REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

CE CEBU GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7740

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

SEP 0 2 2011 1:35 p.m.

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DECISION

CASANOVA, *J*.:

For this Court's resolution is a Petition for Review[1], filed on March 14, 2008, by petitioner CE Cebu Geothermal Power Company, Inc., praying that respondent-Commissioner of Internal Revenue be ordered to refund or issue a tax credit certificate in the amount of ₱7,827,610.98 representing unutilized input VAT from its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of calendar year (CY) 2006.

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[1] Docket, pp. 1-16

Petitioner CE Cebu Geothermal Power Company, Inc., is a domestic corporation duly organized and existing under Philippine laws, with principal office at Kananga, Leyte.[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes as provided by law.[3]

Petitioner was incorporated on January 12, 1994, the primary purpose of which is to "design, develop, construct, erect, assemble, commission and operate geothermal power plants and related facilities for the conversion into electricity of steam and brine provided by and under contract with the Philippine Government, or any subdivision, instrumentality or agency thereof, or any other government-owned or controlled corporation, or other entity engaged in the development, supply or distribution of energy."[4]

Petitioner was principally engaged in the business of power generation through geothermal energy and the subsequent sale of generated power to the PNO-EDC pursuant to an Energy Conversion Agreement ("ECA") with the latter.[5]

Pursuant to the ECA, petitioner's cooperation period with PNOC-EDC ended on June 25, 2006. As a result of its retirement from business effective December 31, 2007, petitioner has filed for the cancellation of its VAT registration and TIN.[6]

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[2] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), *Ibid*, p. 332
[3] Par. 2, Admitted Facts, JSFI, Id., pp. 332-333
[4] Amended Articles of Incorporation of CE Cebu Geothermal Power Company, Inc. Annex "A", Id., pp. 19-29
[5] Par. 2.4, Petitioner's Memorandum, Docket, p. 645
[6] Par. 2.7, Ibid

For the first to fourth quarters of CY 2006, petitioner filed with the Bureau of Internal Revenue (BIR) its Quarterly VAT Returns, reflecting its zero-rated sales, domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the following periods:[7]

2006 Taxable Quarter	Date of Filing of Quarterly VAT Return	Current Transactions				
		Zero-Rated Sales (₱)	Domestic Purchases – Goods Other Than Capital Goods (₱)	Importation – Goods Other Than Capital Goods (₱)	Domestic Purchases – Services (₱)	Services Rendered by Non-Residents (₱)
1st	April 25, 2006	508,703,325.31	3,417,927.20	540,480.00	18,247,688.58	680,700.63
2nd	July 25, 2006	596,032,475.11	6,676,806.60	6,250,861.67	15,517,456.40	157,320.67
3rd	October 25, 2006	400,908,040.39	1,420,723.83	681,608.33	6,969,222.90	0.00
4th	January 25, 2007	0.00	804,946.33	0.00	7,214,345.67	0.00
Total		**1,505,643,840.81**	**12,320,403.96**	**7,472,950.00**	**47,948,713.55**	**838,021.30**

On September 11, 2007, petitioner filed with the BIR Large Taxpayer's Audit and Investigation Division I (LTAID I) an administrative claim for refund/ tax credit of unutilized input VAT for the four quarters of CY 2006. In its claim for refund/tax credit, petitioner maintains that it paid and incurred unutilized input VAT from its domestic purchases of non-capital goods and services, services rendered by non-residents, and importation of non-capital goods in the total amount of ₱7,827,610.98.[8]

When its application for refund/credit remained unresolved by the BIR, petitioner filed a Petition for Review before this Court on March 14, 2008.

On May 22, 2008, respondent filed her Answer[9] interposing the following special and affirmative defenses:

> "5. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses;
>
> 6. Petitioner's alleged claim for refund is subject to administrative investigation/ examination by respondent's Bureau;

[7] Par. 5, Admitted Facts, JSFI, Id., p. 333
[8] Par. 6 and 7, Admitted Facts, JSFI, *Id.*, p. 334
[9] *Id.*, p. 283-292

7. Petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected;

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

9. Petitioner's claim for refund has prescribed already in view of Section 112(C) of the 1997 National Internal Revenue Code which provides that:

> '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 with 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 supplied.)

Hence, when petitioner filed its administrative claim for tax refund/credit with the Bureau of Internal Revenue ('BIR') Large Taxpayer's Audit and Investigation Division I ('LTAID I') on 11 September 2007, respondent had 120 days within which to decide on petitioner's claim for tax refund/credit. 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 11 September 2007 or until 9 January 2008. In the event that respondent failed to act upon petitioner's claim for tax refund/credit, petitioner has 30 days from 9 January 2008 or until 8 February 2008 to appeal the unacted claim with the Court of Tax Appeals. Petitioner filed the instant Petition for Review with the Court of Tax Appeals only on 14 March 2008, more than one (1) month after the lapse of the period allowed by law to file the judicial claim for tax refund/credit with the Court of Tax Appeals. This being so, the instant petitioner for review was clearly filed out of time.

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, p. 266*). For this reason, the courts construe these provisions of statutes as mandatory (*Ibid. citing Alvero vs. De la Rosa, 76 Phil 428, 434*). The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people (M*actan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690*). Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its cause.

10. Gratia argumenti that the subject claim for refund has not yet prescribed, it is imperative for the petitioner to prove its compliance with the following, viz:

a. The registration requirements of a value-added taxpayer under the pertinent provision of the National Internal Revenue Code of 1997, as amended, and its implementing revenue regulations;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the Tax Code of 1997, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003);

c. The submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (C) of the Tax Code of 1997, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with Section 229 of the Tax Code, as amended;

d. That the input taxes of P7,827,610.98 allegedly representing unutilized input VAT from its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods were:

i. paid by the petitioner;

ii. attributable to its zero-rated or effectively zero-rated sales; and,

iii. such input taxes paid should not have been applied against any output tax;

e. That petitioner's claim for tax credit or refund of the unutilized input tax (VAT) in the amount of P7,827,610.98 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code of 1997, as amended;

f. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly provided in Sections 112 (A) and 229 of the Tax Code, as amended.

11. Moreover, in an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund;

12. Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same (Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005). Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (Sea-Land Service, Inc., vs. Court of Appeals, 357 SCRA 444)."

Trial ensued and after presentation of the parties' evidence and witnesses, the Court required the parties to submit their respective Memorandum.[10]

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[10] Resolution dated Sept. 1, 2010, *Id.*, p. 579

Subsequently, petitioner submitted its Memorandum[11] on January 17, 2011 while respondent submitted her Memorandum[12] on January 24, 2011. Hence, the present case was submitted for decision[13].

In their Joint Stipulation of Facts and Issues, the parties agreed on the following issues[14] to be resolved by the Court:

> "1. WHETHER OR NOT THE UNUTILIZED INPUT VAT OF THE PETITIONER FOR THE FIRST TO FOURTH QUARTERS OF CY 2006 AMOUNTING TO ₱7,827,610.98 IS SUBSTANTIATED BY DOCUMENTARY EVIDENCE IN THE FORM OF INVOICES AND OFFICIAL RECEIPTS.
>
> 2. WHETHER OR NOT THE SAID UNUTILIZED INPUT VAT CREDITS OF THE PETITIONER FOR THE FIRST TO FOURTH QUARTERS OF CY 2006 IN THE TOTAL AMOUNT OF ₱7,827,610.98 WAS APPLIED AGAINST ANY OUTPUT TAX OF THE PETITIONER IN THE SUBSEQUENT QUARTERS.
>
> 3. WHETHER OR NOR*(SIC)* THE PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE TOTAL AMOUNT OF ₱7,827,610.98, REPRESENTING ITS UNUTILIZED INPUT VAT FROM DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES AND IMPORTATION OF GOODS FOR THE FIRST TO FOURTH QUARTERS OF CY 2006.
>
> 4. WHETHER OR NOT PETITIONER'S JUDICIAL CLAIM FOR REFUND OF UNUTILIZED INPUT VAT WAS FILED OUT OF TIME.
>
> 5. WHETHER OR NOT PETITIONER SUBMITTED COMPLETE DOCUMENTS IN SUPPORT OF THE ADMINISTRATIVE CLAIM FOR REFUND PURSUANT TO SECTION 112 (C) OF THE TAX CODE OF 1997, AS AMENDED.
>
> 6. WHETHER OR NOT THE INPUT TAXES OF ₱7,827,610.98 REPRESENTING UNUTILIZED INPUT VAT FROM ITS DOMESTIC PURCHASES OF NON-CAPITAL GOODS AND

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[11] Petitioner's Memorandum, *Id.*, pp. 642-679
[12] Respondent's Memorandum, *Id.*, pp. 680-702
[13] Resolution dated Jan. 27, 2011, *Id.*, p. 703
[14] *Id.*, pp. 334-335

> SERVICES, SERVICES RENDERED BY NON-RESIDENTS AND IMPORTATION OF NON-CAPITAL GOODS WERE: (A) PAID BY PETITIONER; AND (B) ATTRIBUTABLE TO ITS ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES."

Simply put, the issue for our resolution is whether or not petitioner is entitled to claim for refund or issuance of a tax credit certificate for its unutilized input VAT amounting to ₱7,827,610.98 for CY 2006.

Petitioner contends that it has complied with all the requisites laid down under Section 112(A) of the 1997 NIRC, hence, it is entitled to a claim for refund/ issuance of a tax credit certificate. That, notwithstanding the ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[15] (**Aichi**) petitioner asserts that its administrative and judicial claims were timely filed. It further argues that there is nothing in Section 112(C) of the 1997 NIRC which supports the view that failure to strictly comply with the 120-day period prevents the taxpayer from filing a judicial claim for refund.

Finally, petitioner claims that it is entitled to a refund of the amount of ₱7,827,610.98 pursuant to Section 112(B) of the 1997 NIRC which provides that a VAT-registered taxpayer who has retired from business may apply for the issuance of a tax credit certificate for any unused input VAT.

For her part, respondent counters that the Court has no jurisdiction over petitioner's claim for refund as petitioner did not timely file its judicial claim. Petitioner filed its Petition for Review more than one month after the expiration of the statutory 120-day period given to the respondent to act on petitioner's claim.

Further, respondent asserts that petitioner is not entitled to a claim for refund since it failed to comply with the requisites laid down under the 1997 NIRC

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

and other pertinent rules and regulations governing the application for tax refund/ credit. She stresses that petitioner must not only prove that it is a VAT-registered entity, but must also substantiate the input VAT by purchase invoices or official receipts.

We find for respondent.

Section 112(A) of the 1997 NIRC, as amended, lays down the requisites for refunds or issuance of a tax credit certificate of input tax due or paid attributable to zero-rated or effectively zero-rated sales, to wit:

> "**SEC. 112. *Refunds or Tax Credits of Input Tax.* –**
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the 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 or 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."

From the aforequoted provision, it is clear that the following requisites must be complied with for the Court to allow the refund or issuance of a tax credit certificate of input VAT attributable to zero-rated or effectively zero-rated sales, *viz:*

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output tax; and,
5. that the administrative claim for refund was filed within the two-year prescriptive period.

From the abovementioned requisites, however, the first issue to be resolved by the Court is the fifth requirement, that is, whether the claim for refund or issuance of a tax credit of creditable and unutilized input VAT of zero-rated or effectively zero-rated sales was timely filed, both in the administrative and judicial levels.

Section 112(A) and (C) of the 1997 NIRC are instructive on the matter.

Section 112(A) of the 1997 NIRC plainly requires that the taxpayer's application for tax refund or tax credit certificate of unutilized or excess creditable input VAT arising from its domestic purchases of goods and services subject to VAT, attributable to its zero-rated or effectively zero-rated sales, must be made within two years after the close of the taxable quarter when such sales were made.

It must be noted that the two-year statutory period referred to in Section 112(A) of the 1997 NIRC refers to the filing of administrative claims with respondent and not resort to the Court. Hence, petitioner had until the following dates within which to file its administrative claim for refund or issuance of tax credit certificate:

CY 2006	*Close of Taxable Quarter*	*Last Day for Filing Administrative Claim*
1st Quarter	March 31, 2006	March 31, 2008
2nd Quarter	June 30, 2006	June 30, 2008
3rd Quarter	September 30, 2006	September 30, 2008
4th Quarter	December 31, 2006	December 31, 2008

Records reveal that petitioner filed its administrative claim on September 11, 2007. Evidently, petitioner timely filed its administrative claim for refund or issuance of tax credit certificate within the two-year statutory period provided under Section 112(A) of the 1997 NIRC.

We will now proceed on whether petitioner's judicial claim was timely filed pursuant to Section 112(C) of the 1997 NIRC, which read as follows –

> "**SEC. 112. *Refunds or Tax Credits of Input Tax*.** –
>
> x x x x
>
> (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 unacted claim with the Court of Tax Appeals.**" [Emphasis supplied]

From the foregoing, it is clear that respondent has 120 days from the date of submission of complete documents within which to grant or deny petitioner's application for refund or tax credit of excess input tax. Upon notice of denial or expiration of the 120-day period without any action on respondent's part, petitioner has 30 days within which to appeal the adverse decision or inaction of respondent with the Court of Tax Appeals.

Significantly, in the Aichi Case,[16] the Supreme Court ruled that the second paragraph of Section 112(C) of the 1997 NIRC envisions two scenarios: (1) when

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

a decision is issued by the Commissioner of Internal Revenue 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 Court of Tax Appeals. As pointed out in this case, the 120-day period is crucial in determining whether the judicial claim was timely filed with the Court. Pertinent portions of said decision read as follows:

> "**Section 112(D) of the NIRC 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.**
>
> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
>
> 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." [Emphasis supplied]

In the present case, petitioner's administrative claim was filed on September 11, 2007. Petitioner submitted the documents in support of its claim on November 13, 2009. Therefore, respondent has 120 days or until March 13, 2010 within which to decide on petitioner's claim. After the expiration of said period without any action on respondent's part, petitioner may file an appeal within 30 days.

A careful review of the records reveals that petitioner prematurely filed its judicial claim when it filed its Petition for Review on March 14, 2008. Section 112(C) clearly provides that the 120-day period commences from the "date of submission of the complete documents in support of the claim for refund." Hence, it is clear that petitioner filed its Petition for Review without waiting for the 120-day period prescribed under Section 112(C) of the 1997 NIRC to lapse. As the counting of the thirty-day period to appeal before this Court has not even commenced to run, the appellate jurisdiction of this Court has not yet ripened.

In *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*,[17] the Court held that "the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every

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[17] CTA Case No. 7808, June 1, 2011

opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention. Exhaustion of administrative remedies should be done in order to give the administrative agency an opportunity to decide the matter correctly and prevent unnecessary and premature resort to the court."

In fine, the premature filing of petitioner's claim for refund or tax credit before the Court warrants denial of its Petition for Review inasmuch as no jurisdiction was acquired by the Court over the case.

Furthermore, petitioner also invoked as legal basis of its claim for refund Section 112(B) of the 1997 NIRC which provides that a VAT-registered taxpayer who has retired from business may apply for the issuance of a tax credit certificate for any unused input VAT. Said provision provides –

"**SEC. 112.** ***Refunds or Tax Credits of Input Tax***. –

x x x x

> (B) *Cancellation of VAT Registration*. A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of the this Code may, within two years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes."

Relative thereto, petitioner also cited Section 236(F) of the same Code which states as follows:

"**SEC. 236.** ***Registration Requirements***. –

x x x x

(F) *Cancellation of Registration.* –

(1) *General Rule.* – The registration of any person who ceases to be liable to a tax type shall be cancelled upon filing with the Revenue District Office where he is registered, an application for registration information update in a form prescribed therefor.

(2) *Cancellation of Value-added Tax Registration.* – A VAT-registered person may cancel his registration for VAT if:

(a) He makes written application and can demonstrate to the commissioner's satisfaction that his gross sales or receipts for the following twelve (12) months, other than those that are exempt under Section 109(A) to (U), will not exceed one million five hundred thousand pesos (P1,500,000), or

(b) He has ceased to carry on his trade or business, and does not expect to recommence any trade or business within the next twelve (12) months.

The cancellation of registration will be effective from the first day of the following month.

To prove compliance with Section 112(B) and 236(F) of the 1997 NIRC, petitioner presented various documents such as:

1. Secretary's Certificate dated November 29, 2007 showing that petitioner's Board of Directors and Stockholders resolved to shorten the term of petitioner's existence to December 31, 2007 thereby effectively causing the dissolution of petitioner as of such date;
2. Petitioner's Application for Registration Information Update (Form 1905) to prove that petitioner filed an application for the cancellation of its VAT registration and TIN due to its dissolution;
3. Certificate of No Tax Liability dated January 15, 2009 issued by the BIR stating that petitioner has no record of tax liability

relative to its application for cancellation of its TIN and VAT registration;
4. Petitioner's letter to the BIR dated January 9, 2008 identifying unused official receipts and invoices;
5. Petitioner's Annual Income Tax Return for the year ended December 31, 2007 filed through the EFPS on January 31, 2008 and manually filed on February 14, 2008;
6. Audited Financial Statements for the year ended December 31, 2007; and
7. Supplemental Sworn Statement of Ms. Leilah Yasmin E. Alpad.

As explicitly stated under Section 112(B) of the 1997 NIRC, the period within which a VAT-registered person may apply for the issuance of a tax credit certificate for any unused input tax, due to retirement from or cessation of business, is **two years from the date of cancellation of VAT registration**.

Interestingly, in this case, petitioner filed with the BIR its Application for Registration Information Update (BIR Form No. 1905)[18] on January 9, 2008. Hence, the two-year period prescribed under Section 112(B) of the 1997 NIRC started to run on February 1, 2008.

Here, petitioner filed its application or claim for refund or tax credit on September 11, 2007, which is way before petitioner even filed its application for cancellation of its VAT registration.

This Court notes that petitioner's alleged entitlement to the claimed input VAT due to its retirement from or cessation of business pursuant to Section 112(B) of the NIRC of 1997 is being raised for the first time in this Court, it was never raised at the administrative level. It is well settled that under the principle of prior exhaustion of administrative remedies, questions or issues not raised in the administrative level cannot be raised for the first time in the judicial level. To

[18] Exhibit "U"

allow a litigant to assume a different posture when he comes before the Court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the Court - which is supposed to review administrative determinations – would not review, but determine and decide for the first time, a question not raised at the administrative forum.[19]

In view of the foregoing, this Court finds it unnecessary to discuss the other issues considering the premature filing of the case at bench.

WHEREFORE, premises considered, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

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[19] Commissioner of Internal Revenue vs. Wanders Philippines, Inc., 160 SCRA 573

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice