Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

JP MORGAN CHASE BANK, N.A.— PHILIPPINE CUSTOMER CARE CENTER,

Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA Case Nos. 7650, 7681 & 7722

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, JJ.

Promulgated:

DEC 1 6 2011

4:30 p.m.

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DECISION

CASANOVA, *J.*:

These are three (3) consolidated Petitions for Review separately filed by petitioner- JP Morgan Chase Bank, N. A.-Philippine Customer Care Center pursuant to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA), in relation to Rule 4 thereof, to review, by appeal, the inaction of the respondent Commissioner of Internal Revenue over petitioner's administrative claim for tax refund of its alleged unutilized input value-added tax (VAT) paid by petitioner on its domestic purchases of goods and services which are attributable to zero-rated transactions covering the period April 2005 to May 2007 in the aggregate amount of ₱41,053,036.64, broken down as follows:

CTA Case No.	Period Covered	Amount
7650	April 2005 to June 2005	P 88,425.45
7681	July 2005 to June 2006	28,422,990.10
7722	July 2006 to May 2007	12,541,621.09
TOTAL		**P 41,053,036.64**

Petitioner is the duly registered Philippine branch of JP Morgan Chase Bank, N. A., a corporation duly organized and existing under the laws of the United States of America. Its offices are located at the 12th, 14th, 27th and 31st Floors, Philamlife Tower, 8767 Paseo de Roxas St., Makati City.[1]

It is registered with the Securities and Exchange Commission (SEC) to engage in call center and business process services, information technology, information technology enabled services, call-center services, customer care and other customer care services.[2]

Petitioner entered into a service agreement with Chase Bankard Services, Inc. (CBS), a New York State banking corporation, with its head office located at 200 White Clay Center Drive Newark, DE 19711-5466. Under this service agreement, petitioner's services involve inbound and outbound contacts with CBS customers outside the Philippines. The purpose of these contacts include welcoming customers to their new CBS credit card product, card activation, stimulating usage through balance transfers,

[1] Par. 2, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (CTA Case No. 7650, Vol. I), p. 137.
[2] Par.1, Stipulated Facts, JSFI, Ibid, p. 137.

and informing the customer of various products and services offered by CBS to its customers. CBS is not engaged in any trade or business within the Philippines.[3]

It also entered into a service agreement with Chase Home Finance LLC (CHF), a Delaware limited liability company, with its head office located at 194 Wood Avenue South, Iselin, NJ 08830. Under this service agreement, petitioner's services involve inbound and outbound contacts as well as back-office functions supporting CHF customers and clients outside the Philippines. CHF is also not engaged in any trade or business within the Philippines.[4]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added (VAT) taxpayer, with Taxpayer's Identification Number (TIN) 239-952-660-000 as evidenced by its Certificate of Registration No. 9RC0000158857 dated August 10, 2005.[5]

Respondent is the duly appointed Commissioner of Internal Revenue with the authority to act as such including the power to decide, approve and grant claims for issuance of tax credit certificate or refund of overpaid internal revenue taxes as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

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[3]Exhibit "CC" Master Service Level Agreement between J.P. Morgan Chase Bank, N.A.- Philippine Customer Care Center and Chase Bankcard Services, Inc. dated December 1, 2005; Exhibit "CC-1" TeleMarketing Schedule to the Master Service Level Agreement by and between Chase Bankcard Services, Inc. and J.P. Morgan, NA-Philippine Customer Care Center; and Exhibit "IIII" Judicial Affidavit of Mr. Ronald James Levinson.

[4] Exhibit "DD" Master Service Level Agreement between J.P. Morgan Chase Bank, N.A.-Philippine Customer Care Center and Chase Home Finance LLC dated December 1, 2005; Exhibit "DD-1" CHF Manila Operations – Schedule to the Master Service Level Agreement by and between Chase Home Finance LLC and JP Morgan Chase Bank, N.A. – Philippine Customer Care Center; and Exhibit "HHHH" Judicial Affidavit of Mr. David R. Beachler.

[5] Par. 3, Stipulated Facts, JSFI, Ibid, p. 137.

Petitioner filed its Monthly and Quarterly VAT Returns for taxable period April 2005 to May 2007, as well as their amendments, on the following dates:[6]

Exhibit	Period Covered	Date of Filing
C	April to June 2005	October 13, 2006
D	July to September 2005	October 7, 2005
E	July to September 2005 (Amended Return)	October 13, 2006
F	October to December 2005	January 10, 2006
G	October to December 2005 (Amended Return)	October 13, 2006
H	January to March 2006	April 10, 2006
I	January to March 2006 (1st Amended Return)	October 13, 2006
J	January to March 2006 (2nd Amended Return)	September 19, 2007
K	April to June 2006	July 10, 2006
L	April to June 2006 (1st Amended Return)	October 13, 2006
M	April to June 2006 (2nd Amended Return)	September 19, 2007
N	July to September 2006	October 10, 2006
O	July to September 2006 (Amended Return)	September 19, 2007
P	October to December 2006	January 10, 2007
Q	October to December 2006 (Amended Return)	September 19, 2007
R	January to March 2007	April 25, 2007
S	January to March 2007(Amended Return)	September 19, 2007
T	April to June 2007	July 25, 2007
U	April to June 2007 (Amended Return)	September 19, 2007
NNN-15	April 2007 (Amended Return)	September 19, 2007
NNN-16	May 2007 (Amended Return)	September 19, 2007

On February 21, 2007, petitioner filed an administrative claim with the BIR Revenue District Office No. 50 (South Makati) for the refund of its alleged unutilized input VAT payments attributable to its zero rated sales covering the period April 2005 to

[6] Par. 4, Stipulated Facts, JSFI, Ibid, pp. 137-138.

June 2006;[7] while the claim for refund covering taxable period July 2006 to March 2007 was filed on May 8, 2007;[8] and subsequently, the claim for refund covering the period April 2007 and May 2007 was filed on May 24, 2007[9].

Due to respondent's inaction, petitioner filed with this Court a Petition for Review, docketed as CTA Case No. 7650 on June 29, 2007, praying for the refund of its alleged unutilized input VAT for the period April 2005 to June 2005 in the amount of P88,425.45.

On September 27, 2007, petitioner filed with this Court another Petition for Review, docketed as CTA Case No. 7681, praying for the refund of its alleged unutilized input VAT for the period July 2005 to June 2006 in the amount of P28,422,990.10.

On January 24, 2008, petitioner filed Petition for Review docketed as CTA Case No. 7722, seeking the refund of its alleged unutilized input VAT for the period July 2006 to May 2007 in the amount of P12,541,621.09. At the instance of petitioner, the three separate cases were consolidated on December 17, 2007 and February 20, 2008.[10]

Respondent interposed the following Special and Affirmative Defenses in her Answers to the Petitions for Review, viz:

CTA Case No. 7650[11]

"4. Granting *arguendo* that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.

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[7] Par. 5, Stipulated Facts, JSFI, Ibid, p. 138.
[8] Par. 5, Stipulated Facts, JSFI, Ibid, p. 138.
[9] Par. 5, Stipulated Facts, JSFI, Ibid, p. 138.
[10] Ibid, pp. 93 and 111.
[11] Answer,Ibid, pp. 60-63.

5. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been or erroneously or illegally collected in violation of the tax laws relied upon by the petitioner.

6. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.

7. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended.

8. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206).

9. Claims for refund are construed strictly against the claimant, 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 121)."

CTA Case No. 7681[12]

"4. Assuming without admitting that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

5. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

6. Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable;

7. It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the Tax Code, as amended upon which its claimed fro refund is premised;

8. In an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, P. 206*);

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[12] Answer, Docket (CTA Case No. 7681),pp.101-102.

9. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, these are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

CTA Case No. 7722[13]

"4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

5. Petitioner's alleged claim for refund or issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;

6. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

7. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php 12,541,621.09, as alleged unutilized input VAT attributable to its zero-rated sales on domestic purchases of goods and services for the years 2006 and 2007 were not fully substantiated by proper documents.

8. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to refund and failure to adduce sufficient proof is fatal to its claim for tax refund/credit.

9. Petitioner's sales of goods and services to various alleged clients/customers do not qualify as zero-rated VAT.

10. The amount subject of the claim for refund of petitioner do not pertains (sic) in full to its input VAT paid attributable to its zero-rated sales on domestic purchases of goods and services for the years 2006 and 2007.

11. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

12. It is incumbent upon the latter to show that it has complied with the provisions under Section 204(c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

[13] Answer, Docket (CTA Case No. 7722), pp. 77-78.

> 13. 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***)."

On November 28, 2008, this Court, upon petitioner's Motion for the Commissioning of an Independent Certified Public Accountant (CPA),[14] appointed Atty. Raymund S. Gallardo as Independent CPA.[15]

During trial, petitioner presented the following witnesses: Ms. Ellen P. Mislang, its Finance Manager;[16] Ms. Madelaine M. Licayan, its Legal Entity Controller;[17] Atty. Raymund S. Gallardo, the Independent CPA duly commissioned by this Court;[18] Mr. Timothy D. Yang, its Chief Operating Officer and Senior Finance Officer;[19] Mr. David R. Beachler, Senior Vice President of Chase Home Finance, LLC;[20] and Mr. Ronald James Levinson, Business Operations Director of Chase Bankcard Services, Inc.[21]

Thereafter, petitioner filed its Formal Offer of Evidence with Motion to Transfer Marking and for Remarking, and Motion to Submit Additional Evidence[22] on April 7, 2010, submitting Exhibits "A" to "U", "W-8", "Z" to "UU-2", "WW" to "WW-2", "YY" to "ZZZ" and ""EEEE" to "IIII", inclusive of submarkings. Petitioner likewise filed its Manifestation with Motion to Transfer Marking[23] on May 7, 2010.

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[14] Docket (CTA Case No. 7650, Vol. I), pp. 251-253.
[15] Minutes, Ibid, p. 260.
[16] Minutes, Ibid, pp. 171 and 210; Docket(CTA Case No. 7650, Vol. II), p. 825.
[17] Minutes, Docket (CTA Case No. 7650, Vol. I), pp. 250 and 498.
[18] Minutes, Ibid, pp. 299, 350 and 395.
[19] Minutes, Ibid, p. 330.
[20] Minutes, Ibid, p. 395.
[21] Minutes, Ibid, p. 424.
[22] Ibid, pp. 427-456.
[23] Ibid, pp. 459-461.

In the Resolution[24] dated June 3, 2010, this Court held in abeyance the resolution of petitioner's Formal Offer of Evidence and set the case for a commissioner's hearing for the marking and remarking of petitioner's additional documentary exhibits.

Subsequently, petitioner filed, on October 1, 2010, its Supplemental Formal Offer of Evidence and Motion to Submit Additional Evidence,[25] submitting Exhibits "DD" to "DD-5", "LLLL", "YY", "ZZZ", "MMMM", "JJJJ" to "KKKK-17", inclusive of submarkings. This was resolved by this Court in the Resolution[26] dated January 13, 2011, where the Court admitted Exhibits "A" to "CCC-4", "DDD" to "ZZZ-1", and "EEEE" to "MMMM-1", inclusive of submarkings. The same Resolution granted petitioner's Motion to Submit Additional Evidence, specifically, its request that it be allowed to present additional documentary evidence and to recall its witness, Ms. Ellen P. Mislang, to testify that petitioner submitted additional documents to the BIR in support of its administrative claims for refund.

On March 28, 2011, petitioner filed its Supplemental Formal Offer of Evidence,[27] submitting Exhibits "OOOO", "NNNN", "QQ" and "CCC-5", inclusive of the submarkings, as part of its documentary evidence, which was admitted by this Court on May 9, 2011 Resolution.[28]

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[24] Ibid, pp. 473-475.
[25] Docket (CTA Case No. 7650, Vol. II), pp. 506-515.
[26] Ibid, pp. 809-811.
[27] Ibid, pp. 826-829.
[28] Ibid, pp. 844-845.

On the other hand, in the hearing on June 8, 2011, counsel for respondent manifested[29] that he is constrained to submit the instant case for decision considering that no Report of Investigation was submitted to his office.

In the Resolution[30] dated August 10, 2011, the case was submitted for decision taking into consideration petitioner's Memorandum[31] filed on July 28, 2011 and Verification Report dated August 9, 2011 of the Records Division that no memorandum has been filed by respondent.

The following are the parties' jointly stipulated issues[32] submitted for this Court's resolution:

> "1. Whether Petitioner, based on its call center services and the manner by which it is compensated for such services, qualifies as a zero-rated VAT entity pursuant to Section 108(B)(2) of the NIRC.
>
> 2. Whether or not Petitioner's claim for refund/tax credit of its excess and unapplied input VAT payments on domestic purchases of taxable goods and services for the period from April 2005 to May 2007 which are directly attributable to its zero-rated revenues for the years 2005, 2006 and 2007 is allowed by law and fully substantiated by documentary evidence.
>
> 3. Whether or not petitioner's unutilized input taxes have not been carried over to succeeding quarters and have not been utilized against any output tax.
>
> 4. Whether or not petitioner have (sic) timely and duly filed its administrative and judicial claims for the refund or issuance of a tax credit certificate for unutilized input taxes attributable to zero-rated sales.

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29 Minutes, Ibid, p. 852.
30 Ibid, p. 917.
31 Ibid, pp. 858-914.
32 Issues to be Tried or Resolved, JSFI, Docket (CTA Case No. 7650, Vol. I), p. 139.

5. Whether or not petitioner is entitled to a tax credit certificate as claimed in the aforesaid entitled positions."

The foregoing issues boil down to one issue: Whether or not petitioner is entitled to a refund in the aggregate amount of P41,053,036.64, representing unutilized input VAT payments attributable to its zero-rated sales, for taxable period April 2005 to May 2007.

Petitioner anchors its claim on the provisions of Sections 108(B)(2) and 112(A) of the 1997 National Internal Revenue Code (NIRC), *as amended*, which provide:

> **"SEC. 108.-*Value-added Tax on Sale of Services and Use or Lease of Properties.-***
>
> xxx xxx xxx
>
> '(B) *Transactions Subject to Zero Percent (0%) Rate.*-- The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> '(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);'
>
> xxx xxx xxx
>
> '**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 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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero rated sales."

From the afore-quoted provision of Section 112(A), petitioner must comply with the following requisites to be entitled to a refund or tax credit of unutilized input value added taxes attributable to zero-rated or effectively zero-rated sales:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the administrative claim for refund was filed within the two-year prescriptive period.

In its amended Quarterly and Monthly VAT Returns for the period April 2005 to May 2007, petitioner reported VAT zero-rated sales in the total amount of P907, 991,634.83 and input VAT of P41,053,036.64, broken down as follows:

Exhibit	Period Covered	Date Amended	Zero-Rated Sales	Total Input VAT
C	Apr to June 2005	10/13/2006		P 88,425.45
E	July to Sept 2005	10/13/2006		1,094,780.84
G	Oct to Dec 2005	10/13/2006		18,491,235.96
J	Jan to Mar 2006	9/19/2007	P 31,089,286.52	3,559,755.28
M	Apr to June 2006	9/19/2007	179,651,057.59	5,277,218.02
O	July to Sept 2006	9/19/2007	153,294,585.82	3,510,147.92
Q	Oct to Dec 2006	9/19/2007	155,453,291.67	2,238,986.86
S	Jan to Mar 2007	9/19/2007	202,011,525.42	3,565,973.28
NNN-15	April 2007	9/19/2007	87,303,419.50	1,024,752.21
NNN-16	May 2007	9/19/2007	99,188,468.31	2,201,760.82
Total			**P 907,991,634.83**	**P 41,053,036.64**

Anent the first requisite, petitioner maintains that the services it rendered to the customers and clients of Chase Bankard Services, Inc. (CBS) and Chase Home Finance LLC (CHF), both non-resident foreign corporations engaged in business conducted outside of the Philippines, of which services were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (BSP),* qualify as VAT zero-rated sales pursuant to Section 108(B)(2) of the1997 NIRC, as amended.

In the case of ***Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.***[33], the Supreme Court held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the 1997 NIRC, as amended, the following requisites must be met:

1. the services must be other than processing, manufacturing or repacking of goods;

[33] G.R. No.153205, January 22, 2007.

2. payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
3. the recipient of such services is doing business outside the Philippines.

This Court finds that petitioner complied with the first requirement as the call center and business process services it renders to the customers and clients of CBS and CHF, are not of the same category as "processing, manufacturing or repacking of goods".[34] Likewise, the second requisite was also satisfactorily met because for its services rendered from June 2005 to April 2007, petitioner received foreign currency payments which were accounted for in accordance with the BSP rules and regulations as evidenced by the official receipts[35] issued by petitioner to its non-resident foreign clients, bank certification of inward remittances[36] and the Bank Statements[37] issued by JP Morgan Chase Bank N.A. (Manila Branch),.

With regard to the third requisite, this Court finds that petitioner has sufficiently established that CBS and CHF, to whom it rendered services, are non-resident foreign corporations or foreign corporations not engaged in business in the Philippines as evidenced by the following:

1. Master Service Level Agreements[38] with JP Morgan's non-resident foreign clients which show the nature of the services to be performed by petitioner and the fact that the CBS and CHF's place of business are located outside the Philippines.

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[34] *Supra*, Notes 3 and 4.
[35] Exhibit III-pages 1 to 32 of Exhibit "WWW-ICPA Preliminary Report".
[36] Exhibits "GG" and "HH".
[37] Exhibit KKK- pp. 1 to 29 of Exhibit "WWW-CPA Preliminary Report".
[38] Exhibits "CC" and "DD".

2. Certification of Non-Registration of Corporation/Partnership issued by the Philippine SEC on July 11, 2008 which shows that the CBS and CHF are not registered as corporation or partnership in the Philippines.[39]
3. Certificate of Authentication of CBS and CHF's Certificate of Incorporation and By-Laws[40] issued by the Secretary of State of New York.

From the foregoing, petitioner has sufficiently proven that its call center and business process services qualified for VAT zero rating and its alleged unutilized input VAT may be a proper subject of a claim for refund.

However, before discussing the merits of petitioner's claimed input VAT of P41,053,036.64, the Court will first resolve petitioner's compliance with the fifth requirement pertaining to prescription.

Regarding the fifth requisite, Section 112(A) of the 1997 NIRC, as amended, requires that the taxpayer's application for refund or tax credit certificate of unutilized or excess creditable input VAT arising from its domestic purchases of goods and services, which are attributable to its zero-rated or effectively zero-rated sales, must be made within two years after the close of the taxable quarter when such sales were made.

In the case of ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.),***[41] the Supreme Court aptly stated that:

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[39] Exhibit "EE" and "FF"
[40] Exhibits "UU" and "WW".
[41] G.R. No. 172129, September 12, 2008.

> "The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:
>
> > (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 <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax:...(Emphasis ours.)
>
> The above proviso 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 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."

Based on the above-quoted provision of law and jurisprudence, the reckoning of the two-year prescriptive period for the filing of a claim for refund/credit of input VAT on zero-rated sales is not from the date of filing of the corresponding Quarterly VAT return and payment of the tax but from the close of the taxable quarter when the pertinent sales or transaction was made.

The present claim pertains to input VAT on zero-rated sales incurred for the taxable period April 2005 to May 2007. Petitioner had until the following dates to file its administrative claim for refund:

CTA CASE NO.	PERIOD COVERED	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Administrative Filing
7650	Apr to June 2005	Jun 30, 2005	Jun 30, 2007	21-Feb-07
7681	July to Sept 2005	Sep 30, 2005	Sep 30, 2007	
	Oct to Dec 2005	Dec 31, 2005	Dec 31, 2007	
	Jan to Mar 2006	Mar 31, 2006	Mar 30, 2008	
	Apr to June 2006	Jun 30, 2006	Jun 29, 2008	
7722	July to Sept 2006	Sep 30, 2006	Sep 29, 2008	8-May-07
	Oct to Dec 2006	Dec 31, 2006	Dec 30, 2008	
	Jan to Mar 2007	Mar 31, 2007	Mar 30, 2009	
	April to May 2007	Jun 30, 2007	Jun 29, 2009	24-May-07

Based from the foregoing and applying Section 112(A) of the 1997 NIRC, as amended, petitioner timely filed its administrative claims for the refund of its unutilized input VAT payments attributable to its zero rated sales, covering the period April 2005 to May 2007.

The Court will now proceed to determine whether petitioner's judicial claims for tax refund for the taxable period April 2005 to May 2007 were timely filed pursuant to Section 112(C) of the 1997 NIRC, *as amended,* which provides that:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

x x x

> (C) *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 Subsection (A) 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**." (*Emphasis/underscoring supplied.*)

Based on the foregoing, the taxpayer has thirty (30) days from its receipt of the decision denying the claim for refund or issuance of tax credit certificate or after the expiration of the one-hundred twenty (120) day period from the date of submission of complete documents to appeal the decision or the inaction of the CIR with this Court.

In applying the provision of Section 112(C) of the 1997 NIRC, as amended, which was formerly 112(D) prior to its amendment by R.A. 9337, the Supreme Court in the more recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., (Aichi case)*[42] held that:

> "Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' 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.**

[42] G.R. No. 184823, October 6, 2010

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 the 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 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.

With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.

> In fine, **the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA**." (*Emphasis supplied*)

Based on the *Aichi case*, the second paragraph of Section 112(C) 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. Likewise, the *Aichi case* aptly stated that the 120-day period mentioned in Section 112(C) of the1997 NIRC, as amended, is crucial in filing an appeal with this Court.

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. 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 Commissioner of Internal Revenue (CIR) and not to appeals made to the CTA.[43] Section 229 does not apply to refunds/credits of input VAT, which is governed by the provision of Section 112 of the 1997 NIRC, as amended, following the *Aichi case*.

In this case, records reveal the following:

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[43] *Ibid.*

CTA CASE NO.	PERIOD COVERED	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Administrative Filing	end of 120-day period for BIR to decide the claim	end of 30-day period to file w/ the Court	Judicial Filing
7650	Apr to June 2005	Jun 30, 2005	Jun 30, 2007	21-Feb-07	21-Jun-07	21-Jul-07	29-Jun-07
7681	July to Sept 2005	Sep 30, 2005	Sep 30, 2007				27-Sep-07
	Oct to Dec 2005	Dec 31, 2005	Dec 31, 2007				
	Jan to Mar 2006	Mar 31, 2006	Mar 30, 2008				
	Apr to June 2006	Jun 30, 2006	Jun 29, 2008				
7722	July to Sept 2006	Sep 30, 2006	Sep 29, 2008	8-May-07	5-Sep-07	5-Oct-07	24-Jan-08
	Oct to Dec 2006	Dec 31, 2006	Dec 30, 2008				
	Jan to Mar 2007	Mar 31, 2007	Mar 30, 2009				
	April to May 2007	Jun 30, 2007	Jun 29, 2009	24-May-07	21-Sep-07	21-Oct-07	

Here, petitioner filed the judicial claim for refund pertaining to CTA Case No. 7681, covering the taxable period July 2005 to June 2006 on September 27, 2007 or after the lapse of sixty-eight (68) days from July 21, 2007, which is the last day or 30th day for filing judicial claim based on the table above. Likewise, in CTA Case No. 7722 covering the taxable period July 2006 to March 2007, petitioner filed its judicial claim for refund on January 24, 2008 or after the lapse of one hundred eleven (111) days from October 5, 2007. Since the judicial claim filed on January 24, 2008 also covers the taxable period April 2007 to May 2007, the said portion of the judicial claim was filed after the lapse of ninety five (95) days from October 21, 2007. Clearly, both judicial claims for refund pertaining to CTA Case Nos. 7681 and 7722 shall be disallowed for being filed out of time (i.e., beyond the 30-day period). Consequently, this Court shall consider only the claim for refund of unutilized input taxes for the 2nd quarter of 2005 in the amount of P88,425.45 for being timely filed both in the administrative and judicial levels.

The Court will now proceed to determine petitioner's compliance with the other requisites.

Petitioner submitted in evidence its Schedule of Purchases and Input VAT for the second quarter of 2005[44] and the corresponding suppliers' VAT official receipts[45] duly examined by the Court-commissioned ICPA.[46]

After a careful examination and verification of petitioner's evidence, this Court finds that the claimed input VAT of P88,425.45 for the second quarter of 2005 is duly substantiated by the required documents. Since petitioner's sales were all zero-rated, the said substantiated input VAT of P88,425.45 is entirely attributable thereto.

The fourth requisite had likewise been satisfied by petitioner. The input taxes sought to be refunded were not utilized during the subject period because it had no output tax liability against which the said input taxes could be applied or credited. Moreover, in its VAT Return for the first quarter of 2007, specifically under Line 23D as "VAT Refund/TCC claimed"[47], petitioner deducted the amount of P28,511,415.55, which includes the present claim of P88,425.45. Hence, the subject claim no longer formed part of the excess input VAT of P9,315,108.08 as of the first quarter of 2007 which was to be carried over/applied to the succeeding second quarter of 2007.

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[44] Exhibit JJJ-1 of Exhibit "WWW-CPA Preliminary Report".
[45] Exhibit QQQ 1-1 to QQQ-1-2.
[46] Atty. Raymund S. Gallardo.
[47] Exhibit "S".

In sum, the Court finds petitioner entitled to a refund in the reduced amount of P88,425.45, representing unutilized input VAT incurred in relation to its effectively zero-rated sales for the period April to June 2005.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. **ACCORDINGLY**, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** the amount of **P88,425.45** to petitioner JP Morgan Chase Bank N.A.-Philippine Customer Care Center, representing unutilized input VAT from its domestic purchases of goods and services attributable to its effectively zero-rated sales for the period April to June 2005.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

ATTESTATION

I attest that the conclusions in the above 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, Second Division

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 Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice