Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 190198** Present:
- versus -	SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
CE LUZON GEOTHERMAL POWER COMPANY, INC., Respondent.	Promulgated: SEP 17 2014

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated September 1, 2009 and the Resolution[3] dated November 6, 2009 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 474 which affirmed the Decision[4] dated November 25, 2008 and the Resolution[5] dated March 9, 2009 of the CTA Second Division (CTA Division) in C.T.A. Case Nos. 6792 and 6837 ordering petitioner Commissioner of Internal Revenue (CIR) to issue a refund or a tax credit certificate in the amount of ₱13,926,697.51 in favor of respondent CE Luzon Geothermal Power Company Inc. (CE Luzon).

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1 *Rollo*, pp. 7-36.

2 Id. at 43-65. Penned by Associate Justice Lovell R. Bautista with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring; and Presiding Justice Ernesto D. Acosta, dissenting.

3 Id. at 76-78.

4 Id. at 81-107. Penned by Associate Justice Olga Palanca-Enriquez with Associate Justice Juanito C. Castañeda, Jr., concurring. Associate Justice Erlinda P. Uy was on leave.

5 Id. at 108-110. Penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, concurring.

The Facts

CE Luzon is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and engaged in the business of power generation. Being one of the generating companies recognized by the Department of Energy – and pursuant to the provisions of Republic Act No. (RA) 9136,[6] otherwise known as the "Electric Power Industry Reform Act of 2001," which took effect on June 26, 2001 – it treated the delivery and supply of electric energy to the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) as value-added tax (VAT) zero-rated.[7]

On October 25, 2001, CE Luzon timely filed its VAT return for the third quarter of 2001, in which it declared unutilized input VAT in the amount of □2,921,085.31. On January 10, 2002, April 10, 2002, May 15, 2003, May 15, 2003, and April 1, 2003, respectively, it likewise filed its VAT returns for the fourth quarter of 2001 and all quarters of 2002 whereby it declared unutilized input VAT in the amount of □21,229,990.80.[8]

On September 26, 2003, CE Luzon filed an administrative claim for refund of unutilized input VAT for the third quarter of 2001 before the Bureau of Internal Revenue (BIR). Alleging inaction on the part of the CIR, it filed a judicial claim for refund before the CTA on September 30, 2003, docketed as C.T.A. Case No. 6792.[9]

Thereafter, on December 18, 2003, CE Luzon likewise filed an administrative claim for refund of unutilized input VAT for the fourth quarter of 2001 and all quarters of 2002 before the BIR. It then filed a judicial claim for such refund before the CTA on December 19, 2003, docketed as C.T.A. Case No. 6837.[10]

In its answer to the judicial claims in both C.T.A. Case Nos. 6792 and 6837, the CIR alleged, *inter alia*, that CE Luzon's claims for refund are subject to its administrative investigation/examination; and that CE Luzon has the burden to prove its entitlement thereto.[11]

On oral motion of CE Luzon, the CTA First Division issued a Resolution dated March 1, 2004 ordering the consolidation of C.T.A. Case Nos. 6792 and 6837.[12]

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6 Entitled "AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES."
7 See *Rollo*, pp. 44-45 and 82-83.
8 See id. at 45, 84, and 91.
9 Id. at 45 and 84.
10 Id. at 45 and 84-85.
11 See id. at 45-48 and 85-87.
12 Id. at 48 and 87.

The CTA Division Ruling

In a Decision[13] dated November 25, 2008, the CTA Division partially granted CE Luzon's claims for refund, ordering the CIR to refund or issue a tax credit certificate in favor of CE Luzon in the amount of □13,926,697.51, representing the unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters of 2001 and all quarters of 2002.[14]

The CTA Division found that while CE Luzon incurred input VAT in the amount of □25,749,880.18, only □13,926,697.51 should be allowed as refund for the following reasons: (*a*) input VAT in the amount of □10,199,791.42 was disallowed for failure to meet the substantiation requirements laid down by law; and (*b*) input VAT in the amount of □1,598,804.08 was offset against the output VAT liability of CE Luzon.[15]

The CTA Division further found that petitioner timely filed its administrative and judicial claims for refund as they were filed within the prescriptive period provided by law, ***i.e.***, within two (2) years from the date of filing of the corresponding quarterly VAT returns.[16]

Both parties moved for partial reconsideration, which were, however, denied in a Resolution[17] dated March 9, 2009. Aggrieved, the CIR appealed to the CTA *En Banc*, contending that: (*a*) CE Luzon's administrative claims are *pro forma* in that it failed to submit at the administrative level all the necessary documents to prove entitlement to their claims for refund; and (*b*) CE Luzon filed its judicial claims prematurely in violation of Section 112 (D) of the National Internal Revenue Code (NIRC).[18]

On the other hand, records are bereft of any showing that CE Luzon appealed the partial denial of its claims for refund which had, thus, lapsed into finality.

The CTA *En Banc* Ruling

In a Decision[19] dated September 1, 2009, the CTA *En Banc* denied the CIR's appeal, and accordingly affirmed the CTA Division's Ruling.[20] It held that CE Luzon's non-submission of the complete supporting documents at the administrative level did not make its administrative claims *pro forma*,

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13 Id. at 81-107.
14 Id. at 106.
15 Id. at 99-104.
16 Id. at 104-105.
17 Id. at 108-110.
18 See CTA *En Banc* Decision; id. at 58.
19 Id. at 43-65.
20 Id. at 65.

holding that their non-submission will not necessarily result in the dismissal of its judicial claims for lack of jurisdiction. In this relation, the CTA *En Banc* opined that all that is required is for the taxpayer to elevate its claim for refund to the CTA within 30 days from receipt of the denial of its administrative claim or after the expiration of the 120-day period granted to the CIR to decide on such administrative claim, which must all be done within two (2) years from payment of the tax.[21]

Corollary thereto, the CTA *En Banc* further held that CE Luzon's judicial claims were not prematurely filed, despite the fact that it filed its petitions for review before the CTA only days after it filed its administrative claims before the BIR. It opined that the use of the word "may" in Section 112 (D) of the NIRC indicates that judicial recourse within 30 days after the lapse of the 120-day period is directory and permissive, and is neither mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period enshrined in Section 229 of the NIRC.[22]

Aggrieved, the CIR moved for reconsideration which was, however, denied in a Resolution[23] dated November 6, 2009, hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CTA *En Banc* correctly ruled that CE Luzon did not prematurely file its judicial claims for refund.

The Court's Ruling

The petition is partly meritorious.

Executive Order No. 273, series of 1987,[24] 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 RA 7716,[25] RA 8424,[26] and RA 9337,[27] which took effect on July 1, 2005. Since CE

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21 Id. at 60-62.
22 Id. at 62-63.
23 Id. at 76-78.
24 Entitled "ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES."
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."
26 Entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES."
27 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."

Luzon's claims for refund covered periods before the effectivity of RA 9337, Section 112 of the NIRC, as amended by RA 8424, should apply, to wit:

> Section 112. *Refunds or Tax Credits of Input Tax. –*
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> (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.
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> x x x x
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> (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.
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> 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 Court of Tax Appeals**. (Emphases and underscoring supplied)
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> x x x x

In *CIR v. Aichi Forging Company of Asia, Inc.*[28] (*Aichi*), 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 and, 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]

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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.

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 246[32] 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:

> 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 the case at bar, the following facts are undisputed: (*a*) in C.T.A. Case No. 6792, CE Luzon filed its administrative claim for refund of unutilized input VAT for the third quarter of 2001 on September 26, 2003 and the corresponding judicial claim on September 30, 2003; and (*b*) in C.T.A. Case No. 6837, the administrative claim for refund of unutilized input VAT for the fourth quarter of 2001 and all quarters of 2002 was filed on December 18, 2003 and the judicial claim on December 19, 2003.

While both claims for refund were filed within the two (2)-year prescriptive period, CE Luzon failed to comply with the 120-day period as it filed its judicial claim in C.T.A. Case No. 6792 four (4) days after the filing

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31 G.R. Nos. 187485, 196003, 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:
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> (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;
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> (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
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> (c) Where the taxpayer acted in bad faith. (Emphases and underscoring supplied)

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

34 Supra note 30.

35 See id.

of the administrative claim, while in C.T.A. Case No. 6837, the judicial claim was filed a day after the filing of the administrative claim. Proceeding from the aforementioned jurisprudence, only C.T.A. Case No. 6792 should be dismissed on the ground of lack of jurisdiction for being prematurely filed. In contrast, CE Luzon filed its administrative and judicial claims for refund in C.T.A. Case No. 6837 during the period, *i.e.*, from December 10, 2003 to October 6, 2010, when BIR Ruling No. DA-489-03 was in place. As such, the aforementioned rule on equitable estoppel operates in its favor, thereby shielding it from any supposed jurisdictional defect which would have attended the filing of its judicial claim before the expiration of the 120-day period.

At this point, the Court notes that due to the consolidation of C.T.A. Case Nos. 6792 and 6837, the CTA Division made a cumulative determination of the total amount of unutilized input VAT to be refunded/credited in favor of CE Luzon in the amount of ₱13,926,697.51. Considering, however, the foregoing disquisition, there is a need to ascertain the specific amounts adjudged that pertain to C.T.A. Case No. 6792 and to C.T.A. Case No. 6837, and consequently limit CE Luzon's entitlement to refund/tax credit of unutilized input VAT only with reference to C.T.A. Case No. 6837. For this purpose, the Court deems it proper to remand the instant case to the CTA.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated September 1, 2009 and the Resolution dated November 6, 2009, of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 474 are hereby **AFFIRMED** with **MODIFICATION DENYING** CE Luzon Geothermal Power Company, Inc.'s (CE Luzon) claim for refund in C.T.A. Case No. 6792 on the ground of lack of jurisdiction for being prematurely filed. On the other hand, the instant case is **REMANDED** to the CTA to determine the proper amount of input Value Added Tax refunded/tax credited in favor of CE Luzon in relation to its claim for refund in C.T.A. Case No. 6837.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

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
Chief Justice