Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

VISAYAS GEOTHERMAL POWER COMPANY,	**G.R. No. 205279**
Petitioner,	Present:
- versus -	VELASCO, JR., *J.*, *Chairperson*, PERALTA,* BERSAMIN, REYES, and TIJAM, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	April 26, 2017

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RESOLUTION

REYES, *J.*:

Subjects of this Petition for Review on *Certiorari*[1] are the Decision[2] dated October 8, 2012 and Resolution[3] dated January 7, 2013 of the Court of Tax Appeals (CTA) *en banc* in CTA EB Case No. 864. The CTA *en banc* affirmed *via* the challenged issuances the CTA First Division's dismissal of Visayas Geothermal Power Company's (petitioner) petition for review on the ground of premature filing.

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* Additional member per Raffle dated April 26, 2017 *vice* Associate Justice Francis H. Jardeleza.

1 *Rollo*, pp. 44-79.

2 Penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez and Cielito N. Mindaro-Gulla concurring; Presiding Justice Ernesto D. Acosta with Concurring and Dissenting Opinion concurred in by Associate Justice Esperanza R. Fabon-Victorino; Associate Justice Lovell R. Bautista with Separate Dissenting Opinion; and Associate Justice Amelia R. Cotangco-Manalastas on leave; id. at 95-110.

3 Id. at 112-115.

The Antecedents

The petitioner is a special purpose limited partnership established primarily to "invest in, acquire, finance, complete, construct, develop, improve, operate, maintain and hold that certain partially constructed power production geothermal electrical generating facility in Malitbog, Leyte Province, Philippines (the "Project"), and other property incidental thereto, for the production and sale of electricity from geothermal resources, to sell or otherwise dispose of the Project and such other property."[4] It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer with Taxpayer Identification No. 003-832-538-000.[5]

On February 13, 2009, the petitioner filed with the BIR an administrative claim for refund of unutilized input VAT covering the taxable year 2007 in the amount of ₱11,902,576.07. On March 30, 2009, it proceeded to immediately file a petition for review with the CTA, as it claimed that the BIR failed to act upon the claim for refund.[6]

Proceedings ensued before the CTA. To substantiate its claim for refund, the petitioner cited, among other laws, Section 6 of Republic Act (R.A.) No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001," which provides in part that "[p]ursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be [VAT] zero-rated." It also referred to the 1997 National Internal Revenue Code (NIRC), as amended by R.A. No. 9337, which imposes a zero percent VAT rate on sale of power generated through renewable sources of energy.[7]

Ruling of the CTA Division

On October 19, 2011, the CTA First Division rendered its Decision,[8] with dispositive portion that reads:

> **WHEREFORE**, the instant Petition for Review is hereby **DENIED** for being prematurely filed.
>
> **SO ORDERED**.[9]

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4 Id. at 96.
5 Id.
6 Id. at 97.
7 Id. at 101.
8 Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy concurring; id. at 160-178.
9 Id. at 178.

Cited in the decision is Section 112(C) of the 1997 NIRC, which provides that the Commissioner of Internal Revenue (CIR) has 120 days within which to decide on an application for refund or tax credit, to be reckoned from the date of submission of complete documents in support of the application. Since the administrative claim for refund was filed on February 13, 2009, the CIR had until June 13, 2009 within which to act on the claim. The petition for review, however, was prematurely filed on March 30, 2009, or a mere 45 days from the filing of the administrative claim with the BIR. The dismissal of the case was based solely on this ground, as the tax court found it needless to still address the petitioner's compliance with the requisites for entitlement to tax refund or credit.[10]

The petitioner moved to reconsider,[11] as it explained that it no longer waited for the CIR's action on the administrative claim to be able to still satisfy the two-year prescriptive period for filing a judicial claim for tax refund. The petitioner's motion for reconsideration was still denied by the CTA First Division *via* a Resolution[12] dated January 16, 2012, prompting the petitioner to elevate the case to the CTA *en banc*.

The CTA *en banc*, in its Decision[13] dated October 8, 2012, affirmed *in toto* the rulings of the CTA First Division. It stated, thus:

> In the case at bench, the CTA First Division is correct in its findings that petitioner's administrative claim for refund/credit of its unutilized input VAT was timely filed on February 13, 2009. Applying subsections (A) and (C) of Section 112 of the 1997 NIRC, as amended, the [CIR] has one hundred twenty (120) days or until June 13, 2009 to act on the said application. However, as can be gleaned from the records, its judicial claim was prematurely filed on March 30, 2009 or barely forty-five (45) days after it filed its application for refund with the [BIR]. For this reason, applying the ruling in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi case),* this Court acquires no jurisdiction to act on the said claim in view of the premature filing of the instant Petition for Review.
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> x x x x
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> **WHEREFORE,** premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the October 19, 2011 Decision and the January 16, 2012 Resolution of the CTA First Division in CTA Case No. 7889 entitled, "*Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*", are hereby **AFFIRMED *in toto.***
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> **SO ORDERED.**[14] (Citation omitted)

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10 Id. at 175-178.
11 Id. at 179-220.
12 Id. at 233-240.
13 Id. at 95-110.
14 Id. at 107-108.

Hence, this petition for review on *certiorari*.

The Present Petition

The petitioner asks the Court to, *first*, reverse the rulings of the CTA *en banc* and, *second*, to order the CIR to grant the refund or tax credit certificate being applied for.[15]

The petitioner insists that when it sought an immediate recourse to the CTA without waiting for the decision of the CIR in the administrative claim, it merely relied on the guidelines that were set forth in BIR Ruling No. DA-489-03, which provides that a taxpayer-claimant need not wait for the lapse of the 120-day period before seeking judicial relief. The petitioner also cites the Court's ruling in *CIR v. San Roque Power Corporation*,[16] which recognized the effects of a taxpayer's reliance on the said BIR ruling.

The CIR, on the other hand, maintains that the petition for review filed with the CTA was prematurely filed, as the petitioner still had to wait for the lapse of the 120-day period allowed for the resolution of its administrative claim.

Ruling of the Court

The petition is partly granted. The CTA erred in ruling that the petitioner's judicial claim was prematurely filed. However, considering that the tax court had not made a disposition on the merits of the claim for tax refund, the case needs to be remanded to the CTA First Division, so that it may decide on the issue.

120+30-Day Periods; Exception

In a line of cases,[17] the Court has underscored the need to strictly comply with the 120+30-day periods provided in Section 112 of the 1997 NIRC, which reads:

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15 Id. at 74.

16 703 Phil. 310 (2013).

17 *CIR v. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016, 781 SCRA 364; *CIR v. Aichi Forging Company of Asia, Inc.*, G.R. No. 183421, October 22, 2014, 739 SCRA 91; *Team Energy Corporation v. CIR*, 724 Phil. 127 (2014).

> Sec. 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 x x x.
>
> x x x x
>
> (C) *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 Subsection (A) 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.
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> x x x x (Emphasis ours)

The Court ruled in *San Roque*[18] that "[f]ailure 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."[19] "The old rule that the taxpayer may file the judicial claim, without waiting for the [CIR'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."[20] With the current rule that gives a taxpayer 30 days to file the judicial claim even if the CIR fails to act within the 120-day period, the remedy of a judicial claim for refund or credit is always available to a taxpayer.[21]

As the petitioner correctly pointed out, this general rule that calls for a strict compliance with the 120+30-day mandatory periods admits of an exception. The Court has declared, also in *San Roque*:

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18 Supra note 16.
19 Id. at 354.
20 Id. at 370.
21 Id. at 370-371.

> [S]trict 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.[22] (Emphasis ours)

The BIR Ruling No. DA-489-03 referred to in the exception was recognized by the Court to be a general interpretative rule applicable to all taxpayers, as it was a response to a query made, not by a particular taxpayer but by a government agency[23] tasked with processing tax refunds and credits.[24]

> VI. **BIR Ruling No. DA-489-03 dated 10 December 2003**
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> BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the "**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.**" Prior to this ruling, the BIR held x x x that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.[25] (Emphasis ours)

All taxpayers can rely on it from the time of its issuance on December 10, 2003 up to its reversal by the Court in *CIR v. Aichi Forging Company of Asia, Inc.*[26] on October 6, 2010, where this Court held that the 120+30-day periods are mandatory and jurisdictional.[27]

It is material that both administrative and judicial claims in the present case were filed by the petitioner in 2009. The CTA *en banc*'s reliance on the general rule enunciated by the Court in *San Roque* is misplaced. Notwithstanding the fact that the petitioner failed to wait for the expiration of the 120-day mandatory period, the CTA could still take cognizance of the petition for review.[28]

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22 Id. at 371.
23 One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance.
24 *CIR v. San Roque Power Corporation*, supra note 16, at 376.
25 Id. at 372-373.
26 G.R. No. 183421, October 22, 2014, 739 SCRA 91.
27 *CIR v. San Roque Power Corporation*, supra note 16, at 376.
28 *See* also *Team Energy Corporation v. CIR*, 724 Phil. 127 (2014).

Entitlement to Tax Refund

In its Decision dated October 19, 2011, the CTA First Division recognized that the petitioner's entitlement to tax refund required proof of satisfaction of the following requisites:

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.[29]

The foregoing matters call for factual findings, which are not for the Court to now determine. Given the Court's ruling that the CTA should have taken cognizance of the petitioner's claim, the Court finds it necessary to remand the case to the CTA, which shall determine and rule on the entitlement of the petitioner to the claimed tax refund. Notwithstanding the fact that the CTA First Division allowed the parties' presentation of evidence, it opted not to rule on the presence or absence of the foregoing requisites, except for the fifth requisite, and instead decided to dismiss the petition on the ground that the case was prematurely filed. Even the CTA *en banc* affirmed the dismissal on the same sole ground.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated October 8, 2012 and Resolution dated January 7, 2013 of the Court of Tax Appeals *en banc* in CTA EB Case No. 864 are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Court of Tax Appeals, which is **DIRECTED** to determine petitioner Visayas Geothermal Power Company's entitlement to a tax refund.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

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29 *Rollo*, pp. 172-173.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution 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 Resolution 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

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUN 07 2017