REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CBK POWER COMPANY LIMITED,
Petitioner,

CTA CASE NO. 7771

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- -x

CBK POWER COMPANY LIMITED,
Petitioner,

CTA CASE NO. 7814

Present:

- versus-

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 3 2010
PBFernand 4:08 p.m.

x- -x

D E C I S I O N

COTANGCO-MANALASTAS, J.:

THE CASE

This resolves the consolidated Petitions for Review both filed by CBK Power Company Limited on April 23, 2008 and July 24, 2008, pursuant to *Section 11 of*

Republic Act No. 1125 (R.A.1125), as amended by Section 9 of R.A. No. 9282, and Section 3(a), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), praying for the issuance of tax credit certificates (TCCs) allegedly representing its unutilized input Value Added Taxes (VAT). For CTA Case No. 7771 filed on April 23, 2008, the amount of SEVEN MILLION FIVE HUNDRED FIFTY NINE THOUSAND NINE HUNDRED FORTY THREE AND 44/100 PESOS (P7,559,943.44) representing unutilized input VAT paid on its domestic purchases of goods and services, which are attributable to zero-rated sales for the period January 1, 2006 to March 31, 2006;[1] and for CTA Case No. 7814 filed on July 24, 2008, the amount of THIRTY SIX MILLION TWO HUNDRED FORTY SIX THOUSAND SIX HUNDRED SIX AND 28/100 PESOS (P36,246,606.28), representing unutilized input VAT paid on its domestic purchases of goods and services, which are attributable to zero-rated sales for the period April 1, 2006 to December 31, 2006.[2]

THE PARTIES

Petitioner is a partnership duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the NPC Compound, Kalayaan, Laguna.

Respondent, on the other hand, is the Commissioner of Internal Revenue, who is charged with the authority to act as such, including inter alia, the power to decide and grant refunds or tax credit or erroneously or illegally collected internal revenue taxes, as provided by law, with office at the Bureau of Internal Revenue (BIR)

[1] *Rollo*, pp. 1-14, Petition for Review for CTA Case No. 7771
[2] *Rollo*, pp. 418-429, Petition for Review for CTA Case No. 7814

National Office Building, Diliman, Quezon City, where he may be served with summons and other court processes.[3]

THE FACTS

The facts of the case, as culled from the records, are as follows:

Petitioner is a special purpose entity, the sole purpose of which is to engage in all aspects of (a) design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna, and (b) rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan and Kalayaan I hydroelectric power plants and their related facilities, located in the Province of Laguna. It generates electricity through its Caliraya, Botocan, and Kalayaan I hydroelectric power plants, as well as from the Kalayaan II hydroelectric power plant.[4]

Petitioner is registered as a VAT entity, with TIN/VAT No. 205-760-474-000, in accordance with the Tax Code, as amended. It was issued BIR Certificate of Registration OCN 1RC0000050243, dated April 10, 2000, by BIR Revenue District Office No. 55 (San Pablo City, Laguna), which was updated on May 11, 2005. As a consequence thereof, petitioner was issued BIR Certificate of Registration OCN 1RC0000195405.[5]

Petitioner was also issued by the Energy Regulatory Commission the following Certificates of Compliance: (1) COC No. 04-02-GXT49A-0050, dated

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[3] *Rollo*, p. 230, Pars. 1 and 2, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI)
[4] Pars. 5 and 9, Facts Admitted, JSFI, *Rollo*, pp. 231-232
[5] Par. 6, Facts Admitted, JSFI, *Rollo*, p. 231

April 11, 2007; (2) COC No. 04-02-GXT49B-0051, dated February 4, 2004; (3) COC No. 04-02-GXT49C-0052, dated February 4, 2004; and (4) COC No. 05-10-GN12-13354-13373, dated April 11, 2007.[6]

On March 17, 2006, BIR issued BIR Ruling No. DA-146-2006, confirming petitioner's claim that as an entity engaged in hydropower generation, its billings/fees for the sale of electricity to NPC are subject to VAT at zero percent (0%) rate, under *Section 108 (B)(7) of the Tax Code of 1997, as amended by Republic Act 9337* (R.A. 9337).[7]

For the period January 1, 2006 to December 31, 2006, petitioner filed with the BIR its Monthly VAT Declarations and Quarterly VAT Returns. Petitioner filed its Original Quarterly VAT Returns for the first, second, third, and fourth quarters of Calendar Year (CY) 2006 and Amended Quarterly VAT Returns for the four quarters of CY 2006 on the following dates:[8]

2006 Taxable Quarter	Original VAT Return (Date filed)	Amended VAT Return (Date filed)
1st	April 25, 2006	December 28, 2007
		March 31, 2008
2nd	July 25, 2006	April 18, 2008
3rd	October 20, 2006	May 7, 2008
4th	January 24, 2007	July 21, 2008

[6] Par. 10, Facts Admitted, JSFI, *Rollo*, p. 232
[7] Par. 11, Facts Admitted, JSFI, *Rollo*, pp. 232-233
[8] Pars. 7-8, Facts Admitted, JSFI, *Rollo*, pp. 231-232

Petitioner's Amended Quarterly VAT Returns for the four quarters of CY 2006 reflected/reported the following input tax credits:[9]

2006 Taxable Quarter	Input Tax Credits for the period January 1 to December 31, 2006					
	Purchase of Capital Goods exceeding P1Million	**Domestic Purchases of Goods Other than Capital Goods**	**Importation of Goods Other than Capital Goods**	**Domestic Purchase of Services**	**Services Rendered by Non-Residents**	**Total Input Tax Credits**
1st	1,870,700.70	1,821,359.38	556,816.00	4,151,387.81	968,642.68	9,368,906.57
2nd	1,346,348.83	1,209,055.08	1,152,424.00	5,797,606.67	1,199,547.36	10,704,981.94
3rd	2,998,466.11	1,425,019.73	810,906.00	10,921,541.86	302,627.14	16,458,560.84
4th	344,377.46	1,620,670.63	654,763.00	8,586,528.36	1,608,644.90	12,814,984.35
TOTAL	6,559,893.10	6,076,104.82	3,174,909.00	29,457,064.70	4,079,462.08	**49,347,433.70**

Also, based on the Amended Quarterly VAT returns for the Period January 1 to December 31, 2006, petitioner's reported zero-rated sales during the period are as follows[10]:

Zero-Rated Sales for the period January 1 to December 31, 2006	
2006 Taxable Quarter	**Zero-Rated Sales/ Receipts**
1st	1,583,390,407.46
2nd	1,648,748,033.50
3rd	1,599,882,354.64
4th	1,547,858,529.27
TOTAL	**6,379,879,324.87**

Out of the total input tax reported in the Amended Quarterly VAT returns for the period January 1 to December 31, 2006, amounting to **P49,347,433.70**, petitioner is seeking issuance of TCCs for a total amount of **P43,806,549.72** (*i.e.* ***P7,559,943.44*** *for CTA Case No. 7771, and* ***P36,246,606.28*** *for CTA Case No. 7814*)

[9] Exhibits "H-1" to "H-10"
[10] *Supra* Note 8

<u>*CTA Case No. 7771*</u>

On March 31, 2008, petitioner filed its administrative claim[11] with the BIR RDO No. 55 of Laguna for the issuance of a TCC in the total amount of P7,559,943.44, representing its unutilized input taxes for the period January 1, 2006 to March 31, 2006, pursuant to Section 112 (A) of the NIRC of 1997, *as amended by R.A. 9337.*[12]

Since respondent has not issued its final decision on the above administrative claim, petitioner filed on April 23, 2008 a Petition for Review[13] with this Court, docketed as CTA Case No. 7771, alleging inaction of respondent.[14]

In his Answer[15], respondent alleged by way of special and affirmative defenses that:

> "5. Petitioner's alleged claim for the issuance of a tax credit certificate is subject to administrative investigation /examination by respondent's Bureau;
>
> 6. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
>
> 7. Taxes collected are presumed to be in accordance with laws and regulations;
>
> 8. Petitioner's judicial claim for the issuance of a TAX CREDIT CERTIFICATE was prematurely filed in view of Section 112 (C) of the 1997 National Internal Revenue Code (1997 NIRC), as amended, which provides that:
>
> > 'Section 112. Refunds or Tax Credits of Input Tax –
> > (C) 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 Subsection (A) hereof.

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[11] Exhibit "A"
[12] Par. 12, Facts Admitted, JSFI, *Rollo*, p. 235
[13] *Rollo*, pp. 1-14
[14] Par. 14, Facts Admitted, JSFI, *Rollo*, p. 235
[15] *Rollo*, pp. 156-162

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.' (Italics supplied)

Hence, when the petitioner filed its administrative claim for the issuance of a TAX CREDIT CERTIFICATE with the BIR Revenue District Office No. 55 of Laguna on 31 March 2008, respondent had 120 days within which to decide on petitioner's claim for the issuance of a TAX CREDIT CERTIFICATE. And in the case of full or partial denial of the claim or failure of respondent to act on the application within the 120 day period, petitioner has 30 days to appeal the decision or inaction with the Court of Tax Appeals. Thus, respondent had to render a decision within 120 days from 31 March 2008 or until 29 July 2008. In the event that respondent failed to act upon petitioner's claim for the issuance of a tax credit certificate, petitioner has 30 days from 29 July 2008 or until 28 August 2008 to appeal the unacted claim with the Court of Tax Appeals. Petitioner filed the instant Petition for Review with the Court of Tax Appeals on 23 April 2008, more than four (4) months before the lapse of the period allowed by law to file the judicial claim for the issuance of a tax credit certificate with the Court of Tax Appeals.

In the case at bar, petitioner seeks the issuance of a tax credit certificate representing its alleged unutilized input taxes. Thus, petitioner can appeal to this Honorable Court only after the expiration of the 120-day period granted by law or within 30 days from the decision of respondent denying its claim for tax credit. This being so, this Honorable Court has no jurisdiction to act on the instant Petition for Review.

9. Assuming in gratia argumenti that petitioner's judicial claim for the issuance of a tax credit certificate was not prematurely filed, it is imperative for petitioner to prove compliance with the following, viz:

a. The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations;

b. The invoicing and accounting requirements for VAT registered persons, as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003);

c. The submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (C) of the 1997 NIRC, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition sine qua non prior to the filing of judicial claim in accordance with Section 229 of the 1997 NIRC, as amended;

d. That the input taxes of P7,559,943.44 allegedly representing unutilized input VAT from its local purchases and/or importation of goods and services and payments for services rendered by non-residents, other than capital goods, and purchases of capital goods, were:

i. paid by the petitioner;
ii. attributable to its zero-rated or effectively zero-rated sales; and
iii. such input taxes paid should not have been applied against any output tax;

e. That petitioner's claim for tax credit or refund of the unutilized input tax (VAT) in the amount of P7,559,943.44 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the 1997 NIRC, as amended;

f. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally colleted as explicitly provided in Sections 112 (A) and 229 of the 1997 NIRC, as amended.

10. Moreover, in an action for tax credit/refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for tax credit/refund;

11. Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same (Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005). Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted *(Sea-Land Services, Inc. vs. Court of Appeals, 357SCRA 444).*

<u>*CTA Case No. 7814*</u>

On July 23, 2008, petitioner filed with the BIR RDO No. 55 of Laguna an administrative claim [16] for the issuance of a TCC for the total amount of P36,246,606.28, representing its unutilized input taxes for the period April 1, 2006 to December 31, 2006, pursuant to Section 112 (A) of the NIRC of 1997, *as amended by R.A. 9337.*[17]

On July 24, 2008, petitioner filed a Petition for Review[18] with this Court, docketed as CTA Case No. 7814, in order to toll the running of the two (2) year prescriptive period.[19]

In his Answer filed on September 18, 2008, respondent alleged by way of special and affirmative defenses that:

> "5. Petitioner's claim for tax refund is subject to administrative investigation/examination by respondent;
>
> 6. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law;
>
> 7. 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 the pertinent provision of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, and its implementing revenue regulations;
>>
>> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the 1997 NIRC, as amended;
>>
>> c. Proof of compliance with the submission of complete documents in support of the administrative claim for refund

[16] Exhibit "B"
[17] Par. 13, Facts Admitted, JSFI, *Rollo*, p. 235
[18] *Rollo*, pp. 418-429
[19] Par. 14, Facts Admitted, JSFI, *Rollo*, p. 235

pursuant to Section 112 (C) of the 1997 NIRC, as amended, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a *condition sine qua non* prior to the filing of judicial claim in accordance with Section 229 of the 1997 NIRC, as amended.

d. That the input taxes of Php36,246,606.28 representing unutilized input tax (VAT) from its local purchases and /or importation of goods and services and payments for services rendered by non-residents, other than capital goods for the period April 1, 2006 to December 31, 2006 were:

d.i paid by the petitioner;
d.ii. attributable to its zero-rated or effectively zero-rated sales; and
d.iii. such have not been applied against any output tax;

e. That petitioner's claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the 1997 NIRC, as amended;

f. That petitioner's domestic purchases and/or importation of goods and services, payment for services rendered by non-residents and capital goods 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 1997 NIRC, as amended and in pursuance to Section 4.104-5(a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. That petitioner has complied the requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95 (Re: persons who can avail of the Input Tax Credit).

8. In an 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 tax refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemptions must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications;

9. The claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation and liberally in favor of the taxing authority."

On October 20, 2008, petitioner filed a Motion for Consolidation of Cases[20] praying for the consolidation of CTA Case No. 7814 with CTA Case No. 7771, which the Court granted in a Resolution[21] dated November 27, 2008.

The parties filed their Joint Stipulation of Facts and Issues[22] on February 2, 2009, which was approved by this Court in a Resolution dated February 9, 2009, thus the Pre-Trial was terminated and the parties were ordered to proceed with the trial on the merits.

During the hearing held on April 1, 2009, Mr. Fernando J. Dela Paz, Chief Financial Officer of the petitioner, testified on direct examination by way of affidavit, he affirmed the veracity of the declarations made in his affidavit and identification of Exhibits "A" to "E-3", inclusive of all submarkings. Considering the absence of the respondent's counsel despite notice, and as moved by petitioner's counsel, the right of the respondent's counsel to cross-examine Mr. Dela Paz was declared by this Court as deemed waived. In the same hearing, the petitioner's Motion to Commission Mr. Edwin F. Ramos of Constantino Guadalquiver & Company, as the Independent Certified Public Accountant (CPA) who will conduct the audit and verification of the aforesaid official receipts, invoices and other pertinent documents, was granted.[23]

On July 24, 2009, Mr. Edwin F. Ramos, commissioned Independent CPA to conduct the independent special audit and examination of petitioner's voluminous documents, submitted his Sworn Statement[24]. The testimony of Mr. Ramos was taken during the hearing held on July 29, 2009, where he affirmed the veracity of his

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[20] *Rollo*, pp. 185-188
[21] *Rollo*, p. 194
[22] *Rollo*, pp. 229-239
[23] Minutes of the hearing held by the Second Division on April 1, 2009; *Rollo*, p. 281
[24] *Rollo*, pp. 302-311

declarations in his Sworn Statement and identification of Exhibits "G" to "W, "Y" and "AA", inclusive of all sub-markings.[25]

Petitioner filed its Formal Offer of Evidence[26] on October 26, 2009, offering Exhibits "A" to "BB-1", inclusive of all submarkings. The exhibits were all admitted by the Court in a Resolution[27] dated November 25, 2009.

On April 21, 2010, counsel for respondent manifested that he will no longer present any witness and that he is resting his case, thus, the parties were ordered to file their respective Memoranda, within thirty (30) days or until May 21, 2010; afterwhich, the cases shall be deemed submitted for decision.[28]

Considering petitioner's Memorandum[29] filed on May 17, 2010, and the Report[30] of the Judicial Records Division dated June 3, 2010 that respondent failed to file his memorandum despite due notice, the cases were deemed submitted for decision on June 7, 2010.[31]

THE ISSUES

Following are the issues, as stipulated upon by the parties, for this Court's resolution:

> "1. Whether or not Petitioner's administrative and judicial claims for the issuance of tax credit certificates were filed on time;
>
> 2. Whether or not Petitioner is registered as a value-added taxpayer pursuant to the provisions of the 1997 NIRC, *as amended;*
>
> 3. Whether or not Petitioner has complied with the invoicing and accounting requirements for VAT-registered persons, as well as the

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[25] Minutes of the hearing held by the Second Division on July 29, 2009; *Rollo*, p. 312
[26] *Rollo*, pp.323-335
[27] *Rollo*, pp. 349-350
[28] Minutes of the hearing held by the Second Division on April 21, 2010; *Rollo*, p. 357
[29] *Rollo*, pp. 360-413
[30] *Rollo*, p. 415
[31] *Rollo*, p. 417, Resolution dated June 7, 2010.

filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the 1997 NIRC, *as amended;*

4. Whether or not Petitioner has submitted complete documents in support of its administrative claims for the issuance of tax credit certificates pursuant to Section 112(C) of the 1997 NIRC, *as amended*;

5. Whether or not the alleged input taxes in the amount of P43,806,549.72 representing unutilized input VAT from local purchases and/or importation of goods and services and payments for services rendered by non-residents and purchases of capital goods were:

i. paid or incurred by Petitioner;
ii. attributable to its zero-rated sales or effectively zero-rated sales;
iii. such input taxes paid or incurred should not have been applied against any output tax;

6. Whether or not the input taxes claimed were carried over to the succeeding quarter or quarters in Petitioner's VAT returns;

7. Whether or not Petitioner is entitled to the issuance of tax credit certificates in the amount of P43,806,549.72 allegedly representing unutilized input VAT from local purchases and/or importation of goods and services and payments for services rendered by non-residents and purchases of capital goods for the period January 1, 2006 to December 31, 2006.

The above issues revolve around the principal issue of whether petitioner is entitled to the issuance of TCCs in the total amount of P43,806,549.72, representing unutilized input VAT on local purchases and/or importation of goods and services and payments for services rendered by non-residents and purchases of capital goods attributable to its zero-rated sales for the period January 1, 2006 to December 31, 2006.

Arguments of Petitioner CBK Power Company Limited[32]

In this present Petitions for Review, petitioner CBK Power Company Limited maintains that its administrative and judicial claims for the issuance of TCCs for

[32] Memorandum for the Petitioner, *Rollo*, pp. 360-413

unutilized input taxes for the period January 1, 2006 to December 31, 2006, were seasonably filed citing Section 229 of the NIRC of 1997, *as amended*, which provides for the two-year period for judicially claiming tax refund/credit, and argued that the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[33] ("*Atlas* case") is the applicable jurisprudence in the pending petitions. Considering that the *Atlas* case was the prevailing jurisprudence at the time the subject administrative and judicial claims were filed, petitioner followed in good faith the doctrine enunciated therein that the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales and input tax on capital goods should be counted from the date of filing of the VAT return and payment of the tax due. The case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[34] ("*Mirant* case") should be given prospective application following the principle of prospectivity of statutes.

With regard to the second issue, petitioner contends that it is a value-added taxpayer pursuant to the provisions of the Tax Code of 1997, *as amended*. In the Joint Stipulation of Facts and Issues (JSFI)[35] filed by both parties on February 2, 2009, respondent had admitted that petitioner is registered as a VAT entity in accordance with the Tax Code of 1997.

As regards the remaining issues, which all boil down to the issue of whether or not petitioner is entitled to the issuance of TCCs, petitioner asserts that it had sufficiently proven and substantiated that it has complied with all the basic requirements in order to be entitled to the issuance of TCCs in the amount of P43,806,549.72 representing unutilized input VAT from local purchases and/or

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[33] G.R. Nos. 141104 & 148763, June 8, 2007
[34] G.R. No. 172129, September 12, 2008
[35] *Rollo*, pp. 229-238

importation of goods and services and payments for services rendered by non-residents and purchases of capital goods for the period January 1, 2006 to December 31, 2006.

Arguments of Respondent Commissioner of Internal Revenue

Respondent CIR strongly contends that petitioner's judicial claims for the issuance of TCCs were prematurely filed in view of Section 112(C) of the NIRC of 1997, *as amended by R.A. 9337,* which essentially provides that the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within 120 days from the date of submission of complete documents in support of the application. Hence, the petitioner can elevate his claim before this Court only after the expiration of the 120-day period granted by law or within 30 days from the decision of the respondent denying its claim for tax credit.

THE RULING OF THE COURT

Section 112(A) of the NIRC of 1997, *as amended*, provides for the refund or tax credit of unutilized input VAT attributable to zero rated or effectively zero-rated sales, to wit:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> > (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: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the

> amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non zero-rated sales.

Based on the afore-quoted provision and settled jurisprudence, a taxpayer engaged in zero-rated or effectively zero-rated transactions may apply for tax refund or issuance of TCC for unutilized input VAT provided, the following requisites are satisfied:

(1) the taxpayer is VAT registered;

(2) the taxpayer is engaged in zero-rated or effectively zero-rated sales;

(3) the input taxes were incurred or paid;

(4) the input taxes have not been applied against output taxes during and in the succeeding quarters;

(5) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

(6) the claim was applied/filed within the period prescribed in Section 112(A) and (C) of the NIRC of 1997, *as amended*.

Timeliness of Petitioner's administrative and judicial claims for the issuance of tax credit certificates.

Before this Court proceeds to determine petitioner's compliance with the 1st to 5th requisites for tax refund and issuance of TCCs, the Court deems it appropriate and opts to first dwell on the 6th requisite, which is in fact the first (1st) issue in this case, pertaining to the timeliness of petitioner's administrative and judicial claims for the issuance of TCCs, seeing that the resolution of this controversy is the determining factor on whether this Court should proceed with the disquisition of the other issues in this case.

On the following dates, petitioner filed its Original and Amended Quarterly VAT Returns,[36] and its administrative[37] and judicial claims for the issuance of TCCs:

2006 Taxable Quarter	Original VAT Return (Date filed)	Amended VAT Return (Date filed)	Administrative Claim (Date filed)	Petition for Review (Date filed)
1st	April 25, 2006	December 28, 2007 March 31, 2008	March 31, 2008	April 23, 2008
2nd	July 25, 2006	April 18, 2008	July 23, 2008	July 24, 2008
3rd	October 20, 2006	May 7, 2008		
4th	January 24, 2007	July 21, 2008		

Respondent, Commissioner of Internal Revenue, contends that petitioner's judicial claims for the issuance of TCCs were prematurely filed in view of Section 112(C) of the NIRC of 1997, *as amended by R.A. 9337*, which provides that:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> > (C) *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 Subsection (A) 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.

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[36] Pars. 7-8, Facts Admitted, JSFI, *Rollo*, pp. 231-232
[37] Pars. 12-13, Facts Admitted, JSFI, *Rollo*, p. 235

Respondent posits that petitioner can appeal to this Honorable Court only after the expiration of the 120-day period granted by law or within 30 days from the decision of the respondent denying its claim for tax credit. This being so, according to the respondent, this Court has no jurisdiction to act on the Petitions for Review.

The issue concerning the timeliness of petitioner's administrative and judicial claims, for input tax refund or the issuance of TCCs, brought forth divergent views on the following:

> First, reckoning of the 2-year period for filing/claiming refund or issuance of TCC provided under Section 112(A) of the NIRC of 1997, *as amended by R.A. 9337*;
>
> Second, whether the 2-year period mandated under Section 112(A) of the NIRC of 1997, *as amended by R.A. 9337*, refers to the filing of both administrative and judicial claim.
>
> Third, whether the non-observance of the 120-day period and 30-day period under Section 112(C) of the NIRC of 1997, *as amended by R.A. 9337*, prior to the filing of Petition for Review amounts to non-exhaustion of administrative remedy and thereby results to lack of jurisdiction of this Court.

However, the Supreme Court finally put to rest the controversies as above-mentioned when it ruled in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823 ("*Aichi* case") on October 6, 2010, as follows:

> First, the reckoning of the 2-year period for filing/claiming refund or issuance of TCC as expressly provided for under Section 112(A) of the NIRC of 1997, *as amended by R.A. 9337*, is from the close of the quarter when such

sales were made. In the *Aichi* case, the Supreme Court adhered to the principle enunciated in the *Mirant* case notwithstanding the fact that the claim for refund was filed on September 30, 2004, approximately 4 years before the *Mirant* case was promulgated, effectively giving the *Mirant* doctrine a retroactive application.

Second, the phrase "*within two (2) years x x x apply for the issuance of a tax credit certificate or refund*" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (C) of the same provision, which states that the CIR has "*120 days from the submission of complete documents in support of the* ***application*** *filed in accordance with Subsections (A) and (B)*" within which to decide on the claim.[38]

Third, compliance with the "120-30 day period" under Section 112 (C) of the NIRC of 1997, *as amended of R.A. 9337*, is crucial in filing a judicial claim.

Hence, applying the aforementioned jurisprudential principle with the prevailing circumstances in this case, this Court is constrained to **DENY** petitioner's claim for issuance of TCCs. The Court in Division finds the Petitions to be devoid of merit and the arguments of the respondent to be in order.

[38] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

in Division finds the Petitions to be devoid of merit and the arguments of the respondent to be in order.

Administrative claims were filed on time

Apropos the administrative claim for refund or issuance of tax credit certificate for unutilized input tax, germane is the provision of Section 112(A) of the NIRC of 1997, *as amended by R.A. 9337*, which prescribes the reckoning of the 2-year period within which to make a claim for refund or tax credit, *i.e.,* from the close of the taxable quarter when the sales were made.

By a plain reading of the foregoing provision, the 2-year prescriptive period for filing the application for refund/credit of input tax on zero-rated sales shall be determined from the close of the quarter when such sales were made. The Supreme Court, in the *Aichi* case, reinforced the doctrine laid down in the *Mirant* case, that the 2-year prescriptive period is reckoned from the close of the taxable quarter when the relevant sales or transactions were made, and significantly gave the said doctrine a retroactive application considering that the High Court applied the same to the *Aichi* case notwithstanding the fact that the claim for refund was filed on September 30, 2004, approximately 4 years before the *Mirant* case was promulgated. In the *Aichi* case[39], the Supreme Court explained as follows:

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> The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to

[39] *Supra* note 38

instances of erroneous payment or illegal collection of internal revenue taxes." We explained that:

> The above proviso [Section 112 (A) of the NIRC] clearly provides in no uncertain terms that **unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued." Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.
>
> ***Reckoning for prescriptive period under***
> ***Secs. 204(C) and 229 of the NIRC inapplicable***
>
> To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:
>
>> Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. – The Commissioner may
>>
>> x x x x
>>
>> (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 an overpayment shall be considered as a written claim for credit or refund.
>
> x x x x
>
> 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, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully 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.

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, **both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.**

MPC's creditable input VAT not erroneously paid

For perspective, under Sec. 105 of the NIRC, creditable input VAT is an indirect tax which can be shifted or passed on to the buyer, transferee, or lessee of the goods, properties, or services of the taxpayer. The fact that the subsequent sale or transaction involves a wholly-tax exempt client, resulting in a zero-rated or effectively zero-rated transaction, does not, standing alone, deprive the taxpayer of its right to a refund for any unutilized creditable input VAT, albeit the erroneous, illegal, or wrongful payment angle does not enter the equation.

x x x x

> Considering the foregoing discussion, **it is clear that Sec. 112 (A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes.** (Emphasis supplied.)
>
> In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.

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Petitioner filed its administrative[40] claims for the issuance of TCCs on the following dates:

2006 Taxable Quarter	Close of the Quarter	Last Day to File Administrative Claim	Date Administrative Claim Filed
1st	March 31, 2006	March 31, 2008	March 31, 2008
2nd	June 30, 2006	June 30, 2008	July 23, 2008
3rd	September 30, 2006	September 30, 2008	
4th	December 31, 2006	December 31, 2008	

Clearly, applying the explicit provision of Section 112(A) of the NIRC of 1997, *as amended by R.A. 9337*, as bolstered in the cases of *Mirant* and *Aichi*, the administrative claims were filed by the petitioner within the 2-year prescriptive period, except for the period covering the 2nd quarter of 2006. For the 2nd quarter of

[40] Pars. 12-13, Facts Admitted, JSFI, *Rollo*, p. 235

2006, the mandated last day of filing of an administrative claim was set by law on June 30, 2008, however, petitioner filed its administrative claim on July 23, 2008, which is clearly beyond the 2-year prescriptive period under Section 112(A) of the NIRC of 1997, *as amended by R.A. 9337*.

<u>The filing of the judicial claim was premature</u>

Regarding the judicial claim for refund, Section 112(C) of the NIRC of 1997, *as amended by R.A. 9337*, is the relevant provision, *viz*:

> "(C) *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 Subsection (A) 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."

Section 112(C) of the NIRC clearly provides that the CIR has "120 days from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the Court of Tax Appeals (CTA) within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the CTA within 30 days.[41]

In this case, records reveal that:

CTA Case	Administrative Claim Filed	End of 120 Days for the BIR Commissioner to Decide the Claim	Date Judicial Claim Filed
CTA Case No. 7771	March 31, 2008	July 29, 2008	April 23, 2008
CTA Case No. 7814	July 23, 2008	November 20, 2008	July 24, 2008

Verily, in both petitions, petitioner did not wait for the decision of the CIR or the lapse of the 120-day period before filing its appeal to this Court. For this reason, this Court finds the filing of the judicial claims for issuance of TCCs for unutilized input VAT, premature.

Also, it is significant to note that, as clarified by the Supreme Court in the *Aichi* case[42], the aforementioned 2-year period refers to applications for refund/credit filed with the CIR and not to appeals made to this Court (CTA). The Supreme Court ratiocinated in this wise:

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> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to

[41] *Supra* note 38
[42] *Supra* note 38

appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim.

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.

With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.

In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.

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This Court adheres to the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010. This is in keeping with the time-honored rule that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy.[43] All courts must take their bearings from the decisions of this Court.[44]

[43] *Dante Nacuray, et. al. vs. National Labor Relations Commission*, G.R. Nos. 114924-27; 270 SCRA 9
[44] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, Resolution dated September 21, 2007, 533 SCRA 776, 781.

To hold otherwise would not only offend the above-cited principles, but would altogether undermine the very foundations upon which the afore-cited principles were pronounced by the Supreme Court in the aforementioned decisions.

Under the **principle of *stare decisis et non quieta movere***, past judicial precedents should be followed in subsequent cases by all courts in the land.[45] Hence, the cases of *Mirant*[46] and *Aichi*[47] constitute as *stare decisis* to the case at bar.

WHEREFORE, premises considered, the instant Petitions for Review are hereby **DISMISSED** for having been prematurely filed.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[45] *Gregorio Castillo v. Sandiganbayan*, G.R. No. 138231, 377 SCRA 509
[46] G.R. No. 172129; 565 SCRA 154, 171
[47] *Supra* note 38

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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