REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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MINDANAO I GEOTHERMAL PARTNERSHIP, Petitioner,	**C.T.A CASE NO. 7506**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 30 2010; 1:30 pm

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AMENDED DECISION

BAUTISTA, *J.*:

This resolves petitioner's *Motion for Partial Reconsideration* filed on June 4, 2009 and respondent's *Motion for Partial Reconsideration* filed on June 5, 2009, with petitioner's *Comment/Opposition (To Respondent's Motion for Partial Reconsideration)* filed on July 6, 2009; both seeking reconsideration of this Court's *Decision* dated May 12, 2009. The dispositive portion of the assailed *Decision* states as follows:

> "**WHEREFORE**, petitioner's claim for issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P2,279,821.99, representing its excess and unutilized input VAT for the period covering the third and fourth quarters of taxable year 2004.
>
> **SO ORDERED**."

In his *Motion for Partial Reconsideration*, respondent interposed the following assigned error:

> "THE HONORABLE COURT ERRED IN RULING THAT PETITIONER IS ENTITLED TO REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF TWO MILLION TWO HUNDRED SEVENTY NINE THOUSAND EIGHT HUNDRED TWENTY ONE AND 99/100 PESOS (P2,279,821.99) BECAUSE THE CLAIM WAS NOT FILED IN ACCORDANCE WITH THE PROCEDURE PRESCRIBED BY LAW."

Respondent asserts that the judicial claim was filed out of time; hence, this Court has no jurisdiction over the same. It cites Section 112(D) of the National Internal Revenue Code (NIRC) of 1997, which states:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> XXX XXX XXX
>
> (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.
>
> 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."

Respondent posits that the administrative claim of petitioner was not acted upon with finality until December 14, 2005 or until the lapse of 120 days from August 16, 2005, the date of filing of the administrative claim. The law provides that petitioner had 30 days or until January 13, 2006, within which to elevate the claim before this Court. The present action however was only filed on July 21, 2006, way beyond the period prescribed by law. This requirement is jurisdictional, failing thus, this Court cannot acquire jurisdiction over the instant case.

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Respondent further claims that petitioner is not entitled to the relief sought since petitioner's claim for refund was not properly documented during the administrative proceeding. After all, it failed to submit "complete documents to substantiate its administrative claim for refund."

Respondent's *Motion for Partial Reconsideration* is bereft of merit.

The Court stresses that every section, provision or clause of the statute must be expounded by reference to each other in order to arrive at the effect contemplated by the legislature.[1] The intention of the legislator must be ascertained from the whole text of the law and every part of the act is to be taken into view.

Applying the aforesaid rule, it is necessary to consider not only Section 112(D) of the NIRC of 1997, but also other provisions of the Tax Code, particularly Section 112(A). These provisions should be harmonized.

Section 112(A) of the NIRC of 1997 categorically provides for a two-year prescriptive period within which to file a refund claim, particularly; "within two (2) years after the close of the taxable quarter when the sales were made." Consequently, the period provided under Section 112(D) of the NIRC of 1997, or the 120-day period from the submission of the complete documents within which respondent may grant or deny the application for refund, is also covered by the two-year prescriptive period provided under Section 112(A) of the same Code.

This Court held in numerous cases that the administrative claim for refund and the subsequent appeal to this Court must both be filed within the two-year period. So long as the administrative claim and the judicial case are filed within the prescriptive period, this Court has jurisdiction to take cognizance of the claim.

[1] Chartered Bank vs. Imperial, 48 Phil. 931

Moreover, there can be no dispute that petitioner has the burden of proving the legal and factual bases of its claim for tax credit or refund; hence, the necessity of submitting the supporting documents lies on petitioner. It cannot be left to the discretion of respondent. Otherwise, it would leave petitioner's case at the mercy of the whims of respondent.[2]

On the other hand, petitioner's grounds for its *Motion for Partial Reconsideration* are as follows:

> "THIS HONORABLE COURT ERRED IN EXCLUDING, ALLEGEDLY FOR BEING PRESCRIBED, PETITIONER'S CLAIM FOR THE 2ND QUARTER OF 2004 IN THAT –
>
> A. PETITIONER'S JUDICIAL CLAIM FOR THE 2ND, 3RD AND 4TH QUARTER OF TAXABLE YEAR 2004 WAS FILED IN ACCORDANCE WITH THE THEN SETTLED RULING OF THIS HONORABLE COURT ON THE ISSUE OF RECKONING DATE OF THE TWO-YEAR PRESCRIPTIVE PERIOD.
>
> B. THE MIRANT PAGBILAO CASE PROMULGATED ON SEPTEMBER 12, 2008, WHICH NOW USES THE END OR CLOSE OF THE TAXABLE QUARTER WHEN THE PERTINENT SALES OR TRANSACTION WAS MADE AS RECKONING DATE IN COUNTING THE TWO-YEAR PRESCRIPTIVE PERIOD CANNOT BE APPLIED RETROACTIVELY TO THE PRESENT CASE WHICH WAS FILED ON JULY 21, 2006.
>
> C. THE RULING IN THE MIRANT PAGBILAO CASE DID NOT AND CANNOT REVERSE THE SETTLED DOCTRINE IN THE CASE OF ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION VS. COMMISSIONER OF INTERNAL REVENUE, G.R. NOS. 141104 & 148763, JUNE 8, 2007 IN THE LIGHT OF THE EXPLICIT PROVISION OF SECTION 4(3), ARTICLE VIII OF THE 1987 CONSTITUTION."

Petitioner asserts that at the time it filed its *Petition for Review* on July 21, 2006, the rule being observed on prescriptive period was that the two-year period is reckoned from the date of filing of the Quarterly VAT Returns.

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[2] Solidbank Corporation (now: First Metro Investment Corporation) vs. Commissioner of Internal Revenue, C.T.A. Case No. 6557, May 5, 2005

Petitioner likewise contends that while judicial decisions are not laws, they assume the same authority as the law itself; and judicial decisions like laws shall have no retroactive effect. It even argues that only the Supreme Court sitting *en banc* can reverse or modify its earlier pronouncement rendered *en banc* or in division.

In the recent case of **TeaM Energy Corporation (Formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue**[3], this Court declared as follows:

> "Although there is a recent case entitled *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly SOUTHERN ENERGY QUEZON, INC.)*, wherein the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made, this Court finds it proper to apply said ruling to cases filed after the promulgation date of the *Mirant Case*. To apply said ruling in the present case will in effect be giving the new doctrine retroactive application thereby impairing vested rights."

Following the afore-quoted ruling, the present claim in the amount of P6,199,278.90 covering the second, third, and fourth quarters of 2004 shall be considered to have been filed within the two-year prescriptive period reckoned from July 22, 2004[4], October 22, 2004[5], and January 25, 2005[6]; the dates when petitioner filed its Quarterly VAT Returns for the second, third, and fourth quarters of 2004, respectively.[7]

The Court shall now determine if petitioner was able to substantiate its claim for the second quarter of 2004 in the amount of P3,080,947.87.

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[3] C.T.A. Case Nos. 7229 and 7298, October 5, 2009
[4] Exhibit "F-1"
[5] Exhibit "I-1"
[6] Exhibit "K-1"
[7] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 and 148763, June 8, 2007

Pursuant to Section 112(A) of the NIRC of 1997, the refund or tax credit of unutilized input VAT is dependent on the taxpayer's compliance with 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 sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output tax liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

As stated earlier, petitioner's claims for refund in the administrative and judicial levels for the second quarter of 2004 were timely filed within the two-year prescriptive period.

Petitioner likewise complied with the first requisite. In the assailed *Decision*, it was ruled that petitioner's sales of power generation services are subject to zero percent (0%) VAT pursuant to Section 6 of Republic Act No. 9136 otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA). Petitioner was able to prove that it is a generation company and that it derived sales from power generation in the second quarter of 2004 in the amount of P209,479,490.69, which was declared in its Quarterly VAT Return for the same period.

As to the second requisite, an examination of petitioner's summary list of input VAT and the related suppliers' invoices and official receipts showed that out of the P3,080,947.87 input VAT claim for the second quarter of 2004, only the amount of P2,998,214.07 is duly substantiated in accordance with Sections 110(A) and 113(A) of the NIRC of 1997, and Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95; while the remaining amount of P82,733.80 shall be disallowed due to the following reasons:

	Supplier's Name	Exhibit	Input VAT Claim
1)	**Input VAT on purchases of services which are supported by TIN-VAT official receipts dated not within the period of claim**		
	Cesar's Electrical & Auto Repair Shop	Z-3-a	P 643.09
	Davao Diamond Industrial Supply	Z-7	555.91
	Davao Diamond Industrial Supply	Z-8	104.55
	Davao Diamond Industrial Supply	Z-9	873.64
	Davao Diamond Industrial Supply	Z-10	1,147.27
	Davao Golden Hardware	Z-14-a	2,160.00
	Davao Golden Hardware	Z-15-a	2,148.55
	Mabuhay Vinyl Corporation	Z-34-a	6,210.64
	SGV & Co.	Z-43	10,000.00
	W & L Trading Corporation	Z-52	1,075.64
	Davao Diamond Industrial Supply	Z-58	136.36
	Davao Golden Hardware	Z-60	591.99
	Davao Golden Hardware	Z-61	511.05
	Davao Golden Hardware	Z-62	263.45
	Davao Golden Hardware	Z-63	413.00
	Mabuhay Vinyl Corporation	Z-82	6,956.32
	Davao Diamond Industrial Supply	Z-108	195.18
	Davao Diamond Industrial Supply	Z-109	1,670.73
	Davao Diamond Industrial Supply	Z-110	532.19
	Davao Diamond Industrial Supply	Z-111	612.27
	Davao Diamond Industrial Supply	Z-113	284.64
		subtotal	**P 37,086.47**
2)	**BIR Authority to Print not indicated in the invoices or official receipts**		
	Global Commercial Trading Corp.	Z-23	15,673.80
	Global Commercial Trading Corp.	Z-119	16,937.31
	Global Commercial Trading Corp.	Z-120	13,036.22
		subtotal	**P 45,647.33**
		Total	**P 82,733.80**

As evidenced by its Quarterly VAT Returns for the subject period of claim[8] and for the succeeding quarters[9], the substantiated input VAT of P2,998,214.07 was not applied against any output VAT liability.

In sum, the Court finds petitioner entitled to the issuance of a tax credit certificate in the amount of P2,998,214.07, representing unutilized input VAT for the

[8] Exhibits "H", "J", and "N"
[9] Exhibits "P", "Q", and "R"

second quarter of 2004, in addition to the amount of P2,279,821.99 originally granted to petitioner per this Court's *Decision* dated May 12, 2009.

WHEREFORE, premises considered, respondent's *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit; while petitioner's *Motion for Partial Reconsideration* is hereby **PARTIALLY GRANTED**. This Court's *Decision* dated May 12, 2009 is hereby **MODIFIED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of P5,278,036.06 in favor of petitioner, representing its unutilized input VAT for the second, third, and fourth quarters of taxable year 2004.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division