Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE,	**G.R. No. 180434**
Petitioner,	Present:
- versus -	VELASCO, JR., *J.*, *Chairperson*, PERALTA, PEREZ, REYES, and JARDELEZA, *JJ.*
MIRANT PAGBILAO CORPORATION (now TeaM Energy Corporation),*	Promulgated:
Respondent.	January 20, 2016

x----------x

DECISION

REYES, *J.*:

This appeal by Petition for Review on *Certiorari*[1] seeks to reverse and set aside the Decision[2] dated September 11, 2007 and Resolution[3] dated November 7, 2007 of the Court of Tax Appeals (CTA) *en banc* in E.B. Case Nos. 216 and 225, affirming the Decision[4] dated August 31, 2005 of the CTA Second Division in CTA Case No. 6417, ordering petitioner Commissioner of Internal Revenue (CIR) to issue a refund or a tax credit certificate in the amount of ₱118,756,640.97 in favor of Mirant Pagbilao Corporation[5] (MPC).

---

* Per Resolution dated June 18, 2008; *rollo*, p. 133.

1 Id. at 13-33.

2 Id. at 35-49.

3 Id. at 9-11.

4 Penned by Associate Justice Erlinda P. Uy, with Chairman Juanito C. Castañeda, Jr. and Associate Justice Olga Palanca-Enriquez concurring; id. at 184-200.

5 Formerly known as Hopewell Power (Philippines) Corporation and Southern Energy Quezon, Inc., id. at 17.

The Facts

MPC is a duly-registered Philippine corporation located at Pagbilao Grande Island in Pagbilao, Quezon, and primarily engaged in the generation and distribution of electricity to the National Power Corporation (NAPOCOR) under a Build, Operate, Transfer Scheme. As such, it is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, with Taxpayer Identification No. 0001-726-870, and registered under RDO Control No. 96-600-002498.[6]

On November 26, 1999, the BIR approved MPC's application for Effective Zero-Rating for the construction and operation of its power plant.[7]

For taxable year 2000, the quarterly VAT returns filed by MPC on April 25, 2000, July 25, 2000, October 24, 2000, and August 27, 2001 showed an excess input VAT paid on domestic purchases of goods, services and importation of goods in the amount of ₱127,140,331.85.[8]

On March 11, 2002, MPC filed before the BIR an administrative claim for refund of its input VAT covering the taxable year of 2000, in accordance with Section 112, subsections (A) and (B) of the NIRC. Thereafter, or on March 26, 2002, fearing that the period for filing a judicial claim for refund was about to expire, MPC proceeded to file a petition for review before the CTA, docketed as CTA Case No. 6417,[9] without waiting for the CIR's action on the administrative claim.

On August 31, 2005, the CTA Second Division rendered a Decision[10] partially granting MPC's claim for refund, and ordering the CIR to grant a refund or a tax credit certificate, but only in the reduced amount of ₱118,749,001.55, representing MPC's unutilized input VAT incurred for the second, third and fourth quarters of taxable year 2000.

---

6 Id. at 185.
7 Id. at 186.
8 Id. at 36-37.
9 Id. at 187.
10 Id. at 184-200.

The CTA Second Division held that by virtue of NAPOCOR's exemption from direct and indirect taxes as provided for in Section 13[11] of Republic Act No. 6395,[12] MPC's sale of services to NAPOCOR is subject to VAT at 0% rate. The Secretary of Finance even issued a Memorandum dated January 28, 1998, addressed to the CIR, espousing the Court's ruling that purchases by NAPOCOR of electricity from independent power producers are subject to VAT at 0% rate, to wit:

> As explained by the Supreme Court, the rationale for the [NAPOCOR's] tax exemption is to ensure cheaper power. If the BIR's recent view is to be implemented, the VAT being an indirect tax, may be passed on by the seller of electricity to [NAPOCOR]. Effectively, this means that electricity will be sold at a higher rate to the consumers. Estimates show that a 10% VAT on electricity which is purchased by [NAPOCOR] from its independent power producers will increase power cost by about P1.30 billion a year. The effect on the consumer is an additional charge of P0.59 per kilowatt-hour. The recognition of [NAPOCOR's] broad privilege will inure to the benefit of the Filipino consumer.
>
> In view of the foregoing and using the power of review granted to the Secretary of Finance under Section 4 of Republic Act No. 8424, the DOF upholds the ruling of the Supreme Court that the [NAPOCOR] is exempt under its charter and subsequent laws from all direct and indirect taxes on its purchases of petroleum products and electricity. Thus, the purchases by [NAPOCOR] of electricity from independent power producers are subject to VAT at zero-rate.[13]

In arriving at the reduced amount of ₱118,749,001.55, the CTA Second Division found out that: (a) ₱2,116,851.79 input taxes claimed should be disallowed because MPC failed to validate by VAT official receipts and invoices the excess payment of input taxes; (b) ₱6,274,478.51 of input taxes was not properly documented; and (c) the input taxes of ₱127,140,331.85 for the year 2000 were already deducted by MPC from the total available input VAT as of April 25, 2002 as evidenced by the 2002 first

---

11 **Sec. 13. Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities**. - The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operations, 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.

12 AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION.

13 *Rollo*, pp. 191-192.

quarterly VAT return. Thus, the input taxes sought to be refunded were not applied by MPC against its output VAT liability as of April 25, 2002 and can no longer be used as credit against its future output VAT liability.[14]

Undaunted, MPC filed a motion for partial reconsideration and new trial in view of the additional amount it sought to be approved.

In an Amended Decision dated August 30, 2006, the CTA Second Division found that MPC is entitled to a modified amount of ₱118,756,640.97 input VAT, upon allowing the amount of ₱7,639.42 in addition to the VAT input tax. However, MPC's motion for new trial was denied. Dissatisfied, MPC elevated the matter to the CTA *en banc,* particularly in E.B. Case No. 216.[15]

Meanwhile, the CIR filed a motion for reconsideration of the amended decision. However, on November 13, 2006, the CTA Second Division issued a Resolution denying the motion. Thereafter, the CIR filed a petition for review before the CTA *en banc*, docketed as E.B. Case No. 225.[16]

In a Decision[17] dated September 11, 2007, the CTA *en banc* affirmed *in toto* the assailed amended decision and resolved the issues presented in E.B. Case Nos. 216 and 225.

In sustaining the decision of the CTA Second Division in E.B. Case No. 216, the CTA *en banc* ruled that:

> (a) MPC's claim for the refund of ₱810,047.31 is disallowed for lack of supporting documents. Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the claimant. Thus, a mere summary list submitted by MPC is considered immaterial to prove the amount of its claimed unutilized input taxes.[18]
>
> (b) MPC's claim for the refund of ₱836,768.00 as input taxes is denied due to lack of proof of payment. As a rule, "input tax on importations should be supported with Import Entry and Internal Revenue Declarations (IEIRDs) duly validated for actual payment of input tax" and that other documents may be adduced to determine its payment.[19] Here, the IEIRDs presented by MPC did not show payment of the input taxes and the amounts indicated therein differed from the bank debit advice. More so, the bank debit advice did not

---

14 Id. at 193-199.
15 Id. at 36.
16 Id. at 36-37.
17 Id. at 35-49.
18 Id. at 41-42.
19 Id. at 43.

properly describe the mode of payment of the input tax which made it difficult to determine which payee, and to what kind of payment did the bank debit advices pertain to.[20]

(c) The denial of MPC's motion for new trial was correct since it was pointless to require MPC to submit additional documents in support of the unutilized input tax of ₱3,310,109.20, in view of MPC's admission that the VAT official receipts and invoices were not even pre-marked and proffered before the court. Regrettably, without such documents, the CTA could not in any way properly verify the correctness of the certified public accountant's conclusion.[21]

As regards E.B. Case No. 225, the CTA *en banc* upheld the ruling of the CTA Second Division that VAT at 0% rate may be imposed on the sale of services of MPC to NAPOCOR on the basis of NAPOCOR's exemption from direct and indirect taxes.[22]

Disagreeing with the CTA *en banc*'s decision, both parties filed their respective motions for reconsideration, which were denied in the CTA *en banc* Resolution[23] dated November 7, 2007.

Feeling aggrieved by the adverse ruling of the CTA *en banc*, the CIR now seeks recourse to the Court *via* a petition for review on *certiorari*.

The Issues

The CIR raises in the petition the sole issue of whether or not the CTA erred in granting MPC's claim for refund of its excess input VAT payments on domestic purchases of goods, services and importation of goods attributable to zero-rated sales for taxable year 2000.[24]

The Court, however, points out that given the factual antecedents, the case also raises a jurisdictional issue inasmuch as MPC instituted the CTA action 15 days from the filing of its administrative claim for refund and without waiting for the CIR's action thereon. Thus, towards a full and proper resolution of the issue on the tax court's action on MPC's case, the Court finds it necessary to likewise resolve the issue of whether or not the CTA had jurisdiction to entertain MPC's judicial claim.

---

20 Id.
21 Id. at 44.
22 Id. at 46-47.
23 Id. at 50-52.
24 Id. at 21-22.

Ruling of the Court

The Court shall first address the issue on jurisdiction. While the matter was not raised by the CIR in its petition, it is settled that a jurisdictional issue may be invoked by either party or even the Court *motu proprio,* and may be raised at any stage of the proceedings, even on appeal. Thus, the Court emphasized in *Sales, et al. v. Barro*:[25]

> It is well-settled that a court's jurisdiction may be raised at any stage of the proceedings, even on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action. x x x [E]ven if [a party] did not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that it has no jurisdiction over the case. In this sense, dismissal for lack of jurisdiction may even be ordered by the court *motu proprio.*[26] (Citations omitted)

In the present dispute, compliance with the requirements on administrative claims with the CIR, which are to precede judicial actions with the CTA, indubitably impinge on the tax court's jurisdiction. In *CIR v. Aichi Forging Company of Asia, Inc.,*[27] the Court ruled that the premature filing of a claim for refund or credit of input VAT before the CTA warrants a dismissal, inasmuch as no jurisdiction is acquired by the tax court.[28] Pertinent thereto are the provisions of Section 112 of the NIRC at the time of MPC's filing of the administrative and judicial claims, and which prescribe the periods within which to file and resolve such claims, to wit:

> 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 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.

---

25 594 Phil. 116 (2008).
26 Id. at 123.
27 646 Phil. 710 (2010).
28 Id. at 732.

> 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].
>
> x x x x

Contrary to the specified periods, specifically those that are provided in the second paragraph of Section 112(D), MPC filed its petition for review with the CTA on March 26, 2002, or a mere 15 days after it filed an administrative claim for refund with the CIR on March 11, 2002. It then did not wait for the lapse of the 120-day period expressly provided for by law within which the CIR shall grant or deny the application for refund. The Court's pronouncement in *CIR v. San Roque Power Corporation*[29] is instructive on the effect of such failure to comply with the 120-day waiting period, to wit:

> 1. **Application of the 120+30-Day Periods**
>
> x x x x
>
> It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**
>
> Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.
>
> The charter of the CTA expressly provides that its jurisdiction is to review on appeal "**decisions** of the [CIR] in cases involving x x x refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the

---

[29] G.R. No. 187485, February 12, 2013, 690 SCRA 336.

Commissioner, the CTA has no jurisdiction over a petition for review.[30] (Citations omitted, emphasis in the original and underscoring ours)

The Court explained further:

> The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period.** With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.
>
> To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.[31] (Citations omitted and emphasis in the original)

The cited exception to the general rule, which came as a result of the issuance of BIR Ruling No. DA-489-03, does not apply to MPC's case as its administrative and judicial claims were both filed in March 2002.

The doctrine laid down in *San Roque* was reiterated in subsequent cases. In *CIR v. Aichi Forging Company of Asia, Inc.*,[32] the Court cited the general rule that parties must observe the mandatory 120-day waiting period to give the CIR an opportunity to act on administrative claims; otherwise, their judicial claims are prematurely filed.[33] In *Team Energy Corporation (formerly MPC) v. CIR*,[34] the Court again emphasized the rule stating that "the 120-day period is crucial in filing an appeal with the CTA."[35] "[T]he 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period."[36]

---

30 Id. at 380-382.
31 Id. at 398-399.
32 G.R. No. 183421, October 22, 2014.
33 Id.
34 G.R. No. 197760, January 13, 2014, 713 SCRA 142.
35 Id. at 153-154, citing *CIR v. Aichi Forging Company of Asia, Inc.*, supra note 27, at 732.
36 Supra note 29, at 401.

Clearly, MPC's failure to observe the mandatory 120-day period under the law was fatal to its immediate filing of a judicial claim before the CTA. It rendered the filing of the CTA petition premature, and barred the tax court from acquiring jurisdiction over the same. Thus, the dismissal of the petition is in order. "[T]ax refunds or tax credits – just like tax exemptions – are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit."[37]

With the CTA being barren of jurisdiction to entertain MPC's petition, the Court finds it unnecessary, even inappropriate, to still discuss the main issue of MPC's entitlement to the disputed tax refund. The petition filed by MPC with the CTA instead warrants a dismissal. It is settled that "a void judgment for want of jurisdiction is no judgment at all."[38]

WHEREFORE, the Decision dated September 11, 2007 and Resolution dated November 7, 2007 of the Court of Tax Appeals *en banc* in E.B. Case Nos. 216 and 225 are **SET ASIDE,** as the CTA Case No. 6417 was prematurely filed, and therefore, the CTA lacked jurisdiction to entertain Mirant Pagbilao Corporation's judicial claim.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

---

[37] *Applied Food Ingredients Company, Inc. v. CIR,* G.R. No. 184266, November 11, 2013, 709 SCRA 164, 169.

[38] *Zacarias v. Anacay,* G.R. No. 202354, September 24, 2014, 736 SCRA 508, 522.

DIOSDADO M. PERALTA
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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

TRUE COPY

LAPITAN
of Court
Division

FEB 17 2016