

PHILIPPINE GEOTHERMAL, INC., PETITIONER, VS. THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 154028. July 29, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

The present petition for review on certiorari assails the September 14, 2001 Decision[1] and June 14, 2002 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 54730, which affirmed the April 21, 1999 Decision[3] of the Court of Tax Appeals in C.T.A. Case No. 5541.

The facts of the case as found by the Court of Appeals and Court of Tax Appeals are as follows:

Petitioner is a resident foreign corporation licensed by the Securities and Exchange Commission (SEC) to engage in the exploration, development and exploitation of geothermal energy and resources in the Philippines. In September 1971, it entered into a service contract with the National Power Corporation (NPC) to supply steam to the latter.

From September 1995 to February 1996, petitioner billed NPC, Value Added Tax (VAT) computed at ten percent of the service fee charged on the supply of steam. NPC did not pay the VAT. To avoid any possible tax deficiency, petitioner remitted VAT equivalent to 1/11 of the fees received from NPC or P39,328,775.41, broken down as follows:

Exhibit

Period covered

Payment Date

VAT Paid

C

7/95 to 9/95

10/18/95

P8,977,117.26

H

10/95 to 12/95

1/18/96

11,248,194.31

M

11/95

12/13/95

8,243,090.27

S

1/96

2/19/96

5,213,400.45

W

2/96

3/18/96

5,646,973.12

P39,328,775.41

Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue on July 10, 1996. According to petitioner, the sale of steam to NPC is a VAT-exempt transaction under Sec. 103 of the Tax Code.[4] Petitioner claimed that Fiscal Incentives Review Board (FIRB) Resolution No. 17-87, approved by President Aquino pursuant to Executive Order No. 93,[5] expressly exempted NPC from VAT.

Since respondent failed to act on the claim, on July 2, 1997, petitioner filed a petition to toll the running of the two-year prescriptive period before the Court of Tax Appeals.

Respondent, in his Answer,[6] averred:

...

- The claim of petitioner Philippine Geothermal Incorporated (PGI for short) for Value-Added Tax refund has no legal basis.

...

- Fiscal Incentives Review Board (FIRB) Resolution 17-87 specifically restored the tax and duty exemption privileges of the NPC, including those pertaining to its domestic purchases of petroleum and petroleum products granted under the terms and conditions of Commonwealth Act 120 as amended, effective March 10, 1987.

However, the restoration of the tax and duty exemption privileges does not apply to importations of fuel oil (crude equivalents) and coal, commercially-funded importations (i.e. importations which include but are not limited to those foreign-based private financial institutions, etc.) and interest income derived from any source. Such exemption also does not include purchases of goods and services. Hence, any contracting services of NPC is not qualified for zero-rated VAT (VAT Ruling 250-89, October, 1989).

- It is clear from the aforecited FIRB resolution that the tax exemption privilege granted to NPC does not include purchases of goods and services, such as the supply of steam to NPC.

...

- The subject taxes have been paid and collected in accordance with law and regulation.

- In a claim for refund, it is incumbent upon petitioner to show that it is indubitably entitled thereto. Petitioner's failure to establish the same is fatal to its claim for refund.
- The present case is no exception to the basic rule that claims for refund are construed strictly against claimant for the same partake of the nature of exemption from taxation.

Simply put, the sole issue in this case is whether petitioner's supply of steam to NPC is a VAT-exempt transaction.

FIRB Resolution No. 17-87 dated June 24, 1987, on which petitioner anchors its claim for tax exemption, provides as follows:

BE IT RESOLVED, AS IT IS HEREBY RESOLVED, That the tax and duty exemption privileges of the National Power Corporation, including those pertaining to its domestic purchases of petroleum and petroleum products, granted under the terms and conditions of Commonwealth Act No. 120 (Creating the National Power Corporation, defining its powers, objectives and functions, and for other purposes), as amended, are restored effective March 10, 1987, subject to the following conditions:

1.

The restoration of the tax and duty exemption privileges does not apply to the following:

1.1

Importation of fuel oil (crude equivalent) and coal;

1.2

Commercially-funded importations (i.e., importations which include but are not limited to those financed by the NPC's own internal funds, domestic borrowings from any source whatsoever, borrowing from foreign-based private financial institutions, etc.); and

1.3

Interest income derived from any source.[7]

This Supreme Court has confirmed this exemption. In *Maceda v. Macaraig, Jr.*,^[8] this Court ruled that Republic Act No. 358^[9] exempts the NPC from all taxes, duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, and its provinces, cities and municipalities. This exemption is broad enough to include both direct and indirect taxes the NPC may be required to pay. To limit the exemption granted the NPC to direct taxes, notwithstanding the general and broad language of the statute, will be to thwart the legislative intention in giving exemption from all forms of taxes and impositions, without distinguishing between those that are direct and those that are not.

A chronological review of the NPC laws will show that it has been the lawmakers' intention that the NPC is to be completely tax exempt from all forms of taxes - both direct and indirect.^[10]

The ruling dated March 15, 1996, issued to petitioner by Assistant Commissioner Alicia P. Clemeno of the Bureau of Internal Revenue, likewise confirms this exemption:

In view of the foregoing, this Office is of the opinion as it hereby holds, that the supply of steam by your client, Philippine Geothermal, Inc. (PGI) to National Power Corporation NPC/NAPOCOR to be used in generating electricity is exempt from the value-added tax. (BIR Ruling No. 078-95 dated April 26, 1995)^[11]

On April 21, 1999, the CTA ruled that the supply of steam to NPC by petitioner being a VAT-exempt transaction,

neither petitioner nor NPC is liable to pay VAT. Petitioner, therefore, may rightfully claim for a refund of the value-added tax paid. The CTA held,

WHEREFORE, in the light of the foregoing, RESPONDENT is hereby ORDERED to REFUND or in the alternative, ISSUE A TAX CREDIT CERTIFICATE to PETITIONER the sum of P9,012,310.26 representing erroneously paid value added tax.

SO ORDERED.[12]

According to the CTA, based on the evidence presented by petitioner, out of the refund claim of P39,328,775.41, only P9,012,310.26[13] or that pertaining to output tax paid for September 1995 and the interest on late payment on peso cash call, were not paid by NPC. As to the rest of petitioner's claim, it appears that the official receipts petitioner issued to NPC included the VAT payable shown in the Summary of Payments Received from NPC for each production period.

Petitioner raised the matter before the Court of Appeals praying that the respondent be ordered to refund the sum of P39,328,775.41 or issue a tax credit certificate representing erroneous payments of VAT from September 1995 to February 1996.

The Court of Appeals denied the petition and affirmed the assailed decision of the Court of Tax Appeals.

Hence this appeal. Petitioner assigns the following errors to the appellate court:

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING IN TOTO THE DECISION OF THE COURT OF TAX APPEALS, BECAUSE:

A). THE DECISION OF THE COURT OF TAX APPEALS WAS BASED ON A MISAPPREHENSION OF FACTS, NAMELY, THAT THE NPC PAID P30,316,465.15 AS VAT;

B). THE PETITIONER HAD ESTABLISHED BY UNDISPUTABLE EVIDENCE THAT IT PAID THE VAT ON THE SUPPLY OF STEAM TO NPC; ACCORDINGLY, IT IS ENTITLED TO THE REIMBURSEMENT OF THE FULL AMOUNT OF VAT ERRONEOUSLY PAID.[14]

The CTA Decision stated categorically that the supply of steam to NPC is exempt from VAT. However, it only granted a partial VAT refund of P9,012,310.26, believing that only this amount was not reimbursed by NPC. The CTA ruled that petitioner was no longer entitled to a refund of the remaining balance of P30,316,465.15, since it appears that the official receipts petitioner issued to NPC included the VAT payable shown in the Summary of Payments Received from NPC for each production period.

We disagree with the CTA. In this case, the only issue is the amount of refund to be granted based on the amount of tax erroneously paid. Tax refunds are in the nature of tax exemptions, and are to be construed strictissimi juris against the entity claiming the same.[15] Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund. In the Bureau of Internal Revenue's Ruling dated March 15, 1996, that the supply of steam by petitioner to NPC is exempt from VAT, petitioner has indubitably established its basis for claiming a refund.

That NPC may have reimbursed petitioner the 10% VAT is not a ground for the denial of the claim for refund. The CTA overlooked the fact that it was petitioner who paid the VAT out of its own service fee. The erroneous payments of the VAT were only discontinued when the BIR issued its Ruling No. DA-111-96 in favor of petitioner on March 15, 1996. By then, petitioner had already remitted a sizeable amount of P39,328,775.41 to the Government. The only recourse of petitioner is the complete restitution of the erroneous payments of taxes.

The amount of refund should have been based on the VAT Returns filed by the taxpayer. Whether NPC had

reimbursed petitioner is not the concern of the CTA. It is solely a matter between petitioner and NPC.[16] For indirect taxes like VAT, the proper party to question or seek a refund of the tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even when he shifts the burden thereof to another.[17]

Petitioner has the legal personality to apply for a refund since it is the one who made the erroneous VAT payments and who will suffer financially by paying in good faith what it had believed to be its potential VAT liability.

Under the principle of solutio indebiti,[18] the government has to restore to petitioner the sums representing erroneous payments of taxes.[19] It is of no moment whether NPC had already reimbursed petitioner or not because in this case, there should have been no VAT paid at all.

The Summary of Payments and Official Receipts issued by a supplier is not a reliable basis for determining the VAT payments of said supplier. The CTA grossly misappreciated the evidence and erroneously concluded in this case that NPC paid the VAT. The CTA should have relied on the VAT Returns filed by the taxpayer to determine the actual amount remitted to the BIR for the purpose of ascertaining the refund due. The presentation of the VAT Returns is considered sufficient to ascertain the amount of the refund. Thus, upon finding that the supply of steam to NPC is exempt from VAT, the CTA should have ordered respondent to reimburse petitioner the full amount of P39,328,775.41 as erroneously paid VAT.

WHEREFORE, the petition is hereby GRANTED. Respondent is ORDERED to refund or in the alternative, issue a Tax Credit Certificate to petitioner in the sum of P39,328,775.41 as erroneously paid VAT.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 74-83. Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Eugenio S. Labitoria, and Perlita J. Tria Tirona concurring.

[2] Id. at 85.

[3] Id. at 304-325.

[4] Now Republic Act No. 8424 which provides

Sec. 109. Exempt Transactions. - The following shall be exempt from the value-added tax:

...

(q) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree Nos. 66, 529 and 1590;

...

[5] WITHDRAWING ALL TAX AND DUTY INCENTIVES, SUBJECT TO CERTAIN EXCEPTIONS, EXPANDING THE POWERS OF THE FISCAL INCENTIVES REVIEW BOARD AND FOR OTHER PURPOSES (17 December 1986).

[6] Rollo, pp. 75-76.

[7] Id. at 308-309.

[8] G.R. No. 88291, 8 June 1993, 223 SCRA 217, 223.

[9] SEC. 2. To facilitate payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, duties, fees, imposts, charges, and restrictions of the Republic of the Philippines, its provinces, cities and municipalities (Effective 4 June 1949).

[10] Republic Act No. 6395 (10 September 1971) enumerated the details covered by the exemptions by stating under Sec. 13 that "The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion...the Corporation is hereby declared exempt 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 . . ." Subsequently, Presidential Decree No. 380 (22 January 1974), Sec. 10 made even more specific the details of the exemption of NPC to cover, among others, both direct and indirect taxes on all petroleum products used in its operation. Presidential Decree No. 938 (27 May 1976), Sec. 13 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts service fees, including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings. The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all the exemption it has been enjoying before. The rationale for this exemption is that being non-profit, the NPC "shall devote all its return from its capital investment as well as excess revenues from its operation, for expansion. . ." (Emphasis supplied).

[11] Rollo, p. 154.

[12] Id. at 312.

[13] P9,012,310.11 in some parts of the records.

[14] Rollo, p. 44.

[15] Commissioner of Internal Revenue v. Solidbank Corporation, G.R. No. 148191, 25 November 2003, 416 SCRA 436, 461.

[16] See Commissioner of Internal Revenue v. American Rubber Co., No. L-19667, 29 November 1966, 18 SCRA 842, 853.

[17] See Cebu Portland Cement Co. v. Collector of Internal Revenue, No. L-20563, 29 October 1968, 25 SCRA 789, 797 and Commissioner of Internal Revenue v. American Rubber Co., *ibid*.

[18] new civil code, Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[19] National Development Company v. Cebu City, G.R. No. 51593, 5 November 1992, 215 SCRA 382, 396 citing Ramie Textiles, Inc. v. Mathay, Sr., No. L-32364, 30 April 1979, 89 SCRA 586, 592.

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