Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

CBK POWER COMPANY LIMITED,
Petitioner,

EB Case No. 574
(CTA Case No. 7460)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

EB Case No. 576
(CTA Case No. 7460)

- versus -

CBK POWER COMPANY LIMITED,
Respondent.

Members:

ACOSTA, *P.J,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JAN 04 2011 1:20pm

x- x

DECISION

CASANOVA, J.:

This is a consolidated Petition for Review of the Decision[1] (Assailed Decision) promulgated on July 16, 2009 of the *CTA Former Second Division*, which partially granted CBK Power Company Limited's (CBK POWER, for brevity) Petition for Review and ordered the Commissioner of Internal Revenue (CIR, for brevity) to issue a tax credit certificate in the amount of P36,994.073.87, representing unutilized input taxes which are attributable to zero-rated sales for calendar year 2004, and of the Resolution[2] (Assailed Resolution) dated November 27, 2009, denying both parties' respective Motion for Partial Reconsideration.

The facts of the case, as found by the *CTA Former Second Division*, are as follows:

> "Petitioner, CBK Power Company Limited, is a partnership duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the NPC Compound Kalayaan, Laguna.[3] On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested with authority to act as such, including the power to decide, approve, and grant refunds or tax credit of erroneously or illegally collected internal revenue taxes as provided by law. He holds office at the Bureau of Internal Revenue (BIR), National Office Building, Diliman, Quezon City.[4]
>
> Petitioner is a special purpose entity, the sole purpose of which is to engage in all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of

---

[1] Division Docket, pp. 852-876
[2] Division Docket, pp. 963-968
[3] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Division Docket, p. 327
[4] Par. 2, Facts Admitted, JSFI, Division Docket, pp. 327-328

Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna; and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna.[5] It is registered as a valued-added tax (VAT) entity, with Tax Identification Number (TIN) 205-760-474-000, in accordance with the NIRC, as amended. It was issued a BIR Certificate of Registration OCN 1RC0000050243[6] dated April 10, 2000 and BIR Certificate of Registration OCN 1RC0000195405 on May 11, 2005.[7]

On December 29, 2003, petitioner filed an Application for VAT zero-rate with BIR in accordance with Section 108(B)(3) of the NIRC of 1997. The said Application was duly approved by the BIR, pursuant to VAT Review Committee Ruling No. 018-03, as indicated in the lower portion thereof which in part reads: 'Valid only for sale of electricity from January 1, 2004 to December 31, 2004, unless sooner revoked.'[8]

On the following dates, petitioner filed its Original and Amended Quarterly VAT Returns:[9]

Taxable Year 2004	**Date of Filing**	
Quarter	**Original Quarterly VAT Return**	**Amended Quarterly VAT Return**
1st	April 23, 2004	March 23, 2005
2nd	July 1, 2004	June 29, 2005
3rd	October 22, 2004	June 29, 2005
4th	January 25, 2005	June 29, 2005

Thereafter on June 30, 2005, petitioner, through its tax counsel, filed with the BIR Revenue District Office (RDO) No. 55 of Laguna, an administrative

[5] Annex "B", Petition for Review, Division Docket, p. 19; Par. 5, Facts Admitted, JSFI, Division Docket, pp. 328-329
[6] Annex "C", Petition for Review, Division Docket, p. 28
[7] Par. 3, Facts Admitted, JSFI, Division Docket, p. 328
[8] Pars. 10 and 11, Facts Admitted, JSFI, Division Docket, pp. 330-331. Exhibit "I"
[9] Par. 6, Facts Admitted, JSFI, Division Docket, p. 329

claim for the issuance of tax credit certificate in the amount of ₱ 78,195,633.13, for its unutilized input taxes on the purchase of capital goods for calendar year 2004 in the amount of ₱ 51,920,893.34, pursuant to then Sections 112(A) and 112(B) of the NIRC of 1997[10], and its unutilized input taxes on the local purchase of goods and services, other than capital goods, for calendar year 2004 in the amount of ₱ 26,274,739.79, attributable to its zero-rated sales, pursuant to Section 112(A) of the same Code.[11]

Due to respondent's failure to act on petitioner's request for issuance of tax credit certificate and in order to preserve its right to claim refund by judicial action, petitioner filed the instant Petition for Review on April 20, 2006.

Respondent filed his 'Answer' on June 16, 2006, interposing the following Special and Affirmative Defenses:

> '4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau;
>
> 5. The amount of P78,195,633.13 being claimed by petitioner as alleged unutilized input taxes for the period January 1, 2004 to December 31, 2004 was not properly documented;
>
> 6. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 7. Petitioner must show that it has complied with the provisions of Sections 112 and 229 of the National Internal Revenue Code of 1997 on the prescriptive period for claiming tax refund/credit;
>
> 8. 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

---

[10] Republic Act No. 9337, which took effect on July 1, 2005, amended Section 112 of the NIRC of 1997, by adding a certain clause to its paragraph (A), and by deleting the provisions of its paragraph (B) referring to *"Capital Goods"*

[11] Par. 9, Facts Admitted, JSFI, Division Docket, p. 330. Annex "S", Petition for Review, Division Docket, pp. 241-249. Exhibit "A"

(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).'[12]

During trial, petitioner presented testimonial and voluminous documentary evidence primarily aimed at proving its supposed entitlement to the issuance of a tax credit certificate in the amount of ₱ 78,195,633.13, representing input taxes for the period covering January 1, 2004 to December 31, 2004.

When it was respondent's turn to present evidence on June 2, 2008, his counsel failed to appear and upon motion of petitioner's counsel, the former was deemed to have waived the right to present evidence for respondent, and the Court directed both parties' counsel to submit their respective Memorandum.[13] After the submission of petitioner's Memorandum[14] within the given period, this case was submitted for decision on July 18, 2008.[15]. However, upon motion of respondent [16] and in the interest of justice, his belatedly filed Memorandum[17] was admitted by the Court in the Resolution dated on August 8, 2008.[18] "

The parties, in their Joint Stipulation of Facts and Issues,[19] filed on September 20, 2006, submitted the following issues[20] for this Court's resolution, to wit:

> "1. Whether or not Petitioner is entitled to a tax credit certificate in the amount of P51,920,893.34 representing unutilized input taxes paid on its purchases of capital goods for the period January 1, 2004 to December 31, 2004;
>
> 2. Whether or not the unutilized input taxes amounting to P51,920,893.34 paid by Petitioner for the period January 1, 2004 to December 31, 2004 were related to payments to its contractors for the construction of the hydroelectric power plants in Laguna, as well as all related expenditures in pursuance of the rehabilitation, construction and operation of the power plant complex;

---

[12] Division Docket, p. 264
[13] Minutes of Hearing held on June 2, 2008 stating that petitioner is given 30 days from said date to file memorandum while respondent's counsel is given 20 days from notice to do so and upon expiry of the period for the filing thereof, this case shall be deemed submitted for decision, Division Docket, p. 749
[14] Petitioner's Memorandum filed on July 2, 2008, Division Docket, pp. 750-819
[15] Resolution dated July 18, 2008, Division Docket., p. 821
[16] Motion to Admit Memorandum, Division Docket, pp. 828-830
[17] Respondent's Memorandum filed on August 8, 2008, Division Docket, pp. 831-848
[18] Division Docket, p. 850
[19] Division Docket, pp. 327-335
[20] JSFI, Division Docket, p. 331-334

3. Whether or not Petitioner has duly substantiated its claim for the issuance of a tax credit certificate for unutilized input taxes amounting to P51,920,893.34 paid on its purchases of capital goods for the period January 1, 2004 to December 31, 2004;

4. Whether or not the input taxes amounting to P51,920,893.34 paid by Petitioner on its purchases of capital goods for the period January 1, 2004 to December 31, 2004 have not been carried over to the succeeding quarters and have not been utilized against any output tax;

5. Whether or not Petitioner is entitled to a tax credit certificate in the amount of P26,274,739.79 representing unutilized input taxes paid or incurred on local purchase of goods and services, other than capital goods, attributable to Petitioner's zero-rated sales to the National Power Corporation (NPC) for the period January 1, 2004 to December 31, 2004;

6. Whether or not Petitioner's sale of services to the National Power Corporation (NPC) for the period January 1, 2004 to December 31, 2004 qualify as zero rated sales;

7. Whether or not unutilized input taxes amounting to P26,274,739.79 representing unutilized input taxes paid or incurred on local purchase of goods and services, other than capital goods, for the period January 1, 2004 to December 31, 2004 were attributable to Petitioner's zero rated sales for the same period;

8. Whether or not Petitioner has duly substantiated its claim for the issuance of a tax credit certificate for its unutilized input taxes amounting to P26,274,739.79 representing unutilized input taxes paid or incurred on local purchase of goods and services, other than capital goods, attributable to its zero-rated sales for the period January 1, 2004 to December 31, 2004;

9. Whether or not the unutilized input taxes amounting to P26,274,739.79 representing unutilized input taxes paid or incurred on local purchase of goods and services, other than capital goods, for the period January 1, 2004 to December 31, 2004 have not been carried over to the succeeding quarters and have not been utilized against any output tax;

10. If any portion of Petitioner's unutilized input taxes paid on its purchase of capital goods amounting to P51,920,893.34 for the period January 1, 2004 to December 31, 2004, is disallowed for not falling under the category of 'capital goods' under then Section 112(B) of the Tax Code, whether or not Petitioner is entitled to claim the same as a tax credit under then Section 112(A) of the Tax Code, as unutilized/excess input taxes paid or incurred on its local purchases of goods and services for the period January 1, 2004 to December 31, 2004 attributable to its zero-rated sales for the same period;

> 11. Whether or not Petitioner had timely and duly filed its administrative claims for the refund or issuance of tax credit certificates amounting to P51,920,893.34 representing unutilized input taxes paid on its purchases of capital goods for the period January 1, 2004 to December 31, 2004; and for P26,274,739.79 representing unutilized input taxes paid or incurred on local purchase of goods and services, other than capital goods, attributable to Petitioner's zero-rated sales to the National Power Corporation (NPC) for the period January 1, 2004 to December 31, 2004, respectively; and,
>
> 12. Whether or not Petitioner is entitled to a tax credit certificate in the total amount of Seventy-Eight Million One Hundred Ninety-Five Thousand Six Hundred Thirty-Three Pesos and 13/100 (P78,195,633.13) representing its unutilized input taxes for the period January 1, 2004 to December 31, 2004."

On July 16, 2009, the *CTA Former Second Division* promulgated the Assailed Decision, the dispositive portion of which reads as follows:

> "**WHEREFORE**, all the foregoing considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **THIRTY SIX MILLION NINE HUNDRED NINETY FOUR THOUSAND SEVENTY THREE PESOS AND 87/100 (₱ 36,994,073.87)**, representing unutilized input VAT for calendar year 2004.
>
> **SO ORDERED**."

Not satisfied with the said Decision, CBK POWER filed its "Motion for Partial Reconsideration"[21] on August 4, 2009, while CIR filed his Motion for Partial Reconsideration[22] on August 6, 2009. In a Resolution[23] promulgated on November 27, 2009, the *CTA Former Second Division* denied both parties' respective Motion.

Hence, the instant Petitions for Review filed by both parties, viz:

a. CTA EB No. 574 - CBK Power Company Limited vs. Commissioner of Internal Revenue

[21] Division Docket, pp. 910-949
[22] Division Docket, pp. 950-961
[23] Division Docket, pp. 963-968

b. CTA EB No. 576 - Commissioner of Internal Revenue vs. CBK Power Company Limited

On January 15, 2010, the Court *En Banc* issued a Resolution[24] consolidating CTA EB No. 576 with CTA EB No. 574, the case bearing the lower docket number. On February 2, 2010, the Court *En Banc* promulgated a Resolution ordering the parties to file their respective comment. In compliance with the said order, CBK POWER filed on February 25, 2010 its Comment on the Petition for Review filed by the CIR in CTA EB Case No. 576. No Comment was filed by the CIR on the Petition for Review filed by CBK POWER in CTA EB Case No. 574.

In a Resolution dated March 12, 2010, the Court *En Banc* gave due course to both petitions and ordered both parties to submit their respective Memorandum within thirty (30) days from receipt of the Resolution, after which the case shall be deemed submitted for decision. In compliance with the said order, CBK POWER filed a "Manifestation and Memorandum" dated April 16, 2010 stating therein that it is reiterating all of its positions in its Petition for Review docketed as CTA EB Case No. 574. On the other hand, CIR filed a "Manifestation" on April 26, 2010 stating therein that he is adopting the statement of facts of the case, issues, and discussion specifically declared in his Petition for Review docketed as CTA EB Case No. 576.

In support of their respective Petition for Review, the CBK POWER and CIR presented their respective issues/discussions, to wit:

<u>CTA EB Case No. 574 (CBK POWER, petitioner)</u>[25]

"4. Petitioner seeks the modification of the abovementioned Decision and Resolution of the Honorable Court's Second Division because the Second Division of the Honorable Court erred when it ruled that:

(1) its (Petitioner's) judicial claim for the first quarter of 2004 was fled (sic) out of time;

[24] CTA En Banc Rollo (CTA EB No. 574), pp. 128-129
[25] Petition for Review, CTA En Banc Rollo (CTA EB No. 574), pp. 15-16

(2) petitioner failed to prove that the related purchases formed part of the account under 'Property, Plant and Equipment' as reflected in its audited financial statements for calendar year 2004;

(3) only a portion of the input value-added tax (VAT) claim attributable to the substantiated zero-rated receipts can be considered for refund, since the input VAT payments on capital goods were not supported by VAT invoices/official receipts or some of the invoices do not pertain to capital goods and other taxable goods and services attributable to its zero-rated sales; and

(4) portion of the substantiated input VAT must be disallowed on the ground that the allowed input amount corresponds only to the ratio of supported zero rated receipts."

CTA EB Case No. 576 (CIR, petitioner)[26]

"THE HONORABLE COURT HAS NO JURISDICTION OVER RESPONDENT'S JUDICIAL CLAIM FOR REFUND AND ERRONEOUSLY APPLIED SECTIONS 204 AND 209 OF THE NIRC OF 1997 CONTRARY TO LAW AND JURISPRUDENCE."

CBK POWER anchors its claim under Sections 110(A) and (B), and 112(A) and (B) of the NIRC of 1997, which, respectively, provides:

"**SEC. 110. Tax Credits.** -

(A) Creditable Input Tax. –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:
(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for

[26] Petition for Review, CTA En Banc Rollo (CTA EB No. 576), p. 14

depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid.

(2) The input tax on domestic purchase of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and
(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and
(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term *'input tax'* means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term *'output tax'* means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

(B) Excess Output or Input Tax. - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

"**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.
>
> **(B) Capital Goods.** - A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made. "

Pursuant to the afore-quoted Section 112 (A) of the 1997 NIRC, in order to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be complied with:

1. 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;
5. that the administrative claim for refund was filed within the two-year prescriptive period.

The Court *En Banc* deems it proper to resolve first CBK POWER's conformity or non-compliance with the fifth requisite before determining whether or not CBK POWER is entitled to its claim for refund/credit.

In the case of ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.), G.R. No. 172129, September 12, 2008***, the Highest Tribunal held, and *We* quote:

> "The claim for refund or tax credit for the creditable input VAT payment by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Section 112 (A) of the NIRC pertinently reads:
>
> > '(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 <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx '
>
> The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** xxx" (Emphasis supplied)

Applying the afore-quoted ruling in the case at bar, the Court *En Banc* finds that the administrative claim of CBK POWER was filed within the two (2) year prescriptive period pursuant to Section 112 (A) of the NIRC of 1997.

The present claim pertains to CBK POWER's alleged unapplied and unutilized input VAT attributable to its zero-rated sales, on its purchases of capital goods for calendar year 2004 in the amount of P51,920,893.34 and input VAT on local purchases of goods and services, other than capital goods, in the amount of P26,274,739.79. Counting from March 31, 2004 (end of 1st quarter of CY 2004), June 30, 2004 (end of 2nd quarter of CY 2004) September 30, 2004 (end of 3rd quarter of CY 2004) and December 31, 2004 (end of 4th quarter of CY 2004), petitioner had until March 31, 2006, June 30, 2006, September 30, 2006 and December 31, 2006, respectively, within which to file its claim for refund in the administrative level. Having filed a claim for refund or issuance of a tax credit certificate with the BIR, RDO No. 55 of Laguna on June 30, 2005, the said administrative claim was seasonably filed within the two (2) year prescriptive period.

Notwithstanding such findings of fact, *We* are constrained to grant CIR's Petition for Review due to the filing of CBK POWER's judicial claim for refund/credit with this Court beyond the prescriptive period provided under Section 112 (D) of the NIRC, which is hereunder quoted for easy reference:

> "**SECTION 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 may, within thirty (30) days from 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)

The Supreme Court, in the recent case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010***, interpreted the above provision, to wit:

> "Section 112 (D) of the NIRC clearly provides that the CIR has '120 days, from the date of submission of the complete documents in support of the application [for tax refund/tax 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.
>
> In this case, the administrative and judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support 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 where 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 xxx 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 said 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.

xxx xxx xxx."

As shown by the records of this case, the administrative claim was filed on June 30, 2005. Hence, the CIR has 120 days or until October 28, 2005 within which to decide on the said claim. After the lapse of the said 120-day period without any action on the part of the CIR, petitioner may appeal the unacted administrative claim within thirty (30) days or until November 27, 2005 with the CTA. However, considering that the Petition for Review (CTA Case No. 7460) was filed on April 20, 2006, or 144 days beyond the 30-day prescriptive period, the Court acquires no jurisdiction to act on the said judicial claim.

With the above discussion, the Court *En Banc* deems it proper to deny CBK POWER's Petition for Review (CTA EB Case No. 574).

WHEREFORE, premises considered:

1) As regards **CTA EB Case No. 574**, the Petition for Review is hereby **DISMISSED**; and

2) As regards **CTA EB case No. 576**, the Petition for Review is hereby **GRANTED.**

Accordingly, the Decision dated July 16, 2009 and the Resolution dated November 27, 2009 of the CTA Former Second Division are hereby **REVERSED** and **SET ASIDE**, and another one is hereby entered, **DISMISSING** the Petition for Review filed in **CTA Case No. 7460** for having been filed beyond the 30-day prescriptive period to appeal.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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