Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PERCEPTION GAMING, INC.,
Petitioner,

-versus-

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8449
For*:* Refund

Members:

DEL ROSARIO, *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

AUG 2 6 2015 ; 1:40 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

This is a Petition for Review filed on March 30, 2012 by Perception Gaming, Inc. as petitioner, against the Bureau of Internal Revenue as respondent, before the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to

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[1] Sec. 7. *Jurisdiction*. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

x x x x x x

Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

Petitioner seeks the refund of the amount of Seven Hundred Forty-Four Thousand Two Hundred Sixty-Seven Pesos and 88/100 (₱744,267.88), allegedly representing its output value-added tax (VAT) on effectively zero-rated sales of services and input VAT attributable to such effectively zero-rated sales for the first (1st) quarter of calendar year (CY) 2010. *c*

[2] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:

> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> x x x x x x
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;
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> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.
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> x x x x x x

Petitioner Perception Gaming, Inc. is a corporation existing by virtue of Philippine laws, with principal place of business at the 24th floor, 6750 Ayala Avenue, Makati City.[3] It was incorporated on December 8, 2006, the primary purpose of which is to, among others, lease goods and commodities, including but not limited to casino gaming products, machines, equipment, software and technology.[4] Petitioner is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number 006-532-145-000.[5]

Petitioner is engaged in the business of supplying and leasing out gaming machines[6] to entities authorized by the Philippine Amusement and Gaming Corporation (PAGCOR) to operate gaming centers ("PAGCOR-authorized Bingo Operators").[7]

On the other hand, respondent is the duly appointed Commissioner of the BIR empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously paid taxes, as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 22, 2010, petitioner filed with the BIR through the Electronic Filing and Payment System (eFPS) its Quarterly VAT Return for the 1st quarter of CY 2010.[8] Based on the said VAT Return, petitioner reported sales in the amount of ₱4,575,955.75, output VAT of ₱549,114.69, purchases in the amount of ₱1,626,276.58, and input VAT of ₱195,153.19.

For the 1st quarter of CY 2010, petitioner subjected its gross receipts from the sales of services to both PAGCOR and PAGCOR-authorized Bingo Operators to twelve percent (12%) output VAT in the aggregate amount of

[3] Exhibit "XX", Docket, pp. 435-443.
[4] Ibid.
[5] Exhibit "YY", Docket, p. 444.
[6] Exhibits "I" to "I-4", Docket, pp. 341-423.
[7] Exhibits "M", "V" and "GGG", Docket, pp. 424 and 492.
[8] Exhibit "H", Docket, pp. 48-49.

₱549,114.69.[9] Petitioner shouldered and paid such output tax. Petitioner also incurred input VAT in the total amount of ₱195,153.19.

On March 30, 2012, petitioner filed with the BIR Revenue District Office (RDO) No. 47 an administrative claim for refund[10] and Application for Tax Credits/Refunds (BIR Form No. 1914)[11] of its output VAT and input VAT for the 1st quarter of CY 2010 in the aggregate amount ₱744,267.88, together with the relevant documents.

Respondent failed to act on petitioner's administrative claim for refund of erroneously paid output VAT and unutilized input VAT for the 1st quarter of CY 2010, prompting petitioner to file a Petition for Review with the Court on March 30, 2012.[12]

Within the extended period granted by the Court, respondent filed her Answer[13] by registered mail on May 31, 2012, which was received by the Court on June 6, 2012. She interposed the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

5) Respondent reiterates and repleads the preceding paragraphs of the answer part of her Special and Affirmative Defenses;

6) Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;

7) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected; *C*

[9] Ibid.
[10] Exhibit "A", Docket, pp. 14-15.
[11] Exhibit "B", Docket, p. 16.
[12] Docket, pp. 6-11.
[13] Docket, pp. 62-68.

8) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

9) It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;

10) In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*);

11) Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor. (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*).

12) It is an established principle that refunds and tax credits are in the nature of tax exemptions, hence, strictly construed against the taxpayer. The taxpayer claiming for tax refund or credit has the burden of proving that he is entitled for such refund or credit by providing evidence of compliance of certain conditions of the law under which the privilege of exemption is granted. In a refund process, the taxpayer is bound to comply not only with substantiation requirements but also with the procedural due process to prove its entitlement to the refund. The more critical of these rules are the 2-year prescriptive period and the proper observance of the 120+30 day rule within which to file the refund claim.

13) In the case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.***, G.R. No. 184823 dated October 6, 2010, the Supreme Court held:

'However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:

'SEC. 112. Refunds or Tax Credits of Input Tax.

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'(D) 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 Subsections (A) and (B) 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.** (Emphasis supplied.)

'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 taxpayers 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.

'Respondents 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 respondents 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.

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'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.'

14) The ***Aichi*** case is squarely applicable in the instant petition. Like the ***Aichi*** case, the administrative and the judicial claims were also simultaneously filed in this case. By doing so, the petitioner likewise did not wait for the decision of the respondent or the lapse of the 120-day period. For this reason, the filing of the judicial claim with the Honorable Court is premature. The non-observance of the 120-day period is fatal to the filing of a judicial claim. The premature filing of petitioner's claim for refund/credit of input VAT before the Honorable Court warrants a dismissal inasmuch as no jurisdiction was acquired by the Honorable Court.

15) Applying the ***Aichi*** case, this Honorable Court just recently promulgated a Decision dated January 5, 2012 in the case of ***Hedcor Sibulan, Inc. vs. Commissioner of Internal Revenue***, C.T.A. Case No. 8051, dismissing the Petition for

Review for having been prematurely filed. In that case, the Honorable Court ruled:

'However, notwithstanding the timely filing of its administrative claim, petitioner's claim must necessarily fail as it prematurely filed its judicial appeal before this Court on March 30, 2010, barely 1 day after it filed its application for refund with respondent CIR. The instant Petition for Review was, therefore, prematurely filed, as petitioner did not wait for the lapse of the 120 days before filing its appeal with the CTA, in violation of *Section 112(D) of the NIRC of 1997, as amended.*

'Pursuant, therefore, to the aforesaid ruling of the Supreme Court in the Aichi case, the premature filing of petitioner's judicial claim for refund/credit of input VAT before this Court warrants a dismissal inasmuch as no jurisdiction was acquired by this Court.'

16) It should be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. However, being an indirect tax, it can be shifted or passed on to the buyer/purchaser, transferee or lessees of the goods, properties or services. Once shifted to the buyer/customer as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods or services.

17) In the present case, petitioner's leased of gaming equipment to 'PAGCOR Operators' are subject to 12% VAT which can be passed on to 'PAGCOR Operators' as additional cost of the gaming equipment being leased by the latter because VAT, being an indirect tax may be shifted or passed on to the buyer of goods, services or lease of properties (PAGCOR Operators), pursuant to Section 105 of the Tax Code.

18) In the case of PAGCOR vs. BIR, GR No. 172087, it was held that:

'Although the law does not specifically mention PAGCOR's exemption from indirect taxes, PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations.'

19) The pronouncement of the Highest Magistrate in holding that PAGCOR is exempt from indirect taxes by granting tax exempt status to persons dealing with PAGCOR in casino operations, which are the PAGCOR Operators in the present case. The unmistakable conclusion is that PAGCOR is not liable for VAT and neither the PAGCOR Operators as the latter are effectively subject to zero percent (0%) rate under Section 108 (B) (3) of the 1997 Tax Code, as amended. While the 'PAGCOR Operators' are exempt from taxes, its exemption only covers taxes for which it is directly liable. The exemption does not cover the VAT passed on by petitioner. The shifting of the VAT to the 'PAGCOR Operators' which are tax-exempt entities does not make them the person directly liable and therefore, the 'PAGCOR Operators' cannot invoke their tax exemption privilege to avoid the passing on or shifting of the VAT.

Moreover, the Supreme Court undoubtedly extends the tax exemption only to those persons or entities directly contracting with PAGCOR in casino operations such as PAGCOR Operators and not to those who are directly contracting with PAGCOR Operators. In this case, Petitioner is an entity not dealing or contracting directly with PAGCOR but with the PAGCOR Operators. Hence, PAGCOR's exemption does not extend to Petitioner. Thus, petitioner's leased of gaming equipments to PAGCOR Operators are subject to 12% VAT under Section 108 of the Tax Code. Accordingly petitioner cannot claim refund/ credit of its VAT payment."

In the Notice of Pre-Trial Conference[14], the pre-trial conference was set on July 5, 2012. Respondent's Pre-Trial Brief[15] was filed by registered mail on June 18, 2012 and was received by the Court on June 21, 2012; while petitioner's Pre-Trial Brief[16] was filed on July 16, 2012.

On September 13, 2012, the parties submitted their Joint Stipulation of Facts and Issues[17], which was approved in open court on September 13, 2012[18]. Thereafter, their Joint Stipulation of Witnesses and Exhibits[19] was filed on September 27, 2012, which was approved by the Court in the Resolution[20] dated October 2, 2012.

On July 16, 2013, the Court issued the Pre-Trial Order. Upon motion[21] of petitioner, amendment of the Pre-Trial Order was ordered by the Court in a Resolution[22] dated December 3, 2013. The Amended Pre-Trial Order[23] was promulgated on December 20, 2013.

During trial, petitioner presented the following witnesses: Ms. Rona Magsakay, its Accountant; Mr. Noel Eugenio P. Cuenca, Bingo Regulatory Officer, at the Bingo Department of PAGCOR; Ms. Anna Liza Aguila, its Administrative Assistant; Atty. Mary Elizabeth (Marybee) M. Belmonte, a Senior Associate of petitioner's counsel; and Mr. Abbet R. Barce, the Independent Certified Public Accountant, commissioned by the Court[24] upon the motion[25] of petitioner.

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[14] Docket, p. 70.
[15] Docket, pp. 71-73.
[16] Docket, pp. 79-82.
[17] Docket, pp. 91-92.
[18] Docket, p. 93.
[19] Docket, pp. 97-99.
[20] Docket, p. 100.
[21] Motion to Amend Pre-Trial Order, Docket, pp. 510-514.
[22] Docket, pp. 521-523.
[23] Docket, pp. 525-533.
[24] Docket, p. 128.
[25] Docket, pp. 118-120.

Petitioner filed its Formal Offer of Evidence[26] on July 18, 2013. In a Resolution[27] dated February 27, 2014, the Court admitted petitioner's Exhibits "A", "B", "E", "E-1", "F", "G-1" to "H", "I" to "K-1", "M", "O" to "FFF-1", and "HHH" to "HHH-1". The Court, however, denied the admission of Exhibits "G" and "H-1" for petitioner's failure to present their originals for comparison and Exhibit "GGG" for petitioner's failure to have the same identified before the Court.

Petitioner filed an Omnibus Motion[28] on March 19, 2014, praying for, among others, a partial reconsideration of the Resolution dated February 27, 2014. The Court recalled petitioner's witness, Ms. Ana Liza Aguila, who identified petitioner's Exhibit "GGG". During the Commissioner's Hearing on April 10, 2014, petitioner's Exhibit "G" was found to be a faithful reproduction of the original.

On April 15, 2014, petitioner filed its Supplemental Formal Offer of Evidence[29]. Thereafter, the Court admitted petitioner's Exhibits "G", "GGG", "III" and "III-1" in a Resolution dated May 30, 2014.

Exhibits	Description
A	Petitioner's administrative claim for refund filed with the Bureau of Internal Revenue (BIR) - Revenue Region No. 8 on March 30, 2012.
B	BIR Form No. 1914 filed with the BIR-Revenue Region No. 8 on March 30, 2012.
E	Petitioner's Original Monthly VAT Declaration for January 2010 filed on February 22, 2012 via BIR's Electronic Filing and Payment System (eFPS) with Filing Reference No. 091000003588433.

[26] Docket, pp. 314-340.
[27] Docket, pp. 537-538.
[28] Docket, pp. 539-543.
[29] Docket, pp. 553-556.

E-1	Electronically-generated payment confirmation slip of Petitioner's VAT payment for the month of January 2010.
F	Petitioner's Original Monthly VAT Declaration for February 2010 wile on March 22, 2010 via BIR's eFPS with Filing Reference No. 091000003657807.
G	Petitioner's passbook for its Security Bank saving account.
H	Petitioner's Original Quarterly VAT Return for the 1st quarter of CY 2010 via BIR's eFPS with Filing Reference No. 101000003735122.
I	Lease and Technical Services Agreement between Petitioner and Market Bingo, Inc.
I-1	Lease and Technical Services Agreement between Petitioner and Bingo Pinoy Corporation (Fields).
I-2	Lease and Technical Services Agreement between Petitioner and Kingluck Amusement and Games Inc.
I-3	Lease and Technical Services Agreement between Petitioner and Bingo Pinoy Corporation (Mabalacat).
I-4	Lease and Technical Services Agreement between Petitioner and AB Leisure Exponent, Inc.
K	Judicial Affidavit of Ms. Rona Magsakay dated October 5, 2012.
K-1	Signature of Ms. Roma Magsakay in her Judicial Affidavit dated October 5, 2012.
M	Certificate issued by PAGCOR dated February 15, 2013 enumerating the authorized operators of bingo-gaming venues.
O	Report of the Independent Certified Public Accountant (CPA) on the results of the procedures performed for the claim for refund of erroneously paid output VAT and unutilized input tax amounting to ₱744,267.88 for the 1st

