REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

STEAG STATE POWER, INC.,
(Formerly State Power Development Corporation),
Petitioner,

~ *versus* ~

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 7458

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STEAG STATE POWER, INC.,
(Formerly State Power Development Corporation),
Petitioner,

~ *versus* ~

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 7554

Members:

Acosta, *PJ,*
Bautista, *and*
Casanova, *JJ.*

Promulgated:

AUG 27 2009; 9:25am

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DECISION

ACOSTA, *PJ:*

This consolidated Petitions for Review seeks for the refund or issuance of a tax credit certificate in the total amount of P670,950,937.97 allegedly representing an unutilized input tax payments on purchases and importations of capital goods from January 1, 2004 to October 31, 2005.

The records of the case disclose that petitioner, formerly known as 'State Power Development Corporation', is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office address at the 20th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, Makati City. It is registered with the Bureau of Internal Revenue ("BIR") as a value-added tax ("VAT") taxpayer with Tax Identification No. 004-626-938-000 as shown on its BIR Certificate of Registration bearing RDO Control No. 9RC0000121415. It is principally engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation ("NPC") under a Build, Operate, Transfer ("BOT") scheme.[1] Respondent, on the other hand, is empowered to act on and approve claims for refund or issuance of tax credit certificate of overpaid internal revenue taxes as provided by law, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons and other court processes.[2]

In connection with the purpose of its existence, petitioner entered into a Registration Agreement with the PHIVIDEC Industrial Authority to conduct and operate its business inside the PHIVIDEC Industrial Estate-Misamis Oriental (PIE-MO).[3] Since 2003, petitioner has been engaged in the construction of its power plant located in PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental, comprising of

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[1] Exhibits A, B, and B-1; pp. 67 and 68, Admitted Facts, CTA Case No. 7458; and pp. 61 and 62, Admitted Facts, CTA Case No. 7554.
[2] Page 67, Admitted Facts, Joint Stipulation of Facts and Issues, CTA Case No. 7458.
[3] Exhibit L.

two (2) 105 megawatts (MW) Coal-Fired Thermal Units and related project facilities[4] and the same was completed on November 15, 2006.[5]

During the construction period, petitioner filed its quarterly VAT returns[6] for the first, second, third and fourth quarters of 2004 on April 26, 2004, July 26, 2004, October 25, 2004 and January 25, 2005, respectively. Subsequently, it filed an amended VAT returns[7] for the said taxable quarters on December 16, 2004 and April 22, 2005, declaring, *among others*, the following:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Input tax carried over	243,485.97	72,600,632.98	74,022,743.37	107,915,494.81
Input tax on:				
Purchases of capital goods	1,027,124.49	298,776.20	24,917,335.32	
Purchases other than capital goods				23,467,686.98
Purchases of service	69,682,549.26	1,123,334.19		
Services by non-resident	1,647,473.26		132,624.10	147,430.64
Importations of capital goods			8,842,792.02	979,100.00
Total available input tax	72,600,632.98	74,022,743.37	107,915,494.81	132,509,712.43

Likewise, in taxable quarters of 2005, petitioner filed its quarterly VAT returns[8] on April 22, 2005, July 26, 2005, October 25, 2005 and January 25, 2006, respectively, declaring, *among others*, the following:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Input tax carried over	132,509,712.43	152,649,870.09	34,700,194.67	52,710,434.48
Input tax on:				
Purchases of capital goods				29,475,318.54
Purchases other than capital goods	1,060,455.29	40,722,526.85	64,215,862.89	56,719,049.53
Services by non-resident	23,820.37	35,671.29	35,612.61	34,478.88
Importations-capital goods	19,055,882.00	336,614,417.00	30,248,991.00	
Total available input tax	152,649,870.09	530,022,485.23	129,200,661.17	138,939,281.43
VAT Refund/TCC claimed		494,551,959.45	76,490,226.69	99,908,751.83
Creditable/Allowable input tax		35,470,525.78	52,710,434.48	39,030,529.60

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[4] Page 68, Jointly Stipulated Facts, CTA Case No. 7458.
[5] Exhibit Z.
[6] Exhibits C, E, G and I.
[7] Exhibits D, F, H and J.
[8] Exhibits N, O, P and Q.

Later, petitioner filed the following administrative claims for refund of its alleged unutilized input tax payments of P670,950,937.97 on purchases and importations of capital goods with the BIR Revenue District Office No. 50 (South Makati)[9]:

Date of Application	Period Covered	Amount of Claim
June 30, 2005	January 1, 2004 to May 31, 2005	P408,768,002.82
August 31, 2005	June 1, 2005 to August 31, 2005	162,274,183.32
October 28, 2005	September 1, 2005 to October 31, 2005	44,988,727.50
December 19, 2005	October 2005	54,920,024.33
TOTAL		**P670,950,937.97**

Due to inaction on the said administrative claims for refund, petitioner was constrained to file on April 20, 2006 the Petition for Review docketed as CTA Case No. 7458 elevating its claim for refund for taxable year 2004. Petitioner likewise sought judicial recourse by way of a Petition for Review on December 27, 2006 docketed as CTA Case No. 7554 involving its claim for refund for taxable year 2005. Petitioner filed the said Petitions for Review to suspend the running of the two-year prescriptive period under the Tax Code and Revenue Regulations No. 7-95 and in order to preserve its right to judicially claim for the refund or the issuance of a tax credit certificate for its unutilized input VAT.[10] These Petitions for Review were later consolidated considering that the parties involved and the questions of law and/or facts presented are the same.[11]

The sole issue for consideration of this Court is whether or not petitioner is entitled to a refund or tax credit in the total amount of P670,950,937.97 allegedly

[9] Exhibits K; page 69, Jointly Stipulated Facts, CTA Case No. 7458; and page 62, Admitted Facts, CTA Case No. 7554.
[10] Page 70, Jointly Stipulated Facts, CTA Case No. 7458; and page 63, Admitted Facts, CTA Case No. 7554.
[11] Resolution dated October 24, 2007, page 197, *Rollo*, CTA Case No. 7458 which confirmed the October 1, 2007 Resolution of the Second Division granting the consolidation of the cases pursuant to Section 1, Rule 31 of the 1997 Rules of Civil Procedure.

representing its unutilized input tax paid on purchases and importations of capital goods from January 1, 2004 to October 31, 2005.

Refund or tax credit of input tax on capital goods is sanctioned by Sections 112(B) and (D) of the 1997 National Internal Revenue Code (NIRC), *viz*:

> "Sec. 112. *Refunds or Tax Credits of Input Tax.* –
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> xxx xxx xxx
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> (B) Capital Goods. – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.
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> xxx xxx xxx
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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.
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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."

To be entitled to a refund or tax credit of input tax on capital goods, the above provisions of the 1997 NIRC requires petitioner to establish the following:

1. It is a VAT-registered person;
2. It paid input tax on its importation or purchase of capital goods;
3. It did not apply the input tax payments on capital goods against output tax during and in the succeeding period of its claim; and
4. The timeliness of its administrative application for refund or tax credit of input tax, which must be within two years after the close of the taxable quarter when the importation or purchase was made, and its subsequent appeal with this Court.

We are now going to determine petitioner's compliance with the aforementioned requirements.

It is undisputed fact that petitioner is a VAT-registered taxpayer as per Certificate of Registration issued by the BIR.[12] Having established this important requirement, it is fitting to determine next the timeliness of petitioner's application for refund and its subsequent judicial recourse with this Court before discussing the substantiation requirements of the case.

As quoted earlier, it is settled rule that a VAT-registered person may apply for the issuance of a tax credit certificate or refund of input tax on capital goods within two years after the close of the taxable quarter when the importation or purchase was made pursuant to Section 112(B) of the 1997 NIRC; and that an appeal may be made with the CTA within thirty (30) days from receipt of the decision of the Commissioner denying the claim or after the expiration of the one hundred twenty day-period without action on the part of the Commissioner pursuant to Section 112(D) of the same Code.

Petitioner's administrative applications for refund or tax credit of its alleged unutilized input tax on June 30, 2005 covering its claim from January 2004 to May 2005; on August 31, 2005 involving its claim from June 2005 to August 2005; on October 28, 2005 relating to its claim from September 2005 to October 2005; and on December 19, 2005 which covered its increased claim for the month of October 2005, were well within the two year prescriptive period reckoned from the close of the

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[12] Exhibit A; Jointly Stipulated Facts, p. 68, CTA Case 7458 *Rollo*; and Admitted Facts, p. 61, CTA Case No. 7554 *Rollo*.

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taxable quarters when the importation or purchase were made pursuant to Section 112(B) of the 1997 NIRC.

With respect to petitioner's claim input tax from January 2004 to May 2005, the 120-day period provided in Section 112(D) of the NIRC ends on October 23, 2005. After the lapse of the said 120-day period, petitioner had only thirty days or until November 22, 2005 within which to appeal to this Court. Considering that the Petition for Review docketed as CTA Case No. 7458 covering the claimed input tax for the four quarters of 2004 was filed only on April 20, 2006 and the other Petition for Review docketed as CTA Case No. 7554 covering in part petitioner's claimed input tax from January 2005 to May 2005 was filed only on December 27, 2006, said Petitions were both filed beyond the period allowed by the provision of the NIRC. Hence, this Court has no jurisdiction to entertain the said judicial claims.

However, petitioner's elevation of its claimed input tax covering the months of June 2005 to October 2005 as part of the Petition for Review docketed as CTA Case No. 7554 on December 27, 2006 was premature. With respect to these applications for refund, the 120-day period provided in Section 112(D) of the NIRC ended on December 29, 2005; February 25, 2006 and April 28, 2006 reckoned from the respective dates when petitioner applied for refund with the BIR on August 31, 2005, October 28, 2005 and December 19, 2005. Supposedly, after the lapse of the said 120-day period, petitioner had thirty days or until January 28, 2006, March 27, 2006 and May 28, 2006, respectively, within which to appeal to this Court pursuant to Section 112(D) of the NIRC. In view of the fact that petitioner elevated its claim before the 120-day period has ended, there was therefore violation of the doctrine of

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exhaustion of administrative remedy. However, considering that non-exhaustion of administrative remedies is not jurisdictional and renders only the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court[13] and considering further that respondent did not raise as a defense the premature invocation by petitioner of the court's intervention at the time when he filed his Answer to the Petition for Review, the said defense is therefore waived pursuant to Section 1, Rule 9 of the Rules of Court.[14] Thus, this Court can entertain petitioner's Petition for Review docketed as CTA Case No. 7554 pertaining to its claimed unutilized input tax of P262,182,935.15 covering the months of June 2005 to October 2005.

We will now determine whether indeed petitioner paid input tax on purchases and importations of capital goods from June 2005 to October 2005.

Scrutiny of the report of the commissioned independent CPA[15] including the official receipts; Bank certification; suppliers' commercial invoices; import entry & internal revenue declarations (IEIRDs)[16] which documents served as basis of the aforesaid report reveals that petitioner paid input tax on importations of power generating equipment and parts acquired from Kawasaki Heavy Industries, Limited, Japan (KHI) as well as on purchases of service from Kawasaki Plant Construction, Inc. (KPCI) and other suppliers of service relative to the construction of petitioner's

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[13] Carale vs. Abarintos, G.R. No. 120704, March 3, 1997.
[14] Rule 9. Effect of Failure to Plead: Section 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.
[15] Exhibit MM.
[16] Exhibits EE to EE57, FF to FF2a, HH to HH187b, II, and KK to KK11.

power plant project. Out of the total claimed unutilized input tax of P262,182,935.15 for the period of June 2005 to October 2005, only P154,397,665.04 input tax payments is duly substantiated by the required supporting documents.[17] The rest of the claimed unutilized input tax cannot be allowed because some of the supporting documents thereof are dated outside the period of claim[18] and some are not supported with documents[19].

While it appears that petitioner paid input tax of P154,397,665.04, nevertheless, it failed to prove that the related purchases and importations were treated as capital goods. The report of the commissioned independent CPA that the invoice amounts of the imported power generating equipment and parts as well as all billings from suppliers of services were booked under the 'Prepayment and Construction in Process account' in the general ledger and the same was reflected as 'Construction in Progress' under the 'Property Plant and Equipment account' in 2005 audited financial statements,[20] cannot be given credence. This Court could not properly identify which purchases of services and importations related to the claimed input tax were allegedly included in the property, plant and equipment account without the presence of the detailed general ledger. Such important document should have been offered as part of petitioner's evidence. In one case,[21] the Court denied petitioner's claim for refund of input tax on purchases of capital goods for failure to prove that the related

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[17] Exhibits EE17 to EE21, EE29 to EE51, HH107 to HH117, HH150 to HH151, HH162 to HH163, and HH165 to HH187.
[18] Exhibits EE22 to EE26, EE52, EE54 to EE57, HH118 to HH149, HH152 to HH161, and HH164, inclusive of sub-markings.
[19] Exhibits GG and II.
[20] Exhibits MM and CCC.
[21] San Roque Power Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 6647, Second Division Decision dated March 8, 2006.

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construction costs were capitalized in its books of accounts and subjected to depreciation. Aside from the general ledger, petitioner must have likewise submitted its 2005 income tax return to prove that the data reflected therein are the same as that declared in the audited financial statements, particularly with respect to the property plant and equipment account.

Settled is the rule that tax refunds, like exemptions, are construed strictly against the taxpayer. Petitioner, as claimant, has the burden of proof to establish the factual basis of its claim for tax credit or refund.[22] Petitioner's failure to present sufficient evidence to prove its claim for refund is fatal to its cause.[23]

WHEREFORE, this consolidated case is hereby DENIED due to insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[22] Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue, 280 SCRA 459.
[23] Paseo Realty & Development Corporation vs. Court of Appeals, G.R. No. 119286, October 13, 2004.

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