REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

VISAYAS GEOTHERMAL POWER COMPANY, Petitioner,	**CTA CASE NO. 7737**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 3 1 2011 2:30 p.m.

x- -x

AMENDED DECISION

CASTAÑEDA, JR., *J.*:

For resolution is respondent's *Motion for Reconsideration* filed on July 12, 2010 seeking reconsideration of this Courts' *Decision* dated June 23, 2010, and petitioner's *Comment/Opposition (Re: Respondent's Motion for Reconsideration dated 12 July 2010)* filed on August 9, 2010.

The dispositive portion of the assailed *Decision* is hereunder quoted, to wit:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **EIGHTEEN MILLION SIX HUNDRED SIXTY FOUR THOUSAND ONE HUNDRED TEN AND 07/100**

> **PESOS (P18,664,110.07)**, representing unutilized input VAT attributable to petitioner's zero-rated sales for the four quarters of taxable year 2006.
>
> **SO ORDERED**."

Respondent, in her *Motion* moved for the reconsideration of the assailed *Decision* by raising the following grounds:

1. Petitioner is not entitled to a refund or the issuance of tax credit certificate in the amount of P18,664,110.07 representing unutilized value added tax for taxable year 2006; and

2. Petitioner's judicial claim was filed beyond the period prescribed by law, hence, the Honorable Court has no jurisdiction.

Respondent posits that petitioner failed to submit all necessary and relevant documents pertaining to its claim for refund, which is a condition *sine qua non* prior to the filing of a judicial claim. Respondent further avers that it is only before this Court that petitioner submitted and presented various pieces of evidence allegedly supporting its claim for refund.

For its second assigned error, respondent asserts that petitioner's claim has prescribed since it only filed the instant *Petition for Review* on March 14, 2008, considering that it filed its administrative claim for refund on July 4, 2007. In support of her contention, respondent cites Section 112(D) of the National Internal Revenue Code (NIRC) of 1997, which states that respondent has one hundred twenty (120) days within which to process claims for refund of unutilized input tax; then petitioner has thirty (30) days to appeal the full or partial denial of the claim or inaction of respondent, to wit:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> *(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*)

Based on the above-cited provision, respondent contends that the claim for refund had already prescribed when it was filed with this Court. Further, respondent states that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

In its *Comment*, petitioner interposed the following counter-arguments: (a) non-submission of complete documents does not bar petitioner from resorting to judicial review; and b) petitioner's judicial claim for refund was timely filed.

Petitioner contends that Section 112(D) of the NIRC does not provide that non-submission of complete documents would result in a denial of the judicial claim. In support of such contention, petitioner cites this Court's *Resolution* dated November 12, 2008, in the case of CE Cebu Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue[1], to wit:

> "While it is true that the submission of the complete supporting documents is necessary for the granting of refund or tax credit certificate; Section 112(D) does not state, much less suggest, that non-submission with respondent of the

[1] CTA Case Nos. 6791 and 6836, October 6, 2008

> supposed complete documents makes the administrative claim for refund or tax credit certificate invalid or pro forma, the effect of which makes the judicial appeal dismissible for lack of jurisdiction. What is clearly required is that the taxpayer must elevate its claim before this Court within 30 days from receipt of the denial of its claim for refund/tax credit or after the expiration of the 120-day period granted to respondent to decide on the taxpayer's claim, which must all be done within two years from payment of the tax penalty or penalty."[2]

Petitioner further points out that it submitted to this Court and offered in evidence the required documents to prove its claim for refund.

For its second argument, petitioner asserts that Section 229 of the Tax Code is clear in saying that failure of the taxpayer, who seeks the recovery of a tax erroneously or illegally collected, to institute an action or proceeding in court within two (2) years from the payment of the tax bars him from recovering the same, to wit:

> "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."

---

[2] Par. 6, *Comment/Opposition (Re: Respondent's Motion for Reconsideration dated 12 July 2010)*

Further, petitioner states that there has been numerous decisions holding that Section 112(D) must always be read in conjunction with Section 229. In support thereof, petitioner cites the ruling of the Supreme Court in the case of *Atlas Consolidated Mining Development Corporation vs. Commissioner of Internal Revenue*[3], to wit:

> "xxx xxx xxx
>
> It is already well-settled that the two-year prescriptive period for instituting a suit or proceeding for recovery of corporate income tax erroneously or illegally paid under Section 230 (now, Section 229, 1997 Tax Code) of the Tax Code of 1977, as amended, was to be counted from the filing of the final adjustment return.
>
> xxx xxx xxx
>
> The very same reasons set forth in the afore-cited cases concerning the two-year prescriptive period for claims for refund of illegally or erroneously collected income tax may also apply to the Petitions at bar involving the same prescriptive period for claims for refund/credit of input VAT on zero-rated sales."

Considering the foregoing, petitioner asserts that its *Petition for Review* was filed within the two-year prescriptive period provided under the Tax Code.

This Court finds merit in respondent's motion.

In computing the two-year prescriptive period for claiming refund or for issuance of tax credit certificate, the applicable provision is Section 112(A) of the NIRC of 1997, as amended, 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

---

[3] G.R. Nos. 141104 and 148763, June 8, 2007

> 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." (*Emphasis supplied*)

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

As held in the assailed *Decision*, the present claim pertains to input VAT incurred for the first to fourth quarters of 2006. Reckoned from March 31, 2006, June 30, 2006, September 30, 2006, and December 31, 2006, the close of each taxable quarter covering taxable year 2006, petitioner had until March 31, 2008, June 30, 2008, September 30, 2008 and December 31, 2008 within which to file its claim. Thus, petitioner's administrative claim for refund/tax credit certificate filed with the Bureau of Internal Revenue on July 4, 2007 was filed on time.

However, notwithstanding the timely filing of petitioner's administrative claim, this Court finds that petitioner's *Petition for Review* was filed late before this Court.

As held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[4], Section 112(D) of the NIRC clearly provides that the Commissioner of Internal Revenue has "120 days,

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

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 Commissioner, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the Revenue Commissioner. However, if after the 120-day period the Revenue Commissioner fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the Commissioner of Internal Revenue to the CTA within 30 days.

In this case, the administrative claim was filed on July 4, 2007, but the judicial claim was filed only on March 14, 2008. Obviously, petitioner's judicial claim was filed beyond the 120-day and 30-day periods provided under Section 112(D) of the NIRC of 1997, as amended.

Further, in the above-cited case, the Supreme Court had the occasion to discuss the relevance of the provision of Section 112(D) as regards the filing of judicial claim for refund or issuance of tax credit, to wit:

> "(S)ubsection (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*)

Applying the foregoing ruling to the present case, it is clear that respondent has 120 days from the submission of the complete documents supporting petitioner's claim within which to decide on petitioner's claim. In case of denial or inaction of respondent, petitioner then has 30 days within which to file an appeal before this Court.

In the present case, petitioner filed the administrative claim on July 4, 2007, counting 120 days from the filing of the said administrative claim, respondent had until November 1, 2007, within which to decide. However, since November 1 and 2 were declared holidays, the expiration of the 120-day period fell on November 5, 2007, the next working day, as provided by Section 1, Rule 22 of the Rules of Court[5]. In the present case, respondent did not act on petitioner's administrative claim, Counting from November 5, 2007, the expiration of the 120-day period from the filing of the administrative claim, petitioner had 30 days or until December 5, 2007, within which to file its appeal before this Court, as provided under Section 112(D) of the NIRC of 1997.

---

[5] Rule 22 Computation of Time
Section 1. How to compute time – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or legal holiday in the place where the court sits, the time shall not run until the next working day.

Considering that petitioner filed its judicial claim on March 14, 2008 only, which is way beyond the thirty-day period following the 120 days given to respondent to decide on the claim for refund or issuance of tax credit certificate, this Court finds that the judicial claim of petitioner was filed late.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration* is hereby **GRANTED**. Accordingly, the assailed *Decision* is hereby **SET ASIDE** and **REVERSED**. Petitioner's claim for refund or issuance of tax credit certificate for its unutilized input VAT attributable to petitioner's zero-rated sales for the four quarters of taxable year 2006 is hereby **DISMISSED** for being filed out of time.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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

ERNESTO D. ACOSTA
Presiding Justice