	quarter of CY 2010, which was filed with the Court of Tax Appeals on January 10, 2013.
P	Petition for Review.
Q	Quarterly VAT Return for the 1st quarter of CY 2010 with eFPS Payment Confirmation.
R	Monthly VAT Declaration for January 2010 filed through the eFPS with Payment Confirmation.
S	Monthly VAT Declaration for February 2010 filed through the eFPS with Payment Confirmation.
T	Security Bank Passbook supporting remittances of Net VAT payable for February 2010.
U	Certificates of Registration issued by PAGCOR to the Petitioner for 2009 to 2011.
V	Certification issued by PAGCOR enumerating the authorized operators of bingo-gaming venues.
W	Summary List of Sales for the Quarter ending March 31, 2010 submitted to BIR through e-Submission.
X	Schedule of Revenues for the Quarter ending March 31, 2010.
Y	Tax Identification No. (TIN) VAT Official Receipts Issued by the Petitioner to PAGCOR-Authorized Bingo Operators.
Z	Summary List of Purchases (SLP) for the Quarters ending March 31, 2010 submitted to BIR through e-Submission.
AA	Other documents supporting the claim for refund of input VAT on domestic purchase of services.
BB	Other documents supporting the claim for refund of input VAT on domestic purchase of goods.

CC	Other documents supporting the claim for refund of input VAT on domestic purchase of services.
DD	Other documents supporting the claim for refund of input VAT on domestic purchase of goods.
EE	Other documents supporting the claim for refund of input VAT on domestic purchase of goods.
FF	Other documents supporting the claim for refund of input VAT on domestic purchase of goods.
GG	Other documents supporting the claim for refund of input VAT on domestic purchase of goods.
HH	Other documents supporting the claim for refund of input VAT on domestic purchase of services.
II	Other documents supporting the claim for refund of input VAT on domestic purchase of services.
JJ	Other documents supporting the claim for refund of input VAT on domestic purchase of services.
KK	Other documents supporting the claim for refund of input VAT on domestic purchase of services.
LL	Other documents supporting the claim for refund of input VAT on domestic purchase of goods.
MM	Other documents supporting the claim for refund of input VAT on domestic purchase of goods.
NN	Other documents supporting the claim for refund of input VAT on domestic purchase of services.

OO	Other documents supporting the claim for refund of input VAT on domestic purchase of services.
PP	Other documents supporting the claim for refund of input VAT on domestic purchase of goods.
QQ	Other documents supporting the claim for refund of input VAT on domestic purchase of services.
RR	Other documents supporting the claim for refund of input VAT on domestic purchase of services.
SS	Other documents supporting the claim for refund of input VAT on domestic purchase of services.
TT	Other documents supporting the claim for refund of input VAT on domestic purchase of goods.
UU	Other documents supporting the claim for refund of input VAT on domestic purchase of goods.
VV	Other documents supporting the claim for refund of input VAT on domestic purchase of goods.
WW	Judicial Affidavit of Mr. Abbet R. Barce dated January 18, 2013.
WW-1	Signature of Mr. Abbet R. Barce on his judicial affidavit dated January 18, 2013.
XX	Petitioner's Certificate of Incorporation issued by the Securities and Exchange Commission with Articles of Incorporation.
YY	Petitioner's Certificate of Registration issued by the Bureau of Internal Revenue.
ZZ	Sworn Statement of Ms. Ana Liza Aguila to Questions Propounded by Atty. Ray-an Francis V. Baybay dated February 18, 2013.

ZZ-1	Signature of Ms. Ana Liza Aguila on her Sworn Statement dated February 11, 2013.
AAA-1	Memorandum of Agreement between Petitioner and BPC Management Group Inc. (Market Bingo)-San Pablo.
AAA-2	Memorandum of Agreement between Petitioner and Elan Creation, Inc. (Market Bingo)-Sta. Rosa.
AAA-3	Memorandum of Agreement between Petitioner and BPC Management Group, Inc. (Bingo Tronic)- NEPA.
AAA-4	Memorandum of Agreement between Petitioner and BPC Management Group, Inc. (Bingo Tronic) – NAVOTAS.
AAA-5	Memorandum of Agreement between Petitioner and Hi Stakes Gaming Corp. (Bingo Tronic) – MARQUEE (Lounge).
AAA-6	Memorandum of Agreement between Petitioner and Hi Stakes Gaming Corp. (Bingo Tronic) – MARQUEE (EZ).
AAA-7	Memorandum of Agreement between Petitioner and Hi Stakes Gaming Corp. (Bingo Tronic) – Pulilan (Lounge).
AAA-8	memorandum of Agreement between Petitioner and Hi Stakes Gaming Corp. (Bingo Tronic) – Pulilan (EZ).
AAA-9	Memorandum of Agreement between Petitioner and Kingluck Amusement and Games Inc. – Marilao.
AAA-10	Memorandum of Agreement between Petitioner and Bingo Pinoy Corp. – Dau Mabalacat.
AAA-11	Memorandum of Agreement between Petitioner and Bingo Pinoy Corp. – Fields
AAA-12	Memorandum of Agreement between Petitioner and Market Bingo Corporation.

BBB-1	Certificate of Registration issued by PAGCOR in favor of Petitioner dated August 27, 2009.
BBB-2	Certificate of Registration issued by PAGCOR in favour of Petitioner dated September 3, 2010.
BBB-3	Certificate of Registration issued by PAGCOR in favor of Petitioner dated January 28, 2011.
CCC	Deed of Assignment between Market Bingo Corporation and BPC Management Group, Inc.
DDD	Certification issued by the BIR's Revenue Accounting Division (RAD) dated April 11, 2013.
EEE	Sworn Statement of Atty. Mary Elizabeth (Marybee) M. Belmonte to Questions Propounded by Atty. Ray-an Francis V. Baybay dated May 24, 2013.
EEE-1	Signature of Atty. Mary Elizabeth (Marybee) M. Belmonte on her Sworn Statement dated May 24, 2013.
FFF	Supplemental Sworn Statement of Ms. Rona Magsakay dated March 27, 2013.
FFF-1	Signature of Ms. Rona Magsakay on her Supplemental Sworn Statement dated March 27, 2013.
GGG	Certification issued by PAGCOR attesting that Allpoint Leisure Corporation, an affiliate of AB Leisure Exponent, Inc., has been authorized by PAGCOR to operate electronic bingo games.
HHH	Supplemental Sworn Statement of Ms. Ana Liza Aguila to Questions Propounded by Atty. Ray-an Francis V. Baybay dated June 18, 2013.
HHH-1	Signature of Ms. Ana Liza Aguila on her Supplemental Sworn Statement dated June 18, 2013.
III	Supplemental Sworn Statement of Ms. Ana Liza Aguila to Questions Propounded by Atty. Ray-an Francis V. Baybay dated March 19, 2014.

III-1 Signature of Ms. Ana Liza Aguila on her Supplemental Sworn Statement dated March 19, 2014.

During the hearing on June 3, 2014, respondent's counsel manifested that there is no report yet of the Revenue Officer, hence, she is submitting the case for decision.[30]

On July 30, 2014, respondent by registered mail, filed a Manifestation (In Lieu of Submission of Memorandum)[31], which was received by the Court on August 5, 2014. Petitioner, on the other hand, filed its Memorandum[32] on August 22, 2014. Thereafter, in the Resolution[33] dated September 1, 2014, the instant case was submitted for decision.

The parties stipulated on the following issues[34] for resolution of this Court:

1. Whether or not petitioner's lease of gaming equipment to PAGCOR operators qualifies as zero percent VAT transactions;

2. Whether or not petitioner has input VAT in the amount of ₱195,153.19 directly attributable to its zero-rated sales for the period January to March 2010; and

3. Whether or not petitioner has input VAT in the amount of ₱195,153.19 which remains unutilized.

Essentially, the foregoing issues may be summarized as follows:

[30] Resolution dated June 3, 2014, Docket, p. 568.
[31] Docket, pp. 583-585.
[32] Docket, pp. 589-616.
[33] Docket, p. 618.
[34] Issues, Joint Stipulation of Facts and Issues, Docket, pp. 91-92.

> "Whether or not petitioner is entitled to a refund in the amount of ₱744,267.88, representing its output VAT on effectively zero-rated sales of services and input VAT attributable to such effectively zero-rated sales for the first quarter of CY 2010."

At the outset, it must be pointed out that petitioner's present claim involves two distinct classes of VAT, namely:

(a) Petitioner's erroneously paid output VAT on its gross receipts from its effectively zero-rated sales of services to PAGCOR and PAGCOR-authorized Bingo Operators for the first quarter of CY 2010 amounting to ₱549,114.69; and

(b) Petitioner's input VAT attributable to its effectively zero-rated sales of services for the first quarter of CY 2010 amounting to ₱195,153.19.

A. Petitioner is entitled to the refund of output VAT it erroneously paid on effectively zero-rated sales for the first quarter of CY 2010

Petitioner argues that considering that PAGCOR and PAGCOR-authorized Bingo Operators are exempt from VAT under the PAGCOR Charter, its gross receipts from the lease of gaming equipment and performance of technical services in connection with the Bingo operations of PAGCOR and PAGCOR-authorized Bingo Operators are subject to 0% VAT.

Respondent, on the other hand, contends that petitioner's lease of gaming equipment to PAGCOR-authorized Bingo Operators are subject to 12% VAT because while the PAGCOR-authorized Bingo Operators are exempt from taxes, its exemption only covers taxes for which it is directly liable and not the VAT passed on by petitioner. Respondent also argues that petitioner is an entity not dealing or contracting directly with PAGCOR but with the PAGCOR-authorized Bingo Operators. Thus, PAGCOR's exemption does not extend to petitioner.

Section 13(2) of Presidential Decree (PD) No. 1869, as amended by Republic Act (RA) No. 9487, otherwise known as the "PAGCOR Charter", provides that PAGCOR, its authorized game operators, and other entities providing facilities and rendering services to PAGCOR and these operators shall be exempt from all kinds of taxes whether national or local, to wit:

> "SECTION 13. *Exemptions.* –
>
> xxx xxx xxx
>
> (2) *Income and other taxes.* – (a) Franchise Holder: **No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation**; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.
>
> (b) Others: **The exemption** herein granted for earnings derived from the operations conducted under the franchise, specifically from

> the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, **shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator** as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.
>
> The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax." *(Emphasis supplied)*

The foregoing provision can be divided into two parts, namely: (1) the kind of tax exemption, and (2) the persons and entities enjoying such tax exemptions. Under Section 13(2)(a) of the PAGCOR Charter, no tax of any kind or form, whether national or local, shall be imposed on the earnings of PAGCOR, except a Franchise Tax of five percent (5%) of the gross revenue or earnings derived by PAGCOR from the operation of its franchise.

Notwithstanding the passage of RA No. 9337[35] on July 1, 2005, removing PAGCOR's income tax exemption, PAGCOR still enjoys exemption from indirect taxes, including VAT.[36] In the case of *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue, et al.*[37], the Supreme Court held that:

[35] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and For Other Purposes.

[36] *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue (BIR), et. al.*, G.R. No. 172087, March 15, 2011; *Philippine Amusement and Gaming Corporation vs. Bureau of Internal Revenue, et. al.*, G.R. no. 215427, December 10, 2014.

[37] G.R. No. 172087, March 15, 2011, citing *Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation,* G.R. No. 147295, February 16, 2007.

"Petitioner's exemption from VAT under Section 108 (B) (3) of R.A. No. 8424 has been thoroughly and extensively discussed in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation.* xxx

xxx xxx xxx

A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. We are one with the CA ruling that PAGCOR is also exempt from indirect taxes, like VAT, as follows:

> Under the above provision [Section 13 (2) (b) of P.D. 1869], the term 'Corporation' or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, **PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations**. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. **In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations**. The unmistakable conclusion is that PAGCOR is not liable for the P30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3), R.A. 8424.

Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to

VAT. **Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes.** xxx" *(Emphasis supplied)*

On the other hand, Section 13(2)(a) and (b) of the PAGCOR Charter enumerates the entities which shall enjoy exemption from taxes other than Franchise Taxes, namely:

(a) The Corporation, or PAGCOR;
(b) Corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under the Franchise granted under the PAGCOR Charter; and
(c) Those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

It bears stressing that not only PAGCOR is exempt from taxes. The tax-exempt status is likewise expressly conferred by the PAGCOR Charter to other entities with whom PAGCOR or operator has any contractual relationship in connection with the operations of the casinos authorized to be conducted under the PAGCOR Charter. These entities include the PAGCOR-authorized Bingo Operators since RA No. 9487[38] expressly authorized PAGCOR to "license" third-parties to operate gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, *i.e.* basketball, football, bingo, etc., except jai-alai.

