REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7951

Members:
UY, *Chairperson,* and
FABON-VICTORINO, ***JJ.***

Promulgated:
JUL 05 2013 ; 3:30 p.m.

x - x

DECISION

UY, *J.*:

In this Petition for Review filed by petitioner, Coca-Cola Bottlers Philippines, Inc., against respondent, Commissioner of Internal Revenue, petitioner seeks the refund or the issuance of a tax credit certificate from respondent in the amount of ₱45,142,592.91, allegedly representing output value-added tax (VAT) erroneously paid for the quarter ending June 30, 2007.

THE FACTS

Petitioner is a corporation duly organized and existing under and by virtue of Philippines laws, with principal office located at No. 1980 Paz Guazon Street, Paco, Manila, and is primarily engaged in the business of manufacturing and selling at wholesale, beverages such as Coca-Cola, Sprite, Royal True Orange, Minute Maid, etc.[1] It is a VAT-registered taxpayer with Tax Identification Number 000-112-104-000.[2]

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[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 63.
[2] Par. 3, Admitted Facts, JSFI, Docket, p. 64.

In the conduct of its business, petitioner purchases goods from VAT-registered suppliers and VAT-registered service providers.[3]

On the other hand, respondent is an official of the Republic of the Philippines authorized to, among others, refund or credit taxes, pursuant to Section 204 of the National Internal Revenue Code (NIRC) of 1997. She holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[4]

Petitioner filed its Monthly VAT Declarations for the months of April 2007 and May 2007 on May 24, 2007 and June 25, 2007, respectively.[5]

On July 25, 2007, petitioner filed its Quarterly VAT Return for the quarter ended June 30, 2007.[6] As reflected in the said Return and the Monthly VAT Declarations for the same quarter, petitioner paid/remitted to the Bureau of Internal Revenue (BIR), output VAT in the total amount of ₱255,581,011.92.[7]

Subsequently, on August 29, 2008, BIR Regional Director Alfredo V. Misajon issued Letter of Authority No. 00046179, authorizing certain Revenue Officers to examine the books of accounts and other accounting records of petitioner for the period January 1 to December 2007. Said Letter of Authority was received by petitioner on September 2, 2008.[8]

According to petitioner, sometime in July 2009, it was determined that it had inadvertently failed to upload certain official receipts, evidencing payment of services, to its computerized books of accounts thereby resulting in a supposed overpayment of VAT in the amount of ₱45,142,592.91 for the second quarter ending June 30, 2007.[9]

However, despite such discovery, petitioner could no longer amend its Quarterly VAT Return for the quarter ended June 30, 2007,

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[3] Par. 4, Admitted Facts, JSFI, Docket, p. 64.
[4] Par. 2, Admitted Facts, JSFI, Docket, pp. 63 to 64.
[5] Exhibits "C" and "D".
[6] Par. 9, Admitted Facts, JSFI, Docket, p. 65.
[7] Par. 6, Admitted Facts, JSFI, Docket, p. 64.
[8] Exhibit "B".
[9] Exhibit "K"; and Exhibit "Q" (I, par. 7), at pp. 4 to 5; Petitioner's Memorandum, at pp. 5 to 7, Docket, pp. 418 to 420.

in view of the said Letter of Authority issued by the BIR against petitioner.[10]

On July 22, 2009, petitioner filed an application and letter request with the LT-Audit & Investigation Division I of the BIR for the refund or issuance of tax credit certificate of the supposed erroneously paid output VAT for the quarter ending June 30, 2007.[11]

Two (2) days after, or on July 24, 2009, petitioner filed its judicial claim with this Court by way of the present Petition for Review.

In her Answer[12] filed on August 28, 2009, respondent raises the following special and affirmative defenses:

> "9. The petition is premature considering that petitioner's claim for tax refund/credit of the alleged erroneously paid Value-Added Tax for the second quarter ending June 30, 2007 in the amount of P45,142,592.91 is still pending investigation with LT-Audit and Investigation Division I, BIR National Office, Diliman, Quezon City.
>
> 10. The VAT Returns themselves (BIR Form 2550M and 2550Q) filed by the petitioner for the second quarter ending June 30, 2009 did not show any erroneously paid tax whatsoever.
>
> 11. Claim for refund is construed strictly against the claimant and should not be allowed unless proven explicitly and categorically.
>
> 12. The allegations regarding tax refundability do not ipso facto merit the refund claimed."

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[10] Par. 7, Admitted Facts, JSFI, Docket, p. 64. Relative thereto, Section 6(A) of the NIRC of 1997 provides in part as follows:

> "Any return, statement or declaration filed in any office authorized to received the same shall not be withdrawn: *Provided*, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further*, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer."

[11] Par. 10, Admitted Facts, JSFI, Docket, p. 65.

[12] Answer, Docket, pp. 31 to 34.

The issues having been joined, the Court set the case for pre-trial conference on September 24, 2009[13] and by agreement of the parties' counsel, they filed their Joint Stipulation of Facts and Issues[14] on October 13, 2009, which was approved by the Court in the Resolution dated October 16, 2009.[15]

Thereafter, both parties were given sufficient opportunities to present their documentary and testimonial evidence, including the commissioning of an Independent Certified Public Accountant (ICPA) in the person of Katherine O. Constantino, upon petitioner's motion[16] pursuant to Section 5 of Rule 12, in relation to Sections 1 and 2 of Rule 13 of the Revised Rules of the Court of Tax Appeals.[17]

Petitioner filed its Formal Offer of Evidence on September 12, 2011.[18] On October 27, 2011, the Court resolved to admit most of petitioner's exhibits.[19] Thereafter on November 21, 2011, petitioner filed a Motion for Partial Reconsideration[20] of the pieces of evidence denied by the Court, with respondent's Comment/Opposition with Manifestation (To Petitioner's Motion for Partial Reconsideration) filed on December 6, 2011[21] opposing petitioner's motion for partial reconsideration, with the manifestation that she is waiving her right to present her evidence in the instant case.

In the Resolution dated January 31, 2012,[22] the Court partially granted petitioner's motion and admitted some of petitioner's evidence for reconsideration and noted respondent's manifestation.

On February 16, 2012, petitioner filed an Urgent Omnibus Motion (1) To Defer Submission of the Parties' Memoranda; (2) To Allow Petitioner to Present Additional Evidence; and (3) To Recall the Independent CPA to Examine Petitioner's Additional Evidence and Testify Thereon.[23] On February 24, 2012, respondent filed her

[13] Docket, p. 36.
[14] Docket, pp. 63 to 66.
[15] Docket, pp. 67 to 68 (found between pp. 95 and 96).
[16] Motion For Commissioning of Independent CPA, Docket, pp. 116 to 119.
[17] Minutes of the hearing held on February 12, 2010, Docket, p. 135.
[18] Docket, pp. 290 to 319.
[19] Resolution dated October 27, 2011, Docket, pp. 327 to 331.
[20] Docket, pp. 332 to 336.
[21] Docket, pp. 340 to 342.
[22] Docket, pp. 345 to 348.
[23] Docket, pp. 349 to 353.

Comment/Opposition (To Petitioner's Urgent Omnibus Motion dated February 15, 2012)[24]; while petitioner filed a Reply (Re: Respondent's Comment / Opposition) on March 5, 2012[25]. The Court granted petitioner's Urgent Omnibus Motion in the Resolution dated April 3, 2012.[26]

Thus, petitioner recalled to the witness stand, ICPA Katherine Constantino for her additional testimony and upon completion thereof, petitioner filed on May 30, 2012, a Supplemental Formal Offer of Evidence (For the Petitioner)[27] for its additional pieces of evidence; with Comment/Opposition[28] thereto filed by respondent on June 14, 2012.

In the Resolution dated July 4, 2012,[29] the Court admitted some of petitioner's supplemental evidence, deemed petitioner to have rested its case, and ordered both parties to submit their respective Memorandum.

After the filing of respondent's Memorandum[30] on August 10, 2012, and petitioner's Memorandum[31] on September 4, 2012, this case was submitted for decision on September 11, 2012.[32]

Hence, this Decision.

THE ISSUES

As stipulated by the parties,[33] the issues for this Court's resolution are the following:

> "1. Whether or not the petition for review is premature considering that petitioner's claim for refund/tax credit of the alleged erroneously paid value-added tax in the amount of **P45,142,592.91** is still pending investigation with the LT-Audit and Investigation Division I of the Bureau of Internal Revenue.

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[24] Docket, pp. 363 to 365.
[25] Docket, pp. 367 to 370.
[26] Docket, pp. 374 to 379.
[27] Docket, pp. 392 to 395.
[28] Docket, pp. 397 to 398.
[29] Docket, pp. 400 to 403.
[30] Docket, pp. 408 to 413.
[31] Docket, pp. 414 to 426.
[32] Resolution dated September 11, 2012, Docket p. 428.
[33] Issues to be Resolved, JSFI, Docket, p. 65.

2. Whether or not petitioner is entitled to a tax refund / credit in the amount of **P45,142,592.91** allegedly representing erroneously paid value-added tax for the second quarter ending June 30, 2007."

Petitioner's arguments:

Petitioner argues that the instant Petition for Review is not premature, but was definitely filed in accordance with Section 229 of the NIRC of 1997.

According to petitioner, for the quarter ended June 30, 2007, it paid VAT in the amount of ₱52,563,987.41 on July 25, 2007. Petitioner then avers that in compliance with the two-year prescriptive period stated in the said Section 229, it has only until July 25, 2009. It then alleges that before the lapse thereof, petitioner filed with this Court the instant Petition for Review on July 22, 2009. Accordingly, petitioner concludes that said Petition cannot be considered premature.

Finally, petitioner contends that it is entitled to refund/tax credit pursuant to law, jurisprudence, and the evidence it has presented during trial.

Respondent's counter-arguments:

Respondent asserts that petitioner is not entitled to a tax refund/credit of the alleged over/erroneous payment of VAT for the quarter ending June 30, 2007.

Thus, respondent claims that the Quarterly VAT Return (2550Q) of petitioner for the said quarter filed with the BIR did not show that petitioner indeed erroneously paid VAT in the amount of ₱45,142,592.91.

Respondent further posits that, in the Supplemental Report to the Amended Final and Consolidated Independent CPA Report of Ms. Katherine O. Constantino, the latter reported that only ₱19,245,971.95, out of the ₱45,142,592.91 input VAT being claimed for refund/credit by petitioner, is properly substantiated. Hence, petitioner failed to substantiate with proper documents over 50% of its claim of erroneous payment.

Moreover, respondent points out that while petitioner's Quarterly VAT Return for the quarter ending June 30, 2007 showed an Input Tax Carried Over from Previous Quarter in the amount of ₱33,007,485.22, the Independent CPA failed to ascertain whether petitioner is indeed entitled to claim for input tax carry-over the said amount, as she failed to verify the VAT Invoices and Official Receipts issued by petitioner's supplier for the quarter ending March 31, 2007.

Lastly, respondent avers that petitioner filed with the BIR a Claim for Refund/Tax Credit only on July 22, 2009, and barely two (2) days thereafter or on July 24, 2009, petitioner filed with this Court the instant Petition for Review without awaiting the decision of the respondent. Clearly, according to respondent, this Court has no jurisdiction to entertain the instant Petition for Review.

THE COURT'S RULING

The instant Petition for Review must fail.

This Court has no jurisdiction to entertain the instant Petition for Review.

Before delving on the issues raised by the parties, We shall first address respondent's contention that this Court is without jurisdiction to entertain the instant Petition for Review.

Respondent advances the argument that since the instant Petition of Review was filed barely after two (2) days from the filing of the administrative claim without awaiting the decision of respondent, this Court clearly has no jurisdiction.

We agree.

Section 7(a)(1) of Republic Act No. (RA) 1125,[34] as amended by RA 9282,[35] provides:

[34] AN ACT CREATING THE COURT OF TAX APPEALS.
[35] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

"SEC. 7. *Jurisdiction.*— The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(4) **Decisions of the Commissioner of Internal** Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" *(Emphasis supplied)*

Based on the foregoing legal provisions, to invoke the appellate jurisdiction of this Court, there must first be a decision rendered by respondent. Such being the case and since there is as yet no such decision, this Court cannot take cognizance of the present appeal.

It must be stated that We cannot apply the ruling of the Supreme Court, interpreting Section 229 of the NIRC of 1997,[36] that *"(i)f, however, the* [Commissioner of Internal Revenue] *takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the* [Commissioner of Internal Revenue]*",*[37] because said Section 229 is not applicable to the case at bar, as will be shown hereinafter.

Nevertheless, even granting that this Court has jurisdiction, the instant Petition is, still without merit.

Petitioner is not entitled to refund or tax credit.

Petitioner anchors the filing of the instant Petition for Review on Sections 204(C) and 229 of the NIRC of 1997, to wit:

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may –

[36] Then Section 306 of the NIRC.
[37] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, January 3, 1968.

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(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." (*Emphasis supplied)*.

"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, 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)*

A careful examination of the instant Petition for Review reveals that what is being claimed for tax refund/credit herein is the supposed input VAT of petitioner for the second quarter of 2007. It must be emphasized that claims for tax refund or credit of input taxes are governed by Section 112 of the NIRC of 1997, as amended, not by the above-quoted Sections 204(C) and 229.

Petitioner submits that due to the honest mistake or inadvertence of its employees, several purchases of services on credit **with input taxes** amounting to ₱45,142,592.91, that were paid in the second quarter of 2007, were not transferred to the account *"Input Tax – Services"*. Consequently, the said amount was not declared in its Quarterly VAT Return and not charged to the output tax payable for the quarter ending June 30, 2007. Petitioner thus asserts that there was an over/erroneous payment of output tax for the same quarter of the same amount, computed as follows:[38]

	Per Return	Should Be
Output Tax	₱1,229,075,851.39	₱1,229,075,851.39
Less: Allowable Input Tax		
Input tax Carried from previous Quarter	33,007,485.22	33,007,485.22
Input Tax Deferred on Capital Goods from previous Quarter	16,929,541.59	16,929,541.59
Purchase of Capital Goods Exceeding ₱1Million	37,828,284.80	37,828,284.80
Domestic Purchases of Goods Other than Capital Goods	791,348,204.44	791,348,204.44
Importation of Goods Other than Capital Goods	21,539,318.72	21,539,318.72
Domestic Purchases of Services		
1. Paid upon presentation of the invoice	6,292,637.34	6,292,637.34
2. Purchased on credit and paid during the quarter	**118,735,786.38**	**163,878,379.29**
Total Available Input Tax	₱ 1,025,681,258.51	₱ 1,070,823,851.42
Less: Deductions from Input Tax	52,186,419.02	52,186,419.02
Total Allowable Input Tax	₱ 973,494,839.46	₱ 1,018,637,432.37
Net VAT Paid	₱ 255,581,011.92	₱ 210,438,419.01
Difference (₱ 255,581,011.92 less ₱210,438,419.01)		**₱ 45,142,592.91**

As can be gleaned above, the comparative figures for the *"Output Tax"*, and every comparative figures under the *"Allowable Input Tax"* remained constant, except for the *"Domestic Purchases of Services" – "Purchased on credit and paid during the quarter"*, which shows a difference of ₱45,142,592.91 (₱163,878,379.29 less ₱118,735,786.38). Thus, there can be no doubt that the supposed *"Difference"* between the *"Net VAT Paid"* (₱255,581,011.92 less ₱210,438,419.01) in the same amount of ₱45,142,592.91 have arisen only because of the alleged unreported or unclaimed input tax on *"Domestic Purchases of Services" – "Purchased on credit and paid during the quarter"*. Consequently, the amount being claimed for refund or tax credit is, in reality, merely part of petitioner's input tax for the second quarter of 2007.

[38] Memorandum (for the Petitioner), Docket, pp. 414 to 427, at p. 419.

To be clear, assuming the figures in the foregoing table are accurate, it was error for petitioner to treat the difference of ₱45,142,592.91 in the *"Net VAT Paid"* as output tax, because in truth, such difference represents difference in its input tax. Plainly, contrary to petitioner's stance, an unreported or unclaimed input tax does not become an output tax. This must be so because there is a whale of a difference between VAT as output tax and VAT as input tax.

Output tax is defined as *"the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code"*; while **input tax** *"means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code"*.[39]

From the foregoing distinction, it can be easily discerned that the *output tax* refers to that which is imposed under Section 105 of the NIRC of 1997, to wit:

> "SEC. 105. *Persons Liable.* — **Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services**, and any person who imports goods **shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code**." *(Emphases supplied)*

On the other hand, Section 110 of the same Code, as amended by Republic Act No. (RA) 9337,[40] states the role of the *input tax* in relation to the *output tax*. Said provision reads:

> "SEC. 110. *Tax Credits.*—
>
> (A) *Creditable Input Tax.* —

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[39] Section 110 of the NIRC of 1997, as amended by RA 9337.

[40] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSE.

> (1) **Any <u>input tax</u>** evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions **shall be <u>creditable</u> against the <u>output tax</u>**:
>
> xxx xxx xxx."*(Emphases and underscoring supplied)*

Simply put, the output tax is one's tax liability; while the input tax is his/its tax credit against such output tax, subject to the evidentiary requirement of a *"VAT invoice or official receipt issued in accordance with Section 113"*. Parenthetically, although the term is not specifically defined in Our Tax Code, *tax credit* generally refers to an amount that is subtracted directly from one's total tax liability. It is an allowance against the tax itself or a deduction from what is owed by a taxpayer to the government.[41]

Relative thereto, the law that originally imposed the VAT in the country, as well as the subsequent amendments of that law, has been drawn from the *tax credit method*.[42] Under the present method that relies on invoices (or official receipts)[43], an entity can credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports.[44]

Such being the case and since what is being claimed herein is the supposed unreported input tax of petitioner, the latter cannot validly anchor its claim under Sections 204(C) and 229 of the NIRC of 1997.

In this connection, it is worthy to note the doctrine laid down by the Supreme Court in the recent case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.*,[45] to wit:

> "<u>The input VAT is **not** 'excessively' collected as understood under Section 229 because **at the time the input VAT is collected the amount paid is correct and proper**</u>. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or

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[41] *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159647, April 15, 2005.
[42] *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005.
[43] See Section 110(A)(1), NIRC of 1997, as amended by RA 9337.
[44] *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*, supra.
[45] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. If the input VAT is in fact 'excessively' collected as understood under Section 229, then it is the first VAT-registered person - the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT - who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit **outside** of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.

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Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax 'erroneously, x x x illegally, x x x excessively or in any manner wrongfully collected.' The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact 'excessively' collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. **Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229**." *(Underscoring supplied)*

As We have pointed out earlier, Section 112 of the NIRC of 1997, as amended by RA 9337, is the governing provision, since it specifically deals with the refund or credit of input taxes, *viz*:

"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 or 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.

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

(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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Based on the foregoing, there are only two (2) instances when input taxes may be applied for:

1. the issuance of a tax credit certificate or refund — when the claimant is a VAT-registered person, whose sales are zero-rated or effectively zero-rated [under Section 112(A)]; and

2. the issuance of a tax credit certificate — when the VAT registration of the claimant has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106 [under Section 112(B)].

In this case, there is no allegation, nor there is any evidence, to the effect that petitioner's VAT-registration has been cancelled due to whatever reason, in accordance with the above-quoted Section 112(B). However, it appears that petitioner has zero-rated transactions for the second quarter ending June 30, 2007, consistent with Section 112(A). Thus, We shall determine whether petitioner complied with the requirements of the latter provision.

To be precise, to claim refund or tax credit under Section 112(A) of the NIRC of 1997, petitioner must comply with the following criteria: (1) the taxpayer is VAT registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the input taxes are due or paid; (4) the input taxes are not transitional input taxes; (5) the input taxes have not been applied against output taxes during and in the succeeding quarters; (6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (7) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (8) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;

and (9) the claim is filed within two years after the close of the taxable quarter when such sales were made.[46]

Of the foregoing criteria, We are convinced that petitioner was able to comply with the condition that it is a VAT-registered person;[47] and that it is engaged in zero-rated or effectively zero-rated sales, as evidenced by petitioner's Quarterly VAT Return for the second quarter of 2007,[48] which indicates the total sales of petitioner for the said period,[49] *viz*:

Vatable Sales/Receipt-Private	₱ 10,242,298,761.58
Zero-Rated Sales/Receipts	8,606,644.54
Total Sales/Receipts	₱ 10,250,905,406.12

However, as to whether the subject input tax were due or paid, the Court-commissioned ICPA found that, out of petitioner's alleged unclaimed input tax credits for the second quarter of 2007 in the amount of ₱45,142,592.91, only the input tax of ₱19,245,971.95 were properly supported by VAT official receipts, broken down as follows:

Exhibit	ICPA Report	Input tax amount
J[7]	Amended Final and Consolidated Report	₱ 17,917,922.99
P[7]	Supplemental Report	1,328,048.96
	TOTAL	**₱ 19,245,971.95**

Thus, only the amount of ₱19,245,971.95 may be considered as input taxes that were due or paid for the subject period. Nevertheless, of this amount, there is no indication that they are transitional input taxes.

Moreover, the same amount of ₱19,245,971.95 cannot be directly and entirely attributable to petitioner's zero-rated sales for the subject period. Thus, in accordance with the eight criterion of claiming input taxes for refund or tax credit, the said amount shall be proportionately allocated on the basis of sales volume as follows:

Amount of Input Tax	₱ 19,245,971.95
Percentage of zero rated sales over total sales (₱8,606,644.54 divided by ₱10,250,905,406.12)	0.0839598474381%
Proportionate Allocation	₱ 16,158.89

[46] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.
[47] Par. 3, Admitted Facts, JSFI, Docket, p. 64.
[48] Exhibit "E".
[49] Exhibit "J[7]".

Thus, the amount of ₱19,245,971.95 is further reduced to ₱16,158.89.

Be that as it may, while there is no showing that the said reduced amount of input taxes were applied against the output taxes for the succeeding (third) quarter for 2007,[50] petitioner fails to convince Us that it has complied with the fifth criterion, because it is mandated that *"the input taxes have not been applied against output taxes during and in the succeeding quarters"*,[51] not just in the immediately following quarter. On this score alone, it is apparent that petitioner cannot validly claim any input tax for the said period, for its failure to comply with the said fifth criterion.

In addition, petitioner likewise failed to comply with the ninth criterion, *i.e.*, the claim is filed within two years after the close of the taxable quarter when petitioner's sales were made. It must be noted that petitioner filed its administrative claim only on July 22, 2009,[52] or twenty-two (22) days after the lapse of the two-year period from the close of the second quarter of 2007 (July 1, 2007 to June 30, 2009).

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA FABON-VICTORINO
Associate Justice

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[50] Exhibit "H".
[51] Underscoring supplied.
[52] Exhibits "I" and "J".

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 Special First Division.

ERLINDA P. UY
Chairperson
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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's Special First Division.

ROMAN G. DEL ROSARIO
Presiding Justice