REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE GEOTHERMAL PRODUCTION COMPANY INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9048

Members:

CASTAÑEDA, JR., Chairperson,
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

MAR 2 1 2018

2:35 p.m.

x- -x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

In this Petition for Review, petitioner Philippine Geothermal Production Company, Inc. seeks to assail the adverse decision of the Commissioner of Internal Revenue on its claim for refund or tax credit in the amount of ₱14,145,000.00, allegedly representing its unutilized input Value-Added Tax (VAT) for the fourth (4^{th}) quarter of taxable year 2012.

THE FACTS

Petitioner Philippine Geothermal Production Company, Inc. is a domestic corporation engaged in the development and utilization of minerals, mineral oils, geothermal and other similar products, among others.[1] It is duly registered with the Securities and Exchange Commission[2] and with the Bureau of Internal Revenue (BIR) with Tax Identification No. 214-127-981-000.[3] Petitioner holds office at the 14th Floor, 6750 Ayala Avenue, Makati City.

On the other hand, respondent is the duly appointed Commissioner of the BIR empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

During the fourth quarter of taxable year 2012, petitioner had zero-rated sales in the amount of ₱355,077,241.24.[4] It likewise made royalty payments to its non-resident suppliers in December 2012 amounting to ₱117,875,000.00, which was subjected to twelve percent (12%) VAT amounting to ₱14,145,000.00.[5]

On December 22, 2014, petitioner filed its claim for refund or tax credit in the total amount of ₱14,145,000.00, along with supporting documents with the BIR Large Taxpayers Excise Audit Division I (LTEAD I), pursuant to Sections 112(A) and 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Section 4.108-5(b)(7) of Revenue Regulations (RR) No. 16-2005.[6]

On April 15, 2015, petitioner received a letter from the BIR denying its claim for refund or tax credit.[7]

---

[1] Exhibit "P-3", docket, vol. III, p. 804.
[2] Exhibit "P-1", docket, vol. III, p. 765.
[3] Exhibit "P-4", docket, vol. III, p. 820.
[4] Exhibit "P-29", docket, vol. III, p. 948.
[5] Exhibits "P-23" and "P-26" to "P-28, docket, vol. III, pp. 914, 946-947, and 1193; BIR records, pp. 194-196.
[6] Exhibits "P-21" and "P-22", docket, vol. III, pp. 907-913.
[7] Exhibit "P-45", docket, vol. III, pp. 965-967.

As a result, petitioner filed the instant case before this Court on May 15, 2015.

On June 15, 2015, respondent filed through registered mail his Answer[8], interposing the following special and affirmative defenses:

> "**It is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not ipso fact granted upon filing of the claim.**
>
> xxx xxx xxx
>
> 5. Respondent submits that petitioner failed to demonstrate that the amount of P14,145,000.00 which is the subject of the case at bar was erroneously or illegally collected. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provisions of law.
>
> 6. Before the instant Petition for Review should be given due course, petitioner should prove that it submitted the relevant pieces of documents to substantiate its claim and had observed the procedure laid down in Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which reads:
>
> xxx xxx xxx
>
> 7. 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

[8] Docket, vol. I, pp. 49-59.

day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

8. Clearly, the law requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law**, petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim.

9. Furthermore, said Section 112 (C) clearly states that there should be a prior administrative claim filed with respondent before judicial resort can be had in the Court of Tax Appeals, where relevant documents must be submitted by the taxpayer to support its claim for refund. Failure on the part of the taxpayer to file the administrative claim and submit relevant documents on the administrative level, makes the administrative claim for tax refund or credit pro-forma and shall be construed as if no administrative claim was filed at all.

10. In case such as this, before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before **trial de novo** proceeds and disposes of the issue of refund entitlement under **substantive law**, it must first be proved that there was **procedural** compliance in pursuing the administrative claim leading to the **appellate** proceedings. As stated by the Honorable Supreme Court:

> 'Petitioner's contention that non-compliance with Revenue Regulations No. 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to

> appreciate the nature of the proceedings in that court. **First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.**' *(Emphasis and underscoring supplied)*

11. Petitioner failed to substantiate its claim for refund/issuance of tax credit certificate in the amount of P14,145,000.00 representing alleged erroneously paid input taxes for the tax year 2012.

12. The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows: ~~

xxx xxx xxx

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

xxx xxx xxx

5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives if applicable

6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable

7) Proof of exemption under special law, if applicable

8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable

9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable

xxx xxx xxx

13. In the case entitled ***Commissioner of Internal Revenue vs. Rosemarie Acosta***, the Supreme Court had the occasion to say:

xxx xxx xxx

14. In the present case, petitioner failed to submit all the necessary documents needed for the application of its VAT refund.

15. The purpose of requiring the filing of the administrative claim for refund/tax credit and submission of supporting documents relevant to a claim for tax refund/credit is to give the administrative agency concerned the opportunity to ascertain the veracity and validity of the claim. This is the very essence, the very substance of the doctrine of exhaustion of administrative remedies. The doctrine rests upon the presumption that the administrative body, board, or officer, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. Thus, non-compliance with a condition precedent renders the Petition for Review dismissible.

16. The failure of petitioner to substantiate its claim for refund before the office of the respondent and the filing of the instant petition before this Honorable Court deprived respondent of the opportunity to fully exercise her function to decide claims for refund, correct, modify or affirm the findings of her subordinates. It must be remembered, that in the case of ***Jariol vs. Commission on Elections***, the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative body an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

xxx xxx xxx"

On September 3, 2015, the case was scheduled for Pre-Trial Conference. [9] On July 31, 2015, petitioner filed its Pre-Trial Brief, [10] while on August 28, 2015, respondent filed his Pre-Trial

[9] Docket, vol. I, p. 221.
[10] Docket, vol. I, pp. 70-77.

Brief.[11] Consequently, the parties filed their Joint Stipulation of Facts and Issues[12] on September 21, 2015. On October 2, 2015, the Court issued a Pre-Trial Order.[13]

After presentation, marking, identification, and offer, the Court admitted all of petitioner's formally offered documentary evidence.[14] On the other hand, respondent, through counsel, manifested that he has no witness to present.[15]

On May 22, 2017, petitioner filed its Memorandum.[16] On the other hand, respondent failed to file his memorandum.[17] On May 26, 2017,[18] the instant case was submitted for decision. Hence, this Decision.

THE ISSUES

The parties submitted the following stipulated issues[19] for this Court's disposition:

1. Whether petitioner is entitled to a claim for refund of its unutilized input taxes for the 4th quarter of 2012 in the total amount of ₱14,145,000.00;

2. Whether petitioner is a VAT-registered taxpayer;

3. Whether petitioner is engaged in zero-rated sales/receipts or effectively zero-rated sales;

4. Whether the input taxes are due or paid and have not been applied against output taxes during the quarter and in the succeeding quarters;

---

[11] Docket, vol. I, pp. 80-83.
[12] Docket, vol. I, pp. 225-230.
[13] Docket, vol. I, pp. 232-236.
[14] Resolutions dated June 10, 2016 and January 27, 2017, docket, vol. III, pp. 1165-1166 and 1222-1223.
[15] Order dated March 22, 2017, docket, vol. III, p. 1231.
[16] Docket, vol. III, pp. 1243-1263.
[17] Records Verification, Docket, vol. III, p. 1265.
[18] Docket, vol. III, p. 1266.
[19] Statement of the Issues, JSFI, docket, vol. I, p. 226.

5. Whether the input taxes being claimed are attributable to zero-rated or effectively zero-rated sales/receipts; and

6. Whether the claim was filed within two years after the close of the taxable quarter when such expenses were incurred.

THE RULING

Petitioner anchors its claim for refund on Section 112(A) and (C) of the NIRC of 1997, as amended, which are quoted hereunder for ready reference:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(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: *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.

xxx xxx xxx

> (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.
>
> 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."

Based on Section 112(A) and (C) of the NIRC of 1997, as amended, in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1. the claimant must be a VAT-registered person;
2. there must be zero-rated or effectively zero-rated sales;
3. input taxes were incurred or paid;
4. such input taxes are attributable to zero-rated or effectively zero-rated sales;
5. said input taxes were not applied against any output VAT liability; and
6. the administrative and judicial claims for refund were filed within the prescribed period.

The Court shall first determine the timeliness of the filing of petitioner's refund claim. ge

Based on the foregoing provision and the Supreme Court's ruling in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,*[20] a VAT-registered person, such as petitioner,[21] may, within two (2) years from the close of the taxable quarter when the relevant sales were made, file with respondent a claim for refund or tax credit of creditable input tax attributable to such sales.

Petitioner filed its administrative claim with the BIR Large Taxpayers Excise Audit Division I on December 22, 2014.[22] The present claim pertains to a claim for refund or tax credit of input VAT for the fourth quarter of calendar year 2012. Clearly, the claim was filed within two years from the close of the subject taxable quarter.

Section 112(C) of the NIRC of 1997, as amended, provides that the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the decision, as in this case, or from the inaction of respondent after the lapse of the 120-day period.

Records show that petitioner received the BIR's decision on April 15, 2015, denying petitioner's claim for refund in the total amount of ₱14,145,000.00 for lack of factual and legal bases.[23] From the said date, petitioner had 30 days, or until May 15, 2015, to appeal the decision to the Court of Tax Appeals. Hence, the Petition for Review was timely filed on May 15, 2015.[24]

The Court will now proceed to determine petitioner's compliance with the other requirements.

Anent the first requisite, there is no doubt that petitioner is a VAT-registered taxpayer, as evidenced by its BIR Certificate of Registration No. OCN8RC0000038356.[25]

---

[20] G.R. No. 184823, October 6, 2010.
[21] Exhibit "P-4", docket, vol. III, p. 820.
[22] Exhibits "P-21" to "P-22", docket, vol. III, p. 907-913.
[23] Exhibit "P-45", docket, vol. III, pp. 965-967.
[24] Petition for Review, docket, vol. I, p. 14.
[25] Exhibit "P-4", docket, vol. III, p. 820.

As indicated in its Articles of Incorporation, petitioner is primarily engaged in the exploration, development and exploitation of geothermal energy and similar resources.[26]

Pursuant to Republic Act (RA) No. 9513 or the Renewable Energy Act of 2008, renewable energy (RE) developers[27] are entitled to VAT zero-rating treatment of their sale of fuel or power generated from renewable sources of energy, to wit:

> "CHAPTER VII
> GENERAL INCENTIVES
>
> SECTION 15. *Incentives for Renewable Energy Projects and Activities.* – RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, **as duly certified by the DOE**, in consultation with the BOI, shall be entitled to the following incentives:
>
> xxx xxx xxx
>
> (g) *Zero Percent Value-Added Tax Rate.* – The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337." *(Emphasis supplied)*

In relation thereto, Section 108(B)(7) of the NIRC of 1997, as amended, provides:

---

[26] Exhibits "P-1" and "P-3", docket, vol. III, pp. 765-800 and 804-819.

[27] SECTION 4. *Definition of Terms.* – As used in this Act, the following terms are herein defined.
xxx
(pp) "Renewable Energy (Systems) Developers" or "RE Developers" refers to individual/s or group of individuals formed in accordance with existing Philippine Laws engaged in the exploration, development, and utilization of RE resources and actual operation of RE systems/facilities.

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."

Accordingly, the sale of power or fuel generated through geothermal energy is subject to zero-rated value-added tax.

Be that as it may, after perusal of the evidence submitted by petitioner, the Court finds that its sales of power generated through geothermal energy for the fourth quarter of 2012 do not qualify for VAT zero-rating.

While petitioner is registered with the Department of Energy (DOE) as "RE Developer of Geothermal Energy Resources", the same took effect only on April 25, 2013.[28] Simply put, petitioner, during the fourth quarter of 2012, is not yet DOE-certified as RE developer. Hence, it is not entitled at that time to any of the incentives under RA No. 9513, particularly the VAT zero-rating treatment of sale of power generated through geothermal energy.

Moreover, petitioner failed to establish that it is a generation company as defined under Section 4.108-3(f) of RR No. 16-2005,

---

[28] Exhibits "P-6" to "P-7", docket, vol. III, pp. 859 and 897.

implementing Section 108(B)(7) of the NIRC of 1997, as amended, *to wit:*

> "SECTION 4.108-3. *Definitions and Specific Rules on Selected Services.* –
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts: *Provided*, That sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.
>
> ***'Generation companies'* refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity.** For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the R.A. No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities." (*Emphasis supplied*)

Based on the foregoing provision, it is clear that an entity should be authorized by the ERC to operate the generation facility, to be considered as a generation company. Necessarily, said facility is required to secure a Certificate of Compliance (COC) from the ERC.

However, a perusal of the records shows that petitioner failed to present the requisite COC, as proof that it is duly authorized by the ERC to operate a generation facility. Thus, it is not entitled to VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended. *h*

Considering that it has no zero-rated sales for the fourth quarter of 2012, petitioner cannot claim the input taxes withheld on the royalty payments made to its non-resident suppliers.

In view of the foregoing findings, the Court will no longer belabor on the remaining requisites of Section 112 of the NIRC of 1997, as amended.

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

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice