REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

TOLEDO POWER COMPANY, Petitioner,	**CTA CASE NOS. 7233 & 7294**
	Members:
-versus-	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** DEC 01 2010 ; 10:45am

x -x

AMENDED DECISION

CASANOVA, *J.*:

On December 15, 2009, this Court rendered a *Decision* partially granting petitioner's claim for refund or issuance of tax credit certificate in the amount of P185,395.11, representing petitioner's unutilized input value-added tax (VAT) from domestic purchases of taxable goods and services, and importation of goods attributable to zero-rated sales for the first and second quarters of taxable year 2003.

On January 6, 2010, petitioner filed a *Motion for Partial Reconsideration (With Motion for Leave to Submit Supplemental Evidence)* of the said *Decision*, while respondent filed his *Opposition (Re: Motion for Partial Reconsideration)* on January 18, 2010.

On January 19, 2010, respondent likewise filed his *Motion for Partial Reconsideration* and petitioner filed its *Comment (To Respondent's Motion for Partial Reconsideration dated January 18, 2010)* on February 18, 2010.

Both parties seek the reconsideration of this Court's *Decision* promulgated on December 15, 2009, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the consolidated *Petitions for Review* are hereby **PARTIALLY GRANTED** in the reduced amount of P185,395.11. Accordingly, respondent is **ORDERED** to refund or issue a tax credit certificate in the amount of P185,395.11 in favor of petitioner representing its unutilized input VAT for the 1st and 2nd quarters of taxable year 2003.
>
> **SO ORDERED**."

Petitioner anchors its Motion on the following grounds:

> "A.
> PETITIONER HAS SHOWN BY SUFFICIENT AND UNCONTROVERTED EVIDENCE THAT IT IS A GENERATION COMPANY SUBJECT TO ZERO PERCENT VAT.
>
> B.
> PETITIONER HAS PRESENTED AMPLE AND UNCONTROVERTED EVIDENCE CONSISTING OF SUPPORTING DOCUMENTS DULY VERIFIED AND EXAMINED BY THE COURT-COMMISSIONED INDEPENDENT CPA TO PROPERLY SUBSTANTIATE THE CLAIM FOR REFUND OF UNUTILIZED INPUT VAT AMOUNTING TO P6,023,630.94[1]."

In support of its argument, petitioner claims that the attachment of the Energy Regulatory Commission's (ERC) Certificate of Compliance (COC) to the *Petition for Review* disproves this Court's findings that such document was not made of record. Petitioner also contends that this Court should have taken judicial notice of the fact that petitioner is a generation company whose sales of generated power is zero-rated for VAT purposes. Lastly, petitioner states that its alleged failure to

[1] Should be P6,032,630.94

present the ERC COC should not be deemed fatal to its claim considering that it was able to present sufficient and uncontested evidence, apart from the said ERC COC, that it is a generation company.

In support of its second argument, petitioner contends that the presentation of both the invoices and official receipts supporting the zero-rated sales is not required by the prevailing law in effect at the time the input VAT were incurred. Further, petitioner argues that law and revenue regulations do not provide that failure to reflect or indicate in the invoices or receipts of the Bureau of Internal Revenue (BIR) authority to print, as well as the "TIN-V", would result in the outright invalidation of these invoices or receipts.

Respondent, in his *Opposition*, counter-argues that this Court cannot consider the ERC COC since it has been an elementary rule that evidence not formally offered is inadmissible and has no probative value. Furthermore, respondent stresses that in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. And finally, respondent reiterates that claims for refund are construed strictly against the claimant.

Respondent, on the other hand, anchors his *Motion for Partial Reconsideration* on the following ground:

> "THE HONORABLE COURT ERRED IN PARTIALLY GRANTING PETITIONER'S CLAIM FOR REFUND IN THE REDUCED AMOUNT OF P185,395.11 ALLEGEDLY REPRESENTING UNUTILIZED INPUT VAT FOR THE FIRST AND SECOND QUARTERS OF TAXABLE YEAR 2003, BECAUSE PETITIONER HAS NOT SUFFICIENTLY PROVEN ITS ENTITLEMENT TO REFUND AND THAT THE CLAIM WAS NOT FILED IN

> ACCORDANCE WITH THE PROCEDURE PRESCRIBED BY LAW."

In support of his argument, respondent avers that in order to substantiate petitioner's claim for refund, it is imperative for petitioner to prove that it has complied with the registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97, in relation to Section 4.107-1(a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code (NIRC) of 1997. According to respondent, petitioner failed to show that its purchases of goods and services were made in the course of its trade or business. Moreover, respondent argues that it is the responsibility of a taxpayer seeking refund to comply with Section 2(c)(1)(2)(4) of Revenue Regulations No. 3-88, which requires the filing of a photocopy of the purchase invoice or receipt evidencing the value-added tax paid together with the application for refund.

In his *Motion*, respondent also interposes that this Court had no jurisdiction to act on the *Petitions for Review*. In support of said argument, respondent cites Section 112(D) of the NIRC of 1997, which provides that respondent has 120 days within which to process claims for refund of unutilized input tax, to wit:

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

Based on the above-cited provision, respondent asserts that petitioner should give respondent 120 days to process its claim for refund. Petitioner can appeal to this Court within thirty (30) days after the expiration of the 120-day period or from the receipt of the decision of respondent denying its claim for refund. According to respondent, since petitioner did not submit complete documents in support of its administrative claim for refund as stated by Section 112(D) of the NIRC of 1997, the 120-day period started to run on December 23, 2004, the day when it filed its administrative claim for refund. Hence, the 30-day period within which to file the *Petition for Review* before this Court commenced on April 23, 2005 and ended on May 22, 2005. Respondent points out that the *Petition for Review* filed on April 22, 2005[2] was prematurely filed; while the *Petition for Review* filed on July 22, 2005[3] was belatedly filed. Consequently, this Court had no jurisdiction to act on the said petitions.

Petitioner, in its *Comment*, has the following counter-arguments: (1) petitioner has sufficiently proven its entitlement to a refund of unutilized input VAT amounting to P6,032,630.94, through sufficient and uncontroverted pieces of evidence which comply with the requirements of the Tax Code and existing

---

[2] Docketed as CTA Case No. 7233
[3] Docketed as CTA Case No. 7294

regulations; and (2) petitioner's claim for refund has been timely filed, in accordance with the provisions of the Tax Code.

This Court finds merit in respondent's argument that this Court has no jurisdiction to act on the *Petitions for Review* filed by petitioner.

In computing the two-year prescriptive period for claiming refund or issuance of tax credit certificate, the applicable provision is Section 112(A) of the NIRC of 1997, which provides:

> "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 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." (*Emphasis supplied*)

Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.

As held in the assailed *Decision*, the present claim pertains to unutilized input VAT from domestic purchases of taxable goods and services, and importation of goods attributable to zero-rated sales for the first and second quarters of taxable year 2003. Reckoned from March 31, 2003 and June 30, 2003, the close of each taxable quarter covering the first and second quarters of taxable year 2003, petitioner had until March 31, 2005 and June 30, 2005, respectively, within which to file its administrative claim. Hence, petitioner's administrative claim for refund/tax credit filed with the Bureau of Internal Revenue on December 23, 2004 was filed on time.

However, notwithstanding the timely filing of petitioner's administrative claim, this Court has no jurisdiction over the instant *Petitions for Review*.

As held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[4], Section 112(D) of the NIRC clearly provides that the Revenue Commissioner has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the Revenue Commissioner. However, if after the 120-day period respondent fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the Revenue Commissioner to the CTA within 30 days.

In the instant case, the administrative claim was filed on December 23, 2004, but the judicial claims for refund/tax credit for the first and second quarters of taxable year 2003 were filed by petitioner on April 22, 2005 and July 22, 2005, respectively. Applying the ruling in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* to the instant case, this Court finds that the *Petition for Review* filed on April 22, 2005 was filed prematurely, while the *Petition for Review* filed on July 22, 2005 was filed

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

beyond the period provided under Section 112(D) of the NIRC of 1997. Clearly, this Court has no jurisdiction over the consolidated case.

In light of the foregoing considerations, this Court finds legal basis in granting respondent's *Motion for Partial Reconsideration* of the *Decision* dated December 15, 2009 and in rendering this *Amended Decision* pursuant to Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals.

WHEREFORE, respondent's *Motion for Partial Reconsideration* is hereby **GRANTED**; while petitioner's *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit. This Court's *Decision* promulgated on December 15, 2009 is hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner's claim for refund or issuance of tax credit certificate for its unutilized input VAT for the first quarter of taxable year 2003 filed on April 22, 2005 and docketed as CTA Case No. 7233, is hereby **DISMISSED** for being prematurely filed. Likewise, petitioner's claim for refund or issuance of tax credit certificate for its unutilized input VAT for the second quarter of taxable year 2003 filed on July 22, 2005 and docketed as CTA Case No. 7294 is hereby **DISMISSED** for having been filed beyond the period provided by law.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division