Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 7986 & 8028

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

Promulgated:
JUN 14 2013
4:30 p.m.

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DECISION

CASANOVA, *J.*:

Before the Court are consolidated cases filed by petitioner, Coca-Cola Bottlers, Philippines, Inc., seeking the refund or issuance of a tax credit certificate in the aggregate amount of ₱172,761,514.88 allegedly representing erroneous payment of output VAT for the third and fourth quarters of taxable year 2007, broken down as follows:

CTA Case No.	Period Covered	Amount of Claim
7986	3rd qtr. – 2007	₱ 60,420,422.20
8028	4th qtr. – 2007	112,341,092.68
	TOTAL	**₱ 172,761,514.88**

The facts, as stated in the parties' Joint Stipulation of Facts and Issues[1], and, as found in the records of this case are as follow:

Petitioner Coca-Cola Bottlers, Philippines, Inc. is a corporation duly organized and existing under, and by virtue, of Philippine laws, with principal office at No. 1890, Paz M. Guazon Avenue, Paco, Manila[2] and is primarily engaged in the business of manufacturing and selling, at wholesale beverages such as Coca- Cola, Sprite, Royal True Orange, Minute Maid, etc.[3]

On the other hand, respondent is an official of the Republic of the Philippines authorized to, among others, refund or credit taxes pursuant to Section 204 of the National Internal Revenue Code of 1997 and may be served with summons at his office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

Petitioner is a VAT-registered taxpayer with Tax Identification Number 000-112-104-000 and is covered by BIR Certificate of Registration NO. OCN 8PC0000019025.[5] In the conduct of its business, petitioner purchases goods from VAT registered suppliers and services from VAT registered service providers.[6]

On October 21, 2009, petitioner filed its administrative claim for refund for its alleged erroneous overpayment of VAT for the quarter ending September 30, 2007 in the amount of ₱60,420,422.20.[7]

Petitioner, likewise, filed with respondent its claim for refund/tax credit on January 20, 2010, for its alleged erroneous overpayment of VAT for the quarter ending December 31, 2007 in the amount of ₱112,341,092.68.[8] Thereafter, the instant Petitions for Review were filed on October 23, 2009 and January 22, 2010.

Respondent, for her part, filed her Answers[9] and interposed the following special and affirmative defenses:

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[1] Docket (CTA Case No. 7986), pp. 128-130.
[2] Exhibit "A".
[3] Par. 2, Petition for Review, Docket (CTA Case No. 7986), pp. 5-6.
[4] Par 1, Admitted Facts by Petitioner and Respondent, Joint Stipulation of Facts and Issues (JSFI),Docket (CTA Case No. 7986), p. 128.
[5] Par 2, Admitted Facts by Petitioner and Respondent, JSFI , Ibid, p. 128; Exhibit "A".
[6] Par 3, Admitted Facts by Petitioner and Respondent, JSFI , Id, p. 129.
[7] Par 5, Admitted Facts by Petitioner and Respondent, JSFI , Id, p. 129.
[8] Par 4, Admitted Facts by Petitioner and Respondent, JSFI , Id, p. 129.
[9] Docket (CTA Case No. 7986), pp. 59-81 & Docket (CTA Case No. 8029), pp. 44-51.

For CTA Case No. 7986:

"5. He reiterates and re-pleads the preceding paragraphs of his Answer as part of his Special and Affirmative Defenses.

6. Taxes collected are presumed to be in accordance with pertinent laws and regulations.

7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

8. Petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected.

9. Petitioner must prove that the claim was filed within the period prescribed by law.

10. Petitioner must prove compliance with the following in order to be entitled to the claim for refund:

   a. That the alleged Value-Added Tax paid for the 3rd quarter of taxable year 2007 in the total amount of Sixty Million Four Hundred Twenty Thousand Four Hundred Twenty Two Pesos and 20/100 (₱60,420,422.20) was erroneously or illegally collected.

   b. That it has complied with the governing rules and regulations with regard to recovery of taxes erroneously or illegally collected/received as provided in Sections 204 and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

   Corollary thereto, Sections 204 and 229 of the NIRC of 1997, as amended, explicitly provides:

   Section 204. Authority of the Commissioner to Compromise, Abate or Refund or Credit Taxes -.

x x x

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for refund within two (2) years after the payment of the tax or penalty: Provided, however, That a refund filed showing an overpayment shall be considered as a written claim for refund** xxx. " (Emphasis and underscoring supplied)

Section 229. Recovery of Tax Erroneously or Illegally Collected.

No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or for any penalty claimed to have been collected until a claim for refund or credit has been duly filed with the Commissioner, but such suit or proceeding may be maintained, whether or not such tax, penalty, sum has been paid under protest or duress.

In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening causes that may arise after payment;** Provided however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis and underscoring supplied)

c. Submission of complete documents in support of the administrative claim for refund otherwise there would be no compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of a judicial claim in accordance with Section 229 of the NIRC of 1997, as amended;

11. In view of the foregoing provision of the law, respondent humbly manifests that the Honorable Court is bereft of jurisdiction to hear and try the case considering that petitioner's administrative claim for refund was already belatedly filed on October 21, 2009. It bears stressing that the claim for refund arose from the alleged erroneous VAT payments for the quarter ending September 30, 2007. Ergo, by express provision of law, petitioner is given a period of two (2) years from the date or payment of erroneously or illegally collected taxes or until September 30, 2009 within which to file a written claim for refund. However, in the case at hand, petitioner filed the administrative claim for refund only on October 21, 2009 which was already a month beyond the deadline period set on September 30, 2009 in total disregard of the provision of law.

12. The law is likewise strict in stating that the same must be filed within the two (2) year period *regardless of any supervening cause that may arise after payment.* Suffice it to say that petitioner's allegations that the erroneous payment was finally determined only by petitioner last July 2009 and that it was barred from amending its VAT returns by reason of the issuance of the Letter of Authority dated August 29, 2008 cannot prevent the filing of the administrative claim for refund within the period prescribed by law. Therefore, the same is fatal to it administrative claim for refund. Lest it be forgotten, what the law prohibits upon the issuance of a Letter of Authority is the *amendment* of tax returns subject of the audit and investigation and *not the filing* of the administrative claim for refund with respondent;

13. It is likewise noteworthy of emphasis that the Petition for Review was filed by petitioner before the Court of Tax Appeals on October 23, 2009 or exactly two (2) days after the filing of the administrative claim for refund with respondent giving the latter no ample opportunity to decide and act on the matter. 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.

14. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.

15. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming the exemption. (Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005. The law does not look with favor on tax exemptions and that he would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. (*Sea Land Service v. Court of Appeals, 357 SCRA 444).*

16. In relation thereto, in the case entitled *"Philippine Bank of Communications vs. Commissioner of Internal Revenue, Court of Tax Appeals and Court of Appeals"*, the Supreme Court had the occasion to say:

x x x

From the same perspective, claims for refund or tax credit should be exercised within the time fixed by law because the BIR being an administrative body enforced to collect taxes, its functions should not be unduly delayed or hampered by incidental matters.

Sec. 230 of the National Internal Revenue Code (NIRC) of 1977 (now Sec. 229, NIRC of 1997) provides for the prescriptive period for filing a court proceeding for the recovery of tax erroneously or illegally collected, *viz:*

Sec. 230. *Recovery of tax erroneously or illegally collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive (sic) or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceedings shall begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment, Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. xxx" (*Emphasis supplied*)

The rule states that the taxpayer may file a claim for refund or credit with the Commissioner of Internal Revenue, within two (2) years after payment of tax, before any suit in CTA is commenced. xxx'

17. Corollary thereto, in the case entitled 'Felix A. Sajot vs. Court of Appeals and People of the Philippines, the Supreme Court had the occasion to say:

"In a minute resolution, we said:

True, appeal is an essential part of our judicial system. As such, courts should proceed with caution so as not to deprive a party of the right to appeal, particularly if the appeal is meritorious. Respect for the appellant's right, however, carries with it the correspondent respect for the appellee's similar rights to fair play and justice. The appeal being a purely statutory right, an appealing party **must strictly comply with the requisites laid down in the Rules of Court**."

