# REPUBLIC OF THE PHILIPPINES
# Court of Tax Appeals
# QUEZON CITY

## ***SECOND DIVISION***

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| **MINDANAO I GEOTHERMAL PARTNERSHIP,** Petitioner, | **CTA CASE NO. 7801** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | **Promulgated:** OCT 25 2012 11:05 a.m. |

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# AMENDED DECISION

**CASTAÑEDA, JR., *J.*:**

For resolution are the following:

1) Respondent's **"MOTION FOR PARTIAL RECONSIDERATION (Re: Decision Promulgated on 10 July 2012)"** filed on July 31, 2012;

2) Petitioner's **"MOTION FOR PARTIAL RECONSIDERATION"** posted on July 30, 2012, with respondent's **"COMMENT"** filed on September 13, 2012; and

3) Petitioner's **"MOTION TO ADMIT ATTACHED COMMENT"** filed on September 18, 2012.

Albeit anchored on different grounds, the first two Motions seek the reconsideration of this Court's *Decision* dated July 10, 2012, the dispositive portion of which reads:

> **"WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby ordered to refund or issue a tax credit certificate in favor of petitioner in the amount of P5,681,141.22, representing the latter's excess or unutilized input tax attributable to zero-rated sales for the year 2006.
>
> **SO ORDERED."**

Before proceeding with the parties' respective Motion for Reconsideration, this Court will first resolve petitioner's **"MOTION TO ADMIT ATTACHED COMMENT"** filed on September 18, 2012.

In the interest of substantial justice, this Court hereby **GRANTS** petitioner's **"MOTION TO ADMIT ATTACHED COMMENT"**. Consequently, petitioner's **"COMMENT/OPPOSITION (To Respondent's Motion for Partial Reconsideration)"** is hereby **ADMITTED**.

Now, this Court will proceed in resolving the parties' Motion for Reconsideration.

***Respondent's Motion for Partial Reconsideration***

In her *Motion*, respondent ascribes to this Court an error in ruling that petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P5,681,141.22 representing excess or unutilized input tax attributable to zero-rated sales for the year 2006.

In support thereof, respondent argues that Petitioner failed to comply with Section 112(D) of the National Internal Revenue Code (NIRC) of 1997, as amended; that Respondent's denial by inaction was proper and should be sustained by this Court for failure of petitioner to substantiate its administrative claim as required by law, jurisprudence and issuances; that this Court has no jurisdiction over petitioner's claim for refund; Section 112(D) of the NIRC of 1997, as amended, is a substantive law which must be strictly applied; and that tax refunds are construed *strictissimi juris.*

On the other hand, petitioner, by way of *COMMENT/OPPOSITION (To Respondent's Motion for Partial Reconsideration)* states that this Court correctly found that it is entitled to a refund or tax credit of its unutilized excess input value-added tax directly attributable to its zero-rated sales for the year 2006 in the amount of P5,681,141.22.

Petitioner points out that Section 112(C) does not set forth in detail the documents that a taxpayer is required to submit with its application for refund or issuance of tax credit certificate. Further, petitioner stresses that the input taxes its claiming are fully supported by VAT-compliant invoices and official receipts and other documents which clearly establish the propriety and validity of its claim for refund or tax credit; and that even assuming arguendo that the documents were allegedly incomplete, the submission of complete documents in the administrative claim is not listed as one of the requirements before filing a judicial claim for refund or tax credit. Lastly, petitioner argues that even assuming arguendo that it allegedly failed to prove compliance with the prescribed checklist of requirements under Revenue Memorandum Order (RMO) No. 53-98, the same cannot divest this Court of jurisdiction to decide the instant case because it has been consistently held that compliance with RMO No. 53-98 is not a pre-condition for filing a judicial claim for VAT refund or issuance of tax credit certificate.

This Court finds respondent's ***Motion for Partial Reconsideration*** no merit.

The pronouncement in the case of *Team Sual Corporation (formerly: Mirant Sual Corporation) vs. Commissioner of Internal Revenue, and Commissioner of Internal Revenue vs. Team Sual Corporation (formerly: Mirant Sual Corporation)*[1] is enlightening as the Court *En Banc* discussed the proper interpretation of the term "complete documents" under Section 112(D) of the NIRC of 1997, to wit:

> "In the case *of Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, the Supreme Court ruled:
>
> > The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. 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.
>
> Although the above ruling refers to the interpretation of the term "relevant supporting documents" under Section 228 of the NIRC of 1997 pertaining to "Protesting of Assessment", We find no reason why the same doctrine cannot be applied in the interpretation of "complete documents" referred to under Section 112(D) of the same code xxx."

Thus, the term "complete documents" under Section 112(D) *[now 112(C)]* of the NIRC should then be understood as those documents necessary to support the claim for refund as determined by the taxpayer. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who

[1] CTA EB Nos. 649 & 651, March 21, 2012

may require the production of documents that the taxpayer cannot submit.[2] Hence, in the event that the taxpayer decides to submit only certain documents, or, at the extreme, does not submit any supporting documents for its claim for refund or tax credit certificate under Section 112(D) of the NIRC of 1997, the reckoning date of the 120-day period would, therefore, be the date of filing of application for refund.

Anent the supposed application of RMO No. 53-98, this Court finds that there is nothing in said RMO which mandates that the list of documents stated therein should be submitted in connection with an application for refund or tax credit certificate under Section 112. However, what is explicit in the said RMO is its objective which is to *"(i)dentify the documents to be required from a taxpayer **during audit**"*.

In the present case, upon filing of the administrative claim for the issuance of its tax credit for excess VAT inputs for the year 2006, petitioner simultaneously submitted the documents in support thereof. This is evident from petitioner's letter-claim dated February 5, 2008[3], which stated:

> "In support of our request for tax credits issuance, we attached the following documents:
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> 1. BIR Form 2550Q (quarterly) VAT for the year 2006 with complete copies of invoices and official receipts.
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> 2. Letter dated August 30, 2001 by Secretary Vincent Perez, Jr. of DOE addressed to the President & Chairman of PNOC-EDC, Mr. Sergio Apostol, confirming that M1GP is a duly accredited generating company;

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[2] Diageo Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 7846 & 7865, January 16, 2012

[3] Exhibit "H"

3. Certificate of Accreditation No. 95-03-07 issued by DOE on the 47-MW Geothermal Power Plant of M1GP;

4. Letter by Benjamin P. Lim, Manager of Planning & Control Division of PNOC-EDC addressed to Austin Herrick, Asst. Executive Director of M1GP, advising of the passage and effectivity of RA No. 9136."

Since respondent neither sent any written notice informing petitioner that the aforesaid documents are incomplete nor required the latter to submit additional documents, respondent cannot now belatedly argue that petitioner was not able to submit the complete documents in support of its claim for refund or tax credit certificate. In fact, perusal of the records show that there was even no audit conducted on petitioner's application for refund or tax credit certificate as evidenced by lack of BIR records on petitioner's administrative claim. Thus, the 120-day period commenced on February 5, 2008, the date when petitioner filed its administrative claim together with the supporting documents in accordance with Revenue Memorandum Circular (RMC) No. 029-99.[4]

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[4] As cited in the case Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8090, May 25, 2012, Revenue Memorandum Circular No. 029-09 provides, thus:

III. Period within which Refund a Tax Credit of Input Taxes shall be Made.

Section 112 (C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides among others, that in proper cases, the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents. For the purpose of defining "proper cases" in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:

a. Submission of complete documents necessary to determine and/or ascertain the correctness of the return and the amount to be refunded;

b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Office (RO) for audit/verification;

c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and

d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.

In cases where taxpayer failed to comply with the above conditions/requirements, i.e., failure to present accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the

Considering that respondent did not act on petitioner's administrative claim and considering further that the judicial claim was timely filed as already stated in the Court's Decision dated March 30, 2012 and reiterated in the Amended Decision dated July 10, 2012, this Court, therefore, is correct in taking cognizance of the instant Petition for Review.

***Petitioner's Motion for Partial Reconsideration***

In its *Motion,* petitioner seeks for reconsideration of the ruling of this Court finding the exceptions noted by the Independent certified Public Accountant (ICPA) to be in order. Petitioner points out that its witness Ms. Daisy Abenes, explained, clarified and rebutted the exceptions noted by the ICPA and presented pertinent documents to prove and support its claimed creditable input VAT. Thus, petitioner moves that this Court grants the refund/issuance of tax credit certificate in the additional amount of P609,978.10.

Respondent, on the other hand, counters that this Court correctly disallowed petitioner's input VAT claim in the amount of P778,502.00 as per ICPA's exception, as well as, the amount of P138,613.23, which was the additional exception noted by this Court. In support of its argument, respondent explains that this Court correctly disregarded "purchase of service supported by invoice instead of OR" because in purchases of service, a VAT official receipt instead of VAT invoice must properly support input VAT claim. As regards the disallowed input VAT for failure to conform to the proper VAT

Agreement Form, the running of the 120-day period shall stop from the date of notification to the taxpayer. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request.

invoices and/or receipts, respondent cites the invoicing requirements found in Section 4-108-1 of Revenue Regulation No. 7-95 and the ruling in Takenaka Corporation Philippine Branch vs. Commissioner of Internal Revenue[5] that refund of input VAT may be denied if not supported by proper VAT invoices/receipts. Finally, as regards out-of-period claim, respondent stresses that petitioner failed to prove compliance with Revenue Memorandum Circular (RMC) No. 42-03.

Considering the foregoing arguments by both parties, this Court finds petitioner's *Motion for Partial Reconsideration* meritorious.

Basically, petitioner calls upon this Court to reconsider its claim for refund or issuance of tax credit certificate in the amount of P609,978.10, broken down as follows:

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| **A. Original/valid invoices and official receipts presented and identified during the hearing and offered as evidence (Annex H.1A).** | | | | | | |
| **Supplier** | **Invoice Date** | **Invoice Number** | **OR Date** | **OR Number** | **Input VAT** | **Exhibit** |
| Davao Import Distributors, Inc. | 07-Jul-06 | 264839 | 03-Aug-06 | 212395 | ₱7,553.57 | "T-1"/"T" |
| New Bansalan MD Drug | 09-Oct-06 | 496/497 | 24-Aug-06 | 504 | 1,716.20 | "V" to "V-2" |
| Glimex, Inc. | 20-Jan-06 | 0103 | - | - | 472,941.00 | "DD" |
| Rustans Commercial Corporation | 27-Oct-06 | 34188 | - | - | 1,197.86 | "X" |
| Monark Equipment | 14-Feb-06 | QH6100295 | 10-Apr-06 | 1100002514 | 5,077.66 | "U" to "U-1" |
| **SUB-TOTAL** | | | | | **₱488,486.29** | |
| **B. Original/valid invoices and official receipts presented and identified during the hearing and offered as evidence (Annex H.1B and H.3).** | | | | | | |
| **Supplier** | **Invoice Date** | **Invoice Number** | **OR Date** | **OR Number** | **Input VAT** | **Exhibit** |
| Nalco Philippines, Inc. | 24-Jan-06 | 34636 | 03-Mar-06 | 34787 | 15,852.54 | "AA-35"/"AA-1"; "AA"/"AA-34.1" |
| Alfa Laval Philippines, Inc. | 18-Dec-06 | 12347 | 19-Jan-07 | 9780 | 59,222.04 | "AD-88.2 & 3"/"Z"/"Z-1"; "AD-88.1" |
| Paris-Manila Technology Corp. | 07-Aug-06 | 6520 | 06-Oct-06 | 7857 | 23,211.40 | "AC-74.1"/"BB- |

[5] CTA Case No. 6414, December 22, 2004

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| | | | | | | 1"; "AC-74.2"/BB" |
| Petron Corporation | 02-Jan-06 | 1003581005 | 02-Sep-06 | - | 17,435.52 | "AA-13"/"W-1"; "W" |
| SGV & Co. | 13-Mar-06 | 30306 | 30-Mar-06 | 030160 | 5,770.31 | "AA-94.1"/"Y-2"; "Y" |
| **SUB-TOTAL** | | | | | **₱121,491.81** | |
| GRAND TOTAL | | | | | **₱609,978.10** | |

Upon further study and verification of petitioner's evidence, this Court finds merit in petitioner's Motion. However, the additional substantiated input VAT of P609,978.10 shall be allocated to the verified zero-rated sales of P282,509,173.96 out of the total declared zero-rated receipts of P375,656,506.01 that have been accounted for in the assailed Amended Decision using the rate of 75.2041212%. Accordingly, petitioner is entitled to an additional refund or issuance of tax credit certificate in the amount of P458,728.67, computed as follows:

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| Additional Substantiated Input VAT | ₱ 609,978.10 |
| x Rate of substantiated zero-rated sales | 75.2041212% |
| **Additional Refundable Input VAT attributable to zero-rated sales** | **₱ 458,728.67** |

in addition to the previous Order of this Court requiring respondent to refund or issue a tax credit certificate in favor of petitioner in the amount of P5,681,141.22. Petitioner is, therefore, entitled to a refund or issuance of a tax credit certificate in the total amount of P6,139,869.89, representing its excess or unutilized input tax attributable to zero-rated sales for 2006.

**WHEREFORE**, premises considered, respondent's "**MOTION FOR PARTIAL RECONSIDERATION (Re: Decision Promulgated on 10 July 2012)**" filed on July 31, 2012 is hereby **DENIED** for lack of merit. On the other hand, petitioner's **"MOTION FOR PARTIAL RECONSIDERATION"** filed on July 30, 2012, is hereby **PARTIALLY GRANTED**. Accordingly, the Amended Decision promulgated on July 10, 2012 is hereby **MODIFIED**. Respondent is hereby ordered to refund or issue a tax credit certificate in favor of petitioner in the amount of P6,139,869.89, representing the latter's excess or unutilized input tax attributable to zero-rated sales for the year 2006.

**SO ORDERED**.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

WE CONCUR:

**CAESAR A. CASANOVA**
Associate Justice

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

## ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR**
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

**ERNESTO D. ACOSTA**
Presiding Justice