacted administrative claim for refund or tax credit, which represents the alleged excess and unutilized input tax attributable to zero-rated sales in the aggregate amount of P27,663,507.89 for the four quarters of taxable year 2006.

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Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at Barangay San Roque, San Miguel, Pangasinan.[1] It is registered with the Board of Investment on a preferred pioneer status as new operator of hydroelectric power generating plant under Certificate of Registration No. 97-356 dated February 11, 1998.[2] It is registered with the Bureau of Internal Revenue ('BIR') as a VAT taxpayer with TIN 005-017-501-000.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue ("BIR") empowered to perform the duties of her office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other legal processes.[4]

Petitioner filed its first, second, third and fourth quarterly VAT Returns[5] for the taxable year 2006 on April 21, 2006, July 15, 2006, October 19, 2006 and January 22, 2007, respectively, declaring the following:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Zero-Rated Sales/Receipts	1,554,920,044.72	1,577,881,624.63	2,125,662,300.00	1,716,385,780.31
Taxable Sales/Receipts				276,785.71
Output Tax				33,214.28
Input Tax Carried Over from Previous Quarter/ Excess over 70% of Output VAT	40,966,799.34	44,095,090.28	59,624,658.87	48,360,233.27
Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter	271,115.79	504,599.69	860,073.41	1,288,178.98
Input Tax from current transactions	3,361,774.84	15,885,042.31	4,122,741.53	6,143,636.62
Total Available Input Tax	44,599,689.97	60,484,732.28	64,607,473.81	55,792,048.87
Less: Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period	504,599.69	860,073.41	1,306,153.61	2,248,016.10
Total Allowable Input Tax	44,095,090.28	59,624,658.87	63,301,320.20	53,544,032.77
Overpayment	44,095,090.28	59,624,658.87	63,301,320.20	53,510,818.49

It then filed the amended quarterly VAT returns for the first quarter, second and third quarters, and fourth quarter of 2006 on November 7, 2006, November 8, 2006, and February

[1] Respondent's admitted statement, Rollo, pp. 1 and 126.
[2] Paragraph 1 of the Stipulation of Facts, Rollo, p. 187.
[3] Exhibit A; and paragraph 2 of the Stipulation of Facts, Rollo, p. 187.
[4] Respondent's admitted statement, Rollo, pp. 1 and 126.
[5] Exhibits B, D, G and J; par. 4, 5, 6 and 7 of the Stipulation of Facts, Rollo, pp. 187-188.

5, 2007, respectively. Subsequently, it further filed for the second time its amended quarterly VAT returns for the second and third quarters, and fourth quarter of 2006 on February 5, 2007 and May 12, 2007, respectively.[6]

Thereafter, it filed four separate administrative claims with the Bureau of Internal Revenue covering the alleged unutilized input taxes of P2,857,174.95, P15,044,030.82, P4,122,741.54, and P6,223,682.61 for the first, second, and third and fourth quarters of 2006 on April 11, 2007, July 10, 2007, and August 31, 2007, respectively. On September 21, 2007 it subsequently filed its amended administrative claims covering the alleged unutilized input taxes of P3,675,574.21 and P5,311,012.39 for the third and fourth quarters of 2006. Likewise on March 10, 2008, it filed the amended administrative claims covering the alleged unutilized input taxes of P3,128,290.74 and P15,548,630.55 for the first and second quarters of 2006.[7]

Due to respondent's inaction[8] on the foregoing applications for refund and/or issuance of tax credit certificate, petitioner filed on March 28, 2008 the Petition for Review docketed as CTA Case No. 7744 for the refund or tax credit of its alleged excess and unutilized creditable input taxes of P12,114,877.34 for the first, third and fourth quarters of 2006. Likewise, it filed on June 27, 2008 the Petition for Review docketed as CTA Case No. 7802, which was raffled to the Second Division of the Court, for the refund or tax credit of its excess and unutilized creditable input taxes of P15,548,630.55 for the second quarter of 2006, with Motion to Consolidate with CTA Case No. 7744. Subsequently, on July 25, 2008 the Second Division granted herein petitioner's Motion to Consolidate CTA Case No. 7802 with

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[6] Exhibits C, E, H, K, F, I and L; and paragraphs 4, 5, 6 and 7 of the Stipulation of Facts, Rollo, p. 187-188.
[7] Exhibits P, Q, R, S, T, U, V, W, and X, and paragraphs 10-13 of the Stipulation of Facts, Rollo, p. 188.
[8] Paragraph 14, Stipulation of Facts, Rollo, p. 188.

CTA Case No. 7744 subject to the conformity of this Court.[9] On July 28, 2008 this Court granted the consolidation of these cases.[10]

In her Answer,[11] respondent prayed for the dismissal of the Petition for Review. In support thereof, she alleged, as her Special and Affirmative Defense, that petitioner's judicial claim was premature, hence, the Court has no jurisdiction to take cognizance of the instant case.

After trial, this case was submitted for decision on October 22, 2010 with the filing of the parties' respective memoranda.[12]

Both parties presented the following issues[13] for consideration of this Court, *viz*:

1. Whether or not petitioner's administrative claim was timely filed.
2. Whether or not petitioner's judicial claim were timely filed.
3. Whether or not the amount of Php27,663,507.89 represents the accumulated excess input taxes generated and recognized by petitioner within the Year 2006.
4. Whether or not petitioner's accumulated excess input taxes for the Year 2006 were directly attributable to its primary source of revenue which is VAT zero-rated.
5. Whether or not petitioner's VAT zero-rated sale is duly supported by pertinent documents, such as VAT-compliant official receipts and invoices.
6. Whether or not petitioner's accumulated excess creditable input taxes for the Year 2006 is duly supported by pertinent documents, such as VAT-compliant invoices and official receipts.
7. Whether or not the accumulated excess creditable input taxes generated and recognized by petitioner within the Year 2006 in the total amount of Php27,663,507.89 remain unutilized.
8. Whether or not petitioner is entitled to the claim for refund or tax credit in the accumulated amount of Php27,663,507.89 representing its accumulated excess and unutilized creditable input taxes for the Year 2006.

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[9] CTA Case No. 7802, Rollo, p. 44.
[10] CTA Case No. 7744, Rollo, p. 111.
[11] Rollo, pp. 126-134.
[12] Rollo, p. 605.
[13] Paragraphs 1-8, stipulated 'Issues', Joint Stipulation of Facts and Issues, Rollo, pp. 188-189.

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The remedy to claim for the refund of input tax attributable to zero-rated sales is provided in Section 112 (A) and (C) of the National Internal Revenue Code (NIRC), *as amended*, which provides:

> "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 or 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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."
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> "(C) *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 Subsection (A) 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 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."

The case at hand reveals that petitioner's original applications for refund on April 11, 2007, July 10, 2007 and August 31, 2007, as well as its amended applications for refund on March 10, 2008 and September 21, 2007 of its alleged excess and unutilized input tax for the first, second, third and fourth quarters of 2006 were made within the two year period in accordance with the foregoing provision of the NIRC.

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Notwithstanding the timeliness of the administrative claims for refund, the Petitions for Review must fail.

As to petitioner's original applications for refund is concerned, the Commissioner of Internal Revenue has one hundred twenty days or until August 9, 2007, November 7, 2007 and December 29, 2007 within which to make decision. After the lapse of the one hundred twenty day period, petitioner should have elevated its claim with the Court within thirty (30) days starting from August 10, 2007 to September 8, 2007 for its first quarter claim, November 8, 2007 to December 7, 2007 for its second quarter claim, and December 30, 2007 to January 28, 2008 for its third and fourth quarters claims pursuant to Section 112(D) of the NIRC in relation to Section 11 of RA 1125, as amended by Section 9 of RA No. 9282. Unfortunately, the Petitions for Review on March 28, 2008 for the first, third and fourth quarters claims and on June 27, 2008 for the second quarter claim, were filed beyond the 30-day period set by law and therefore, the Court has no jurisdiction to entertain the subject matter of the case considering that the 30-day appeal period provided under Section 11 of RA 1125 is a jurisdictional requirement as held in the case of *Ker & Co., Ltd. vs. Court of Tax Appeals,*[14] *viz*:

> "While the right to appeal a decision of the Collector to the Tax Court is merely a statutory remedy, nevertheless the requirement that it must be brought within thirty days after receipt of the Collector's decision, or ruling is jurisdictional. <u>If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional</u> and failure to comply therewith may be raised in a motion to dismiss. xxx The right to appeal from the decision of the Collector being a statutory right, the same can be invoked only in accordance with the requisites provided by law."
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> *(Emphasis supplied)*

Likewise, if we reckoned the one hundred twenty day period from the date of the amended applications for refund on March 10, 2008 for the first and second quarters claims

[14] No. L-12396, January 31, 1962.

and September 21, 2007 for the third and fourth quarters claims, both Petitions for Review would still be denied.

With respect to the amended application for refund of input tax for the first and second quarters of 2006 on March 10, 2008, the Commissioner of Internal Revenue has one hundred twenty days or until July 8, 2008 within which to make a decision. After the lapse of the said 120-day period, petitioner had thirty days or until August 7, 2008 within which to appeal to this Court. Petitioner, however, appealed via Petitions for Review on March 28, 2008 for its first quarter claim and on June 27, 2008 for its second quarter claim, which are clearly before the lapse of the 120-day period. This violates the rule on exhaustion of administrative remedies.

The rule on exhaustion of administrative remedies before resorting to the court means that there should be an orderly procedure which favors a preliminary administrative sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency, avoidance of interference with functions of the administrative agency by withholding judicial action until the administrative process has run its cause, and prevention of attempts to swamp the courts by a resort to them in the first instance.[15] A party seeking an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to court action.[16]

The premature invocation of the court's intervention, *like the instant Petitions for Review,* is fatal to one's cause of action; and the case is susceptible of dismissal for failure to state a cause of action.[17] Moreover, such premature appeal will also warrant the dismissal

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[15] Abe-Abe vs. Manta, L-4827, May 31, 1979; 90 SCRA 524.
[16] Commissioner of Internal Revenue vs. Rosemarie Acosta, G.R. No. 154068, August 3, 2007.
[17] Ilo-ilo City Zoning Board of Adjustment and Appeals vs. Gegato-Abecia Funeral Homes, Inc. G.R. No. 157118, December 8, 2003.

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of the Petitions for Review inasmuch as no jurisdiction was acquired by the Court in line with the recent pronouncement made by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[18]

As far as the amended application for refund covering the third and fourth quarter filed on September 21, 2007 is concerned, the Commissioner of Internal Revenue has one hundred twenty days or until January 19, 2008 within which to make a decision. After the lapse of the said one hundred twenty day period, petitioner should have elevated its claim with the Court within thirty (30) days starting from January 20, 2008 to February 18, 2008. Unfortunately, the Petition for Review covering said third and fourth quarter was filed March 28, 2008 beyond the 30-day period set by law and therefore, the Court has no jurisdiction to entertain the subject matter of the case.

Other issues raised now becomes moot and academic.

WHEREFORE, these consolidated Petitions for Review, CTA Case Nos. 7744 covering the first, third and fourth quarter and 7802 covering second quarter are hereby **DISMISSED** since the Court has no jurisdiction thereof.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

ERLINDA P. UY
Associate Justice

ESPERANZA FABON-VICTORINO
Associate Justice

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[18] G.R. No. 184823, October 6, 2010.

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals First Division in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice