

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CE LUZON GEOTHERMAL POWER
COMPANY, INC.,

Petitioner,

C.T.A. EB NO. 553
(C.T.A. CASE NOS. 7180 & 7279)

-versus-

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

X ----- X
COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

C.T.A. EB NO. 554
(C.T.A. CASE NOS. 7180 & 7279)

Present:

-versus-

CE LUZON GEOTHERMAL POWER
COMPANY, INC.,

Respondent.

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

JUL 20 2010

4:16 pm

X ----- X

DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

Before us are consolidated Petitions for Review separately filed by
CE Luzon Geothermal Power Company, Inc. (hereafter "CE Luzon"),

APL

docketed as C.T.A. EB No. 553, and by the Commissioner of Internal Revenue (hereafter "CIR"), docketed as C.T.A. EB No. 554, both under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seek to review the Decision dated April 21, 2009 and Resolution dated October 19, 2009 rendered by the Former Second Division of this Court in the consolidated C.T.A. Case Nos. 7180 and 7279, the respective dispositive portions of which read, as follows:

"WHEREFORE, petitioner's claim for refund or issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-TWO MILLION SIX HUNDRED FORTY SEVEN THOUSAND SIX HUNDRED THIRTY EIGHT PESOS AND 47/100 (P22,647,638.47)** to petitioner, representing its unutilized input VAT for the four (4) quarters of taxable year 2003.

SO ORDERED."

"WHEREFORE, premises considered, both petitioner's and respondent's *Motions for Partial Reconsideration* are hereby **DENIED** for lack of merit.

SO ORDERED."



THE PARTIES

CE Luzon Geothermal Power Company, Inc. is a corporation duly organized and existing under Philippine laws, with principal office at 24/F 6750 Bldg., Ayala Ave., Makati City. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC), with Tax Identification No. 003-924-356-000.

Commissioner of Internal Revenue, on the other hand, is the duly appointed Commissioner of the BIR empowered to perform the duties of his office, including among others, the duty to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Agham Road, Quezon City.

THE FACTS

The facts, as found by the Former Second Division, are as follows:

CE Luzon is accredited by the Department of Energy (DOE), as the owner and operator of CE Luzon Geothermal Power Plant, as shown in its DOE Certificate of Accreditation (OSAC94-12) issued on June 15, 1994. It is principally engaged in the business of power generation and subsequent sale of generated power to the Philippine National Oil



Company-Energy Development Corporation (PNOC-EDC), pursuant to an Energy Conversion Agreement (ECA).

In the course of its operation, CE Luzon made domestic purchases of goods and services, services rendered by non-residents, and importation of goods attributable to its zero-rated sale of power generation services. CE Luzon accrued input VAT which allegedly remained unutilized. For each quarter of taxable year 2003, CE Luzon filed its Quarterly VAT Returns, indicating the following:

Exhibit	Quarter	Date of filing of Return	Zero-rated Sales	Input VAT
D	1 st	25-Apr-03	856,386,440.57	4,723,705.62
Q	2 nd	24-Jul-03	1,042,918,879.54	4,150,402.36
R	3 rd	27-Oct-03	1,067,478,721.24	7,760,246.26
S	4 th	26-Jan-04	1,252,326,575.66	10,336,308.43
TOTAL			4,219,110,617.01	26,970,662.67

On November 24, 2004, petitioner filed its Amended Quarterly VAT Returns for each quarter of taxable year 2003, summarized as follows:

Exh.	Qtr.	Zero-rated Sales	Excess/Unutilized VAT Credits					Total (P)
			Domestic purchases of capital goods (P)	Domestic purchases of goods other than capital goods (P)	Domestic purchases of services (P)	Services Rendered by Non-Residents (P)	Importations of Goods Other than Capital Goods (P)	
E	1 st	856,386,440.57	141,272.73	577,547.84	2,069,863.26	1,577,106.87	265,834.00	4,785,234.70
F	2 nd	1,042,918,879.54	0.00	1,072,720.05	2,236,164.11	37,870.33	1,221,704.00	4,568,458.49
G	3 rd	1,067,478,721.24	0.00	1,708,210.65	2,762,233.95	534,653.37	2,450,216.00	7,455,413.97
H	4 th	1,252,326,575.66	0.00	697,915.28	7,612,110.29	392,407.26	1,062,849.00	9,765,281.83
Total Excess/Unutilized VAT Credits for 1st to 4th Quarters of CY 2003 (10% of Total Purchases)								26,574,388.99

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CE Luzon filed an application for refund of these unutilized input VAT with the BIR on the following dates:

Exhibit	Quarter	Date of Filing	Input VAT (P)
N	1st	January 20, 2005	4,785,234.70
O	2nd	March 31, 2005	4,568,458.49
P	3rd	June 07, 2005	7,455,413.97
P	4th	June 07, 2005	9,765,281.83
		TOTAL	26,574,388.99

Alleging inaction on the part of CIR, CE Luzon filed two separate Petitions for Review on March 30, 2005 and June 30, 2005, with the Former Second Division, docketed as C.T.A. Case Nos. 7180 and 7279, respectively.

In CTA Case No. 7180, in his answer, the CIR raised the following Special and Affirmative Defenses:

- “4. Petitioner’s claim for refund is subject to administrative investigation/examination by the respondent;
5. To support its claim, it is imperative for petitioner to prove the following, viz:
 - a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
 - b. The invoicing and accounting requirements of VAT registered persons, as well as the filing and

payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

d. That the input taxes of P4,785,234.70 allegedly paid by the petitioner on its purchases of goods and services for the first quarter of taxable year 2003 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with sections 112 (A) and (D) and 229 of the Tax Code, as amended;



f. That petitioner's domestic purchases of goods and services were made in the course of trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits);

xxx xxx."

On the other hand, in CTA Case No. 7279, the CIR raised the following Special and Affirmative Defenses:

- "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;
5. The amount of P21,789,154.29 being claimed by petitioner as alleged unutilized input VAT on purchases of goods and services for the 2nd and 4th quarters of 2003 is not properly documented;
6. In an action for refund/credit, the burden of proof is on the taxpayer to establish the 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 204 (C) 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 such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

After trial on the merits, on April 21, 2009, the Former Second Division rendered the assailed Decision partially granting the Petition for Review.

Not satisfied, on May 7, 2009, CE Luzon filed a "Motion for Partial Reconsideration (Re: Decision dated 21 April 2009)", while the CIR filed his "Motion for Partial Reconsideration" on June 5, 2009. Both motions were denied by the Former Second Division in a Resolution dated October 19, 2009.

Both parties filed separate Petitions for Review with this Court. On November 6, 2009, CE Luzon filed its petition, docketed as C.T.A. EB No. 553, while the CIR filed his petition on November 10, 2009, docketed as C.T.A. EB No. 554.



C.T.A. EB No. 553
(Appeal of CE Luzon)

On December 15, 2009, we required the CIR to file his comment, within ten (10) days from notice. However, the CIR failed to file his comment.

On January 26, 2010, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice, after which the case shall be deemed submitted for decision.

CIR filed his "Memorandum" on February 26, 2010.

C.T.A. EB No. 554
(Appeal of CIR)

On November 19, 2009, we required CE Luzon to file its comment, on the petitions, within ten (10) days from notice.

On December 17, 2009, CE Luzon filed its "Comment (Re: Petitioner's Petition for Review dated 11 November 2009)". Thus, in a Resolution dated January 5, 2010, the case was deemed submitted for decision.

However, in a resolution dated February 18, 2010, C.T.A. EB No. 554 was ordered consolidated with C.T.A. EB No. 553, the latter bearing the lower docket number. The Resolutions dated January 5, 2010 and



January 26, 2010 were recalled and set aside. Thereafter, both parties were ordered to file their respective consolidated memorandum, within thirty (30) days from notice.

Considering that CE Luzon filed its "Consolidated Memorandum" on March 26, 2010 and CIR filed his "Memorandum" on March 29, 2010, these consolidated cases were deemed submitted for decision on April 13, 2010.

Hence, this decision.

CE Luzon's Assigned Errors

The principal issue raised by CE Luzon boils down to whether or not the Former Second Division erroneously applied the law and existing jurisprudence insofar as it disallowed the amount of P3,926,750.52 input VAT on the following grounds:

THERE IS A DISCREPANCY OF P841,876.17 BETWEEN THE AMOUNT OF INPUT VAT CLAIMED BY CE LUZON IN ITS ADMINISTRATIVE CLAIMS FOR REFUND VIS-A-VIS THE AMOUNT OF INPUT VAT PRAYED FOR IN ITS JUDICIAL CLAIMS FOR REFUND.

CE LUZON'S UNUTILIZED INPUT VAT IN THE TOTAL AMOUNT OF P3,084,874.35 WAS NOT DULY SUBSTANTIATED.



CIR's Assigned Errors

For his part, CIR anchors his petition on the following grounds:

THE HONORABLE SECOND DIVISION OF THE COURT OF TAX APPEALS ERRED IN RESOLVING THAT RESPONDENT IS ENTITLED TO A PARTIAL REFUND OF ITS UNUTILIZED EXCESS INPUT VALUE-ADDED TAX ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR ALL FOUR QUARTERS OF 2003.

RESPONDENT HAS FILED THE PETITION FOR REVIEW PREMATURELY IN VIOLATION OF SECTION 112 (D) OF THE NIRC.

THE COURT *EN BANC*'S RULING

CE Luzon's petition is partly meritorious.

C.T.A. EB No. 553
CE Luzon's Arguments

CE Luzon contends that there is no discrepancy in the amount of input VAT claimed in its administrative claim for refund as against the amount of input VAT in its judicial claim; that official receipts and invoices supporting its unutilized input VAT comply with the invoicing requirements of the law; that the CIR has waived or abandoned its right to object regarding invoicing requirements when he failed to raise the same

during trial; and that in civil cases only preponderance of evidence is required.

Anent the first ground, we rule for CE Luzon.

After a second hard look on the records of both cases, this Court finds that there is in fact no discrepancy between the amount of input VAT claimed in CE Luzon's administrative and judicial claims. A careful perusal of CE Luzon's administrative claim for refund shows that the total unutilized input VAT claimed for refund amounts to P26,574,388.99 (*Annexes "E", "F" and "G" of C.T.A. EB No. 553*). On the other hand, the Petition for Review, docketed as C.T.A. Case No. 7180, reveals that CE Luzon is claiming the amount of P4,785,234.70 (*C.T.A. Case No. 7180, Orig. Docket, p. 6*), while the Petition for Review, docketed as C.T.A. Case No. 7279, shows a claimed amount of P21,789,154.29 (*C.T.A. Case No. 7279, Orig. Docket, p. 5*). Hence, CE Luzon's total claim in the consolidated cases amounts to P26,574,388.99. Clearly, both its administrative and judicial claims for refund amounts to P26,574,388.99. Considering that the disallowance of the amount of P841,876.17 has no basis, we hereby reconsider and grant the same to CE Luzon.



As to the second ground, this Court finds that the issues raised by CE Luzon are mere rehash of the grounds raised in its “Motion for Reconsideration” in the consolidated C.T.A. Case Nos. 7180 and 7279, and present no new arguments nor new matters which have not been considered and passed upon by the Former Second Division in the assailed Decision and Resolution. Nevertheless, we deem it necessary to discuss them in *seriatim*.

a.) *As to the disallowance in the total amount of P563,245.20 with ORs and invoices with pre-printed “TIN-V”*

The Former Second Division disallowed CE Luzon’s official receipts and invoices covering some of its input VAT where such official receipts and invoices bore the pre-printed word “TIN-V”, instead of “TIN-VAT”, in the total amount of P563,245.20, on the basis of Section 4.108-1 of RR 7-95.

CE Luzon contends that the indication of the words “TIN-V” is sufficient for VAT purposes, pursuant to the provisions of the Tax Code and related jurisprudence relying heavily on the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue* (522 SCRA 657).

CE Luzon’s contention cannot be sustained.



While *Section 112 of the NIRC of 1997, as amended*, allows tax refund or credit of input tax of zero-rated sales of VAT-registered persons, nonetheless, certain invoicing requirements must be faithfully complied with before such claim for refund or credit can be granted.

Invoicing and Accounting Requirements

Invoicing and accounting requirements for VAT-registered persons are provided for under *Sections 113 and 237 of the NIRC of 1997, as amended*. *Section 113* provides:

“SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.-

(A) Invoicing Requirements- A VAT-registered person shall for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following informations shall be indicated in the invoice or receipt:

(1)A statement that the seller is a VAT-registered person, followed by his taxpayer’s identification number (TIN); and

(2)The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

xxx xxx.”

The law is very clear. *Section 113* provides that “a VAT registered person shall, for every sale, issue a duly registered VAT invoice or receipt for every sale transaction”. Such VAT invoice or receipt must show the taxpayer’s identification number, followed by the word “VAT”,

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the BIR Authority to Print or BIR permit marker and the word “zero-rated” imprinted on the invoice or receipt covering a zero-rated sale. This requirement is mandatory in nature and consequently, non-compliance therewith is fatal to one’s claim for credit or refund of its input taxes.

Corollary thereto, *Section 4-108-1 of Revenue Regulations No. 75 (The Consolidated Value-Added Tax Regulations)* enumerates the information that must appear on the face of the receipts or invoices issued for sales of goods by all VAT-registered persons, pertinent portion of which states:

“SEC. 4-108-1. Invoicing Requirements- All VAT-registered person shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller,
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word “zero-rated” imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

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Only VAT-registered persons are required to print their TIN followed by the word ‘VAT’ in their invoices or receipts and this shall be considered as ‘VAT INVOICE.’ All purchases covered by invoices other than ‘VAT INVOICE’ shall not give rise to any input tax.”

The aforequoted revenue regulations implementing the NIRC provision on VAT invoicing and accounting requirements are mandatory as the word “shall” is used. The word “shall” is imperative, commonly operating to impose an obligation or duty which may be enforced; it is a word of command that must be given a compulsory meaning (*Filipino vs. Macabuhay*, 508 SCRA 50; *Francisco vs. Court of Appeals*, 243 SCRA 392). Thus, the seller-taxpayer is duty bound to comply with the invoicing requirements laid down in said memorandum circular.

Moreover, *Revenue Memorandum Circular No. 42-2003 [Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters]* expressly provides that the failure of a taxpayer claiming for tax refund/credit to comply with the invoicing requirements will result to the disallowance of the claim for input tax. Pertinent portion of said Revenue Memorandum Circular provides:

“A-13. Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

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If the claim for refund/TCC is based on existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to concerned BIR office for verification of other tax liabilities of the taxpayer.”

The aforequoted provision clearly mandates that if the claim for refund/issuance of a tax credit certificate is based on the existence of zero-rated sales by the taxpayer, but fails to comply with the invoicing requirements, the claim for tax credit/refund of input VAT shall be denied

CE Luzon’s reliance on the case of Intel is misplaced. The issue in the Intel case closely dealt with the substantiation of the “output VAT”, while in this case, the Former Second Division’s disallowance of the claim is based on CE’ Luzon’s failure to substantiate its “input VAT”, thus:

“In a claim for refund or issuance of a tax credit certificate attributable to zero-rated sales, ***what is to be closely scrutinized is the documentary substantiation of the input VAT paid xxx.***” (*Intel Technology Phils. Vs. CIR* (522 SCRA 657)

Accordingly, there is basis for the validity of *Section 4.108-1 of RR 7-95*. Settled is the rule that a “regulation adopted pursuant to law is

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a law” (*Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, 456 SCRA 441). Consequently, it bears emphasis that *Section 4.108-1 of RR 7-95* clearly states that VAT-registered persons must print their TIN followed by the word “VAT” in their invoices or receipts and not simply followed by the letter “V”.

Well settled is the rule that statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of tax exemptions. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government (*Panasonic Communications vs. CIR*, February 8, 2010). Consequently, the Former Second Division committed no reversible error when it disallowed the amount of P563,245.20, corresponding to the amount of ORs and invoices with pre-printed “TIN-V” only, instead of “TIN-VAT”, for failure to comply with the mandatory invoicing requirements.

b.) As to the disallowance amounting to P392,146.00
with supporting certified true copies of Import Entry
and Internal Revenue Declarations (IEIRD)



CE Luzon argues that the IEIRD supporting its importations are admissible under relevant rules of evidence; that such forms were certified by the BOC and thus may be considered as public documents.

We rule in the negative.

As pointed out by the Former Second Division, this Court cannot ascertain the BOC official who purportedly certified that the said documents are true copies of the original was the actual and authorized custodian of the same.

Likewise, we cannot also sustain CE Luzon's contentions that the balance of justice should not be tilted in favor of the CIR who failed to raise any question as to its entitlement for refund and that the quantum of evidence required in this case is mere preponderance of evidence.

Considering that the grant of a claim for refund is tantamount to an exemption from taxation, the same shall be construed strictly against the claimant and in favor of the taxing authority. The taxes that have been paid and collected are presumed to have been made in accordance with the law, hence, not refundable. But the burden of proof to the contrary rests upon the claimant, who must establish its factual basis for a refund. The burden of proof rests upon the taxpayer to establish by



sufficient and competent evidence its entitlement to a claim for refund (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, 244 SCRA 335). Therefore, CE Luzon must not rely on the evidence or the weakness of the defense of the CIR but solely on its own evidence, thus, failure on its part is fatal to its claim for refund.

For all the foregoing, CE Luzon's Petition for Review is hereby partly granted, but in the reduced amount of P841,876.17.

C.T.A. EB No. 554

On the other hand, the CIR questions the jurisdiction of the Former Second Division to entertain the appeal on the ground that CE Luzon failed to submit all necessary and relevant documents pertaining to its claim for refund in its administrative claim and that it failed to prove compliance with the requirements under Revenue Memorandum Order No. 53-98. Furthermore, CE Luzon allegedly filed the original Petition for Review prematurely, in violation of *Section 112 (D) of the NIRC of 1997, as amended*.

We are not persuaded.

As to the question on the jurisdiction of this Court to entertain the appeal on the ground of non-submission of supporting documents in the



administrative level, we rule that the same is not fatal to CE Luzon's claim for refund.

Corollary thereto, *Section 112 (D) of the NIRC of 1997, as amended*, provides:

“SEC. 112. Refunds of Tax Credits of Input Tax. —

xxx

xxx

(D) Period within which Refund or Tax Credit of Input of 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 to the Court of Tax Appeals.”

It is clear from the above-quoted provision that although the submission of the complete supporting documents is necessary for the granting of refund or tax credit certificate, nowhere in said provision leads to a conclusion that the non-submission of the supporting documents with the CIR will make the administrative claim for refund or



tax credit certificate invalid or pro forma, which may cause the dismissal of the appeal for lack of jurisdiction. What the provision mandates that the taxpayer must elevate its claim before this Court, within thirty (30) days from receipt of the denial of its claim for refund/tax credit or after the expiration of the 120-day period granted to respondent to decide on the taxpayer's claim, which must all be done within two (2) years from payment of the tax or penalty.

Likewise, CE Luzon's non-compliance with the requirements listed under RMO No. 53-98 is not fatal. The requirements listed under RMO No. 53-98 refer mainly to the requirements for refund of tax credit in the administrative level for purposes of establishing the authenticity of a taxpayer's claim for refund or tax credit. However, in the judicial level or when the case is elevated to the Court, the Rules of Court applies. In this connection, it may not be amiss to mention that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.

Once an appeal is filed with this Court, it transforms the administrative claim for refund into a judicial claim for refund because



an appeal to the Court of Tax Appeals is manifestly judicial. When CE Luzon's claim was converted into a judicial claim, what matters foremost are — the filing of an administrative claim before the Commissioner, and that both the administrative and judicial claims are filed within the prescriptive period provided under the *NIRC of 1997, as amended*. Considering that CE Luzon has substantially complied with such requirements, it is clear that this Court has jurisdiction over CE Luzon's judicial claim refund.

As regards the alleged pre-mature filing of the original Petitions for Review before the Former Second Division, the rule is that when the two (2) year period is about to prescribe and the claim for refund with the CIR has not been acted upon, for the protection of the interest of the taxpayer, he should file a Petition for Review with the Court of Tax Appeals, within the said two (2) year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the two (2)-year period, he can no longer appeal the same to the Court of Tax Appeals. In short, a taxpayer need not wait for the lapse of the 120-day period before it can elevate its claim to the CTA. To stress, the administrative claim does not toll the running of the two (2)-year



prescriptive period for filing a judicial recourse for refund. Hence, CE Luzon should not be faulted for filing its claim before this Court on March 30, 2005 and June 30, 2005, respectively, considering that the two (2)-year prescriptive period is about to expire. An otherwise action on its part would be fatal to its claim.

Incidentally, the taxpayer cannot be faulted for taking advantage of the full two (2)-year period set by law for filing his claim for refund, as the law only limits the maximum period within which a taxpayer may file a claim, which the taxpayer may utilize at its own discretion, as long as it has substantially complied with the rules.

Furthermore, it has been held that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before Us in accordance with *Revenue Memorandum Circular No.49-2003*, which provides:

“In cases where the taxpayer has filed a “Petition for Review” with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing



certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. *In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.*

If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA.

xxx xxx.” (Emphasis supplied)

Finding no merit in CIR’s Petition for Review, we have no recourse, but to deny C.T.A. EB Case No. 554.

WHEREFORE, premises considered:

1) as regards CE Luzon’s Petition For Review, docketed as C.T.A.

EB No. 553, the petition is hereby **PARTLY GRANTED**.

Accordingly, the assailed Decision dated April 21, 2009 is hereby **AMENDED**, to read as follows:

“**WHEREFORE**, petitioner’s claim for refund or issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-**

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THREE MILLION FOUR HUNDRED EIGHTY NINE THOUSAND FIVE HUNDRED FOURTEEN PESOS AND 64/100 (P23,489,514.64) to petitioner, representing its unutilized input VAT for the four (4) quarters of taxable year 2003.

SO ORDERED.”

2) as regards CIR’s Petition for Review, docketed as C.T.A. EB

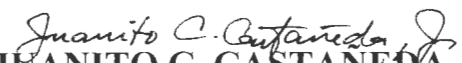
No. 554, the petition is hereby **DENIED DUE COURSE**, and accordingly **DISMISSED** for lack of merit.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

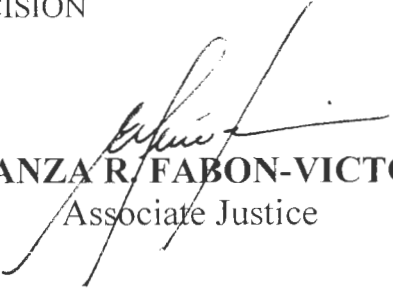

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice



ESPERANZA R. FABON-VICTORINO
Associate Justice



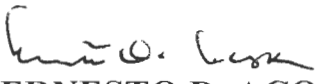
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)

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