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FIRST DIVISION

[G.R. No. 179356, December 14, 2009]

KEPCO PHILIPPINES CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Korea Electric Power Corporation (KEPCO) Philippines Corporation (petitioner) is an independent power producer engaged in selling electricity to the National Power Corporation (NPC).

After its incorporation and registration with the Securities and Exchange Commission on June 15, 1995, petitioner forged a Rehabilitation Operation Maintenance and Management Agreement with NPC for the rehabilitation and operation of Malaya Power Plant Complex in Pililia, Rizal.[1]

On September 30, 1998, petitioner filed with the Commissioner of Internal Revenue (respondent) administrative claims for tax refund in the amounts of P4,895,858.01 representing unutilized input Value Added Tax (VAT) payments on domestic purchases of goods and services for the 3rd quarter of 1996 and P4,084,867.25 representing creditable VAT withheld from payments received from NPC for the months of April and June 1996.

Petitioner also filed a judicial claim before the Court of Tax Appeals (CTA), docketed as CTA Case No. 5765, also based on the above-stated amounts.

Petitioner filed before respondent on December 28, 1998 still another claim for refund representing unutilized input VAT payments attributable to its zero-rated sale transactions with NPC, including input VAT payments on domestic goods and services in the amount of P13,191,278.00 for the 4th quarter of 1996. Petitioner also filed the same claim before the CTA on December 29, 1998, docketed as CTA Case No. 5704.

The two petitions before the CTA for a refund in the total amount of P22,172,003.26 were consolidated.

In his report, the court-commissioned auditor, Ruben R. Rubio, concluded that the claimed amount of P20,550,953.93 was properly substantiated for VAT purposes and subject of a

valid refund.

By Decision of March 18, 2003, the CTA granted petitioner partial refund with respect to **unutilized input VAT payment on domestic goods and services qualifying as capital goods** purchased for the 3rd and 4th quarters of 1996 in the amount of P8,325,350.35. All other claims were disallowed.

Petitioner filed an urgent motion for reconsideration, claiming an additional amount of P5,012,875.67.

By Resolution of July 8, 2003,[2] the CTA denied petitioner's motion, it holding that part of the additional amount prayed for â"€ P1,557,676.13 â"€ involved purchases for the year 1997, and with respect to the remaining amount of P3,455,199.54, it was not recorded under depreciable asset accounts, hence, it cannot be considered as capital goods.

Petitioner appealed under Rule 43 of the Rules of Court before the Court of Appeals,[3] praying only for the refund of P3,455,199.54, claiming that the purchases represented thereby were used in the rehabilitation of the Malaya Power Plant Complex which should be considered as capital expense to fall within the purview of capital goods.

The appellate court, by Decision of December 11, 2006, **affirmed** that of the CTA. In arriving at its decision, the appellate court considered, among other things, the account vouchers submitted by petitioner which listed the purchases under inventory accounts as follows:

1) Inventory supplies/materials
2) Inventory supplies/lubricants
3) Inventory supplies/spare parts
4) Inventory supplies/supplies
5) Cost/O&M Supplies
6) Cost/O&M Uniforms and Working Clothes
7) Cost/O&M/Supplies
8) Cost/O&M/Repairs and Maintenance
9) Office Supplies
10) Repair and Maintenance/Mechanics
11) Repair and Maintenance/Common/General
12) Repair and Maintenance/Chemicals

Reconsideration of the appellate court's decision having been denied by Resolution of August 17, 2007, the present petition for review on certiorari was filed.

In the main, petitioner faults the appellate court for not considering the purchases amounting to P3,455,199.54 as falling under the definition of "capital goods."

The petition is bereft of merit.

Section 4.106-1 (b) of Revenue Regulations No. 7-95 defines capital goods and its scope in this wise:

> x x x x
>
> (b) Capital Goods. - Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be the ratable portion corresponding to taxable operations.
>
> "Capital goods or properties" refer to goods or properties with estimated useful life greater that one year and which are treated as depreciable assets under Section 29 (f),[4] used directly or indirectly in the production or sale of taxable goods or services. (underscoring supplied)

For petitioner's purchases of domestic goods and services to be considered as "capital goods or properties," three requisites must concur. *First*, useful life of goods or properties must exceed one year; *second*, said goods or properties are treated as depreciable assets under Section 34 (f) and; *third*, goods or properties must be used directly or indirectly in the production or sale of taxable goods and services.

From petitioner's evidence, the account vouchers specifically indicate that the disallowed purchases were recorded under inventory accounts, instead of depreciable accounts. That petitioner failed to indicate under its fixed assets or depreciable assets account, goods and services allegedly purchased pursuant to the rehabilitation and maintenance of Malaya Power Plant Complex, militates against its claim for refund. As correctly found by the CTA, the goods or properties must be recorded and treated as depreciable assets under Section 34 (F) of the NIRC.

Petitioner further contends that since the disallowed items are treated as capital goods in the general ledger and accounting records, as testified on by its senior accountant, Karen Bulos, before the CTA, this should have been given more significance than the account vouchers which listed the items under inventory accounts.

A general ledger is a record of a business entity's accounts which make up its financial statements. Information contained in a general ledger is gathered from source documents such as account vouchers, purchase orders and sales invoices. In case of variance between the source document and the general ledger, the former is preferred.

The account vouchers presented by petitioner confirm that the purchases cannot qualify as capital goods for they are held as inventory items and not charged to any depreciable asset account. Petitioner has proffered no explanation why the disallowed items were not listed under depreciable asset accounts.

It is settled that tax refunds are in the nature of tax exemptions. Laws granting exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[5] Where the taxpayer claims a refund, the CTA as a court of record is required to conduct a formal trial (*trial de novo*) to prove every minute aspect of the claim.[6]

By the very nature of its functions, the CTA is dedicated exclusively to the resolution of tax problems and has consequently developed an expertise on the subject. Absent a showing of abuse or reckless exercise of authority,[7] the Court appreciates no ground to disturb the appellate court's Decision affirming that of the CTA.

IN FINE, petitioner having failed to establish that the disallowed items should be classified as capital goods, the assailed Decision of the Court of Appeals must be upheld.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and *Villarama, Jr.,* concur.

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[1] *Rollo*, p. 241 - Note 1 to Balance Sheets in petitioner's Annual Audited Financial Statement for 1996.

[2] Id. at 99-102.

[3] The appeal was filed before the passage of Republic Act No. 9282, elevating the rank of the Court of Tax Appeals to the level of the Court of Appeals.

[4] Now Section 34 (F) Depreciation. -

(1) General Rule - There shall be allowed as depreciation deduction a reasonable allowance

for the exhaustion, wear and tear (including reasonable allowance for obsolescence) of property used in the trade or business. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustees in accordance with the pertinent provisions of the instrument creating the trust, or in the absence of such provisions, on the basis of the trust income allowable to each. x x x x

[5] *Philippine Phosphate Fertilizer v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005, 461 SCRA 369, 381.

[6] *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, 468 SCRA 571, 588-589.

[7] *Commissioner of Internal Revenue v. Cebu Toyo Corp.*, G.R. No. 149073, February 16, 2005, 451 SCRA 447.
