REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL 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:
[illegible] 06 2010 ; 4:10 pm

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AMENDED DECISION

This resolves the following:

1. The Motion for Reconsideration (With Motion to Submit Supplemental Evidence) filed by petitioner on September 22, 2009, which prays that the Decision promulgated on August 27, 2009 be reversed and set aside, and for the Court to issue an amended decision granting in its favor the refund in the amount of P670,950,937.97; and

2. The Motion for Reconsideration filed by respondent via registered mail on February 10, 2010, which prays that the Resolution dated January 5, 2010 be

reconsidered and set aside and a new judgment be rendered dismissing the Petition for Review, taking into account petitioner's Comment (Re: Respondent's Motion for Reconsideration dated February 8, 2010) which was posted on March 19, 2010.

As a backdrop, the Court rendered the Decision on August 27, 2009 denying the consolidated case due to insufficiency of evidence. Thereafter, the petitioner filed on September 22, 2009 its Motion for Reconsideration (With Motion to Submit Supplemental Evidence), praying the following relief from the Court:

1. Reverse and set aside the Decision and issue an amended decision in its favor granting the refund of input tax on capital goods amounting to P670,950,937.97;

2. Grant its leave to submit and offer supplemental evidence and allow the admission of the attached documents and/or to recall the previously commissioned ICPA to supplement her report and identify the documents examined in the course of her verification; and

3. On the basis of the supplemental evidence submitted, consider the same as sufficient and competent to prove that its claim for refund of input tax on capital goods is duly substantiated.

Subsequently, the Court, by a majority vote, partially granted the foregoing Motion in a Resolution dated January 5, 2010. In that Resolution, this Court made a partial ruling, applying the two-year prescriptive period to file a claim, that both Petitions for Review were timely filed. However, as far as the substantiation issue of the case is concerned, the same was held in abeyance pending the formal offer of annexes relative to petitioner's Motion. The dispositive portion of this Court's Resolution dated January 5, 2010 reads:

> "**WHEREFORE**, petitioner's *Motion for Reconsideration (With Motion to Submit Supplemental Evidence)* is hereby **PARTIALLY GRANTED**. Accordingly, let this case be set for hearing for the presentation of Annexes "A" and "A-1" (inclusive of sub-markings [Exhibits EEE to ZZZ], inclusive of sub-markings) on January 29, 2010 at 9:00 a.m.
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> Meanwhile, the resolution of petitioner's Motion Reconsideration with regard to the issue of whether petitioner was able to substantiate its claim for a refund or tax credit in the total amount of Php670,950,937.97, allegedly representing its unutilized input tax paid on purchases and importations of capital goods from January 1, 2004 to October 31, 2005, is

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HELD IN ABEYANCE pending the formal offer of said Annexes. Thereafter the *Motion* shall be deemed submitted for resolution.

Furthermore, respondent's Motion to Admit Comment/Opposition is hereby **GRANTED** and his *Comment/Opposition* is hereby **ADMITTED**.

SO ORDERED."

Pursuant to the foregoing Resolution, the hearing was conducted on January 29, 2010. Thereafter, petitioner filed its Supplemental Formal Offer of Evidence on February 8, 2010. Meanwhile, on February 10, 2010 respondent posted his Motion for Reconsideration assailing the Resolution dated January 5, 2010 on the following grounds:

1. Petitioner's judicial claim for refund of input VAT covering the four quarters of 2004 and January 2005 to May 2005 were filed beyond the prescriptive period under Section 112(D) of the 1997 NIRC. Hence, this Honorable Court has no jurisdiction to entertain its judicial claim covering the said period;

2. The general ledger and 2005 income tax return submitted by petitioner are inadmissible as evidence since the same cannot be considered as newly discovered evidence but "forgotten evidence";

3. Petitioner failed to establish the factual and legal basis of its claim for tax credit or refund.

Respondent, thus, prayed that the Resolution dated January 5, 2010 be reconsidered and set aside and another one be rendered dismissing the Petition for Review for palpable lack of merit and for lack of jurisdiction to entertain the instant case.

Within the extended period, petitioner posted on March 19, 2010 its Comment (Re: Respondent's Motion for Reconsideration dated February 8, 2010) stating the following arguments:

1. The Tax Code gives the taxpayer a full 2-year period within which to file an administrative and judicial claim for refund;

2. Republic Act (RA) No. 9337 took effect on November 1, 2005, hence, its claim for refund of input VAT on capital goods from July 1, 2005 to October 31, 2005 has legal basis;

3. The additional evidence cannot be considered as "forgotten evidence"; Respondent's argument regarding the inapplicability of the BPI Family Savings Bank is baseless; and

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4. It has sufficiently proven that it is entitled to a refund of or issuance of TCC in the total amount of Php670,950,937.37 representing its unutilized input VAT payments of Php101,569,776.82 and Php569,381,161.15 for the periods January 1, 2004 to December 31, 2004 and January 1, 2005 to October 31, 2005, respectively.

Petitioner therefore prayed that respondent's Motion for Reconsideration be denied and a judgment be rendered ordering the respondent to make a cash refund of or issue a TCC in its favor in the total amount of P670,950,937.97, representing the unutilized input tax on capital goods from January 1, 2004 to October 31, 2005.

The arguments of the parties boil down into a single issue of whether or not petitioner is entitled to its claim for refund or tax credit of unutilized input tax of P670,950,937.97.

After careful deliberation of this case, this Court is constrained to deny petitioner's Motion for Reconsideration.

Prior to the implementation of Republic Act (RA) No. 9337 on November 1, 2005, refund or tax credit of input tax on capital goods is allowed by RA No. 8424, otherwise known as the 1997 National Internal Revenue Code (NIRC) which took effect on January 1, 1998. Section 112(B) and (D) of the NIRC provides:

> "Sec. 112. Refunds or Tax Credits of Input Tax. –
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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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> "(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."

[illegible]

Applying the foregoing provision of the NIRC in the case at hand reveals that petitioner's applications for refund of unutilized input tax with the BIR Revenue District Office No. 50 (South Makati) on June 30, 2005 covering the period from January 2004 to May 2005 in the amount of P408,768,002.82 and on August 31, 2005, October 28, 2005 and December 19, 2005 covering the period from June 2005 to October 2005 in the aggregate amount of P262,182,935.15[1] were made within two years after the close of the taxable quarter when the importation or purchase was made.

As to its application for refund dated June 30, 2005 is concerned, the Commissioner of Internal Revenue has one hundred twenty days or until October 28, 2005 within which to decide on the claim. 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 October 29, 2003 to November 27, 2005 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 Petition for Review (docketed as CTA Case No. 7458) covering the claimed input tax for the four quarters of 2004 on April 20, 2006 and the other Petition for Review (docketed as CTA Case No. 7554) covering in part the claimed input tax from January 2005 to May 2005 were filed on December 27, 2006, 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 considered by the Supreme Court as a jurisdictional requirement.[2] For this reason, its claimed input tax of P408,768,002.82 should be denied considering that the Petitions for Review were filed beyond the thirty day period allowed by law.

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[1] Exhibit K; page 69, Jointly Stipulated Facts, CTA Case No. 7458; and page 62, Admitted Facts in relation to Annexes D, E, and F of the Petition for Review, CTA Case No. 7554.
[2] Ker & Co., Ltd. vs. Court of Tax Appeals, No. L-12396, January 31, 1962.

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On the other hand, petitioner's appeal to this Court on December 27, 2006 of its claimed input tax of P262,182,935.15 covering the months from June 2005 to October 2005, as part of the Petition for Review docketed as CTA Case No. 7554, 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 18, 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, respectively. Supposedly, after the lapse of the said 120-day period, petitioner had thirty days or until January 28, 2006, March 27, 2006 and May 18, 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, petitioner prematurely filed its appeal which warrants the dismissal of the Petition for Review inasmuch as no jurisdiction was acquired by the Court. This is 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.***[3]

WHEREFORE, respondent's Motion for Reconsideration is hereby **GRANTED** while petitioner's Motion for Reconsideration is hereby **DENIED.** Accordingly, these consolidated cases are hereby **DISMISSED** since the Court has no jurisdiction thereof.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[3] 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, Special First Division in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice