REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UCPB PROPERTIES, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

CTA EB No. 581
(CTA Case Nos. 6467 & 6512)

Present:

Acosta, *PJ,*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:
DEC 17 2010

x- -x

DECISION

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* by way of Petition for Review[1] is the Decision[2] of the First Division of this Court dated June 18, 2009 and Resolution[3] dated December 15, 2009 in the consolidated CTA Case Nos. 6467 and 6512 entitled "*UCPB Properties, Inc. v. Commissioner of Internal Revenue*." Under the assailed decision and resolution, the CTA First Division did not grant petitioner's claim for refund and/or issuance of a tax credit certificate for the amount of P16,901,035.90

[1] *Rollo*, C.T.A. EB No. 581, pp. 9-48.
[2] *Rollo*, pp. 53-63.
[3] *Rollo*, pp. 65-70.

representing unutilized input value-added taxes (VAT) generated from petitioner's purchases of capital goods for the period January 1, 2000 to June 30, 2000.

THE FACTS[4]

The facts as found by the CTA First Division are as follows:

> Petitioner, UCPB Properties, Incorporated, is a domestic corporation duly organized and existing under and by virtue of Philippine Laws, with principal office at 8th Floor, UCPB Building, Makati Avenue, Makati City. It is principally engaged in the business of home building and home development, real estate buying and selling, subdividing and developing lands and other properties. Likewise, it is registered as a Value-Added Tax (VAT) Taxpayer with Tax Identification Number (TIN) 000-172-912-000 with Bureau of Internal Revenue (BIR) Certificate of Registration No. 15797.
>
> Whereas, respondent is the duly appointed Commissioner of Internal Revenue with authority to act as such including, among others, the power to decide, approve and grant refunds or tax credit of overpaid internal revenue taxes as provided by law, with office at the BIR National Office Building, Diliman, Quezon City.
>
> For the period from January 1, 2000 to March 31, 2000, petitioner filed its Quarterly VAT Return on April 25, 2000 which reflected an input tax of P14,572,315.34; while for the period from April 1, 2000 to June 30, 2000, it filed its Quarterly VAT Return on July 24, 2000 reflecting input tax from domestic purchases in the amount of P10,886,698.00.
>
> Pursuant to Revenue Regulations No. 7-95, petitioner filed an administrative claim for refund or issuance of tax credit on April 24, 2002 and July 23, 2002 in the respective amounts of P9,573,975.01 and P7,327,060.89 covering the period from January 1, 2000 to June 30, 2000.
>
> In order to suspend the running of the two-year prescriptive period under the National Internal Revenue Code (NIRC) of 1997, as amended and Revenue Regulations No. 7-95 and to preserve its right to judicially claim the tax refund or tax credit, petitioner filed Petitions for Review covering the 1st and 2nd Quarters of taxable year 2000."

Petitioner filed its first Petition for Review on April 25, 2002 for a refund or issuance of tax credit certificate covering the 1st Quarter of the taxable year 2000 in a

[4] *Rollo*, pp. 53-60.

the amount of P9,573,975.01.[5] On July 23, 2002, petitioner filed its second Petition for Review seeking for the refund or issuance of tax credit certificate of the amount of P7,327,060.89, this time covering the 2nd Quarter of the year 2000.[6]

On June 25, 2009, petitioner received a copy of the Decision denying petitioner's claim for refund or issuance of a TCC for its unutilized input VAT on purchases of capital goods for the 1st and 2nd quarters of CY 2000 on the ground of prescription[7], to wit:

> "To stress, the reckoning of the two (2)-year prescriptive period for the filing of a claim for input VAT refund on capital goods purchased is from the close of the taxable quarter when the importation or purchase was made. To illustrate:

Period 2000	Close of the Quarter	Last Day of the Two-Year Prescriptive Period
1st Quarter	March 31, 2000	April 1, 2002
2nd Quarter	June 30, 2000	July 1, 2002

> From the foregoing, the close of the 1st and 2nd quarters is March 31, 2000 and June 30, 2000, respectively.

> Applying Section 112(B), petitioner had until March 31, 2002 and June 30, 2002 within which to file its claim. However, the said dates both fell on a Sunday. Pursuant to section 1 of Rule 22 of the Revised Rules of Court, the last day within which petitioner may file its claim for refund or tax credit for the 1st and 2nd quarters falls on April 1, 2002 and July 1, 2002, respectively.

> Based from the records of the case, petitioner filed its administrative claim and judicial case on the following dates:

Period	Date of Filing of the Administrative Claim	Date of Filing of the Petition for Review
1st Quarter	April 24, 2002	April 25, 2002
2nd Quarter	July 23, 2002	July 23, 2002

> Perusal thereof will show that petitioner filed its administrative and judicial claim beyond the two-year prescriptive period reckoned from the close of the taxable quarter when the importation or purchase was made. Petitioner failed to consider the last paragraph included in the cited provision which require the filing of the

[5] *Rollo*, p. 55.
[6] *Rollo*, p. 56.
[7] *Rollo*, p. 18.

> application for refund or tax credit within the two (2) year period after the close of the taxable quarter when the importation or purchase was made.
>
> Therefore, petitioner is barred from claiming refund of its alleged unutilized input taxes it paid on capital goods purchased for the 1st and 2nd quarters of 2000 due to prescription.
>
> The discussion of the other issues is deemed unnecessary considering the findings of prescription.
>
> WHEREFORE, in view of the foregoing, the Petitions for Review are hereby DENIED on the ground of prescription."[8]

In its Resolution of petitioner's Motion for Reconsideration, the CTA First Division resolved that petitioner's cause of action has not prescribed.[9] Nonetheless, the CTA First Division still denied petitioner's claim for refund for failure to prove that "Forbes Tower" was used directly or indirectly in the production or sale of taxable goods or services.[10]

Hence, this petition for review.

THE ISSUES

The issue raised by the petitioner is whether or not it is entitled to the refund of P16,901,035.90 representing unutilized input taxes paid on purchases of capital goods for the period of January 1, 2000 to June 30, 2000.

In resolving the instant petition, the Court deems it necessary to first resolve the issue on the timeliness of petitioner's claim for refund/tax credit as the resolution of said issue is pivotal to the resolution of the issue on petitioner's entitlement to the refund/tax credit.

THE RULING OF THE COURT *EN BANC*

The petition is without merit. a

---

[8] *Rollo*, pp. 61-63.
[9] *Rollo*, p. 18.
[10] *Rollo*, p. 20.

The foregoing conclusion was reached by this Court in accordance with the explicit provision of Section 112(A) and (B), in relation to paragraph (D) of the National Internal Revenue Code (NIRC) *prior to the amendments of R.A. 9337*[11], and the recent case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia*, G.R. No. 184823, promulgated on October 6, 2010 (*Aichi* case), where the Supreme Court finally put to rest the controversies surrounding the prescriptive period for applying or claiming refund/tax credit of unutilized input VAT, *i.e.* reckoning of the 2-year period for filing/claiming refund or issuance of TCC; whether the 2-year period applies to both administrative and judicial claims; and whether the 120-day period and 30-day period must be strictly observed. In sum, the High Court essentially resolved the controversies, as follows:

First, the reckoning of the 2-year period for filing/claiming refund or issuance of TCC, as expressly provided for under Section 112(A) of the NIRC, *as amended by R.A. 9337*, is from the close of the quarter when the sales were made. In the *Aichi* case, the Supreme Court adhered to the principle enunciated in the *Mirant*[12] case notwithstanding the fact that the claim for refund was filed on September 30, 2004, approximately 4 years before the *Mirant* case was promulgated. This effectively gave the *Mirant* doctrine a retroactive application.

Second, the phrase "*within two (2) years x x x apply for the issuance of a tax credit certificate or refund*" refers to applications for refund/credit filed with the Commissioner of Internal Revenue (CIR) and not to appeals made to the Court of Tax a

[11] *Republic Act No. 9337* which took effect on November 1, 2005 amended Section 112 of the NIRC by deleting Subsection (B) on "*Capital Goods*". Subsections (C) and (D) referring to "*Cancellation of VAT Registration*" and "*Period within which Refund or Tax Credit of Input Taxes shall be Made*" were then renumbered as Subsections (B) and (C), respectively. However, for ease of discussion, the Court shall cite the Subsections prior to the amendment, unless otherwise indicated.
[12] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*, G.R. No. 172129, September 12, 2008.

Appeals (CTA). This is clear in the first paragraph of Section 112(D)[13] of the NIRC, which states that the CIR has *"120 days from the submission of complete documents in support of the* ***application*** *filed in accordance with Subsections (A) and (B)"* within which to decide on the claim.[14]

Third, compliance with the "120-30-day period" under Section 112(D)[15] of the NIRC, is crucial in filing a judicial claim.

Applying Section 112 and the doctrine laid down in the *Aichi* case to the prevailing circumstances in this case, We conclude that petitioner's administrative claim was filed beyond the reglementary period of 2 years from the close of the taxable quarter. Thus, the Court is constrained to **DENY** petitioner's claim for refund or issuance of a TCC. The following discussions further elucidate this Court's standpoint.

Unutilized input VAT arising from purchases of capital goods must be claimed within two years after the close of the taxable quarter when the purchases were made

The Supreme Court, in the *Aichi* case, explained as follows:

> The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes." We explained that:
>
>> The above proviso [Section 112(A) of the NIRC] clearly provides in no uncertain terms that **unutilized input VAT payments not otherwise used for any internal revenue tax**

a

[13] Now Section 112(C).
[14] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.
[15] See Footnote 13.

due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued." Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.

Reckoning for prescriptive period under Secs. 204(C) and 229 of the NIRC inapplicable

To be sure, MPC cannot avail itself of the provisions of either Secs. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:

> Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> x 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 x
>
> 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, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner, 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, 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 that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefore, 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.

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.**

MPC's creditable input VAT not erroneously paid

For perspective, under Sec. 105 of the NIRC, creditable input VAT is an indirect tax which can be shifted or passed on to the buyer, transferee, or lessee of the goods, properties, or services of the taxpayer. The fact that the subsequent sale or transaction involves a wholly-tax exempt client, resulting in a zero-rated or effectively zero-rated transaction, does not, standing alone, deprive the taxpayer of its right to a refund for any unutilized creditable input VAT, albeit the erroneous, illegal, or wrongful payment angle does not enter the equation.

x x x x

Considering the foregoing discussion, **it is clear that Sec. 112(A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes.**

In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input a

> VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made."

The petitioner anchors its claim on Section 112(B)[16] of the NIRC, which states:

> "Sec. 112. Refunds or Tax Credits of Input Tax. –
> x x x x
> (B) Capital Goods. – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."

Thus, the reckoning point of "*close of the taxable quarter*" shall also be applied to claims for refund of unutilized input taxes arising from importation or purchases of capital goods. Section 112(B) also contains an express provision that the "*application may be made only within two (2) years, after the close of the taxable quarter when the importation or purchase was made.*"

Administrative claim has prescribed

Bearing the foregoing discussion in mind, We now determine the timeliness of petitioner's administrative claim.

Petitioner's claim for refund involves unutilized input VAT arising from purchases of capital goods during the period January 1, 2000 to June 30, 2000. The unutilized input VAT for each quarter and the respective ends of the two-year prescriptive period are summarized below:

Period	Amount	End of 2-year period to file claim
January 1 to March 31, 2000	P9,573,975.01	March 31, 2002
April 1 to June 30, 2000	7,327,060.89	June 30, 2002
	P16,901,035.90	

Petitioner filed an administrative claim for refund or issuance of tax credit on April 24, 2002 and July 23, 2002 in the respective amounts of P9,573,975.01 and

[16] See Footnote 11.

P7,327,060.89 covering the period from January 1, 2000 to June 30, 2000.[17] These administrative claims were clearly filed beyond the prescriptive period.

The discussion of the other issues is deemed unnecessary considering the findings of prescription.

WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED on the ground of prescription. Accordingly, the assailed Decision dated June 18, 2009 of the Former First Division is hereby affirmed.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

w/ Separate Concurring Opinion
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

[17] *Rollo*, p. 13.

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice