



Republic of the Philippines
 Supreme Court
 Manila

FIRST DIVISION

CBK POWER COMPANY G.R. No. 198928
LIMITED,

Petitioner, Present:

- versus -

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, JJ.

COMMISSIONER OF
INTERNAL REVENUE,
 Respondent.

Promulgated:

DEC 03 2014

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D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated July 20, 2011 and the Resolution³ dated October 5, 2011 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 639, which reversed and set aside the Decision⁴ dated February 6, 2009, the Amended Decision⁵ dated February 8, 2010, and the Resolution⁶ dated May 20, 2010 of the CTA Second Division in C.T.A. Case No. 7220 and dismissed the claim for refund of excess input value-added tax (VAT) of petitioner CBK Power Company Limited (CBK Power) for being prematurely filed.

¹ *Rollo*, pp. 145-220.

² Id. at 10-23. Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez, and Cielito N. Mindaro Grulla, concurring, and with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista and Esperanza R. Fabon-Victorino, dissenting. Associate Justice Amelia R. Cotango-Manalastas was on leave.

³ Id. at 37-41. Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez, and Cielito N. Mindaro Grulla, concurring, and with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino, and Amelia R. Cotango-Manalastas, dissenting.

⁴ Id. at 370-391. Penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring.

⁵ Id. at 124-135.

⁶ Id. at 137-143.

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The Facts

CBK Power, a partnership duly organized and existing under Philippine laws, is a special purpose entity formed for the sole purpose of engaging in all aspects of: (a) the design, financing, construction, testing, commissioning, operation, maintenance, management, and ownership of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna; and (b) the rehabilitation, upgrade expansion, testing, commissioning, operation, maintenance, and management of the Caliraya, Botocan, and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna. It is registered as a VAT entity since April 10, 2000 and on January 29, 2003, its application for a VAT zero-rate status was approved pursuant to VAT Review Committee Ruling No. 018-13.⁷

On April 24, 2003, July 25, 2003, October 24, 2003, and January 26, 2004, CBK Power submitted its quarterly VAT returns for the period covering January 1, 2003 to December 31, 2003. Subsequently, CBK Power amended its April 24, 2003 VAT return on June 10, 2003 and March 23, 2005. Similarly, CBK Power made amendments in its July 25, 2003, October 24, 2003, and January 26, 2004 VAT returns on March 23, 2005. These amendments reflected unutilized/excess input VAT in the amount of ₱298,430,362.42.⁸

On March 29, 2005, CBK Power filed before the Bureau of Internal Revenue (BIR) District Office No. 55 of Laguna an administrative claim for the issuance of a tax credit certificate for a total amount of ₱295,994,518.00, representing unutilized input VAT on its purchase of capital goods, as well as unutilized input VAT on its local purchase of goods and services other than capital goods, all for the calendar year 2003. Thereafter, on April 18, 2005, CBK Power filed its judicial claim for tax refund/credit before the CTA, docketed as CTA Case No. 7220.⁹

For its part, respondent Commissioner of Internal Revenue (CIR) claimed, *inter alia*, that the amount being claimed by CBK Power as alleged unutilized input VAT for the period January 1, 2003 to December 31, 2003 must be denied for not being properly documented.¹⁰

⁷ Id. at 11.

⁸ Id. at 11-12.

⁹ Id. at 12-13.

¹⁰ Id. at 13.

The CTA Second Division Ruling

In a Decision¹¹ dated February 6, 2009, the CTA Second Division ruled in favor of CBK Power and accordingly awarded it a tax credit certificate, albeit in the reduced amount of ₱215,998,263.13.¹² In disallowing certain portions of CBK Power's claim for refund/credit, the CTA Second Division found that CBK Power failed to prove that the purchases under scrutiny pertained to its capital purchases as reflected in its audited financial statements for the calendar year 2003.¹³

On partial reconsideration from both parties, the CTA Second Division rendered an Amended Decision¹⁴ dated February 8, 2010, increasing CBK Power's entitlement to a tax credit certificate in the amount of ₱286,783,847.37.¹⁵

The CIR again moved for reconsideration,¹⁶ which was, however, denied in a Resolution¹⁷ dated May 20, 2010. Dissatisfied, the CIR appealed to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision¹⁸ dated July 20, 2011, the CTA *En Banc* reversed and set aside the CTA Second Division's ruling and thereby denied CBK Power's claim for refund in its entirety.¹⁹ It found that CBK Power filed its judicial claim for refund/credit on April 18, 2005 or just 20 days after it filed its administrative claim on March 29, 2005. As such, it failed to observe the mandatory and jurisdictional 120-day period provided under Section 112 (D) of the National Internal Revenue Code²⁰ (NIRC). Consequently, it ruled that such non-observance resulted in the prematurity of CBK Power's claim, warranting a dismissal thereof for lack of jurisdiction.²¹

Aggrieved, CBK Power moved for reconsideration,²² which was, however, denied in a Resolution²³ dated October 5, 2011, hence, this petition.

¹¹ Id. at 370-391.

¹² Id. at 390.

¹³ See id. at 379-382.

¹⁴ Id. at 124-135.

¹⁵ See id. at 128-132 and 134.

¹⁶ Not attached to the *rollo*.

¹⁷ *Rollo*, pp. 137-143.

¹⁸ Id. at 10-23.

¹⁹ Id. at 21-22.

²⁰ Republic Act No. 8424, entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES" (January 1, 1998).

²¹ See *rollo*, pp. 16-21.

²² See Motion for Reconsideration dated August 11, 2011; id. at 49-122.

²³ Id. at 37-41.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CTA *En Banc* correctly denied CBK Power's claim for refund for being prematurely filed.

The Court's Ruling

The petition is meritorious.

Executive Order No. 273, Series of 1987²⁴ or the original VAT law first allowed the refund or credit of unutilized excess input VAT. Thereafter, the provision on refund or credit was amended several times by Republic Act No. (RA) 7716,²⁵ RA 8424, and RA 9337,²⁶ which took effect on November 1, 2005.²⁷ Since CBK Power's claims for refund covered periods before the effectivity of RA 9337, *i.e.*, January 1, 2003 to December 31, 2003, Section 112 of the NIRC, as amended by RA 8424 should apply, to wit:

Section 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: x x x.

x x x x

(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

²⁴ Entitled "ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES" (January 1, 1988).

²⁵ Entitled "AN ACT RESTRUCTURING THE VALUE-ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES" (May 5, 1994).

²⁶ Entitled "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."

²⁷ RA 9337's effectivity clause provides that it shall take effect on July 1, 2005 but due to a temporary restraining order (TRO) filed by some taxpayers, the law took effect on November 1, 2005 when the TRO was finally lifted by the Supreme Court. (Republic of the Philippines, Bureau of Internal Revenue: Tax Code <<http://www.bir.gov.ph/index.php/tax-code.html>> [visited November 20, 2014].)

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 Court of Tax Appeals.**

x x x x (Emphases and underscoring supplied)

In *CIR v. Aichi Forging Company of Asia, Inc. (Aichi)*,²⁸ the Court held that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund before the CTA. Consequently, its non-observance would lead to the dismissal of the judicial claim on the ground of lack of jurisdiction. *Aichi* also clarified that the two (2)-year prescriptive period applies only to administrative claims and not to judicial claims.²⁹ Succinctly put, once the administrative claim is filed within the two (2)-year prescriptive period, the claimant must wait for the 120-day period to end; thereafter, he is given a 30-day period to file his judicial claim before the CTA, even if said 120-day and 30-day periods would exceed the aforementioned two (2)-year prescriptive period.³⁰

However, in *CIR v. San Roque Power Corporation (San Roque)*,³¹ the Court categorically recognized an exception to the mandatory and jurisdictional nature of the 120-day period. It ruled that BIR Ruling No. DA-489-03 dated December 10, 2003 provided a valid claim for equitable *estoppel* under Section 246³² of the NIRC. In essence, the aforesaid BIR Ruling stated that “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.”³³

Recently, in *Taganito Mining Corporation v. CIR*,³⁴ the Court reconciled the pronouncements in the *Aichi* and *San Roque* cases in the following manner:

²⁸ G.R. No. 184823, October 6, 2010, 632 SCRA 422.

²⁹ See *id.* at 435-445.

³⁰ See *Taganito Mining Corporation v. CIR*, G.R. No. 197591, June 18, 2014.

³¹ G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

³² Section 246 of the NIRC provides:

SEC. 246. *Non-Retroactivity of Rulings.* – Any revocation, modification or reversal of any of the **rules and regulations** promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers.** except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith. (Emphases and underscoring supplied)

³³ *CIR v. San Roque Power Corporation*, *supra* note 31, at 401.

³⁴ *Supra* note 30.


Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that **during the period December 10, 2003** (when BIR Ruling No. DA-489-03 was issued) **to October 6, 2010** (when the *Aichi* case was promulgated), **taxpayers-claimants need not observe the 120-day period** before it could file a judicial claim for refund of excess input VAT before the CTA. **Before and after the aforementioned period (i.e., December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim.**³⁵ (Emphases and underscoring supplied)

In this case, records disclose that CBK Power filed its administrative and judicial claims for issuance of tax credits on March 29, 2005 and April 18, 2005, respectively or during the period when BIR Ruling No. DA-489-03 was in place, *i.e.*, from December 10, 2003 to October 6, 2010. As such, it need not wait for the expiration of the 120-day period before filing its judicial claim before the CTA, which was timely filed. In view of the foregoing, the CTA *En Banc* erred in dismissing CBK Power's claim on the ground of prematurity and, thus, its ruling must be corrected accordingly.


Considering, however, that the CTA *En Banc* dismissed CBK Power's claim for refund solely on procedural ground and no longer delved on its substantive merits, *i.e.*, whether or not CBK Power was able to substantiate its claim for issuance of a tax credit certificate, the Court deems it prudent to remand the case to the CTA *En Banc* for resolution on the merits.

WHEREFORE, the petition is **GRANTED**. The Decision dated July 20, 2011 and the Resolution dated October 5, 2011 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 639 are hereby **REVERSED** and **SET ASIDE**. For reasons aforesated, the instant case is **REMANDED** to the CTA *En Banc* for resolution on the merits.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

³⁵ Id.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Jose Portugal Perez
JOSE PORTUGAL PEREZ
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
MARIA LOURDES P. A. SERENO
Chief Justice