REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

TOLEDO POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 7352 & 7400

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

SEP 3 0 2009

2:30 p.m.

x- x

DECISION

UY, *J*.:

This case is a consolidation of two (2) Petitions for Review praying that judgment be rendered ordering respondent, Commissioner of Internal Revenue, to refund or to issue a tax credit certificate in favor of petitioner in the aggregate amount of ₱ 9,805,908.54, representing alleged unutilized input value-added tax (VAT) of petitioner, Toledo Power Company, arising from its domestic purchases of goods and services and importation of goods attributable to its zero-rated sales of power generation services for the third quarter of taxable year 2003 in the amount of ₱ 3,120,366.79 docketed as C.T.A. Case No. 7352, and for the fourth quarter also of taxable year 2003 in the amount of ₱ 6,685,541.75 docketed as C.T.A. Case No. 7400.

THE FACTS

Culled from the evidence on record and as stipulated by the parties, these are the facts of the case.

Petitioner, Toledo Power Company, is a general partnership duly organized and existing under Philippine laws, with principal office at Sangi, Toledo City, Cebu,[1] principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation, and Atlas Fertilizer Corporation. It is registered with the BIR as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) with Tax Identification No. 003-883-626 and BIR Certificate of Registration bearing RDO Control No. 94-083-000300. It was also issued a Certificate of Compliance under COC No. 04-06-GXT61-0066 dated June 23, 2004 by the Energy Regulatory Commission.[2]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office, including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

It appears that petitioner entered into separate Electric Power Purchase Agreements with Cebu Electric Cooperative III (CEBECO) and the Visayan Electric

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[1] Joint Stipulation of Facts and Issues (JSFI), Admitted Facts, Par. 1, Docket, p. 123.
[2] Exhibit "NN".
[3] JSFI, Admitted Facts, Par. 2, Docket, p. 123.

Cooperative Company (VECO), dated August 9, 2002 and November 19, 2002, respectively.[4]

On June 26, 2001, Republic Act No. (RA) 9136, also known as the "Electric Power Industry Reform Act of 2001" (EPIRA), took effect and the relevant provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, on zero-rated sales were deemed modified. Said law was enacted by Congress to ordain reforms in the electric power industry, highlighting, among others, the importance of ensuring the reliability, security and affordability of the supply of electric power to end-users. The pertinent provisions of RA 9136 and the *Rules and Regulations to Implement Republic Act No. 9136, entitled "Electric Power Industry Reform Act of 2001"* respectively provides as follows:

> "SEC. 6. *Generation Sector.— xxx*
>
> Pursuant to the objective of lowering electricity rates to end-users, **sales of generated power by generation companies shall be value added tax zero-rated**.
>
> *xxx xxx xxx." (Emphasis supplied)*
>
> "RULE 5
> Generation Sector
>
> *xxx xxx xxx*
>
> SECTION 6. *Generation Charges and VAT.—xxx*
>
> (b) **Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by a Generation Company shall, from the effectivity of the Act, be zero-rated for the purpose of imposition of value-added tax.** Towards this end, **the imposition of zero percent (0%) VAT shall apply to the sale of generated power by a Generation Company through all stages of sale until it reaches the End-user.** The DOF, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from effectivity of these Rules." *(Emphases supplied)*

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[4] Exhibits "B" and "C".

On October 27, 2003, petitioner filed its Quarterly VAT Return for the third quarter of taxable year 2003.[5] Thereafter, on January 26, 2004, petitioner filed its Quarterly VAT Return for the fourth quarter of taxable year 2003.[6] Said Return was amended on July 26, 2004.[7]

Pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed on December 23, 2004 with BIR RDO No. 83 an administrative claim for refund of unutilized input VAT for the four (4) quarters of 2003 in the total amount of ₱ 15,838,539.48,[8] invoking Section 112(A) of the NIRC of 1997, as amended, as its basis for the instant claim for refund or issuance of tax credit certificate.[9]

Due to respondent's failure to act on petitioner's claim, petitioner filed a Petition for Review on October 26, 2005, docketed as CTA Case No.7352 (assigned to this Division), for its supposed unutilized input VAT in the amount of ₱ 3,120,366.79 for the third quarter of 2003. Subsequently, petitioner filed a second Petition for Review on January 18, 2006, docketed as CTA Case No. 7400 (assigned to the First Division of this Court), for its supposed unutilized input VAT in the amount of ₱ 6,685,541.75, for the fourth quarter of 2003.

In the Answers[10] filed in CTA Case No. 7352 and 7400, except as to the respective amounts involved in both cases and quoted in italicized manner in paragraph 5 thereof, respondent similarly interposes the following special and affirmative defenses:

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[5] JSFI, Jointly Stipulated Facts, Par. 5, Docket, p. 124. Exhibit "D".
[6] JSFI, Jointly Stipulated Facts, Par. 6, Docket, p. 124. Exhibit "E".
[7] Exhibit "F".
[8] JSFI, Jointly Stipulated Facts, Par. 7, Docket, p. 124.
[9] JSFI, Jointly Stipulated Facts, Par. 8, Docket, p. 124.
[10] Docket, CTA Case No. 7352, pp. 85-86, and Docket, CTA Case No. 7400, p. 98.

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of *"P3,120,366.79 (for CTA Case No. 7352) and P6,685,541.75 (for CTA Case No. 7400)"* being claimed by petitioner allegedly representing unutilized input VAT from its domestic purchases of taxable goods and services and importation of goods attributable to zero-rated sales for the third quarter of calendar year 2003 was not properly documented;

6. 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/credit;

7. Petitioner must show that it has complied with the provisions of Section 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"

On January 31, 2006,[11] petitioner moved for the consolidation of CTA Case No. 7400 with CTA Case No. 7352 before the First Division of this Court. The motion, however, was denied by said Division in the Resolution dated March 8, 2006.[12] Upon petitioner's motion for reconsideration of such denial,[13] the same was granted on April 18, 2006,[14] as both cases involve the same parties and subject matter pertaining to claims for refund or issuance of tax credit certificate for excess input VAT attributable to VAT zero-rated sales, and the difference lies only on the taxable periods and the amounts involved in each Petition.

Thereafter, a consolidated pre-trial was held on June 8, 2006, and the parties jointly agreed to submit a Joint Stipulation of Facts and Issues within fifteen (15)

[11] Docket, pp. 92-94 (CTA Case No. 7400).
[12] Docket, p. 103 (CTA Case No. 7400).
[13] Docket, pp. 109-111 (CTA Case No. 7400).
[14] Docket, pp. 115-116 (CTA Case No. 7400); Docket, pp. 104-105 (CTA Case No. 7352).

days from said date. On June 22, 2006, parties submitted the required pleading and was approved in the Resolution dated July 3, 2006.

During trial, petitioner presented testimonial and documentary evidence primarily aimed at proving its supposed entitlement to the refund or issuance of a tax credit certificate in the total amount of ₱ 9,805,908.54, representing alleged unutilized input VAT for third and fourth quarters of taxable year 2003.

When it was respondent's turn to present evidence on September 15, 2008, his counsel manifested that he is submitting the case for decision based on the pleadings. Accordingly, the parties were granted thirty (30) days to file their respective memorandum,[15] after which this case shall be deemed submitted for decision. Petitioner and respondent filed their Memoranda on April 7, 2009 and April 8, 2009, respectively.

Hence, this Decision.

THE ISSUES

The parties jointly stipulated the following issues[16] for the Court's resolution:

> "1. Whether or not the power generation services rendered by petitioner to its customers are subject to zero-percent (0%) VAT pursuant to the EPIRA and its implementing rules and regulations.
>
> 2. Whether or not petitioner has unutilized input VAT for the third and fourth quarters of calendar year 2003 in the total amount of P9,805,908.54 arising from its domestic purchases of taxable goods and services and importation of goods.
>
> 3. Whether or not the unutilized input VAT are attributable to its zero-rated sales of electricity to its various customers.

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[15] Minutes of Hearing, September 15, 2008, Docket, p. 379; Transcript of Stenographic Notes, September 15, 2008.
[16] Docket, p. 125 (CTA Case No. 7352).

4. Whether or not the administrative claim for refund was seasonably filed.

5. Whether or not the unutilized creditable input taxes for the third and fourth quarters of calendar year 2003 are properly substantiated by invoices and official receipts.

6. Whether or not the unutilized input VAT payments for the third and fourth quarters of calendar year 2003 were carried over to and utilized in the succeeding taxable quarter(s) or applied against any of the output VAT liability of the petitioner.

7. Whether or not petitioner is entitled to a refund and/or issuance of tax credit certificate for the unutilized input VAT payments in the amount of P9,805,908.54."

Petitioner's arguments

Petitioner stresses that the power generation services rendered by petitioner to CEBECO and VECO are subject to zero percent (0%) VAT, pursuant to the EPIRA and its implementing rules and regulations; that it has unutilized input VAT for the third and fourth quarters for calendar year 2003 in the amount of ₱ 9,805,908.54 arising from its purchases of taxable goods and services and importation of goods; that the said unutilized input VAT is attributable to its zero-rated sales; and that the same unutilized input VAT is properly substantiated by invoices and official receipts, and remained unutilized and unapplied against any output VAT liability until they were deducted from petitioner's total available input VAT on the fourth quarter of 2005. Petitioner further submits that the administrative and judicial claims for refund were filed within the period provided under the law.

Respondent's counter-argument

Respondent counters that petitioner has not sufficiently proven its claim in the amount of ₱ 9,805,908.54 representing unutilized VAT input taxes for the third and fourth quarters of 2003 and that this Court has no jurisdiction to act on the instant petitions for review for being belatedly filed. Thus, the instant petition should allegedly be dismissed for lack of merit.

THIS COURT'S RULING

Section 112(A) of the NIRC of 1997, as amended, lays down the requisites for refunds or tax credits of input tax due or paid attributable to zero-rated or effectively zero-rated sales. It reads:

> "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. xxx"

Based on the foregoing, petitioner must comply with the following requisites to be entitled to a refund or issuance of a tax credit certificate, to wit:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input VAT payments were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

We shall first address the fifth requisite as it affects the jurisdiction of this Court to entertain the present appeal. Needless to state, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[17]

The prevailing jurisprudence that establishes the period within which to file the claim for refund or tax credits of unutilized input VAT attributable to zero-rated or

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[17] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.

effectively zero-rated sales is ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)***.[18] The pertinent portion of the High Tribunal's Decision reads:

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
> > (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 <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx. (Emphasis ours.)
>
> The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid**. xxx" (*Emphasis supplied*)

Based on the afore-quoted jurisprudence, the reckoning of the prescriptive period shall commence from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT, regardless of whether said tax was paid or not.

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[18] G.R. No. 172129, September 12, 2008.

The present claim involves petitioner's input VAT incurred for the third and fourth quarters of 2003. Counting from the close of the third and fourth quarters, *i.e.*, September 30, 2003 and December 31, 2003, petitioner had until September 30, 2005 and December 31, 2005, respectively, within which to file the instant claim, both in the administrative and the judicial levels.

A perusal of the records reveals the following:

CTA Case No.	Taxable Quarter (2003)	Close of Taxable Quarter	End of Two-year period	Date of Filing		Amount of Claim
				Administrative Claim	Judicial Claim	
7352	3rd	9/30/2003	9/30/2005	12/23/2004	10/26/2005	₱ 3,120,366.79
7400	4th	12/31/2003	12/31/2005	12/23/2004	1/18/2006	₱ 6,685,541.75

Petitioner's administrative claims for both petitions were filed on December 23, 2004; while the Petitions for Review in CTA Case Nos. 7352 and 7400 were filed on October 26, 2005 and January 18, 2006, respectively. Clearly, while the administrative claim was filed within the two-year prescriptive period, both judicial claims were filed out of time. Thus, petitioner's claims for refund have prescribed and it is therefore barred from pursuing its claims for refund.

Settled is the rule that petitioner's belated filing of its judicial claims effectively remove from this Court, the jurisdiction to entertain its claims. Thus, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[19] Consequently, the resolution of the other issues raised by the parties is therefore no longer warranted.

[19] Section 1, Rule 9, Rules of Court.

WHEREFORE, premises considered, the instant consolidated cases are hereby **DISMISSED** due to prescription.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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.

ERNESTO D. ACOSTA
Presiding Justice