CTA - UFR
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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILEX MINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 532
(CTA Case No. 7657)

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

PROMULGATED:

SEP 07 2010 Apolinario 2:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by petitioner Philex Mining Corporation before the Court of Tax Appeals (CTA) *en banc* assailing the Decision [1] dated May 12, 2009 and the Resolution [2] dated August 12, 2009 promulgated by the

[1] *Rollo*, pp. 26-40. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta, concurring and dissenting and Associate Justice Lovell R. Bautista, concurring.
[2] Ibid, pp. 42-56.

CTA First Division in the case entitled " Philex Mining Corporation vs. Commissioner of Internal Revenue," docketed as CTA Case No. 7657.

The assailed decision and resolution DENIED the petition seeking the approval of petitioner's application for and issuance of Value Added Tax (VAT) refund representing excess input VAT for the second quarter of 2005.

The dispositive portion of the assailed Decision reads as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **DENIED** on the ground of **PRESCRIPTION**.
> **SO ORDERED**."

The dispositive portion of the assailed Resolution reads as follows:

> "**WHEREFORE**, in view of the foregoing, petitioner's *Motion for Reconsideration* is hereby **DENIED** for **LACK OF MERIT**. The *Decision* dated May 12, 2009 is hereby **AFFIRMED**.
> **SO ORDERED**."

THE FACTS

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

> Petitioner, Philex Mining Corporation, is VAT-registered corporation organized under Philippine laws with principal office at 27 Brixton Street, Pasig City with VAT Registration Certificate No. 35-6-000731 dated October 29, 1997. It is engaged in the mining business, the exploration of mine properties, and the commercial production and marketing of mine products.
>
> Respondent, on the other hand is the government official charged with the administration and enforcement of the national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the Tax Code, with address at the BIR National Office, Diliman, Quezon City.
>
> Petitioner's application for zero-rating pursuant to Section 4.100-3 of Revenue Regulations No. 7-95 (RR 7-95) was approved on April 12, 1998. Since petitioner's sales were deemed zero-rated, petitioner alleged that there was no output VAT against

which it could apply or use its input taxes incurred for the 2nd quarter of 2005.

For the 2nd quarter of 2005, petitioner filed its original VAT return on July 26, 2005 and the amended return on December 1, 2005 which reported total zero-rated sales of P 1,335,044,466.98, domestic purchase of goods of P 825,912.30, with corresponding input tax of P 82,591.23, and importation of goods of P 62,500,070.00 with corresponding input tax of P 6,250,007.00.

Relying on Section 4.106-2 of RR 7-95, petitioner filed a claim for tax refund/tax credit with the One Stop Shop Center of the Department of Finance on March 20, 2006, in the amount of P6,332,598.23. Respondent has not acted upon petitioner's claim for refund for which reason petitioner filed the instant petition before Us on July 13, 2007.

In response to the Petition for Review, respondent stipulated the following Special and Affirmative Defenses:

> "6. The claim for refund is still under examination by the respondent Bureau;
>
> 7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
>
> 8. The grant of claim for refund [is] tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;
>
> 9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

Petitioner presented evidence in support of its claim and even commissioned an Independent Certified Public Accountant to prove its allegations. Respondent submitted the case for decision on the ground that the One Stop Shop Inter-Agency Tax Credit and Duty Drawback of the Department of Finance has not replied as to the status of the investigation on petitioner's claim for refund.

Upon receipt of petitioner's Memorandum on August 26, 2008, the instant petition was submitted for decision on October 7, 2008, *sans* respondent's Memorandum.

As agreed upon by the parties, the issues are as follows: gr

1. Whether or not petitioner's importation of capital goods, and domestic purchases and importations of goods which are attributable to its export sales for the 2nd quarter of 2005, are duly supported by documentary evidence.

2. Whether petitioner made direct and indirect exports of mineral products during the same period.

3. Whether or not the accumulated or excess input VAT was not utilized or applied by petitioner against output VAT in the 2nd quarter of 2005 or in the succeeding quarters or taxable years.

4. Whether or not the export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

5. Whether or not petitioner is entitled to the refund of the excess input taxes in the total amount of P6,332,598.23 for the 2nd quarter of 2005 paid for the purchase of capital goods and/or non-capital goods and services due to petitioner being a producer and exporter of mineral products.

On May 12, 2009, the Court in Division rendered the assailed Decision denying the Petition for Review on the ground of prescription. Aggrieved, petitioner filed a Motion for Reconsideration which was denied for lack of merit on August 12, 2009.

Hence, this Petition for Review *en banc*.

In a resolution dated September 22, 2009, the CTA *en banc* ordered respondent to file his comment within ten (10) days from receipt of the said resolution. Despite the opportunity granted, respondent failed to comment on the petition within the period allowed. Subsequently, in a resolution dated October 22, 2009, the CTA *en banc* ordered the parties to simultaneously submit their respective memoranda within fifteen (15) days from notice. Both parties failed to comply with the said resolution, hence, the instant petition was submitted for decision. *gr*

THE ISSUE

Petitioner raises before the Court *en banc* the lone issue of:

> WHETHER PETITIONER'S JUDICIAL CLAIM IS BARRED BY PRESCRIPTION BY VIRTUE OF SECTION 112(A) OF THE 1997 TAX CODE AND THE *MIRANT* DECISION OF THE SUPREME COURT

THE COURT'S RULING

Petitioner argues that CTA First Division erred in ruling that prescription had already set in when it filed its judicial claim for tax refund or credit on July 19, 2007 (should be July 13, 2007, per record[3]), on the basis of Section 112(A) of the National Internal Revenue Code (NIRC) of 1997 and pursuant to the Supreme Court ruling in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.*).[4]

Allegedly, the *Mirant* decision is not on all fours with the instant case thus, inapplicable. The cited case refers to an administrative claim for tax refund filed with respondent that was declared time-barred and not to a judicial claim as in the instant case. Petitioner maintains that the two-(2) year prescriptive period mentioned in Section 112(A) of the NIRC of 1997 applies only to administrative and not to judicial claim for input VAT refund. The word 'apply' in the provision connotes the filing of administrative claim as a taxpayer does not apply for a tax refund with this Court but appeal the adverse decision or inaction of respondent on the claim. *Jr*

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[3] p. 1 Record of C.T.A. Case No. 7657.
[4] G. R. No. 172129, September 12, 2008, 565 SCRA 154.

Moreover, petitioner stresses that the relevant provisions to the instant case are Section 112(D) of the NIRC and Section 4.106-2(c) of Revenue Regulations (RR) No. 7-95, which allow respondent one hundred twenty (120) days from the date of submission of complete documents to act on the petitioner's claim for tax refund or credit. After the lapse of the said 120 days without any action on the part of the respondent or from receipt of the adverse decision, petitioner had thirty (30) days within which to elevate its claim for refund to the CTA. But if there is no way of determining the 120-day period for the purpose of counting the 30-day period to appeal to the CTA, then, Section 4.106-2(c) of RR No. 7-95, which provides that "xxx before the lapse of the two (2)-year period from the date of the filing of the VAT return for the taxable quarter, the taxpayer may appeal to the Court of Tax Appeals," should serve as the fall-back provision.

We do not agree.

The Petition for Review is denied for having been filed beyond the two (2)-year prescriptive period. In the assailed decision and resolution, the CTA First Division correctly ruled the dismissal of petitioner's judicial claim on the ground of prescription.

The two (2)-year prescriptive period for administrative and judicial claims for VAT refund is mandatory as expressly provided under Section 112 (A) in relation to Section 112 (D) and Section 229 of the NIRC of 1997. The two (2)-year prescriptive period applies both to administrative and judicial claims for refund. Hence, if the two (2)-year prescriptive period is about to expire there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue (Commissioner) or its inaction after the expiration of the 120-day period before the taxpayer can go to the Court of Tax Appeals (CTA). This is based on the following reasons:

1. The applicable provisions of law to the instant case found in Section 112(A) and (D) of NIRC of 1997 are clear and categorical.

2. Recent jurisprudence will show that the two (2)-year prescriptive period applies both to administrative and judicial claims for refund or credit of unutilized input VAT.

3. The Supreme Court decided in several refund cases that before the lapse of the two (2)-year prescriptive period the taxpayer-applicant may already file a judicial claim without awaiting the decision of the Commissioner.

4. Revenue Memorandum Circular No. 49-03 recognizes that administrative and judicial claims for VAT refund or tax credit can proceed simultaneously.

The provisions of Section 112(A) and (D) of NIRC of 1997 are clear and categorical.

The applicable law to the instant claim for refund is the NIRC of 1997 specifically Section 112 (A) and (D)[5] which provides:

> **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: xxx
>
> xxx xxx xxx
>
> D) *Period within which Refund or Tax Credit of Input Taxes Shall be Made.* - In proper cases, the Commissioner shall

[5] Prior to its amendment under Republic Act (RA) No. 9337.

> 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.-
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> xxx xxx xxx xxx

It is clear from the above cited provision that the reckoning of the two (2)-year prescriptive period for filing the application for refund/credit of input VAT attributable to zero-rated sales or effectively zero-rated sales shall be counted from the close of the taxable quarter when the sales were made. And where a provision of law speaks categorically, the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. [6]

And, in case of denial of administrative claim for refund or the failure of the respondent Commissioner to act within the 120-day period, the taxpayer **may** file a judicial claim with the CTA within 30 days after denial of administrative claim or after the lapse of the 120-day period. It should be emphasized that the provision of Section 112 (D) is couched merely in a permissive manner with the employment of the word "may".[7] It is directory and permissive and not mandatory nor jurisdictional as long as the judicial claim is

[6] *Luzon Stevedoring Corp. vs. Court of Tax Appeals, et. al.*, G.R. No. L-30232, July 29, 1988, 163 SCRA 647, citing *Allied Brokerage Corp. v. Commissioner of Customs*, L-27641, 40 SCRA 555 [1971]; *Quijano, etc. v. DBP*, L-26419,35 SCRA 270 [1970]).
[7] Consolidated cases of *Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue*, C.T.A. Case Nos. 7228, 7286, 7318, Resolution, March 10, 2009.

within the two (2)-year prescriptive period so that if the said period is about to lapse without action on the part of respondent Commissioner, then, judicial recourse may be resorted to. It now becomes imperative to reconcile Section 112 with Section 229 of the NIRC of 1997 with respect to the two (2)-year prescriptive period.

Section 229 of the NIRC of 1997 provides:

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

Section 229 covers not just taxes erroneously or excessively collected but also "any sum alleged to have been excessively xxx collected" which is exactly the nature of an input VAT attributable to zero-rated or effectively zero-rated sales. [8]

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[8] Consolidated cases of *Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue*, C.T.A. Case Nos. 7228, 7286, 7318, Resolution, March 10, 2009.

Although Section 112 is a specific provision which deals on the refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero rated sales and Section 229 is a general provision which contains the mandatory statute of limitations of two (2)-year prescriptive period on refund cases, still these two provisions should be harmonized. This is in accord with the rule on statutory construction that where one statute deals with a subject matter in general terms and another in a more detailed way, they should be harmonized if possible.[9] Every section, provision or clause of the statute must be expounded by reference to each other in order to arrive at the effect contemplated by the legislature. The intention of the legislature must be ascertained from the whole text of the law and every part of the act is to be taken into view. [10] Hence, when We harmonize Sections 112 and 229 of the NIRC of 1997, We see no reason to sustain petitioner's argument that Section 4.106-2(c) of Revenue Regulations No. 7-95 applies as a fall-back provision in determining the prescriptive period for judicial claim.

It should also be pointed out in the *Mirant* [11] case that the Supreme Court clearly delineated the **inapplicability of the reckoning point** of the two (2)-year prescriptive period under Section 229 of the NIRC of 1997 but did **not** rule out the **two (2)-year prescriptive period** for filing administrative and judicial claims for refund of unutilized input VAT. The said decision emphasized the point in this wise:

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[9] Ruperto G. Martin*, Handbook on Statutory Construction*, revised edition, p. 141.
[10] *Commissioner of Internal Revenue vs. TMX Sales, Inc.,* G.R. No. 83736, January 15, 1992, 205 SCRA 184 citing the cases of *Chartered Bank vs. Imperial*, 48 Phil. 931 [1921]; *Lopez vs. El Hoger Filipino*, 47 Phil. 249, cited in *Aboitiz Shipping Coporation vs. City of Cebu*, 13 SCRA 449 [1965].
[11] *Supra,* note 4.

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.
>
> xxx xxx xxx

Recent jurisprudence will show that the two (2)-year prescriptive period applies both to administrative and judicial claims for refund or credit of unutilized input VAT.

As early as the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue* [12] (*Intel* case) promulgated on April 27, 2007, the Supreme Court listed down all requisites in the application for refund or issuance of tax credit certificate for unutilized input VAT attributable to zero-rated or effectively zero-rated transactions. One of the requisites listed therein is the period within which the claim must be filed, i.e, within two (2) years after the close of the taxable quarter when such sales were made.

The pertinent portion of the *Intel* case provides:

> Under Sections 106 (A)(2)(a)(1) in relation to 112(A) of the Tax Code, a taxpayer engaged in zero-rated or effectively zero-rated transactions may apply for a refund or issuance of a tax credit certificate for input taxes paid attributable to such sales upon complying with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated (like export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; **(3) the claim must be filed within two years after the close of the taxable quarter when such sales were made;** xxx (emphasis ours)

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[12] G.R. No. 166732, April 27, 2007, 522 SCRA 657.

Upon examination of the factual antecedents of the *Intel* case, the administrative claim for refund of its unutilized input VAT covering the period April 1, 1998 to June 30, 1998 was filed on May 18, 1999 while its judicial claim was filed on June 30, 2000 and We quote the Supreme Court, *viz.*:

> On June 30, 2000, when the two-year prescriptive period to file a refund was about to lapse without any action by the Commission of Internal Revenue on its claim, petitioner filed with the Court of Tax Appeals (CTA) a petition for review with the Commissioner of Internal Revenue (Commissioner) as respondent. xxx xxx xxx

It is clear from the above cited case that the two (2)-year prescriptive period for filing a claim for refund applies both to administrative and judicial claims. The said ruling was affirmed and applied in the *Mirant* case as well as in the recent case of *San Roque Power Corporation vs. Commissioner of Internal Revenue* [13] *(San Roque* case) where petitioner San Roque applied for a refund of its unutilized input VAT covering the period January to December 2002. It filed its administrative and judicial claims for refund on the following dates:

Period Covered (Year 2002)	Administrative Claim	Amended Administrative Claim	Judicial claim
January - March	19-Jun-02	30-May-03	5-Apr-04
April - June	25-Oct-02	-	-do-
July – September	27-Feb-03	-	-do-
October - December	29-May-03	31-Jul-03	-do-

To emphasize, the judicial claims were filed beyond the 30-day period counted from the expiration of the 120-day period resulting from the inaction of the Commissioner. Nonetheless, the Supreme Court considered both claims

[13] G.R. No. 180345, November 25, 2009, 605 SCRA 536.

as having been filed within the prescriptive period because they were both filed before the lapse of the two years.

The Supreme Court decided in several refund cases that before the lapse of the two (2)-year prescriptive period the taxpayer-applicant may already file a judicial claim without awaiting the decision of the Commissioner.

As early as the case of *Gibbs vs. Collector*,[14] the Supreme Court held that if, however, the Collector (now Commissioner) takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the CTA before the end of the two (2)-year period without awaiting the decision of the Commissioner.

This was the same pronouncement in the subsequent case of *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc.,* 22 SCRA 12 (1968), where the high court held that the claim for refund with the BIR and the subsequent appeal to the CTA must be filed within the two (2)-year period.

Furthermore, in the case of *Commissioner of Customs and Commissioner of Internal Revenue vs. The Honorable Court of Tax Appeals and Planters Products, Inc.,*[15] the Supreme Court held that the taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect. It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of

[14] L-13453, February 29, 1960, 107 Phil. 232.
[15] G.R. No. 82618, March 16, 1989 citing the case of *Paracale-Gamaus vs. Biaquera* (CTA Case No. 211, Resolution of August 22, 1956).

the Collector (now Commissioner) of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the Commissioner, would have, at his personal convenience, given his go signal.

And in a more recent case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* [16], the Supreme Court was categorical in holding that if in case the application for refund/credit of input VAT was denied or remained unacted upon by the BIR, and before the lapse of the two (2)-year prescriptive period, the taxpayer-applicant may already file a Petition for Review before the CTA.

Revenue Memorandum Circular No. 49-03 recognizes that administrative and judicial claims for VAT refund or tax credit can proceed simultaneously.

Rules and regulations issued by administrative or executive officers pursuant to the procedure or authority conferred by law upon the administrative agency have the force and effect, or partake of the nature, of a statute [17] and are just as binding as if they have been written in the statute itself.[18] As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court. [19]

[16] G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[17] *Commissioner of Internal Revenue vs. Solidbank Corporation.*, G.R. No. 148191, November 25, 2003, 416 SCRA 436 citing the case of *Victorias Milling Co., Inc. v. Social Security Commission,* 114 Phil. 555, 558, March 17, 1962.
[18] *Abakada Guro Party List vs. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251.
[19] *Ibid.*

Accordingly, the Court gives weight to Revenue Memorandum Circular (RMC) No. 49-2003 [20] dated August 15, 2003 which recognizes that administrative and judicial claims for VAT refund or tax credit can proceed simultaneously and that taxpayers need not wait for the lapse of the 120-day period when the two (2)-year prescriptive period is about to expire, to wit:

> " I.) A-17 of Revenue Memorandum Circular No. 42-2003 is hereby revised to read as follows:
> **In cases where the taxpayer has filed a "Petition for Review" with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately.** While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. xxx **In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.**
>
> **If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim**. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. xxx." (Emphasis ours)

Therefore, applying the laws and jurisprudence cited above, petitioner had until June 30, 2007 within which to file the claim for refund or credit of

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[20] Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters.

excess input tax for the 2nd quarter of 2005. It filed its administrative claim for refund on March 20, 2006 while the judicial claim was filed on July 13, 2007. The petition must fail for having been filed beyond the two (2)-year prescriptive period reckoned after the close of the taxable quarter when the pertinent sales were made.

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *en banc* is **DISMISSED** for lack of merit. Accordingly, the Decision dated May 12, 2009 and the Resolution dated August 12, 2009 issued by the CTA First Division are **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(Concurs with CDO of Justice Fabon-Victorino)
ERNESTO D. ACOSTA
Presiding Justice

(w/ Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(Concurs with "CDO" of Justice Bautista)
CAESAR A. CASANOVA
Associate Justice

See attached Separate Concurring & Dissenting Opinion
OLGA PALANCA-ENRIQUEZ
Associate Justice

(With Concurring and Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice