REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MINDANAO II GEOTHERMAL PARTNERSHIP, *Petitioner,*	CTA EB No. 957 (CTA Case Nos. 7899, 7942 &7960)
	Present:
-versus-	**DEL ROSARIO,** ***PJ*** **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, RINGPIS-LIBAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 11 2013 9:05 a.m.

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DECISION

DEL ROSARIO, PJ.

This is a petition for review[1] filed by Mindanao II Geothermal Partnership assailing the Decision dated August 1, 2012[2] (assailed Decision) and the Resolution dated November 7, 2012[3] (assailed Resolution), both of the

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[1] Pursuant to Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals.

[2] *Rollo* CTA EB No. 957, pp. 6-33. Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justice Lovell R. Bautista concurring and dissenting, and Associate Justice Amelia R. Cotangco-Manalastas concurring.

[3] *Id,* pp. 38-47. Penned by Associate Justice Olga Palanca-Enriquez, with Associate Justice Lovell R. Bautista concurring and dissenting, and Associate Justice Amelia R. Cotangco-Manalastas concurring.

former Third Division of the Court of Tax Appeals (CTA Third Division) in the consolidated cases docketed as CTA Case Nos. 7899, 7942 and 7960, entitled "*Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue.*" The dispositive portions of which read:

Decision dated August 1, 2012

"**WHEREFORE**, premises considered:

1) As regards C.T.A. Case No. 7899, the Petition for Review is hereby **DISMISSED** for having been prematurely filed;

2) As regards C.T.A. Case No. 7942, the Petition for Review is hereby **DISMISSED** for having been prematurely filed; and

3) As regards C.T.A. Case No. 7960, the Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent [Commissioner of Internal Revenue] CIR is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SIX THOUSAND SIX HUNDRED THIRTY FOUR PESOS and 29/100 (P6,634.29)**, representing unutilized input VAT paid on its domestic purchases of goods and services which are attributable to zero-rated sales for the third and fourth quarters of calendar year 2007.

SO ORDERED."

Resolution dated November 7, 2012

"**WHEREFORE**, premises considered, petitioner's "Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS[4]

As found by the CTA Third Division, the facts of this case are as follows:

"Petitioner is a partnership duly registered with the Securities and Exchange Commission, with principal address at Barangay Ilomavis, Kidapawan City, Cotabato.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue [CIR], vested with authority to act as such, including, among

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[4] *Id*, pp. 7 to 10.

others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. xxx

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On March 11, 1997, petitioner entered into a Build-Operate-Transfer Contract with the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) for the finance, engineering, supply, installation, testing, commissioning, operation and maintenance of a 48.25 megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to petitioner at no cost. In turn, petitioner shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and in behalf of PNOC-EDC.

As a power generation company utilizing geothermal energy and steam, petitioner's sale of generated power and delivery of electric capacity and energy to NPC for and in behalf of PNOC-EDC, under the BOT contract, is VAT zero-rated, pursuant to *Section 108(B) of the NIRC of 1997, as amended by RA 9337.*

As a result of said transactions, petitioner allegedly incurred input VAT, which are attributed and allocated to effectively zero-rated sales in the amount of P8,255,554.02 for taxable year 2007.

On the following dates, petitioner filed with the BIR its Original Quarterly VAT Returns for taxable year 2007:

Taxable Quarter	Date of Filing of Original Return
1^{st}	April 25, 2007
2^{nd}	July 25, 2007
3^{rd}	October 24, 2007
4^{th}	January 28, 2008

On March 30, 2009, petitioner filed its administrative claim for refund of unutilized input VAT for taxable year 2007, together with the supporting documents.

Due to respondent's inaction, petitioner filed with the CTA the following Petitions for Review:

CTA Case No.	Quarters	Unutilized Input VAT	Date of Filing of Petition for Review
7899	1^{st}	P4,048,011.48	March 31, 2009
7942	2^{nd}	P1,484,924.01	June 30, 2009
7960	3^{rd} & 4^{th}	P2,722,618.53	August 12, 2009

On August 12, 2009, petitioner filed a "Motion to Consolidate C.T.A. Case No. 7960 with C.T.A. Case Nos. 7899 and 7942, which the Court granted. Thus, C.T.A. Case Nos. 7960 and 7942 were consolidated with C.T.A. Case No. 7899, the case bearing the lowest docket number.

In compliance with the order of the CTA Third Division, respondent filed her Answers to the Petitions for Review and interposed special and affirmative defenses, which are summarized hereunder:

a) Petitioner's claims for refund are not properly documented;

b) Petitioner must prove its compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to RMO No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma;

c) Petitioner must prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 NIRC, as amended, in relation to the provisions of Revenue Regulations (RR) No. 7-95;

d) Petitioner must prove that its claimed input VAT 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; and,

e) The CTA has no jurisdiction to entertain the petitions for review for failure on the part of petitioner to comply with the provisions of Section 112 of the 1997 NIRC relative to the prescriptive period for claims for refund.

After trial on the merits, the CTA Third Division promulgated the assailed Decision[5] wherein it dismissed CTA Case Nos. 7899 and 7942 for having been prematurely filed and partially granted CTA Case No. 7960. The CTA Third Division denied petitioner's motion for reconsideration through the assailed Resolution.[6]

Hence the instant Petition for Review where petitioner raises the following assigned errors:

> **"I**
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> The Honorable Third Division erred in dismissing petitioner's petition for review in CTA Case Nos. 7899 and 7942 in that petitioner relied in good faith on the then consistent rulings for almost a decade of this Honorable Court as regards the 120-day and 30-day periods provided under Section 112 of the 1997 Tax Code.

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[5] *Supra* note 2.
[6] *Supra* note 3.

II

The Honorable Third Division erred in applying retroactively the Aichi ruling which is a new doctrine establishing a new procedural rule which affects the substantive rights of petitioner and many litigants and must therefore be applied prospectively in accordance with the laws and jurisprudence upholding the principle of prospectivity.

III

The Honorable Third Division erred in applying retroactively the Aichi ruling to the present case in that this retroactive application violates the basic policies of the EPIRA Law.

IV

The Honorable Third Division erred in invoking the doctrine of exhaustion of administrative remedies in that the same is inapplicable in light of the special circumstances obtaining in the present case.

V

The Honorable Third Division erred in not considering collectively the official receipts and the corresponding sales invoices showing the company TIN and the VAT component of the transactions."

ISSUES

The foregoing assigned errors may be summarized into two (2) main issues, to wit:

I.

Whether or not the CTA Third Division erred in dismissing the judicial claims docketed as CTA Case Nos. 7899 and 7942.

II.

Whether or not the CTA Third Division erred in merely granting in part CTA Case No. 7960.

PARTIES' ARGUMENTS

Petitioner's Arguments

Petitioner posits that it should not be faulted in observing the then consistent rulings for almost a decade of this Court that the word "may" under Section 112 (D) (now C) of the 1997 NIRC is merely permissive and discretionary.[7] Citing *Commissioner of Internal Revenue v. Accenture,*[8] petitioner insists that the use of the word "may" in the afore-stated provision of the 1997 NIRC indicates that the filing of a judicial claim within thirty (30) days from the lapse of the 120-day period is merely discretionary and permissive and that what is important is that the judicial claim is filed within the two-year prescriptive period.

Petitioner argues that the Supreme Court's ruling in the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,*[9] should not be given retroactive application in light of existing laws and jurisprudence upholding the principle of prospectivity.[10] Petitioner's theory is that the *Aichi* ruling must be applied prospectively as it establishes new doctrine as regards the interpretation of the 120-day and 30-day periods provided under Section 112 of the 1997 NIRC, considering that before the promulgation of the *Aichi* ruling on October 6, 2010, there has been no ruling from the Supreme Court on the matter.[11]

Petitioner also alleges that the retroactive application of the *Aichi* ruling is in violation of the EPIRA[12] law. It claimed that the said law "mandated that sales of generation companies be zero-rated paving the way for such generation companies to claim for refund the creditable input taxes they incurred and/or paid in the course of their operation."[13]

When petitioner filed its petition for review docketed as CTA Case No. 7899, 7942 and 7960 on March 31, 2009, June 30, 2009 and August 12, 2009, respectively, it claims that the then prevailing rule was that the taxpayer was bound not by the 120-day and 30-day periods under Section 112 (C) of the 1997 NIRC, but by the two-year prescriptive period. When the two-year period is about to lapse, the taxpayer must file an appeal before the CTA without awaiting the decision of the CIR.[14] Petitioner ultimately submits that it is "highly unjust, not to mention violative of its rights to due process and equal protection of law, if its claims for refund or issuance of tax credit certificate would be denied pursuant to a ruling which was not yet in existence at the time it filed its judicial claims and which it could no longer comply."[15]

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[7] *Id*, unpaginated.
[8] CTA EB No. 410, March 18, 2009.
[9] G.R. No. 184823, October 6, 2010.
[10] *Rollo* p. 71.
[11] *Id,* p. 83.
[12] Republic Act No. 9136.
[13] *Rollo,* note 10.
[14] *Id,* p. 65.
[15] *Id,* p. 88.

Finally, invoking the ruling of the Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corporation,*[16] petitioner contends that although petitioner appears to have violated the mandatory and jurisdictional 120+30 day periods, petitioner's judicial claims should be exempted from its strict application considering that said judicial claims were filed during the exception period, that is, after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 but before its revocation in *Aichi* on October 6, 2010.[17]

As to petitioner's judicial claims for refund or issuance of TCC representing excess input VAT for the 3rd and 4th quarters of 2007, docketed as CTA Case No. 7960, petitioner avers that the CTA Third Division erred when it ruled that petitioner is entitled to a refund amounting to P6,634.29 only and disallowed the rest of its claim for failure to meet the rules laid down in Section 113 (A) and (B) of the 1997 Tax Code.

Allegedly, the CTA Third Division should have considered the official receipts **AND** the corresponding sales invoices as proof of petitioner's input taxes.[18] Reliance is then made on *AT&T Communications Service Philippines, Inc. v. Commissioner of Internal Revenue*[19] and *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[20] to support its thesis that sales invoice and official receipts taken collectively are necessary to substantiate the actual amount or quantity of goods sold and their selling price (proof of transaction) and the best means to prove the input VAT payments (proof of payments).[21]

Respondent's Arguments

On the other hand, respondent argues that petitioner violated the doctrine of exhaustion of administrative remedies. The party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention.[22]

In addition, respondent contends that the CTA Third Division correctly disallowed petitioner's input VAT on purchases of services for failure to meet

[16] G.R. No. 187485, February 12, 2013.
[17] *Rollo*, unpaginated.
[18] *Id*, p. 90.
[19] G.R. No. 182364, August 3, 2010.
[20] G.R. No. 181858, November 24, 2010.
[21] *Rollo*, p. 93.
[22] *Cf. Rollo*, unpaginated.

the rules laid down in Section 113 (A) and (B) of the 1997 Tax Code. She said that the afore-said section provides for mandatory invoicing requirements which a VAT-registered person must comply with. Respondent cautioned that an allowance of a claim for refund or issuance of TCC, absent the mandatory information required, will open the gates for fraud to the prejudice of the government.[23]

Regarding petitioner's objections to the application of the *Aichi* ruling, respondent alleges that no vested right of petitioner was impaired nor violated by the retroactive application of the doctrine. Respondent reasoned that the right to refund or credit is not absolute, complete and unconditional. A claim for refund or credit is not *ipso facto* granted because it is still subject to administrative routine investigation or examination by the respondent to ascertain the validity of the claim.[24]

Finally, respondent behooves the Court that petitioner's reliance on the consolidated cases of *San Roque, Taganito* and *Philex* is misplaced. She said that petitioner never relied on BIR Ruling No. DA-489-03 as it merely argued that it relied in good faith on the then consistent rulings of the CTA.[25]

THE RULING OF THE COURT *EN BANC*

The first issue pertains to the dismissal of petitioner's judicial claims for refund or issuance of TCC in the cases docketed as CTA Case No. 7899 and 7942 on the ground of lack of jurisdiction by the CTA Third Division. Applying the doctrine laid down in *Aichi,*[26] the CTA Third Division found that the petitions for review filed by petitioner in CTA Case No. 7899 and 7942 were prematurely filed and consequently dismissed the same for lack of jurisdiction.

Records show that petitioner filed its administrative claim for refund or issuance of TCC for its unutilized input VAT for the taxable year 2007 on March 30, 2009. The judicial claim for its unutilized input VAT covering the first quarter of 2007, docketed as CTA Case No. 7899, was filed on March 31, 2007 or one (1) day after petitioner's filing of its administrative claim. On the other hand, the judicial claim for its unutilized input VAT covering the second quarter of 2007, docketed as CTA Case No. 7942, was filed on June 30, 2009 or 28 days before the lapse of the 120-day period for respondent CIR to decide the claim.

[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Supra*, note 9.

Clearly, the CTA Third Division was correct in dismissing these cases for having been prematurely filed, based on prevailing jurisprudence when the assailed Decision was rendered.

Recent pronouncements of the Supreme Court *En Banc*, however, specifically in the cases of *San Roque, Taganito, and Philex,*[27] declared:

> "**BIR Ruling No. DA-489-03** does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.**" Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.
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> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, **through a general interpretative rule issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA**. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.
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> xxx xxx xxx
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> Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the Atlas doctrine by Mirant and Aichi is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the Atlas doctrine did not result in Atlas, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under Atlas prior to its abandonment. This Court is applying Mirant and Aichi prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. xxx
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> xxx xxx xxx

[27] Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue, G.R. Nos. 187485, 196113, and 197156, February 12, 2013. Also note 16.

> Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.
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> **BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits**, xxx
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> Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, **all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.**" (*Emphases added and citations omitted*)

Respondent's argument that petitioner cannot rely upon the doctrine laid down in *San Roque* is unavailing. The ruling itself grants petitioner the benefit of the excepted period even though petitioner, through its pleadings filed before this Court, consistently stated that it relied on the previous pronouncements of the CTA on the matter without ever mentioning its reliance on BIR Ruling No. DA-489-03. The Supreme Court unequivocally stated that the BIR ruling is a **GENERAL INTERPRETATIVE RULE** which misled "all taxpayers into filing prematurely judicial claims before the CTA" because "it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits."

In the case of *Nippon,*[28] the Supreme Court clarified *San Roque, Taganito and Philex* in saying that:

> "Pursuant to the ruling of the Court in *San Roque*, the 120+30-day period is mandatory and jurisdictional from the time of the effectivity of Republic Act (R.A.) No. 8424 or the Tax Reform Act of 1997. The Court, however, **took into consideration the issuance by the BIR of Ruling No. DA-489-03, which expressly stated that the taxpayer need not wait for the lapse of the 120-day period before seeking judicial relief**. Because taxpayers cannot be faulted for relying on this declaration by the BIR, the Court deemed it reasonable to allow taxpayers to file its judicial claim even before the expiration of the 120-day period. This exception is to be observed from the issuance of the said ruling on December 10, 2003 up until its reversal by Aichi on October 6, 2010. In the landmark case of *Aichi*, this Court made a definitive statement that the failure of a taxpayer to wait for the decision of the CIR or the lapse of the 120-day period will render the filing of the judicial claim with the CTA premature. As a consequence, its promulgation once again made it clear to the taxpayers that the 120+ 30-day period must be observed." (*Emphases added and citation omitted*)

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[28] Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 196907, March 13, 2013.

As guide, the consolidated cases of *Mindanao I and II*[29] are enlightening, wherein the Supreme Court stated:

> "We summarize the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code, as follows:
>
> (1) An administrative claim must be filed with the CIR **within two years** after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The CIR **has 120 days** from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.
>
> (3) A judicial claim must be filed with the CTA **within 30 days** from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.
>
> (4) **All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods**." (*Emphases added*)

Based on the foregoing, the Supreme Court reiterated that the observance of the 120+30-day period is mandatory and jurisdictional. By way of exception, taxpayers who from December 10, 2003 up to October 6, 2010 filed their judicial claims for tax refund or issuance of tax credit certificate without regard to the 120+30-day period are exempted from the strict application of the same. As was discussed in *San Roque, Taganito and Philex*, **premature filing during the excepted period does not constitute an infirmity on the jurisdiction of the Court of Tax Appeals to act on the claim**.

As afore-discussed, petitioner filed its administrative claim for refund or issuance of TCC for its unutilized input VAT for the taxable year 2007 on March 30, 2009. Its judicial claims were filed before the CTA on March 31, 2009 for its unutilized input VAT covering the first quarter and on June 30, 2009 for its unutilized input VAT covering the second quarter, both of taxable year 2007.

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[29] Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue, G.R. No. 193301, *and* Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue, G.R. No. 194637, *both* March 11, 2013.

In fine, the administrative claim was filed with the CIR within two years after the close of the taxable quarter when the zero-rated sales were made. This is well within the two-year period provided by Section 112 (A) of the NIRC of 1997 as amended by R.A. No. 9337. More importantly, **the judicial claims were filed within the period** during which petitioner may appropriately rely on BIR Ruling No. DA-489-03, thereby allowing the CTA Third Division to acquire jurisdiction thereon.

The Court *En Banc* shall now discuss and resolve the second issue.

In the case docketed as CTA Case No. 7960, the CTA Third Division partly granted petitioner's judicial claim for refund or issuance of TCC in the **reduced amount** of SIX THOUSAND SIX HUNDRED THIRTY FOUR PESOS and 29/100 (P6,634.29) representing the unutilized input VAT paid on its domestic purchases of goods and services which are attributable to zero-rated sales for the third and fourth quarters of calendar year 2007.[30]

The CTA Third Division found that petitioner's gross receipts from power generation services rendered to NPC for the third and fourth quarters of 2007 in the total amount of P175,965,639.50 qualifies for VAT zero-rating. It, however, ruled that only the invoice issued by 128 Convenient Store[31] and official receipt issued by SGV & Co.,[32] amounting to P6,634.29, complied with the requirements prescribed under Section 113(A) and (B) of the 1997 NIRC, as amended by Republic Act (RA) No. 9337, which provides that:

> "SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. -
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> (A) Invoicing Requirements. - A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
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> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:

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[30] *Rollo*, pp. 135-136.
[31] Exhibit "S.15".
[32] Exhibit "T.60".

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

(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: Provided, That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: "Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client."

The rest of the input VAT claims for third and fourth quarters of 2007 were disallowed by the CTA Third Division based on the following grounds:

a) domestic purchases of goods and services were supported by invoices or receipts which were issued outside of the third and fourth quarters of 2007;

b) purchases of goods or services were supported by invoices or receipts, respectively, with company TIN and VAT component not indicated thereon;

c) purchases of goods and services were supported by receipts or invoices, respectively which were not in the name of the company;

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> d) purchases of goods or services were supported by invoices or receipts, respectively, wherein no VAT component was separately indicated therein;
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> e) purchases of goods or services were supported by invoices or receipts, respectively, with company name, TIN and VAT component not indicated therein;
>
> f) purchases of goods or services were supported by invoices or receipts, respectively, with company TIN not indicated therein; and,
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> g) purchases of goods were not supported by invoices and purchases of services were not supported by receipts. [33]

Petitioner alleges that "to support the actual amount and payment of input VAT, petitioner offered in evidence the VAT official receipts as proof of such payment together with the corresponding VAT sales invoices as proof of such transactions and where the company TIN and the VAT component are clearly indicated. These pieces of documentary evidence taken together are sufficient to prove that input taxes were incurred and paid."[34] Petitioner cites *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*[35] and *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[36] as grounds for its claim that VAT official receipts and sales invoices can be taken together in support of and as proof of payment of input tax.

The Court *En Banc* finds petitioner's contentions bereft of merit.

In *AT&T*, the Supreme Court effectively recognized that VAT invoices are sufficient for purposes of proving AT&T's sale of services and that the *then* Section 113 of the 1997 NIRC does not create a distinction between sales invoice and official receipt, *viz*:

> "**Section 113 of the Tax Code does not create a distinction between a sales invoice and an official receipt.**
>
> '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

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[33] *Rollo*, pp. 30-31.
[34] *Id*, p. 97.
[35] *Supra*, note 19.
[36] Supra, note 20.

> following information shall be indicated in the invoice or receipt:
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> (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.'
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> Section 110 of the 1997 Tax Code in fact provides:
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> 'Section 110. Tax Credits. —
>
> A. Creditable Input Tax. —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
> (b) Purchase of services on which a value-added tax has actually been paid.
>
> Parenthetically, to determine the validity of petitioner's claim as to unutilized input VAT, an invoice would suffice provided the requirements under Sections 113 and 237 of the Tax Code are met.
>
> Sales invoices are recognized commercial documents to facilitate trade or credit transactions. They are proofs that a business transaction has been concluded, hence, should not be considered bereft of probative value. Only the preponderance of evidence threshold as applied in ordinary civil cases is needed to substantiate a claim for tax refund proper." (*Emphases, italics, and underscoring omitted*)

On the other hand, in *Kepco*, the Supreme Court opined, among others, that under the *then existing* VAT law, a VAT invoice is the seller's best proof of the sale of goods or services to the buyer while a VAT receipt is the buyer's best evidence of the payment of goods or services by the seller. Pertinent pronouncements of the Supreme Court in *Kepco* are quoted hereunder:

> "Kepco further argues that under Section 113(A) of the 1997 NIRC, invoices and official receipts are used **interchangeably for purposes of substantiating input VAT**. Hence, it claims that the CTA should have accepted its substantiation of input VAT on (1) P64,509.50 on purchases of goods with official receipts and (2) P256,689.98 on purchases of services with invoices.
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> **The Court is not persuaded.**

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> Under the law, a VAT invoice is necessary for every sale, barter or exchange of goods or properties while a VAT official receipt properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. In *Commissioner of Internal Revenue v. Manila Mining Corporation*, the Court distinguished an invoice from a receipt, thus:
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>> A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.
>>
>> A "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer. [37]
>
> In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (proof of transaction), and the best means to prove the input VAT payments (proof of payment). Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. **Certainly, neither does the law intend the two to be used alternatively.**[38] (*Emphases added* and *citations omitted*)

Notably, *AT&T* and *Kepco* involve claims for VAT refund which were incurred in 2002, when the VAT law has a different substantiation requirement prior to the effectivity of RA No. 9337[39] on November 1, 2005.

In the instant case, however, Section 113 (A) and (B) of the 1997 NIRC, as amended by RA No. 9337, should be applied in determining petitioner's compliance with the substantiation requirements for input VAT refund as it is the prevailing law when the transactions herein involved were made. And, as found by the CTA Third Division, petitioner failed to sufficiently comply with the substantiation requirements mandated under Section 113 (A) and (B) of the 1997 NIRC, as amended by RA No. 9337. Petitioner's failure to do so is fatal to its claim for refund or issuance of tax credit certificate. In view thereof, the assailed Decision of the CTA Third Division as regards CTA Case No. 7960 must necessarily be upheld as it correctly ruled that petitioner is entitled to a

on

[37] Portion cited by petitioner.
[38] *Id*, note 20.
[39] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

refund or issuance of a TCC, representing unutilized input VAT paid on its domestic purchases of goods and services attributable to zero-rated sales for the third and fourth quarters of 2007, only in the reduced amount of P6,634.29.

WHEREFORE, premises considered, this Court resolves to **PARTIALLY GRANT** the instant petition for review. The assailed Decision dated August 1, 2012 and the assailed Resolution dated November 7, 2012 promulgated by the CTA Third Division are hereby **PARTIALLY REVERSED** and **SET ASIDE**.

Accordingly, petitioner's claims for VAT refund or issuance of TCC under CTA Case Nos. 7899 and 7942 are hereby **REMANDED** to the CTA Third Division for the proper and immediate determination of the propriety of the claim. Thereafter, the CTA Third Division shall make a determination of the specific amount of refund or TCC to which petitioner is entitled to, if any.

As to the petitioner's claim for VAT refund or issuance of TCC under CTA Case No. 7960, the instant petition for review is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice