REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NORTHWIND POWER DEVELOPMENT CORPORATION, Petitioner,	**C.T.A. CASE NO. 8119** Members: **CASTAÑEDA, JR.,** *Acting P.J.,* **CASANOVA,** and **MINDARO-GRULLA,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 12 2013 4:30 p.m.

x - x

DECISION

CASANOVA, *J*.:

This Petition for Review[1] filed by petitioner, Northwind Power Development Corporation, seeks the refund or issuance of tax credit certificate of the amount of P51,936,956.05, representing petitioner's unutilized input VAT payments attributable to its zero-rated sales for the 2nd quarter of taxable year 2008.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws with principal office at Unit 702 Net One Center, 3rd Avenue corner 26th St., E-Square, Crescent Park West District, Bonifacio Global City, 1634 Taguig City.

Respondent is the duly appointed Commissioner of Internal Revenue, vested by law in general to implement and enforce the provisions of the National Internal Revenue Code ("NIRC") and other tax laws, and in particular, decide claims for refund or internal revenue taxes.

---

[1] Division Docket, pp. 4-18

Petitioner is engaged in the business of general building of electric generating plants and sale of renewable power.[2] It is a VAT-registered entity as shown by its Certificate of Registration OCN No. 9RC0000270238 issued by the Bureau of Internal Revenue, Revenue Region No. 008, Revenue District Office No. 044 on October 13, 2000.[3]

Petitioner is, likewise, a BOI-registered "New Operator of Wind Power Generation Plant" entity, as evidenced by its Certificate of Registration No. 2004-108 issued by the Board of Investments on 20 September 2004.[4]

On July 19, 2002, petitioner entered into an Electricity Sales Agreement[5] with the Ilocos Norte Electric Cooperative ("INEC") for the sale of renewable energy power generated from petitioner's wind turbine in Bangui Bay, Ilocos Norte. This sale of renewable power is subject to zero percent (0%) value-added tax (VAT) pursuant to Section 108(B)(7) of the 1997 National Internal Revenue Code (NIRC).

For the taxable quarter covering the period April 1 to June 30, 2008, petitioner imported and/or locally purchased goods and services in the aggregate amount of P432,807,965.00 and paid the 12% VAT on these purchases in the amount of P51,936,956.05.

On November 14, 2008, petitioner filed with the respondent's Revenue District Office No. 43, its administrative claim for refund or issuance of a tax credit certificate for unutilized input VAT covering the 2nd quarter of taxable year 2008 in the amount of P51,936,956.05.

Since no action has been taken by the Revenue District Office on petitioner's claim for refund/issuance of a tax credit certificate, petitioner filed the instant Petition for Review pursuant to Section 112(A) of the NIRC, as amended.

On August 20, 2010, respondent filed her Answer[6] interposing the following Special and Affirmative Defenses, to wit:

---

[2] Par. 6, Admitted Facts, Joint Stipulation of Facts and Issues ("JSFI"), Docket, p. 158
[3] Par. 4, Admitted Facts, JSFI, Ibid
[4] Par. 5, Admitted Facts, JSFI, Ibid
[5] Annex "D" to Petition for Review, Docket, pp. 27-62
[6] Docket, pp. 138-140

"3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

4. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;

5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of P51,936,956.05 as alleged unutilized input VAT paid on purchases/importations of goods and services attributable to its zero-rated sales for the 2nd quarter of taxable year 2008 were not fully substantiated by proper documents, such sales invoices, official receipts and others;

7. In an action for refund/tax credit, the burden of proof is on the petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim;

8. Petitioner's sales of goods and services to various alleged clients/affiliates do not quality as zero-rate VAT;

9. The amount subject of the claim for refund of petitioner do not pertain in full to its input VAT attributable to its zero-rated sales for the 2nd quarter of taxable year 2008;

10. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code;

11. Petitioner failed to comply with the requirements under Section 204(C) in relation to Sections 112(C) and 229 of the 1997 Tax Code;

12. Claims for refund are construed strictly against the claimant for 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 1211)**."

The parties filed their Joint Stipulation of Facts and Issues[7] on October 29, 2010, and the same was subsequently approved by the Court in its Resolution[8] promulgated on November 3, 2010.

After presentation of its evidence, petitioner filed its Formal Offer of Evidence[9] and Supplemental Formal Offer of Evidence, both on October 17, 2011, offering in evidence "Exhibits A to MMM-1" and "Exhibits FFF to GGG-1". The Court, per Resolution[10] dated November 24, 2011, resolved to admit the aforesaid exhibits except the following:

> 1. Exhibits "M-7" for petitioner's failure to have the same identified; and
>
> 2. Exhibits "AAA1", "BBB1", "BBB3", CCC1", CCC2", "CCC3", "CCC4" and "DDD1" for petitioner's failure to submit the documents duly pre-marked by the Independent Certified Public Accountant.

Petitioner filed a Motion for Partial Reconsideration (Re: Resolution dated 24 November 2011)[11] on December 15, 2011 which Motion was denied per this Court's Resolution[12] promulgated on January 12, 2012.

Again, petitioner, filed on February 1, 2012, a Motion for Reconsideration (Re: Resolution dated 12 January 2012)[13] seeking reconsideration of this Court's denial of admission of some of its exhibits enumerated in the Resolution dated November 24, 2011.

In a Resolution[14] promulgated on February 23, 2012, the Court granted petitioner's Motion for Reconsideration (Re: Resolution dated 12 January 2012) and, accordingly, admitted Exhibits "AAA1", "BBB1", "BBB2", "BBB3", "CCC1", "CCC2", "CCC3", "CCC4" and "DDD1".

---

[7] Ibid, pp. 157-160
[8] Ibid, pp. 161
[9] Ibid, pp. 444-470
[10] Ibid, pp. 604-605
[11] Ibid, pp. 614-617
[12] Ibid, pp. 626-627
[13] Ibid, pp. 629-641
[14] Ibid, pp. 646-647

Respondent, having manifested that he will not be presenting any witness in the April 30, 2012 hearing[15] and that he is submitting the case for decision, this Court gave both parties thirty (30) days from the date of hearing within which to file their respective memorandum.

On June 6, 2012, petitioner filed its Memorandum while no memorandum was filed by respondent per Report dated June 8, 2012 of the Records Division.

The case was deemed submitted for decision per Resolution[16] promulgated on June 19, 2012.

Respondent, thereafter, filed, on July 6, 2012, an Omnibus Motion (a. For Reconsideration of the Resolution dated 19 June 2012) (b. To Admit the Attached Respondent's Memorandum With Offer of Profuse Apologies).

On July 27, 2012, this Court promulgated a Resolution granting respondent's prayer to admit her Memorandum for the Respondent but denying her prayer to set aside the Resolution dated June 19, 2012.

As jointly stipulated by the parties, the following issues are submitted to this Court for resolution:

> "I. WHETHER OR NOT PETITIONER (sic) SALE OF ELECTRICITY IS ZERO-RATED FOR VAT PURPOSES UNDER SECTION 108(B)(7) OF THE NIRC, AS AMENDED.
>
> II. WHETHER OR NOT PETITIONER HAS CARRIED OVER TO THE SUCCEEDING TAXABLE QUARTERS/YEARS THE ALLEGED UNUTILIZED INPUT VAT ON ITS ZERO-RATED SALES FOR THE SECOND QUARTER OF THE TAXABLE YEAR 2008, AND APPLIED THE SAME IN PAYMENT OF ITS OUTPUT VAT LIABILITY FOR THE PERIOD INVOLVED, IF ANY.
>
> III. WHETHER OR NOT THE CLAIMED INPUT VAT PAYMENTS IN THE AGGREGATE AMOUNT OF PhP51,936,956.05 FOR THE 2ND QUARTER OF TAXABLE YEAR 2008 ARE DIRECTLY ATTRIBUTABLE TO PETITIONER'S ZERO-RATED SALE.

---

[15] Minutes of the hearing, Ibid, p. 651

[16] Ibid, p. 707

IV. WHETHER OR NOT PETITIONER HAS COMPLIED WITH THE SUBSTANTIATION REQUIREMENTS PRESCRIBED UNDER REVENUE REGULATIONS 7-95 IN RELATION TO SECTION 113 AND 237 OF NIRC, AS AMENDED.

V. WHETHER OR NOT PETITIONER COMPLIED WITH THE REQUIREMENTS UNDER SECTION 112(C) OF THE NIRC, AS AMENDED.

VI. WHETHER THE CLAIMED INPUT VAT PAYMENTS IN THE AGGREGATE AMOUNT OF PhP51,936,956.05 FOR THE 2ND QUARTER OF TAXABLE YEAR 2008 ARE SUBSTANTIATED BY PROPER DOCUMENTARY EVIDENCE.

VII. WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AGGREGATE AMOUNT OF PhP51,936,956.05 REPRESENTING ITS UNUTILIZED INPUT VAT PAYMENTS FOR THE 2ND QUARTER OF THE TAXABLE YEAR 2008."

Petitioner anchors its claim on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, the provision of which reads 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 or properties or services, and the amount of creditable input tax due or paid cannot be directly*

> *and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.*"

Thus, under the afore-quoted provision, in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be met, to wit:

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

Regarding the first requisite, Section108(B)(7) of the NIRC of 1997, as amended provides that sale of power generated through renewable sources of energy is among the transactions subject to zero-percent (0%) VAT, to wit:

> "**(B). Transactions Subject to Zero Percent (0%) Rate. –**
>
> x x x x x x x x x
>
> (7) Sales of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."

On the other hand, Section 4.108-5(b)(7) of Revenue Regulations No. 16-2005, which implements the above provision, qualified the applicability of such zero-rating as follows:

> *"**(b) Transactions Subject to Zero Percent (0%) VAT Rate. –***
>
> *The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:*
>
> *x x x x x x x x x*
>
> *(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; Provided, however, That zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power."*

Corollarily, Section 4.108-3(f) of the same revenue regulations provides:

> ***"SEC. 4.108-3. Definitions and Specific Rules on Selected Services. —***
>
> *xxx xxx xxx*
>
> *(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts; Provided, That sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.*
>
> ***'Generation companies'** refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of*

electricity by a generation company or a co-generation facility pursuant to the provisions of RA No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities."

In other words, to be qualified for VAT zero-rating under the foregoing provisions, petitioner must be able to prove that it is a generation company and that it is engaged in sale of power or fuel generated through renewable source of energy.

As borne by the records, petitioner is engaged in the business of general builders and contractors of electric generating plants.[17] Its BIR Certificate of Registration[18] shows that it is engaged in the generation, collection, and distribution of electricity. Likewise, petitioner is registered with the BOI as a "New Operator of Wind Power Generation Plant" pursuant to the Omnibus Investments Code of 1987.[19] Furthermore, petitioner's 25-megawatt wind power generation plant located in Bangui Bay, Ilocos Norte has been certified by the Energy Regulatory Commission (ERC) that it has complied with the requirements set forth by the ERC for its new generation facility.

Pursuant to the Electricity Sales Agreement[20] it entered with Ilocos Norte Electric Cooperative (INEC), petitioner shall finance, design, construct, install/erect, test, commission, operate and maintain a 25MW Renewable Energy Power System (REPS) on Build-Own-and-Operate (BOO) basis, as well as 69KV Transmission Line, the interconnection facilities, and its related facilities in Bangui Bay, Ilocos Norte, to supply electricity to INEC during the 20-year Cooperation Period.[21]

Petitioner's gross receipts from sale of electricity to INEC, for the period from April 1, 2008 to June 30, 2008, amounted to P56,809,066.01, as evidenced by official receipts[22] issued by petitioner to INEC for the same period. Such sales of electricity generated through a renewable source of energy particularly, wind power energy, qualify for VAT zero-rating pursuant to Section 108(B)(7) of the NIRC of 1997,

[17] Exhibit "A-1"
[18] Exhibit "B"
[19] Exhibit "C", Par. 5, Admitted Facts, JSFI, Admitted Facts, Docket, p. 158
[20] Exhibit "N"
[21] Exhibit "O-1"
[22] Exhibits "CCC-1", "CCC-2" & "CCC-3"

as amended, and, as implemented by Section 4.108-5(b)(7) of Revenue Regulations No. 16-2005.

However, in its Quarterly VAT Return[23] for the 2nd quarter of 2008, only P34,352,340.07 was reflected as zero-rated receipts. The difference of P22,456,725.94 was allegedly recognized in the 3rd and 4th quarters of 2008. However, no evidence was presented to substantiate the said allegations i.e. the difference of P22,456,725.94 was indeed reported in the said quarters. Besides, pursuant to Section 114(A) of the NIRC of 1997, as amended, in relation to Sec. 108 of the same Code, petitioner should have reported the zero-rated sales of P22,456,725.94 in its Quarterly VAT Returns in the period the payments were received, i.e., on June 2008 which is covered by the 2nd quarter of 2008.

Considering that the input VAT sought to be refunded, in the amount of P51,936,956.05 is attributable to petitioner's gross receipts from sale of electricity to INEC in the amount of P56,809,066.01, and, inasmuch as only the amount of P34,352,340.07 was declared in its 2nd Quarterly VAT Return, it is but proper to apportion the substantiated input VAT over the volume of zero-rated sales per official receipts and only the amount attributable to the zero-rated sales of P34,352,340.07 may be claimed for refund. The rate to be applied is computed as follows:

Declared Zero-Rated Sales	34,352,340.07
Divided by Total Zero-Rated Sales	56,809,066.01
Percentage of Zero-Rated Sales	**60.46982019%**

As to the second requisite, petitioner's 2nd Quarterly VAT Return for the taxable year 2008 reflected an input VAT derived from (a) importation of capital goods amounting to P50,081,282.00 (b) domestic purchases of capital goods exceeding one million amounting to P1,501,871.00 and (c) domestic purchases of services amounting to P353,803.05.

The validity of the input VAT on importation of capital goods amounting to P50,081,282.00 shall be discussed first.

Pursuant to Section 110(A) of the NIRC of 1997, as amended, input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed either in full during the month of acquisition or

[23] Exhibit "R"

spread over a period of time depending on the aggregate acquisition cost of the capital goods in the calendar month. If the aggregate acquisition cost exceeds P1Million, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if the aggregate acquisition cost does not exceed P1Million, the total input taxes shall be allowed as credit/refund in the month of acquisition.

Petitioner submitted its Import Entry Internal Revenue Declaration (IEIRD) and validated bank deposit slips[24] to substantiate its claim for input VAT of P50,081,282.00 on its importation of capital goods. However, not all of the substantiated input VAT of P50,081,282.00 is refundable since the said importations are in the nature of depreciable assets the monthly aggregate acquisition cost of which exceed P1M (regardless of the acquisition cost of each capital goods). Thus, the related input VAT shall be spread over 60 months. Consequently, out of the P50,081,282.00 input VAT on importations of capital goods, only the amount of P2,174,586.25 is refundable or creditable, computed as follows:

Exhibit	Supplier	OR Date	Input VAT	Estimated Useful Life	Number of Months to be Amortized for the Claim Period	Allowable Input VAT
AA1-AA3	Vestas Asia Pacific A/S	10-Apr-08	₱17,453,885.00	60	3	₱ 872,694.25
BB1-BB3	Vestas Asia Pacific A/S	10-Apr-08	15,157,717.00	60	3	757,885.85
CC1-CC3	Vestas Asia Pacific A/S	10-Apr-08	320,638.00	60	3	16,031.90
DD1-DD3	Vestas Asia Pacific A/S	10-Apr-08	236,006.00	60	3	11,800.30
EE1-EE3	Vestas Asia Pacific A/S	5-May-08	656,561.00	60	2	21,885.37
FF1-FF3	Vestas Asia Pacific A/S	8-May-08	678,853.00	60	2	22,628.43
GG1-GG3	Vestas Asia Pacific A/S	14-May-08	10,521,057.00	60	2	350,701.90
HH1-HH2	Vestas Asia Pacific A/S	21-May-08	2,200,931.00	60	2	73,364.37
II1-II2	Vestas Asia Pacific A/S	12-Jun-08	1,816,802.00	60	1	30,280.03
JJ1-JJ2	Vestas Asia Pacific A/S	20-Jun-08	1,038,831.00	60	1	17,313.85
	TOTAL		**₱50,081,281.00**			**₱2,174,586.25**

Regarding the input VAT of P1,501,871.00 representing input VAT from purchase of Capital Goods as indicated in the 2nd Quarterly VAT Return, the Independent Certified Public Accountant (ICPA), Ms. Leticia

[24] Exhibits "AA-1" to "JJ-2"

Tagle, in her Report,[25] noted that these pertain to the periodic payments for the turnkey supply of distribution lines from Power Dimension Inc..[26] This transaction is considered purchase of services for purposes of claiming input tax pursuant to Section 4.110-3 of RR 16-2005 as amended by RR 4-2007, thus, not subject to amortization.

Pertinent portion of the ICPA Report is hereunder quoted:

> "It was also noted that in the Quarterly VAT Return ending June 3, 2008, it was indicated that out of the P1,855,673.32 input VAT from local purchases, 1,501,871.00 represents input VAT from purchases of Capital Goods. However, our examination revealed that these were purchases of services as correctly indicated in the Summary List of Purchases. This transaction pertains to periodic payments of a Contract for Turnkey supply of distribution lines and Construction of proposed Head Office. Under Section 4.110-3 of RR 16-2005 as amended by RR 4-2007, this transaction is considered purchase of services for purposes of claiming input tax, to wit:
>
> > ***SECTION 16. Input Tax on Depreciable Goods. – Sec.4.110-3 of RR No. 16-2005*** *is hereby amended to read as follows:*
> >
> > ***SEC. 4.110-3 Claim for Input Tax on Depreciable Goods. - ....***
> >
> > *(a) xxx xxx*
> >
> > *Construction in Progress (CIP) is the cost of construction work which is not yet completed. CIP is not depreciated until the asset is placed in service. Normally, upon completion, a CIP item is reclassified and the reclassified asset is capitalized and depreciated.*
> >
> > *<u>CIP is considered, for purposes of claiming input tax, as a purchase of service, the value of which shall be determined based on the progress billings. Until such time the construction has been completed, it will not</u>*

[25] Exhibit "X", note 2, p. 7
[26] Exhibit "KK-1" and "SS-1"

> *qualify as capital goods as herein defined, in which case, input tax credit on such transaction can be recognized in the month the payment was made; Provided, that an official receipt of payment has been issued based on the progress billings.*
>
> *xxx xxx*
>
> *Once the input tax has already been claimed while the construction is still in progress, no additional input tax can be claimed upon completion of the asset when it has been reclassified as a depreciable capital asset and depreciated." (underscoring ours)*
>
> *Therefore, the input VAT attributable thereto is not subject to amortization."*

The remaining input VAT of P353,803.05 was properly indicated in the 4th Quarterly VAT Return as input VAT from domestic purchases of services.

In support of its input VAT claim on domestic purchases of P1,855,674.05 (P1,501,871.00 plus 353,803.05), petitioner submitted various official receipts[27]. However, only the input VAT amounting to P1,013,300.65 was duly substantiated while the remaining amount of P842,373.40, as presented hereinbelow, was disallowed for petitioner's failure to comply/meet the substantiation requirements under Sections 110(A) and 113 of the NIRC of 1997, as amended, and implemented by Sections 4.110-8 and 4.113-1 of Revenue Regulations No. 16-05:

Findings	Exhibit	Input VAT
1. Input VAT on purchase of services supported by official receipt dated outside the period of claim		
Power Dimension Incorporated	KK1	**₱824,373.40**
2. Input VAT on purchases of services wherein the VAT amount was not separately shown in the official receipts.		
Broadband Everywhere Corp	LL1	₱ 6,000.00
Broadband Everywhere Corp	OO1	6,000.00
Textron Corp.	UU1	6,000.00
Sub-total		**₱ 18,000.00**
TOTAL		**₱842,373.40**

[27] Exhibits "KK-1" to "WW-1"

In sum, petitioner's valid input VAT for the 2nd quarter of 2008 amounted to P3,187,886.90, computed as follows:

	Amount
Input VAT on importations of capital goods	₱ 2,174,586.25
Input VAT on domestic purchases	1,013,300.65
Substantiated Input VAT	**₱ 3,187,886.90**

As to the fourth requisite, it was established that petitioner's input taxes were not applied against any output VAT liability during the period of claim and in the succeeding quarters since there was no output VAT for the period covering April to September 2008 from which the input taxes may be credited or applied. While petitioner carried over the said input VAT subject of the present claim in its monthly VAT declaration for the months of July[28] and August[29] 2008, as well as in the 3rd Quarterly VAT Return[30], the same remained unutilized since it was later on deducted as "VAT Refund/TCC claimed[31] in the same 3rd Quarterly VAT Return of 2008.

On the timeliness of petitioner's administrative and judicial claims, the pertinent provisions to determine the same are Section 112(A) & (C), respectively, of the NIRC of 1997, as amended.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, a taxpayer must file an application for refund or tax credit of unutilized or excess creditable input VAT attributable to its zero-rated sales within two (2) years after the close of the taxable quarter when the sales were made.

The subject of the instant Petition for Review is petitioner's claim for refund or issuance of tax credit certificate of its unutilized creditable input VAT attributable to its zero-rated sales for the second (2nd) quarter of 2008. Thus, counting from June 30, 2008, petitioner had until June 30, 2010, within which to file its administrative claim for the period covering the 2nd quarter of 2008 . Its administrative claim, which was filed on November 14, 2008, was, therefore, seasonably filed.[32]

---

[28] Exhibit "S"
[29] Exhibit "T"
[30] Exhibit "U"
[31] Exhibit "U", line 23D
[32] Exhibits "D" and "E"

As to petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, reads as follows:

> ***"SEC. 112. Refunds or Tax Credits of Input Tax.-***
>
> ***(C) Period within which Refund or Tax Credit of Input Taxes shall be Made.—*** *In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.*
>
> *In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the tax payer 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."*

Thus, the Commissioner of Internal Revenue (CIR) has 120 days from the submission of complete documents, in support of the application filed in accordance with Subsection (A) within which to decide on the claim. When a decision is issued by the CIR before the lapse of the 120-day period or when no decision is made after the lapse of the 120-day period, the taxpayer has 30 days within which to file an appeal with the CTA.

Applying the same to the instant case, the 120-day period, reckoned from February 19, 2010[33], the date when petitioner submitted its last set of documents in support of its application for refund, ended on June 19, 2010. From June 19, 2010, petitioner had 30 days to appeal its claim to the CTA, or up to July 19, 2010. The instant Petition for Review, having been filed on June 29, 2010, therefore, was timely filed.

In fine, petitioner has sufficiently proven its entitlement to the issuance of tax credit certificate or refund of unutilized input VAT attributable to its zero-rated sales for the 2nd quarter of taxable year 2008.

---

[33] Exhibits "M" to "M-7"

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of ONE MILLION NINE HUNDRED TWENTY SEVEN THOUSAND SEVEN HUNDRED NINE and 48/100 PESOS (P1,927,709.48) representing petitioner's unutilized input VAT attributable to zero-rated sales for the 2nd quarter of 2008, computed as follows:

Substantiated Input VAT	₱ 3,187,886.90
Multiply by Rate of Zero-Rated Sales	60.46982019%
Refundable Input VAT attributable to zero-rated sales	**₱1,927,709.48**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

CERTIFICATION

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice