REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CE CASECNAN WATER AND ENERGY COMPANY, INC.,
Respondent.

CTA EB No. 1158
(CTA Case No. 8446)

Present:

Del Rosario, *PJ,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

APR 07 2015 1:25 p.m.

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DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner, Commissioner of Internal Revenue, assailing the *Decision*[1] dated December 16, 2013 and the *Resolution*[2] dated March 25, 2014 of the First Division of the Court partially granting respondent's claim for refund or issuance of tax credit certificate in the reduced amount of P15,729,679.92, representing its unutilized input value-added tax (VAT) for the four quarters of taxable year 2010 attributable to its zero-rated sales of generated power to National Irrigation Administration (NIA).

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[1] *Rollo*, pp. 14-40.
[2] *Rollo*, pp. 41-43.

The Facts

The facts[3], as found by the Court in Division, are as follows:

Petitioner is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of said office, including, among others, the power to decide, approve, and grant refunds or tax credit certificate (TCC) of erroneously paid taxes, as provided by law.

Respondent is a domestic corporation, duly organized and existing under and by virtue of Philippine laws. Its principal office is at Pantabangan, Nueva Ecija.

Respondent was incorporated on September 21, 1994. Its primary purpose is "to design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydro-electric power project and related facilities in Central Luzon, Philippines for the conversion into electricity of water provided for and under contract with the National Irrigation Administration (the "Project"); provided that, in no event shall the corporation itself engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility, or furnish electricity to end-users or consumers, or provide a public service or engage in industries or activities reserved by the Constitution or by law to corporations wholly or partially owned by Filipino Citizens." It is a registered VAT taxpayer with the Bureau of Internal Revenue (BIR) engaged in the business of power generation, with Tax Identification No. 004-500-931-000.

Respondent's multipurpose irrigation and power plant project, with an installed capacity of 140-150 MW hydropower generation power plant component, has been duly accredited and certified as a Private Sector Generation Facility by the Department of Energy. On July 27, 2005, the Energy Regulatory Commission issued Certificate of Compliance No. 05-07-GN8-10701 for respondent's Hydroelectric Generation Facilities, which was renewed on June 21, 2010 by Certificate of Compliance No. 10-06-GN8-10701.

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[3] *Rollo*, pp. 14-17.

On the following dates, respondent filed its Original and Amended Quarterly VAT Returns for the taxable period January 2010 to December 2010:

Exhibit	Period	Date of Filing
Q	January to March 2010	April 26, 2010
G	Jan. to Mar. 2010 (Amended)	November 3, 2011
R	April to June 2010	July 26, 2010
H	April to June 2010 (Amended)	November 3, 2011
S	July to August 2010	October 26, 2010
I	July to August 2010 (Amended)	November 3, 2011
T	September to December 2010	January 25, 2010
J	Sept. to Dec. 2010 (Amended)	November 3, 2011

On November 9, 2011, respondent filed with the Large Taxpayers Excise Audit Division I of the BIR (BIR LTEAD I) an administrative claim for refund or issuance of TCC of its unutilized input VAT for the 1st to 4th quarters of 2010. It allegedly has incurred unutilized input VAT from its purchases of capital goods, as well as non-capital goods, domestic purchases of service, and services rendered by non-residents in the total amount of P37,755,632.06. Of this amount, respondent allegedly did not carry over nor applied against output VAT in succeeding quarters its unutilized input VAT in the amount of P16,000,888.15.

On November 18, 2011, respondent filed with the BIR LTEAD I a copy of a certification issued by the Department of Finance stating that respondent had not filed a similar claim for refund covering the period concerned.

Due to the inaction of petitioner in deciding the administrative claim for refund or issuance of TCC beyond the 120-day period provided for by Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, respondent filed a Petition for Review on March 27, 2012 before the Court in Division.

Petitioner filed her Answer, interposing various special and affirmative defenses.

During trial, only respondent presented its documentary and testimonial evidence while petitioner manifested that she would not present evidence. On June 5, 2013, the case was submitted for decision after the parties filed their respective memoranda.

The First Division, in its Decision[4] dated December 16, 2013, found that respondent has sufficiently proven its entitlement to a refund or issuance of TCC as to the amount of P15,729,679.92. Thus, the Court in Division partially granted respondent's petition for review; ordering petitioner to refund or issue a TCC in favor of respondent the amount of P15,729,679.92, representing the latter's unutilized input VAT incurred for the four quarters of taxable year 2010 attributable to its zero-rated sales of generated power to NIA. Petitioner filed a Motion for Partial Reconsideration, which was denied in the Resolution[5] dated March 25, 2014.

Aggrieved, petitioner filed the instant *Petition for Review* on April 15, 2014.

Respondent was ordered to file its comment within ten (10) days from receipt of the Resolution[6] dated May 28, 2014. Respondent filed its Comment (To Petitioner's Petition for Review)[7] on June 26, 2014.

Considering the issues raised by petitioner, this Court resolved to give due course to the petition and ordered the parties to submit their respective memoranda[8].

Petitioner filed a Manifestation[9] on September 9, 2014 stating that she is adopting the arguments raised in her petitioner for review as her memorandum. Respondent filed a Manifestation[10] on October 2, 2014 likewise stating that it is adopting its comment as its memorandum. Thus, the above-captioned case was submitted for decision on December 4, 2014.

The Issue

The sole issue presented by petitioner is whether or not the First Division of the Court erred in partially granting respondent's claim for refund in the amount of P15,729,679.92 allegedly representing unutilized input VAT

[4] *Supra*, Note 1.
[5] *Supra*, Note 2.
[6] *Rollo*, pp. 48-49.
[7] *Rollo*, pp. 55-63.
[8] *Rollo*, pp. 66-67, Resolution dated August 1, 2014.
[9] *Rollo*, pp. 68-70.
[10] *Rollo*, pp. 73-75.

incurred for the four quarters of taxable year 2010 allegedly attributable to its zero-rated sales of generated power to NIA[11].

The Ruling of the Court

The Petition for Review has no merit.

A perusal of the arguments raised by petitioner in the instant petition shows that they were the very same flawed arguments raised in her Motion for Partial Reconsideration filed before the Court in Division which had been thoroughly discussed and passed upon by the Court in Division in its assailed Decision and Resolution. Be that as it may, the Court *En Banc* will again address the arguments of petitioner to reinforce its ruling.

Petitioner insists that respondent failed to substantiate its claim that it is entitled to the refund prayed for. Respondent failed to comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the NIRC of 1997, as amended, and its implementing regulations under Revenue Regulations No. 16-2005. In addition, respondent was not able to prove that it has strictly complied with the submission of all supporting and relevant documents provided under Revenue Memorandum Order (RMO) No. 53-98.

Likewise, petitioner maintains that respondent failed to prove that no other claim for refund has been filed with the Board of Investment, Department of Finance, Special Economic Zones/Freeport Zones as no certifications from said agencies were presented. Hence, the application for refund must fail. Moreover, respondent has VATable transactions subject to 12% rate. Thus, input tax being claimed by respondent cannot be directly attributable in its entirety to the alleged zero-rated transactions in view of the existence of VATable transactions subject to 12% rate.

However, based on evidence submitted, respondent has sufficiently proven its entitlement to a refund or issuance of TCC of its unutilized input VAT incurred for taxable year 2010 in the reduced amount of P15,729,679.92, computation of which was clearly presented in the assailed Decision. The records also show that respondent, upon the filing of its

[11] *Rollo*, p. 6.

administrative claim for refund on November 9, 2011, simultaneously submitted the documents in support thereof and that on November 18, 2011, respondent submitted a copy of the certification issued by the Department of Finance stating that respondent has not filed a similar claim for refund covering the year 2010. Moreover, in computing the amount of input VAT refund, the Court in Division clearly allocated the substantiated input VAT of P35,162,953.78 among respondent's zero-rated sales, VATable sales to government and VATable sales to private entitles resulting to input VAT attributable to zero-rated sales in the amount of P15,791,375.69. This amount was further reduced to P15,729,679.92 after deducting the Net Output VAT Payable of P61,695.77 attributable to respondent's VATable sales to private entities.

Thus, *We* agree with the Court in Division's ruling quoted below:

> "By way of reiteration, contrary to respondent's [now petitioner] contention that petitioner [now respondent] failed to substantiate its judicial claim for refund, the Court painstakingly reviewed and scrutinized the evidence submitted by petitioner and found that petitioner has sufficiently proven its entitlement to a refund or issuance of a tax credit certificate in the amount of P15,729,679.92, representing its unutilized input VAT incurred for the four quarters of taxable year 2010 which are attributable to its zero-rated sales of generated power to the National Irrigation Administration (NIA).
>
> Anent respondent's contention that petitioner failed to comply with the requirements set forth in RMO No. 53-98 in support of its administrative claim for refund, Revenue Memorandum Circular No. 029-09 is explicit that if the taxpayer failed to present accounting books and records for audit/verification and additional documents to explain discrepancies/findings, it is incumbent upon the BIR to notify the taxpayer. In the present case, there is nothing on record which would show that a written notice was sent by the BIR to petitioner for purposes of informing petitioner that the submitted documents are incomplete or that petitioner is required to submit additional documents.
>
> Respondent's contention that petitioner failed to prove that it has other pending claims for refund covering the same period is belied by the copy of the certification issued by the Department of Finance that petitioner has not filed a similar claim for refund covering the year 2010. Moreover, as aptly pointed out by petitioner, the verification and

> certification attached to the petition for review contains a pronouncement that it has not commenced any other action or proceeding involving the same issues in the Supreme Court, or in any other court, tribunal or agency.
>
> Finally, respondent posits that the input taxes sought to be refunded cannot be *entirely* attributable to petitioner's zero-rated transactions. Nowhere in the assailed Decision, however, did the Court state that the entire input VAT, subject of the claim, is attributable to petitioner's zero-rated sales during the covered period. In fact, of the total substantiated input VAT of P35,162,953.78, the Court determined that only P15,791,375.69 is attributable to zero-rated sales. From petitioner's total input VAT attributable to zero-rated sales of P15,791,375.69, the Court deducted the net amount of P61,695.77 as petitioner's net output VAT payable. Thus, the refundable amount was reduced to P15,729,679.92."

Finding no reversible error, *We* affirm the assailed *Decision* dated December 16, 2013 and *Resolution* dated March 25, 2014 of the First Division.

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

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice