REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB NO. 251
(C.T.A. Case Nos. 6628 & 6732)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

MIRANT PAGBILAO CORPORATION (formerly Southern Energy Quezon, Inc.),
Respondent.

Promulgated:
MAY 3 0 2007

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue praying for the reversal of:

1. the Decision of the Second Division of the Court of Tax Appeals ("Court in Division") dated July 31, 2006 in C.T.A. Case Nos. 6628 and 6732 entitled, "*Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue*," ordering herein petitioner to refund or issue a tax credit certificate to herein respondent in the amount of ₱116,331,423.43 representing unutilized input value-added taxes ("VAT") paid on its domestic purchases of goods and services and importation of goods attributable to zero-rated sales for the four quarters of 2001; and
2. the Resolution of the Court in Division dated January 2, 2007 denying herein petitioner's Motion for Reconsideration.

Antecedent Facts

The antecedent facts that precipitated the instant petition are summarized by the Court in Division as follows:

> "Petitioner[1] is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office at Pagbilao Grande Island, Pagbilao Quezon, while respondent[2] is the Commissioner of Internal Revenue duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law, with office at the BIR National Office Building, Diliman, Quezon City.
>
> Petitioner is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation ('NPC') under a Build, Operate, Transfer ('BOT') scheme. It is registered as a value-added tax ('VAT') taxpayer in accordance with Section 107 of the Tax Code [now Section 236 of the National Internal Revenue Code of 1997], with BIR Certificate of Registration bearing RDO Control No. 96-600-002498 and Taxpayer Identification No. 001-726-870. Petitioner was originally registered with the Securities and Exchange Commission ('SEC') under the name 'Hopewell Power (Philippines), Corporation' which was subsequently changed to 'Southern Energy Quezon, Inc.' on September 22, 1999. On June 28, 2001, petitioner's name was again changed from 'Southern Energy Quezon, Inc.' to 'Mirant Pagbilao Corporation'.

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[1] Herein respondent.
[2] Herein petitioner.

On December 6, 2000, Petitioner filed with the BIR Revenue District Office No. 60 at Lucena City an Application for Effective Zero-Rate for the supply of electricity to the National Power Corporation which was subsequently approved.

Petitioner filed with the Bureau of Internal Revenue ('BIR') its VAT returns for the first, second, third and fourth quarters of 2001 on the respective dates of April 20, 2001, July 25, 2001, October 25, 2001 and January 25, 2002. However, on August 27, 2001, petitioner filed amended VAT returns for the first and second quarters of 2001. Below are the details of the said VAT returns:

xxx xxx xxx

Pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed an administrative claim for refund of unutilized input VAT with the Bureau of Internal Revenue on March 19, 2003 in the total amount of P121,309,855.09 for the calendar year 2001.

Due to respondent's inaction thereon, petitioner elevated its claim before this Court through the filing of two (2) separate Petitions for Review on March 31, 2003 and July 23, 2003 docked as CTA Case No. 6628 and CTA Case No. 6732, respectively:

CTA Case No.	Date of Filing of Petition for Review	Period Covered	Claimed Input VAT
6628	March 31, 2003	Jan. 1, 2001 - Mar. 31, 2001	P16,713,450.77
6732	July 23, 2003	Apr. 1, 2001 - Dec. 31, 2001	104,596,404.32
			P121,309,855.09

On July 29, 2003, petitioner filed a motion for the consolidation of the above cases considering that the same involve the same parties and issues. The Court granted the said motion in open court on July 30, 2003, followed by a confirming resolution dated August 7, 2003." (*Citations omitted*)

The Ruling of the Court in Division

On July 31, 2006, the Court in Division rendered its Decision partially granting the Petition for Review and ruling that by virtue of the special charter of the National Power Corporation ("NPC"), services rendered by a VAT-registered entity like herein respondent to NPC are effectively subject to zero percent ("0%") VAT in accordance with Section 108(B)(3) of the 1997 National Internal Revenue Code ("NIRC").

The Court in Division also found that herein respondent was able to establish through the various invoices and official receipts it issued to NPC that it actually derived revenues from its sale of power generation services to NPC for the four quarters of 2001.

The Court in Division likewise agreed with the findings of SGV & Co., the commissioned independent CPA (*save for the amount of ₱1,318,789.85*), that herein respondent was able to substantiate with proper invoices and official receipts its reported unutilized input taxes in the amount of ₱116,331,423.43 for the four quarters of calendar year 2001.

The Court in Division further ruled that herein respondent's claimed unutilized input taxes were not applied against any output tax.

Lastly, the Court in Division held that herein respondent's administrative claim for refund filed on March 19, 2003 and the two Petitions for Review docketed as CTA Case Nos. 6628 and 6732 filed on March 31, 2003 and July 23, 2003 respectively, were well within the two-year prescriptive period reckoned from the date of filing of the corresponding Quarterly VAT Returns for taxable year 2001.

The dispositive portion of the aforementioned Decision reads as follows:

> "**IN VIEW OF ALL THE FOREGOING**, the Petition for Review is hereby *PARTIALLY GRANTED*. Accordingly, respondent is **ORDERED TO REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of P116,331,423.43 representing unutilized input taxes paid on its domestic purchases of goods and services and importation of goods attributable to zero-rated sales for the four taxable quarters of 2001.
>
> **SO ORDERED.**"

Dissatisfied, herein petitioner filed a Motion for Reconsideration of the said Decision which was denied for lack of merit by the Court in Division in its Resolution promulgated on January 2, 2007.

Hence, the present recourse.

The Issue

The single issue posed in this Petition for Review is whether or not respondent is entitled to a tax refund or tax credit certificate in the amount of ₱116,331,423.43 allegedly representing unutilized input VAT paid on purchases of goods and services and importation of goods, all of which are allegedly attributable to zero-rated sales for the four taxable quarters of 2001.

Petitioner's Arguments

Petitioner avers that to support respondent's claim, it is imperative for the latter to prove that it has complied with the registration requirements of a VAT taxpayer in compliance with Section 6 (a) and (b) of Revenue Regulations ("RR") No. 6-97 in relation to Section 4.107-1(a) of RR No. 7-95 and Section 236 of the 1997 NIRC.

Petitioner also alleges that respondent failed to show that its purchases of goods and services were made in the course of its trade or business. It failed to show that the said purchases were properly supported by VAT invoices and/or official receipts and other documents, such as entries made in its subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A)(2) and 113 of the 1997 NIRC and pursuant to Section 4.104-5(a) & (b) of RR No. 7-95.

Petitioner likewise claims that the Court in Division has no jurisdiction to entertain the Petition for Review for failure on the part of the respondent to comply with the provision of Section 112 (D) of the 1997 NIRC. Respondent filed the administrative claim for refund with the Bureau of Internal Revenue (BIR) on March 19, 2003. Subsequently on November 30, 2003, the Petition for Review was filed with this Court. The one hundred twenty (120) days given to petitioner to decide on the claim has not yet lapsed when the petition was filed.

Lastly, petitioner posits that respondent failed to show proof that the claimed input VAT payments are directly attributable to its zero-rated sales. Respondent failed to show that the proceeds of the export sales were inwardly remitted and were duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP").

Respondent's Counter-arguments

Respondent, in its Comment, contends that contrary to petitioner's allegation, the assailed Decision and Resolution did not state that the refundable amount of input VAT should be the proportionate amount of the duly substantiated input VAT attributable to respondent's *zero-rated export sales*, as said Decision and Resolution clearly stated that the respondent is entitled to the refund of unutilized input taxes paid on respondent's domestic purchases and importation of goods and services attributable to respondent's *zero-rated sales of power generation services to NPC.*

Respondent also asseverates that it was able to prove, by conclusive evidence, that the unutilized input taxes amounting to ₱116,331,423.43 paid on its domestic purchases of goods and services, as well as importation of goods and services, were reported in the quarterly VAT returns during the four quarters of calendar year 2001, and said unutilized input taxes are properly supported by schedules, official receipts, bank debit advices, billings, cash vouchers, import entry and internal revenue declarations and Bureau of Customs official receipts and other documents.

Respondent likewise asserts that it proved that the subject unutilized input taxes had arisen from respondent's domestic purchases and importations of taxable goods and services attributable to its zero-rated sales of power generation services to the NPC.

Respondent further avers that the administrative and judicial claims for refund were filed within the period provided under the law.

Lastly, respondent posits that it was able to prove that it is entitled to the subject for refund or issuance of tax credit certificate in the amount of ₱116,331,423.43.

The Ruling of the Court En Banc

The petition is bereft of merit.

A closer consideration of the instant petition will reveal that the arguments propounded by petitioner had been thoroughly discussed by the Court in Division in the assailed Decision dated July 31, 2006 and Resolution dated January 2, 2007.

Claim for refund of unutilized input VAT is attributable to respondent's power generation services to NPC, and not to export sales

Records of the instant case support the findings of the Court in Division that the subject claim for refund involves unutilized input taxes paid on respondent's domestic purchases and importation of goods and services attributable to respondent's zero-rated sales of power generation services to NPC.

In this connection, Section 112(A) of the 1997 NIRC outlines the procedure for Refunds or Tax Credits of Input Tax, *viz*:

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

In conformity with the above law, to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. Both the administrative and the judicial claim for a tax credit or refund were filed within two (2) years from the filing of the quarterly VAT return(s) covered by the claim[3] as provided under Section 4.106-2(c) of Revenue Regulations No. 7-95, in relation to Section 112(D) of the NIRC;

2. The claimed input VAT payments were not applied against any output tax during the period covered by the claim and in the succeeding periods;

3. The claimed input VAT payments are directly attributable to zero-rated sales; and

4. The claimed input VAT payments are duly supported by VAT invoice or official receipts, in accordance with Section 4.104-5 of Revenue Regulations No. 7-95, in relation to Section 113 and 237 of the Tax Code.[4]

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[3] Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, Resolution, CTA Case No. 5296, July 20, 1998; Taganito Mining Corporation v. Commissioner of Internal Revenue, CTA Case No. 5983, dated October 11, 2001; Air Liquide Philippines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5748, promulgated January 23, 2002.
[4] Intel Philippines Manufacturing, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 5760 and 5902, February 05, 2002.

Based on the assailed Decision of the Court in Division, herein respondent complied with all of the foregoing requirements as to excess input taxes amounting to ₱116,331,423.43.

Indeed, the sale of power generation services to NPC is effectively zero-rated, pursuant to Section 108 (B) (3) of the 1997 NIRC, in relation to Section 13 of Republic Act No. 6395[5], as aptly discussed by the Court in Division, *to wit*:

> "Petitioner posits that its sale of electricity to NPC is effectively zero-rated pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 13 of Republic Act No. 6395, otherwise known as the NPC Charter, which are all quoted hereunder for easy reference:
>
> 'SEC. 108. ***Value-Added Tax on Sale of Services and Use or Lease of Properties***. —
>
> xxx xxx xxx
>
> '(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> '(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate.' (*Underlining supplied*)
>
> '**Sec. 13. Non-profit Character of the Corporation, Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities.** — The corporation shall be non-profit and shall devote all its returns from its capital investments, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance of effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby **declared exempt from the payment of all forms of taxes**, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.' (*Emphasis supplied*)
>
> We agree with petitioner. **This Court has consistently held that NPC is an entity with a special charter, which categorically makes it exempt from payment of all taxes, whether direct or indirect, including VAT.** Hence, by virtue of the said charter, services rendered by a VAT registered entity like herein petitioner to NPC are effectively subject to zero percent (0%) VAT in accordance with Section 108(B)(3) of the NIRC of 1997.

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[5] An Act Revising the Charter of the National Power Corporation dated September 10, 1971.

Moreover, the Supreme Court in its Resolution dated June 8, 1993, affirmed NPC's tax exemption in the case of ***Maceda vs. Macaraig, Jr., 223 SCRA 217***, to wit:

> 'A chronological review of the NPC laws will show that it has been the lawmaker's intention that the NPC was to be completely tax-exempt from all forms of taxes — direct or indirect.
>
> xxx xxx xxx
>
> One common theme in all these laws is that the NPC must be enabled to pay its indebtedness which, as of P.D. No. 938 was P12 Billion in total domestic indebtedness, at any one time, and US$4 Billion in total foreign loans at any one time. The NPC must be and has to be exempt from all forms of taxes if this goal is to be achieved.'

Likewise, **no less than the respondent himself approved petitioner's application for the zero-rating of its sales to NPC covering the period from January 2, 2001 to December 31, 2001.**

Further, **petitioner was able to establish through the various invoices and official receipts it issued to NPC (*Exhibits II to II-139*) that it actually derived revenues from its sale of power generation services to NPC for the four quarters of 2001.** Considering that its sales are effectively zero-rated for VAT purposes pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, the reported unutilized input taxes in the amount of P121,309,855.09 which are allegedly attributable thereto may be proper subject of a claim for refund or issuance of a tax credit certificate in accordance with Section 112(A) of the NIRC of 1997, as quoted earlier."[6] (*Emphasis supplied*)

Respondent was able to sufficiently prove that its unutilized input taxes are attributable to its zero-rated sales to NPC for the year 2001

In its assailed Resolution, the Court in Division held that herein respondent had sufficiently proven, through documentary and testimonial evidence, that the excess input taxes of ₱116,331,423.43 were all attributable to its effectively zero-rated sales to NPC for the subject period of the claim.[7] It is well-settled that the factual findings of the Court of Tax Appeals are entitled to the highest respect and can only be disturbed on appeal if not supported by substantial evidence.[8]

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[6] Pages 6 to 7, Decision, C.T.A. Case Nos. 6628 &6732, July 31, 2006.
[7] Pages 2 to 3, Resolution, C.T.A. Case Nos. 6628 &6732, January 2, 2007.
[8] Bonifacia Sy Po v. Honorable Court of Tax Appeals and Honorable Commissioner of Internal Revenue, G.R. No. L-81446, August 18, 1988, 164 SCRA 524.

After a careful review of the records of this case, We hold that the findings of the Court in Division that herein respondent is entitled to a refund or a tax credit in the amount of ₱116,331,423.43 are amply supported by the evidence on record.

In addition, respondent's discussion on this matter in its Comment is enlightening and is also supported by the evidence on record, thus:

> "Contrary to the bare assertions of petitioner, the CTA, in its Decision and Resolution, found that Respondent had sufficiently established and proven, both by testimonial and documentary evidence, that the unutilized creditable input taxes for the four quarters of CY 2001 in the total amount of ₱116,331,423.43 were duly substantiated by official receipts and invoices, bank debit advices, BOC official receipts, IEIRDs and other documents. These are also shown in *Exhibits "DD to DD-2689", "EE to EE-3005", "FF to FF-3413", "GG to GG-3497", and "NN" to "YYY" of Respondent.*
>
> To prove that the amount of domestic purchases of goods and services and importations of goods are substantiated by invoices, official receipts, bank debit advices, BOC official receipts, IEIRDs, and other relevant documents, three (3) Certifications [*Exhibits "V to V-1", "W to W-76", and "X to X-72"*] were submitted to the CTA by Mr. Henry Tan of SGV & Co., in his capacity as the duly commissioned Independent Certified Public Accountant, after he verified Respondent's supporting documents. Furthermore, the testimony of Mr. Henry Tan was presented to prove the contents of said Certifications, which the Petitioner did not at all dispute as to its veracity and accuracy.
>
> Moreover, Mr. Henry Tan noted in the Certifications [*Exhibits "V to V-1", "W to W-76", and "X to X-72"*] and testified before the CTA that the payment of input VAT on importations are also supported by other documents, such as original copies of bank debit advices, bank official receipts, BOC official receipts and official receipts issued by the brokers [*TSN dated May 27, 2004, pages 17-24*].
>
> In coming out with his findings, Mr. Henry M. Tan tested the accuracy of the Respondent's input VAT for the period January 1, 2001 to December 31, 2001 against the source documents, including original copies of the invoices, official receipts, bank debit advices, BOC official receipts, IEIRDs, and other relevant documents related to the input taxes covered in Respondent's claim [*TSN dated May 27, 2004, pages 14-15*]. Notably, the duly commissioned Independent CPA considered existing VAT laws, rules and regulations on the matter of invoicing. Suffice it to state that said Certifications were the result of an accurate determination of Respondent's allowable excess creditable input VAT for the four (4) quarters of CY 2001."[9]

The claim for refund was filed within the period provided under the law

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[9] Pages 4 to 5, Comment filed on March 8, 2007.

We do not subscribe to petitioner's contention that the Court in Division has no jurisdiction over the petition since the one hundred twenty (120) days given to the Commissioner of Internal Revenue to decide on the claim under Section 112 (D) of the 1997 NIRC, had not yet lapsed when the Petition for Review was filed on November 30, 2003. Section 112(D) provides:

> "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*)

A scrutiny of the records of this case reveal that herein respondent filed with the BIR its VAT returns for the first, second, third and fourth quarters of 2001 on April 20, 2001, July 25, 2001, October 25, 2001 and January 25, 2002, respectively. However, on August 27, 2001, petitioner filed amended returns for the first and second quarters of 2001. Respondent filed its administrative claim for refund for the four quarters of year 2001 with the BIR on March 19, 2003, pursuant to Section 112(A) of the NIRC, in relation to RR No. 7-95.[10] The judicial claims for the refund for unutilized input VAT covering the first quarter and the second, and the third and fourth quarters were filed on March 31, 2003 and July 23, 2003, respectively.

Section 112(A) reads:

> "SEC. 112. **Refunds or Tax Credits of Input Tax.** —

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[10] Annex "G", Petition for Review, pages 65 to 67, C.T.A. Records.

"(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." (*Emphasis supplied*)

This Court has repeatedly ruled that the administrative and judicial prescriptive period in claiming for the refund of input VAT is reckoned from the date of filing of the quarterly VAT return.[11]

Corollary thereto, the Honorable Court of Appeals has ruled that when the two-year period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, the latter should file a petition for review with the Court of Tax Appeals within the said two-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the two-year period, he can no longer appeal the same to the Court of Tax Appeals. The Court of Appeals ratiocinated as follows:[12]

"It appears therefore, that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case. This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of **the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute**.

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[11] Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, *supra, note 3*.

[12] Commissioner of Internal Revenue v. Hitachi Computed Products (Asia) Corporation, CA-G.R. SP No. 63340, February 7, 2002 *citing Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil 232, Johnson Lumber Co. vs. CTA, 101 Phil 151.*

> **Incidentally, the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund.** Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal. The law fixed the same period — two years — for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be made in court. Indeed, only the latter case presupposes the existence of a prior decision of the Commissioner which could be subjected to review by the court. In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*Emphasis supplied*)

Moreover, the Bureau of Internal Revenue (BIR) has cited the foregoing disquisition of the Court of Appeals as basis when it made the following ruling:

> "In reply, please be informed that **a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the CTA may acquire jurisdiction, particularly if the claim is about to prescribe.** The Tax Code fixed the period of two (2) years for filing a claim for refund with the Commissioner [Sec. 112(A) in relation to Sec. 204(c)] and for filing a case in court [Section 229]. Hence, a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law."[13] (*Emphasis supplied*)

For all the foregoing, the Court in Division correctly ruled that respondent's judicial claims for refund were filed well within the two-year prescriptive period reckoned from the date of filing the corresponding Quarterly VAT Returns for taxable year 2001.

While the settled rule is that tax refunds are in the nature of tax exemptions and regarded as derogation of the sovereign authority, thus should be construed *strictissimi juris* against the person or entity claiming the exemption, We find that respondent in this case was able to discharge the burden of proof to establish its right to a tax credit or refund.

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[13]BIR Ruling [DA-489-03] dated December 10, 2003, signed by Deputy Commissioner (Legal and Enforcement Group) Jose Mario C. Buñag.

All told, there is no error in the disquisition of judgment rendered by the Court in Division, the same being in accord with the evidence on record and with the applicable law and jurisprudence.

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision promulgated on July 31, 2006 and Resolution dated January 2, 2007 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice