REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

LUZON HYDRO CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7810

Present:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

NOV 24 2010
ABFernando 3:50 p.m.

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D E C I S I O N

COTANGCO-MANALASTAS, *J.*:

THE CASE

Before this Court is a Petition for Review filed by Luzon Hydro Corporation on July 18, 2008, pursuant to *Section 11 of Republic Act No. 1125 (R.A.1125), as amended by Section 9 of R.A. No. 9282, and Section 3(a), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)*, seeking for refund or issuance of a tax credit certificate (TCC) in the amount of **FOUR MILLION ONE HUNDRED FIFTY ONE THOUSAND EIGHT HUNDRED FIFTY TWO AND 39/100 PESOS (P4,151,852.39)**, allegedly representing its unutilized input Value Added Tax

(VAT) paid on domestic purchases of goods and services, which are attributable to zero-rated sales for the period June to September 2006.[1]

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Poblacion Alilem, Ilocos Sur.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), who is charged with the authority to perform the duties of his office, including inter alia, the power to decide and grant refunds or tax credit or erroneously or illegally collected internal revenue taxes, as provided by law, with office address at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[2]

THE FACTS

The relevant antecedents, as culled from the records, and as agreed upon by the parties in their Joint Stipulation of Facts and Issues[3] (JSFI) filed on October 30, 2008, are as follows:

Petitioner is registered[4] with the BIR as a VAT taxpayer under taxpayer identification number (TIN) 004-266-526 and is duly registered with the Securities and Exchange Commission which primary purpose state:

> "To develop, construct, own, lease and operate a hydro power plant; to engage in build-operate-transfer arrangements with the government, its branches, agencies and instrumentalities, and any non-government

[1] *Rollo*, pp. 1-9, Petition for Review
[2] Pars. 1 and 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), *Rollo*, p. 270,
[3] *Rollo*, pp. 269-276
[4] Exhibit "C" to "C-2, Certificate of Registration Issued by the BIR

> entity; act as consultants, contractors or principals in the business of developing, constructing, operating, repairing and maintaining of hydro power plants and systems and other power-generating or converting stations and in the manufacture, operation and repair of associated mechanical and electrical equipment; to carry on the general business of manufacture, generation, and/or transmission of electric power in accordance with existing laws, rules and regulations, and to carry on all business necessary or incident to all the foregoing."

On November 24, 1996, a Power Purchase Agreement[5] (PPA) with the *NATIONAL POWER CORPORATION (NPC)* was entered into by *The Consortium of NORTHERN MINI HYDRO CORPORATION; EVER ELECTRICAL MANUFACTURING, INC.; ABOITIZ EQUITY VENTURES, INCORPORATED; PACIFIC HYDRO LIMITED*[6]. The PPA was executed for the development of the Bakun AB and C small hydroelectric facilities located at the Bakun River in Benguet and Ilocos Sur provinces on a build-operate-transfer (BOT) basis.[7]

The said consortium, in accordance with the tender documents and its bid, has caused the formation of the petitioner, **Luzon Hydro Corporation**, for the purpose of performing the undertakings in respect of the Project pursuant to and under the terms and conditions of the Accession Undertaking.[8]

Petitioner was issued Certificate of Accreditation No. 97-03-31[9] by the Department of Energy, as a hydroelectric powerhouse. Also, petitioner is registered with the Board of Investments as an operator of Power Generating Plants with Certificate of Registration No. 96-262.[10]

Records show that petitioner filed the following VAT returns, stamp received by the BIR:

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[5] Exhibit "B"
[6] Exhibits "B-1-a" to "B-1-e"
[7] Exhibit "B-2-a"
[8] *Rollo*, p. 395, Power Purchase Agreement
[9] Exhibit "D"
[10] Exhibit "E"

Month	Original VAT Return (Date filed)	Amended VAT Return (Date filed)	Amount
June	July 21, 2006	April 19, 2007	1,252,183.09
July	September 1, 2006	April 19, 2007	1,051,474.12
August	September 15, 2006	April 19, 2007	765,937.45
September	October 2006	April 19, 2007	1,082,257.73
TOTAL			**4,151,852.39**

The following, among others, were admitted by respondent subject to petitioner's presentation of the original or certified true copies of the necessary documents:[11]

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5.1. The genuineness and due execution of the October 2006 Monthly VAT return.

