Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

UNISYS PUBLIC SECTOR SERVICES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1232
(CTA Case No. 8216)

Present:
DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *J.J.*

Promulgated:

JUN 16 2016 3:44p.m.

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of Petition for Review (Re: Decision dated 16 April 2014 and Resolution dated 16 September 2014)[1], filed by petitioner, Unisys Public Sector Services Corporation, praying for this Court to:

a. reconsider its 16 April 2014 Decision and 16 September 2014 Resolution;

b. grant petitioner's claim for refund in the total amount of ₱10,978,224.87, representing the erroneous and overpaid output VAT payments for the fourth (4^{th}) quarter of CY 2008; and

[1] EB Rollo, pp. 9-28

c. order the respondent to refund the above amount in favor of petitioner.

The facts of the case, as found by the CTA-Third Division, are as follows:

"Unisys Public Sector Services Corporation (petitioner) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, the primary purpose of which is, 'to engage in the business of licensing and modifying computer hardware, computer system software programs, application, components, devices and supplies, as well as providing support, training and consultancy services in the use and application of said products.' Petitioner's principal office address is at Level 9 One Cyberpod, Eton Centris Station, EDSA corner Quezon Avenue, Quezon City.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with the authority to decide, approve, and grant tax refunds/credits of overpaid internal revenue taxes as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner registered with the BIR as a Value Added Tax (VAT) taxpayer on 1 January 1997, with Taxpayer Identification No. 003-933-453-000, and the supply of hardware and software consultancy, as its line of business.

As such, petitioner entered into a build, operate, and transfer contract (Contract) for an estimated period of twelve (12) years from 2000 with the National Statistics Office (NSO), a Philippine government agency responsible for the collection, compilation, classification, production, publication and dissemination of general-purpose statistics and civil registry data.

Specifically, the Contract provides the following terms and conditions, among others:

a. Petitioner will be responsible for the design, development, construction, installation, testing, and commissioning of NSO's Civil Registry System-Information Technology (CRS-IT).

b. In consideration for its services, petitioners will receive a percentage of the revenues generated by NSO (Service Fee) from the services rendered under its CRS-IT including, among others, the authentication, certification, and issuance of Certificate of Live Birth, Certificate of Marriage, Certificate of No-Marriage, and other civil registry data.

During the 4th Quarter of the taxable year 2008, petitioner derived gross sales amounting to Pesos: One Hundred Ninety-Two Million Two Hundred Ninety Four Thousand Eight Hundred Fifty-One & 41/100 (₱192,294,851.41).

The above amount of gross sales was subjected to five percent (5%) final VAT which was directly deducted and withheld by NSO pursuant to Section 114(c) of the 1997 Tax Code, as amended, to wit:

> '(C) *Withholding of Value-Added Tax.* – The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled-corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: x x x'

Testimonial confirmation was presented by petitioner relative to the act of withholding by NSO such as the corresponding Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) for the months of October, November, and December 2008.

NSO withheld a total amount of Nine Million Six Hundred Fourteen Thousand Seven Hundred Forty-Two &

57/100 Pesos (₱9,614,742.57) on all of its Income payments to petitioner, as summarized in the table below:

Document/Month	Amount
Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for October 2008	₱3,456,774.93
Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for November 2008	₱3,396,940.02
Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for December 2008	₱2,761,027.62
Total:	₱9,614,742.57

Pursuant to Sec. 114 of the 1997 Tax Code, petitioner filed its VAT returns for the 4th Quarter of 2008.

Petitioner paid its VAT for the month of October 2008 on 20 November 2008 in the amount of Pesos: Four Million One Hundred Sixty-Five Thousand Nine Hundred Sixty-Five & 44/100 (₱4,165,965.44).

Petitioner paid its VAT for the month of November 2008 on 18 December 2008 in the amount of Pesos: Four Million Three Hundred Seventy-Two Thousand One Hundred Ninety-Four & 77/100 (₱4,372,194.77).

Petitioner paid its VAT for the month of December[2], 2008 in the amount of Pesos: Three Million One Hundred Thirty-Two Thousand Seven Hundred Five & 33/100 (₱3,132,705.33).

[2] Exhibit "K"

In total, petitioner paid an additional VAT amounting to Pesos: Eleven Million Six Hundred Seventy Thousand Eight Hundred Sixty-Five & 54/100 (₱11,670,865.54).

In computing its VAT liability for the 4th Quarter of 2008, petitioner initially used Actual Input VAT as reported in what will henceforth be called the Original VAT Return. In the Original VAT Return, petitioner reported zero ("0") sales to the government in Line 15 of the VAT returns. Consequently, it garnered a Total Output VAT amounting to Pesos of: Twenty-Four Million Seventy-Seven Thousand Six Hundred and Sixty-Five & 98/100 (₱24,077,665.98).

Private sales amounted to Pesos: Two Million Seven Hundred Ninety-Two Thousand Fifty Seven & 87/100 (₱2,792,057.87) with no amount reported for Input tax on sales to government closed to expense-excess of standard input over actual input VAT. Its Total Input VAT, therefore, amounted to Pesos: Two Million Seven Hundred Ninety-Two Thousand Fifty Seven & 87/100 (₱2,792,057.87) with no VAT Overpayment reported.

Subsequently, petitioner filed an Amended VAT Return for the 4th Quarter of 2008 with a modified amount of VAT payable and claiming overpayment. Petitioner claims that it discovered that it erroneously overpaid its VAT liabilities to the BIR when it used its actual accumulated input VAT for the quarter instead of the seven percent (7%) standard input VAT in computing the net VAT payable. This is what they sought to correct by filing the Amended VAT Return using standard input VAT.

Reflected in the Amended VAT Return is overpaid VAT for the 4th Quarter of 2008 in the amount of Pesos: **Ten Million Nine Hundred Seventy-Eight Thousand Two Hundred Twenty-Four & 87/100 (₱10,978,224.87)**.

On 20 January 2011, petitioner filed with the BIR its administrative claim for tax refund/credit of its alleged overpaid VAT together with its Application for Tax Credits/Refund (BIR Form No. 1914).

Due to respondent's failure to act on petitioner's administrative claim for refund, and because the two-year period within which to file a judicial claim for refund and/or issuance of tax credit certificates (TCC) was about to expire, petitioner filed the instant Petition for Review before this Court on 21 January 2011 to forestall the expiration of its right to bring suit on its claim for refund on the allegedly erroneous VAT payments.

On 23 February 2011, respondent filed her Answer. As part of her Special and Affirmative Defenses, respondent alleged that:

1.) the instant Petition for Review should not be given due course for being filed out of time;

2.) filing the judicial claim one day after filing its administrative claim for refund with the BIR deprived the respondent the opportunity to examine petitioner's administrative claim for refund intelligently;

3.) the burden is on petitioner to prove that the amount of erroneously paid VAT is properly documented in accordance with law and that there must be procedural compliance in pursuing the administrative claim leading to the appellate proceedings.

4.) the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to its claim for refund;

5.) taxes collected are presumed to be in accordance with laws and regulations; and

6.) tax refunds are regarded as tax exemptions and are construed *strictissimi juris* against the person claiming the exemption.

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues on 6 April 2011, which the Court approved on 29 April 2011.

During the trial, petitioner presented three (3) witnesses, namely: 1) Jennifer Glinoga, Finance Manager of the petitioner; 2) Veronica R. Catajoy, External Tax Consultant of petitioner; and 3) Katherine O. Constantino, the Court-commissioned Independent Certified Public Accountant (ICPA),

After formal offer of its documents, petitioner rested its case.

On the other hand, respondent's counsel manifested during the hearing held on 2 May 2013 that due to the lack of BIR Records for this case, he is constrained to waive respondent's right to present evidence and to submit the case for decision based on respondent's memorandum. Thus, the parties were given a period of thirty (30) days from notice within which to submit their respective Memorandum.

In the Resolution dated 3 July 2013, this case was submitted for decision, considering respondent's Memorandum filed on 28 June 2013 and petitioner's Memorandum filed on 24 June 2013."

On April 16, 2014, the CTA-Third Division promulgated the Assailed Decision[3] the decretal portion of which reads as follows:

> "**WHEREFORE**, in the light of the foregoing, petitioner's claim for refund or issuance of a tax credit certificate for its October 2008 VAT payment and its November 2008 VAT payment are **DENIED** on account of prescription having been filed beyond the two-year period decreed in Section 229; and petitioner's claim for refund for its December 2008 VAT payment is also **DENIED** on account of petitioner having a pending VAT payable of ₱2,619,498.90.
>
> **SO ORDERED.**"

On May 7, 2014, petitioner filed its Motion for Reconsideration (RE: 16 April 2014 Decision of the Honorable Court)[4] and a

[3] *En Banc* Rollo, pp. 30-56
[4] Division Docket (Vol. I), pp. 571-580

Supplemental Motion for Reconsideration (RE: 16 April 2014 Decision of the Honorable Court)[5] on May 13, 2014.

On June 25, 2014, respondent filed, thru registered mail, her Comment (To Petitioner's Motion for Reconsideration dated 8 May 2014),[6] and Comment (To Petitioner's Supplemental Motion for Reconsideration dated 8 May 2014),[7] likewise, filed thru registered mail on June 27, 2014.

In a Resolution[8] dated September 16, 2014, the CTA Third Division denied petitioner's Motion for Reconsideration (RE: 16 April 2014 Decision of the Honorable Court) for utter lack of merit and its Supplemental Motion for Reconsideration (RE: 16 April 2014 Decision of the Honorable Court) for having been filed beyond the reglementary 15-day period and in violation of the Omnibus Motion Rule.

On October 24, 2014, petitioner filed, thru registered mail, the instant Petition for Review. Respondent was given ten (10) days from receipt of the Resolution[9] to file her Comment to petitioner's Petition for Review.

On March 12, 2015, respondent filed a Motion for Extension of Time To File Comment (To Petitioner's Petition for Review), which was granted per Minute Resolution dated March 17, 2015. Respondent was given a final and non-extendible period of fifteen (15) days from March 12, 2015 or until March 27, 2015 to file her Comment on the Petition for Review.

Subsequently, respondent filed the following Urgent Motion for Extension of Time To File Comment (To Petitioner's Petition for Review) with the Court's action thereon, viz:

1. Urgent Motion for Extension of Time To File Comment (To Petitioner's Petition for Review),[10] filed on March 27, 2015, requesting for additional ten (10) days from March 27, 2015 or until April 6, 2015, to file her Comment to petitioner's Petition for Review – denied per

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[5] *Ibid*, pp. 582-593
[6] Division Docket (Vol. II), pp. 642-651
[7] *Ibid*, pp. 661-666
[8] *Id.*, pp. 668-674
[9] *En Banc* Rollo, pp. 74-75
[10] *Id.*, pp. 81-84

Resolution[11] dated April 15, 2015 as respondent was already granted, in a Minute Resolution dated March 17, 2015, a final and non-extendible period of fifteen (15) days from March 12, 2015, or until March 27, 2015 within which to file her comment on the Petition for Review. The Resolution, likewise, resolved to give due course to petitioner's Petition for Review and required the parties to submit their respective memoranda within fifteen (15) days from receipt of the resolution and the case shall be deemed submitted for resolution with or without such memoranda.

2. Urgent Motion for Extension of Time To File Comment (To Petitioner's Petition for Review),[12] filed on April 6, 2015, requesting for an extension of five (5) days from April 6, 2015 or until April 11, 2015, to file the Comment to Petitioner's Petition for Review - the Court "NOTED WITHOUT ACTION" the said Urgent Motion per Resolution[13] dated April 28, 2015.

On April 20, 2015, respondent filed a Manifestation and Submission,[14] manifesting therein that on April 13, 2015 she served and filed thru registered mail, her Comment and attaching thereto additional 9 copies of the same. The said Manifestation and Submission and the submission of the additional 9 copies of respondent's Comment were both NOTED by the Court per Minute Resolution[15] dated April 22, 2015.

Respondent filed a Motion for Extension of Time To File Memorandum[16] on May 14, 2015, which was granted by the Court per Minute Resolution[17] dated May 18, 2015.

On May 18, 2015, respondent filed her Memorandum.[18]

On May 22, 2015, the Court promulgated a Resolution[19] expunging from the records of the case respondent's Comment filed, thru registered mail, on April 13, 2015.

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[11] *Id.*, pp. 90-91
[12] *Id.*, pp. 85-88
[13] *Id.*, 121-122
[14] *Id.*, pp. 92-93
[15] *Id.*, p. 106
[16] *Id.*, pp. 123-126
[17] *Id.*, p. 127
[18] *Id.*, pp. 128-144
[19] *Id.*, pp. 146-147

Petitioner filed, thru registered mail, on May 20, 2015, a Motion for Additional Time To File Memorandum (of Petitioner Unisys Public Sector Service Corporation)[20] and, on June 8, 2015, petitioner filed its Memorandum thru registered mail. On July 8, 2015, the Court promulgated a Resolution[21] which DENIED petitioner's Motion for Additional Time To File Memorandum (Of Petitioner Unisys Public Sector Service Corporation) and, likewise, resolved to expunge from the records of the case the Memorandum filed by petitioner. The case was deemed submitted for decision in the same resolution.

Hence, this Decision.

Petitioner assails the Decision dated April 16, 2014, and Resolution dated September 16, 2014, both rendered by the CTA Third Division based on the following factual and legal grounds, to wit:

> 1. Substantiation requirements under RR No. 16-05 apply to refunds of excess input VAT under Section 110 of the Tax Code but not to refunds of erroneously paid 5% final VAT which is covered by Section 229 of the Tax Code.
>
> 2. The reckoning point of the two-year prescriptive period is the end of each taxable quarter. Quarterly VAT returns constitute full and complete return for a taxable period (i.e. quarter). Monthly VAT filing is a mere declaration for a month of a particular quarter and does not cover a complete taxable period for VAT purposes.

Petitioner argues that the substantiation requirements under Section 113 of the Tax Code do not apply to its claim for refund of erroneously overpaid VAT since what should apply is Section 229 which deals with refund of tax erroneously or illegally collected. Petitioner stressed that there is nothing in Section 229 of the Tax Code which requires compliance with the invoicing requirements before a taxpayer can claim a refund of its erroneously paid tax and maintains that it is entitled to the refund of an amount equal to ₱10,668,581.79 for the 4th quarter of 2008 even if with the disallowance of the actual input VAT made by the CTA-Third Division is to be considered.

As regards the reckoning point of the 2-year prescriptive period, petitioner points out Section 114(A) of the Tax Code which specifically

[20] *Id.*, pp. 148-152
[21] *Id.*, pp. 174-176

provides that VAT shall be covered by a quarterly return and shall be paid within twenty-five (25) days after the close of each taxable quarter. That, for VAT purposes, a taxable period consists of one (1) quarter; that, a taxpayer's VAT liability can only be determined after the end of each quarter when it can be ascertained if there is an overpayment or erroneous payment of VAT. Petitioner further posits that said stand is supported by Section 4.114-1(A) of Revenue Regulations No. 16-2005. Petitioner, likewise, notes that a similar rule exists for income taxation where Sec. 52 of the Tax Code speaks of a quarterly income tax return and final or adjustment return; that, it is well settled that the taxable period refers to a taxable year whether calendar or fiscal. Thus, petitioner concludes that when filing a claim for refund of erroneously paid income tax, the 2-year prescriptive period is reckoned from the filing and payment of the final income tax return and not on the filing of each quarterly income tax return.

Respondent, on the other hand, counter-argues that petitioner's contention that the substantiation requirement should not apply to refund of erroneous/overpayment of VAT has no leg to stand on; that, the invoicing and substantiation requirements under Sec. 110(A) and 113(A) and (B) of the 1997 NIRC, as amended and implemented by Revenue Regulations No.16-2005, must be followed because it is the only way to determine the veracity of petitioner's refund claim.

After a thorough evaluation and consideration of the records of the case, We find no merit in the Petition for Review.

In the Assailed Decision, the CTA Third Division denied petitioner's claim for refund, for allegedly erroneously paid Value-Added Tax (VAT), for the months of October and November 2008 due to prescription for having been filed beyond the two-year period prescribed in Section 229 of the NIRC of 1997, as amended.

We sustain the Third Division's ruling that, indeed, prescription had already set in when petitioner's claim for refund of VAT payments, albeit erroneously paid, were filed.

We quote with approval the relevant portions of the Assailed Decision and Assailed Resolution expounding on the timeliness of the application for refund of erroneously paid tax under Section 229 of the NIRC of 1997, as amended, to wit:

"In determining whether or not petitioner's claim for VAT refund was timely filed, we considered the relevant provisions of the 1997 NIRC together with the prevailing jurisprudence.

Section 204(c) lays down the period within which an **administrative claim** for refund must be filed, thus:

> '**Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** - The Commissioner may - x x x **(C)** Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund x x x' (*Emphasis supplied*)

Given the foregoing, it is clear that an administrative claim for refund must be filed within two (2) years after payment of the tax or penalty.

Section 229 of the 1997 NIRC, on the other hand, lays down the requirements for a **judicial claim** to prosper, thus:

> '**Sec. 229. Recovery of Tax Erroneously or Illegally Collected.** - no suit or proceeding, shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully

> collected, **<u>until a claim for refund or credit has been duly filed with the Commissioner</u>**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **<u>no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause</u>** that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.' (*Emphasis supplied*)

Section 229, therefore, requires: a) an administrative claim filed prior; and b) that the judicial claim be filed within two (2) years from the date of payment of the tax or penalty.

Thus, in a claim for refund, a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim.

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes as opposed to Section 112 of the NIRC which governs refund/credit of input VAT arising from zero-rated or effectively zero-rated sales.

Existing jurisprudence shows that Section 229 applies to overpayment of taxes as well. In *Accra Investments Corporation vs. Court of Appeals*, Section 229 was applied to overpaid taxes on rental, commission and consultancy income withheld by the payors. In *Collector of Internal Revenue vs. Prieto*, the same section was applied to overpaid inheritance taxes. In these cases, the Supreme Court used the two (2)-year prescriptive period even when the issue involved was overpayment of taxes.

Is it necessary that the administrative claim be decided prior to filing a judicial claim? Respondent argues that filing the judicial claim for refund one day after petitioner filed its administrative claim did not give them ample time and opportunity to intelligently examine and investigate petitioner's administrative claim.

The long standing doctrine, however, has been that both administrative and judicial claims must be filed within the two (2) year prescriptive period, despite the pendency of the administrative claim. In *CIR vs. Victorias Milling, Co. Inc.* (Victorias Milling Case), the Supreme Court stated that, '[i]f, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector.'

Although the Victoria's Milling case construed then Section 306 of the applicable Tax Code at the time, Section 229 of the 1997 Tax Code essentially maintained the same wording thereof. The original wording in Section 306 has since been amended by Presidential Decree No. 69 (PD 69) to include the phrase 'regardless of any supervening cause'.

Section 229 is emphatic on the requirement that the claim for refund must be filed within two (2) years from the date of payment in all cases in view of the phrase 'regardless of any supervening cause' that may arise after payment.

The wording of Section 229 is clear, plain, and explicit that that the two (2)-year prescriptive period is not affected by any supervening cause, hence, the phrase 'regardless of any supervening cause'. This phrase was originally added by P.D. No. 69 dated November 24, 1972 and was retained in both the 1977 and 1997 NIRC. The intent of the law is unmistakable, to establish as a condition sine qua non that all claims and actions for refund of any tax or penalty shall be filed within two years from the date of payment of such tax or penalty, 'even if the taxpayer had no cause for refund as the tax or penalty, was legally collected, and even if after the lapse of the two (2)-year period, a supervening cause should arise which would entitle the taxpayer to refund.'

In any event, pursuant to section 306 of the Tax Code, no suit or proceeding for refund or credit of any national internal revenue tax erroneously or illegally assessed or collected shall be begun after the expiration of two (2) years from the date of payment. This provision, which is mandatory, is not subject to any qualification, and, hence, it applies regardless of the conditions under which the payment has been made.

In the case at bar, the relevant dates and amounts of payments are summarized in the table below:

Taxable Period	**October 2008 VAT**	**November 2008 VAT**	**December 2008 VAT**
Five percent (5%) Final VAT withheld by NSO *cf: Sec. 114C, NIRC*	P3,396,940.02	P3,456,774.93	P2,761,027.62
VAT paid by Unisys	P4,165,965.44	P4,372,194.77	P3,132,705.33
Date of Payment	November 20, 2008	December 18, 2008	January 29, 2009
Deadline Administrative Claim: 2 years *Cf: Sec. 204(c), NIRC*	November 20, 2010	December 18, 2010	January 29, 2011
Date of Filing Administrative Claim	January 20, 2011	January 20, 2011	January 20, 2011
Deadline Judicial Claim: 2 years *Cf: Sec. 229, NIRC*	November 20, 2010	December 18, 2010	January 29, 2011
Date of filing of Judicial Claim	January 21, 2011	January 21, 2011	January 21, 2011

> In determining whether or not the administrative claims of petitioner were filed within the prescriptive period of two years, the reckoning date according to Section 229 of the NIRC is the 'date of payment'. As can be gleaned from the table above, petitioner paid its VAT liability for the months of October 2008, November 2008, and December 2008 on November 20, 2008, December 18, 2008 and January 29, 2009, respectively. Petitioner's deadline, therefore, for filing an administrative claim would be November 20, 2010 for October 2008 VAT, December 18, 2010 for its November 2008 VAT, and January 29, 2011 for its December 2008 VAT.
>
> However, petitioner filed its administrative claims for refund for the October-December 2008 period all on the same date - January 20, 2011. Clearly, its administrative claims for VAT refund for the months of October 2008 and November 2008 have already prescribed. We hold that only petitioner's administrative claim for refund for December 2008 VAT has been timely filed."

In the Assailed Resolution the same issue was resolved by the Third Division, as follows:

> "In a bid to have its claim for VAT refund considered to have been timely filed within the two-year period stated in Section 229 of the NIRC, petitioner would have this court believe that its payments for its October 2008 and November 2008 VAT liability were advanced payments that should only be credited on January 29, 2009, the date petitioner paid its December 2008 VAT liability.
>
> Petitioner confuses two different and distinct concepts - the act of payment and the act of filing. Even if Section 4.114-1 says that '***Payments in the monthly VAT declarations shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter***,' the crediting of the monthly payments is for the **<u>limited and specific purpose</u>** of arriving at a) the net VAT payable; or b) the excess input tax/over-payment as of the end of a quarter.
>
> Petitioner says that 'the determination [of the] seasonable filing of claims for refund for erroneous and

overpaid output VAT liabilities in accordance with Section 229 of the Tax Code should be reckoned from the **filing and payment** of the output VAT liabilities for the covered quarter'. However, this is not what Section 229 requires.

We reiterate our ruling that Section 229 is emphatic on the requirement that the claim for refund must be filed within two (2) years **from the date of payment** in all cases in view of the phrase 'regardless of any supervening cause' that may arise after payment.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or 'speech is the index of intention.' Furthermore, there is the maxim *verba legis non est recedendum*, or 'from the words of a statute there should be no departure.'

While petitioner wishes that the act of filing be synonymous with payment, Section 229 of the NIRC clearly omits as a reckoning point of the two-year period, the date of filing, and only specifies the date of payment. This Court is bereft of power to supply the omission."

We now go to petitioner's argument that substantiation requirements under RR No. 16-05 apply to refunds of excess input VAT under Section 110 of the Tax Code but not to refunds of erroneously paid 5% final VAT which is covered by Section 229 of the Tax Code citing the case of Ericsson Telecommunications, Inc. vs. Commissioner of Internal Revenue[22] (the "Ericsson case").

Petitioner's contention cannot be sustained as the Ericsson case is not applicable in the instant case.

The factual antecedents in the Ericsson case are not on all fours in the case at bar. In the Ericsson case, Ericsson Telecommunications, Inc. (the petitioner) reported in its Quarterly VAT Return (BIR Form 2550Q)

[22] CTA Case No. 8027, August 2, 2012

output VAT of ₱41,965,071.76 due for the fourth quarter of 2007 and input VAT for ₱50,057,254.70 which, therefore, resulted to an excess input VAT of ₱8,092,182.94. Despite the excess net input VAT, petitioner erroneously paid the said amount of ₱8,092,182.94 in the mistaken belief that it is an excess output tax over input tax which is to be paid as tax due. The CTA Second Division, thus, ruled that there was, indeed, an erroneous payment made to the government as the VAT Return itself, together with the actual proof of payment, was deemed sufficient to warrant the refund of said amount.

In the instant case, it may be recalled that petitioner's present claim in the amount of ₱10,978,224.87 essentially pertains to the alleged VAT overpayment for the 4th quarter of 2008, as hereinbelow shown:

Particulars	Original VAT Return (Using Actual Input)	Amended VAT Return (Using Standard Input)
Output VAT	₱ 24,077,665.92	₱ 24,077,665.92
Input VAT	2,792,057.87	13,770,282.68
Net VAT Payable	**₱ 21,285,608.05**	**₱ 10,307,383.24**
Less: Actual VAT Payments	21,285,608.11	21,285,608.11
Overpaid VAT	**(0.06)**	**₱ (10,978,224.87)**

As can be seen from the above table, the overpaid VAT of ₱10,978,224.87 was derived by applying the standard input VAT of ₱13,770,282.68 and Actual VAT Payments of ₱21,285,608.11 against petitioner's output VAT liability of ₱24,077,665.92.

Of the total claimed overpaid VAT of ₱10,978,224.87, only the VAT overpayment in the amount of ₱3,006,919.29 pertaining to the month of December 2008 may be the proper subject of a claim under Section 229 of the NIRC of 1997, as amended, as the refund claim for the months of October and November 2008 had already prescribed. The amount of ₱3,006,919.29 is determined as follows:

Particulars	Amount	Amount
Output VAT		₱ 6,997,586.38
Less: Input VAT	₱ 5,750,290.34	
Input Tax on Sale to Government closed to expense	(1,639,517.62)	4,110,772.72
Net VAT Payable		**₱ 2,886,813.66**
Less: Actual VAT Payments		5,893,732.95
Overpaid VAT		**₱(3,006,919.29)**

However, since petitioner's claim for refund of erroneously paid VAT cannot be accurately determined by simply looking at the face of the VAT Return, upon which payment was made, since there were changes in petitioner's actual input tax from its original VAT Return to its subsequent Amended Return. It is for this reason that there is a need for further substantiation.

Foregoing considered, We find no cogent reason to disturb and reverse the Assailed Decision dated April 16, 2014 and Assailed Resolution dated September 16, 2014, both rendered by the CTA Third Division.

WHEREFORE, the Petition for Review of petitioner, Unisys Public Sector Services Corporation, is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice