# REPUBLIC OF THE PHILIPPINES
# Court of Tax Appeals
# QUEZON CITY

## SECOND DIVISION

**TOTAL (PHILIPPINES) CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 7855**

Members:

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

**Promulgated:**

JUN 3 0 2011
11:00 a.m.

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# DECISION

**CASTAÑEDA, JR., J.:**

The case involves a claim for refund or issuance of tax credit certificate in the amount of P8,843,228.30, representing alleged excess and unutilized input value-added tax (VAT) attributable to zero-rated sales of Total (Philippines) Corporation for the period covering October 1 to December 31, 2006.

Petitioner Total (Philippines) Corporation is a domestic corporation duly registered with and licensed by the Securities and Exchange Commission (SEC) to do business in the Philippines, with principal office address at Penthouse, Total Corporate Center, 1012 Triangle Drive, North Bonifacio, Bonifacio Global City.[1]

[1] Par. 1.1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 111

It is a VAT-registered entity as evidenced by Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 8RC0000019580 and was assigned with Taxpayer's Identification Number (TIN) 005-145-964-000.[2]

Petitioner's primary purpose is to "acquire, assemble, install, construct, equip, repair, remodel, maintain, develop, operate, hold, own, lease and otherwise deal with oil terminals and service station networks; to develop and operate a wholesale distribution network and carry out the purchase, acquisition, including importation, if appropriate, storage, marketing, distribution, transport, use, wholesale, exportation, refinement, treatment, distillation and manufacture of, and generally deal in, Fuel Oils, Gas Oils, Gasolines, Lubricants and, subject to market conditions, Bitumens, Solvents and Kerosenes and, subject to the written agreement of the stockholders any and all kinds of oil products, such as Jet Fuel and liquefied petroleum gas.[3]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of his office, including, among others, to act on and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Quezon City.

Petitioner filed its Quarterly VAT Return for the fourth quarter of taxable year 2006.[4] During the said fourth taxable quarter of 2006, petitioner exported goods to companies located in foreign countries and to companies located in special economic zones and freeport zones. And it purportedly incurred/paid input taxes on its purchases of vatable goods and services for the said period. The sales and purchases for the fourth quarter of 2006 are summarized as follows:[5]

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[2] Exhibit "C"
[3] Exhibit "B"
[4] Exhibit "F"
[5] Par. 6, Petition for Review, docket, p. 6

| Zero-rated Sales | Exempt Sales | Sales Subject to 12% VAT | Output Tax | Purchases | Input Tax |
|---|---|---|---|---|---|
| 75,273,816.73 | 150,618.31 | 6,024,195,649.40 | 722,903,477.93 | 5,971,569,508.60 | 716,588,254.94 |

Petitioner filed its application for issuance of tax credit certificate for the unutilized VAT input taxes in the amount of P8,843,228.30, along with all supporting documents on December 18, 2008 with the Large Taxpayers Service–Large Taxpayer Audit and Investigation Division II.

Respondent has not acted on petitioner's claim for refund, prompting petitioner to file this Petition for Review on December 22, 2008.[6]

On February 6, 2009, respondent filed his Answer[7], interposing the following Special and Affirmative Defenses:

> "4. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
>
> 5. Petitioner's alleged claim for tax credit/refund is subject to administrative routinary investigation/examination by respondent's Bureau.
>
> 6. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 7. Petitioner's judicial claim for tax credit/refund was prematurely filed for failure to comply with the provision of Section 112 (C) of the 1997 National Internal Revenue Code (NIRC), as amended, which states:
>
> > '**Section 112.** Refunds or Tax Credits of Input Tax. -
> >
> > **(C) Period within which Refund or Tax Credit of Input Taxes shall be Made.** - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes *within one hundred twenty (120) days from the date of submission of complete documents* in support of the application filed in accordance with Subsection (A) hereof.

[6] Exhibit "D"
[7] Docket, pp. 57-63

> 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.' (Italics supplied)

As stated in the Petition, petitioner filed its administrative claim for tax credit/refund with respondent on 18 December 2008. After only four (4) days or on 22 December 2008, the instant Petition for Review was filed with this Honorable Court. Obviously, the 120-day period given to respondent to decide on the claim has just started. Such action on the part of petitioner is tantamount to a wanton disregard of the doctrine of exhaustion of administrative remedies.

Well settled is the rule that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes (*Zabat vs. Court of Appeals, 338 SCRA 551*). This rule on exhaustion of administrative remedies was explained thus:

> 'The underlying principle of the rule on exhaustion of administrative remedies **rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly.** There are both legal and practical reasons for the principle. The administrative process is intended to provide less expensive and more speedy solution to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts – for reasons of law, comity and convenience – will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct errors committed in the administrative forum." (*Union Bank of the Philippines vs. Court of Appeals, 290 SCRA 198*)

8. *Grantia argumenti* that the instant claim for tax credit/refund was not prematurely filed, it is imperative for petitioner to prove its compliance with the following, viz:

   a. The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations.

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

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

   d. That the input taxes of P8,843,228.30 allegedly representing unutilized input VAT from its purchases of goods and services attributed/allocated to its export sales and sales to companies located in the special economic zones/freeport zones were:

      i. paid by petitioner;

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

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

   e. That petitioner's claim for tax credit/refund allegedly representing unutilized input VAT in the amount of P8,843,228.30 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the 1997 NIRC, as amended.

9. Furthermore, in an action for tax credit/refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.

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

During trial, petitioner presented documentary and testimonial evidence. Respondent's counsel, however, manifested that she has no evidence to present.

On January 26, 2011, this Court considered the case submitted for decision after petitioner filed its Memorandum on January 17, 2011 and respondent filed his Memorandum through registered mail on January 17, 2011.

The issues[8], as jointly stipulated by the parties, are the following:

"A.

WHETHER OR NOT THE PETITIONER SEASONABLY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE.

B.

WHETHER OR NOT PETITIONER IS REGISTERED AS A VALUE ADDED TAXPAYER PURSUANT TO THE PROVISIONS OF THE 1997 NIRC, AS AMENDED.

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[8] Docket, pp. 114-115

C.
WHETHER OR NOT PETITIONER HAS COMPLIED WITH THE INVOICING AND ACCOUNTING REQUIREMENTS FOR VAT-REGISTERED PERSONS, AS WELL AS THE FILING AND PAYMENT OF VAT PURSUANT TO THE PROVISIONS OF THE 1997 NIRC, AS AMENDED.

D.
WHETHER OR NOT PETITIONER HAS UNUTILIZED INPUT VAT FOR THE FOURTH QUARTER OF TAXABLE YEAR 2006 IN THE TOTAL AMOUNT OF P716,588,254.94, ARISING FROM ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES AND IMPORTATION OF GOODS, AND P8,843,228.30 IS PROPERLY ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES.

E.
WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE FOURTH QUARTER OF CY 2006 THAT ARE ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES WERE NOT UTILIZED IN THE SUCCEEDING TAXABLE QUARTER(S) OR APPLIED AGAINST ANY OUTPUT VAT LIABILITY OF THE PETITIONER.

F.
WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE FOURTH QUARTER OF CY 2006 THAT ARE ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES."

Petitioner anchors its claim for refund or issuance of tax credit certificate on Sections 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which are quoted hereunder for easy reference, thus:

"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.

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."

Based on the foregoing provisions, in order to be entitled to a refund or tax credit of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid; 9z

3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output tax liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

This Court finds it appropriate to determine first the timeliness of the filing of the instant claim.

The Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*[9], held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 starts from the close of the taxable quarter when the relevant sales were made.

The present claim involves input VAT incurred during the fourth quarter of 2006. Reckoned from December 31, 2006, the close of the fourth taxable quarter for the year 2006, petitioner had until December 31, 2008, within which to file its administrative claim. Thus, petitioner's administrative claim for refund/tax credit filed with the Bureau of Internal Revenue on December 18, 2008 was filed on time.

After the determination of the timeliness of the filing of the administrative claim for tax refund, this Court shall now proceed with the determination of the timeliness of the filing of the judicial appeal before this Court.

This Court finds instructive Section 112(C) of the NIRC of 1997, as amended, which reads:

> "(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. Jc

[9] G.R. No. 172129, September 12, 2008, 565 SCRA 154

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."

Significantly, in the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[10], the Supreme Court explained the relevance of Section 112(D) [now Section 112(C)] of the NIRC of 1997, as amended, in this wise:

"Section 112 (D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

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There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales.' The phrase 'within two (2) years... 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 gz

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

> (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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> xxx xxx xxx
>
> **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**." (*Emphasis supplied*)

Taking into consideration the importance of the periods provided under Section 112(C) of the NIRC of 1997, as amended, this Court has no recourse but to strictly apply the said provision in this case.

Accordingly, counting from the filing of petitioner of its administrative claim, along with all supporting documents on December 18, 2008, the Commissioner has one hundred twenty (120) days or until April 17, 2009, within which to decide on the said claim. After the lapse of the said period, without any receipt of a decision on its administrative claim, the said inaction shall be deemed a denial of the claim and such denial may be appealed before this Court within thirty (30) days or until May 17, 2009. Nevertheless, petitioner filed its judicial claim on December 22, 2008 or merely four (4) days from the filing of the administrative claim. Obviously, petitioner prematurely filed the instant Petition for Review without waiting for the lapse of the 120-day period. Therefore, petitioner's non-observance of the periods provided under Section 112(C) of the NIRC of 1997, as amended, by filing the instant Petition for Review on December 22, 2008 would mean that this Court cannot take cognizance of the instant Petition for Review.

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

**SO ORDERED.**

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

WE CONCUR:

**CAESAR A. CASANOVA**
Associate Justice

***(On Wellness Leave)***
**CIELITO N. MINDARO-GRULLA**
Associate Justice

## ATTESTATION

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

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

## CERTIFICATION

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

**ERNESTO D. ACOSTA**
Presiding Justice