REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special First Division

CE LUZON GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7393

Members:

BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

DEC 01 2015 9:45 a.m.

x--x

RESOLUTION

BAUTISTA, J:

This resolves the "Motion for Partial Reconsideration (Re: Amended Decision Promulgated on July 27 2015)," (hereinafter referred to as "Motion for Partial Reconsideration") filed on August 12, 2015, with petitioner's "Comment/Opposition (Re: Respondent's Motion for Partial Reconsideration dated August 12, 2015)," (hereinafter referred to as "Comment/Opposition") filed by registered mail on September 21, 2015.

On July 27, 2015, the Court promulgated an Amended Decision, the dispositive portion of which states:

> **WHEREFORE**, premises considered, CIR is hereby **ORDERED** to **REFUND** or **ISSUE a TAX CREDIT CERTIFICATE** to CE Geothermal in the amount of Php11,319,226.01 representing unutilized input VAT for the 2nd, 3rd and 4th quarters of 2004.
>
> **SO ORDERED.**

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On August 12, 2015, respondent filed her Motion for Partial Reconsideration.

On August 18, 2015, the Court issued a Resolution ordering petitioner to file its comment or opposition within a period of ten (10) days from notice.

On August 28, 2015, counsel for petitioner, Sycip Salazar Hernandez & Gatmaitan, filed its Withdrawal of Appearance, requesting that all pleadings, motions, manifestations, orders, judgments, resolutions, and other papers in connection with the case be served upon petitioner's new counsel, Salvador Llanillo & Bernardo (formerly, Salvador & Associates), at Units 815-816 Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.

On the same date, the new counsel for petitioner, Salvador Llanillo & Bernardo, filed its Entry of Appearance.

On September 3, 2015, the Court issued a Minute Resolution noting the Withdrawal of Appearance and Entry of Appearance by petitioner's former and new counsel, respectively, and ordered that all succeeding notices, orders and resolutions be addressed to petitioner's new counsel.

On September 4, 2015, petitioner filed a Motion for Extension of Time to File Comment (Re: Motion for Partial Reconsideration dated August 12, 2015), praying for an additional period of ten (10) days from September 4, 2015 or until September 14, 2015, within which to file its comment.

On September 7, 2015, the Court issued an Order granting petitioner's Motion for Extension of Time to File Comment.

On September 15, 2015, petitioner filed an *Ex Parte* Manifestation, with attached Motion for Extension of Time to File Comment ("Second Motion"), stating that on September 14, 2015, it filed the attached Motion by registered mail.

On September 17, 2015, the Court received the Second Motion, which prayed for additional period of five (5) days from September 14, 2015 or until September 19, 2015, within which to file its comment.

On September 22, 2015, petitioner filed an *Ex Parte* Manifestation, with attached Comment/Opposition, which states on September 21, 2015, it filed the attached pleading by registered mail.

On September 28, 2015, the Court issued a Resolution granting the Second Motion.

On October 1, 2015, the Court received petitioner's Comment/Opposition.

On October 7, 2015, the Court issued a Resolution noting petitioner's *Ex Parte* Manifestation and submitting respondent's Motion for Partial Reconsideration for resolution.

Respondent alleges that petitioner hastily filed the instant petition for review on December 29, 2005 or a mere fifteen (15) days after filing its administrative claim for refund with the BIR, thus depriving her of her function to act on the claim for refund; that in an action for refund, the law requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue ("BIR"); that the allegation of submission of complete documents is a material fact necessary to invoke and to justify the relief demanded because it constitutes the reckoning point of the 120-day prescriptive period required by *Section 112 of the 1997 National Internal Revenue Code ("NIRC"), as amended;* and that the taxpayer has to prove compliance with all administrative requirements before judicial inquiry into the issue of whether taxpayers are entitled to a refund/tax credit under substantive law.

On the other hand, petitioner avers that respondent's argument against the timeliness of its judicial claim has been sufficiently threshed out by the Supreme Court in its Resolution dated June 18, 2014; that respondent never objected to nor rebutted the evidence presented by petitioner; that respondent failed to specify which documents it allegedly failed to submit to the BIR; and that it has the prerogative to choose the documents to submit to respondent in support of its administrative claim for refund and absent any further notice from the latter, there is the presumption that the supporting documents submitted by petitioner are complete and consistent with the requirements of the law.

The Ruling of the Court

We find no reversible error in the impugned Amended Decision.

Anent respondent's allegation that petitioner's filing of the Petition for Review before the Court was hastily done, the Supreme Court has already spoken, thus, in its *Resolution* dated June 18, 2014, the Supreme Court held, *viz.*:

> Applying our ruling in *San Roque,* we find that, although prematurely filed, petitioner's judicial claims for refund for the 2nd, 3rd, and 4th quarters of 2004 must be allowed pursuant to BIR Ruling No. DA-489-03, which provides that '<u>taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review</u>.' xxx

Moreover, *Revenue Memorandum Circular ("RMC") No. 54-2014*[1] *dated June 11, 2014,* provides for the exception to the mandatory and jurisdictional nature of the 120+30 day period (*BIR Ruling No. DA-489-03 dated 10 December 2003*), *viz:*

> As an exception to the mandatory and jurisdictional 120+30 day period, it was emphasized that from the time of issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal by the Supreme Court in the Aichi case on October 6, 2010 (or a period of almost 7 years), taxpayers/claimant ***<u>need not wait</u>*** for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. This exception,

[1] Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.

> however, is limited to case of premature filing (filing of judicial claim prior to the lapse of the 120-day period) and *does not extend to late filing of a judicial claim. (Emphasis supplied)*

As regards respondent's contention that the law requires the submission of complete documents in support of the application filed with the BIR, the Court *En Banc* in the case of *Commissioner of Internal Revenue v. Coral Bay Nickel Corporation*[2], ruled in this wise:

> To determine the concept of 'complete documents' by analogy, the phrase 'relevant supporting documents' as explained by the Supreme Court in *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.* is *apropos:*
>
> > The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit. (With emphasis)
>
> Further our ruling in *Team Sual Corporation (formerly: Mirant Sual Corporation) vs. Commissioner of Internal Revenue, and Commissioner of Internal Revenue vs. Team Sual Coporation(formerly: Mirant Sual Corporation)* likewise construed the term 'complete documents' under Section 112 of the NIRC, as amended, thus:
>
> > Accordingly, the term 'complete documents' under Section 112(D) of the NIRC

[2] CTA EB No. 1133, CTA Case No. 8252, January 7, 2015.

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> of 1997, as amended should be understood as those documents necessary to support the application for refund or tax credit certificate as determined by the taxpayer. **Thus, should the taxpayer decide to submit only certain documents, or should the taxpayer fail, or opted not, to submit any document at all, in support of its application for refund or tax credit certificate under Section 112 of the NIRC of 1997, it is reasonable and logical to conclude that the reckoning date of the 120-day period thereunder, should be reckoned from the filing of the said application.** *(Emphasis supplied)*

Based on the foregoing, the determination of documents to be submitted is at the discretion of the taxpayer. Respondent can only request petitioner to submit additional documents but cannot demand the type of supporting documents to be submitted.

WHEREFORE, from the foregoing, the "Motion for Partial Reconsideration (Re: Amended Decision Promulgated On July 27, 2015)," is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

I CONCUR:

CAESAR A. CASANOVA
Associate Justice