6. The existence of the following laws and provisions:

6.1. *Chapter II, paragraph 5 of Republic Act 9136*

"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."

6.2. *Section 108(B)(7) of Republic Act 9337*

"Section 108.

(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:

(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."

[11] Pars. 5.7, 6 to 6.6(b), Summary of Admitted Facts, JSFI, *Rollo*, pp. 272-275

6.3. *Revenue Regulations 14-05 (4.108-3)(f)*

"Revenue Regulation 14-05 (4.108-3)

(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."

6.4. *Section 4.108-5(b)(7) of Revenue Regulations No. 16-2005*

"Section 4.108-5. Zero-Rated Sale of Services. –

(b) Transactions Subject to Zero Percent (0%) VAT Rate. – The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; Provided, however, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power."

6.5. *Revenue Memorandum Circular 61-2005*

"**Q18** – What transaction is subject to zero percent (0%)?
A18 – Sale of electricity generated from renewable sources like hydropower, geothermal, solar, wind, and other similar sources of energy."

6.6. BIR Ruling No. 025-2005 rendered on December 28, 2005

"(a) The fees payable under PPA for sale of electricity by Luzon Hydro Corporation to NPC, which is generated through a renewable source of energy, particularly hydropower energy, continues to be subject

> of automatic zero percent (0%) VAT rate pursuant to Section 108 (B) (7) of the Tax Code, as amended by RA 9337.
>
> (b) Any input tax on its purchases of properties like replacement parts of the machineries and equipment, goods, supplies and services which are used in or related to the generation of electricity by power plant shall be available as tax credit or refund pursuant to Section 112 of the same Tax code, as amended by RA 9337."
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On April 30, 2007, petitioner filed an administrative claim[12] with the BIR RDO No. 2 of Vigan, Ilocos Sur for refund in the total amount of P4,151,852.39, representing its unutilized input VAT allegedly incurred and paid on domestic purchase of goods and services for the period covering June to September 2006.

According to the petitioner, since the two-year period granted by law is about to lapse without its claim for refund being acted upon by respondent, petitioner elevated its claim to this Court by filing a Petition for Review on July 18, 2008.

On September 8, 2008, respondent filed his Answer[13] and alleged by way of special and affirmative defense, that:

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> "6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.
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> 7. A claim for refund partakes of the nature of an exemption which cannot be allowed unless granted in the most categorical language. These claims are construed strictly against the petitioner and liberally in favor of the taxing authority. (Commissioner of Internal Revenue v. Manila Mining Corp., 468 SCRA 571). This being so, the claim for refund of creditable Value Added Tax input taxes in the amount of Php4,151,852.39 for the months of June to September 2006 must be strictly construed and petitioner has the burden of proving that the following requirements were met or complied with:

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[12] Exhibits "F" to "F-3", "G" to "G-3", "H" to "H-3", "I" to "I-3"
[13] *Rollo*, pp. 214-220

a. The registration requirements of a value-added taxpayer in compliance with Section 9.236-1(a) of Revenue Regulations No. 16-2005, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997), as amended;

b. The invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the NIRC of 1997, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance with Section 9.236-1(a) of Revenue Regulations No. 16-2005, Revenue Memorandum Order No. 53-98. Otherwise, there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the NIRC of 1997, as amended. It is worthy of emphasis that Section 112(D) [sic] of the NIRC of 1997, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue 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 stated [sic] requirements warrants the dismissal of the petition for review; and

d. That petitioner's administrative and judicial claims for tax refund was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) [sic] and 229 of the NIRC of 1997, as amended.

7. [sic] Petitioner failed to show proof of compliance with the above requirements. Hence, the petition should be denied.

8. [sic] Moreover, petitioner did not give respondent ample time to resolve its administrative claim for refund based on Section 112 (C) of the NIRC of 1997, which states:

"Section 112. Refunds or Tax Credits of Input Tax-

> (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." (Italics ours)

9. [sic] Hence, when petitioner filed its administrative claim for tax refund on 30 April 2007, respondent had 120 days within which to decide on petitioner's claim for tax refund. And in case of full or partial denial of the claim or failure of respondent to act on the application within the 120 day period, petitioner has 30 days to appeal the decision or inaction with the Court of Tax Appeals. Thus, respondent had to render a decision within 120 days from 30 April 2007 or until 27 August 2007. In the event that respondent failed to act upon petitioner's claim for tax refund, petitioner has 30 days from 27 August 2007 or until 26 September 2007 to appeal the unacted claim with the Court of Tax Appeals.

10. [sic] Petitioner filed the instant petition for review with the Court of Tax Appeals only on **18 July 2008**, almost a year after the lapse of the period allowed by law to file the judicial claim for tax refund with the Court of Tax Appeals. Clearly, the instant petition for review was filed out of time.

11. [sic] The above-mentioned periods are clearly given for strict compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions (Agpalo, Statutory Construction, Third Edition 1995, pa. 266). For this reason, the courts construe these provisions of statutes as mandatory (ibid., citing Alvero vs. Dela Rosa, 76 PHIL. 428, 434).

12. [sic] 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 tax refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. (Asiatic Petroleum Co. v. Llanes, 49 PHIL 466).

13. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in accordance with the law and the rules and regulations, and the burden to prove otherwise is upon the petitioner."

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On October 30, 2008, the parties filed their Joint Stipulation of Facts and Issues.[14]

A Motion for the Appointment of an Independent Auditor[15] was filed by petitioner praying that Mr. Luis A. Cañete of the firm Luis Cañete and Company be commissioned as Independent Auditor to conduct the independent special audit and examination of petitioner's voluminous documents submitted. On November 11, 2008, Mr. Luis A. Cañete was commissioned as the Independent Certified Public Accountant (CPA).[16] During the hearing held on January 20, 2009, the Independent CPA affirmed the veracity of his Judicial Affidavit executed on January 5, 2009 and the Audit Report dated December 8, 2008, as well as the signatures thereon. He also identified the Summaries of unutilized input VAT as well as the other supporting documents.[17]

On April 1, 2009, petitioner filed its Formal Offer of Evidence requesting for the admission of Exhibits "A" to "U-1" inclusive of all submarkings. In a Resolution[18] dated June 4, 2009, the exhibits were admitted subject to this Court's appreciation of their purposes, materiality, relevancy, and probative value to the issues involved in this case.

During the hearing[19] held on September 1, 2009, counsel for respondent manifested that, in view of the non-submission of Audit Report by the Revenue Officer who conducted the investigation, respondent is waiving his right to present evidence, thus, respondent was granted a period of thirty (30) days to file his

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[14] *Rollo*, pp. 269-276
[15] *Rollo*, pp. 281-288
[16] Minutes of the Hearing held on November 11, 2008, *Rollo*, p. 289
[17] Minutes of the Hearing held on January 20, 2009, *Rollo*, p. 338
[18] *Rollo*, pp. 602-603
[19] Minutes of the Hearing held on September 1, 2009, *Rollo*, p. 615

Memorandum, likewise, petitioner was required to file its Memorandum within fifteen (15) days from receipt of this Resolution, afterwhich the case shall be submitted for decision.

Taking into consideration the Memorandum (for the Petitioner),[20] filed on September 24, 2009, and the Memorandum (for the Respondent),[21] posted on December 1, 2009, the case was submitted for decision on December 14, 2009.

THE ISSUES

The parties, in their Joint Stipulation of Facts and Issues[22] filed on October 30, 2008, submitted the following issues[23] for this Court's resolution, to wit:

> "1. Whether or not Petitioner's sale of electricity through renewable sources of energy such as hydropower is zero-rated.
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> 2. Whether or not the input value added tax being claimed by Petitioner is supported by sufficient documentary evidence.
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> 3. Whether or not Petitioner complied with the invoicing and accounting requirement to establish zero-rated sale of electricity.
>
> 4. Whether or not Petitioner has excess and unutilized input VAT from its purchases of domestic goods and services in the amount of **four million one hundred fifty one thousand eight hundred fifty two pesos and thirty nine centavos *(Php 4,151,852.39)*** representing alleged unutilized input VAT incurred for the months of June to September 2006.
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> 5. Whether or not the input VAT being claimed by Petitioner is attributable to its alleged zero-rated sale of electricity.
>
> 6. Whether or not the administrative and judicial claim were filed within the reglementary period allowed by law.

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[20] *Rollo*, pp. 618-637
[21] *Rollo*, pp. 651-669
[22] JSFI, *Rollo*, pp. 269-276
[23] JSFI, *Rollo*, p. 275

Arguments of Petitioner Luzon Hydro Corporation[24]

Petitioner, Luzon Hydro Corporation, asseverates that its hydropower generated electricity is from renewable sources of energy and, thus, its sale is zero-rated. Petitioner's argument concerning the first issue is mainly grounded on the provision of RA 9136 entitled "An Act Ordaining Reforms in the Electric Power Industry, Amending for the purpose Certain Laws and For other Purposes" (otherwise known as the EPIRA Law), which took effect on June 26, 2001 and provides that *"sales of generated power by a Generation Company shall, from the effectivity of this Act, be zero-rated for the purpose of imposition of value-added tax."* It is undisputed that Petitioner was formed by a consortium of four corporations pursuant to a Power Purchase Agreement with NPC, and the electricity produced by Luzon Hydro Corporation in its operation of Bakun Plant by harnessing hydropower of the river will be sold solely to the NPC.

Petitioner likewise asserts that: it has proven by testimonial and documentary evidence, that the unutilized creditable input VAT for the second and third quarters of 2006 in the total amount of Php 4,151,852.39 is duly supported by official receipts, invoices and other relevant documents and that these supporting documents were verified by the court appointed Independent CPA.

Further, petitioner maintains that it has established the existence of unutilized input VAT of Php4,151,852.39 from the purchases of domestic goods and services attributable to its zero-rated sales to NPC. Since the petitioner's only purchaser of electricity is NPC, it is without doubt that the input VAT generated during the second

[24] Memorandum (for the Petitioner), *Rollo*, pp. 618-637

and third quarters of 2006 in the total amount of Php4,151,852.39 are attributable to petitioner's zero-rated sale of electric power to NPC.

Lastly, petitioner posits that: the administrative and judicial claims were filed within the reglementary period; the written claim for refund/credit of its unutilized input VAT for the 2nd and 3rd quarters of 2006 were filed on April 30, 2007 and that the judicial claim for refund was filed with the Honorable Court of Tax Appeals on July 18, 2008, clearly, both the administrative and judicial claims were filed within the 2 year prescriptive period from the filing of the quarterly VAT returns.

Arguments of Respondent Commissioner of Internal Revenue

In respondent CIR's Memorandum[25] posted on December 1, 2009, CIR contends that this Court is bereft of jurisdiction over petitioner's claim for refund or issuance of tax credit certificate citing Section 112(D) *[now Section 112(C)]* of the NIRC of 1997, in relation to Section 112(A) of the NIRC of 1997. On the basis of the aforementioned provisions of law, respondent is given an opportunity to act on the administrative claim within the 120-day period from the submission of all relevant documents in support of the claim, upon the other hand, petitioner is given the right to elevate the case before this Court within 30 days after the receipt of the denial of the claim or after the expiration of the 120-day period. Respondent argues that the claim for refund/credit of unutilized input VAT will only be ripe for judicial determination within the said 30-day period and that said requirement is jurisdictional, failure to do so would deprive this court of jurisdiction to try and decide on the case.

[25] *Rollo*, pp. 651-669

CIR narrated that petitioner filed its administrative claim for refund on April 30, 2007 covering the period June to September 2006 without however attaching any document in support of the claim. Subsequently, petitioner submitted a Certification issued on September 7, 2007 duly signed by Imelda A. Bueno, Revenue District Officer of RDO No. 2, Vigan, Ilocos Sur stating that the VAT returns and the corresponding attachments for the period of June 2005 to December 2006 were received by Revenue Officers Lawrence Timbreza and Fremarie L. Aquino, thus, it is safe to assume the date of September 7, 2007 as the reckoning point in counting the 120-day period within which respondent is given an opportunity to act on the matter. Ergo, counting from September 7, 2007, respondent had until January 5, 2008 within which to act on the administrative claim for refund by petitioner, and petitioner is given a period of 30 days from January 5, 2008 or until February 4, 2008 within which to elevate the same before this Court. Therefore, according to respondent, on account of petitioner's failure to appeal the case within 30 days from January 5, 2008 or until February 4, 2008, this Court no longer has jurisdiction to try and hear the instant case.

Moreover, respondent posits that: petitioner failed to prove by concrete and sufficient evidence that it is entitled to the claim for refund; petitioner failed to comply with the requisites for refund of input tax under the pertinent provision of NIRC of 1997, *as amended*, and other rules and regulations governing the application for the claim of tax refund or issuance of tax credit certificate, for one, according to respondent, petitioner failed to prove that the substantiated input VAT is entirely attributable to the reported zero-rated receipts/transactions of petitioner; the report of the Independent CPA is not sufficient to entitle petitioner to lay a claim on the refund or tax credit, and because of the limitations/restrictions imposed on the Independent CPA assigned responsibilities, he cannot categorically answer whether the input taxes being claimed on account of the domestic purchases of goods and services are directly or indirectly attributable to the zero-rated transactions of petitioner.

Finally, respondent stated that tax refunds are regarded as tax exemptions which are in derogation of the sovereign authority and are to be construed strictissimi juris against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption and he must be able to justify his claim by the clearest grant under Constitutional or statutory law and he cannot be permitted to rely upon vague implications.

THE RULING OF THE COURT

Section 112(A) of the NIRC of 1997, *as amended by RA 9337*, provides for the refund or tax credit of unutilized input VAT attributable to zero rated or effectively zero-rated sales, *viz*:

> 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 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.

As can be culled from the afore-quoted provision and numerous jurisprudence, a taxpayer engaged in zero-rated or effectively zero-rated transactions may apply for tax refund or issuance of TCC for unutilized input VAT provided, the following requisites are satisfied:

(1) the taxpayer is VAT registered;

(2) the taxpayer is engaged in zero-rated or effectively zero-rated sales;

(3) the input taxes were incurred or paid;

(4) the input taxes have not been applied against output taxes during and in the succeeding quarters;

(5) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

(6) the claim was applied/filed within the period prescribed in Section 112(A) and (C) of the NIRC of 1997, *as amended.*

Timeliness of Petitioner's administrative and judicial claims for refund or the issuance of tax credit certificate.

In resolving the instant petition, the Court in Division 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 other issues raised in this petition.

The records of this case show that, petitioner filed its Original and Amended Quarterly VAT Returns,[26] and its administrative and judicial claims for refund or the issuance of TCC on the following dates:[27]

Period (June to September 2006)	Original VAT Return (Date filed)	Amended VAT Return (Date filed)	Administrative Claim (Date filed)	Petition for Review (Date filed)
June	July 21, 2006	April 19, 2007	April 30, 2007	July 18, 2008
July	September 1, 2006	April 19, 2007		
August	September 15, 2006	April 19, 2007		
September	October 2006	April 19, 2007		

Petitioner insists that the administrative and judicial claims were filed within the reglementary period, *i.e.* within the 2 year prescriptive period from the filing of the quarterly VAT returns.

In contrast, respondent adheres to the strict application of Section 112(C) of the NIRC of 1997, *as amended by RA 9337*, arguing that respondent is granted by law a period of 120 days from the submission of all relevant documents in support of the claim to act on the administrative claim, and that petitioner is given the right to elevate the case before this Court within a period of 30 days after the receipt of the denial of the claim or after the expiration of the 120-day period. Respondent emphasized that said requirement is jurisdictional, failure to do so would deprive this court of jurisdiction to try and decide on the case.

[26] Paragraph 5.6, Summary of Admitted Facts, JSFI, *Rollo*, p. 272
[27] Paragraphs 3 & 4, Summary of Admitted Facts, JSFI, *Rollo*, p. 270

In determining whether Luzon Hydro Corporation complied with the period prescribed for claiming a refund/tax credit of unutilized input VAT, Section 112(A) of the NIRC of 1997, *as amended by RA 9337*, must be taken in conjunction with Section 112(C) which provides for the period within which refund or tax credit of input taxes shall be made, said provision is quoted hereunder for ready reference:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
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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.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.
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The instant Petition for Review must fail.

The foregoing conclusion was reached by this Court in accordance with the explicit provision of Section 112(A), in relation to paragraph (C) of the NIRC of 1997, *as amended by RA 9337*, and the recent case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, 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:

> <u>First,</u> 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 of 1997, *as amended by R.A. 9337*, is from the close of the quarter when such sales were made. In the *Aichi* case, the Supreme Court adhered to the principle enunciated in the *Mirant*[28] case notwithstanding the fact that the claim for refund was filed on September 30, 2004, approximately 4 years before the *Mirant* case was promulgated, effectively giving the *Mirant* doctrine a retroactive application.
>
> <u>Second,</u> 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 CIR and not to appeals made to the Court of Tax Appeals (CTA). This is apparent in the first paragraph of subsection (C) of the same provision, 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)*"[29] within which to decide on the claim.
>
> <u>Third,</u> compliance with the "120-30 day period" under Section 112 (C) of the NIRC of 1997, *as amended of R.A. 9337*, is crucial in filing a judicial claim.

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[28] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*, G.R. No. 172129, September 12, 2008
[29] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

Applying, therefore, the foregoing provision and doctrine laid down in the *Aichi* case with the prevailing circumstances in this case, We conclude that, while the administrative claim was filed within the reglementary period of 2 years from the close of the taxable quarter, the judicial claim was filed beyond the period mandated under Section 112(C) of the NIRC of 1997, *as amended by RA 9337*; thus, the Court is constrained to **DENY** the petitioner's claim for refund or issuance of TCC.

The following discussions further elucidate this Court's standpoint.

Administrative claim was filed on time.

The relevant provision for the administrative claim for refund or issuance of tax credit certificate of unutilized input tax is Section 112(A) of the NIRC of 1997, *as amended by R.A. 9337*, which prescribes the reckoning of the 2-year period within which to make a claim for refund or tax credit, *i.e.*, from the close of the taxable quarter when the sales were made.

The Supreme Court, in the *Aichi*[30] case, fortified the doctrine laid down in the *Mirant*[31] case, that the 2-year prescriptive period is reckoned from the close of the taxable quarter when the relevant sales or transactions were made, and significantly gave the said doctrine a retroactive application considering that the High Court applied the same to the *Aichi* case notwithstanding the fact that the claim for refund was filed on September 30, 2004, approximately 4 years before the *Mirant* case was promulgated. In the *Aichi* case, the Supreme Court explained as follows:

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> 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*

[30] *Supra* note 29
[31] *Supra* note 28

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 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 the 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 Sec. 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 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.

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.** (Emphasis supplied.)

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

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Petitioner filed its administrative claim for refund or issuance of TCC on April 30, 2007 for the period covering June to September 2006. Clearly, applying the explicit provision of Section 112(A) of the NIRC of 1997, *as amended by R.A. 9337*, as solidified by the Supreme Court in the cases of *Mirant* and *Aichi*, the administrative claim was filed by the petitioner within the 2-year prescriptive period.

<u>The judicial claim for refund/tax credit was filed beyond the 30-day period prescribed under Section 112(C) of the NIRC of 1997, as amended.</u>

Section 112(C) of the NIRC of 1997, *as amended by RA 9337*, clearly provides that the CIR has "**120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],**" within which to grant or deny the claim. **In case of full or partial denial** by the CIR, the taxpayer's recourse is to file an **appeal before the CTA within 30 days** from receipt of the decision of the CIR. However, if **after the 120-day period the CIR fails to act** on the application for tax refund/credit, the remedy of the taxpayer is to **appeal the inaction of the CIR to CTA within 30 days.**[32]

In this case, records reveal that:

Date Administrative Claim Filed	Submission of Relevant Documents (Reckoning of the 120-day period)	End of 120 Days for the BIR Commissioner to Decide the Claim	End of 30 Days for the Petitioner to Appeal the Decision/Inaction	Date Judicial Claim Filed
April 30, 2007	September 7, 2007	January 5, 2008	February 4, 2008	July 18, 2008

As can be culled from the records at hand, petitioner filed its administrative claim for refund on April 30, 2007 covering the period of June to September 2006. Thereafter, to prove the submission of all the necessary documents with the BIR for the approval of its administrative claim for refund/tax credit, petitioner submitted a Certification[33] issued on September 7, 2007 and duly signed by Imelda A. Bueno, Revenue District Officer of RDO No. 2, Vigan, Ilocos Sur stating that the VAT

[32] *Supra* note 29
[33] Exhibit "O", Formal Offer of Evidence, *Rollo*, p. 371

returns and the corresponding attachments for the period of June 2005 to December 2006 were received by Revenue Officers Lawrence Timbreza and Fremarie L. Aquino, thus, it may be fairly inferred that the date of September 7, 2007 is the reckoning point in counting the **120-day period** within which respondent is given an opportunity to act on the matter. Therefore, counting from September 7, 2007, respondent had until **January 5, 2008** within which to act on the administrative claim for refund by petitioner and conversely, petitioner is given a period of **30 days** from January 5, 2008 or until **February 4, 2008** within which to elevate the same before this Court. Noticeably, it is at this particular point that the petitioner failed considering the fact that petitioner filed its judicial claim only on **July 18, 2008**, which is actually 165 days late or beyond the 30-day period provided under Section 112(C) of the NIRC of 1997, *as amended by RA 9337*.

Hence, for petitioner's failure to appeal the case within 30 days from January 5, 2008 or until February 4, 2008, We are convinced that this Court has no jurisdiction over the instant Petition for Review. Perfection of an appeal in the **manner and within the period** laid down by law is not only mandatory but also jurisdictional.

Relative thereto, in the case of *Yao vs. Court of Appeals*,[34] the Supreme Court had the occasion to say that:

> The right to appeal is not a constitutional, natural or inherent right. It is a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. Since the right to appeal is not a natural right nor a part of due process, it may be exercised only in the manner and in accordance with the provisions of law. Corollarily, its requirements must be strictly complied with.

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[34] G.R. No. 132428, October 24, 2000 citing *Aris, Phil. Inc. v. NLRC*, 200 SCRA 246, 253 [1991]; *Pedrosa v. Hill*, 257 SCRA 373, 378 1996], citing *Bello v. Fernandez*, 4 SCRA 138; *Ortiz v. Court of Appeals*, 299 SCRA 708 [1998]; *Almeda v. Court of Appeals*, 292 SCRA 587 [1998]; also *Asuncion v. NLRC* 273 SCRA 498 [1997]; *Mabuhay Development Industries v. NLRC*, 288 SCRA 1 [1998]; *Rosewood Processing, Inc. v. NLRC*, 290 SCRA 408 [1998]; *Laza v. Court of Appeals*, 269 SCRA 654 [1997]; *Uy v. Court of Appeals*, 286 SCRA 343 [1998]; *Pascual v. Court of Appeals*, 300 SCRA 214 [1998].

> That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional. Non-compliance with such legal requirements is fatal, for it renders the decision sought to be appealed final and executory, with the end result that no court can exercise appellate jurisdiction to review the decision.

It is significant to note that in the recent case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,*[35] although it does not mainly pertain to the 30-day period to file petition or appeal under Sec. 112(C) of the NIRC of 1997, *as amended by RA 9337*, the Supreme Court reaffirmed the principle that the right to appeal is not a natural right, but merely a statutory privilege exercised only in the manner and in accordance with the provisions of law, and thus, held as follows:

> The right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.
>
> The failure to timely perfect an appeal cannot simply be dismissed as a mere technicality, for it is jurisdictional. Thus:
>
> Nor can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a **jurisdictional** problem as it deprives the appellate court of jurisdiction over the appeal. **The failure to file the notice of appeal within the reglementary period is akin to the failure to pay the appeal fee within the prescribed period. In both cases, the appeal is not perfected in due time**. [Emphases supplied]
>
> As to the claim that the government would suffer loss of substantial amount if not allowed to recover the tax refund in the amount of more than P15M, the Court is of the view that said problem has been caused by petitioner's own doing or undoing. While We understand its counsel's predicament of being burdened with a heavy

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[35] G.R. No. 167606, August 11, 2010 citing *Neypes v. Court of Appeals*, 506 Phil. 613, 621 (2005); *Nuñez v. GSIS Family Bank*, G.R. No. 163988, November 17, 2005, 475 SCRA 305, 320; *Republic v. Court of Appeals*, 379 Phil. 92, 100-101 (2000); *In the matter of the Heirship (Intestate Estates) of the late Hermogenes Rodriquez v. Robles*, G.R. No. 182645, December 4, 2009, 607 SCRA 770.

case load, We cannot always rule in favor of the Government. In this case, petitioner even failed to sufficiently explain its failure to observe the Rules.

Petitioner merely pointed out that due to plain oversight, the motions for extension of time and the petition for review that it filed were erroneously titled as *"Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue"* when it should have been *"Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation;"* that "on the assumption that it was respondent which filed the motion, the Court of Appeals, in its Resolution dated January 29, 2002, denied the motion for extension of time to file petition for review on the ground of failure to pay docket and other legal fees;" that respondent filed a manifestation stating that the case was incorrectly titled as it was not the one who appealed the CTA decision to the CA; and that in order to rectify the error, petitioner filed an Amended Petition for Review. To recognize the foregoing statements would render the mandatory rule on appeals meaningless and nugatory.

The point of reference of Our discussion is not the CA's Resolution dated January 29, 2002 but its **January 27, 2003** Resolution. Records bear out that the assailed January 27, 2003 Resolution reiterated the dismissal of the petition for review and thus denied the admission of the amended petition but NOT on the basis of the earlier (January 29, 2002) resolution dismissing the petition for non-payment of docket and other legal fees as there was clearly an error in the designation of FBDC as petitioner in the first motion for extension of time filed by the CIR. Indeed, the CIR is exempted from payment of docket and other legal fees, as a government official representing the BIR.

It bears emphasizing that the dismissal of the petition for review and the denial of the amended petition were premised rather on: ***(1)*** the late filing of the original petition for review by the CIR; ***(2)*** the absence of a motion for reconsideration of the January 29, 2002 Resolution; and ***(3)*** lack of authority of Atty. Alberto R. Bomediano, Jr., legal officer of the BIR Region 8, Makati City, to pursue the case on behalf of petitioner CIR.

It has been ruled that **perfection of an appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional.** The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.

> Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite time fixed by law. Such rules are necessary incidents to the proper, efficient and orderly discharge of judicial functions. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the fruits of his victory. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal. Undeniably, there are exceptions to this rule. Petitioner, however, did not present any circumstances that would justify the relaxation of said rule.
> It need not be overemphasized that it is the responsibility of the counsel to check and keep track of the period of time left to file an appeal. He cannot escape from the inflexible observance of this rule which is jurisdictional. <u>The rules, particularly on **the statutory requirement for perfecting an appeal within the reglementary period** provided, must be **strictly followed. If an appeal is not taken within the period prescribed therefor, the judgment becomes final and the court loses all jurisdiction over the case.**</u> [Emphasis supplied]

Petitioner's assertion that the prescriptive period for the filing of administrative and judicial claims for refund should be counted from the date of filing of the corresponding Quarterly VAT Return,[36] thus, both the administrative and judicial claims were filed within two (2) years from the period prescribed for the filing of the quarterly VAT,[37] is misplaced.

The ruling of the Supreme Court in the *Aichi* case [38] is so clear and unmistakable, that anyone who honestly desires to enforce its principles would know that the Supreme Court, in the said case, hails and upholds the strict compliance with the "120-30 day period" provided under Section 112(C) of the NIRC of 1997, *as amended by RA 9337*. As held in the *Aichi* case, the aforementioned 2-year period refers to applications for refund/tax credit filed with the CIR and not to appeals made to this Court. The Supreme Court ratiocinated in this wise:

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[36] *Rollo*, p. 634
[37] *Rollo*, p. 633
[38] *Supra* note 29

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Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, 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.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.

In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.

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The principle laid down in the foregoing decisions is indicia of how entrenched the rule mandating strict compliance with the statutory requirements for perfecting an appeal is today. Knowledge of these statutory requirements, which make the right to appeal available, is crucial to one's judicial claim for refund/tax credit of unutilized input VAT. Taxpayers should be aware of these statutory requirements, specifically the prescriptive periods in making an appeal, otherwise, they will run the risk of losing their statutory right to appeal refund/tax credit cases with this Court.

In view of the foregoing, this Court finds no need to discuss the other issues raised by the parties, for being moot and academic.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for having been filed beyond the 30-day period provided under Section 112(C) of the NIRC of 1997, *as amended by RA 9337*.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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