In *Garbo vs. Court of Appeals,* we ruled that:

Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus **enjoined to abide strictly by the rules**. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended **to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances.**

While litigation is not a game of technicalities, it is a truism that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and specify administration of justice' (Emphasis and underscoring supplied)

18. Finally, in the interest of justice, the Rules of Procedure are required to be followed, except only when for the most persuasive of reasons, they must be relaxed to relive a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. (Limpot vs. Court of Tax Appeals, 170 SCRA 367). While the rigid application of the rules of procedure has, in the past, been relaxed so that the ends of justice may be better served, such liberality may not be invoked if it would result to wanton disregard of the rules and cause needless delay. Save for the most persuasive reasons, strict compliance with the rules is enjoined to facilitate the orderly administration of justice."[10] (Citations omitted)

[10] Docket (CTA Case No. 7986), pp. 60-67.

For CTA Case No. 8028

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR);

5. Petitioner must prove the alleged erroneous payment of VAT and that the same was remitted to the BIR.

6. Petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law.

7. The action has already prescribed, Section 204 and Section 229 states:

> Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes* – The Commissioner may –
>
> x x x
>
> (c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, (sic) in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund <u>within two (2) years after the payment of the tax</u> or penalty: Provided, however, That a refund filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> x x x

> Section 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; Provided however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis and underscoring supplied)

Both Section 204 and Section 229 give the taxpayer up to two years from the date of payment of the tax to file their claim for refund. Petitioner paid the subject VAT for October and November 2007 on November 26 and December 26, 2007, respectively. The administrative claim was filed on January 20, 2010 and the judicial claim was filed on January 22, 2010. Thus, the action has already prescribed, petitioner can no longer claim the refund of its supposedly erroneously paid VAT for October and November 2007. In fact in Dart Philippines, Inc. vs. Commissioner of Customs, (CTA Case No. 6394, November 5, 2003), this Honorable Court dismissed the petition due to the fact that two years from date of payment of VAT had already lapsed before the filing of the same.

8. It is interesting that in paragraph 10 of the Petitioner (sic) for Review, petitioner states that they discovered the over/erroneous payment on July 2009, but yet it only chose to file its administrative claim only on January 20, 2010. It further aggravates the error when it filed its judicial claim for refund 2 days later on January 22, 2010. This clearly shows the intent of petitioner to make the administrative claim a mere formal requirement in filing a judicial claim.

9. In claims for a refund, a claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court, first, to afford the CIR an opportunity to correct the action of subordinate officers; and second, to notify the government that such taxes have been questioned, and notice should then be borne in mind in estimating the revenue available for expenditure. (Bermejo vs. Collector, 87 Phil 96 cited in CIR vs. Rosemarie Acosta, GR No. 154068, August 3, 2007)

10. In Ang Tibay vs. Court of Industrial Relations GR No. L-46496, it states the primary rights which must be respected even in an administrative proceeding:

1) **The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof**. In the language of Chief Hughes, in *Morgan v. U.S.*, 304 U.S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129, 'the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. (Chief Justice Hughes in Morgan v. U.S. 298 U.S. 468, 56 S. Ct. 906, 80 law. ed. 1288.) In the language of this court in *Edwards vs. McCoy*, 22 Phil., 598, 'the right to adduce evidence,

without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.'

(3) 'While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support it is a nullity, a place when directly attached.' (Edwards vs. McCoy, *supra.*) This principle emanates from the more fundamental is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) **Not only must there be some evidence to support a finding or conclusion** (City of Manila vs. Agustin, G.R. No. 45844, promulgated November 29, 1937, XXXVI O. G. 1335), **but the evidence must be 'substantial.'** (Washington, Virginia and Maryland Coach Co. v. national labor (sic) Relations Board, 301 U.S. 142, 147, 57 S. Ct. 648, 650, 81 Law. ed. 965.) It means such relevant evidence as a reasonable mind accept as adequate to support a conclusion." (Appalachian Electric Power v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989; National Labor Relations Board v. Thompson Products, 6 Cir., 97 F. 2d 13, 15; Ballston-Stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 760.) . . . The statute provides that "the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent inn (sic) judicial proceedings would not invalidate the administrative order. (Interstate Commerce Commission v. Baird, 194 U.S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; Interstate Commerce Commission v. Louisville and Nashville R. Co., 227 U.S. 88, 93 33 S. Ct. 185, 187, 57 Law. ed. 431; United States v. Abilene and Southern Ry.

Co. S. Ct. 220, 225, 74 Law. ed. 624.) But this assurance of a desirable flexibility in administrative procedure does not go far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. (Consolidated Edison Co. v. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.)'

(5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected**. (Interstate Commerce Commission vs. L. & N. R. Co., 227 U.S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) **Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them**. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer any industrial or agricultural dispute or any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal, a justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers. (Section 10, *ibid.*)

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of

the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally Relations personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with the right to appeal to board or commission, but in our case there is no such statutory authority.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The performance of this duty is inseparable from the authority conferred upon it. (Emphasis supplied)

Petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. If there is lack of evidence, then the decision will probably be contrary to petitioner. Only the evidence presented will be reviewed by the quasi-judicial body. An administrative claim is meant to expedite the proceedings where all the relevant evidence is presented. Petitioner, however, instead chose not to submit any evidence to support its claim.

11. 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 disfavored 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 the common burden cannot be permitted to exist upon vague implications **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc. 98 Phil. 670).**"[11]

[11] Docket (CTA Case No. 8028), pp. 45-49.

The Court, subsequently, issued Notices of Pre-Trial Conference for CTA Case No. 7986 on March 9, 2010[12] and for CTA Case No. 8028 on March 18, 2010[13], both setting the said cases for pre-trial conference on May 17, 2010 at 9:00 a.m.

On April 15, 2010, CTA Case No. 8028 was finally consolidated with CTA Case No. 7986 and the parties were ordered to file their respective consolidated pre-trial brief within ten (10) days from April 15, 2010 or until April 25, 2010.[14]

Accordingly, the Pre-Trial Brief (For the Petitioner) was filed on April 26, 2010[15] while respondent's Consolidated Pre-Trial Brief was filed on May 14, 2010.[16]

On June 2, 2010, the parties filed their Joint Stipulation of Facts and Issues[17] which was later approved in a Resolution dated June 4, 2010.[18] In the same Resolution, the Pre-Trial was considered terminated.[19]

Thereafter, on July 21, 2010, petitioner moved for the commissioning of Ms. Katherine O. Constantino, CPA, a partner in Constantino Guadalquiver & Co. as an Independent Certified Public Accountant (ICPA) pursuant to Section 5 Rule 12 in relation to Sections 1 and 2 of Rule 13 of the Revised Rules of the Court of Tax Appeals.[20] The said motion was later granted during the hearing held on August 2, 2010.[21]

Consequently, the trial of the case proceeded giving both parties the opportunity to present their documentary and testimonial evidence. Petitioner formally offered in evidence Exhibits "A" to "D^8-2"[22] which were admitted in a Resolution[23] dated July 25, 2011. For her part, respondent formally offered in evidence Exhibits "1" to "9a"[24] which were later admitted in a Resolution[25] dated January 16, 2012.

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[12] Docket (CTA Case No. 7986), p. 84.
[13] Docket (CTA Case No. 8028), p.52 .
[14] Docket (CTA Case No. 7986), p. 101.
[15] Ibid, pp.103-115.
[16] Id, pp. 116-120.
[17] Id, pp. 128-130.
[18] Id, p.132.
[19] Id.
[20] Id, pp.196-199.
[21] Minutes of the Hearing dated August 2, 2010, Id, p. 209.
[22] Id, pp. 333-383.
[23] Id, pp. 389-390.
[24] Id, pp. 432-436.
[25] Id, pp. 525-526.

Also, pursuant to its Supplemental Formal Offer of Evidence (For the Petitioner)[26] filed on June 4, 2012, petitioner formally offered in evidence Exhibits "CC-2101" to "CC-4243", "DD-3742" to "DD-6632", "L8", "L8-1", "M8", "N8", "O8" and "O8-1" which were later admitted in a Resolution[27] dated June 25, 2012 with the exception of Exhibits "CC-2216", "CC-2889" and "CC-4243" which were denied admission.

Subsequently, the "Memorandum (For the Petitioner)"[28] was submitted on August 28, 2012 while respondent adopted the arguments in her Memorandum[29] filed on February 8, 2012 as her Supplemental Memorandum pursuant to her Manifestation[30] filed on July 3, 2012. Accordingly, the case was submitted for decision on August 31, 2012.[31]

The parties submitted the following issues[32] for this Court's disposition:

> "1. Whether or not petitioner has complied with the provisions of Section 204 and 229 of the NIRC of 1997, as amended, in the prescriptive period for filing of administrative and judicial claims for refund and/or issuance of a tax credit certificate;
>
> 2. Whether or not petitioner has exhausted all administrative remedies before filing the petitions for review;
>
> 3. Whether or not petitioner is entitled to its claims for refund/tax credit in the amounts of ₱60,420,422.20 and ₱112,341,092.68 allegedly representing erroneously paid value-added tax for the quarters ended September 30, 2007 and December 31, 2007, respectively.

Since the foregoing issues are intertwined, the Court shall discuss them jointly.

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[26] Id, pp. 564-567.
[27] Id, pp. 573-574.
[28] Id, pp. 586-602.
[29] Id, pp. 531-541.
[30] Id, pp. 577-579.
[31] Id, p. 603.
[32] Issues to be Resolved, Joint Stipulation of Facts and Issues, Id, p. 129.

It should be recalled that in the instant case, it is represented that petitioner's accounting practice concerning purchases of services on credit consists of charging the input tax component into a temporary account Input Tax-Services-Clearing upon receipt of the invoice from its supplier of services. When petitioner pays the account, the input taxes recorded in the temporary account is transferred to Input Tax-Services account, which is subsequently closed to Output Tax Payable at the end of the taxable quarter.[33]

Records show that for the quarters ended September 30, 2007 and December 31, 2007, petitioner reported VAT payments of ₱128,535,025.61 and ₱206,803,296.79 in its Quarterly VAT Returns, respectively, thus:[34]

	3rd Quarter	4th Quarter
Vatable Sales/Receipts	₱ 10,611,732,022.23	₱ 11,635,774,330.90
Output Tax Due	₱ 1,273,407,842.67	₱ 1,396,292,919.71
Less: Allowable Input Tax		
From Previous Period:		
Excess over 70% of output VAT	₱ -	₱ -
Input Tax Deferred on Capital Goods Exceeding ₱1Million	52,186,419.05	111,899,713.49
Total	₱ 52,186,419.05	₱ 111,899,713.49
Current Transactions:		
Purchase of Capital Goods Exceeding ₱1Million	₱ 67,270,824.11	₱ 49,861,912.53
Domestic Purchases of Goods Other than Capital Goods	887,520,396.86	933,500,376.29
Importation of Goods Other than Capital Goods	32,000,101.00	22,585,779.04
Domestic Purchases of Services	144,997,449.03	186,079,485.29
Total	₱ 1,131,788,771.00	₱ 1,192,027,553.15
Total Available Input Tax	₱ 1,183,975,190.05	₱ 1,303,927,266.64
Less: Deductions from Input Tax		
On Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	111,899,713.49	150,132,731.02
Total Allowable Input Tax	₱ 1,072,075,476.56	₱ 1,153,794,535.62
Net VAT Payable	₱ 201,332,366.11	₱ 242,498,384.09
Less: Tax Credits/Payments		
Monthly VAT payments-previous two months	72,797,340.50	35,695,087.30
Tax Still Payable/(Overpayment)	**₱ 128,535,025.61**	**₱ 206,803,296.79**

Petitioner's Monthly VAT Returns for July, August, October and November for the year 2007 show the following VAT payments:

Exhibit	Period Covered	VAT Paid
C to C-2	July	₱ 19,372,999.91

[33] Exhibit "BB".
[34] Exhibits "E" to "E-2" and "H" to "H-2".

D to D-2	August	53,424,340.61
F to F-2	October	28,969,938.18
G to G-2	November	6,725,149.18
	TOTAL	**₱ 108,492,427.88**

Petitioner asserts that, due to inadvertence, several purchases of services on credit with input taxes amounting to ₱60,420,422.20 and ₱112,341,092.68 that have been paid in the third and fourth quarters of 2007, respectively, were <u>not</u> transferred to the Input Tax-Services account and consequently <u>not</u> declared in its Quarterly VAT Return and <u>not</u> charged to the output tax payable for the quarters ended September 30, 2007 and December 31, 2007, respectively. This resulted to the alleged over/erroneously paid output tax for the same quarters amounting to ₱60,420,422.20 and ₱112,341,092.68, computed as follows:

	Should Be	
	3rd Quarter	**4th Quarter**
Output Tax Due	₱1,273,407,842.67	₱ 1,396,292,919.71
Less: Allowable Input Tax		
Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Period	₱ 52,186,419.05	₱ 111,899,713.49
Purchase of Capital Goods Exceeding ₱1Million	67,270,824.11	49,861,912.53
Domestic Purchases of Goods Other than Capital Goods	887,520,396.86	933,500,376.29
Importation of Goods Other than Capital Goods	32,000,101.00	22,585,779.04
Domestic Purchases of Services	205,417,871.23	298,420,577.97
Total Available Input Tax	₱1,244,395,612.25	₱ 1,416,268,359.32
Less: Deductions from Input Tax		
On Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	111,899,713.49	150,132,731.02
Total Allowable Input Tax	₱1,132,495,898.76	₱ 1,266,135,628.30
Net VAT Payable	₱ 140,911,943.91	₱ 130,157,291.41
Less: Tax Credits/Payments		
Monthly VAT Payments-previous two months	72,797,340.50	35,695,087.30
Should Be Tax Still Payable/(Overpayment)	**₱ 68,114,603.41**	**₱ 94,462,204.11**
VAT Paid Per Return	128,535,025.61	206,803,296.79
Difference	**₱ 60,420,422.20**	**₱ 112,341,092.68**

However, due to the issuance of a Letter of Authority (LOA) dated August 29, 2008 which was issued to examine petitioner's books of accounts for all internal revenue taxes for the taxable year 2007,[35] petitioner cannot amend its VAT Returns for the subject quarters to include the input taxes in the amounts of ₱60,420,422.20 and ₱112,341,092.68 when the error was discovered in July 2009.[36]

Hence, these claims for refund.

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[35] Exhibit "B".

[36] Par. 10, Petition for Review, Docket (CTA Case No. 7986), pp. 9-10.

In these consolidated cases, petitioner cited only two provisions of law as its bases for the claims for tax credit or refund and, these are: Sections 204(C) and 229 of the NIRC of 1997, which respectively provides:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*—The Commissioner may—
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> xxx xxx xxx
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*—No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Under Section 229, a taxpayer who intends to file a claim for refund or tax credit of any tax alleged to have been erroneously paid or illegally collected, **must file both the administrative claim and the judicial claim within the period of two (2) years from the date of payment of the tax sought to be refunded**, regardless of any supervening cause that may arise after such payment.

Upon verification, records reveal that the dates of filing of petitioner's administrative and judicial claims for the 3rd and 4th quarter of 2007 fall within the two-year prescriptive period as shown hereafter:

CTA Case No.	Period Covered in 2007	Date of Payment[37]	Administrative Claim[38]	Judicial Claim	End of Two-year Period
7986	3rd Quarter	25-Oct-07	21-Oct-09	23-Oct-09	25-Oct-09
8028	4th Quarter	25-Jan-08	20-Jan-10	22-Jan-10	25-Jan-10

Records, likewise, show that in petitioner's administrative claims for refund for the third and fourth quarters of 2007, petitioner enumerated the documents attached thereto[39] which petitioner's witness, Mr. Gerardo E. Espirion, mentioned during the hearing held on July 5, 2010.[40] In fact, the Final Report dated September 23, 2010 which was presented as evidence by the respondent confirmed respondent's receipt of supporting documents attached to the Administrative Claim for Refund filed on January 20, 2010.[41] Thus, there is no reason for this Court to subscribe to respondent's assertion that petitioner failed to present evidence to support its administrative claims for refund.

However, notwithstanding the timeliness of the filing of petitioner's administrative and judicial claims under Section 229, it should not be forgotten that **Sections 204 and 229 must be read together with the provision of Section 4.110-8 of Revenue Regulations No. 16-2005,** which provides:

> SEC. 4.110-8. *Substantiation of Input Tax Credits.*—
>
> (a) **Input taxes for the importation of goods or the domestic purchase of goods, properties or services** is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT,

[37] Exhibits "E" to "E-3" and "H" to "H-2".
[38] Exhibits "O", "P", "Q" to "Q-3" and "R" to "R-3".
[39] Exhibits "Q-3" & "R-3".
[40] Transcript of Stenographic Notes dated July 5, 2010, pp. 14-15.
[41] Exhibit "8".

> must be substantiated by the following documents, and **must be reported in the information returns required to be submitted to the Bureau**: xxx ."*(Emphasis supplied)*

Based from the foregoing provision, in order **for input taxes to be available as tax credits, they must be substantiated and reported in the VAT returns of the taxpayer.**

Here, the Court-commissioned Independent CPA (ICPA) [42] found that out of petitioner's alleged unclaimed input tax credits for the third and fourth quarters of 2007 in the respective amounts of ₱60,420,422.20 and ₱112,341,092.68, totaling ₱172,761,514.88, only the input taxes of ₱19,342,803.07 and ₱34,440,405.24 for the third and fourth quarters of 2007, respectively, totaling ₱53,783,208.31 were properly supported by VAT official receipts. Below is the breakdown of the amount of ₱53,783,208.31:

Period	Input tax amount		
	Amended Final Consolidated Report[43]	Supplemental Report[44]	Total
3rd quarter of CY 2007	₱ 16,852,085.91	₱ 2,490,717.16	₱ 19,342,803.07
4th quarter of CY 2007	25,541,697.83	8,898,707.41	34,440,405.24
Total	**₱ 42,393,783.74**	**₱ 11,389,424.57**	**₱ 53,783,208.31**

The ICPA, likewise, examined petitioner's voluminous documents supporting its input taxes from domestic purchases and importation of goods other than capital goods and purchase of services and purchase of capital goods, as reported in its Quarterly VAT Return for the third and fourth quarters of 2007 amounting to ₱1,131,788,771.00 and ₱1,192,027,553.15, respectively. The ICPA further examined the supporting documents pertaining to petitioner's input taxes on purchases of capital goods declared in its Quarterly VAT Return for the previous quarters (first and second quarters of 2007).[45]The following were found to be duly substantiated, *viz.*:[46]

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Input Taxes from:				
Domestic purchases and importation of goods other than capital goods and	₱ -	₱ -	₱ 83,976,787.85	

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[42] Ms. Katherine O. Constantino, Partner of Constantino Guadalquiver & Co.
[43] Exhibit C^8, pp. 27-49.
[44] Exhibit L^8, item A, pp. 6-7 and 11.
[45] Exhibits "RR" and "O^7".
[46] Exhibit "C^8", pp. 82-100, 109-111, 114-115 and 118-119.

purchase of services				₱ 104,400,005.68
Purchase of capital goods	8,571.43	189,128.57	-	829,123.89
TOTAL	**₱ 8,571.43**	**₱ 189,128.57**	**₱ 83,976,787.85**	**₱ 105,229,129.57**

However, while records show that the substantiated input taxes of ₱19,342,803.07 and ₱34,440,405.24 for the third and fourth quarters of 2007, respectively, were recorded in petitioner's books of accounts, this Court, after a thorough scrutiny of petitioner's documents found out that, they were not reported in petitioner's VAT returns due to alleged inadvertence. Therefore, following Section 4.110-8 of Revenue Regulations No. 16-2005, petitioner cannot credit or offset the undeclared input taxes against output taxes for the said taxable periods.

In connection thereto, Section 110(A)(2) and (B) of the NIRC of 1997, as amended,[47] states:

"SEC. 110. *Tax Credits.*—

(A) Creditable Input Tax. -

xxx xxx xxx

(2) The input tax on domestic purchase or importation 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.

"*Provided,* That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P 1,000,000.00): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be

[47] Republic Act No. 9361, November 21, 2006.

> spread over such a shorter period: ***Provided, finally,* that in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee <u>upon payment</u> of the compensation, rental, royalty or fee.** *(Emphasis and underscoring supplied)*
>
> xxx xxx xxx
>
> (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: *Provided, however,* That any input tax attributable 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."

The afore-quoted provision provides for the time when the input taxes are creditable. The output and input taxes contemplated therein are those reported in the taxpayer's VAT return. **Thus, petitioner's input taxes for the third and fourth quarters of 2007 should have been declared in petitioner's Quarterly VAT Returns pertaining to the same quarter so that it could be creditable against the output tax of the same taxable periods.**

But as previously discussed, petitioner's input taxes were not reported in its VAT returns, thus, following Section 4.110-8 of Revenue Regulations No. 16-2005 and Section 110(A)(2) and (B) of the 1997 NIRC, as amended, petitioner cannot credit or offset the undeclared input taxes against output taxes for the said taxable periods.

Petitioner's Quarterly VAT Returns for the first to the fourth quarters of 2007 show the following output taxes due:

Exhibit	Period Covered	Output Tax
O[7]	1st Quarter	₱ 757,872,102.18
RR	2nd Quarter	1,229,075,851.39
E to E-2	3rd Quarter	1,273,407,842.67
H to H-2	4th Quarter	1,396,292,919.71
TOTAL		**₱ 4,656,648,715.95**

Assuming arguendo that petitioner was able to declare the substantiated input taxes in the aggregate amount of ₱53,783,208.31 in its Quarterly VAT Return for the third and fourth quarters of 2007, considering its output taxes and substantiated input taxes for the first to fourth quarters of 2007 per ICPA examination, records still show that it would not have had enough input taxes to offset against its output taxes for the same taxable periods. Thus, petitioner would not have had erroneously paid output VAT for the third and fourth quarters of 2007. To illustrate, the computation is shown hereafter:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Output Tax	₱757,872,102.18	₱1,229,075,851.39	₱1,273,407,842.67	₱1,396,292,919.71
Less: Substantiated Input Taxes	8,571.43	189,128.57	83,976,787.85	105,229,129.57
VAT Payable	**₱757,863,530.75**	**₱1,228,886,722.82**	**₱1,189,431,054.82**	**₱1,291,063,790.14**

Hence, the claimed ₱60,420,422.20 and ₱112,341,092.68 in the instant cases essentially represents <u>**undeclared input taxes**</u> **for the third and fourth quarters of 2007, and not the so-called "erroneously paid taxes" as contemplated under Section 229 of the 1997 NIRC, as amended**, since it was not declared in the pertinent VAT Return and, consequently, not offset against output tax for the same period. <u>***Consequently*, the circumstances of the instant cases do not fall within the purview of Section 229 *of* the 1997 NIRC, as amended.**</u>

Another provision of the Code which pertains to the refund of input taxes is Section 112. In this section, there are only two instances when <u>excess input taxes</u> may be claimed for refund:

a) when they are attributable to zero-rated or effectively zero-rated sales; and,

b) upon cancellation of VAT registration due to retirement from or cessation of business.

Unfortunately, petitioner's claims for refund or credit of its <u>undeclared input taxes</u> for the third and fourth quarters of 2007 do not fall in any of the instances enumerated under Section 112 of the 1997 NIRC, as amended. Thus, Section 112 is likewise not applicable to the case at bench. **Consequently, whether it be under Section 229 or Section 112 of the 1997 NIRC, as amended, petitioner is not entitled to a tax refund or issuance of tax credit certificate in the respective amount of ₱60,420,422.20 and ₱112,341,092.68.**

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

WHEREFORE, premises considered, petitioner's Petitions for Review are hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division