Considering that PAGCOR and PAGCOR-authorized Bingo Operators are exempt from VAT under the PAGCOR Charter, the services rendered to them are effectively

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[38] An Act Further Amending Presidential Decree No. 1869, Otherwise Known as PAGCOR Charter, June 20, 2007.

subject to zero percent (0%) VAT in accordance with Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997, as amended, which states:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (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:
>
> xxx xxx xxx
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;"

Petitioner is a VAT-registered taxpayer[39] engaged in the business of, among others, distributing, selling, leasing, importing, exporting, exchanging, mortgaging, purchasing, acquiring goods and commodities, including but not limited to casino gaming products, machines, equipment, software and technology.[40] Petitioner is a duly registered supplier/distributor/manufacturer/contractor of PAGCOR.[41] The lease of gaming machines and provision of technical services by petitioner to PAGCOR-authorized Bingo Operators is therefore subject to 0% VAT.

Perusal of the VAT Returns[42] discloses petitioner's gross sales in the aggregate amount of ₱4,575,955.75[43], which was derived from the lease of gaming machines and

[39] Exhibit "YY", Docket, p. 444.
[40] Exhibit "XX", Docket, p. 437.
[41] Exhibit "U".
[42] Exhibits "E", "F" and "H", Docket, pp. 41-45.
[43] Exhibit "H", line 15A, Docket, p. 48; Exhibit "B-2", p. 18.

provision of technical services to PAGCOR-authorized Bingo Operators.[44] Notwithstanding the fact that PAGCOR and its authorized operators are VAT-exempt entities under the NIRC and the PAGCOR Charter, petitioner erroneously subjected its gross receipts to 12% VAT in the total amount of ₱549,114.69[45]. Petitioner alleges that it shouldered and paid such output tax, as such, it is entitled to the refund of the output VAT in the amount of ₱549,114.69.

Petitioner's claim for refund of the erroneously paid output VAT finds legal basis in Sections 204(C) and 229 of the NIRC of 1997, as amended, which read:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (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."
>
> "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

[44] Exhibits "M" and "GGG", Docket, pp. 424 and 492.
[45] Exhibit "H", line 15B, Docket, p. 48.

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 claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

The recovery of any national internal revenue tax extends only to that erroneously paid or remitted to the BIR. Thus, petitioner's claim for refund of the total output VAT for the first quarter of CY 2010 in the amount of ₱549,114.69 is baseless. Records show that, as detailed below, petitioner made VAT payment only in the amount of ₱353,961.50 for the first quarter of CY 2010. Accordingly, petitioner may only be refunded of the VAT payment of ₱353,961.50, subject to further considerations.

Taxable Quarter	**Gross Receipts**	**Output Tax**	**Input Tax**	**VAT Paid**	**Exhibit**
1st Qtr 2010	₱4,575,955.75	₱549,114.69	₱195,153.19	₱353,961.50	"H" "E-1", "G", and "Q",

In order to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be present:[46]

1. That there must be an erroneous or illegal collection of tax, or a penalty collected without

[46] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,* CTA EB No. 960, September 9, 2013.

authority, or sum excessively or wrongfully collected;

2. That the claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

3. That the suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

Thus, for a valid claim for refund of taxes erroneously paid, it must be filed within two years from the date of payment of the tax. In the case of *Atlanta Land Corporation vs. Commissioner of Internal Revenue*[47], the Court of Tax Appeals *En Banc* held that:

> "The language of the law is unequivocal, it provides that no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax 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.
>
> **The date of payment of the tax is the reckoning point of the two-year period within which a valid claim for refund may be filed in both the administrative [Sec. 204 (C) NIRC] and judicial levels.** Any claim or proceeding for the recovery of taxes shall be filed within the two-year prescriptive period; otherwise, the taxpayer loses his right *ipso facto* to recover any tax alleged to have been erroneously or illegally collected." *(Emphasis supplied)*

The following are the pertinent dates to petitioner's claim for refund:

[47] CTA EB No. 79, May 23, 2006.

Taxable Quarter	VAT Payment	Date of Payment	End of Two-Year Prescriptive Period	Date of Filing of Administrative Claim for Refund	Date of Filing of Judicial Claim for Refund
1st Qtr 2010	₱353,961.50	April 22, 2010	April 22, 2012	March 30, 2012[48]	March 30, 2012

Clearly, petitioner's administrative and judicial claims were filed within the two-year prescriptive period.

Considering that petitioner complied with all the requisites, it is entitled to the refund of ₱353,961.50, representing erroneously paid output VAT on effectively zero-rated sales for the first quarter of CY 2010.

B. Petitioner is not entitled to the refund of input tax attributable to zero-rated sales for the first quarter of CY 2010

In the course of its operations, petitioner made local purchases of goods and services and importation of goods amounting to ₱1,626,276.58[49] and incurred input VAT in making these purchases amounting to ₱195,153.19.[50]

Petitioner's sales for the first quarter of CY 2010 was derived mainly from its lease of gaming equipment and performance of related technical services to PAGCOR and to PAGCOR-authorized Operators; thus, all of petitioner's input taxes are considered directly attributable to its zero-rated sales. As a result, petitioner prays for the refund of the input VAT for the first quarter of CY 2010 in the total amount of ₱195,153.19.

In order to avoid the possibility that the decision may be rendered void, the Court can, by its own initiative, raise the question of jurisdiction. After all, to inquire into the

[48] Exhibit "A", Docket, p. 14.
[49] Exhibit "H", line 21N, Docket, p. 48.
[50] Exhibit "H", line 21O, Docket, p. 48.

existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[51] As such, the Court shall determine first whether it has jurisdiction to entertain the present appeal.

The portions of Section 112 of the NIRC of 1997, as amended, pertaining to refunds or tax credits of input tax read as follows:

> "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.

[51] *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 185969, November 19, 2014, citing *Commissioner of Internal Revenue vs. Villa, et. al.,* G.R. No. L-23988, January 2, 1968.

xxx xxx xxx

(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**." *(Emphasis supplied)*

Petitioner, as mentioned earlier, simultaneously filed its administrative and judicial claims for refund on March 30, 2012[52], which is within the two-year prescriptive period from the close of the taxable quarter.

Notwithstanding the timely filing of its administrative claim, petitioner's claim must necessarily fail as it prematurely filed its Petition for Review before this Court on March 30, 2012, the same day it filed its Application for Tax Credits/Refunds with the BIR.

As correctly pointed out by respondent in her Answer[53], the proper observance of the two-year prescriptive period and the 120+30-day rule is critical in a refund process, to wit:

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[52] Exhibit "A", Docket, p. 14.
[53] Docket, p. 63.

> "It is an established principle that refunds and tax credits are in the nature of tax exemptions, hence, strictly construed against the taxpayer. The taxpayer claiming for tax refund or credit has the burden of proving that he is entitled for such refund or credit by providing evidence of compliance of certain conditions of the law under which the privilege of exemption is granted. In a refund process, the taxpayer is bound to comply not only with substantiation requirements but also with the procedural due process to prove its entitlement to the refund. The more critical of these rules are the 2-year prescriptive period and the proper observance of the 120+30 day rule within which to file the refund claim."

In the case of *Team Energy Corporation (Formerly Mirant Pagbilao Corporation) vs. Commissioner of Internal Revenue*[54], the Supreme Court explained the rules on the prescriptive period for claiming refund or credit of input VAT in this wise:

> "From the foregoing, it is clear that a VAT-registered taxpayer claiming for refund or tax credit of their excess and unutilized input VAT must file their administrative claim within two years from the close of the taxable quarter when the sales were made. After that, the taxpayer must await the decision or ruling of denial of its claim, whether full or partial, or the expiration of the 120-day period from the submission of complete documents in support of such claim. Once the taxpayer receives the decision or ruling of denial or expiration of the 120-day period, it may file its petition for review with the CTA within thirty (30) days.
>
> In the *Aichi* case, this Court ruled that the 120-30-day period in Section 112 (C) of the NIRC is mandatory and its non-observance is fatal to the filing of a judicial claim with the CTA. In this case, the Court explained that if after the 120-day mandatory period, the Commissioner of Internal Revenue *(CIR)* fails to

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[54] G.R. No. 197760, January 13, 2014, citing the case of *Commissioner of Internal Revenue vs. Aichi Forging Company Asia, Inc.*, G.R. No. 184823, October 6, 2010.

act on the application for tax refund or credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the CTA within thirty (30) days. The judicial claim, therefore, need not be filed within the two-year prescriptive period but has to be filed within the required 30-day period after the expiration of the 120 days. Thus:

> 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 [the] CTA within 30 days.
>
> xxx xxx xxx
>
> 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 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)"

With the premature filing of petitioner's judicial claim, the Court clearly has no jurisdiction over petitioner's claim for refund of input tax attributable to zero-rated sales for the first quarter of CY 2010.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** the reduced amount of **₱353,961.50** to petitioner, representing erroneously paid output VAT for the first quarter of CY 2010.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division