REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES,
Respondent.

C.T.A. EB No. 249
(CTA Case No. 6580)

Present:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:

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DECISION

ACOSTA, P.J.:

This is a Petition for Review filed on February 2, 2007 seeking to set aside the Court of Tax Appeals' Second Division Decision and Resolution dated September 14, 2006 and January 3, 2007, respectively, both rendered in CTA Case No. 6580 entitled "*Matsushita Business Corporation of the Philippines vs. Commissioner of Internal Revenue*". The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE** *[sic]* the amount of P3,806,333.21 in favor of petitioner, representing unutilized input value-added taxes paid on purchases of goods and services attributable to zero-rated export sales for the period October 1, 2000 to March 31, 2001.

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SO ORDERED."

The facts as found by the Second Division are:

"Petitioner is a domestic corporation organized and existing under the laws of the Philippines, with principal office address at Lot C4-10, Carmelray Industrial Park II, Brgy. Punta, Calamba, Laguna.

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) enterprise with Tax Identification No. TIN/VAT Registration No. 004-649-223. Petitioner is also registered with the Board of Investments (BOI) during the period covering October 1, 2000 to March 31, 2001, in accordance with the provisions of the Omnibus Investments Code of 1987 as a preferred pioneer enterprise for the production and export of plain paper copiers, sub-assemblies, parts, and components.

For the fourth quarter of 2000 and first quarter of 2001, petitioner filed with the Bureau of Internal Revenue its Quarterly VAT Returns on January 25, 2001 and April 25, 2001, respectively, reflecting the following:

Period Covered	Zero-rated Sales	Taxable Sales	Output VAT (a)	Input VAT this Quarter (b)	VAT Refund/ TCC Claimed (c)	Net Creditable Input Tax (b-c) = d	Excess Input VAT this Qtr (a-d)
4th Qtr-2000	413,908,050.29	396,916.63	39,691.66	24,530,553.75	6,673,381.01	17,857,172.74	(17,817,481.08)
1st Qtr-2001	811,895,380.55	1,017,686.10	101,768.61	21,634,988.28	-	21,634,988.28	(21,533,219.67)

On March 20, 2002, petitioner filed with the BIR, a written application for the refund of the amount of P13,232,769.21 representing unutilized input VAT for the period October 1, 2000 to March 31, 2001. The claimed amount is computed herein below:

4th Quarter 2000	P 9,496,392.16
1st Quarter 2001	3,736,377.05
Total *(Exhibit Z-1)*	P 13,232,769.21
	(Exhbits "J" & "M")

On December 27, 2007, petitioner filed the instant Petition for Review.

Respondent Commissioner of Internal Revenue (hereafter 'respondent'), in his answer, alleged by way of special and affirmative defenses, that petitioner's claim for refund: is subject to

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administrative routinary investigation; petitioner failed to demonstrate that the taxes were erroneously or illegally collected; the amount of P13,232,769.21 representing alleged unutilized and/or unapplied input VAT for the period covering October 1, 2000 to March 31, 2001 was not properly documented; taxes paid and collected are presumed to have been paid in accordance with law and regulations; in action for refund the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit; it is incumbent upon petitioner to show that it has complied with the provisions of *Sections 204 (c) and 229 of the Tax Code* on the prescriptive period for claiming tax refund/credit; and well settled is the rule that claims for tax refund/credit are construed in *strictissimi juris* against the taxpayer as they partake the nature of exemption from tax.

Petitioner presented Elma Guillermo, Anna Marie A. Molano and Mary Ann C. Capuchino, as witnesses, and submitted its Formal Offer of Evidence, which were admitted by the Court except for Exhibits 'A' to "D' which were denied admission for failure of petitioner to present the original copies thereof for comparison.

On the other hand, respondent submitted the case for decision without presenting any evidence. xxx"

The Second Division found Matsushita to be entitled to a refund in the reduced amount of P3,806,333.21, computed as follows:

Substantiated Input VAT		P 3,810,725.80
Less: Input VAT attributable to taxable sales		
Substantiated Input VAT	3,810,725.80	
Multiply: Ratio of Taxable Sales to Total Sales *(P1,414,602.73/P1,227,218,033.57)*	0.001152691	4,392.59

	4th Qtr-2000	*1st Qtr-2001*	*Total*
Zero-rated	*413,908,050.29*	*811,895,380.55*	*1,225,803,430.84*
Taxable sales	*396,916.63*	*1,017,686.10*	*1,414,602.73*
Total Sales	*414,304,966.92*	*812,913,066.65*	*1,227,218,033.57*

Refundable input VAT	P 3,806,333.21

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Not in agreement with the Second Division's partial grant of Matsushita's claim for refund or issuance of tax credit certificate, the instant Petition for Review was filed by the Commissioner of Internal Revenue on February 2, 2007, claiming that Matsushita is not entitled to the refund/tax credit in the amount of P3,806,333.21, representing alleged unutilized input value-added taxes paid on purchases of goods and services attributable to zero-rated export sales for the period 1 October 2000 to 21 March 2001.

Petitioner Commissioner of Internal Revenue (hereafter "Commissioner") contends that it is imperative for respondent, Matsushita Business Machine Corporation of the Philippines, (hereafter "Matsushita") to prove that it has complied with the registration requirements of a value-added taxpayer as stated in Section 6(a) 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 National Internal Revenue Code (NIRC). The Commissioner further claims that Matsushita failed to show that its purchases of goods and services were made in the course of its trade or business and that they were supported by VAT invoices and/or official receipts and other documents, such as entries made in its subsidiary purchase journals showing that it actually paid VAT in accordance with Section 110(A)(2) and 113 of the NIRC, and Section 4.104-5(a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit. The Commissioner also maintains that it is Matsushita's responsibility to comply with Section 2 (c)(1)(2)(4) of Revenue Regulations No. 3-88.

Moreover, the Commissioner argues that the Matsushita's Petition for Review filed before the Division of the Court of Tax Appeals (CTA) was filed out of time. According to him, Matsushita's administrative claim for refund was filed on March 20, 2002 and on July 18, 2002, there having been no action on his part,

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the 120-day period provided by law[1], within which the Commissioner to act on the administrative claim, expired. In view of this, Matsushita only had until August 17, 2002, or thirty days from the expiry of the 120-day period within which to file a Petition for Review before the CTA. Thus, the Petition for Review filed on December 27, 2002 was filed out of time.

In its Comment to the Petition for Review filed on April 10, 2007, Matsushita counters that the Second Division's Decision dated September 14, 2006 has long attained finality since the filing with the Second Division of the Motion for Partial Reconsideration by the Commissioner, did not toll the running of the prescriptive period to appeal. Matsushita submits that the Motion for Partial Reconsideration was a mere *pro forma* motion under Section 2 Rule 37 of the Rules of Court, since it failed to "point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, [by] making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions". Anent the issue of the supposed belated filing of the Petition for Review with the Second Division, Matsushita maintains that since this alleged lateness was not raised in the proceedings therein, it cannot be raised for the first time on appeal, without offending the basic rules of fair play, justice and due process. Any issue raised for the first time on appeal and not timely raised in the proceedings on the lower court is barred by estoppel.

Further, according to Matsushita even on the merits, the instant petition must fail, as the Commissioner merely conveniently overlooked the detailed findings of the Court commissioned Independent Certified Public Accountant which were incorporated by the Second Division in its Decision. Such detailed findings could have easily answered the Commissioner's questions, as to the fact that the purchases of goods and services were made in the course of business and

[1] *Sec. 112 (D) of the National Internal Revenue Code*

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were duly substantiated by the necessary VAT invoices/receipts and other supporting documents.

With the expiration of the period given for the filing of the parties' Memoranda, the case was submitted for decision in a Resolution promulgated August 2, 2007, with only the Commissioner filing one on July 13, 2007.

The Court finds no reason factual or legal to deviate from the findings of the Second Division. Matsushita correctly argued that the Commissioner failed to point to any specific error on the part of the Second Division and conveniently overlooked the detailed explanation of the Court as to the allowed part of the claim. Further, the Commissioner is erroneous in claiming that the judicial claim for refund was belatedly filed.

The Commissioner only raised as issue Matsushita's entitlement to the "tax refund/credit in the amount of P3,806,333.21" representing unutilized input value-added taxes paid on purchases of goods and services attributable to zero-rated export sales for the period 1 October 2000 to 31 March 2001. There being no dispute over the portion disallowed by the Second Division, this Court will limit its review to the propriety of the grant of the claim in this reduced amount.

Matsushita presented its sales invoices, bills of lading/airway bills, export declarations and proofs of inward remittances *(Exhibits "FF-1" to "FF-1-101", "FF-2" to "FF-2-208", "FF-3" to "FF-3-233", "FF-4" to "FF-4-205", "FF-5" to "FF-5-324", "FF-6" to "FF-6-306" and "GG" to "GG-35")* to prove that it actually generated zero-rated export sales during the period October 1, 2000 to March 31, 2001 and that the foreign exchange proceeds thereof were duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (BSP).*

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Further, this Court, after examination and verification of the Independent Certified Public Accountant's (CPA) findings, as well as the evidence on record, finds that the Second Division did not err in finding that out of the total of P1,296,675,315.92 export sales, only the amount of P721,577,255.96 qualifies for zero-rating, under *Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.* This amount was duly supported by the requisite evidence and that the foreign exchange proceeds thereof were duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP). The rest of the export sales of P575,098,059.96 (P1,296,675,315.92 less P721,577,255.96) was appropriately deemed not qualified for reasons such as:

> "1) The photocopied bills of lading/airway bills, export declarations and invoices supporting the alleged export sales cannot be given evidentiary value for being mere photocopies, in violation of the Best Evidence Rule;
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> 2) The export sales are supported **only** by original invoices or bank remittance certificates/advices, and as such, are not competent evidence to prove the actual export sales. Petitioner failed to present the corresponding bills of lading/airway bills to prove actual shipment of goods abroad; and
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> 3) Petitioner's [Matsushita] failure to present the bills of lading/airway bills or export declaration and bank remittance certificate/advice is fatal to its claim."

As aptly explained in the assailed Decision, certification of inward remittances, bank credit advices, export declarations, bills of lading/airway bills and duly registered VAT invoices or receipts, taken collectively, are the best means to prove exportation of goods and receipt of the corresponding foreign currency payments.

Matsushita likewise presented its "Schedule of Input VAT summary/summary of Input VAT Per Department" (*Exhibits "AA" to "AA-75"*),

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various official receipts, invoices, Monthly Remittance Return of VAT and Import Entry and Internal Revenue Declarations supporting payment of input taxes (*Exhibits "BB-1" to "BB-1-107", "Bb-2" to "BB-2-127", "BB-3" to "BB-3-119, "BB-4 to "BB-4-121", "BB-5" to "BB-5-166", "BB-6" to "BB-6-136" and "DD" to "DD-91"*) to prove that it actually paid input VAT in the total amount of P13,232,769.21 on its purchases of goods and services for the period October 31, 2000 to March 31, 2001.

This Court also finds no reason to deviate from the findings of the Second that out of the total claimed input VAT of P13,232,769.21, only the amount of P3,810,725.80 *(Nos. 1, 2, 21 and 24 of the Findings)* is properly substantiated by the requisite evidence and the claimed input VAT in the total amount of P13,232,769.21 was not applied against petitioner's output VAT liability in the succeeding quarters considering that said amount was already deducted from the "Total Available Input Tax" as "Any VAT Refund/TCC Claimed" for the first quarter of 2002 *(Exhibit "N")*.

Anent Commissioner's argument that Matsushita's judicial claim was filed belatedly, the Second Division correctly found that both the administrative claim filed on March 20, 2002 and the instant Petition for Review filed with this Court on December 27, 2002 were filed within the two-year period, prescribed by the *NIRC of 1997, as amended,* reckoned from January 25, 2001 and April 25, 2001, the respective dates petitioner filed its Quarterly VAT Returns for the 4th quarter of 2000 and 1st quarter of 2001.

Recently in ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue***,[2] the Supreme Court explained that the two-year prescriptive period for filing a claim for refund/credit of input VAT on

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2 *GR 141104 &148763, June 8, 2007.*

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zero-rated sales is to be reckoned from the date of filing of the return and payment of the tax due. To quote:

> "It is already well-settled that the two-year prescriptive period for instituting a suit or proceeding for recovery of corporate income tax erroneously or illegally paid under Section 230[3][13] of the Tax Code of 1977, as amended, was to be counted from the filing of the final adjustment return. This Court already set out in *ACCRA Investments Corporation v. Court of Appeals*,[4][14] the rationale for such a rule, thus –
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> > 'Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of *Commissioner of Internal Revenue v. Asia Australia Express, Ltd.* (G.R. No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, the petitioner corporation had

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3[13] SEC. 230. Recovery of tax erroneously or illegally collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Forfeiture of refund. – A refund check or warrant issued in accordance with the pertinent provisions of this Code which shall remain unclaimed or uncashed within five (5) years from the date the said warrant or check was mailed or delivered shall be forfeited in favor of the government and the amount thereof shall revert to the General Fund.

4[14] G.R. No. 96322, 20 December 1991, 204 SCRA 957, 963-964.

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until April 15, 1984 within which to file its claim for refund.

Considering that ACCRAIN filed its claim for refund as early as December 29, 1983 with the respondent Commissioner who failed to take any action thereon and considering further that the non-resolution of its claim for refund with the said Commissioner prompted ACCRAIN to reiterate its claim before the Court of Tax Appeals through a petition for review on April 13, 1984, the respondent appellate court manifestly committed a reversible error in affirming the holding of the tax court that ACCRAIN's claim for refund was barred by prescription.

It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The "date of payment", therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982.

In another case, *Commissioner of Internal Revenue v. TMX Sales, Inc.*,[5[15]] this Court further expounded on the same matter –

'A re-examination of the aforesaid minute resolution of the Court in the *Pacific Procon* case is warranted under the circumstances to lay down a categorical pronouncement on the question as to when the two-year prescriptive period in cases of quarterly corporate income tax commences to run. A full-blown decision in this regard is rendered more imperative in the light of the reversal by the Court of Tax Appeals in the instant case of its previous ruling in the *Pacific Procon* case.

[5[15]] *G.R. No. 83736, 15 January 1992, 205 SCRA 184, 187-192.*

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Section 292 (now Section 230) of the National Internal Revenue Code should be interpreted in relation to the other provisions of the Tax Code in order to give effect the legislative intent and to avoid an application of the law which may lead to inconvenience and absurdity. In the case of *People vs. Rivera* (59 Phil. 236 [1933]), this Court stated that statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. *INTERPRETATIO TALIS IN AMBIGUIS SEMPER FRIENDA EST, UT EVITATUR INCONVENIENS ET ABSURDUM.* Where there is ambiguity, such interpretation as will avoid inconvenience and absurdity is to be adopted. Furthermore, courts must give effect to the general legislative intent that can be discovered from or is unraveled by the four corners of the statute, and in order to discover said intent, the whole statute, and not only a particular provision thereof, should be considered. (*Manila Lodge No. 761, et al. vs. Court of Appeals, et al.* 73 SCRA 162 [1976) 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. 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. (*Chartered Bank vs. Imperial*, 48 Phil. 931 [1921]; *Lopez vs. El Hoger Filipino*, 47 Phil. 249, cited in *Aboitiz Shipping Corporation vs. City of Cebu*, 13 SCRA 449 [1965]).

Thus, in resolving the instant case, it is necessary that we consider not only Section 292 (now Section 230) of the National Internal Revenue Code but also the other provisions of the Tax Code, particularly Sections 84, 85 (now both incorporated as Section 68), Section 86 (now Section 70) and Section 87 (now Section 69) on Quarterly Corporate Income Tax Payment and Section 321 (now Section 232) on keeping of books of accounts. All these provisions of the Tax Code should be harmonized with each other.

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Therefore, the filing of a quarterly income tax returns required in Section 85 (now Section 68) and implemented per BIR Form 1702-Q and payment of quarterly income tax should only be considered mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. This is reinforced by Section 87 (now Section 69) which provides for the filing of adjustment returns and final payment of income tax. Consequently, the two-year prescriptive period provided in Section 292 (now Section 230) of the Tax Code should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax.

In the case of *Collector of Internal Revenue vs. Antonio Prieto* (2 SCRA 1007 [1961]), **this Court held that when a tax is paid in installments, the prescriptive period of two years provided in Section 306 (Section 292) of the National Internal Revenue Code should be counted from the date of the final payment**. This ruling is reiterated in *Commissioner of Internal Revenue vs. Carlos Palanca* (18 SCRA 496 [1966]), wherein this Court stated that where the tax account was paid on installment, the computation of the two-year prescriptive period under Section 306 (Section 292) of the Tax Code, should be from the date of the last installment.

In the instant case, TMX Sales, Inc. filed a suit for a refund on March 14, 1984. Since the two-year prescriptive period should be counted from the filing of the Adjustment Return on April 15,1982, TMX Sales, Inc. is not yet barred by prescription.'

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The very same reasons set forth in the afore-cited cases concerning the two-year prescriptive period for claims for refund of illegally or erroneously collected income tax may also apply to the Petitions at bar involving the same prescriptive period for claims for refund/credit of input VAT on zero-rated sales.

It is true that unlike corporate income tax, which is reported and paid on installment every quarter, but is eventually subjected to a final adjustment at the end of the taxable year, VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year. However, it is also equally true that **until and unless the VAT-registered taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just how much input VAT[6[16]] the taxpayer may apply against its output VAT;[7[17]] how much output VAT it is due to pay for the quarter or how much excess input VAT it may carry-over to the following quarter; or how much of its input VAT it may claim as refund/credit. It should be recalled that not only may a VAT-registered taxpayer directly apply against his output VAT due the input VAT it had paid on its importation or local purchases of goods and services during the quarter; the taxpayer is also given the option to either (1) carry over any excess input VAT to the succeeding quarters for application against its future output VAT liabilities, or (2) file an application for refund or issuance of a tax credit certificate covering the amount of such input VAT.[8[18]] Hence, even in the absence of a final adjustment return, the determination of any output VAT payable necessarily requires that the VAT-registered taxpayer make adjustments in its VAT return every quarter, taking into consideration the input VAT which are creditable for the present quarter or had been carried over from the previous quarters.**

Moreover, when claiming refund/credit, the VAT-registered taxpayer must be able to establish that it does have refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities – information

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6[16] Input VAT means the value-added tax paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchases of goods or services from a VAT-registered person. (Section 104, Tax Code of 1977, as amended)

7[17] Output VAT refers to VAT due on the sale of taxable goods or services by any person registered or required to register under Section 107 of the Tax Code of 1977, as amended (Section 104, Tax Code of 1977, as amended)

8[18] See Section 104 of the Tax Code of 1977, as amended, on Tax Credits.

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> **which are supposed to be reflected in the taxpayer's VAT returns. Thus, an application for refund/credit must be accompanied by copies of the taxpayer's VAT return/s for the taxable quarter/s concerned.**
>
> Lastly, although the taxpayer's refundable or creditable input VAT may not be considered as illegally or erroneously collected, its refund/credit is a privilege extended to qualified and registered taxpayers by the very VAT system adopted by the Legislature. Such input VAT, the same as any illegally or erroneously collected national internal revenue tax, consists of monetary amounts which are currently in the hands of the government but must rightfully be returned to the taxpayer. Therefore, whether claiming refund/credit of illegally or erroneously collected national internal revenue tax, or input VAT, the taxpayer must be given equal opportunity for filing and pursuing its claim.
>
> **For the foregoing reasons, it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter.** xxx" *(Emphasis Supplied)*

Simply put, the two year prescriptive period in this case should commence to run from the time the Quarterly VAT Return is filed and the corresponding payment made. In this regard, the applicable provision is Section 114 of the National Internal Revenue which states:

> "SEC. 114. Return and Payment of Value-added Tax.-
>
> (A) *In General.*- Every person liable to pay the value-added tax imposed under this Title shall file a **quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: xxx" *(Emphasis Supplied)*

Clearly, the reckoning date of the two-year prescriptive period is the date of filing of the Quarterly VAT Returns. To reiterate, both administrative claim

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filed on March 20, 2002 and the judicial claim filed on December 27, 2002 were made within the two-year period prescribed under *Section 204 (C)*[9], in relation to *Section 229*[10] *of the NIRC of 1997, as amended*, reckoned from January 25, 2001 and April 25, 2001, the respective dates petitioner filed its Quarterly VAT Returns for the 4th quarter of 2000 and 1st quarter of 2001.

In the light of the above, the Court finds no cogent reason to reverse or modify the assailed Decision and Resolution dated September 14, 2006 and January 3, 2007, respectively.

Accordingly, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

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[9] *(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction.* ***No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:*** *Provided, however, That a return filed showing overpayment shall be considered as a written claim for credit or refund.*

[10] *SEC. 229.* ***Recovery of Tax Erroneously or Illegally Collected.-*** *No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected without authority, or of penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until* ***a claim for refund or credit has been duly filed with the Commissioner****; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.*

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment*: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis Supplied)*

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WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

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