REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PANAY POWER CORPORATION (FORMERLY: AVON RIVER POWER HOLDINGS CORPORATION), Petitioner,	**CTA CASE NO. 7402**
	Members: **BAUTISTA,** and **CASANOVA.**
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 22 2016 ; 1:05 p.m.

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AMENDED DECISION

CASANOVA, *J.*:

This is a remanded case involving the refund/issuance of tax credit certificate in the amount of ₱14,122,347.21, allegedly representing petitioner's unutilized input Value-Added Tax (VAT) paid on its purchases of capital goods and services for the fourth quarter of Calendar Year (CY) 2003.

The facts of the case are narrated in Our Decision dated February 18, 2010 and remain undisputed.

On February 18, 2010, this Court promulgated the Decision[1], denying the Petition for Review for lack of merit.

Petitioner filed a Motion for Reconsideration (Re: Decision dated February 18, 2010) with Motion for Leave to Submit Supplemental

[1] Docket (Vol. II), pp. 753-762.

Evidence with Reservation to Present Additional Evidence on March 10, 2010[2]. The Court granted petitioner's Motion for Leave to Submit Supplemental Evidence and held in abeyance petitioner's Motion for Reconsideration in a Resolution[3] promulgated on April 30, 2010.

Consequently, petitioner submitted its Supplemental Formal Offer of Evidence[4] on July 1, 2010. As such, Exhibits "R", "S", "T" and "U" were admitted in evidence, and the petitioner's Motion for Reconsideration was submitted for resolution on August 31, 2010.[5]

On December 6, 2010, the Court issued an Amended Decision[6], denying the instant Motion for Reconsideration and dismissing petitioner's Petition for Review for being prematurely filed.

In view thereof, petitioner elevated such dismissal to the Court *En Banc* by filing, on January 10, 2011, a Petition for Review[7], which was docketed as CTA EB Case No. 709. Respondent submitted her Comment (Re: Petition for Review)[8] on February 2, 2011. Thereafter, the Court *En Banc* gave due course to the instant petition and required the parties to file their respective memoranda.[9]

Considering petitioner's Memorandum[10] filed on April 15, 2011 and respondent's Manifestation[11] filed on March 8, 2011, stating that she is adopting her Comment to the Petition for Review, filed on January 10, 2011, as her Memorandum, the CTA EB Case No. 709 was submitted for decision on May 18, 2011.[12]

On May 17, 2012, the Court *En Banc* denied the Petition for Review and affirmed the Amended Decision dated December 6, 2010. Petitioner filed a Motion for Reconsideration[13] on June 13, 2012, which was also denied by the Court *En Banc* on August 29, 2012[14].

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[2] Docket (Vol. II), p. 766-785.
[3] Resolution, Docket (Vol. II), pp. 921-922.
[4] Docket (Vol. II), p. 1034.
[5] Resolution, Docket (Vol. II), pp. 1242-1243.
[6] Docket (Vol. II), pp. 1245-1252.
[7] Docket (Vol. III), p. 1268-1313.
[8] Docket (Vol. III), p. 1346-1353.
[9] Resolution dated February 16, 2011, Docket (Vol. III), pp. 1355-1356.
[10] Docket (Vol. III), pp. 1368-1399.
[11] Docket (Vol. III), pp. 1357-1359.
[12] Resolution, Docket, (Vol). III, p. 1401.
[13] Docket (Vol. III), pp. 1442-1487.
[14] Resolution, Docket (Vol. III), pp. 1514-1526.

As a result, petitioner filed on November 29, 2012 its Petition for Review on Certiorari[15] before the Second Division of the Supreme Court, which was docketed as G.R. No. 203351.

On January 21, 2015, the Supreme Court Second Division rendered a Judgment[16] partially granting petitioner's Petition for Review and setting aside the Decision dated May 17, 2012 and the Resolution dated August 29, 2012 of the CTA *En Banc* in CTA EB Case No. 709, and remanded the instant case to the CTA Special First Division for its resolution on the merits.

The Court shall now determine whether petitioner is entitled to a refund or tax credit in the amount of ₱14,122,347.21 allegedly representing its unutilized input VAT paid on its purchases of capital goods and services for the fourth quarter of CY 2003.

Since the present Petition pertains to a refund/credit of unutilized input VAT from purchases of capital goods and services for the fourth quarter of CY 2003, We deem it proper to quote Section 112(B) of the NIRC of 1997, prior to the enactment of Republic Act No. 9337[17], which provides:

> "Section 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

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[15] Docket (Vol. III), pp. 1539-1601.
[16] Docket (Vol. III), p. 1737.
[17] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, which took effect on November 1, 2005. It amended Section 112 of the 1997 NIRC by deleting Subsection (B) on "Capital Goods". Subsections (C) and (D) referring to "Cancellation of VAT Registration" and "Period within which Refund or Tax Credit of Input Taxes shall be Made" were then renumbered as Subsections (B) and (C), respectively.

taxable quarter when the importation or purchase was made."

Based on the foregoing provision, petitioner must comply with the following requisites for it to be entitled to claim for refund or tax credit of input VAT on its capital goods:

1. that it is a VAT registered entity;
2. that input taxes were paid on capital goods duly supported by VAT invoices and official receipts;
3. that such input taxes were not applied against any output VAT liability; and
4. that the claim for refund was filed within the two-year prescriptive period.

As regards the first requisite, it has been jointly stipulated that petitioner is registered with the BIR as a VAT taxpayer with Tax Identification No. 223-606-641-000 as shown in its BIR Certificate of Registration bearing OCN 9RC0000123988.[18]

Anent the third requisite, petitioner was able to establish that its claimed input VAT was not applied against any output VAT liability during the fourth quarter of CY 2003 and in the succeeding quarters as evidenced by its Quarterly VAT Returns from the fourth quarter of CY 2003 to the fourth quarter of CY 2005.

With respect to the fourth requisite, the Supreme Court has already ruled in the Petition for Review on Certiorari that petitioner's judicial claim was deemed timely filed, *viz*:

> "In this case, records disclose that petitioner filed its administrative and judicial claims for refund/credit of its input VAT on December 29, 2005 and January 20, 2006, respectively, or during the period when BIR Ruling No. DA-489-03 was in place, *i.e.*, from December 10, 2003 to October 6, 2010. As such, it need not wait for the expiration of the 120-day period before filing its judicial claim before the CTA, and hence, is deemed timely filed. xxx."

[18] Par. 3, Stipulation of Facts, JSFI, Docket (Vol. I), p. 72.

With regard to the second requisite, the Court finds that petitioner failed to prove the same.

According to petitioner, the amount of ₱14,122,347.21 pertains to the input VAT that petitioner paid on its purchases of capital goods and services consisting of power generation assets located in Iloilo City, which input VAT have not been utilized against any output VAT liability in the fourth quarter of CY 2003 or even in subsequent quarters.[19]

To substantiate its input VAT claim, petitioner submitted various supplier's invoices and official receipts[20]. Petitioner also mentioned that in an affidavit, petitioner's Senior Accounting Manager, Ms. Reymonda Aida B. Obrero, stated that petitioner incurred purchases of capital goods and services for the fourth quarter of CY 2003 in the aggregate amount of ₱141,223,472.15 on which input VAT amounting to ₱14,122,347.21 was paid. She explained that these purchases were made at a time when petitioner was still at a pre-operational stage. All items purchased during this period allegedly relate to the construction of petitioner's power plants which have useful lives of more than one (1) year. Thus, they were allegedly capitalized and reflected in petitioner's books as depreciable assets under the Property, Plant and Equipment (Construction Work In Progress) account. Ms. Obrero further stated that the foregoing purchases of capital goods and services are shown in petitioner's audited financial statements for the CY 2003.[21]

Further, petitioner presented its Audited Financial Statements for CY 2003[22], General Ledger for the Construction Work In Progress Account as of December 31, 2003[23] and Comparative Audited Financial Statements for CYs 2008 and 2007[24]. Ms. Obrero further testified that the entries in the general ledger are postings of all of the petitioner's purchases of capital goods from October 2003 to December 2003. The alleged total amount of the Converted Debit (Dr) column less the Converted Credit (Cr) would result to the amount of ₱414,518,341.00,

[19] Par. 7 of Petition for Review, Docket (Vol. I), p. 2.
[20] Exhibits "Q-1" to "Q-49a".
[21] Exhibit "D".
[22] Exhibit "R".
[23] Exhibit "S".
[24] Exhibit "T".

the same amount reported as the power plant construction in progress in petitioner's financial statements.[25]

Upon verification of the ICPA Report, out of the total input VAT claimed of ₱14,122,347.21, only the amount of ₱1,203,005.40 was properly substantiated by invoices for domestic purchases of goods and by official receipts for domestic purchases of services.[26]

However, despite the submission of the petitioner's General Ledger for the Construction Work In Progress Account as of December 31, 2003, the Court cannot ascertain whether the purchases made were indeed capitalized and reflected in petitioner's books as depreciable assets under the Property, Plant and Equipment (Construction Work In Progress) account and depreciated after its completion. The aforementioned general ledger does not provide specific details so that the Court could account for and reconcile the same with the submitted invoices and official receipts supporting the purchases related to the claimed input VAT of ₱1,203,005.40.

In sum, petitioner still failed to prove that the properly substantiated input VAT of ₱1,203,005.40 pertained to capital goods purchases.

Being a derogation of the sovereign authority, a statute granting tax exemption is strictly construed against the person or entity claiming the exemption. When based on such statute, a claim for tax refund partakes of the nature of an exemption. Hence, the same rule of strict interpretation against the taxpayer-claimant applies to the claim.[27] Indeed, it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, or in the de novo litigation before the CTA in Division.[28]

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

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[25] Exhibit "U".

[26] Exhibit "N".

[27] Western Mindanao Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 181136, June 13, 2012.

[28] *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
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.

LOVELL R. BAUTISTA
Associate Justice

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice