REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UCPB PROPERTIES, INC.,
Petitioner,

CTA EB No. 568
(CTA Case Nos. 6677 & 6723)

- versus-

Present:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

Promulgated:

DEC 17 2010 9:05 a.m.

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DECISION

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* by way of Petition for Review[1] is the Decision[2] of the First Division of this Court dated September 20, 2007 and Resolution[3] dated November 9, 2009 in the consolidated CTA Case Nos. 6677 and 6273 entitled "*UCPB Properties Inc. v. Commissioner of Internal Revenue*". Under the assailed decision and resolution, the CTA First Division refused to grant petitioner's claim for refund and/or issuance of a tax credit certificate for the amount

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[1] *Rollo*, C.T.A. EB No. 568, pp. 9-43.
[2] *Rollo*, pp. 44-52.
[3] *Rollo*, pp. 53-58.

of P6,043,960.00 representing unutilized input value-added taxes (VAT) generated from petitioner's purchases of capital goods for the period January 1, 2001 to December 31, 2001.

THE FACTS[4]

The facts as found by the CTA First Division, are as follows:

"UCPB Properties, Inc. (Petitioner) is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal office at the 8th Floor, UCPB Building, 7907 Makati Avenue, Makati City. It is principally engaged in the business of home building and home development, real estate buying and selling, subdividing, and developing lands, and other properties. It is registered as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code of 1997 (Tax Code) with Taxpayer Identification Number (TIN) 000-172-912-000 and Bureau of Internal Revenue (BIR) Certificate of Registration No. 15797.

Commissioner of Internal Revenue (Respondent) is the duly appointed officer of the BIR with the authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credit of overpaid internal revenue taxes as provided by law, with office at the BIR National Office Building, Diliman, Quezon City.

For the four (4) quarters of taxable year 2001, petitioner filed its Quarterly VAT Returns with the BIR on April 25, 2001, July 13, 2001, October 10, 2001, and September 4, 2002, disclosing the following entries:

Exhibit	Year 2001	Carried-over From Previous Quarter	INPUT VAT On Domestic Purchases for the Quarter	Total
A	1st quarter	P120,479,520.49	P5,221,640.24	P125,701,160.73
B	2nd quarter	125,701,160.73	3,628,510.19	129,329,670.92
C	3rd quarter	129,329,670.92	2,044,267.97	131,373,940.62
D	4th quarter	131,373,940.62	2,551,328.41	133,925,269.03
			P13,445,746.81	

Petitioner alleged that the input VAT payment of P13,445,746.81 included input VAT paid on capital goods purchased in the amount of P6,043,960.00, broken down as follows: a

[4] *Rollo*, pp. 10-14.

Year 2001	Input VAT on Capital Goods Purchased
1st quarter	P2,959,538.00
2nd quarter	1,852,265.00
3rd quarter	921,440.00
4th quarter	310,717.00
	P6,043,960.00

Relying on Section 112(B) of the Tax Code, as amended, which allows the refund/tax credit of unutilized input VAT attributable to purchases of capital goods, petitioner filed an administrative claim for refund and/or issuance of a tax credit certificate in the amount of P6,043,960.00 on March 24, 2003.

In order to suspend the running of the two-year prescriptive period within which it can judicially claim the amount of P6,043,960.00, petitioner filed with this Court on April 21, 2003 and July 11, 2003, two separate Petitions for Review docketed as CTA Case Nos. 6677 and 6273, respectively:

CTA Case No.	Date of Filing of Petition for Review	Period Covered	Claimed Input VAT
6677	April 21, 2003	Jan. 1, 2001 – Mar. 31, 2001	P2,959,538.00
6723	July 11, 2003	Apr. 1, 2001 – Dec. 31, 2001	3,084,422.00
			P6,043,960.00

On August 26, 2003, petitioner filed a Motion for the consolidation of the two cases considering that the same involve the same parties and issues. The Court granted the motion in open court on September 1, 2003, followed by a confirming Resolution dated September 3, 2003.

After trial and petitioner's submission of the Memorandum, the case was submitted for decision on June 13, 2007."[5]

The CTA First Division rendered its decision on September 20, 2007 disposing of the Petition for Review, as follows:

"For petitioner's failure to prove that Forbes Tower is used for its leasing business, the same cannot qualify as capital property, as contemplated under Section 4.106-1(b) of Revenue Regulations No. 7-95.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DENIED** for lack of merit."[6]

[5] *Rollo*, pp. 44-46.
[6] *Rollo*, p. 51.

Petitioner filed an Omnibus Motion[7] praying for leave to submit additional evidence in support of its cause of action and that, after considering the arguments and additional evidence, that the First Division reconsider its September 20, 2007 decision and grant petitioner's claim for refund.[8] Petitioner was allowed to present additional evidence which were admitted by the CTA First Division. However, after consideration of the additional evidence, the CTA First Division rendered its Resolution dated November 9, 2009, denying petitioner's Motion for Reconsideration.

Hence, this Petition for Review.

THE ISSUES

The issue raised by the petitioner is whether or not it is entitled to the refund of P6,043,960.00 representing unutilized input taxes paid on purchases of capital goods for the period January 1, 2001 to December 31, 2001.

In resolving the instant petition, the Court deems it necessary to first resolve the issue on the timeliness of petitioner's claim for refund/tax credit as the resolution of said issue is pivotal to the resolution of the issue on petitioner's entitlement to the refund/tax credit.

THE RULING OF THE COURT *EN BANC*

The petition is without merit.

The foregoing conclusion was reached by this Court in accordance with the explicit provision of Section 112(A) and (B), in relation to paragraph (D) of the NIRC a

[7] *Rollo*, pp. 63-93.
[8] *Rollo*, p. 12.

prior to the amendments of R.A. 9337[9], and the recent case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, promulgated on October 6, 2010 (*Aichi* case), where the Supreme Court finally put to rest the controversies surrounding the prescriptive period for applying or claiming refund/tax credit of unutilized input VAT, *i.e.* reckoning of the 2-year period for filing/claiming refund or issuance of TCC; whether the 2-year period applies to both administrative and judicial claims; and whether the 120-day period and 30-day period must be strictly observed. In sum, the High Court essentially resolved the controversies, as follows:

First, the reckoning of the 2-year period for filing/claiming refund or issuance of TCC, as expressly provided for under Section 112(A) of the NIRC, *as amended by R.A. 9337*, is from the close of the quarter when the sales were made. In the *Aichi* case, the Supreme Court adhered to the principle enunciated in the *Mirant*[10]case notwithstanding the fact that the claim for refund was filed on September 30, 2004, approximately 4 years before the *Mirant* case was promulgated. This effectively gave the *Mirant* doctrine a retroactive application.

Second, the phrase "*within two (2) years x x x 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 Court of Tax Appeals (CTA). This is clear in the first paragraph of Section 112(D)[11] of the NIRC, which states that the CIR has "*120 days*

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[9] *Republic Act No. 9337* which took effect on November 1, 2005 amended Section 112 of the NIRC by deleting Subsection (B) on "*Capital Goods*". Subsections (C) and (D) referring to "*Cancellation of VAT Registration*" and "*Period within which Refund or Tax Credit of Input Taxes shall be Made*" were then renumbered as Subsections (B) and (C), respectively. However, for ease of discussion, the Court shall cite the Subsections prior to the amendment, unless otherwise indicated.
[10] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*, G.R. No. 172129, September 12, 2008.
[11] Now Section 112(C).

from the submission of complete documents in support of the ***application*** *filed in accordance with Subsections (A) and (B)*" within which to decide on the claim.[12]

Third, compliance with the "120-30 day period" under Section 112(D)[13] of the NIRC, is crucial in filing a judicial claim.

Applying Section 112 and the doctrine laid down in the *Aichi* case to the prevailing circumstances in this case, We conclude that, while the administrative claim was filed within the reglementary period of 2 years from the close of the taxable quarter, the judicial claim was filed prematurely. Thus, the Court is constrained to **DENY** petitioner's claim for refund or issuance of TCC. The following discussions further elucidate this Court's standpoint.

Unutilized input VAT arising from purchases of capital goods must be claimed within two years after the close of the taxable quarter when the purchases were made

The Supreme Court, in the *Aichi* case, explained as follows:

> "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." We explained that:
>
> The above proviso [Section 112(A) of the NIRC] clearly provides in no uncertain terms that **unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), "[P]rescriptive period commences from the close of the taxable

[12] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.
[13] See Footnote 11.

quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued." Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.

Reckoning for prescriptive period under Secs. 204(C) and 229 of the NIRC inapplicable

To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:

> Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> x x x x
>
> (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.
>
> 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, of any sum alleged to have been excessively or in any manner wrongfully 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.

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, **both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes**.

MPC's creditable input VAT not erroneously paid

For perspective, under Sec. 105 of the NIRC, creditable input VAT is an indirect tax which can be shifted or passed on to the buyer, transferee, or lessee of the goods, properties, or services of the taxpayer. The fact that the subsequent sale or transaction involves a wholly-tax exempt client, resulting in a zero-rated or effectively zero-rated transaction, does not, standing alone, deprive the taxpayer of its right to a refund for any unutilized creditable input VAT, albeit the erroneous, illegal, or wrongful payment angle does not enter the question.

x x x x

Considering the foregoing discussion, **it is clear that Sec. 112(A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes**.

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 reckoned from the close of the taxable quarter when the sales were made." a

The petitioner anchors its claim on Section 112(B)[14] of the National Internal Revenue Code (NIRC), which states:

> "Sec. 112. Refunds or Tax Credits of Input Tax. –
> xxx xxx xxx
> (B) Capital Goods. – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

Thus, the reckoning point of "*close of the taxable quarter*" shall also be applied to claims for refund of unutilized input taxes arising from importation or purchases of capital goods. Section 112(B) also contains an express provision that the "*application may be made only within two (2) years, after the close of the taxable quarter when the importation or purchase was made.*"

Administrative claim was timely filed

Bearing the foregoing discussion in mind, We now determine the timeliness of petitioner's administrative claim.

Petitioner's claim for refund involves unutilized input VAT arising from purchases of capital goods during the period January 1, 2001 to December 31, 2001. The unutilized input VAT for each quarter and the respective ends of the two-year prescriptive period are summarized in the table below:

Period	Amount	End of 2-year period to file claim
January 1 to March 31, 2001	P2,959,538.00	March 31, 2003
April 1 to June 30, 2001	1,852,265.00	June 30, 2003
July 1 to September 30, 2001	921,440.00	September 30, 2003
October 1 to December 31, 2001	310,717.00	December 31, 2003
	P6,043,960.00	

[14] See Footnote 9.

Petitioner filed its administrative claim for refund on March 24, 2003[15] which is before the first prescriptive period of March 31, 2003 for the first quarter. Clearly, petitioner's administrative claim was timely filed.

The filing of the judicial claim was premature

Section 112(D) [now, Section 112(C)] of the NIRC provides as follows:

> "Sec. 112. Refunds or Tax Credits of Input Tax. –
> x x x x
> (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."

In this case, records reveal that:

Date Administrative Claim was Filed	End of 120 Days for the BIR Commissioner to Decide the Claim	End of 30 Days for the Petitioner to Appeal the Decision/Inaction	Date Judicial Claim Filed
March 24, 2003	July 22, 2003	August 21, 2003	April 21, 2003 and July 11, 2003

Petitioner's filing of its judicial claims with the CTA on April 21, 2003 and July 11, 2003 were before the expiration of the 120-day period given to CIR to decide the case, or more specifically, before July 22, 2003. This rendered petitioner's judicial claim premature which warrants its dismissal pursuant to the *Aichi* case where the Supreme Court clarified the application of the 120-30 day period, as follows:

> "Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete

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[15] *Rollo*, p. 46.

> documents in support of the application [for tax refund],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
>
> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to the applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A) and (B)**" within which to decide on the 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 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."[16]

Petitioner's premature filing with the CTA, of its claim for refund of unutilized input VAT arising from purchases of capital goods, warrants its dismissal. a

[16] *Supra*, Footnote 12.

In view of the foregoing, we find no need to discuss the merits of the case.

WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED. Accordingly, the assailed decision of the former First Division dated September 20, 2007 denying the Petitions For Review is hereby AFFIRMED, with modification that the denial is on the ground that the Petitions For Review were prematurely filed.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

w/ Separate Concurring 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
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