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. 8218

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

Promulgated:
DEC 06 2013, 1:30 p.m.

x - x

DECISION

UY, J.:

Before Us is a Petition for Review filed on January 25, 2011 by petitioner, Coca-Cola Bottlers Philippines, Inc., praying that it be refunded or issued a tax credit certificate by respondent, Commissioner of Internal Revenue, in the total amount of ₱ 111,177,395.70, allegedly representing over/erroneous payment of VAT for the quarter ended December 31, 2008.

THE FACTS

Petitioner Coca-Cola Bottlers Philippines, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, 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-

[1] Paragraph 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 96.

000.[2] On January 1, 2005, petitioner was issued a Permit to Adopt Computerized Books of Accounts with System Generated Accounting Records (No. 0105-116-00020-CBA/AR) by the Bureau of Internal Revenue (BIR).[3]

Respondent Commissioner of Internal Revenue 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, as amended. She holds office at the BIR National Office Building, Diliman, Quezon City.[4]

Petitioner filed its Monthly VAT Declarations for the months of October 2008 and November 2008 on November 24, 2008 and December 24, 2008, respectively.[5]

On January 26, 2009, petitioner filed its Quarterly VAT Return for the quarter ended December 31, 2008.[6]

Subsequently, on May 27, 2009, Zenaida G. Garcia, OIC-ACIR, Large Taxpayers Service of the BIR, issued Letter of Authority No. 2007-00049455, authorizing certain Revenue Officers to examine the books of accounts and other accounting records of petitioner for the period January 1, 2008 to December 31, 2008. Said Letter of Authority was received by petitioner on June 2, 2009.[7]

During the quarter ended December 31, 2008, due to inadvertence of petitioner's employees, there was an instance when details of official receipts from the suppliers/service providers of petitioner were not uploaded in its computerized accounting system. Petitioner believes that the effect thereof is that there was an erroneous overpayment of VAT for the said quarter in the amount of ₱ 111,177,395.70.[8]

Petitioner considered amending its Quarterly VAT Return for the quarter ended December 31, 2008, and its Monthly VAT Declarations for October and November 2008 to correct the supposed over/erroneous payment; but was legally prevented from

[2] Exhibit "A".
[3] Exhibit "O".
[4] Paragraph 2, Admitted Facts, JSFI, Docket, p. 97.
[5] Paragraphs 3 and 4, Admitted Facts, JSFI, Docket, p. 97.
[6] Paragraph 5, Admitted Facts, JSFI, Docket, p. 97.
[7] Exhibits "N" and "1".
[8] Exhibit "Y" (Q9-A9 to Q11-A11), at p. 4.

doing so in view of the said Letter of Authority issued by the BIR against petitioner.[9]

On January 21, 2011, petitioner filed an Application for Tax Credits / Refunds (BIR Form No. 1914),[10] and a letter request with the LT Regular Audit Division I of the BIR for the refund or issuance of tax credit certificate of the supposed erroneously paid VAT in the amount of ₱ 111,177,395.70, for the quarter ended December 31, 2008.[11]

Petitioner filed the present Petition for Review on January 25, 2011.

Respondent filed her Answer[12] on March 23, 2011, raising the following special and affirmative defenses:

> "6. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 7. Petitioner's alleged claim for refund is subject to administrative routinary investigation by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.
>
> 8. Petitioner must prove compliance with the following in order to be entitled to the claim for refund :
>
> > a. That the alleged Value-Added Tax was erroneously or illegally collected.
> >
> > b. That it has complied with the governing rules and regulations with regard to recovery of taxes erroneously or illegally collected/received as provided

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[9] Exhibit "Y" [(Q17-A17 to Q18-A18), at p. 5] vis-à-vis Section 6(A) of the NIRC of 1997, which 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."

[10] Exhibit "L".

[11] Exhibit "M".

[12] Docket, pp. 46 to 57.

in Sections 204 and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

c. **Submission of complete documents in support of the administrative claim for refund otherwise there would be no 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 a judicial claim** in accordance with Section 229 of the NIRC of 1997, as amended.

9. Petitioner's basis to support its claim for refund or issuance of tax credit is Section 204 of the National Internal Revenue Code, hereunder quoted for reference:

> *'Section 204. Authority of the Commissioner to Compromise, Abate or Refund or Credit Taxes –*
>
> *xxx xxx xxx*
>
> *(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 refund within two (2) years after the payment of the tax or penalty: Provided, however, That a refund filed showing an overpayment shall be considered as a written claim for refund.*** *xxx' (Emphasis and underscoring supplied)'*

Corollary thereto, Section 229 of the NIRC provides:

> *'Section 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 for any penalty claimed to have been 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, 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 and underscoring supplied)*

Noteworthy, the requirements under Section 229 for refund claims are as follows:

1. A written claim for refund or tax credit must be filed by the taxpayer with the Commissioner;

2. The claim for refund must be a categorical demand for reimbursement;

3. The claim for refund or tax credit must be filed, or the suit or proceeding therefor must be commenced in court *within two (2) years from date of payment of the tax or penalty regardless of any supervening cause.* **(Commissioner of Internal Revenue vs. Rosemarie Acosta, G.R. No. 154068, August 3, 2007 citing Aban, Law of Basic Taxation in the Philippines)**

In view of the foregoing provisions of the law, respondent submits that the instant petition is bereft of cause of action for failure to allege the date of payment of value-added tax allegedly erroneous or illegally collected. Section 2 Rule 6 of the Revised Rules of Court of Tax Appeals is provides:

> *'Section 2. Petition for Review; Contents.— The petition for review shall contain allegations showing the jurisdiction of the Court,* ***a concise***

> ***statement of the complete facts*** *and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision.'*

While Section 1, Rule 8 of the Rules of Civil Procedure provides:

> *'Section 8. In general. Every pleading shall contain in a methodical and logical form,* ***a plain, concise and direct statement of ultimate facts*** *on which the party pleading relies for his claim or defense, as the case may, omitting the statement of mere evidentiary facts.'*

Evidently, the allegation of date of payment of the value-added tax is a material fact necessary to invoke jurisdiction and to justify the relief demanded. Precisely because such date constitutes the reckoning time of the 2-year prescriptive period to claim for refund as mandated by Section 204 and 229 of the NIRC. It bears stressing that the claim for refund arose from the alleged erroneous VAT payments for the quarter ending September 30, 2008. By express provision of law, petitioner is given a period of two (2) years from the date or payment of erroneously or illegally collected taxes within which to file a written claim for refund.

More so, it is noteworthy that petitioner not only failed to allege the date of payment in its petition but likewise, did not attach documents relative thereto. This utter failure cannot be countenanced. It is well-established disputable presumption under Section 3 of Rule 131 of the Rules of Court that:

> *'Section 3.*
>
> *(e) That evidence willfully suppressed would be adverse if produced.'*

It is very implausible for petitioner to omit the date of payment of value-added tax erroneously or illegally paid when in fact Section 204 of NIRC which served as the basis of petitioner's claim clearly and palpably mandates such ultimate fact supporting petitioner's cause of action. For failure to allege the date of payment, the instant claim for refund has no leg to stand on.

10. Moreover, it must be stressed that in claiming a refund, a claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the Commissioner of Internal Revenue, before resorting to an action in court, first, to afford the CIR an opportunity to correct the action of the subordinate officers; and second to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure **(CIR vs. Rosemarie Acosta, G.R No. 154068, August 3, 2007)** If there was no such decision of the Commissioner because he was not even given such opportunity to do so, the taxpayer cannot seek refuge under the cloak of having filed the action within two (2) year prescriptive period on the ground that the Commissioner has not yet acted upon said claim for tax refund or tax credit. To allow the taxpayer to file his claim for refund will be creating a dangerous precedent. It would not be long that the court will be dealing with monstrous clogging of dockets which could have been otherwise solved in the administrative level had taxpayer filed his claim for refund at the earliest opportunity. **(Geodetic and Construction Survey, Ltd vs. Commissioner of Internal Revenue, CTA Case No. 4526, June 1993)** In this case, it should be noted that the administrative claim for refund was filed on January 21, 2011 while this petition was filed on January 25, 2011 claiming that the two-year prescriptive period is about to lapse. Although petitioner is not legally proscribed to file this present petitioner, the intendment of the law affording opportunity to the government will not be served.

11. Petitioner cannot justify the date of filing of instant petitioner last Jan 25 2011 on the supposition that the amount of the said over/erroneous payment of VAT was only finally determined in July 2009 and that petitioner is barred from amending its VAT return for the quarter ended December 31, 2008 by reason of the issuance of the Letter of Authority. Section 229 of the NIRC provides that the claim for refund must be filed within the two (2) year period *regardless of any supervening cause that may arise after payment.* Hence, it is the date of payment that is material.

12. Taxes are essential to government's very existence; **(CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003)** hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the

right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. **(CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008)** Since tax refunds are regarded as tax exemptions and these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. **(Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R 141973, June 28, 2005)**

13. In an action for refund, the **burden of proof is on the taxpayer who claims the exemption** and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R 127624, November 18, 2003)** The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund **(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc. G.R. 163835 July 7, 2010)**

13. The amount of One Hundred Eleven Million, One Hundred Seventy Seven Thousand, Three Hundred Ninety Five and 70/100 (P111,177,395.70) being claimed by petitioner arising from alleged unutilized input value-added tax ('VAT') incurred for the taxable year 2008 is not properly documented.

14. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

After the pre-trial conference held on April 29, 2011,[13] and by agreement of the parties' counsel, they filed their Joint Stipulation of Facts and Issues[14] on May 10, 2011, which was approved by the Court in the Resolution dated May 13, 2011.[15]

In the interim, the Assistant Commissioner, Large Taxpayers Service of the BIR, Zenaida G. Garcia, issued the letter dated April

[13] Minutes of Pre-trial Conference, Docket, p. 89.
[14] Docket, pp. 96 to 99.
[15] Docket, p. 101.

25, 2011, denying petitioner's request for refund or tax credit certificate for the following reasons:

1) failure of petitioner to include the amount of input tax pertaining to purchases made on services that are recorded on account "input tax – services – clearing" and closed to account "input tax – services" upon payment during the quarters on petitioner's VAT Returns (2550Q) as part of the input tax claimed as deduction or to be credited to output tax due for the quarter; and

2) failure to provide or submit necessary documents to prove the claim.[16]

On May 26, 2011, petitioner filed a Request for Reconsideration of the said letter dated April 25, 2011, interposing the following grounds:

1) the input tax pertaining to purchases made on services that are recorded on account "input tax – services – clearing" and closed to account "input tax – services" upon payment during the quarters are included in the Domestic Purchases of Services (Box 21J) in the Quarterly VAT Return for the 4th quarter of calendar year 2008; and

2) the VAT invoices and official receipts in support of the claimed input VAT payments are available for examination.[17]

To date, however, the Court has not been informed whether or not respondent's denial of petitioner's request for refund or tax credit certificate was reconsidered by the BIR.

Be that as it may, during trial, both parties presented their respective documentary and testimonial evidence, including the commissioning of Katherine O. Constantino as an Independent Certified Public Accountant (ICPA), upon petitioner's motion,[18] 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. Upon termination thereof, the parties were directed to submit their respective memorandum.[19]

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[16] Exhibit "7", Docket, p. 376.
[17] Exhibit "8", Docket, pp. 377 to 380.
[18] Motion For Commissioning of Independent CPA, Docket, pp. 169 to 171.
[19] Id.

After the filing of respondent's Memorandum[20] on February 18, 2013, and petitioner's Memorandum[21] on March 4, 2013, this case was submitted for decision on March 14, 2013.[22]

Hence, this Decision.

THE ISSUES

The parties stipulated the following issues for this Court's resolution, to wit: [23]

> "1. Whether petitioner has complied with the submission of complete documents in support of its administrative claim for refund; and
>
> 2. Whether or not petitioner is entitled to refund or issuance of tax credit certificate in the amount of **P111,177,395.70** representing over/erroneous payment of value- added tax for quarter ended December 31, 2008."

Petitioner's arguments:

Anent the first issue, petitioner argues that in the Request for Tax Refund/Credit dated January 19, 2011 filed with the BIR on January 21, 2011, it attached all documents necessary for the respondent to determine the amount of tax overpaid by petitioner for the quarter ended December 31, 2008 and to refund the same to petitioner.

With regard to the second issue, in contending that it has proved its claimed refund, petitioner particularly points to the testimonies of its Tax & Risk Management Manager, Nelson D. Empalmado, and the court-commissioned ICPA, Ms. Katherine O. Constantino. Petitioner also invokes the doctrine of *solutio indebiti*.

Respondent's counter-arguments:

Respondent asserts that petitioner failed to comply with the

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[20] Docket, pp. 415 to 423.
[21] Docket, pp. 430 to 441.
[22] Resolution dated March 14, 2013, Docket p. 443.
[23] Issues to be Resolved, JSFI, Docket, p. 97.

submission of complete documents in support of its administrative claim for refund.

Furthermore, respondent claims that petitioner failed to exhaust administrative remedies prior to the filing of the Petition for Review.

Lastly, according to respondent, petitioner is not entitled to tax refund/credit in the amount of ₱ 111,177,395.70 for alleged erroneous payment of VAT for the fourth quarter of 2008.

THE COURT'S RULING

The instant Petition for Review is not meritorious.

The determination of the completeness of the documents in support of the administrative claim rests upon the taxpayer, not on the BIR.

It is undisputed that in petitioner's administrative claim for refund or tax credit certificate filed with the BIR,[24] the following documents were attached thereto, to wit:

"1. BIR Form 1914 – Application for Tax Refund/Credit;
2. List of Check Processing Documents (Clearing Documents) and the corresponding amount of Input Tax – Service – Clearing for the Quarter ended December 31, 2008;
3. List of Input Tax – Services – Clearing that were reclassified into Input Tax – Services and credited against Output Tax for the for the Quarter ended December 31, 2008;
4. Copy of BIR Form 2550Q – Quarterly Value-Added Tax Return for the quarter ended December 31, 2008;
5. Copy of the advice of Union Bank of the Philippines of 'BIR e-Payment Confirmation of the Net VAT paid for the quarter ended December 31, 2008;
6. Copy of BIR Form 2550M – Monthly Value-Added Tax Declaration for the month of November 2008;
7. Copy of the advice of Union Bank of the Philippines of 'BIR e-Payment Confirmation of the Net VAT paid for the month of November 2008;
8. Copy of BIR Form 2550M – Monthly Value-Added Tax Declaration for the month of October 2008;
9. Copy of the advice of Union Bank of the Philippines of 'BIR e-Payment Confirmation of the Net VAT paid for the month of October 2008;
10. BIR Certificate of Registration of CCBPI as VAT Taxpayer, and

[24] Exhibit "M".

11. Securities & Exchange Commission ('SEC') Certificate of Registration of CCBPI."

In *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*,[25] the Supreme Court ruled as follows:

> "The term 'relevant supporting documents' should be understood as **those documents necessary to support the legal basis in disputing a tax assessment <u>as determined by the taxpayer</u>.** The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit." *(Emphasis supplied)*

Thus, the determination of the completeness of the documents in support of an administrative claim for refund or tax credit certificate rests upon the taxpayer, <u>not</u> on the BIR.

Admittedly, the said ruling refers to the interpretation of the term *"relevant supporting documents"* under Section 228 of the NIRC of 1997 referring to tax assessments. However, We find no reason not to apply the same in the case of refund claims. This must be so because of the following reasons:

1. if the determination of the completeness of the documents depends on the BIR, the concerned taxpayer will also be at the mercy thereof; and

2. it has been held that the respondent ought to know the tax records of all taxpayers.[26] Thus, the Commissioner of Internal Revenue can easily decide whether or not to grant the concerned taxpayer's administrative claim for refund or tax credit certificate.

Thus, anent the first issue, the same is resolved in favor of petitioner. Nevertheless, the Court finds that petitioner is not entitled to the refund claim.

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[25] G.R. No. 172045-46, July 16, 2009

[26] See the cases of *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.* (G.R. No. 122480, April 12, 2000), and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation* (G.R. No. 180042, February 8, 2010).

Petitioner is not entitled to tax refund or issuance of a tax credit certificate.

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 –
>
> xxx xxx xxx
>
> (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)*

However, a careful examination reveals that what is being claimed for tax refund/credit in the instant case is the supposed input VAT of petitioner for the fourth quarter of 2008. In this connection, 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 in the quarter ended December 31, 2008, **the total input tax** pertaining to the services purchased on credit that there were paid and covered with VAT registered official receipts amounted to ₱ 355,787,331.88; but due to inadvertence of employees of petitioner, only the official receipts evidencing payment of the services **with input tax** in the amount ₱ 244,609,936.18 were erroneously uploaded in petitioner's computerized accounting system, and thus, only the amount of ₱ 244,609,936.18 were reclassified from the amount *"Input Tax – Services – Clearing"* in the account *"Input Tax – Services"*. Consequently, **only said amount were credited against the output tax** for the quarter ended December 31, 2008, resulting in the erroneous overpayment of VAT for the said quarter, computed as follows:[27]

	Per Return	**Should Be**
Output Tax	₱ 1,488,109,013.33	₱ 1,488,109,013.33
Less: Allowable Input Tax		
Input tax Carried from previous quarter		
Input Tax Deferred on Capital Goods from previous quarter	469,013,117.43	469,013,117.43
Input Tax Purchase of Capital Goods exceeding ₱ 1Million	82,367,812.99	82,367,812.99
Input Tax on Domestic Purchases of Goods Other than Capital Goods	714,957,777.98	714,957,777.98
Input Tax on Importation of Goods Other than Capital Goods	126,584,248.00	126,584,248.00
Input Tax on Domestic Purchases of Services:		
1. Paid upon presentation of the invoice	47,700,176.80	47,700,176.80
Purchased on credit and paid during the quarter	244,609,936.18	355,787,331.88
Total Available Input Tax	₱ 1,685,233,069.38	₱ 1,796,410,465.08
Less: Input Tax on purchases of Capital Goods exceeding ₱ 1Million deferred for the succeeding period	517,753,827.89	517,753,827.89
Total Allowable Input Tax	₱ 1,167,479,241.49	₱ 1,278,656,637.19
VAT Paid/Should Be Paid	₱ 320,629,771.84	₱ 209,452,376.14
Difference (₱ 320,629,771.84 less ₱ 209,452,376.14)		**₱ 111,177,395.70**

[27] Memorandum (for the Petitioner), Docket, pp. 434 to 435.

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 *"Input Tax on Domestic Purchases of Services" – "Purchased on credit and paid during the quarter"*, which shows a difference of ₱ 111,177,395.70 (₱ 244,609,936.18 less ₱ 355,787,331.88). Thus, there can be no doubt that the supposed *"Difference"* between the *"VAT Paid/Should Be Paid"* (₱ 320,629,771.84 less ₱ 209,452,376.14) in the same amount of ₱ 111,177,395.70 have arisen only because of the alleged unreported or unclaimed input tax on *"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 fourth quarter of 2008.

Such being the case, petitioner 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.*,[28] 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 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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> xxx xxx xxx

[28] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

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 a corollary, Section 112 of the NIRC of 1997, as amended by RA 9337, instead 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.

xxx xxx xxx."

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 is there any evidence, to the effect that petitioner's VAT-registration has been cancelled for whatever reason, in accordance with the above-quoted Section 112(B). However, it appears that petitioner has zero-rated transactions for the fourth quarter ending December 31, 2008, 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.[29]

Of the foregoing criteria, it is clear that petitioner was able to comply with the following conditions: (1) that it is a VAT-registered person;[30] (2) the subject input taxes have not been applied against output taxes during and in the succeeding quarters;[31] and (3) that it is engaged in zero-rated or effectively zero-rated sales, as evidenced by petitioner's Quarterly VAT Return for the fourth quarter of 2008,[32] which indicates the total sales of petitioner for the said period,[33] *viz*:

Vatable Sales/Receipt-Private	₱ 12,400,908,444.42
Zero-Rated Sales/Receipts	33,238,944.27
Total Sales/Receipts	₱ 12,434,147,388.69

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 fourth quarter of 2008 in the amount of ₱ 111,177,395.70, only the input tax of ₱ 48,573,188.23 were properly supported by VAT official receipts.[34]

[29] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.
[30] Exhibit "A".
[31] Exhibit "BB", at page 67.
[32] Exhibit "E".
[33] Exhibit "BB", at page 4.
[34] Exhibit "BB", at page 15.

Thus, only the amount of ₱ 48,573,188.23 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 ₱ 48,573,188.23 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	₱ 48,573,188.23
Percentage of zero rated sales over total sales (₱ 33,238,944.27 divided by ₱ 12,434,147,388.69)	0.2680363653919%
Proportionate Allocation	₱ 130,193.81

Thus, the amount of ₱ 48,573,188.23 is further reduced to ₱ 130,193.81.

Be that as it may, petitioner 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 January 21, 2011,[35] or twenty-one (21) days after the lapse of the two-year period from the close of the fourth quarter of 2008 (January 1, 2009 to December 31, 2010).

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 R. FABON-VICTORINO
Associate Justice

[35] Exhibit "M".

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.

ERLINDA P. UY
Chairperson
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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's Special First Division.

ROMAN G. DEL ROSARIO
Presiding Justice