REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

DEUTSCHE KNOWLEDGE SERVICES, PTE LTD., Petitioner,	**C.T.A. CASE NO. 7921**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 2 8 2009 10:06 a.m.

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RESOLUTION

For resolution are respondent's **"Motion to Dismiss"** filed on June 8, 2009, and petitioner's **"Comment/Opposition (Re: Respondent's Motion to Dismiss dated 27 May 2009) (With Motion to Set Case for Pre-Trial)"** filed on August 3, 2009.

In his **"Motion to Dismiss,"** respondent Commissioner of Internal Revenue alleges that petitioner's judicial claim for refund or for issuance of a tax credit certificate for the amount of PhP12,549,446.30, allegedly representing petitioner's excess and unutilized input value-added tax attributable to its zero-rated sales for the 1st quarter of CY 2007, was filed beyond the period provided for by law. Respondent cited the Supreme

Court's ruling in *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[1] that the reckoning of the two-year prescriptive period provided in Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, should commence not from the payment of the tax, but from the close of the taxable quarter when the sales were made. In the instant cases, the last day for the filing of both the administrative and judicial claims for refund was on March 31, 2009, counting the two-year prescriptive period from the close of the taxable quarter of CY 2007, which was March 31, 2007. Respondent concluded that while the administrative claim was timely filed, the judicial claim for refund was belatedly filed on April 17, 2009. Moreover, respondent contended that Sections 204 and 229 of the NIRC of 1997, as amended, do not apply in this case.

In its **"Comment/Opposition,"** petitioner counter argues:

1.) respondent's motion is moot since upon filing of the Answer, the issues to be resolved have been joined, pre-trial and trial should have proceeded in due course;
2.) the two-year prescriptive period for the filing of a claim for the refund of or issuance of a TCC for excess and unutilized input VAT is the date of the filing of the Quarterly VAT Return;
3.) the ruling of the Supreme Court in the *Mirant case* did not overturn the Supreme Court's doctrinal pronouncement in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*;
4.) Section 229 of the NIRC of 1997, as amended, applies even to cases of refund of excess input VAT. Otherwise, the Civil Code provision on prescription applies

Respondent's Motion to Dismiss is meritorious.

Section 1, Rule 9 of the 1997 Rules of Civil Procedure, as amended, provides:

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[1] G.R. No. 172129, September 12, 2008.

> "**Section 1.** *Defense and objections not pleaded.-* Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, **when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or **by statute of limitations**, **the court shall dismiss the claim**." (Emphasis supplied.)

In relation to the above-provision, in *Mactan-Cebu International Airport Authority (MCIAA) vs. Heirs of Marcelina L. Sero, et. al.*,[2] citing *Gicano vs. Gegato*,[3] the Supreme Court ruled:

> "Thus, in *Gicano v. Gegato*:
>
> We have ruled that trial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred; and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings, or where a defendant has been declared in default. **What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record: either in the averments of the plaintiffs complaint, or otherwise established by the evidence**. xxx."

In the instant Petition, petitioner claims for a tax refund or issuance of a tax credit certificate of the amount it allegedly paid representing the excess and unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the 1st quarter of CY 2007. Pursuant to Section 112(A) of the NIRC of 1997, as amended, as well as the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation* (Mirant

[2] G.R. No. 174672, April 16, 2008.
[3] G.R. No. L-63574, January 20, 1988, 157 SCRA 140.

case), the reckoning of the two-year prescriptive period for filing both the administrative and judicial claims for refund of creditable input tax should be from the close of the taxable quarter, which was March 31, 2009. The filing of the administrative claim was made on March 31, 2009.[4] On the other hand, the Petition for Review was filed on April 17, 2009. Thus, while the administrative claim was timely filed; however, the judicial claim was already filed out of time.

Further, as ruled by the Supreme Court in the *Mirant Pagbilao* case, Section 229 of the NIRC of 1997, as amended does not apply in this case as the said provision pertains to taxes erroneously or illegally collected internal revenue taxes. Citing *CIR vs. Seagate Technology (Philippines),* in the *Mirant Pagbilao* case the Supreme Court explained the nature of the VAT and the entitlement to tax refund or credit of a zero rated taxpayer, to wit:

> **"Zero-rated transactions** generally refer to the export sale of goods and supply of services. The **tax rate is set at zero**. When applied to the tax base, such rate obviously results in no tax chargeable against the purchaser. **The seller of such transactions charges no output tax, but can claim a refund of or a tax credit certificate for the VAT previously charged by suppliers"[5].**

Considering the foregoing discussion, it is clear that Section 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 creditable input VAT, applies to the instant case, and not to other actions which refer to erroneous payment of taxes."

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[4] Paragraph 6 of the Petition and Annex "C."
[5] G.R. No. 153866 February 11, 2005 451SCRA132.

WHEREFORE, premises considered respondent's **"Motion to Dismiss"** is hereby **GRANTED**. Accordingly, the instant Petition for Review is hereby **DISMISSED** for being filed out of time.

SO ORDERED.

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

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice