REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TEAM SUAL CORPORATION
[Formerly: Mirant Sual Corporation],
Petitioner,

~ versus ~

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7230

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TEAM SUAL CORPORATION,
[Formerly: Mirant Sual Corporation]
Petitioner,

~ versus ~

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7299

Members:

ACOSTA, *Chairperson*
BAUTISTA, *and*
CASANOVA, *JJ.*

Promulgated:

NOV 26 2009; 1:30pm

x -x

AMENDED DECISION

BAUTISTA, *J.*:

For resolution are:

1. petitioner's *Motion for Partial Reconsideration (Re: Amended Decision dated June 30, 2009)* filed on July 20, 2009, with respondent's *Comment/Opposition (To Petitioner's Motion for Partial Reconsideration)* filed on August 17, 2009; and

2. respondent's *Motion for Reconsideration (Re: Amended Decision dated June 30, 2009)* filed on July 21, 2009, with petitioner's *Comment/Opposition (To Respondent's Motion for Reconsideration)* filed on August 3, 2009.

Both *Motions* seek the reconsideration of this Court's *Amended Decision* promulgated on June 30, 2009, the *fallo* of which reads:

> **WHEREFORE**, petitioner's "Motion for Reconsideration" is hereby **PARTIALLY GRANTED** and this Court's Decision dated February 6, 2009 denying petitioner's Petition for Review is hereby **MODIFIED**. The Petition for Review in C.T.A. Case No. 7230 is hereby **DISMISSED** for being filed out of time, while the Petition for Review in C.T.A. Case No. 7299 is hereby **PARTIALLY GRANTED**.
>
> Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P64,492,488.62, representing the latter's excess input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of taxable year 2003.
>
> **SO ORDERED.**

Since both parties rely on dissimilar grounds for their respective *Motions,* each *Motion* will be discussed separately.

In its *Motion,* petitioner proffers the following grounds:

A. PETITIONER FILED ITS JUDICIAL CLAIM FOR REFUND WELL WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD CORRECTLY RECKONED FROM THE DATE OF THE FILING OF THE QUARTERLY VAT RETURN PURSUANT TO LONG STANDING JURISPRUDENCE, WHICH THE SUPREME COURT EXPRESSLY RECOGNIZED IN ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION V. COMMISSIONER OF INTERNAL REVENUE, G.R. NOS. 141104 & 1148763, JUNE 8, 2007 ("ATLAS SC CASE")

B. THE HONORABLE COURT SHOULD NOT HAVE HASTILY RELIED ON THE CONTRARY HOLDING OF THE SUPREME COURT IN COMMISSIONER OF INTERNAL REVENUE V. MIRANT PAGBILAO CORPORATION, G.R. NO. 172129, SEPTEMBER 12, 2008 ("MIRANT PAGBILAO SC CASE") AS IT IS OF DOUBTFUL VALIDITY IN THE LIGHT OF ARTICLE VIII, SECTION 4(3) OF THE CONSTITUTION

C. ASSUMING BUT WITHOUT CONCEDING THE VALIDITY OF THE RULING IN THE MIRANT PAGBILAO SC CASE, THE SAME SHOULD BE APPLIED PROSPECTIVELY AND NOT RETROACTIVELY TO THE PREJUDICE OF PETITIONER WHO RELIED IN GOOD FAITH ON PREVAILING

JURISPRUDENCE AT THE TIME OF FILING OF ITS JUDICIAL CLAIM FOR REFUND

In his *Comment/Opposition*, respondent maintains that the 2-year prescriptive period for the claim for refund of input VAT should be counted from the date of the close of the taxable quarter pursuant to the *Mirant Pagbilao* SC case. He also submits that the validity of Supreme Court decisions should be addressed to the sound wisdom of the Honorable Supreme Court itself and not to the Honorable Court of Tax Appeals which lacks jurisdiction to determine whether or not a recent SC decision is valid.

A second hard look at the relevant law and jurisprudence convinces the Court that the arguments of petitioner are meritorious.

In fact, in the recent case of *Team Enery Corporation (Formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue, C.T.A. Case Nos. 7229 & 7298, October 5, 2009*, this Court made the following pronouncement:

> 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.** *(Boldfacing supplied)*

Indeed, at the time of filing of herein petitioner's Petition for Review with the Court on April 22, 2005, relative to its claim for refund of input VAT attributable to zero-rated sales for taxable year 2003, **the prevailing jurisprudence then is that the 2-year prescriptive period is reckoned from the filing of the quarterly VAT return**, which the Court has consistently applied in a long line of decisions, and has continued to guide taxpayers and practitioners alike.

In *Dyno Nobel Philippines, Inc. v. CIR, C.T.A. Case No. 6291, March 10, 2003*, the Court stated as one of the requisites to entitlement to input VAT refund, that both the administrative and judicial claims for refund must be filed within two (2) years upon filing of the quarterly VAT return(s) covered by the claim as provided under Section 4-106.2(c) of Revenue Regulations No. 7-95 in relation to Section 112(D) of the 1997 NIRC.

In *JIDECO Manufacturing Philippines, Inc. v. CIR, C.T.A. Case No. 6552, September 16, 2004,* which was affirmed by the Court *En Banc*[1], the Court in Division ruled that:

> As we have already elucidated in our Resolution dated July 20, 1998 in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296,* the two-year prescriptive period for the filing of claims for VAT refund should be reckoned from the date of filing of the corresponding quarterly VAT returns in order to harmonize the provisions of Section 112(B) of the NIRC of 1997 with Sections 114(A) and 229 of the same Code.
>
> xxx xxx xxx
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> In the cases of *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Appeals, G.R. No. 83736, dated January 15, 1992 and ACCRA Investments Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957,* the Supreme Court held that the two (2)-year period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of the tax can be determined. In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these matters can only be determined if a return is filed. It is logical therefore, that the two-year period should not immediately be counted from the close of the quarter but from the prescribed date of filing of the VAT return.

Verily, the Court has been consistent with the foregoing rule that, even after petitioner filed its Petition for Review in 2005, the Court has continued to invoke the rule that the reckoning of the two-year prescriptive period for the filing of claims for VAT refund/tax credit certificate starts from the date of filing of the corresponding quarterly VAT returns, in similar cases such as *Takenaka Corp. Phil. Branch v. CIR, C.T.A. Case No. 6762,*

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[1] EB No. 53, June 7, 2005.

March 20, 2006, Mirant (Navotas 11) Corporation v. CIR, C.T.A. Case Nos. 7234 & 7295, October 2, 2008, CE Luzon Geothermal Power Co. v. CIR, C.T.A. Case Nos. 6792 & 6837, November 25, 2008.

Moreover, as pointed out by petitioner, even after the promulgation of the *Mirant SC Case*, the Court has continued to apply the rule that the reckoning of the two-year prescriptive period for the filing of claims for VAT refund/tax credit certificate starts from the date of filing of the corresponding quarterly VAT returns, citing as basis the ruling of the Supreme Court in the Atlas SC case.[2]

Thus, the rule that the reckoning of the 2-year period is the date of filing of the quarterly VAT return has become a well-established doctrine and adopted in numerous decisions of this Court, the Court of Appeals and even the Supreme Court until the Supreme Court rendered its decision in the *Mirant SC Case* on September 12, 2008.

Consequently, petitioner relied in good faith on prevailing CTA jurisprudence, at the time it filed its Petition for Review with the Court on April 22, 2005.

The Court agrees with petitioner's contention that the ruling of the Supreme Court in the *Mirant SC Case* should be applied prospectively and not retroactively to the prejudice of petitioner who relied in good faith on prevailing jurisprudence at the time of filing of its judicial claim for refund.

In the case of *Co v. Court of Appeals*[3], the Supreme Court declared that the prospective application of statutes apply also to judicial decisions which "although in themselves not laws, are nevertheless evidence of what the laws mean, . . . (this being) the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system . . .'"

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[2] CIR v. Taganito Mining Corporation, CTA EB No. 376, January 19, 2009, Mirant Sual Corporation v. CIR, C.T.A. Case No. 6421, January 26, 2009, Lapanday Foods Corporation v. CIR, CTA EB No. 367, January 29, 2009.
[3] G.R. No. 100776, October 28, 1993.

In *Spouses Benzonan v. Court of Appeals*[4], the Supreme Court stated that the prevailing doctrines when the case was filed should govern. The Supreme Court justified the prospective application of doctrines in this wise:

> At that time, the prevailing jurisprudence interpreting section 119 of R.A. 141 as amended was that enunciated in Monge and Tupas cited above. The petitioners Benzonan and respondent Pe and the DBP are bound by these decisions for pursuant to Article 8 of the Civil Code 'judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.' But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that 'laws shall have no retroactive effect unless the contrary is provided.' This is expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional (Francisco v. Certeza, 3 SCRA 565 [1961]).
>
> The same consideration underlies our rulings giving only prospective effect to decisions enunciating new doctrines. Thus, we emphasized in People v. Jabinal, 55 SCRA 607 [1974] . . . when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

It would be the height of injustice to apply a new doctrine to a pending case involving a party who already invoked a contrary view and who acted in good faith thereon prior to the issuance of said doctrine.[5]

The rule of prospective application of judicial decisions is also observed in criminal procedure. In *Colombia Pictures, Inc. v. Court of Appeals*[6], the Supreme Court held that:

> Jurisprudence, in our system of government, cannot be considered as an independent source of law; it cannot create law. While it is true that judicial decisions which apply or interpret the Constitution or the laws are part of the legal system of the Philippines, still they are not laws. Judicial decisions, though not laws, are nonetheless evidence of what the laws mean, and it is for this reason that they are part of the legal system of the Philippines. Judicial decisions of the Supreme Court assume the same authority as the statute itself.
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> Interpreting the aforequoted correlated provisions of the Civil Code and in light of the above disquisition, this Court emphatically declared in *Co vs. Court of*

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[4] G.R. No. 979973, January 27, 1992, 205 SCRA 515.
[5] Land Bank of the Philippines v. De Leon, G.R. No.143275, 399 SCRA 376, March 20, 2003.
[6] G.R. No. 110318, August 28, 1996, 261 SCRA 144, 168.

> *Appeals, et al.* That the principle of prospectivity applies not only to originator amendatory statutes and administrative rulings and circulars, but also, and properly so, to judicial decisions. xxx
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> The reasoning behind *Senarillos vs. Hermosisima* that judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect, is all too familiar. Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one, and that is precisely the situation obtaining in this case.
>
> It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. **To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.** *(Boldfacing supplied)*

Based on the foregoing discussion, the Court declares that **the ruling in the *Mirant SC Case*** that the reckoning of the 2-year prescriptive period should be from the close of the taxable quarter, **should be applied prospectively *i.e. only to administrative and judicial claims filed after September 12, 2008.***

Therefore, petitioner's entire claim in the amount of P166,158,823.50 covering the four quarters of 2003 shall be considered to have been filed within the two-year prescriptive period reckoned from April 24, 2003[7] and July 25, 2003[8], October 27, 2003[9] and January 26, 2004[10], the dates when petitioner filed its Quarterly VAT Returns for the first, second, third and fourth quarters of 2003, respectively.[11]

Considering that the Court has already granted petitioner's claim for refund for the third and fourth quarters of 2003 in the amount of P64,492,488.62 in its Amended Decision

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[7] Par. 7, Stipulation of Facts, Stipulation of Facts and Issues, Docket, page 293
[8] Par. 8, Stipulation of Facts, Stipulation of Facts and Issues, Docket, page 293
[9] Exhibit "G'
[10] Exhibit "II"
[11] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007

dated June 30, 2009, the Court shall now determine if petitioner was able to substantiate its claim for the first and second quarters of 2003 in the respective amounts of P67,527,025.75 and P28,224,476.83 or the aggregate amount of P95,751,502.58.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the refund or tax credit of unutilized input VAT is dependent on the taxpayer's compliance with the following requisites:

1) 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 previously discussed, petitioner's application for refund in the administrative and judicial levels for the first and second quarters of 2003 was timely filed within the two-year prescriptive period, reckoned from the time it filed its Quarterly VAT Returns.

Petitioner likewise complied with the first requisite. In the assailed Amended Decision, it was ruled that petitioner's sales of power generation services are subject to zero percent (0%) VAT pursuant to Section 6 of R.A. 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 first and second quarters of 2003 in the total amount of P7,061,488,478.16 which were declared in its Quarterly VAT Returns for the same period as follows:

Exhibit	**Taxable Quarter**	**Zero-rated Sales**
D	1st Quarter	P 3,596,438,393.77
F	2nd Quarter	3,465,050,084.39
	Total	**P 7,061,488,478.16**

An examination of the official receipts issued by petitioner disclosed that the declared zero-rated sales in its Quarterly VAT Returns are fully substantiated.

With regard to the second requisite, petitioner submitted various documents such as suppliers' invoices and official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDS) and BOC/bank official receipts in support of the following input taxes reported in its Quarterly VAT Returns for the first and second quarters of 2003:

Exhibit	Taxable Quarter		Input VAT
D	1st Quarter	P	67,527,025.75
F	2nd Quarter		28,224,476.83
	Total	**P**	**95,751,502.58**

Relative thereto, the Court-commissioned ICPA[12] examined and verified petitioner's supporting documents. His findings are as follows:[13]

	Findings	Exhibit	Input Tax (1st & 2nd Qtrs.)
1.	Input taxes claimed on local purchases of capital goods and goods-others properly supported by VAT invoices	BB-1	P 5,517,029.30
2.	Input taxes claimed on local purchases of services properly supported by VAT ORs	BB-3	50,674,377.76
3.	Input taxes claimed on importation of capital goods and goods-others properly supported by original IEDs and BOC/bank ORs	BB-7	9,247,848.00
4.	Input taxes claimed on importation of goods-others properly supported by original BOC/bank ORs and photocopied IEDs/IIEDs certified by BOC	BB-8	10,948,294.61
5.	Input taxes claimed on importation of goods supported by original BOC/bank ORs	BB-12	76,987.00
6.	Input taxes claimed on importation of goods supported by original BOC/bank ORs and photocopied IEDs	BB-13	84,604.00
7.	Input taxes claimed on importation of goods supported by original BOC/bank ORs and photocopied IEDs/IIED	BB-17	53,189.00
8.	Input taxes claimed on importation of services supported by BIR Form 1600	BB-20	4,396,104.75
	Subtotal		***P 80,998,434.42***
9.	Input taxes claimed on local purchases of capital goods and goods-others properly supported by VAT invoices not dated within the taxable quarter but within the VAT-taxable year	BB-2	P 2,765,219.69
10.	Input taxes claimed on local purchases of services properly supported by VAT ORs not dated within the taxable quarter but within the VAT-taxable year	BB-4	94,707.47
11.	Input taxes claimed on local purchases of services supported by TIN Non-VAT and stamped VAT-registered used before June 30, 2003	BB-5	40,875.57

[12] Jerome Antonio B. Constantino of Constantino Guadalquiver & Co.
[13] Exhibit "Y", pages 5 to 9.

12.	Input taxes claimed on importation of goods-others and capital supported by photocopied IEDs/IIEDs certified by BOC and original BOC/bank ORs not dated within the VAT-taxable year	BB-10	479,695.00
13.	Input taxes claimed on importation of goods-others supported by original IEDs/IIEDs certified by BOC and BOC/bank ORs not dated within the VAT-taxable quarter but within the VAT-taxable year	BB-11	246,887.00
	Subtotal		***P 3,627,384.73***
14.	Input taxes claimed on local purchases of goods supported by photocopied VAT invoices	BB-22	P 287,284.50
15.	Input taxes claimed on local purchases of services supported by photocopied VAT ORs	BB-30	560,184.84
16.	Input taxes claimed on local purchases of services supported by documents other than VAT ORs (e.g. invoices, statement of accounts, etc.)	BB-31	762,198.31
17.	Input taxes claimed on local purchases of goods and services without supporting documents	BB-39	1,253,925.39
	Subtotal		***P 2,863,593.04***
18.	Erroneous computation of input taxes claimed on local purchases of services	BB-32	P 108,593.77
	Subtotal		***P 108,593.77***
19.	Input taxes claimed on importation of goods supported by photocopied IEDs certified by BOC and photocopied BOC/bank ORs certified by the BOC	BB-9	P 1,984,239.00
20.	Input taxes claimed on importation of goods supported by photocopied IEDs certified by BOC	BB-14	12,399.00
21.	Input taxes claimed on importation of goods supported by photocopied IEDs/IIED and photocopied ORs certified by the BOC	BB-16	7,830.00
22.	Input taxes claimed on importation of goods-others supported by photocopied IEDs and BOC ORs certified by BOC	BB-18	34,255.00
23.	Input taxes claimed on importation of goods supported by photocopied IEDs certified by BOC and photocopied BOC/bank ORs	BB-42	18,168.00
24.	Input taxes on local purchases of goods supported by certified true copies (CTCs) of VAT invoices	BB-53	1,882.54
25.	Input taxes on importation of goods supported by original undated BOC/bank ORs and photocopied IEDs certified by the BOC	BB-59	223.00
	Subtotal		***P 2,058,996.54***
26.	Input taxes claimed on local purchases of capital goods and goods-others supported by VAT invoices without BIR permit number	BB-21	463,560.43
27.	Input taxes claimed on local purchases of capital goods and goods-others supported by documents other than VAT invoices (e.g. ORs, statement of accounts, delivery receipts, etc.)	BB-23	82,277.46
28.	Input taxes claimed on local purchases of goods supported by single invoices erroneously presented twice in the summary list	BB-24	1,860.00
29.	Input taxes claimed on local purchases of goods supported by VAT invoices not in the name of the Company	BB-28	2,855.29
30.	Input taxes claimed on local purchases of services supported by VAT ORs without BIR permit number	BB-29	164,274.08
31.	Input taxes claimed on local purchases of services supported by ORs with pre-printed TIN only	BB-33	17,525.47

32.	Input taxes claimed on local purchases of services supported by ORs issued not in the name of the Company	BB-34	94,950.25
33.	Input taxes claimed on local purchases of services supported by ORs with pre-printed TIN with stamped RDO # VAT	BB-36	20,623.80
34.	Input taxes claimed on local purchases of services which are supported by Non-VAT ORs	BB-37	19,817.18
35.	Input taxes claimed on importation of goods supported by original undated BOC ORs	BB-40	5,829.00
36.	Input taxes claimed on importation of goods supported by original BOC/bank ORs only dated outside the period of claim (i.e. 2002)	BB-41	55,847.00
37.	Input taxes claimed on importation of goods supported by photocopied IEDs only	BB-43	6,278.00
38.	Input taxes claimed on importation of goods supported by photocopied IEDs/IIED certified by the BOC not in the name of the Company (i.e. Mirant Pagbilao) and original BOC ORs dated outside the period of claim (i.e. 2002)	BB-45	84.00
39.	Input taxes claimed on importation of goods without supporting documents	BB-47	243,932.00
40.	Input taxes on local purchases of goods supported by undated VAT invoices	BB-49	256,691.38
41.	Input taxes on local purchases of services supported by undated VAT ORs	BB-50	57,621.83
42.	Input taxes on local purchases of goods supported by invoices dated outside the period of claim	BB-51	3,375,395.50
43.	Input taxes on local purchases of services supported by ORs dated outside the period of claim	BB-52	118,740.33
44.	Input taxes on local purchases of services supported by ORs with pre-printed 'TIN-V'	BB-55	413,995.08
45.	Input taxes on importation of goods supported by original BOC/bank ORs dated outside the period of claim	BB-56	692,342.00
	Subtotal		***P 6,094,500.08***
	TOTAL		**P 95,751,502.58**

Input taxes classified under numbers 1 to 8 amounting to P80,998,434.42 represent petitioner's valid claims as these are duly supported by required documents pursuant to Sections 110(A) and 113(A) of the NIRC of 1997 as implemented by Sections 4.104-1, 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95.The input taxes under numbers 9 to 13 in the total amount of P3,627,384.73 shall be reduced by P9,711.37 representing input VAT supported by invoices or official receipts dated outside the first and second quarters of 2003, to wit:

Exh. (ICPA Report)	Supplier	Exhibit (Invoice)	Invoice No.	Inv. Date	Input Tax
BB-2	Abstract Industrial Sales	DD-1Q-30, 30a	1030	12/20/2002	P 9,580.00
BB-2	Zab Enterprises	DD-2Q-1821, 1822	12310	12/17/2002	131.37
	TOTAL				**P 9,711.37**

On the other hand, input taxes in the amount of P3,211,531.84 which represents input VAT covered by invoices or official receipts dated within the first and second quarters but was previously disallowed for being included in Petitioner's claim for the third and fourth quarters,[14] shall be added.

As regards the input taxes classified under numbers 14 to 17 in the amount of P2,863,593.04, petitioner presented the following documents to refute the ICPA findings:

Exh. (ICPA Report)	Supplier	Exh. (Inv./OR)	Input VAT	Remarks
BB-30	Shiloh Techno Services Corp.	HH	P 227,784.07	Certified true copy only
BB-30	Shiloh Techno Services Corp.	HH	127,148.26	Certified true copy only
BB-39	Luzon Hydraulic Center	LL	216.37	Stamped TIN-VAT
BB-39	Sycip Gorres Velayo & Co.	OO	37,641.10	Valid VAT OR
			P 392,641.10	

The Court finds that only Exhibit "OO" is valid. Therefore, out of the P2,863,593.04 input VAT claim, the amount of P2,825,951.94 (P2,863,593.04 less P37,641.10) shall be disallowed.

Anent the erroneously computed input taxes under number 18 in the amount of P108,593.77, the excess of the claimed amount over the input tax per invoice or official receipt shall be disallowed. The total overstatement of P45,365.58 is computed as follows:

Exhibit (ICPA Report)	Payee	Exhibit (Invoice/OR)	Input VAT per Invoice/OR	Input VAT Claim	Difference
BB-32	Maunsell Phils., Inc.	DD-1Q-1778, 1778a	P 6,353.61	P 8,736.21	P 2,382.60
BB-32	Tyco Integrated Systems	DD-1Q-2628, 2628a	6,157.75	7,697.18	1,539.43
BB-32	Tyco Integrated Systems	DD-1Q-2629, 2628	7,185.96	8,982.45	1,796.49
BB-32	Welltech Service Corp.	DD-1Q-2643, 2643a	5,239.28	8,732.12	3,492.84
BB-32	Phil. Industrial Automation	DD-2Q-3084, 3085	14,531.23	34,874.94	20,343.71
BB-32	Phil. Industrial Automation	DD-2Q-3086, 3084	5,981.82	14,356.36	8,374.54
BB-32	Tyco Integrated Systems	DD-2Q-4116, 4117	8,213.53	15,649.50	7,435.97
	TOTAL		**P 53,663.18**	**P 99,028.76**	**P 45,365.58**

[14] Amended Decision dated June 30, 2009, page 15.

Input taxes under numbers 19 to 25 amounting to P2,058,996.54 shall likewise be denied for being supported by documents which are merely stamped with the words "certified true copy" or "certified photocopy". The same cannot be given credence and probative value as the Court cannot ascertain whether the certifier named therein is the actual and authorized custodian of the said documents.

Finally, those under numbers 26 to 45 in the total amount of P6,094,500.08 shall be disallowed for failure to meet the substantiation requirements set forth by the pertinent provisions of the NIRC of 1997 as implemented by Revenue Regulations No. 7-95.

Thus, petitioner's valid input VAT amounts to P87,928,508.91, computed as follows:

Total Input VAT claim for the year 2003		P 166,158,823.50
Less: Claim for the 3rd and 4th quarters		70,407,320.92
Claim for the 1st and 2nd quarters		**P 95,751,502.58**
Less: Disallowances		
a. Input taxes supported by invoices or ORs dated outside the 1st and 2nd quarters of 2003	P 9,711.37	
Less: Valid claim included in 3rd & 4th quarters of 2003	3,211,531.84	(3,201,820.47)
b. Input taxes classified under Exhibits BB-22, BB-30, BB-31, and BB-39	P 2,863,593.04	
Less: Valid claim per Court's verification	37,641.10	2,825,951.94
c. Overstatement of claimed input taxes		45,365.58
d. Input taxes supported by invoices or ORs stamped as "certified true copy" or "certified photocopy"		2,058,996.54
e. Input taxes classified under Exhibits BB-21, BB-23, BB-24, BB-28, BB-29, BB-33, BB-34, BB-36, BB-37, BB-40, BB-41, BB-43, BB-45, BB-47, BB-49, BB-50, BB-51, BB-52, BB-55, and BB-56		6,094,500.08
Valid Input Taxes – 1st and 2nd Quarters 2003		**P 87,928,508.91**

A portion of the foregoing valid input taxes shall be applied against petitioner's reported output tax liability for the first and second quarters of 2003 in total amount of P3,155,842.85[15]. Hence, input taxes attributable to petitioner's zero-rated sales for the first and second quarters of 2003 amounted to P84,772,666.06, as computed below:

Valid input taxes – 1st and 2nd quarters 2003	P 87,928,508.91
Less: Output VAT – 1st and 2nd quarters 2003	3,155,842.85
Excess input VAT – 1st and 2nd quarters 2003	**P84,772,666.06**

[15] Exhibits "D" and "F".

Petitioner carried-over the valid input VAT of P84,772,666.06 to the succeeding quarters but the same was not applied against any output tax liability as it was fully deducted as "Any VAT Refund/TCC Claimed" in the third quarter of 2005.[16]

In fine, the Court finds petitioner entitled to a refund or issuance of a tax credit certificate in the amount of P84,772,666.06 representing unutilized excess input VAT incurred in relation to its zero-rated sales of power generation services for the first and second quarters of 2003.

The Court shall now proceed to resolve respondent's *Motion.*

Respondent sides with the Dissenting Opinion of Presiding Justice Ernesto D. Acosta and asseverates that the Petition for Review in C.T.A. Case No. 7299 was filed out of time since it was filed beyond the 120-day period provided in Section 112 (D) of the 1997 NIRC, as amended. The said period ended on April 19, 2005 reckoned from December 20, 2004, the date petitioner applied for a refund with the BIR. Petitioner had 30 days or until May 20, 2005 within which to lodge its judicial claim. Considering that the Petition for Review in C.T.A. Case No. 7299 was filed only on July 22, 2005, it was filed out of time. Hence, the Court has no jurisdiction to entertain the same.

Respondent also contends that the "close of the taxable quarter" deadline as mentioned in Section 112(A) of the 1997 NIRC, as amended, applies only to the period to file the application for refund. Taxpayers come before this Court to appeal and not to "file". Thus, the deadline should not apply to judicial claims for refund of input VAT. In addition, if the 2-year period would be allowed to prevail over the 120-day and 30-day periods, then the latter procedural deadlines would be rendered useless in instances where a taxpayer files an application with the BIR close to the expiration of the 2-year period.

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[16] Exhibit "U-2".

In its *Comment/Opposition,* petitioner submits that the inaction of respondent on the subject claim for refund must be construed as a reaffirmation of the original action taken by respondent and an implied denial of the claim for refund or credit. Therefore, if no decision is received from respondent on the claim, and the 2-year period for instituting court action is about to expire, the taxpayer, petitioner in this case, must file the court action without waiting for the action of respondent on the administrative claim, if he is not to lose the right to judicial remedy, since the written claim for refund does not toll the statutory limitation of two years.

The Court agrees with petitioner.

The Court *En Banc* has consistently ruled that judicial course within thirty (30) days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Sections 112 and 229 of the 1997 NIRC, as amended. It has likewise held that if the 2-year prescriptive period is about to expire, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or its inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court. [17]

Moreover, Revenue Memorandum Circular No. 49-03[18] dated August 15, 2003, recognizes that administrative and judicial claims for VAT refund or tax credit can proceed simultaneously and that taxpayers need not wait for the lapse of the subject 120-day period, *scilicet:*

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[17] Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., C.T.A. EB No. 416, February 4, 2009, Commissioner of Internal Revenue v. San Roque Power Corporation, C.T.A. EB No. 408, March 25, 2009, Commissioner of Internal Revenue v. CE Cebu Geothermal Power Company, Inc., C.T.A. EB No. 426, May 29, 2009.

[18] Entitled *"Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters"*

I.) A-17 of Revenue Memorandum Circular No. 42-2003 is hereby revised to read as follows:

> **In cases where the taxpayer has filed a "Petition for Review" with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately.** While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.
>
> **If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim**. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. xxx." *(Boldfacing supplied)*

It bears stressing that rules and regulations issued by administrative or executive officers pursuant to the procedure or authority conferred by law upon the administrative agency have the force and effect of law.[19] In other words, a regulation adopted pursuant to law is law.[20]

In view thereof, respondent's *Motion for Reconsideration* must fail.

WHEREFORE, petitioner's "Motion for Partial Reconsideration" is hereby **GRANTED** and this Court's Amended Decision dated June 30, 2009 denying petitioner's claims for refund for the first[21] and second quarters[22] of 2003 is hereby **REVERSED**.

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[19] Commissioner of Internal Revenue v. Solidbank Corporation, G.R. No. 148191, November 25, 2003, 416 SCRA 436.
[20] Commissioner of Internal Revenue v. Central Luzon Drug Corporation, G.R. No. 159647, 456 SCRA 441, April 15, 2005.
[21] Petition for Review in C.T.A. Case No. 7230 which was dismissed for being filed out of time in the Amended Decision dated June 30, 2009.

On the other hand, respondent's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P84,772,666.06, representing the latter's excess input VAT attributable to its zero-rated sales for the first and second quarters of taxable year 2003.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Concurring and 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 conclusion in the above Decision was reached in consultation with the members of the First Division before the case was assigned to the writer of the opinion of the said Division.

ERNESTO D. ACOSTA
Presiding Justice

[22] Included in the Petition for Review in C.T.A. Case No. 7299 which was denied for being filed out of time in the Amended Decision dated June 30, 2009.