REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

PHILEX MINING CORPORATION, Petitioner,	**CTA CASE NO. 7720**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** *and* **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** DEC 01 2010 ; 1:30pm

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AMENDED DECISION

CASANOVA, *J.*:

This resolves respondent's *Motion for Partial Reconsideration* filed on August 3, 2010, seeking reconsideration of the *Decision* promulgated on July 12, 2010, the dispositive portion of which reads:

> "**WHEREFORE**, the Petition for Review is hereby **PARTIALLY GRANTED.** ACCORDINGLY, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of SEVEN MILLION ONE HUNDRED TWENTY NINE THOUSAND FOUR HUNDRED TWENTY FIVE PESOS AND 91/100 (P7,129,425.91) to petitioner, Philex Mining Corporation, representing its unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to its zero-rated sales covering the fourth quarter of taxable year 2005.

SO ORDERED."

In the said *Motion*, respondent alleged that the judicial filing of petitioner's claim for refund for its unutilized input value-added tax (VAT) for the fourth quarter of taxable year 2005 was not done within the two-year prescriptive period provided under Section 112(A) of the National Internal Revenue Code (NIRC) of 1997. Respondent also cited the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation* as the applicable jurisprudence in the present case. Additionally, respondent avered that the specific law governing the periods for filing judicial claims of excess unutilized input taxes attributable to VAT zero-rated sales after the filing of an administrative claim is Section 112(D) of the NIRC of 1997. In applying the said provision to this case, respondent claims that the *Petition for Review* was filed way beyond the period prescribed by law.

For its part, petitioner filed its *Comment (On Respondent's "Motion for Partial Reconsideration")* on August 26, 2010, stressing that the prevailing ruling of the Supreme Court at the time when it filed its Petition for Review is *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[1], where it was held that the counting of the two-year prescriptive period is reckoned from the date of filing of the quarterly VAT returns. On such basis, petitioner maintains that its claim for refund of excess input tax for the 4th quarter of 2005 is not barred by prescription. Furthermore, petitioner opposes respondent's disquisition that, on the basis of 112(D) of NIRC of 1997, as amended, petitioner failed to file its judicial claim within the period provided therein.

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[1] G.R. No. 141104 and 148763, June 8, 2007

After a close scrutiny of the parties' arguments as well as the pertinent doctrine and recent jurisprudence applicable in this case, this Court is constrained to give a second hard look on the facts surrounding the case and the findings in the assailed *Decision*, specifically, regarding the issue of prescription.

We agree with respondent that the applicable jurisprudence in this petition is the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[2]. However, in view of the very recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc.*[3], wherein the High Court said:

> "(T)o 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.
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> xxx xxx xxx
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> Bearing this in mind, we shall now proceed to determine whether the administrative claim was timely filed.
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> xxx xxx xxx
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> Applying this to the present case, the two-year period to file a claim for tax refund/credit for the period July 1, 2002 to September 30, 2002 expired on September 30, 2004. Hence, respondent's administrative claim was timely filed.
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> xxx xxx xxx
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> (S)ubsection (A) of the said provision (Section 112) 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 xxx apply for the issuance of a tax credit certificate or refund'**

[2] G.R. No. 172129, September 12, 2008
[3] G.R. No. 184823, October 6, 2010

> **refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA**. xxx" (*Emphasis supplied*)

Under the afore-quoted decision, the two-year prescriptive period for filing of claims refers only to administrative claim and not to judicial claim.

Thus, in the instant case, counting from the close of the fourth taxable quarter of 2005, which is December 31, 2005, petitioner had until December 31, 2007 within which to file its administrative claim for refund. Clearly, the administrative claim for refund, which was filed on June 20, 2007, was well within the two year prescriptive period provided by law. However, with regard to the timeliness of petitioner's judicial claim, which was filed on January 17, 2008, it is necessary to quote Section 112(C), which is a reproduction of Section 112(D) of the NIRC of 1997, as amended, to wit:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
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> (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.
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> 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 supplied)*

In relation thereto, Section 7 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, provides:

> "SEC. 7. *Jurisdiction.* - The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> xxx xxx xxx
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**;" (*Emphasis supplied*)

Significantly, Section 11 also provides the period of limitation within which the petition must be filed, to wit:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days** from the receipt of the decision or ruling or in the case of inaction as herein provided, **from the expiration of the period fixed by law to act thereon.** xxx" (*Emphasis supplied*)

In applying the above-quoted provisions to the instant petition, respondent should have acted on petitioner's application for refund until October 18, 2007, the

120-day reckoning period from June 20, 2007, the date petitioner filed its application for refund before the Commissioner of Internal Revenue, which is the date when petitioner presumably submitted the supporting documents. Now, counting from October 18, 2007, petitioner had 30 days or until November 17, 2007, within which to appeal its claim for refund before this Court. Since the instant *Petition for Review* was filed only on January 17, 2008, it is therefore clear that petitioner filed its judicial claim for refund beyond the 30-day period mandated by law.

Petitioner, on the other hand, argues that the material date for the reckoning of the 120 days provided in the above-quoted provision is the date of submission of complete documents and not the date of filing of the application for the administrative claim. Petitioner is of the belief that respondent has the burden to present evidence as to whether or not complete documents have been submitted. There being no evidence as to whether complete documents were submitted, petitioner opines that there is no way of finding when the 120-day period will commence and end and in determining when to start counting the 30-day period to appeal to the Court of Tax Appeals.

We are not persuaded.

In the same case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia Inc.*[4], the Supreme Court emphasized the importance of Section 112(D) [now Section 112(C)] of the NIRC of 1997, as amended, in filing an appeal with this Court, to wit:

> "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**

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[4] *Supra.*

> **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**." *(Emphasis supplied)*

Likewise, it has long been settled that tax refunds are construed in *strictissimi juris* against the taxpayer and in favor of the government. Tax refunds in relation to the VAT are in the nature of such exemptions. The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.[5]

Accordingly, petitioner, and not respondent, is the one who bears the burden of proving whether it was able to file the instant Petition within the prescriptive period. Failing in this regard, petitioner is now barred from seeking recourse to this Court for its tax refund claim.

At this juncture, it must be pointed out that the right to appeal is not part of due process but a mere statutory privilege that has to be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail of the same must comply with the requirements of the rules.[6] Failing to do so, the right to appeal is lost.

Therefore, petitioner's failure to comply with the provisions of Section 112(D) of the NIRC of 1997, Section 7(a)(2) and Section 11 of Republic Act No. 1125, as

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[5] Panasonic Communications Imaging Corporation of the Philippines (*formerly* Matsushita Business Machine Corporation of the Philippines vs. Commissioner of Internal Revenue, G.R. No. 178090, February 8, 2010

[6] Producers Bank of the Philippines vs. Honorable Court of Appeals, *et al.*, G.R. No. 126620, April 17, 2002

amended by Republic Act No. 9282, by belatedly filing the Petition for Review on January 17, 2008 would mean that this Court cannot acquire jurisdiction over the present case.

WHEREFORE, the instant *Motion for Partial Reconsideration* is hereby **GRANTED**. Accordingly, the Decision dated July 12, 2010 is hereby **REVERSED** and the *Petition for Review* is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division