REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CORAL BAY NICKEL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1269
(CTA Case No. 7895)

x- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CORAL BAY NICKEL CORPORATION,
Respondent.

CTA EB NO. 1270
(CTA Case No. 7895)

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

JUN 29 2016 2:15 p.m.

x- -x

DECISION

COTANGCO-MANALASTAS, *J.*:

Before this Court are consolidated *Petitions for Review* assailing the *Decision*[1] and *Resolution*[2] promulgated on September 1, 2014 and January 27, 2015, respectively, by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 7895, entitled "Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue", which ordered the Commissioner of Internal Revenue (CIR) to refund or issue a tax credit certificate (TCC) in favor of Coral Bay Nickel Corporation (CBNC) the amount of P5,706,706.49, representing its unutilized excess input value-added tax (VAT) for the four quarters of 2007.

FACTS OF THE CASE

The facts as narrated in the assailed Decision:

> Petitioner Coral Bay Nickel Corporation is a Philippine corporation registered with and licensed by the Securities and Exchange Commission (SEC) to engage in the manufacture and exportation of nickel/cobalt mixed sulfide, with principal office address at Barangay Rio Tuba, Municipality of Bataraza, Palawan. It is a VAT-registered entity with Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 8RC0000019300 VAT and Taxpayer's Identification Number (TIN) 005-961-540-000. It is also registered with the Philippine Economic Zone Authority (PEZA) as indicated in its PEZA Registration Certificate No. 02-072 dated December 27, 2002.
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> Respondent, on the other hand is the Commissioner of Internal Revenue (CIR) empowered to perform the duties of her office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Diliman, Quezon City.
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> Petitioner claims that, as a PEZA registered entity, it is entitled to tax incentives such as Income Tax Holiday; tax and duty-free importation of merchandise which include raw materials, capital equipment, machineries and spare parts; exemption from wharfage dues and export tax; VAT zero

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[1] *Rollo*, pp. 94 127.
[2] *Rollo*, pp. 129 138.

rating of local purchases subject to compliance with BIR and PEZA requirements; and exemption from payment of any and all local government imposts, fees, licenses or taxes except real estate tax.

On September 1, 2004, petitioner entered into an Off-Take Agreement with Sumitomo Metal Mining Co., Ltd. (SMMC), a Japanese corporation, for the export of nickel cobalt mixed sulfide.

Pursuant to the said agreement, petitioner exported nickel cobalt mixed sulfide to SMMC during the 1st, 2nd, 3rd and 4th quarters of taxable year 2007 in the amounts of P4,284,213,687.40, P3,669,203,503.70, P3,336,098,698.16 and P2,254,998,860.43, respectively.

During the same period, petitioner purchased goods and services which were consumed and rendered outside the PEZA Zone, to which it incurred input VAT in the amount of P22,522,878.86.

As a qualified Large Taxpayer, petitioner filed all its Quarterly VAT Returns for the taxable year 2007, as well as amendments thereto, through the Electronic Filing and Payment System (EFPS) of the BIR on the following dates:

PERIOD COVERED (2007)		**DATE FILED**	**EXHIBIT**
First Quarter	Original return	April 23, 2007	"H^{4}-1"
	First amendment	April 25, 2007	"I^{4}-1"
	Second amendment	April 30, 2007	"J^{4}-1"
	Third amendment	May 02, 2007	"K^{4}-1"
	Fourth amendment	January 15, 2009	"L^{4}-1"
	Fifth amendment	January 28, 2009	"M^{4}-1"
	Sixth amendment	March 30, 2009	"K"
Second Quarter	Original return	July 23, 2007	"L"
	First amendment	July 24, 2007	"M"
	Second amendment	March 30, 2009	"N"
Third Quarter	Original return	October 22, 2007	"O"
	Amended return	March 30, 2009	"P"

Fourth Quarter	Original return	January 23, 2008	"Q"
	Amended return	March 30, 2009	"R"

On March 31, 2009, petitioner filed its administrative claim for tax credit certificate/refund for the unutilized input VAT for taxable year 2007 in the amount of P22,522,878.86 along with the attached Application for Tax Credits/Refunds (BIR Form No. 1914) and all supporting documents with the Large Taxpayers Service — Large Taxpayer Audit and Investigation Division II (Revenue District Office No. 121).

Petitioner also filed on the same day, March 31, 2009, the instant Petition for Review before this Court.

In her Answer[8] filed on May 22, 2009, respondent interposed the following special and affirmative defenses, thus:

> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).
>
> 5. (sic)The amount of P22,522,878.86 being claimed by petitioner as alleged unutilized input VAT for the period January 1, 2007 to December 31, 2007 was not properly documented.
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> 6. Petitioner must prove that it has complied with the provisions of Section 112 (A) and (D) of the National Internal Revenue Code of 1997 (1997 Tax Code) on the prescriptive period for claims for VAT refund/credit.
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> 7. Petitioner must prove compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative claim for refund, the administrative claim thereof being mere pro-forma. Further, Section 112 (D) of the 1997 Tax Code, as amended, requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

> 8. Petitioner must prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations 7-95.
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> 9. In an action for refund/credit, 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/credit (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670);
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> 10. 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).
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> 11. The Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of petitioner to comply with the provisions of Section 112 (D) of the 1997 Tax Code xxx xxx xxx.
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> 12. As stated in the petition, petitioner filed the administrative and judicial claim for refund with respondent on the same day, March 31, 2009. Obviously the 120 days given to respondent to decide on the claim had not yet lapsed when the petition was filed. The petition was prematurely filed, hence, it must be dismissed for lack of jurisdiction.

After trial, the CTA Third Division found that out of the P13,544,514,749.69 zero-rated sales reported by petitioner in its 2007 Quarterly VAT Returns, only the amount of P12,887,848,507.31 qualifies for VAT zero-rating under Section 106(A)(2)(a)(l) of the Tax Code; and that out of the P22,522,878.86 input VAT reported by petitioner for the year 2007, only the amount of P5,997,476.63 represents its valid input VAT, computed as follows:

Input VAT Claim	22,522,878.86
Less: Disallowances	
Per Independent CPA's Report	2,257,648.76

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Per this Court's further verification[3]	14,267,753.47
Total Disallowances	16,525,402.23
VALID INPUT VAT	**5,997,476.63**

The dispositive portion of the assailed *Decision* dated September 1, 2014, partially granting CNBC's Petition for Review is quoted below:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P5,706,706.49, representing its unutilized excess input VAT for the four taxable quarters of 2007 attributable to its zero-rated sales for the same period.
>
> **SO ORDERED.**"

The CTA Third Division denied the motion for reconsideration filed by CNBC and CIR in its January 27, 2015 *Resolution.*

Hence, the instant consolidated petitions separately filed by CNBC and CIR.

CNBC submits that the Third Division erred based on the following grounds:

I. Disallowed input VAT amounting to P13,178,915.64 is covered by official receipts that are compliant with the invoicing requirements under the National Internal Revenue Code of 1997 (Tax Code) and related Bureau of Internal Revenue (BIR) issuances;

II. The Tax Code and other related BIR issuances do not require that any alteration or addition to the

[3] Related to CNBCs purchases of goods or services which are supported by VAT invoices or official receipts with alterations or additions without countersignature or with counter-signature but cannot be ascertained whether the person who counter-signed the alterations or additions was an authorized representative of the supplier should also be disallowed.

sales invoice be countersigned by an identified and duly authorized representative of the issuer; and

III. Substantial justice dictates that technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding taxpayers.

CIR, on the other hand, put forth the following issues:

A. Whether respondent filed a *bona fide* administrative claim for refund;

B. Whether respondent is entitled to a refund or issuance of TCC for its unutilized input VAT in the reduced amount of P5,706,706.49.

CNBC filed its Memorandum[4] through registered mail on August 14, 2015, which was received by the CTA on August 27, 2015. On the other hand, the CIR manifested that she is adopting the arguments she raised in her Petition for Review (CTA EB No. 1270) filed on February 27, 2015 and Comment filed on May 25, 2015 as her Memorandum.[5]

The instant Petitions were submitted for decision in the CTA *En Banc's* Resolution dated September 24, 2015.[6]

ISSUE/S

In substance, the parties presented the following issues:

1. Whether the CTA properly acquired jurisdiction over CNBC's judicial claim for input VAT albeit the administrative and judicial claims were filed on the same day; and

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[4] Rollo, pp. 860-881.
[5] Rollo, pp. 886-888.
[6] Rollo, pp. 892-893.

2. Whether CNBC complied with the substantiation requirements for a claim for refund or tax credit of unused creditable input tax under the Tax Code and related BIR issuances, and thus, must be refunded the disallowed input VAT amounting to P13,178,915.64.

RULING OF THE COURT

The petitions are dismissed for lack of merit.

The CTA properly acquired jurisdiction over CNBC's judicial claim for input VAT refund/tax credit.

The CIR insists that the CTA has no jurisdiction over CNBC's original Petition for Review claiming input VAT refund or issuance of TCC considering that CNBC failed to file a bona fide administrative claim for refund when it filed both its administrative and judicial claim on the same day. According to CIR, CNBC failed to comply with Section 112(C) of the Tax Code, which grants CIR a period of 120 days within which to act on the request for refund or issuance of TCC, thereby depriving CIR of the opportunity to properly act on the claim.

The Court does not agree.

On February 12, 2013, the Supreme Court issued its decision on the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation*; *Taganito Mining Corporation vs. Commissioner of Internal Revenue*; and *Philex Mining Corporation vs. Commissioner of Internal Revenue*,[7] ("*San Roque*") wherein it affirmed with qualification the decision in the *CIR vs. Aichi Forging Company of Asia, Inc.*[8] *("Aichi")* case concerning the mandatory and jurisdictional nature of the 120+30 day period provided under Section 112(C) of the Tax Code. The Supreme Court held therein that compliance with the 120-day and the 30-day periods under Section 112 of the Tax Code is mandatory and jurisdictional,

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[7] G.R. No. 187485, 196113 and 197156, February 12, 2013.
[8] G.R. No. 184823, October 6, 2010.

save for those input VAT refund cases that were prematurely filed (i.e., before the lapse of the 120-day period) with the CTA between December 10, 2003 (when the BIR Ruling No. DA-489-03 was issued) and October 6, 2010.

Effectively, the *San Roque* case created a period of exception (i.e., from December 10, 2003 to October 6, 2010), where judicial claims that did not comply with the mandatory 120-day period shall be entertained.

The case of *Visayas Geothermal Power Company vs. CIR*[9], concisely reiterates the rule on the filing of administrative and judicial claims for input VAT refund or tax credit established in the *Aichi* and *San Roque* cases, *viz*:

> "It has been definitively settled in the recent En Banc case of CIR v. San Roque Power Corporation (San Roque), that it is Section 112 of the NIRC which applies to claims for tax credit certificates and tax refunds arising from sales of VAT-registered persons that are zero-rated or effectively zero-rated, which are, simply put, claims for unutilized creditable input VAT.
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> Thus, under Section 112(A), the taxpayer may, within 2 years after the close of the taxable quarter when the sales were made, via an administrative claim with the CIR, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Under Section 112(D), the CIR must then act on the claim within 120 days from the submission of the taxpayer's complete documents. In case of (a) a full or partial denial by the CIR of the claim, or (b) the CIR's failure to act on the claim within 120 days, the taxpayer may file a judicial claim via an appeal with the CTA of the CIR decision or unacted claim, within 30 days (a) from receipt of the decision; or (b) after the expiration of the 120-day period.
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> Upholding the ruling in Aichi, San Roque held that the 120+30 day period prescribed under Section 112(D) mandatory and jurisdictional. The jurisdiction of the CTA over decisions or inaction of the CIR is only appellate in nature and, thus, necessarily requires the prior filing of an administrative case before the CIR under Section 112. The CTA can only acquire jurisdiction over a case after the CIR

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[9] G.R. No. 197525, June 4, 2014.

has rendered its decision, or after the lapse of the period for the CIR to act, in which case such inaction is considered a denial. A petition filed prior to the lapse of the 120-day period prescribed under said Section would be premature for violating the doctrine on the exhaustion of administrative remedies.

There is, however, an exception to the mandatory and jurisdictional nature of the 120+30 day period. The Court in San Roque noted that BIR Ruling No. DA-489-03, dated December 10, 2003, expressly stated 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." This BIR Ruling was recognized as a general interpretative rule issued by the CIR under Section 4 of the NIRC and, thus, applicable to all taxpayers. Since the CIR has exclusive and original jurisdiction to interpret tax laws, it was held that taxpayers acting in good faith should not be made to suffer for adhering to such interpretations. Section 246 of the Tax Code, in consonance with equitable estoppel, expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. **Hence, taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by this Court in Aichi on October 6, 2010, where it was held that the 120+30 day period was mandatory and jurisdictional.**

Accordingly, **the general rule is that the 120+30 day period is mandatory and jurisdictional from the effectivity of the 1997 NIRC on January 1, 1998, up to the present. As an exception, judicial claims filed from December 10, 2003 to October 6, 2010[24] need not wait for the exhaustion of the 120-day period.**

A review of the facts of the present case reveals that petitioner VGPC timely filed its administrative claim with the CIR on December 6, 2006, and later, its judicial claim with the CTA on January 3, 2007. The judicial claim was clearly filed within the period of exception and was, therefore, not premature and should not have been dismissed by the CTA En Banc. (Emphasis supplied)

Since the instant judicial claim was filed on March 31, 2009, well within the period of exception created in the case of *San Roque,* CNBC need not wait for the lapse of the 120-day period before it could seek judicial relief before the CTA. Pursuant to the *San Roque* case, the subject judicial claims may be respectively considered as timely filed, and thus, the CTA properly acquired jurisdiction over CNBC's judicial claim for input VAT refund or issuance of TCC.

CNBC failed to properly substantiate the disallowed input VAT subject of its appeal amounting to P13,178,915.64.

Out of the aforementioned disallowed input VAT of P14,267,753.47 due to alterations or additions without countersignature or unverified counter-signature, CNBC appealed to this court the disallowance of input VAT amounting to P13,178,915.64, which CNBC claims to be supported by sales invoices and official receipts compliant with the invoicing requirements under the Tax Code and BIR regulations. CNBC further argues that the Tax Code and other relevant BIR issuances do not require that any alteration or addition to the sales invoice be countersigned by an identified or duly authorized representative of the issuer, thus, must be refunded the appealed amount.

An examination of the arguments in the instant petition shows that they were essentially lifted from CNBC's Motion for Reconsideration. There is nothing in CNBC's petition that was not considered and passed upon by the Court in Division in the assailed *Decision*[10] and *Resolution*[11]. The relevant points in the challenged *Resolution* are reproduced hereunder:

> "Note that the Court disallowed the amount of P13,178,915.64, representing petitioner's input taxes on purchases from SMCC, because the supporting invoices or official receipts have alterations or additions without counter-signature or with counter-signature but could not be ascertained whether the person who counter-signed the alterations or additions was authorized.
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> Indeed, it is incredible that petitioner was unaware of the insertions/alterations on the official receipts issued to it by SMCC. In the first place, petitioner would not have asked SMCC to insert or add the required information in the receipts to make them compliant. While petitioner had the right to request its supplier to issue a compliant receipt/invoice, it had the corresponding obligation to check

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[10] Supra, Note 1.
[11] Supra, Note 2.

> whether the insertions/alterations were properly validated or countersigned by the authorized signatory. Petitioner in this regard miserably failed. For failure to have the insertions/alterations in the official receipts issued to it by SMCC countersigned by the authorized signatory, petitioner is not deemed to have acted with ordinary prudence in connection with its claim for refund.
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> On petitioner's alleged reliance on the report of the ICPA, suffice it to say that the Court is not bound by the ICPA's report or findings for they are mere tools or guide to aid the Court in the determination of the case. The Court may either completely or partially adopt it or totally disregard it. The Court can even come up with its own findings and evaluation of the pieces of evidence submitted by the parties in support of their respective positions.
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> In other words, without the validation of the alterations or additions on the said invoices or receipts, the said documents failed to satisfy the requirements of the law. Consequently, they cannot be considered in favor of petitioner.
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> More importantly, the attached copies of the alleged proofs of remittances is (sic) of no consequence, since the said documents were not formally offered and admitted in evidence."

For failure of CNBC to have the insertions/alterations in the supporting invoices or official receipts countersigned or to have the counter-signature verified, CNBC consequently failed to properly substantiate the disallowed input VAT amounting to P13,178,915.64, thus, the Court affirms and finds no compelling reason to disturb the conclusions arrived at by the Court in Division.

Well-settled is the rule that tax refunds, when based on statutes granting tax exemption or tax refund, partake the nature of tax exemptions, a legislative grace; thus, the rule of strict interpretation against the taxpayer-claimant similarly applies.[12] CNBC has the burden of proof to establish the factual basis of its claim for tax refund.

WHEREFORE, premises considered, the consolidated *Petitions for Review* are **DENIED**. The assailed September 1, 2014 *Decision*[13] and January 27, 2015 *Resolution*[14] of the Third Division in CTA Case No. 7895 are **AFFIRMED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Official Business)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[12] *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation,* G.R. No. 167274 75, July 21, 2008.
[13] Supra, Note 1.
[14] Supra, Note 2.

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

Ma. Belen R
MA. BELEN RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice