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SECOND DIVISION

[G.R. No. 196415, December 02, 2015]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. TOLEDO POWER COMPANY, RESPONDENT.

[G.R. No. 196451]

TOLEDO POWER COMPANY, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

The burden of proving entitlement to a tax refund rests on the taxpayer.

Before this Court are Consolidated Petitions for Review on *Certiorari*[1] assailing the November 22, 2010 Decision[2] and the April 6, 2011 Resolution[3] of the Court of Tax Appeals (CTA) in CTA EB Nos. 623 and 629.

Factual Antecedents

Toledo Power Corporation (TPC) is a general partnership principally engaged in the business of power generation and sale of electricity to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation (ACMDC), and Atlas Fertilizer Corporation (AFC).[4]

On December 22, 2003, TPC filed with the Bureau of Internal Revenue (BIR) Regional District Office (RDO) No. 83 an administrative claim for refund or credit of its unutilized input Value Added Tax (VAT) for the taxable year 2002 in the total amount of P14,254,013.27 under Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) and the National Internal Revenue Code of 1997 (NIRC).[5]

On April 22, 2004, due to the inaction of the Commissioner of Internal Revenue (OR), TPC filed with the CTA a Petition for Review, docketed as CTA Case No. 6961 and raffled to the CTA First Division (CTA Division).[6]

In response to the Petition for Review, the CIR argued that TPC failed to prove its entitlement to a tax refund or credit.[7]

Ruling of the CTA Division

On November 11, 2009, the CTA Division rendered a Decision[8] partially granting TPC's claim in the reduced amount of P7,598,279.29.[9] Since NPC is exempt from the payment of all taxes, including VAT, the CTA Division allowed TPC to claim a refund or credit of its unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the taxable year 2002.[10] The CTA Division, however, denied the claim attributable to TPC's sales of electricity to CEBECO, ACMDC and AFC due to the failure of TPC to prove that it is a generation company under the EPIRA.[11] The CTA Division did not consider the said sales as valid zero-rated sales because TPC did not submit a Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC).[12] Although TPC filed an application for a COC on June 20, 2002 with the ERC, the CTA Division found this insufficient to prove that TPC is a generation company under the EPIRA.[13] The pertinent portions of the Decision read:

> Therefore, out of the P439,660,958.77 zero-rated sales declared by [TPC] in its Quarterly VAT Returns for the four quarters of 2002, only the amount of P280,337,939.83 pertaining to [TPC's] sales of electricity to NPC shall be considered as valid zero-rated sales. x x x
>
> x x x x
>
> [TPC's] sales of electricity to companies other than NPC worth P159,323,018.94 shall be denied VAT zero-rating for [TPC's] failure to present Certificate of Compliance from the ERC, as stated earlier. x x x
>
> x x x x
>
> After finding that [TPC] had VAT zero-rated sales for the four quarters of 2002 in the amount of P280,337,939.83, the Court now determines the amount of input VAT attributable thereto.
>
> [TPC] submitted its summary lists of purchases and corresponding suppliers' invoices/official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC official receipts, and other documentary evidence in support of the following input taxes reported in its Quarterly VAT Returns for the four quarters of 2002:
>
> x x x x
>
> Upon examination of the supporting documents of [TPC], the Court[-]Commissioned Independent CPA recommended that out of the total reported input VAT of P14,558,043.30, only the amount of P11,347,363.55 represents [TPC's] valid claim, while the remaining amount of P3,210,679.75 should be disallowed. x x x

x x x x

The Court finds the disallowance of the above input taxes proper except for input taxes classified under Nos. 3 and 10 in the respective amounts of P6,568.00 and P3,121,787.60.

The input VAT of P6,568.00 represents [TPC's] valid claim because the same is duly supported by BOC official receipt. As to the input taxes of P3,121,787.60, [TPC] submitted documents marked as Exhibits "SS-3" top "SS-28" but only with respect to the claimed amount of P1,106,820.84 as summarized in Exhibit "SS." Out of the P1,106,820.84 input VAT claim, only the amount of P969,369.59 is valid, while the remaining input VAT of P137,451.25 shall be denied. x x x

x x x x

Therefore, the P3,121,787.60 input VAT disallowed by the Independent CPA for not having supporting documents shall now be reduced to P2,152,418.01 (P3,121,787.60 less P969,369.59).

In addition to the disallowances found by the Independent CPA, the amount of P102,700.85, representing out-of-period claim, shall be denied.

In sum, only the input VAT claim of P12,220,600.29 is duly substantiated in accordance with Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95. The amount of P12,220,600.29 is computed below:

Input VAT per 2002 Quarterly VAT Returns			P14,558,043.30
Less:	Disallowances		
	Per Independent CPA	P3,210,679.75	
	Less: Valid Claim		
	Input VAT on Importation of Goods	6,568.00	
	Input VAT per add'l documents submitted	969,369.59	2,234,742.16
	Per this Court's further verification		102,700.85
Substantiated Input VAT			P12,220,600.29

A portion of the substantiated input VAT of P12,220,600.29, however, shall be applied against [TPC's] reported output VAT liability of P304,030.03. x x x

x x x x

Hence, only the remaining input VAT of P11,916,570.26 can be attributed to the entire zero-rated sales declared by [TPC] in the amount of P439,660,958.77, and only the input VAT of P7,598,279.29 is attributable to the substantiated zero-rated sales of P280,337,939.83, as computed below:

Substantiated Input VAT	P 12,220,600.29
Less: Output VAT	304,030.03
Excess Input VAT	P 11,916,570.26
Substantiated Zero-Rated Sales	P 280,337,939.83
Divided by Total Reported Zero-Rated Sales	/439,660.958.77
Multiplied by Substantiated Excess Input VAT	x 11,916,570.26
Excess Input VAT attributable to Substantiated Zero-Rated Sales	P 7,598,279.29

As evidenced by its Quarterly VAT Returns from the first quarter of 2003 to the second quarter of 2004, [TPC] was able to prove that the input VAT of P7,598,279.29 was not applied against any output VAT in the succeeding quarters.

x x x x

WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of [TPC] the amount of SEVEN MILLION FIVE HUNDRED NINETY EIGHT THOUSAND TWO HUNDRED SEVENTY NINE PESOS AND 29/100 (P7,598,279.29), representing its unutilized input taxes attributable to zero-rated sales for taxable year 2002.

SO ORDERED.[14]

TPC moved for partial reconsideration contending that as an existing generation company, it was not required to obtain a COC from the ERC as a prerequisite for its operations, and that the issue of whether it is a generation company was never raised during the trial.[15] In any case, it attached photocopies of its application for a COC dated June 20, 2002 and its COC dated June 23, 2004.[16]

The CIR, likewise, sought partial reconsideration arguing that the administrative claim was merely *pro forma* since TPC failed to submit the complete documents required under Revenue Memorandum Order (RMO) No. 53-98,[17] which were necessary to ascertain the correct amount to be refunded in the administrative claim.[18]

On April 13, 2010, the CTA Division issued a Resolution[19] denying both motions for lack of merit. It

maintained that TPC timely filed its administrative claim for refund and that its failure to comply with RMO No. 53-98 was not fatal.[20] The CTA Division also said that in claiming a refund under the EPIRA, the taxpayer must prove that it was duly authorized by the ERC to operate a generation facility and that it derived its sales from power generation.[21] In this case, TPC failed to present a COC to prove that it was duly authorized by the ERC to operate as a generation facility in 2002.[22] As to the attached photocopy of the COC, the CTA Division gave no credence to it as it was not formally offered in evidence and no valid reason was offered by TPC to justify its late submission.[23]

Unfazed, both parties elevated the case before the CTA *En Banc*.

Ruling of the CTA En Banc

On November 22, 2010, the CTA *En Banc* rendered a Decision dismissing both Petitions. It sustained the findings of the CTA Division that both the administrative and the judicial claims were timely filed and that TPC's non-compliance with RMO No. 53-98 was not fatal to its claim.[24] Also, since TPC was not yet issued a COC in 2002, the CTA *En Banc* agreed with the CTA Division that TPC's sales of electricity to CEBECO, ACMDC, and AFC for the taxable year 2002 could not qualify for a VAT zero-rating under the EPIRA.[25] The CTA *En Banc* likewise noted that contrary to the claim of TPC, there is no stipulation in the Joint Stipulation of Facts and Issues (JSFI) that TPC is a generation company under the EPIRA.[26] Thus:

> WHEREFORE, premises considered, the above-captioned petitions are hereby DISMISSED. Hie assailed Decision dated November 11/2009 and Resolution dated April 13, 2010 rendered by the Former First Division in CTA Case No. 6961 are hereby AFFIRMED.
>
> SO ORDERED.[27]

Both parties moved for partial reconsideration but the CTA *En Banc* denied both motions for lack of merit in its April 6, 2011 Resolution.[28]

Issues

Hence, the instant Petitions with the following issues:

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>
> Whether x x x the [CTA] *En Banc* committed reversible error in holding that TPC is entitled to a refund or tax credit certificate in the reduced amount of P7,598,279.29, representing alleged unutilized input tax, considering that -
>
> A. TPC did not comply with the rule on exhaustion of administrative remedies.
>
> B. TPC is liable for deficiency VAT for those sales of electricity to companies other

than NPC that failed to qualify as VAT zero-rated sales under the EPIRA x x x, hence, considered subject to VAT under Section 108 of the [NIRC], as amended.

C. x x x TPC did not comply with the pertinent provisions of Section 112 (A) of the MRC x x x, as amended.[29]

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A. Whether TPC established that it is a generation company during the period of its claim for refund.

B. Whether the fact of TPC being a generation company was raised as an issue by the parties for the CTA to resolve.

C. Whether TPC is entitled to the rights of a generation company under the EPIRA prior to the issuance of its COC.[30]

Simply put, the issues raised in the Petitions can be grouped into two:

A. Whether the administrative and the judicial claims for tax refund or credit were timely and validly filed.

B. Whether the TPC is entitled to the full amount of its claim for tax refund or credit.

The CIR 's Arguments

The CIR contends that TPC is not entitled to a refund or credit in the reduced amount of P7,598,279.29, representing its alleged unutilized input VAT for taxable year 2002 because it failed to comply with the rules on exhaustion of administrative remedies.[31] She insists that the BIR was deprived of the opportunity to determine the truthfulness of the claim as TPC failed to submit the complete documents set out in RMO No. 53-98.[32] And since TPC failed to present all relevant documents, it failed to prove that it did not apply its unutilized input VAT against output VAT as provided in Section 112 (A) of the NIRC.[33] Thus, the *pro forma* administrative claim filed by TPC has no effect.[34] Moreover, since TPC's sales of electricity to companies other than NPC were denied VAT zero-rating, TPC should be held liable for deficiency VAT in the amount of P4,015,731.63.[35]

TPC's Arguments

TPC, on the other hand, argues that its administrative claim was not *pro forma* as it submitted relevant supporting documents, to wit: (a) its Articles of Partnership; (b) ERC Registration and Compliance Certificate; (c) VAT Registration Certificate; (d) Quarterly VAT Returns for the 1st to 4th quarters of 2002; (e) Summary of Input Tax Payments for the 1st to 4th quarters of 2002 showing the details of TPC's purchases of goods and services as well as the corresponding input taxes paid, and the pertinent supporting VAT invoices and official receipts; and (f) application for zero rating for

2002.[36] It also complied with the rule on exhaustion of administrative remedies as it waited for the CIR to rule on its administrative claim before filing the judicial claim.[37]

Citing VAT Ruling No. 011-5,[38] TPC further claims that it is entitled to the full amount of tax refund or credit because it became entitled to the rights of a generation company under the EPIRA when it filed its application with the ERC on June 20, 2002.[39] Thus, the belated issuance of the COC has no effect on its claim for tax refund or credit. Besides, in the JSFI, the parties already agreed that TPC is a generation company under the EPIRA.[40] In addition, it is not liable for deficiency VAT, even if, for the sake of argument, its sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, as an assessment cannot be issued in a refund case, not to mention that the BIR's period to assess had already prescribed.[41]

Our Ruling

The Petitions are bereft of merit.

Both the administrative and the judicial claims were timely and validly filed.

Pursuant to Section 112 (A)[42] and (D)[43] of the NIRC, a taxpayer has two (2) years from the close of the taxable quarter when the zero-rated sales were made within which to file with the CIR an administrative claim for refund or credit of unutilized input VAT attributable to such sales. The CIR, on the other hand, has 120 days from receipt of the complete documents within which to act on the administrative claim. Upon receipt of the decision, a taxpayer has 30 days within which to appeal the decision to the CTA. However, if the 120-day period expires without any decision from the CIR, the taxpayer may appeal the, inaction to the CTA within 30 days from the expiration of the 120-day period.

In *Commissioner of Internal Revenue v. San Roque Power Corporation*,[44] we said that the 120+30-day period must be strictly observed except from the date of issuance of BIR Ruling No. DA-489-03 on December 10, 2003, which allowed taxpayers to file a judicial claim without waiting for the end of the 120-day period, up to the date of promulgation of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[45] on October 6, 2010, where we declared that compliance with the 120+30-day period is mandatory and jurisdictional.

In this case, TPC applied for a claim for refund or credit of its unutilized input VAT for the taxable year 2002 on December 22, 2003. Since the CIR did not act on its application within the 120-day period, TPC appealed the inaction on April 22, 2004. Clearly, both the administrative and the judicial claims were filed within the prescribed period provided in Section 112 of the NIRC.

Also, the administrative claim was not *pro forma* as TPC submitted documents to support its claim for refund and even manifested its willingness to submit additional documents if necessary.[46] The CIR, however, never requested TPC to submit additional documents. Thus, she cannot now raise the issue that TPC failed to submit the complete documents.

Neither do we find the alleged failure of TPC to submit all relevant documents set out in RMO No. 53-98 fatal to its claim. In *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*,[47] we said that:

> The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities ...." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."
>
> Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA EB's finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time.[48]

In view of the foregoing, we find that both the administrative and the judicial claims were timely and validly filed.

Now, as to the validity of TPC's claim, there is no question that TPC is entitled to a refund or credit of its unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the taxable year 2002 pursuant to Section 108 (B) (3)[49] of the NIRC, as amended, in relation to Section 13[50] of the Revised Charter of the NPC, as amended. Hence, the only issue to be resolved is whether TPC is entitled to a refund of its unutilized input VAT attributable to its sales of electricity to CEBECO, ACMDC, and AFC.

TPC is not entitled to a refund or credit of unutilized input VAT attributable to its sales of electricity to CEBECO, ACMDC, and AFC.

Section 6[51] of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4(x) of the same law states that a generation company "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Corollarily, to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.

In this case, TPC failed to present a COC from the ERC during the trial. On partial reconsideration,

TPC argued that there was no need for it to present a COC because the parties already stipulated in the JSFI that TPC is a generation company and that it became entitled to the rights under the EPIRA when it filed its application with the ERC on June 20, 2002.

We find the arguments raised by TPC unavailing.

There is nothing in the JSFI to show that the parties agreed that TPC is a generation company under the EPIRA. The pertinent portions of the JSFI read:

JOINTLY STIPULATED FACTS

> 1. [TPC] is principally engaged in the business of power generation and subsequent sale thereof to the [NPC, CEBECO, ACMDC, and AFC].[52]
>
> 2. On 20 June 2002, petitioner filed an application with the Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance pursuant to the Implementing Rules and Regulations of the EPIRA.
>
> x x x x

ADMITTED FACTS

> x x x x
>
> 3. Effective 26 June 2001, sales of generated power by generation companies became VAT zero-rated by virtue of Section 4(x) in relation to Section 6 of the EPIRA and Rule 5, Section 6 of the Rules and Regulations to Implement the EPIRA.[53]

Obviously, the parties did not stipulate that TPC is a generation company. They only stipulated that TPC is engaged in the business of power generation and that it filed an application with the ERC on June 20, 2002. However, being engaged in the business of power generation does not make TPC a generation company under the EPIRA. Neither did TPC's filing of an application for COC with the ERC automatically entitle TPC to the rights of a generation company under the EPIRA.

At this point, a distinction must be made between a generation facility and a generation company. A generation facility is defined under the EPIRA Rules and Regulations as "a facility for the production of electricity."[54] While a generation company, as previously mentioned, "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Based on the foregoing definitions, what differentiates a generation facility from a generation company is that the latter is authorized by the ERC to operate, as evidenced by a COC.

Under the EPIRA, all new generation companies and existing generation facilities are required to obtain a COC from the ERC. New generation companies must show that they have complied with the requirements, standards, and guidelines of the ERC before they can operate.[55] As for existing generation facilities, they must submit to the ERC an application for a COC together with the

required documents within ninety (90) days from the effectivity of the EPIRA Rules and Regulations.[56] Based on the documents submitted, the ERC will determine whether the applicant has complied with the standards and requirements for operating a generation company. If the applicant is found compliant, only then will the ERC issue a COC.

In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. It was only on June 23,2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA.

Neither can TPC rely on VAT Ruling No. 011-5, which considered the sales of electricity of Hedcor effectively zero-rated from the effectivity of the EPIRA despite the fact that it was issued a COC only on November 5, 2003, as this is a specific ruling, issued in response to the query made by Hedcor to the CIR. As such, it is applicable only to a particular taxpayer, which is Hedcor. Thus, it is not a general interpretative rule that can be applied to all taxpayers similarly situated.[57]

All told, we find no error on the part of the CTA *En Banc*, in considering TPC's sales of electricity to CEBECO, ACMDC, and AFC for taxable year 2002 as invalid zero-rated sales, and in consequently denying TPC's claim for refund or credit of unutilized input VAT attributable to the said sales of electricity.

TPC is not liable for deficiency VAT.

But while TPC's sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, we cannot hold it liable for deficiency VAT by imposing 10% VAT on said sales of electricity as what the CIR wants us to do.

As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other.[58] However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes.

In *Commissioner of Internal Revenue v. Court of Tax Appeals*,[59] we allowed offsetting of taxes in a tax refund case because there was an existing deficiency income and business tax assessment against the taxpayer. We said that "[t]o award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects" and that "to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits."[60]

Similarly, in *South African Airways v. Commissioner of Internal Revenue*,[61] we permitted offsetting of taxes because the correctness of the return filed by the taxpayer was put in issue.

In the recent case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*,[62] we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order to determine whether there should be a refund.[63] However, we clarified that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.[64]

But in all these cases, we allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229[65] of the NIRC. A situation that is not present in the instant case.

In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. And since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC s VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.

Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers.[66] The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period.[67]

WHEREFORE, the Petitions are hereby **DENIED**. The November 22, 2010 Decision and the April 6, 2011 Resolution of the Court of Tax Appeals in CTA EB Nos. 623 and 629 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr.,[*] *Perez*,[***] *Mendoza*, and *Leonen, JJ.*, concur.

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[*] Per Special Order No. 2282 dated November 13, 2015.

[**] Per Special Order No. 2281 dated November 13, 2015.

[***] Per Special Order No. 2301 dated December 1, 2015.

[1] *Rollo*, G.R. No. 196415, pp. 7-29; *rollo*, G.R. No. 196451, pp. 3-27.

[2] Id. at 36-53; penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castafteda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelita R. Cotangco-Manalastas. Separate Opinion of Associate Justice Lovell R. Bautista, id. at 54-57.

[3] Id. at 60-65.

[4] Id. at 38.

[5] Id. at 39.

[6] Id.

[7] Id. at 39-40.

[8] Id. at 68-81; penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justice Caesar A. Casanova, Concurring and Dissenting Opinion of Presiding Justice Ernesto D. Acosta, id. at 82-86.

[9] Id. at 80.

[10] Id. at 74-80.

[11] Id. at 72-74.

[12] Id. at 74.

[13] Id.

[14] Id. at 76-80.

[15] *Rollo*, G.R. No. 196451, pp. 92-94.

[16] Id. at 93.

[17] Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket, June 25, 1998.

[18] *Rollo*, G.R. No. 196451, pp. 99-100.

[19] Id. at 91-102. Concurring Opinion of Presiding Justice Ernesto D. Acosta, id. at 103-105.

[20] Id. at 100-101.

[21] Id. at 94-97.

[22] Id.

[23] Id. at 98-99.

[24] *Rollo*, G R. No. 196415, pp. 44-48.

[25] Id. at 48-50.

[26] Id. at 50-51.

[27] Id. at 52.

[28] Id. at 60-65.

[29] Id. at 262.

[30] Id. at 226.

[31] Id. at 263-267.

[32] Id.

[33] Id. at 269-270.

[34] Id. at 264-265.

[35] Deficiency VAT computation: amount of sale of electricity denied by the CTA multiplied by 10% VAT less the substantiated excess input VAT [P159,323,018.94 x 10% = P15,923,301.89 - P11,916,570.26 = P4,015,731.63], id. at 267-269.

[36] Id. at 227-228.

[37] Id. at 228.

[38] Ruling on the letter-request of Hydro Electric Development Corporation issued by Jose Mario C. Bufiag, OIC-Commissioner of Internal Revenue on August 8, 2005.

[39] *Rollo*, G.R. No. 196415, pp. 238-251.

[40] Id. at 233-236.

[41] Id. at 232-233.

[42] 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: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

x x x x

(Amended by Republic Act [RA] No. 9337, 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.)

[43] SEC. 112. *Refunds or Tax Credits of Input Tax*. —

(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.

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 [CTA]. (Renumbered as Section 112 (C) by RA No. 9337.)

[44] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

[45] 646 Phil. 710 (2010).

[46] *Rollo*, G.R. No. 196415, pp. 87-89.

[47] G.R. No. 205055, July 18, 2014, 730 SCRA 242.

[48] Id. at 255-257.

[49] SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.*—

x x x x

(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

x x x x

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate.

[50] REPUBLIC ACT NO. 6395, An Act Revising the Charter of the National Power Corporation.

Sec. 13. *Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and other Charges by Government and Governmental Instrumentalities*. — The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation is hereby declared exempt:

(a) From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;

(b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;

(c) From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and

(d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and

instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power.

(Repealed by Section 24 of Republic Act No. 9337.)

[51] SECTION 6. *Generation Sector*. — Generation of electric power, a business affected with public interest, shall be competitive and open.

x x x x

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.

x x x x

(Repealed by Section 24 of Republic Act No. 9337)

[52] *Rollo*, G.R. No. 196415, p. 234.

[53] Id. at 50-51.

[54] RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 9136, ENTITLED "ELECTRIC POWER INDUSTRY REFORM ACT OF 2001"

PART I

General Provisions

x x x x

RULE 4

Definition of Terms

x x x x

(00) "*Generation Facility*" refers to a facility for the production of electricity;

x x x x

[55] Republic Act No. 9136, SECTION 6. *Generation Sector*. — Generation of electric power, a business affected with public interest, shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from

the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

x x x x

[56] RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 9136, ENTITLED "ELECTRIC POWER INDUSTRY REFORM ACT OF 2001"

x x x x

PART II

Structure and Operation of Electric Power Industry

RULE 5

Generation Sector

x x x x

SECTION 4. *Obligations of a Generation Company*. —

(a) A COC shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.

(i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operational history, a general company profile and other information that ERC may require. Upon making a complete submission to the ERC, such Person shall be issued a COC by the ERC to operate such existing Generation Facility.

x x x x

[57] *Commissioner of Internal Revenue v. San Roque Power Corporation*, supra note 44 at 404.

[58] *Philex Mining Corp. v. Commissioner of Internal Revenue*, 356 Phil. 189, 198 (1998).

[59] G.R. No. 106611, July 21, 1994, 234 SCRA 348, 357.

[60] Id. at 357.

[61] 626 Phil. 566, 579 (2010).

[62] G.R. No, 175410, November 12, 2014.

[63] Id.

[64] Id.

[65] SEC. 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[66] *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, supra note 62.

[67] Id.