Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NORTHERN MINDANAO POWER CORPORATION, Petitioner,	**G.R. No. 185115**
	Present:
– versus –	SERENO, *CJ*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 18 2015

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DECISION

SERENO, *CJ:*

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by Northern Mindanao Power Corporation (petitioner). The Petition assails the Decision[2] dated 18 July 2008 and Resolution[3] dated 27 October 2008 issued by the Court of Tax Appeals *En Banc* (CTA *En Banc*) in C.T.A. EB No. 312.

THE FACTS

Petitioner is engaged in the production sale of electricity as an independent power producer and sells electricity to National Power Corporation (NPC). It allegedly incurred input value-added tax (VAT) on its

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[1] *Rollo*, pp. 9-42.

[2] Id. at 61-80; penned by Associate Justice Juanito C. Castañeda, Jr and concurred in by Associate Justices Lovell R. Bautista, Caesar A. Casanova, Erlinda P. Uy and Olga Palanca-Enriquez, with the Concurring and Dissenting Opinion of then Presiding Justice Ernesto D. Acosta.

[3] Id. at 45-60; penned by Associate Justice Juanito C. Castañeda Jr and concurred in by Associate Justices Caesar A. Casanova, Erlinda P. Uy and Olga Palanca-Enriquez, with then Presiding Justice Ernesto D. Acosta dissenting.

domestic purchases of goods and services that were used in its production and sale of electricity to NPC. For the 3rd and the 4th quarters of taxable year 1999, petitioner's input VAT totaled to □2,490,960.29, while that incurred for all the quarters of taxable year 2000 amounted to □3,920,932.55.[4]

Petitioner filed an administrative claim for a refund on 20 June 2000 for the 3rd and the 4th quarters of taxable year 1999, and on 25 July 2001 for taxable year 2000 in the sum of □6,411,892.84.[5]

Thereafter, alleging inaction of respondent on these administrative claims, petitioner filed a Petition[6] with the CTA on 28 September 2001.

The CTA First Division denied the Petition and the subsequent Motion for Reconsideration for lack of merit. The Court in Division found that the term "zero-rated" was not imprinted on the receipts or invoices presented by petitioner in violation of Section 4.108-1 of Revenue Regulations No. 7-95. Petitioner failed to substantiate its claim for a refund and to strictly comply with the invoicing requirements of the law and tax regulations.[7] In his Concurring and Dissenting Opinion, however, then Presiding Justice Ernesto D. Acosta opined that the Tax Code does not require that the word "zero-rated" be imprinted on the face of the receipt or invoice. He further pointed out that the absence of that term did not affect the admissibility and competence of the receipt or invoice as evidence to support the claim for a refund.[8]

On appeal to the CTA En Banc, the Petition was likewise denied. The court ruled that for every sale of services, VAT shall be computed on the basis of gross receipts indicated on the official receipt. Official receipts are proofs of sale of services and cannot be interchanged with sales invoices as the latter are used for the sale of goods. Further, the requirement of issuing duly registered VAT official receipts with the term "zero-rated" imprinted is mandatory under the law and cannot be substituted, especially for input VAT refund purposes. Then Presiding Justice Acosta maintained his dissent.

Hence, this appeal before us.

ISSUES

Petitioner's appeal is anchored on the following grounds:

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[4] Id. at 62-63.

[5] Id. at 63.

[6] Docketed as C.T.A. Case No. 6337, raffled to the CTA First Division, id. at 85-90.

[7] Id. at 139-151.

[8] Id. at 152-157.

> Section 4.108-1 of Revenue Regulations (RR) No. 7-95 which expanded the statutory requirements for the issuance of official receipts and invoices found in Section 113 of the 1997 Tax Code by providing for the additional requirement of the imprinting of the terms "zero-rated" is unconstitutional.
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> Company invoices are sufficient to establish the actual amount of sale of electric power services to the National Power Corporation and therefore sufficient to substantiate Petitioner's claim for refund.[9]

THE COURT'S RULING

To start with, this Court finds it appropriate to first determine the timeliness of petitioner's judicial claim in order to determine whether the tax court properly acquired jurisdiction, although the matter was never raised as an issue by the parties. Well-settled is the rule that the issue of jurisdiction over the subject matter may, at any time, be raised by the parties or considered by the Court *motu proprio*.[10] Therefore, the jurisdiction of the CTA over petitioner's appeal may still be considered and determined by this Court.

Section 112 of the National Internal Revenue Code (NIRC) of 1997 laid down the manner in which the refund or credit of input tax may be made. For a VAT-registered person whose sales are zero-rated or effectively zero-rated, Section 112(A) specifically provides for a two-year prescriptive period after the close of the taxable quarter when the sales were made within which such taxpayer may apply for the issuance of a tax credit certificate or refund of creditable input tax. In the consolidated tax cases *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue*[11] (hereby collectively referred to as *San Roque*), the Court clarified that the two-year period refers to the filing of an administrative claim with the BIR.

In this case, petitioner had until 30 September 2001 and 31 December 2001 for the claims covering the 3rd and the 4th quarters of taxable year 1999; and 31 March, 30 June, 30 September and 31 December in 2002 for the claims covering all four quarters of taxable year 2000 − or the close of the taxable quarter when the zero-rated sales were made − within which to file its administrative claim for a refund. On this note, we find that petitioner had sufficiently complied with the two-year prescriptive period when it filed its administrative claim for a refund on 20 June 2000 covering the 3rd and the 4th quarters of taxable year 1999 and on 25 July 2001 covering all the quarters of taxable year 2000.

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[9] Petition for Review, id. at 18.
[10] *Namuhe v. Ombudsman*, 358 Phil. 782 (1998), *citing* Section 1, Rule 9, 1997 Rules of Civil Procedure (formerly Rule 9, Section 2); *Fabian v. Desierto*, 356 Phil. 787 (1998).
[11] G.R. Nos. 187485, 196113, 197156, 12 February 2013, 690 SCRA 336.

Pursuant to Section 112(D) of the NIRC of 1997, respondent had one hundred twenty (120) days from the date of submission of complete documents in support of the application within which to decide on the administrative claim. The burden of proving entitlement to a tax refund is on the taxpayer. Absent any evidence to the contrary, it is presumed that in order to discharge its burden, petitioner attached to its applications complete supporting documents necessary to prove its entitlement to a refund.[12] Thus, the 120-day period for the CIR to act on the administrative claim commenced on 20 June 2000 and 25 July 2001.

As laid down in *San Roque*, judicial claims filed from 1 January 1998 until the present should strictly adhere to the 120+30-day period referred to in Section 112 of the NIRC of 1997. The only exception is the period 10 December 2003 until 6 October 2010. Within this period, BIR Ruling No. DA-489-03 is recognized as an equitable estoppel, during which judicial claims may be filed even before the expiration of the 120-day period granted to the CIR to decide on a claim for a refund.

For the claims covering the 3rd and the 4th quarters of taxable year 1999 and all the quarters of taxable year 2000, petitioner filed a Petition with the CTA on 28 September 2001.

Both judicial claims must be disallowed.

a) Claim for a refund of input VAT covering the 3rd and the 4th quarters of taxable year 1999

Counting 120 days from 20 June 2000, the CIR had until 18 October 2000 within which to decide on the claim of petitioner for an input VAT refund attributable to its zero-rated sales for the period covering the 3rd and the 4th quarters of taxable year 1999. If after the expiration of that period respondent still failed to act on the administrative claim, petitioner could elevate the matter to the court within 30 days or until 17 November 2000.

Petitioner belatedly filed its judicial claim with the CTA on 28 September 2001. Just like in *Philex*, this was a case of late filing. The Court explained thus:

> Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in

[12] *Applied Food Ingredients Company, Inc. v. CIR*, G.R. No. 184266, 11 November 2013.

> fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
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> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. The **inaction** of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.
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> Philex's situation is not a case of premature filing of its judicial claim but of late filing, indeed *very* late filing. BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim. Philex cannot claim the benefit of BIR Ruling No. DA-489-03 because Philex did not file its judicial claim prematurely but filed it long after the lapse of the 30-day period **following the expiration of the 120-day period**. In fact, Philex filed its judicial claim 426 days after the lapse of the 30-day period.[13] (Emphasis in the original)

Petitioner's claim for the 3rd and the 4th quarters of taxable year 1999 was filed 319 days after the expiration of the 30-day period. To reiterate, the right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise. Like *Philex*, petitioner failed to comply with the statutory conditions and must therefore bear the consequences. It already lost its right to claim a refund or credit of its alleged excess input VAT attributable to zero-rated or effectively zero-rated sales for the 3rd and the 4th quarters of taxable year 1999 by virtue of its own failure to observe the prescriptive periods.

b) Claim for the refund of input VAT covering all quarters of taxable year 2000

For the year 2000, petitioner timely filed its administrative claim on 25 July 2001within the two-year period from the close of the taxable quarter

[13] Supra note 13, at 389-390 and 405-406.

when the zero-rated sales were made. Pursuant to Section 112(D) of the NIRC of 1997, respondent had 120 days or until 22 November 2001 within which to act on petitioner's claim. It is only when respondent failed to act on the claim after the expiration of that period that petitioner could elevate the matter to the tax court.

Records show, however, that petitioner filed its Petition with the CTA on 28 September 2001 without waiting for the expiration of the 120-day period. Barely 64 days had lapsed when the judicial claim was filed with the CTA. The Court in *San Roque* has already settled that failure of the petitioner to observe the mandatory 120-day period is fatal to its judicial claim and renders the CTA devoid of jurisdiction over that claim. On 28 September 2001 – the date on which petitioner filed its judicial claim for the period covering taxable year 2000 − the 120+30 day mandatory period was already in the law and BIR Ruling No. DA-489-03 had not yet been issued. Considering this fact, petitioner did not have an excuse for not observing the 120+30 day period. Again, as enunciated in *San Roque*, it is only the period between 10 December 2003 and 6 October 2010 that the 120-day period may not be observed. While the ponente had disagreed with the majority ruling in *San Roque*, the latter is now the judicial doctrine that will govern like cases.

The judicial claim was thus prematurely filed for failure of petitioner to observe the 120-day waiting period. The CTA therefore did not acquire jurisdiction over the claim for a refund of input VAT for all the quarters of taxable year 2000.

In addition, the issue of the requirement of imprinting the word "zero-rated" has already been settled by this Court in a number of cases. In *Western Mindanao Power Corporation v. CIR*,[14] we ruled:

> RR 7-95, which took effect on 1 January 1996, proceeds from the rule-making authority granted to the Secretary of Finance by the NIRC for the efficient enforcement of the same Tax Code and its amendments. In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue,* we ruled that this provision is "reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services." Moreover, we have held in *Kepco Philippines Corporation v. Commissioner of Internal Revenue* that the subsequent incorporation of Section 4.108-1 of RR 7-95 in Section 113 (B) (2) (c) of R.A. 9337 actually confirmed the validity of the imprinting requirement on VAT invoices or official receipts – a case falling under the principle of legislative approval of administrative interpretation by reenactment.

[14]G.R. No. 181136, 13 June 2012, 672 SCRA 350, 363.

> In fact, this Court has consistently held as fatal the failure to print the word "zero-rated" on the VAT invoices or official receipts in claims for a refund or credit of input VAT on zero-rated sales, even if the claims were made prior to the effectivity of R.A. 9337. Clearly then, the present Petition must be denied.

Finally, as regards the sufficiency of a company invoice to prove the sales of services to NPC, we find this claim is without sufficient legal basis. Section 113 of the NIRC of 1997 provides that a VAT invoice is necessary for every sale, barter or exchange of goods or properties, while a VAT official receipt properly pertains to every lease of goods or properties; as well as to every sale, barter or exchange of services.

The Court has in fact distinguished an invoice from a receipt in *Commissioner of Internal Revenue v. Manila Mining Corporation:*[15]

> A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.
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> A "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.

A VAT invoice is the seller's best proof of the sale of goods or services to the buyer, while a VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. A VAT invoice and a VAT receipt should not be confused and made to refer to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.[16]

WHEREFORE, premises considered, the instant Petition is **DENIED**.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

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[15] 505 Phil. 650, 665 (2005).

[16] *KEPCO Philippines Corporation v. CIR*, G.R. No. 181858, 24 November 2010, 636 SCRA 166.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice