REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MINDANAO I GEOTHERMAL PARTNERSHIP, Petitioner,	**CTA CASE NO. 8247**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 1 0 2012 3:25 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by Mindanao I Geothermal Partnership to seek the refund or the issuance of tax credit certificate in the amount of P12,275,984.24, allegedly representing excess and unutilized creditable input value-added tax (VAT) of petitioner for the four quarters of taxable year 2009.

Mindanao I Geothermal Partnership (petitioner) is a partnership previously registered with the Securities and Exchange Commission (SEC), with principal office address at 36th Floor, Tower I, The Enterprise Center, 6766 Ayala Avenue, Makati City.[1] Petitioner is a duly registered VAT taxpayer, with Taxpayer Identification Number (TIN) 004-712-984-000.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office, including, among others, the duty to decide upon and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for the four quarters of taxable year 2009, declaring the following information:

PERIOD (2009)	TOTAL SALES/ RECEIPTS	INPUT VAT FROM PREVIOUS PERIOD	DOMESTIC PURCHASES OF GOODS NOT CAPITAL GOODS	CREDITABLE INPUT VAT	NET ACCUMULATED EXCESS INPUT VAT
1st Quarter[3]	P 10,752,871.91	P30,509,672.26	P19,501,072.91	P2,340,128.75	P32,849,801.01
1st Quarter (Amended)[4]	11,020,729.08	30,509,672.26	19,501,072.91	2,340,128.75	32,817,658.15
2nd Quarter[5]	29,806,053.44	32,849,801.01	30,133,953.41	3,616,074.41	36,465,875.42
2nd Quarter (Amended)[6]	30,047,392.69	32,817,658.15	30,133,953.41	3,426,059.26	36,404,771.85
3rd Quarter[7]	22,675,497.19	36,404,771.85	0.00	1,310,894.26	37,723,787.44
3rd Quarter (Amended)[8]	23,184,693.61	36,404,771.85	10,991,796.58	1,319,015.59	37,662,683.87
4th Quarter[9]	0.00	37,662,683.87	42,706,438.58	5,124,318.57	42,787,456.50
4th Quarter (Amended)[10]	15,000.00	37,662,683.87	42,702,654.75	5,124,772.63	42,785,656.50

On April 15, 2010, petitioner filed with respondent a written request for the cancellation of its BIR Registration/Tax Identification Number and the

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[1] Par. I, Admitted Facts, Joint Stipulation of Facts and Issues, (JSFI), docket, p. 302
[2] Exhibit "B"
[3] Exhibit "I", filed on April 24, 2009
[4] Exhibit "J", filed on July 24, 2009
[5] Exhibit "K", filed on July 21, 2009
[6] Exhibit "L", filed on July 24, 2009
[7] Exhibit "M", filed on October 13, 2009
[8] Exhibit "N", filed on November 20, 2009
[9] Exhibit "O", filed on January 12, 2010
[10] Exhibit "P", filed on January 15, 2010

issuance of Tax Clearance Certificate, with a claim for refund or issuance of tax credit certificate for its alleged excess input VAT for the year 2009 in the amount of P12,275,984.24. Petitioner cites BIR Ruling No. 003-06 dated February 14, 2006 as legal basis of its refund claim, which confirmed that the sale of electricity by petitioner to Philippine National Oil Corporation-Energy Development Corporation (PNOC-EDC) is subject to zero percent (0%) VAT rate pursuant to Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended.[11]

Inasmuch as petitioner has yet to receive a favorable response from respondent and before it could be barred by prescription, petitioner filed the instant Petition for Review on March 31, 2011.

In the Answer[12] filed on May 6, 2011, respondent interposed the following Special and Affirmative Defenses:

> "5. Taxes collected are presumed to be in accordance with laws and regulations.
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> 6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.
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> 7. Taxes are essential to government's very existence; **(CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003**) hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. **(CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008)** Since tax refunds are regarded as tax exemptions and these are to be construed

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[11] Exhibit "H"

[12] Docket, pp. 254-263

strictissimi juris against the person or entity claiming the exemption. **(Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R. 141973, June 28, 2005)**

8. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R. 127624, November 18, 2003)** The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. **(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc. G.R. 163835 July 7, 2010)**

9. To support its claim, it is imperative for petitioner to prove the following, viz:

   a. The registration requirements of a value-added taxpayer in compliance with section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

   b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

   c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of an administrative application for refund which is a condition sine qua non prior to the filing of a judicial claim** in accordance with Section 112 of the Tax Code, as amended. This requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of the judicial remedies as provided for in the** 92

law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner *(sic)* for review;

d. That the input taxes of P12,275,984.24 allegedly incurred by petitioner for the first to fourth quarter of taxable year 2009 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of unutilized input tax (VAT) was filed in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.101-5 of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits)

10. Petitioner primarily hinged its claim for refund of alleged excess input VAT in Section 112 (A) and (D) of the National Internal Revenue Code of 1997 which provides:

> ***(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

(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 days (120) days from the date of submission of complete documents*** in support of the application filed in accordance with Subsections (A) and (B) hereof.

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 unacted claim with the Court of Appeals.

Indeed, the foregoing provision is plain and resounding. The Supreme Court in the case of **Commissioner of Internal Revenue vs Aichi Forging (G.R. No. 184823 October 6, 2010)** held:

xxxx

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. ***In both instances, the taxpayer has 30 days within which to file an appeal with the CTA***.

As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

The foregoing judicial pronouncement stressed the mandatory character of Section 112 (D) which governs the observance of the 120-day period and the 30-day period. The doctrine of exhaustion of remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions.

In this case, petitioner's right to file the instant case has prescribed. As admitted by petitioner in paragraph 20 of its petition that 'on **April 25, 2010**, it filed with respondent BIR a written request for cancellation of its Tax Identification Number (TIN) and issuance of Tax Clearance Certificate **with a claim for refund or tax credit** for its excess input VAT for the year 2009 in the amount of P12,275,984.24' and it is of judicial notice that the judicial claim was filed on **March 31, 2011**. Counting 30 days from the lapse of 120-day period, it is evident that the instant petition was filed way beyond the period mandated by law, as it filed the petition ***199 days*** after the lapse of 30-day period. Evidently, the 30-day period as mandated by Section 112(D) and CIR vs Aichi Forging was not complied with. The case has prescribed; therefore the Honorable Court has no jurisdiction to take cognizance of the case and should dismiss the petition

11. The amount of Twelve Million, Two Hundred Seventy Five Thousand, Nine Hundred Eighty Four and 24/100 P12,275,984.24) being claimed by petitioner arising from unutilized input value-added tax ('VAT') paid and incurred for the taxable year 2009 is not properly documented.

12. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

The parties submitted their Joint Stipulation of Facts and Issues[13] on June 29, 2011, which the Court approved in a Resolution[14] dated June 30, 2011. Thereafter, the pre-trial was terminated and the parties were ordered to proceed with the trial proper.

During trial, petitioner presented documentary and testimonial evidence. On the other hand, respondent, through counsel, waived her right to present evidence since her counsel has not received the report of the investigation of the case. The parties were given a period of thirty (30) days from April 23, 2012 or until May 23, 2012 to file their respective memorandum.[15]

On June 5, 2012, the case was submitted for decision, considering respondent's Memorandum filed on May 22, 2012[16] and the report of the Court's Records Division that petitioner failed to file a memorandum.

The issues[17], as jointly stipulated by the parties, are the following:

"1. Whether or not petitioner has complied with the submission of complete documents in support of its administrative claim for refund.

2. Whether or not petitioner's administrative and judicial claims were timely filed.

3. Whether or not this Honorable Court has jurisdiction over the present case.

4. Whether or not the amount of P12,275,984.24 represents the excess and unutilized creditable input taxes paid by petitioner within the 1st to 4th Quarters of

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[13] Docket, pp. 302-304
[14] Docket, p. 306
[15] Minutes of Hearing dated April 23, 2012, docket, p. 456
[16] Docket, pp. 457-476
[17] Docket, pp. 303-304

Year 2009 directly attributable to its primary source of revenue which is VAT zero-rated.

5. Whether or not the excess and unutilized creditable input taxes for the 1st to 4th Quarters of the Year 2009 is duly supported by pertinent documents, such as VAT compliant invoices and official receipts.

6. Whether or not petitioner's excess and unutilized creditable input taxes paid by petitioner for the 1st to 4th Quarters of Year 2009 in the total amount of P12,275,984.24 remains unutilized and will not be utilized because of petitioner's dissolution.

7. And in sum, whether or not petitioner is entitled to the claim for refund or tax credit in the amount of P12,275,984.24 representing its excess creditable input taxes for the 1st to 4th Quarters of Year 2009 directly attributable to its primary source of revenue which is VAT zero-rated."

In claims for refund or issuance of tax credit certificate for excess and unutilized value-added tax due to cessation of business, the applicable provision is Section 112(B) of the NIRC of 1997, as amended, which provides:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

xxx xxx xxx

(B) *Cancellation of VAT Registration.* – A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, **within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.**" *(Emphasis supplied)*

In connection thereto, Section 4.112-1(b) of Revenue Regulations (RR) No. 16-05, dated September 1, 2005, states: *Jc*

> "SECTION 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.* –
>
> xxx xxx xxx
>
> (b) *Cancellation of VAT registration*
>
> A VAT-registered person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Sec. 106(C) of the Tax Code may, **within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes**; *Provided, however*, **that he shall be entitled to a refund if he has no internal revenue tax liabilities against which the tax credit certificate may be utilized**." *(Emphasis supplied)*

Based on the foregoing, it is clear that a VAT-registered person whose registration has been cancelled due to cessation of business may, within two (2) years from the date of cancellation of its registration, apply for the issuance of a tax credit certificate for any unused input tax which may be used to pay other internal revenue taxes. However, if the said VAT-registered person has no internal revenue tax liabilities, it shall be entitled to a refund.

In case of a refund, Section 204 of the NIRC of 1997 provides that:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. **Any request for conversion into refund of unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code: *Provided*, That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: *Provided, further*, That in no case shall a tax refund be given resulting from availment of**

> **incentives granted pursuant to special laws for which no actual payment was made**." *(Emphasis supplied)*

As may be gleaned from the above-quoted provisions, the VAT-registered person who seeks the issuance of tax credit certificate or refund due to cessation of business has two years within which to file its claim. The two-year period is reckoned from the date of cancellation of the taxpayer's registration, as provided by Section 236(F)(1) and (2)(b) of the NIRC of 1997, as amended, to wit:

> "SEC. 236. *Registration Requirements.* –
>
> xxx xxx xxx
>
> (F) *Cancellation of Registration.* –
>
> (1) *General Rule.* – The registration of any person who ceases to be liable to a tax type shall be cancelled upon filing with the Revenue District Office where he is registered, an application for registration information update in a form prescribed therefor;
>
> (2) *Cancellation of Value-added Tax Registration.* – **A VAT-registered person may cancel his registration for VAT if:**
>
> xxx xxx xxx
>
> (b) **He has ceased to carry on his trade or business, and does not expect to recommence any trade or business within the next twelve (12) months.**
>
> **The cancellation of registration will be effective from the first day of the following month.**" *(Emphasis supplied)*

Based on the records, on December 22, 2009, the Board of Directors and Stockholders of Marubeni Pacific Energy Holdings Corporation (MPEHC) and Marubeni Pacific II Energy Holdings Corporation (MP2EHC) approved and authorized the merger with Axia Power Holdings Philippines Corporation

(APHPC), with APHPC as the surviving entity, effective January 1, 2010. On account of the merger, MPEHC withdrew as one of the two partners in Mindanao I Geothermal Partnership.

On March 29, 2010, the SEC approved the merger of APHPC, MPEHC and MP2EHC and Marubeni Energy Services Corporation (MESC). Likewise approved by the SEC was the Affidavit of Withdrawal executed by MPEHC,[18] which resulted in the dissolution of petitioner. Consequently, petitioner filed its request for cancelation of BIR Registration/TIN and issuance of Tax Clearance Certificate, with a claim for refund or issuance of tax credit certificate on April 15, 2010.[19]

Applying Section 236(F)(1) and (2)(b) of the NIRC of 1997, as amended, petitioner's cancellation of registration became effective only on May 1, 2010, considering that it filed its application with the BIR on April 15, 2010. However, since petitioner's claim for refund or issuance of tax credit certificate with respondent was incorporated in its application for cancellation of BIR Registration/TIN, which was filed on April 15, 2010, applying Section 236 of the NIRC of 1997, as amended, this Court finds petitioner's administrative claim for refund prematurely filed.

In the case *Associated Swedish Steels Phils., Inc. vs. Commissioner of Internal Revenue*[20], this Court made the following pronouncements:

> "Thus, as a general rule, if a taxpayer ceases to be liable to a tax type, his registration shall be cancelled upon the filing with the proper Revenue District Office of an application for registration update in a form prescribed therefor.

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[18] Exhibit "A"
[19] Exhibit "H"
[20] CTA Case No. 7850, September 16, 2011

> **However, in the case of a VAT-registered person, the cancellation of his registration**, as such, does not depend on whether or not he ceases to be liable to VAT, but must rest on any of the grounds stated in the above-quoted Subsection (F) (2), and **shall be effective only from the first day of the following month, not upon the filing of the said application.**
>
> In this case, petitioner was able to establish that it ceased its business operations effective December 31, 2007 and from then on, it did not recommence any form of business, and that it filed an Application for Registration Information Update on July 1, 2008.
>
> **Accordingly, the cancellation of petitioner's registration as a VAT-registered person took effect only on August 1, 2008, *i.e.*, the first day of the following month. Such being the case, insofar as petitioner is concerned, the two-year period under the earlier quoted Section 112 (C) commenced to run only on such date.**
>
> **Consequently, the filing of petitioner's administrative claim for issuance of a TCC** on July 7, 2008 **was prematurely made**. Thus, petitioner failed to comply with the above-stated *last* requisite under Section 112 (B) of the NIRC of 1997, as amended by RA 9337." *(Emphasis supplied)*

In the present case, the earliest date that petitioner can file a claim for refund or issuance of tax credit certificate was on May 1, 2010. As of April 15, 2010, its VAT registration was not yet cancelled. So any claim for refund or issuance of tax credit certificate prior to the effectivity of the cancellation of its VAT registration must be considered premature.

Petitioner's non-compliance with the provision of Section 112(B) of the NIRC of 1997, as amended, in relation to Section 4.112-1(b) of RR No. 16-05 with respect to the period for filing of an application for refund or issuance of tax credit certificate is sufficient ground for the dismissal of the instant Petition for Review. Hence, the Court now deems it unnecessary to resolve the other issues submitted for resolution. *Je*

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice