REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MINDANAO I GEOTHERMAL PARTNERSHIP, Petitioner,	**CTA CASE NO. 7801**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 3 0 2011 10:50 a.m.

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DECISION

CASTAÑEDA, JR., *J*.:

This Petition for Review seeks the refund or issuance of tax credit certificate in the amount of P8,471,410.30, representing alleged excess and unutilized input value-added tax (VAT) attributable to zero-rated sales of Mindanao I Geothermal Partnership (petitioner) for taxable year 2006.

Petitioner is a partnership duly registered with the Securities and Exchange Commission (SEC), with principal address at 36th Floor, Tower I, The Enterprise Center, 6766 Ayala Avenue, Makati City.[1] It is a duly

[1] Par. 1, Joint Stipulation of Facts and Issue, (JSFI), docket, p. 98.

registered VAT taxpayer, with Taxpayer Identification No. (TIN) 004-712-984-000.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. He holds office at the 4th Floor, BIR National Office Building, Agham Road, Quezon City.

Petitioner has a geothermal power plant which has been accredited by the Department of Energy (DOE) as a Private Sector Generation Facility, as evidenced by its DOE Certificate of Accreditation No. 95-03-07 issued on June 15, 1995.[3]

Petitioner filed its Quarterly VAT Returns for taxable year 2006 on the following dates:

Exhibit	Year 2006	Date filed
"C"	1st Qtr	April 24, 2006
"D"	1st Qtr (amended)	July 25, 2006
"E"	2nd Qtr	July 25, 2006
"F"	3rd Qtr	October 23, 2006
"G"	4th Qtr	January 22, 2007

On February 5, 2008, petitioner filed with the BIR a request for issuance of tax credit certificate for purported excess input VAT for taxable year 2006 in the amount of P10,776,696.32.[4]

Due to respondent's inaction, petitioner filed with this Court a Petition for Review on June 27, 2008, praying for the refund or issuance of tax credit *Jc*

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[2] Exhibit "A".
[3] Exhibit "B".
[4] Exhibits "H" to "H-2".

certificate in the amount of P8,471,410.30 for its alleged unutilized input VAT for taxable year 2006.[5]

Respondent filed his Answer[6] on September 2, 2008, interposing the following counter-arguments:

> "5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 6. Petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected.
>
> 7. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112(A) of the Tax Code of 1997, as amended.
>
> 8. Petitioner must prove compliance with the following in order to be entitled to a claim for refund:
>
> a) Registration requirements of a value-added taxpayer under the pertinent provision of the Tax Code of 1997, as amended and its implementing regulations;
>
> b) Invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of 1997, as amended;
>
> Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003);
>
> c) Submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (c) of the

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[5] Petitioner erroneously indicated the claimed amount of P8,471,410.30 as pertaining to the period of January 1 to March 31, 2006, docket, p. 13.

[6] Docket, pp. 54-61.

Tax Code of 1997, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition sine qua non prior to the filing of judicial claim in accordance with Section 229 of the Tax Code of 1997, as amended;

d) That the input taxes in the amount of Eight Million Four Hundred Seventy One Thousand Four Hundred Ten Pesos and 30/100 (P8,471,410.30) allegedly representing input VAT from its domestic purchases of goods other than capital goods and services were:

1. attributable to its zero-rated or effectively zero-rated sales;
2. incurred or paid by petitioner; and
3. not applied against any output VAT liability.

e) That the claim for refund in the amount of Eight Million Four Hundred Seventy One Thousand Four Hundred Ten Pesos and 30/100 (P8,471,410.30) representing unutilized input tax was filed within two (2) years after the close of taxable quarter when sales were made in accordance with Section 112 (a) of the Tax Code of 1997, as amended; and

f) Petitioner must likewise prove that it has complied with the governing rules and regulations with regard to recovery of taxes erroneously or illegally received as provided in Section 112(a) and 229 of the Tax Code of 1997, as amended.

9. For the judicial claim for refund to prosper, petitioner must not only prove that it is a VAT-registered entity, it must substantiate the input VAT paid by purchase invoices or official receipts *(Commissioner of Internal Revenue vs. Manila Mining Corporation, 468 SCRA 571)*. Such that failure to comply with the requirements for a valid request for refund including the requirement for a valid sales invoice is fatal to the claim for refund. *(EG & G*

Omni, Inc. v. CIR, CTA Case No. 5987, March 26, 2004)

10. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

11. Taxes collected are presumed to be in accordance with laws and regulations.

12. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.

13. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption *(Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005)*. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (Sealand Service vs. Court of Appeals, 357 SCRA 444)."

During trial, petitioner presented documentary and testimonial evidence. Respondent's counsel, however, manifested that she has no witness to present and that she is submitting the case for decision based on the pleadings.[7]

On June 22, 2010, this Court considered the case submitted for decision, with petitioner submitting its Memorandum[8] on April 23, 2010 and respondent submitting his Memorandum[9] on June 18, 2010.

[7] Minutes of the hearing dated March 17, 2010, docket, p. 364.
[8] Docket, pp. 435-465.
[9] Docket, pp. 477-496.

The issues[10], as jointly stipulated by the parties, are the following:

"1. Whether or not petitioner's administrative claim was timely filed.

2. Whether or not petitioner has complied with the submission of complete documents in support of its administrative claim for refund pursuant to Section 112 (D) of the Tax Code of 1997, as amended.

3. Whether or not petitioner's judicial claim was timely filed.

4. Whether or not petitioner's sale of generated power qualifies as zero-rated sales Section 108 (B) of the NIRC, as amended by R.A. No. 9337.

5. Whether or not petitioner's VAT zero-rated sales are duly supported by VAT-compliant invoices and official receipts.

6. Whether or not the amount of P8,471,410.30 represents the accumulated excess and unutilized creditable input taxes paid and/or incurred by petitioner within the 1st, 2nd, 3rd, and 4th Quarters of the Year 2006.

7. Whether or not petitioner's alleged excess and unutilized creditable input taxes for the Year 2006 is duly supported by pertinent documents, such as VAT invoices, and official receipts.

8. Whether or not petitioner's alleged excess and unutilized creditable input taxes for the Year 2006 were directly attributable to its VAT zero-rated sales.

9. Whether or not the alleged accumulated excess and unutilized input taxes paid by petitioner within the Year 2006 in the total amount of P8,471,410.30 remains unutilized.

10. And in sum, whether or not petitioner is entitled to the claim for refund or tax credit in the alleged accumulated amount of P8,471,410.30 representing its excess and unutilized creditable input taxes for the Year 2006."

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[10] Docket, pp. 99-100.

The foregoing issues may be summarized as follows:

> "Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P8,471,410.30, representing unutilized excess input VAT attributable to its zero-rated sales of generated power for taxable year 2006."

In its Quarterly VAT Returns for the four quarters of 2006, petitioner reflected VAT zero-rated sales in the amount of P375,656,506.01, taxable sales in the amount of P19,210,716.87 with the corresponding output VAT of P2,305,286.02 and excess input VAT of P8,471,410.30, broken down as follows:

Exh.	Year 2006	Zero-rated Sales/Receipts	Taxable Sales/Receipts	Output VAT	Input VAT	Excess Input VAT
"D"	1st Qtr (amended)	P194,583,929.00	P 4,623,665.42	P 554,839.85	P 3,450,087.30	P2,895,247.45
"E"	2nd Qtr	181,072,577.01	5,180,819.36	621,698.32	2,750,598.37	2,128,900.05
"F"	3rd Qtr	-	5,118,199.92	614,183.99	1,820,852.88	1,206,668.89
"G"	4th Qtr	-	4,288,032.17	514,563.86	2,755,157.77	2,240,593.91
		P375,656,506.01	**P19,210,716.87**	**P2,305,286.02**	**P10,776,696.32**	**P8,471,410.30**

The reported excess input VAT for the four quarters of 2006 in the amount of P8,471,410.30 is the subject of the present claim for refund or issuance of tax credit certificate.

Sections 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provide the basis and procedure for refunds or tax credits of input tax attributable to zero-rated or effectively zero-rated sales, to wit:

> "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

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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 of 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.

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(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."

Based on the afore-quoted provisions, in order to be entitled to a refund or tax credit of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

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 or effectively zero-rated sales; *ju*

4. that the input taxes were not applied against any output tax liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

Anent the first requisite, it is clear that pursuant to Republic Act (R.A.) No. 9136 or the "Electric Power Industry Reform Act of 2001" (EPIRA), sales of generated power by generation companies shall be VAT zero-rated effective June 26, 2001.

Section 6 of R.A. No. 9136 states that:

> "SECTION 6. *Generation Sector.* - Generation of electric power, a business affected with public interest shall be competitive and open.
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> xxx xxx xxx
>
> Pursuant to the objective of lowering electricity rates to end-users, **sales of generated power by generation companies shall be value added tax zero-rated.**" *(Emphasis supplied)*

The pertinent provisions of the NIRC of 1997 (prior to its amendment under Republic Act Nos. 9238 and 9337) were deemed amended by R.A. No. 9136 by modifying the VAT rate applicable to sales of generated power by generation companies from ten percent (10%) to zero percent (0%).

However, upon the enactment of R.A. No. 9337, certain amendments were introduced, particularly, on the Expanded VAT provisions of the NIRC. One of the relevant changes is the express repeal of the zero percent VAT rate imposed on the sales of generated power by generation companies under R.A. No. 9136.

The significant portions of the repealirg clause of R.A. No. 9337 provide:

"SECTION 24. *Repealing Clause.* - The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:

xxx xxx xxx

(B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and"

Notwithstanding the said repeal, the sale of generated power or fuel through renewable source of energy continued to be VAT zero-rated under Section 108(B)(7) of the NIRC of 1997, as amended, which states:

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

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(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:

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(7) **Sale of power or fuel generated through renewable sources of energy such as**, but not limited to, biomass, solar, wind, hydropower, **geothermal**, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels." (*Emphasis supplied*)

In relation thereto, Section 4.108-3(f) of Revenue Regulations No. 16-2005 provides:

"SECTION 4.108-3. *Definitions and Specific Rules on Selected Services.* -

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(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts; *Provided*, That **sale of power or fuel generated through renewable sources of energy such as,**

but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.

'*Generation companies*' refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities." *(Emphasis supplied)*

Hence, in order to qualify for VAT zero-rating under Section 108(B)(7) of R.A. No. 9337, petitioner must be able to prove that it is a generation company and that it is engaged in the sale of power or fuel generated through renewable source of energy.

As earlier stated, petitioner reported a total amount of P375,656,506.01 VAT zero-rated sales/receipts in its Quarterly VAT Returns for taxable year 2006, detailed as follows:

Exhibit	Year 2006	Zero-rated Sales/Receipts
"D"	1st Qtr	P 194,583,929.00
"E"	2nd Qtr	181,072,577.01
"F"	3rd Qtr	-
"G"	4th Qtr	-
	Total	**P 375,656,506.01**

Based on the findings of the Court-commissioned Independent Certified Public Accountant (CPA)[11], the zero-rated sales reported in the "Summary of Zero-Rated Sales"[12] for taxable year 2006 consisted of sales of

[11] Mr. Michael L. Aguirre, Managing Partner of M.L Aguirre & Co., CPAs.
[12] Exhibit "T", Annex "B".

electricity to Philippine National Oil Company–Energy Development Corporation (PNOC-EDC).

Petitioner submitted its Certificate of Accreditation[13] issued by the Department of Energy, Certificate of Registration[14] issued by the Bureau of Internal Revenue, letter[15] issued by PNOC-EDC to petitioner, letter[16] of DOE to PNOC-EDC, and the related invoices and official receipts[17] issued by petitioner to PNOC-EDC for taxable year 2006 to support the afore-mentioned zero-rated sales.

While these documents proved that petitioner actually derived revenues from sale of power generated through a renewable source of energy, *viz.*, geothermal energy; however, it failed to establish that it is a generation company as defined under Section 4(x) in relation to Section 6 of the EPIRA and under the pertinent provision of Revenue Regulations No. 16-2005, to wit:

"REPUBLIC ACT NO. 9136

SECTION 4. *Definition of Terms.* -

xxx xxx xxx

(x) 'Generation Company' refers to any person or entity authorized by the ERC[18] to operate facilities used in the generation of electricity;" *(Emphasis supplied)*

"REVENUE REGULATIONS NO. 16-2005

"SECTION 4.108-3. *Definitions and Specific Rules on Selected Services.* -

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[13] Exhibit "B".
[14] Exhibit "A".
[15] Attached to Exhibit "H".
[16] Attached to Exhibit "H".
[17] Exhibits "AE.1 to AE.6", "AF.1 to AF.7", "AG.1.1 to AG.4", and "AH.1 to AH.10", inclusive of sub-markings.
[18] Energy Regulatory Commission.

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> '***Generation companies*' refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity**. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities." *(Emphasis supplied)*

Moreover, Section 4(a) of Rule 5 of the Implementing Rules and Regulations of Republic Act No. 9136 provides:

"SECTION 4. *Obligations of a Generation Company.* -

(a) A COC[19] shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.

(i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operational history, a general company profile and other information that ERC may require. Upon making a complete submission to the ERC, such Person shall be issued a COC by the ERC to operate such existing Generation Facility."

Based on the foregoing provisions, it is clear that the entity should be authorized by the ERC to operate the generation facility for it to be considered as a generation company. Specifically, both new and existing Generation

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[19] Certificate of Compliance.

Facilities are required to secure a Certificate of Compliance (COC) from the ERC before it can operate the facilities used for generation of electricity, as provided under the Implementing Rules and Regulations of R.A. No. 9136.

In the recent case of *Mindanao II Geothermal Partnership vs. Commissioner of Intemal Revenue*,[20] the CTA First Division ruled that without the COC, a person cannot be said to be a Generation Company. Hence, failure to submit proof of the approved COC will render the sales of generated power not qualified for VAT zero-rating. The pertinent portion of the decision is quoted below:

> Clearly, no person may engage in the generation of electricity as a new Generation Company unless such person has received a COC from the ERC to operate facilities used in the generation of electricity. Existing generation facility or a generation facility under construction is obligated to submit within ninety (90) days from effectivity of the Rules, to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operational history, a general company profile and other information that the ERC may require. Only upon complete submission of the foregoing requirements that the generation company shall be issued a COC by the ERC to operate such existing generation facility.
>
> Thus, to be a Generation Company, it must have a duly issued COC from the ERC, without which it is not authorized to operate a generation facility. Simply put, without the COC, a person cannot be said to be a Generation Company.
>
> In the case of *Toledo Power Company v. Commissioner of Internal Revenue*, the Court ruled that failure to submit proof of the approved COC will render the sales of generated power not qualified for VAT zero-rating under R.A. No. 9136. The pertinent portion of the Decision is quoted hereunder:
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>> "Pursuant to the above provisions, petitioner filed on June 20, 2002 an application for the issuance of a Certificate of Compliance with the Energy Regulatory Commission, **but it failed to submit proof of the approved Certificate of** gz

[20] CTA Case No. 7800, January 19, 2011.

> **Compliance; thus, its sales of generated power cannot qualify for VAT zero-rating under the EPIRA.**" (Emphasis supplied)
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> Quite recently, the Court in *GBH Power Resources, Inc. [Formerly: Mirant (Philippines) Island Generation Corporation] v. Commissioner of Internal Revenue*, ruled that while GBH proved that it actually derived sales from power generation, it, however, failed to establish that it is a generation company as defined under Section 4 (x) in relation to Section 6 of R.A. No. 9136. Petitioner therein failed to submit its ERC registration and COC, thus it cannot qualify for VAT zero-rating under R.A. No. 9136.
>
> Pursuant to the aforecited cases, there is a need for petitioner to establish that it is authorized to operate as a generation company, as defined under R.A. No. 9136, by presenting its COC from the ERC.

Based on the foregoing and upon perusal of the evidence presented by petitioner, record reveals that it failed to submit its ERC registration and Certificate of Compliance. Nowhere in the records of the case is it shown that petitioner is duly authorized by the ERC to operate facilities used in the generation of electricity.

Thus, in the absence of evidence that petitioner is a generation company, all of the reported zero-rated receipts for the four quarters of 2006 in the amount of P375,656,506.01 cannot qualify for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended by R.A. No. 9337, in relation to Section 4.108-3 of Revenue Regulations No. 16-2005, and Section 4 of Rule 5 of the Implementing Rules and Regulations of R.A. No. 9136.

Finally, as to the timeliness of the filing of the instant claim, the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*[21], held that the

[21] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 should start from the close of the taxable quarter when the relevant sales were made.

The present claim pertains to input VAT incurred during the four quarters of 2006. Reckoned from March 31, 2006, June 30, 2006, September 30, 2006 and December 31, 2006, the close of each taxable quarter covering taxable year 2006, petitioner had until March 31, 2008, June 30, 2008, September 30, 2008 and December 31, 2008 within which to file its claim. Therefore, petitioner's administrative claim for refund filed with the Bureau of Internal Revenue on February 5, 2008 was filed on time.

As to the judicial claim filed by petitioner on June 27, 2008, this Court likewise finds the same to have been filed on time. The High Tribunal in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[22], held that Section 112(D) of the NIRC clearly provides that the Revenue Commissioner has 120 days, from the date of submission of complete documents in support of the application for tax refund, within which to grant or deny the claim. In case of full or partial denial by the Revenue Commissioner, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the Revenue Commissioner. However, if after the 120-day period the Commissioner of Internal Revenue fails to act on the application for refund/tax credit, the remedy of the taxpayer is to appeal the inaction of the Revenue Commissioner to the Court of Tax Appeals within 30 days. ge

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

Based on the above ruling, it is clear that respondent has 120 days from the submission of complete documents supporting petitioner's claim within which to decide on the refund claim. In case of denial or inaction of respondent, petitioner then has thirty days within which to file an appeal before this Court.

In the present case, petitioner filed the administrative claim on February 5, 2008; counting 120 days from the filing of the said administrative claim, respondent had until June 4, 2008, within which to decide. Since respondent did not act on petitioner's administrative claim, petitioner had until July 4, 2008, within which to file its appeal before this Court, as provided under Section 112(D) of the NIRC of 1997.

Since petitioner filed its judicial claim on June 27, 2008, which is well within the thirty-day period to appeal before this Court, this Court finds the judicial claim of petitioner to have been filed on time.

Notwithstanding the foregoing, the present claim cannot be granted considering that, as mentioned earlier, petitioner was not able to prove that it is a generation company qualified for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended by R.A. No. 9337, and in relation to Section 4.108-3 of Revenue Regulations No. 16-2005, and Section 4 of Rule 5 of the Implementing Rules and Regulations of R.A. No. 9136.

Consequently, petitioner's claim for refund or issuance of tax credit certificate in the amount of P8,471,410.30, alleged to be representing its input VAT attributable to zero-rated sales/receipts from power generation services rendered to PNOC-EDC for taxable year 2006, cannot be granted.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO 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

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