Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MIRANT NAVOTAS CORPORATION (Formerly: Southern Energy Navotas, Inc.),
Respondent.

CTA EB CASE NO. 650
(CTA Case No. 6960)

For: Refund or Issuance of a Tax Credit Certificate

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

Promulgated: DEC 20 2011 [illegible] 9:10 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax* Appeals*, as amended,* of the Decision dated November 13, 2008[1] and the Amended Decision dated August 11, 2009[2] rendered by the former First Division of this Court, and Amended Decision dated June 7, 2010,[3] rendered by the Special First Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated November 13, 2008:

> "WHEREFORE, with the foregoing disquisitions, the *Petition for Review* is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P2,220,608.01, representing its unutilized input VAT for taxable year 2002.
>
> SO ORDERED."

Amended Decision dated August 11, 2009:

> "WHEREFORE, premises considered, respondent's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED** and the Decision dated November 13, 2008 is hereby **MODIFIED**. Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of P1,483,975.00, representing petitioner's unutilized input VAT for taxable year 2002.
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> SO ORDERED."

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[1] Penned by Associate Justice Lovell R. Bautista, concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, *En Banc* Docket, pp. 23-35.

[2] Penned by Associate Justice Lovell R. Bautista, concurred in by Associate Justice Caesar A. Casanova with Concurring and Dissenting Opinion by Presiding Justice Ernesto D. Acosta, *En Banc* Docket, pp. 36-45.

[3] Penned by Associate Justice Lovell R. Bautista, concurred in by Associate Justice Caesar A. Casanova with Concurring and Dissenting Opinion by Presiding Justice Ernesto D. Acosta, *En Banc* Docket, pp. 46-58.

Amended Decision dated June 7, 2010:

"**WHEREFORE**, premises considered, respondent's *Motion for Reconsideration* is hereby **DENIED** for lack of merit; while petitioner's Motion for Reconsideration is hereby **GRANTED**. Accordingly, the Amended Decision dated August 11, 2009 is hereby **MODIFIED**. Respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P2,220,608.01, representing its excess input VAT for taxable year 2002.

SO ORDERED."

The antecedent facts as culled from the Decision dated November 13, 2008 of the Court *a quo* are as follows:

"Mirant Navotas Corporation (Petitioner) is a corporation duly organized and existing by virtue of Philippine laws, with principal office located at 5F, CTC Building, 2232 Roxas Boulevard, Pasay City. It is primarily engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate and Transfer (BOT) Scheme.

Petitioner was originally registered with the Securities and Exchange Commission (SEC) under the name Hopewell Energy (Philippines) Corporation. On June 17, 1999, petitioner's name was officially changed to Southern Energy Navotas, Inc. Subsequently, the SEC approved the application of petitioner to further change its corporate name to Mirant Navotas Corporation on June 18, 2001.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with the authority to act as such, including the power to decide, approve and grant claims for issuance of tax credit certificate or refunds of overpaid internal revenue taxes as provided by law. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On December 7, 2001, petitioner filed with the BIR an Application for VAT Zero-Rate for its supply of electricity to the NPC, which was subsequently approved.

Petitioner filed its Quarterly VAT Returns for taxable year 2002 on the following dates:

Period	Date Filed	Exhibits
1st Quarter	April 25, 2002	"A"
2nd Quarter	July 26, 2002	"B"
3rd Quarter	October 25, 2002	"C"
4th Quarter	January 27, 2003	"D"

On December 23, 2003, petitioner filed an administrative claim for refund of its unutilized input VAT in the total amount of 2,666,221.16 for the four quarters of taxable year 2002 with the BIR Large Taxpayers Service.

Due to respondent's inaction and to suspend the two-year prescriptive period under the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations No. 7-95, petitioner filed this *Petition for Review* on April 22, 2004.

In his *Answer* filed on June 9, 2004, respondent by way of Special and Affirmative Defenses averred the following:

> '4. He reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses;
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> 5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the respondent;
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> 6. To support its claim, it is imperative for petitioner to prove the following, viz:
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> a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
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> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment

of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of P2,666,211.16 allegedly paid by the petitioner on its purchase of goods and services for the four (4) quarters of year 2002 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within the two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A)(2) and 113 of the Tax Code, as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue

Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations no. 7-95 (Re: Persons who can avail of the Input Tax Credits);

7. Furthermore, in an action for refund 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. This is so because exemptions from taxation are highly disfavoured in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications *(Asiatic Petroleum Co. {P.I.} v. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670)*;

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

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After presenting documentary and testimonial evidence, petitioner filed its Formal Offer of Evidence on October 2, 2006, which was partially admitted in a Resolution dated November 20, 2006, and its Omnibus Motion filed on December 18, 2006, which was resolved via Resolution dated March 23, 2007.

On May 22, 2007, petitioner filed a Supplemental Formal Offer of Evidence, which the Court resolved in a Resolution dated July 27, 2007.

In a Resolution dated January 14, 2008, which confirmed the order in open court on January 8, 2008, respondent is deemed to have waived its right to present evidence for failure on the part of respondent's counsel to appear during the hearing for his initial presentation of evidence on August 28, 2007, October 11, 2007, November 13, 2007, and January 8, 2008."[4]

On November 13, 2008, the former First Division of this Court rendered a Decision[5] granting the Petition for Review and ordered Commissioner of Internal Revenue ("CIR") to refund or issue a tax credit certificate in favor of Mirant Navotas Corporation ("Mirant") in the amount of P2,220,608.01, representing its unutilized input VAT for taxable year 2002. The Court *a quo* ratiocinated that Mirant's sale of power generation services to National Power Corporation ("NPC"), an entity with a special charter that expressly grants exemption from payment of all taxes including VAT, are subject to zero percent VAT pursuant to Section 108(B)(3) of the NIRC of 1997, as amended. Consequently, having sufficiently substantiated its documentary evidence under Sections 110 (A) and 113 (A) of the NIRC of 1997 and Revenue Regulations No. 7-95, and having timely filed its administrative[6] and judicial[7] claims within the two-year period reckoned

[4] *En Banc* Docket, pp. 23-27.
[5] *Supra* note 1.
[6] Filed on December 23, 2003.
[7] Filed on April 22, 2004.

from the date of filing of its First Quarterly VAT Return for the taxable year 2002, Mirant's application for tax refund/credit is in order.

On December 8, 2008, CIR moved for reconsideration of the above-cited Decision, which was partially granted by the former First Division of this Court in an Amended Decision[8] dated August 11, 2009. The Court *a quo* modified its Decision dated November 13, 2008 and ordered CIR to refund or issue a tax credit certificate in favor of Mirant in the reduced amount of P1,483,975.00, representing its unutilized input VAT for the taxable year 2002. In partially granting CIR's motion, the Court *a quo* applied the rule laid down in the case of ***Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)***[9] (the "*Mirant Case*") and held that Mirant's judicial claim for the first quarter of 2002 filed on April 22, 2004 was beyond the two (2)-year period prescribed by law. Hence, the claimed excess and unutilized creditable input VAT in the amount of P737,360.28 for the first quarter of 2002 is barred by prescription.

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[8] *Supra* note 2.
[9] G.R. No. 172129, September 12, 2008.

Thereafter, both Mirant and CIR filed their Motions for Reconsideration dated August 28, 2008 and September 2, 2009, respectively.

In an Amended Decision[10] dated June 7, 2010, the Special First Division of this Court denied CIR's motion and granted Mirant's motion, ordering CIR to refund or to issue a tax credit certificate in favor of Mirant in the amount of P2,220,608.01, representing excess input VAT for the taxable year 2002. The Court *a quo* elucidated that prior to the promulgation of the *Mirant Case*, the prevailing jurisprudence then provides that both administrative and judicial claims for unutilized input VAT refund/credit must be filed within two (2) years reckoned from date of filing of the Quarterly VAT Return. Hence, Mirant's judicial claim for the first quarter of 2002 filed on April 22, 2004 was timely filed considering that the new doctrine laid down in the *Mirant Case* should be applied prospectively in order not to impair any vested rights.

Hence, this Petition for Review was filed before the Court *En Banc* on July 16, 2010.[11]

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[10] *Supra* note 3.
[11] The Petition for Review was filed within the extended period granted by the Court *En Banc* in a Resolution dated July 2, 2010.

The sole issue raised is whether the Court *a quo* erred in granting a tax refund/credit in favor of Mirant in the amount of P2,220,608.01, representing excess input VAT for the taxable year 2002.

On the procedural issues raised, CIR opines that the submission of complete documents in the administrative proceedings is a requirement established by law and jurisprudence. CIR asserts that the law requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Considering that Mirant merely submitted five (5) classes of documents in the administrative proceedings, CIR argues that the administrative claim was correctly denied by inaction due to its failure to submit complete documents as required under Annexes “B” and “B-1” of Revenue Memorandum Order (RMO) No. 53-98. In essence, CIR insinuates that the inaction is tantamount to a decision denying the administrative claim for unutilized input VAT refund/credit and consequently, the judicial review before this Court is limited to whether or not CIR’s denial of claim is correct.

In its Comment,[12] Mirant alleges that the instant Petition for Review should be outrightly dismissed for CIR's failure to attach certified true copies of material portions of the record referred to in the said Petition, in violation of the mandatory requirements under Sections 6 and 7, Rule 43, Revised Rules of Court. Mirant asseverates that the sole ground relied upon by CIR, *i.e.,* non-submission of the documents enumerated in RMO No. 53-98, clearly has no basis. Mirant maintains that the Court *a quo* correctly ordered the input VAT refund/credit in its favor as the documents listed in RMO 53-98 are not required to be submitted together with the application for refund but during the audit proper, which an investigating Revenue Officer/Tax Auditor must always request. Finally, Mirant alleges that CIR is barred from raising the issue of whether or not it submitted complete documents in support of the application for VAT refund as such issue was not accordingly raised during the pre-trial conference.

CIR's arguments are misplaced.

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[12] Filed on September 14, 2010, *En Banc* Docket, pp. 69-82.

A careful perusal of Section 112(D) of the NIRC of 1997, as amended,[13] Section 7 of Republic Act (R.A.) No. 9282, amending R.A. No. 1125, otherwise known as the *Law Creating the Court of Tax Appeals,*[14] and Section 3, Rule 4 of the Revised Rules of the Court of

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[13] Section 112. Refunds or Tax Credits of Input Tax. –

> (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 Subsection (A) hereof.
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> 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 <u>or</u> 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.]

[14] Sec. 7. *Jurisdiction.* — The CTA shall exercise:

> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
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> x x x

Tax Appeals[15] readily reveals that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the CIR.[16] Thus, contrary to CIR's stance, the inaction is not tantamount to a decision denying the administrative claim for unutilized input VAT refund/credit. Otherwise stated, CIR's inaction ↳

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15 RULE 4. Jurisdiction of the Court

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SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

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16 Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.

is not synonymous with a decision although both may be subject to judicial appeal before this Court within 30 days from receipt of CIR's decision or ruling or after the lapse of the 120-day period of inaction on the part of the CIR.

We disagree with CIR's argument that the submission of complete documents pursuant to RMO No. 53-98 is necessary before the 120-day audit period shall apply and before judicial appeal before this Court may be availed of.

Under Section 8 of R.A. No. 1125,[17] the CTA is described as a court of record. As cases filed before it are litigated *de novo,* party litigants should prove every minute aspect of their cases. No evidentiary value can be given to the pieces of evidence submitted to the BIR as the rules on documentary evidence[18] require that these documents must be formally offered before the CTA.[19]

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[17] Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides to wit:

> SEC. 8. *Court of record; seal; proceedings*. – The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

[18] Section 34 of Rule 132 of the Revised Rules of Court, provides to wit:

It is a basic rule in taxation that the factual findings of the Court of Tax Appeals are entitled to the highest respect[20] and, when supported by substantial evidence, will not be disturbed on appeal, unless it is shown that it committed gross error in the appreciation of facts.[21] Thus, where the taxpayer files a Petition for Review and this Court thereafter acquires jurisdiction over the case, the Court is necessarily given ample authority to determine the sufficiency of evidence submitted to warrant the granting of its prayer.

The term "complete documents" referred to under Section 112 of the NIRC of 1997, as amended, should be construed as those documents necessary to support the legal basis of taxpayer's application for input VAT refund/credit as may be determined by the taxpayer bearing in mind that the "burden of proving entitlement to a

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SEC. 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[19] *See Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005; *Rafael Arsenio Dizon v. Court of Tax Appeals*, et al., G.R. No. 140944, April 30, 2008; *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179356, December 14, 2009.
[20] *Commissioner of Internal Revenue v. Arnoldus Carpentry Shop, Inc., et al.,* G.R. No. 71122, March 25, 1988.
[21] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 124043, October 14, 1998, *citing Commissioner of Internal Revenue v. Mitsubishi Metal Corp.,* 181 SCRA 214, 220, January 22, 1990.

refund lies with the claimant"[22]. Hence, the determination of what constitutes as complete documents should not be left at the sole discretion of the CIR. Otherwise, a taxpayer would be practically placed at the mercy of the CIR which may require production of documents that a taxpayer cannot submit.[23]

A taxpayer has the burden of proof to establish the factual basis of his or her claim for a tax refund or credit. Nonetheless, once the taxpayer has submitted all the required documents, it is the function of the BIR to assess these documents with purposeful dispatch.[24] The CIR is given sufficient authority, pursuant to Section 112(D) of the NIRC of 1997, as amended, to decide whether to grant or deny the claim of a tax refund based on the documents submitted by the taxpayer. Otherwise put, the CIR cannot simply refuse to act on the application for a tax refund/credit on a pretext that the documents submitted were insufficient.

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[22] *Silicon Philippines, Inc. (Formerly INTEL PHILIPPINES MANUFACTURING, INC.) v. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011.
[23] *See Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, G.R. Nos. 172045-46, June 16, 2009.
[24] *Philex Mining Corporation v. Commissioner of Internal Revenue, et al.,* G.R. No. 125704 August 28, 1998.

In the instant case, it is undisputed that Mirant filed its Application for Tax Credits/Refunds on December 23, 2003 together with the several documents[25] in support of its application.[26] However, as previously stated, CIR failed to act on nor respond to Mirant's claim within the 120-day period required by law, thereby causing Mirant to exercise its statutory right to appeal before this Court. Hence, CIR's failure to exercise her authority to decide Mirant's claim precludes her from questioning the sufficiency of the documentary evidence submitted before her office.

Anent Mirant's assertion that the instant Petition for Review should be outrightly dismissed for CIR's failure to attach certified true copies of the documents referred to in the said petition in violation of requirements under Sections 6 and 7, Rule 43, Revised Rules of Court, the same may not be given credence. This provision must be taken in the light of Section 8, R.A. No. 1125,[27] which provides that proceedings

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[25] Articles of Incorporation; VAT Registration Certificate; Quarterly VAT Returns for the four (4) quarters of 2002; Summary of Input Tax Payments for the four (4) quarters of 2002 showing the details of its purchases of goods and services as well as the corresponding input tax paid, together with the pertinent supporting VAT invoices and official receipts; and Approved Certificate for Zero Rate for the year 2002.
[26] Exhibit "E", Division Docket, pp. 312-315.
[27] An Act Creating the Court of Tax Appeals.
SEC. 8. *Court of record; seal; proceeding.* – The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of

before the Court of Tax Appeals shall not be governed strictly by technical rules of evidence. Similarly, jurisprudence is replete with cases holding that technicalities should not be used to defeat substantive rights, especially those that have been established as a matter of fact.[28]

As to the timeliness of filing both administrative and judicial claims for unutilized input VAT refund, although this issue was not raised in the instant Petition for Review, the same shall be resolved in order to arrive at a just decision and complete resolution of the case. As succinctly put by the Supreme Court, "[o]nce a court acquires jurisdiction over a case, it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law".[29]

In the assailed Amended Decision dated June 7, 2010,[30] the Special First Division of this Court held that Mirant timely filed its administrative and judicial claims for unutilized input VAT refund/credit

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its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

[28] Filinvest Development Corporation v. Commissioner of Internal Revenue, et al., G.R. No. 146941, April 9, 2007.

[29] *Comilang v. Burcena, et al.,* G.R. No. 146853, February 13, 2006.

[30] *Supra* note 3.

for the four (4) quarters of the taxable year 2002 and ratiocinated as follows:

> "It has been consistently held that the administrative claim and the subsequent appeal to this Court must be filed within the two-year prescriptive period. In the case of Gibbs, *et al.* vs. Collector of Internal Revenue, *et al. [G.R. No. L-13453, February 29, 1960]*, the Highest Tribunal held that if the Collector (now Commissioner) takes time in deciding the claim and the two-year period is about to end, the suit or proceeding must be started in this Court before the end of the two-year period without awaiting the decision of the Collector. After all, after the two-year period, the taxpayer can no longer appeal to this Court.
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> In the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue *[G.R. Nos. 141104 and 148763, June 8, 2007]*, the Supreme Court made the following pronouncements:
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> > 'Lastly, although the taxpayer's refundable or creditable input VAT may not be considered as illegally or erroneously collected, its refund/credit is a privilege extended to qualified and registered taxpayers by the very VAT system adopted by the Legislature. Such input VAT, the same as any illegally or erroneously collected national internal revenue tax, consists of monetary amounts which are currently in the hands of the government but must rightfully be returned to the taxpayer. Therefore, whether claiming refund/credit of illegally or erroneously collected national internal revenue tax, or input VAT, the taxpayer must be given equal opportunity for filing and pursuing its claim.
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> > For the foregoing reasons, it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter. xxx'

The Court likewise takes note of the recent case of Team Energy Corporation (Formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue *[CTA Case Nos. 7229 and 7298, October 5, 2009]*, where this Court held:

> 'Although there is a recent case entitled *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly SOUTHERN ENERGY QUEZON, INC.)*, wherein the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of al claims for input VAT refund starts from the close of the taxable quarter when the relevant sales were made, this Court finds it proper to apply said ruling to cases filed after the promulgation date of the Mirant Case. To apply said ruling in the present case will in effect be giving the new doctrine retroactive application thereby impairing vested rights.'

Following the afore-quoted decisions, the administrative and judicial claims for refund of excess input VAT must both be filed within two years from the filing of the Quarterly VAT Return."[31] [Emphasis supplied.]

In a nutshell, the Special First Division of this Court held that prior to the promulgation of the *Mirant Case*, the prevailing jurisprudence then provides that both administrative and judicial claims for unutilized input VAT refund/credit must be filed within two (2) years reckoned from date of filing of the Quarterly VAT Return. Thus, the new doctrine laid down in *Mirant Case* should be applied prospectively in order not to impair any vested rights.

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[31] *En Banc* Docket, pp. 49-51.

While we agree with the Court *a quo* insofar as Mirant's timely filing of its administrative claim for refund with the BIR and its subsequent appeal before this Court, we humbly differ with respect to its ruling that the administrative claim and the judicial appeal must be filed within two (2) years reckoned from the filing of Quarterly VAT Return. Instead, we hold that the filing of the administrative claim for unutilized input VAT refund/credit under Section 112(A) of the NIRC of 1997, as amended, must be made within two (2) years after the close of the taxable quarter when the sales were made; whereas the filing of the Petition for Review with this Court must be made within thirty (30) days reckoned from either the receipt of the decision denying the claim or after the expiration of the one hundred twenty day (120)-period for the CIR to act on the claim pursuant to Section 112(D) of the NIRC of 1997, as amended.

In the recent case of ***Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.***[32] *(the "Aichi Case"),* the Supreme Court had finally settled the issue of prescription insofar as the filing of an administrative claim for unutilized input VAT refund/credit before the

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

CIR and its subsequent judicial appeal before the CTA.[33] The pertinent portion of the said decision reads:

> "The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [G.R. No. 172129, September 12, 2008, 565 SCRA 154]*, where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.
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> x x x
>
> x x x To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.
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> 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 the 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 when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.
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> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for

[33] In a Resolution dated December 6, 2010, the First Division of the Supreme Court denied with finality the Motion for Reconsideration filed by Aichi Forging Company of Asia, Inc. in the aforesaid *Aichi Case*.

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.

With regard to *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc. [130 Phil. 12 (1968)]* relied upon by respondent, we find the same inapplicable as the tax provision involved in that case is Section 306, now Section 229 of the NIRC. And as already discussed, Section 229 does not apply to refunds/credits of input VAT, such as the instant case.

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.]

It is evidently clear that the Supreme Court distinguished the prescriptive period between an administrative claim for unutilized input VAT refund/credit and a judicial appeal before this Court under Section 112 of the NIRC of 1997, as amended. *First*, the filing of an administrative claim for unutilized input VAT refund/credit before the CIR must be made within two (2) years after the close of the taxable quarter when the sales were made pursuant to Section 112(A) of the NIRC of 1997. *Second*, the filing of a Petition for Review with this Court must be made within thirty (30) days reckoned from either the receipt of CIR's decision denying the claim or after the expiration of the one hundred twenty (120) day -period for the CIR to act on the claim in accordance with Section 112(D) of the NIRC of 1997, as amended.

In the instant case, Mirant filed with the BIR its administrative and judicial claims for refund and/or tax credit of its unutilized input VAT credits for the four (4) quarters of the taxable year 2002 on the following dates:

Period	Quarterly VAT Return Date Filed[34]	Administrative Claim Date Filed[35]	Judicial Claim Date Filed[36]
1st Quarter	April 25, 2002	December 23, 2003	April 22, 2004
2nd Quarter	July 26, 2002	December 23, 2003	April 22, 2004
3rd Quarter	October 25, 2002	December 23, 2003	April 22, 2004
4th Quarter	January 27, 2003	December 23, 2003	April 22, 2004

Clearly then, Mirant timely filed its administrative claim for unutilized input VAT refund with the BIR for the four (4) quarters of the taxable year 2002 on December 23, 2003, having filed it within two years reckoned from the close of the taxable quarter when the sales were made.

As to the timeliness of its judicial appeal, Mirant filed a Petition for Review before this Court on April 22, 2004 or 121 days after it filed its

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[34] Exhibits "A" to "D", Division Docket, pp. 278-311.
[35] *Supra* note 26.
[36] Division Docket, pp. 1-82.

application for refund before respondent on December 23, 2003. Evidently, Mirant similarly filed its judicial appeal before the Court *a quo* within the prescriptive period, having complied with the mandatory period of 120 and 30 days as held in the *Aichi Case*.

On the main issue in the instant case, it is undisputed that Mirant anchored its claim for unutilized input VAT refund or issuance of tax credit on its zero-rated sale of power generation services for the four quarters of the taxable year 2002 to the NPC pursuant to Section 108(B) (3) of the NIRC of 1997, as amended, and Section 13, R.A. 6395, as amended, or otherwise known as the NPC's revised charter.

Section 108(B) (3) of the NIRC of 1997, as amended, reads:

> "Sec. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –
>
> 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
>
> (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;"

Consequently, Section 13 of R.A. No. 6395, as amended, or otherwise known as the NPC's revised charter, which expressly declares NPC as exempt from all taxes, provides:

> "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 investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and 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." [Underscoring supplied.]

In ***Maceda v. Macaraig, Jr., et al.***,[37] the Supreme Court affirmed NPC's tax-exempt character and construed the exemption as covering both direct and indirect taxes,[38] including VAT. The pertinent portion of the said decision reads:

> "x x x [T]he amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently, P.D. No. 380, made even more specific the details of the exemption of NPC to cover, among others, *both direct and indirect taxes* on all petroleum products used in its operation. Presidential Decree No. 938 amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "*all forms of taxes*, duties, fees, imposts, as well as costs and service fees including filing fees,

[37] G.R. No. 88291, May 31, 1991, 197 SCRA 771.
[38] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*, G.R. No. 172129, September 12, 2008.

appeal bonds, supersedeas bonds, in any court or administrative proceedings.

The use of the phrase "all forms" of taxes demonstrates the intention of the law to give NPC all the tax exemptions it has been enjoying before. x x x

x x x

It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from *all forms* of taxes including indirect taxes as provided under R.A. No. 6395 and P.D. 380 if it is to attain its goals."[39]

Thus, the services rendered by a VAT-registered entity, like Mirant in the instant case, to NPC, are effectively subject to zero-percent VAT pursuant to Section 108(B) of the NIRC of 1997, as amended and Section 13 of R.A. No. 6395, as amended.

As aptly found by the Court *a quo*, Mirant sufficiently substantiated its claim for unutilized input VAT refund/credit in the amount of P2,220,608.01 arising from its sale of power generation services to NPC by documentary evidence presented before the Court. The pertinent portion of the said decision dated November 13, 2008 reads:

"In order to determine whether or not petitioner's reported input taxes for the four quarters of taxable year 2002 in the amount of P2,666,221.16 have been substantiated by requisite documentary evidence, the Court notes the findings of the commissioned Independent CPA, to wit:

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[39] *Supra* note 37, pp. 798-801.

'Based on our verification of the documents supporting the input taxes, we present below our findings:

	Findings	1st QTR	2nd QTR	3rd QTR	4th QTR	TOTAL
I.	Input taxes on domestic purchases of goods that are supported by VAT invoices and purchases of services that are supported by VAT ORs *(Annex 6)*	677,206.28	822,330.01	403,139.20	258,505.79	2,161,181.28
II.	Input tax on an importation of goods that is supported by original bank OR and photocopied IED certified as true copy of the BOC *(Annex 7)*	60,154.00	-	-	-	60,154.00
III.	Input taxes on domestic purchases of goods:					
1.	Erroneously computed *(Annex 8-1)*	129.10	-	-	-	129.10
2.	Supported by a VAT invoice without BIR Permit	-	-	240.00	-	240.00

	Number *(Annex 8-2)*					
3.	Supported by a document other than a VAT invoice *(Annex 8-3)*	-	-	54.55	-	54.55
4.	Supported by a VAT inoice with pre-printed "TIN NON-VAT" *(Annex 8-4)*	4,414.55	-	-	-	4,414.55
5.	Supported by VAT invoices not issued in the Name of the Company *(Annex 8-5)*	-	3,763.64	-	-	3,763.64
6.	Erroneously presented twice in the Summary of Local Purchases *(Annex 8-6)*	2,181.82	-	-	-	2,181.82
IV.	Input taxes on **purchases of services:**					
1.	Erroneously computed *(Annex 9-1)*	3,471.70	-	-	-	3,471.70
2.	Supported by a VAT OR without BIR Permit Number *(Annex 9-2)*	-	5,330.64	-	-	5,330.64
3.	Supported by documents other than VAT ORs *(Annex 9-3)*	1,499.32	517.91	1,196.64	1,561.63	4,775.50
4.	Supported by VAT					

	ORs with pre-printed "TIN-NV" only *(Annex 9-4)*	-	-	2,000.06	-	2,000.06
5.	Supported by VAT ORs with pre-printed TIN only *(Annex 9-5)*	5,880.00	4,015.00	470.00	5,825.00	16,190.00
6.	Supported by VAT ORs not issued in the name of the Company *(Annex 9-6)*	1,800.00	427.83	-	-	2,227.83
V.	Input taxes on importation of goods:					
1.	Supported by BOC OR only (Annex 10-1)	-	-	50.00	-	50.00
2.	Supported by photocopied IED only (Annex 10-2)	84.00	-	-	-	84.00
3.	Without available supporting documents (Annex 10-3)	39,200.00	150,160.00	-	-	189,360.00
TOTAL		P796,020.77	P986,545.03	P407,150.45	P265,892.42	P2,455,608.67

Moreover, we would like to mention the following items for the additional information of this Honorable Court:

1. Input taxes amounting to P33,289.24 were claimed on domestic purchases of goods which are supported by VAT invoices issued in the name of Southern Energy Pangasinan, Inc., former name of the Company. The VAT invoices were issued after June 18, 2001 (The

change of the Company's name from SENI (Southern Energy Pangasinan, Inc. [Hopewell Energy (Philippines) Corporation] to Mirant Navotas Corporation was effective on June 18, 2001 under its Amended Articles of Incorporation filed with the Securities and Exchange Commission on June 11, 2001). *(See Annex 11)*

2. Input taxes amounting to **P102,162.75** were claimed on domestic purchases of goods which are supported by VAT invoices dated outside the period of claim. *(See Annex 12)*

   We were able to ascertain that there were no double claiming relative to these input taxes. The input taxes were claimed only in the calendar year 2002 and were not claimed in any quarters of 2001.

3. Input taxes amounting to P1,040,48 were claimed on domestic purchases of services which are supported by VAT ORs dated outside the period of claim. *(See Annex 13)*

   We were able to ascertain that there were no double claiming relative to these input taxes. These input taxes were claimed only in the calendar year 2002 and were not claimed in any quarters of 2001 and 2003.

4. Input tax amounting to **P2,552.00** was claimed on an importation of goods supported by Informal IED and BOC OR Dated outside the period of claim. *(See Annex 14)*

   We were able to ascertain that there was no double claiming relative to this input tax. This input tax was claimed only in the calendar year 2002 and was not claimed in any quarters of 2001.

5. Input taxes amounting to **P21,219.00** were claimed on importations of goods supported by photocopied IEDs and BOC or Bank ORs. *(See Annex 15)*

6. Input tax amounting to **P47,535.00** was claimed on an importation of goods supported by a Bank OR Dated outside the Period of claim *(See Annex 16)*

> Based on the above-quoted findings of the commissioned Independent CPA, out of the total claimed input VAT of P2,666,221.16, only the amount of P2,221,335.28 (only the first and second items of the Independent CPA's findings) is properly substantiated by the required evidence under Sections 110(A) and 113(A) of the NIRC of 1997, and as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95. The remaining amount of P444,885.88 shall be denied for the above-stated reasons.
>
> x x x
>
> However, it should be noted that the input VAT used in computing the input VAT available for refund was not reduced by the amount of output tax for sales subject to VAT. Thus, the output VAT of P727.27 shall be deducted from the substantiated input VAT of P2,221,335.28, thereby leaving a refundable excess input VAT of P2,220,608.01 which are all attributable to petitioner's zero-rated sales."

Based on the foregoing, we see no cogent reason to deviate from the factual findings of the Court *a quo* that Mirant sufficiently substantiated its claim for unutilized input VAT refund/credit in the amount of P2,220,608.01 arising from its sale of power generation services to NPC.

All told, the Court *a quo's* granting of Mirant's claim for unutilized input VAT refund or issuance of a tax credit for the four (4) quarters of the taxable year 2002 in the substantiated amount of P2,220,608.01 is proper.

WHEREFORE premises considered, the petition is **DENIED** for lack of merit. Accordingly, the Amended Decision dated June 7, 2010 is hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

(with Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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 among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MIRANT NAVOTAS CORPORATION, (Formerly, Southern Energy Navotas, Inc.),
Respondent.

CTA EB CASE NO. 650
(CTA Case No. 6960)

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
DEC 2 0 2011 Apolinario 4:10 a.m.

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CONCURRING AND DISSENTING OPINION

BAUTISTA, J.

A second hard look at the relevant law and jurisprudence convinces me that the Decision rendered by the then First Division of this Court dated November 13, 2008 should be reinstated.

As one of the members of the then First Division of the Court and as the *ponente* of the assailed Decision dated November 13, 2008, and the Amended Decision dated June 7, 2010, now before the Court *En Banc*, I maintain that the factual circumstances present in the case at bench should make this Court consider the principle which states that "where there has been justifiable reliance on Our decisions, and those who have so relied may be substantially harmed if retroactive effect is given, where the purpose of the new rule can be adequately effectuated without giving it retroactive operation, or where retroactive operation might greatly burden the administration of justice, then it is Our duty to apply the new rule prospectively."[1]

At the time of filing of the administrative claim with the BIR on December 23, 2003 and the Petition for Review with this Court on April 22, 2004, relative to a claim for refund of input value-added tax ("VAT") attributable to zero-rated sales for the four quarters of 2002, *the prevailing jurisprudence then is that the two (2)-year prescriptive period is reckoned from the filing of the quarterly return*, which this Court has consistently applied in a long line of decisions, and has continued to guide taxpayers and practitioners alike.

Albeit I agree that ruling of the then First Division of the Court in the Amended Decision dated June 7, 2010, and which is now affirmed by the Court *En Banc* is in accordance with the letter and spirit of Section 112 of the 1997 National Internal Revenue Code ("NIRC"), as amended, it would be the height of injustice to impose a new ruling wherein after a taxpayer-claimant had faithfully relied and complied therein, this Court will only nullify the same on the basis of the so-called "adherence to precedence." Even the taxpayer-claimant itself could not have foreseen that after it had filed its claims before the administrative and judicial *fora*, a

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[1] Magtoto *v.* Manguera, *et al.*, G.R. Nos. L-37201-02, L-37424, and L-38929, March 3, 1975, 63 SCRA 4, Concurring Opinion penned by Justice Felix Q. Antonio, with Justices Antonio P. Barredo and Cecilia Muñoz-Palma, concurring.

subsequent ruling, either modifying or overruling a previous one, would be issued that would put to naught its claims.

This Court has been consistent that, even after the Petition for Review was filed on 2004, the Court has continued to invoke the rule that the reckoning of the two (2)-year prescriptive period for the filing of claims for VAT refund/tax credit certificate starts from the date of filing of the corresponding quarterly VAT returns, in similar cases such as *Takenaka Corp. Phil. Branch v. CIR, CTA Case No. 6762, March 20, 2006; Mirant (Navotas 11) Corporation v. CIR, CTA Case Nos. 7234 & 7295, October 2, 2008;* and *CE Luzon Geothermal Power Co. v. CIR, CTA Case Nos. 6792 & 6837, November 25, 2008.*

Thus, the rule that the reckoning of the two (2)-year period is the date of filing of the quarterly VAT return has become a well-established doctrine and adopted in numerous decisions of this Court, the Court of Appeals and even the Supreme Court until the latter issued a ruling wherein the two (2)-year period is reckoned, not from the filing of the return, but from the close of the taxable quarter when the sales were made.

Consequently, taxpayers and litigants relied in good faith on such prevailing jurisprudence. It would be the height of injustice to apply a new doctrine to a pending case involving a party who already invoked a contrary view and who acted in good faith thereon prior to the issuance of said doctrine.[2]

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[2] Land Bank of the Philippines *v.* De Leon, G.R. No.143275, 399 SCRA 376, March 20, 2003.

Based on the foregoing discussion, while I concur with the denial of the present Petition for Review, I maintain that the Decision issued by the then First Division of the Court dated November 13, 2008 should be reinstated.

Accordingly, I vote for the **DENIAL** of the Petition for Review. The Amended Decision dated June 7, 2010, should be **REVERSED** and **SET ASIDE**, and the Decision dated November 13, 2008 should be **REINSTATED**.

LOVELL R. BAUTISTA
Associate Justice