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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MIRAMAR FISH COMPANY, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 627
(CTA Case No. 7466)

Present:
Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

PROMULGATED:

FEB 15 2011 1:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by petitioner Miramar Fish Company, Inc. before the Court of Tax Appeals (CTA) *En Banc* assailing the Decision[1] dated February 1, 2010 and the Resolutions[2] dated April 21, 2010 and May 5,

[1] *Rollo*, pp. 69-90. Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justice Lovell R. Bautista and Associate Justice Amelia R. Cotangco-Manalastas, concurring.
[2] *Ibid*, pp. 92-97, 99-100.

2010 promulgated by the CTA Third Division in the case entitled "Miramar Fish Company, Inc. vs. Commissioner of Internal Revenue," docketed as CTA Case No. 7466.

The assailed decision and resolutions DENIED the petition seeking the issuance of a tax credit certificate in favor of the petitioner in the total amount of P9,920,486.64, allegedly representing unutilized input value-added tax (VAT) paid on its domestic purchases of goods and services attributable to its zero-rated sales for the calendar years 2004 and 2005.

The dispositive portion of the assailed Decision reads as follows:

> **WHEREFORE**, premises considered, petitioner's claim for the first quarter of 2004 in the amount of P1,368,409.81 is hereby **DENIED** on the ground of prescription, while the remaining claim covering the second, third and fourth quarters of 2004 and all four quarters of 2005 in the amount of P8,552,076.83 is hereby **DENIED** for petitioner's failure to properly substantiate its alleged zero-rated sales.
> **SO ORDERED.**

The dispositive portion of the assailed Resolution dated April 21, 2010 reads as follows:

> **WHEREFORE**, premises considered, respondent Commissioner of Internal Revenue's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
> **SO ORDERED.**

The dispositive portion of the assailed Resolution dated May 5, 2010 reads as follows: 9r

WHEREFORE, premises considered, the dispositive portion of the Resolution dated April 21, 2010 is hereby corrected to read, as follows:

> "**WHEREFORE**, premises considered, petitioner Miramar Fish Company, Inc.'s "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
> **SO ORDERED**."

SO ORDERED.

THE FACTS

The facts of the case as found by the CTA Third Division are as follows:

> Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office at Barangay Recodo, Zamboanga City.
>
> Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credit of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> Petitioner filed with the BIR its original Quarterly VAT Returns for the four quarters of calendar year 2004 on the following dates:

2004	**Date of Filing**
First Quarter	April 22, 2004
Second Quarter	July 7, 2004
Third Quarter	October 18, 2004
Fourth Quarter	January 18, 2005

> On March 11, 2005, petitioner filed an administrative claim for refund of its unutilized input VAT for the four quarters of calendar year 2004.
>
> Petitioner filed with the BIR its original Quarterly VAT Returns for calendar year 2005 on the following dates:

2005	**Date of Filing**
First Quarter	April 15, 2005
Second Quarter	July 19, 2005
Third Quarter	October 20, 2005
Fourth Quarter	January 16, 2006

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On March 31, 2006, petitioner filed with the BIR an administrative claim for refund or issuance of a tax credit certificate amounting to P4,457,062.52 for its unutilized input VAT for the first, second, third and fourth quarters of calendar year 2005.

Since respondent has not acted on petitioner's claim for refund, on April 21, 2006, petitioner filed the present Petition for Review.

On June 15, 2005, respondent filed his Answer, alleging the following:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;

5. The amount of P9,920,486.64 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of goods and services for calendar years 2004 and 2005 is not properly documented;

6. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

7. Petitioner must show that it has complied with the provisions of Sections 112 and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)**."

Petitioner presented Sherman Biniza and Felix Garsuta, as witnesses, and documentary evidence, marked as *Exhibits "E"* to *"10C-4-001-01,"* which the Court admitted in its Resolution dated December 2, 2008.

Upon manifestation of counsel for respondent that she is submitting the case for decision without presenting any evidence, the parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. ge

> On March 26, 2009, respondent filed his Memorandum while petitioner's Memorandum was filed on April 1, 2009. Hence, the case was deemed submitted for decision on April 3, 2009.[3]

On February 1, 2010, the Court in Division rendered the assailed Decision denying the Petition for Review on the ground of prescription and for failure to properly substantiate its alleged zero-rated sales. Aggrieved, petitioner filed a Motion for Reconsideration on February 19, 2010 while respondent filed its Opposition (Re: Motion for Reconsideration) on March 12, 2010. The petitioner's motion was denied for lack of merit on April 21, 2010.

Hence, this Petition for Review *En Banc* filed on May 24, 2010.

THE ISSUE

In support of the present Petition for Review, petitioner proffers the following grounds:

> 32. Petitioner respectfully submits that the CTA-Division erred in its conclusion that petitioner's claim for refund for the 1st quarter of CY 2004 was filed beyond the two-year prescriptive period provided under Section 112(A), Tax Code. Petitioner respectively submits that:
>
> 32.1 As held by the Supreme Court in Atlas Consolidated Mining and Development Corporation vs. CIR (the "Atlas case"), the two-year prescriptive period for the filing of administrative and judicial claims for refund or tax credit of excess and unutilized input VAT is reckoned from the **date of the filing of the quarterly VAT return and the payment of the output VAT**;
>
> 32.2 By mandate of Article VIII, Section 4(3) of the Constitution, the ruling of the Second Division of the Supreme Court in CIR vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon,

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[3] *Rollo*, pp. 70-73.

Inc.) (the "Mirant case") relied upon by this Court could not have overturned and did not validly overturn the doctrine laid down in the Atlas case;

32.3 The Supreme Court's ruling in the Mirant case is not applicable to the case at bar because the factual circumstances of this case are different from that of the Mirant case;

32.4 There is nothing in the Mirant case that would show that the Supreme Court has deliberately abandoned the doctrine laid down in the Atlas case; and

32.5 Even assuming for the sake of argument that the Mirant decision validly overturned the doctrine laid down in the Atlas case, the Mirant decision should only be applied prospectively, and should not be made to apply to judicial claims for refund of excess input VAT pending with the courts at the time of issuance of the Mirant decision.

33. Anent the second ground, Petitioner respectfully submits that the CTA-Division erred in its conclusion that non-compliance with the invoicing requirements under Sections 113, 237 and 238, Tax Code and Section 4.108-1, RR No. 7-95 would result to the outright invalidation of petitioner's zero-rated sales, and the consequent disallowance of Petitioner's claim for refund of excess input VAT on purchases attributable to such export sales. Petitioner submits that:

33.1 Petitioner has complied with the statutory requirements for claiming a refund of excess and unutilized input VAT under Section 112(A), in relation to Section 106(A)(2)(a)(1), Tax Code. Compliance with the invoicing requirements under the Tax Code and RR No. 7-95 is not a condition precedent for claiming a refund of excess and unutilized input VAT under Section 106(A)(2(a)(1), in relation to Section 112(A), Tax Code;

33.2 There is nothing in the Tax Code and in RR No. 7-95 which states that failure to comply with the BIR's invoicing requirements will nullify the VAT zero-rating of an export sale under Section 106(A)(2(a)(1), Tax Code;

33.3 Based on the Supreme Court's ruling in Intel Technologies Philippines, Inc. vs. CIR (the "Intel case"), failure to indicate the words "TIN-V," "zero-rated," and the BIR authority to print on the invoices covering export sales is not fatal to a taxpayer's claim for refund of excess input VAT under Section112(A), in relation to Section 106(A)(2)(a)(1), Tax Code; and

33.4 Revenue Memorandum Circular ("RMC") No. 42-03 is invalid because it overrides the clear provision of the Tax Code.[4]

THE COURT'S RULING

The petition is without merit. We affirm the assailed Decision not only for the reasons stated therein but also on the ground of prescription for claims involving the taxable year 2004 and prematurity for claims pertaining to taxable year 2005.

Prescriptive period for filing administrative and judicial claims on VAT refund cases.

On prescription, the Court shall address the two relevant issues present in this case. The first is the reckoning point of the prescriptive period on administrative claim for VAT refund and second is the period within which to file judicial claim for VAT refund.

Petitioner anchored its claim on an earlier ruling in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[5]

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[4] *Rollo*, at pp. 14-16.
[5] G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.

(*Atlas*), where the reckoning of the administrative and judicial claims for VAT refund is set within two years from the filing of quarterly VAT returns and payment of the output VAT. However, this was followed by a different ruling in a more recent case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[6] (*Mirant*), where the Supreme Court literally applied the letter of the law and reckoned the two-year prescriptive period from the close of the taxable quarter when the relevant sales were made. This seemingly conflicting view has been squarely settled in the recent case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[7] (*Aichi*) where the Supreme Court affirmed the ruling in *Mirant*. The pertinent portion of the Supreme Court's ruling in *Aichi* states:

> ***Unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made***
>
> In computing the two-year prescriptive period for claiming a refund/credit of unutilized input VAT, the Second Division of the CTA applied Section 112(A) of the NIRC, which states:
>
> 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

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[6] G. R. No. 172129, September 12, 2008, 565 SCRA 154.
[7] G.R. No. 184823, October 6, 2010.

> 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. (Emphasis supplied.)

The CTA *En Banc*, on the other hand, took into consideration Sections 114 and 229 of the NIRC, which read:

> SEC. 114. Return and Payment of Value-Added Tax. –
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> (A) In General. – Every person liable to pay the value-added tax imposed under this Title shall **file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
>
> Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.
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> 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, 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 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.)

Hence, the CTA *En Banc* ruled that the reckoning of the two-year period for filing a claim for refund/credit of unutilized input VAT should start from the date of payment of tax and not from the close of the taxable quarter when the sales were made.

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 instances of erroneous payment or illegal collection of internal revenue taxes." xxx (emphasis ours)

xxx xxx xxx

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**

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> **reckoned from the close of the taxable quarter when the sales were made.** (emphasis ours)

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The above cited ruling puts to rest petitioner's argument that the *Mirant* decision should only be applied prospectively, and should not be made to apply to judicial claims for refund of excess input VAT pending with the courts at the time of issuance of the *Mirant* decision. It bears stressing that the *Mirant* ruling was affirmed and applied outright in *Aichi* case notwithstanding the fact that the claim for refund involved the third quarter of the taxable year 2002 (July 1, 2002 to September 30, 2002) and both its administrative and judicial claims were still pending prior to the promulgation of *Mirant*. Hence, We see no reason why We should depart from the *Aichi* ruling considering the periods involved in the said case were earlier than the periods in the present case, yet, the Supreme Court applied the *Mirant* ruling without any qualifications.

Therefore, the applicable provision for administrative claim for VAT refund is Section 112 (A) of the 1997 NIRC and the two (2)-year period should be reckoned from the close of the taxable quarter when the sales were made. "The phrase "within two (2) years xxx 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."[8]

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[8] *Supra*, note 7.

As regards the period within which to file judicial claims, Section 112 (D)[9] of the 1997 NIRC finds application, the pertinent portion of which is quoted hereunder:

> **Sec. 112 – *Refunds or Tax Credits of Input Tax.*** –
>
> xxx xxx xxx
>
> D) *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 Subsections (A) and (B) 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 xxx

Accordingly, judicial claim for refund should be filed within thirty (30) days from receipt of the decision of the CIR or upon the expiration of the one hundred twenty (120) days in case of inaction of the CIR. The observance of these periods is mandatory and non-compliance therewith would result in the denial of the claim. The two (2)-year prescriptive period under Section 112 (A) applies only to administrative 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

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[9] Now Section 112 (C) under Republic Act (RA) No. 9337.

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." [10]

Taxable year 2004

Applying the foregoing considerations, the petition should be denied on the ground of prescription. For the four quarters of taxable year 2004, the judicial claim was filed beyond the thirty (30)-day period prescribed by law. The administrative claim was filed on March 11, 2005 which is also presumably the date petitioner submitted supporting documents in the absence of any evidence to the contrary. From March 11, 2005, the CIR has one hundred twenty (120) days or until July 9, 2005 within which to render a decision. No decision was rendered. As a result of the inaction, petitioner has thirty (30) days from July 10, 2005 or until August 8, 2005 within which to elevate the case before the CTA. The judicial claim which was filed on April 21, 2006 was already way beyond the 30-day period to file an appeal. Thus, the petition failed for having been filed beyond the 30-day prescribed period.

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[10] *Supra*, note 7.

Taxable year 2005

As for the four quarters of taxable year 2005, the judicial claim should also be denied for being prematurely filed. The administrative claim was filed on March 31, 2006 which is also presumably the date petitioner submitted supporting documents in the absence of any evidence to the contrary. From March 31, 2006, the CIR has one hundred twenty (120) days or until July 29, 2006 within which to render a decision. Petitioner has thirty (30) days from July 30, 2006 or until August 28, 2006 within which to elevate the case before the CTA in Division. The judicial claim was filed on April 21, 2006 without awaiting the decision of the CIR or the lapse of the 120-day period. As a result, the filing of the judicial claim is premature. As held in the *Aichi*, "the premature filing of respondent's (petitioner in this case) claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."[11]

Thus, consistent with the foregoing jurisprudence, the claim pertaining to taxable year 2004 is denied on the ground of prescription, while the claim involving the taxable year 2005 is denied for being prematurely filed. We reiterate the ruling that "a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim."[12]

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[11] *Supra*, note 7.
[12] *Ibid.*

Non-compliance with the invoicing requirements under Section 4.108-1 of RR 7-95 is fatal to the claim for VAT refund.

Even assuming the judicial claim was filed within the period prescribed by law, the petition still fails. The second argument raised by petitioner lacks merit. In the case of *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) vs. Commissioner of Internal Revenue,*[13] the Supreme Court squarely resolved that the failure to observe the invoicing requirements set forth under Section 4.108-1 of RR 7-95 particularly the imprinting of the word "zero-rated" on the invoices would result to the denial of a claim for VAT refund. It was held that "Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments." The invoicing requirement in the said regulation was recognized as reasonable and in accord with the efficient collection of VAT. This ruling was affirmed in the subsequent cases of *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*[14] and *Hitachi Global Storage Technologies Philippines Corp. (formerly Hitachi Computer Products [Asia] Corporation) v. Commissioner of Internal Revenue*[15] where the Supreme Court reiterated that the absence of the word zero-rated on the invoices/receipts is fatal to a claim for credit/refund of input VAT. *ge*

[13] G.R. No. 178090, February 8, 2010, 612 SCRA 28.
[14] G.R. No. 177127, October 11, 2010.
[15] G.R. No. 174212, October 20, 2010.

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **DISMISSED** on the ground of prescription insofar as petitioner's judicial claim for the four quarters of 2004 was filed out of time and on the ground of premature filing insofar as petitioner's judicial claim for the four quarters of 2005 was filed without awaiting the decision of the CIR or the lapse of the period prescribed by law.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(with Separate Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice