REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

NORTHWIND POWER DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8260

Members:
UY, *Chairperson, and*
FABON-VICTORINO, ***JJ.***

Promulgated:
JUL 16 2013 ; 1:30 p.m.

x - x

DECISION

UY, *J*.:

Before Us is a Petition for Review filed by petitioner, Northwind Power Development Corporation, against respondent, Commissioner of Internal Revenue, praying that judgment be rendered ordering respondent to refund or issue a tax credit certificate in favor of petitioner in the amount of Six Million Seven Hundred Fifty One Thousand Four Pesos and Fifty One Centavos (P6,751,004.51), allegedly representing its unutilized input value-added tax (VAT) payments directly attributable to its zero-rated sales for the third (3rd) and fourth (4th) quarter of taxable year 2008.

THE FACTS

Petitioner is a corporation duly organized and existing under and by virtue of Philippines laws, with Taxpayer Identification Number (TIN) 208-101-373-000,[1] and with principal office at Unit 702 Net One Center, 3rd Avenue corner 26th St. E-Square, Crescent Park West

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[1] Exhibit "A," Docket (Vol. II), p. 665.

District, Bonifacio Global City, 1634 Taguig City.[2] It is a VAT-registered entity as shown by its Certificate of Registration OCN No. 9RC0000270238, issued by the Bureau of Internal Revenue (BIR), Revenue Region No. 008, Revenue District Office No. 044 on October 13, 2000.[3] It is also registered with the Board of Investments (BOI) as a "New Operator of Wind Power Generation Plant" entity, as evidenced by its Certificate of Registration No. 2004-108 issued by the Board of Investments on September 20, 2004.[4] Moreover, petitioner is also registered as a power generation company with the Energy Regulatory Commission (ERC) as evidenced by its ERC Certificate of Compliance No. 05-06-GN6-8245.[5]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, vested by law in general to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws, and in particular, decide claims for refund of internal revenue taxes.[6]

On July 19, 2002, petitioner entered into an Electricity Sales Agreement with Ilocos Norte Electric Cooperative (hereinafter referred to as "INEC"), whereby the former agreed to finance, design, construct, operate, and maintain a 25MW wind turbine project in Bangui Bay, Ilocos Norte and to undertake its implementation as Phase I of a Renewable Energy Power System (REPS) through a Build-Own-and-Operate (BOO) project; while INEC agreed to accept the electricity generated by petitioner under the terms and conditions set forth in the agreement.[7]

Petitioner filed its Quarterly VAT Returns for the 3rd and 4th quarters of 2008[8] that showed the following total amount of overpayment:

Taxable Quarter	Total Overpayment	Filing Date
Third	P3,249,335.03	October 22, 2008
Fourth	P7,567,936.82	January 29, 2009

[2] Par. 1, Admitted Facts, "Joint Stipulation of Facts and Issues," Docket (Vol. 1), p. 230.
[3] Par. 3, Admitted Facts, "Joint Stipulation of Facts and Issues," Docket (Vol. 1), p. 231.
[4] Par. 6, Admitted Facts, "Joint Stipulation of Facts and Issues," Docket (Vol. 1), p. 231.
[5] Exhibits "T" and "T-1," Docket (Vol. II), pp. 825 to 828.
[6] Par. 2, Admitted Facts, "Joint Stipulation of Facts and Issues," Docket (Vol. 1), p. 230.
[7] Exhibits "D" and "D-1," Docket (Vol. II), pp. 684 to 721.
[8] Exhibits "G" and "J," Docket (Vol. II), pp. 724 and 727.

On February 19, 2010, petitioner filed an Amended Quarterly VAT Return for the 4th Quarter of 2008 that reflected an overpayment amounting to P7,567,936.82.[9]

On August 23, 2010, petitioner filed with the BIR Revenue District Office No. 44, its administrative claim for refund or issuance of a tax credit certificate, together with supporting documents of its unutilized input VAT covering the 3rd and 4th quarters of taxable year 2008, in the amount of Six Million Seven Hundred Fifty One Thousand Four Pesos and Fifty One Centavos (P6,751,004.51).[10]

On September 24, 2010, the BIR issued Letter of Authority No. LOA-044-2010-00000312 for the examination of petitioner's books of account for the period July 1, 2008 to December 31, 2008.[11]

On November 4, 2010, petitioner submitted required documents in support of its claim for refund, such as its 2008 Annual Income Tax Return and Audited Financial Statements; Reconciliation Statements of Sales/Revenues/Receipts/Fees vs. ITR and VAT Returns; and certified photocopies of Cash Receipts, Disbursements, Journals & Input Tax Ledger.[12]

For failure of respondent to act on its administrative claim for refund, petitioner filed a Petition for Review with this Court on April 1, 2011, docketed as CTA Case No. 8260 praying that judgment be rendered, ordering respondent to refund or to issue a tax credit certificate to the petitioner in the amount of Six Million Seven Hundred Fifty One Thousand Four Pesos and Fifty One Centavos (P6,751,004.51), representing its alleged unutilized input VAT payments directly attributable to its zero-rated sales for the 3rd and 4th quarters of taxable year 2008.[13]

In her Answer[14] filed on May 26, 2011, respondent raises the following special and affirmative defenses:

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[9] Exhibit "K," Docket (Vol. II), p. 728.
[10] Par. 4, Admitted Facts, "Joint Stipulation of Facts and Issues," Docket (Vol. 1), p. 231.
[11] Par. 5, Admitted Facts, "Joint Stipulation of Facts and Issues," Docket (Vol. 1), p. 231.
[12] Exhibit "WW," Docket (Vol. II), p. 882.
[13] Docket (Vol. 1), pp. 1 to 14.
[14] Docket (Vol. 1), pp. 197 to 203.

"3. The instant case should be dismissed on the ground that the petition for review is already time-barred. The judicial claim for refund or for issuance of a tax credit certificate for the creditable input VAT payment made by petitioner Northwind Power Development Corporation filed on April 1, 2011 was filed beyond the period provided by law for such claim.

Petitioner anchors its claim for refund or the issuance of a tax credit certificate under Section 112(A) & (C) of the Tax Code of 1997, as amended, which provides:

> 'Sec. 112. – Refunds or Tax Credits of Input Tax. –
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated may, **within two (2) years after the close of the taxable quarter <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax; *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (BSP): Provided further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.'

x x x x

> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals. x x x' (Emphasis supplied.)

Pursuant to the aforequoted provision, a VAT registered taxpayer whose sale is zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for a refund or the issuance of tax credit certificate of its creditable input tax due or paid attributable to such sales.

The Honorable Supreme Court in the recent case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation* has already put to rest the issue on the reckoning of the prescriptive period on claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales, as follows:

> 'The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112 (A) of the NIRC pertinently reads:
>
> > (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT–registered person, whose sales are zero-rated or effectively zero-

> rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: ... (Emphasis ours.)

The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer **must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued'. Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.** Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, or September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.'

From the foregoing, it is clear that the two-year prescriptive period provided in Section 112(A) of the Tax Code of 1997, as amended, should be reckoned not from the payment of the tax, but from the close of the taxable quarter when the sales were made.

In this case, petitioner is claiming for refund or the issuance of a tax credit certificate of its alleged unutilized input VAT paid on domestic purchase of goods or services allegedly attributable to its zero-rated sales of goods or services for the 3rd and 4th quarters of 2008, hence, the two (2) year prescriptive period should be reckoned from September 30, 2008, the close of the taxable 3rd quarter and from December 31, 2008, the close of the taxable 4th quarter. Accordingly, petitioner had until September 30, 2010 (3rd quarter claim for refund) and until December 31, 2010 (4th quarter claim for refund), within which to file its claim both in the administrative and judicial levels.

Records show that while the administrative claim for refund or the issuance of a tax credit certificate filed by petitioner on August 23, 2010 falls within the two (2)-year prescriptive period; however, the Petition for Review filed before this Honorable Court on April 1, 2011 is beyond the two (2)-year period prescribed by law. Thus, petitioner is barred from claiming refund of the alleged unutilized input taxes for the 3rd and 4th quarters of 2008 in the amount of P6,751,004.51, due to prescription.

It is the respondent's humble submission that the two-year period is a limitation of action not only in submitting the written claim for refund or issuance of tax credit certificate to the Commissioner of Internal Revenue, but likewise in instituting an action with the Court of Tax Appeals. A different interpretation would necessarily allow an extension of the two-year prescriptive period, for as long the 120-day period had not elapsed from the filing of the administrative claim for refund.

Notably, nowhere in Section 112 is it stated nor implied, that the periods under paragraphs (A) and (B) thereof, are limited to administrative claims only, while it is more evident that the periods (120 days and 30 days) mentioned in paragraph (C) thereof, are provided for the taxpayer's guidance in the exhaustion of administrative remedies. Clearly, the mandate to act on claims for refund or issuance of tax credit certificate of creditable input VAT due within the 120-day period mentioned under the first paragraph of Section 112(C) is addressed to the Commissioner of Internal Revenue, while the second paragraph of the same Section is an optional recourse given to the taxpayer-claimant, should there be a denial of the refund claim, or inaction on the part of the Commissioner on the claim for 120 days.

In the case of **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.), supra,** the Supreme Court held that Section 112 of the NIRC clearly provides in no uncertain terms that an unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** The Supreme Court further said the prescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued. Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.

Additionally, Section 112(C) grants the Commissioner a **120-day period** from submission of complete documents in support of the administrative claim within which to act on claims for refund/application for issuance of the tax credit certificate, and upon denial of such claim or upon expiration thereof, the taxpayer only has a **30-day period** within which to appeal said adverse decision or unacted claim before the Court of Tax Appeals. Thus, it becomes incumbent upon the taxpayer-claimant to adjust the dates of filing of its administrative claims, to ensure compliance not only with the 120-day and 30-day periods, but prior to the lapse of the two-year prescriptive period, which is appealable to both administrative and judicial claims.

While the respondent agrees that it is only upon full or partial denial of the claim for tax refund or tax credit, or failure of the Commissioner to act on the application within the prescribed 120-day period, may the taxpayer-claimant seek judicial recourse, within the 30-day period from submission of complete documents in support of said application, however, it is the respondent's humble opinion that in the observance of the 120-day and 30-day periods mentioned in Section 112, the two-year prescriptive period from the close of the taxable quarter when the sales were made for seeking judicial recourse must not be disregarded. And as mentioned earlier, it is the taxpayer-claimant's duty to monitor the dates of filing of its administrative claims to monitor the dates of filing of its administrative claims *(sic)* to ensure compliance, not only with the 120-day and 30-day periods, but also with the two-year prescriptive period, in filing both its administrative and judicial claims.

4. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

5. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

6. In order for petitioner to be entitled to its claim for refund/issuance of tax credit certificate allegedly representing unutilized input VAT attributable to its zero-rated sales for taxable year 2008, it must comply with the substantiation requirements under the appropriate Revenue Regulations. Thus, it is incumbent upon the petitioner to show that it has complied with the provisions of Section 112(A)(C) of the 1997 Tax Code, as amended, including but not limited to Revenue Regulations No. 5-87 as amended by Revenue Regulations Nos. 3-88 and 7-95 as further amended by Revenue Regulations No. 16-2005; and Revenue Memorandum Order No. 9-2000.

> 7. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).**
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> 8. The Court has always decreed that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government **[Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue, G.R. No. 184398, February 25, 2010].**"

Thereafter, petitioner filed a Reply[15] on June 7, 2011 alleging, among others, that petitioner's reliance in the case of ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*** is misplaced because allegedly, nowhere in said decision did the Supreme Court rule that the administrative claim for refund with the Court of Tax Appeals must be made within the two year prescriptive period. Contrary to the position taken by respondent, the Supreme Court in the more recent case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia*** (G.R. No. 184826, October 6, 2010) categorically ruled that the two-year prescriptive period provided in Sec. 112 (A) of the National Internal Revenue Code, as amended, applies only to the administrative claim for refund with the Commissioner of Internal Revenue and not to the judicial claim for refund before the Court of Tax Appeals. Also, petitioner submits that it timely filed the instant Petition for Review within the "120-30" day rule provided in Section 112 (C) of the Tax Code, as amended, as elucidated in the Aichi case. Thus, petitioner prays that after proper proceedings, judgment be rendered ordering respondent to grant its refund claim.

This case was set for pre-trial on July 15, 2011. Both parties' counsel appeared and entered into stipulation of facts and issues,

[15] Docket (Vol. I), pp. 205 to 211.

identification of their respective documentary exhibits and names of their witnesses. As directed by the Court, the parties submitted their Joint Stipulation of Facts and Issues on July 29, 2011,[16] which was approved by the Court in the Resolution dated August 2, 2011.[17]

During trial, petitioner presented two (2) witnesses, Nerissa Posadas and Independent Certified Public Accountant Leticia C. Tagle to prove and substantiate its refund claim.

On the other hand, during the initial presentation of respondent's evidence on May 24, 2012, respondent, through counsel, manifested that there was no report of investigation from the Revenue District Office of Taguig, where petitioner filed its claim for refund, and that she would no longer present evidence.[18] In view thereof, the parties were directed to file their respective Memoranda.

In the Resolution dated November 14, 2012[19], this case was submitted for decision taking into consideration the filing of petitioner's Memorandum[20] on October 25, 2012, and the failure of respondent to file her Memorandum, despite the opportunity granted to file the same.

Hence, this Decision.

THE ISSUES

As stipulated by the parties, these are the issues submitted for the resolution of the Court, [21] to wit:

> "I. WHETHER OR NOT PETITIONER COMPLIED WITH THE REQUIREMENTS UNDER SECTION 112(C) OF THE NIRC, AS AMENDED.

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[16] Docket (Vol. I), pp. 230 to 237.
[17] Docket (Vol. I), p. 239.
[18] Resolution dated May 30, 2012; Docket (Vol. III), pp. 1384 to 1385.
[19] Docket (Vol. III), p. 1472.
[20] Docket (Vol. III), pp. 1430 to 1469.
[21] Issues to be Resolved, "Joint Stipulation of Facts and Issues," Docket (Vol. 1), p. 232.

II. WHETHER OR NOT PETITIONER'S SALE OF ELECTRICITY IS ZERO-RATED FOR VAT PURPOSES UNDER SECTION 108(B)(7) OF THE NIRC, AS AMENDED.

III. WHETHER OR NOT THE CLAIMED INPUT VAT PAYMENTS IN THE AGGREGATE AMOUNT OF ₱6,751,004.51 WERE APPLIED AGAINST ANY OUTPUT TAX DURING THE PERIOD COVERED BY THE CLAIM.

IV. WHETHER OR NOT THE CLAIMED INPUT VAT PAYMENTS IN THE AGGREGATE AMOUNT OF ₱6,751,004.51 FOR THE 3^{RD} AND 4^{TH} QUARTER OF TAXABLE YEAR 2008 ARE DIRECTLY ATTRIBUTABLE TO PETITIONER'S ZERO RATED SALE.

V. WHETHER OR NOT THE CLAIMED INPUT VAT PAYMENTS IN THE AGGREGATE AMOUNT OF ₱6,751,004.51 FOR THE 3^{RD} AND 4^{TH} QUARTERS OF TAXABLE YEAR 2008 ARE SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

VI. WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AGGREGATE AMOUNT OF ₱6,751,004.51 REPRESENTING ITS UNUTILIZED INPUT VAT PAYMENTS FOR THE 3^{RD} AND 4^{TH} QUARTERS OF THE TAXABLE YEAR 2008."

Petitioner's arguments

Petitioner alleges that its Petition for Review was filed on time, considering that its administrative claim was filed within the two-year reglementary period under Section 112 of the NIRC as amended, while its judicial claim complied with the mandatory 120-day and 30-day periods provided under the same law.

In support of its argument, petitioner cites the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of*

Asia,[22] where it was held that the two-year prescriptive period provided in Section 112 of the NIRC of 1997, as amended, applies only to the administrative claim for refund with the Commissioner of Internal Revenue and not to the judicial claim for refund before the Court of Tax Appeals.

Petitioner likewise contends that its sale of electricity is zero-rated for VAT purposes under Section 108 (B) (7) of the NIRC, as amended. Moreover, petitioner maintains that its unutilized input VAT for the 3rd and 4th quarters of the year 2008 is substantiated by documentary evidence.

Finally, petitioner claims that its input VAT payments were never utilized even for the period that said input taxes were carried over to the succeeding taxable periods as shown by its VAT returns from January 2009 to July 2010. Thus, petitioner concludes that it is entitled to the refund or issuance of a tax credit certificate of its input VAT representing its purchase of goods and services which are directly attributable to its zero-rated sales for the 3rd and 4th quarters of 2008.

Respondent's counter-arguments

For her part, respondent claims that petitioner's judicial claim should be dismissed on the ground that it is already time-barred. Respondent points out that while petitioner's administrative claim was filed within the two-year period provided for under Section 112 of the NIRC of 1997, as amended, its judicial claim was filed beyond the said two-year reglementary period. Thus, petitioner should be barred from claiming for the refund of its alleged unutilized input taxes for the 3rd and 4th quarters of 2008 in the amount of ₱6,751,004.51, due to prescription.

THE COURT'S RULING

Section 112 (A) of the National Internal Revenue Code of 1997, as amended, provides the basis for refunds or tax credits of input tax attributable to zero-rated or effectively zero-rated sales, to wit:

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

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Based on the foregoing legal provision and as held by the Supreme Court in the case of *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*,[23] a taxpayer engaged in zero-rated transactions may apply for tax refund or issuance of tax credit certificate for unutilized input VAT, subject to the following requirements:

(1) The taxpayer is VAT-registered;

(2) The taxpayer is engaged in sales which are zero-rated (*i.e.,* export sales) or effectively zero-rated;

(3) The claim must be filed within two years after the close of the taxable quarter when such sales were made;

[23] G.R. No. 182364, August 3, 2010.

(4) The creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and

(5) In case of zero-rated sales under Section 106 (A) (2) (a) (1) and (2), Section 106 (B) and Section 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.

In this case, petitioner has sufficiently proven its compliance with the first requisite: that it is a VAT-registered entity, with TIN No. 208-101-373-000,[24] as evidenced by Certificate of Registration OCN No. 9RC0000270238, issued by the Bureau of Internal Revenue (BIR), Revenue Region No. 008, Revenue District Office No. 044 on October 13, 2000.[25]

With regard to the second requisite, it appears that petitioner is engaged in the business of building electric generating plants and sale of renewable power, particularly the sale of electricity generated through renewable wind energy.[26] According to petitioner, it entered into an Electricity Sales Agreement with INEC for the sale of power generated from petitioner's wind turbines in Bangui, Ilocos Norte,[27] and that INEC is petitioner's sole customer for the electricity it generates through renewable wind energy.[28]

Thus, petitioner submits that its sale of power generated from renewable wind energy to INEC is zero-rated for VAT purposes pursuant to Section 108 (B) (7) of the NIRC of 1997, as amended, which provides as follows:

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties. -*

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[24] Exhibit "A," Docket (Vol. II), p. 665.
[25] Par. 3, Admitted Facts, "Joint Stipulation of Facts and Issues," Docket (Vol. 1), p. 231; Exhibit "A," Docket (Vol. II), p. 665.
[26] Par. 5, Statement of the Facts and of the Case, "Memorandum," Docket (Vol. III), p. 1431; Exhibits "C" and "C-1," Docket (Vol. II), pp. 672 to 683.
[27] Exhibits "D" and "D-1," Docket (Vol. II), pp. 684 to 721.
[28] Par. 6, Statement of the Facts and of the Case, "Memorandum," Docket (Vol. III), p. 1432

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

(7) Sale of power or fuel generated through <u>renewable sources of energy such as</u>, but not limited to, biomass, solar, <u>wind</u>, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels." (*Emphasis supplied.)*

Relative thereto, in order that petitioner's sale of power generated through renewable sources of energy will be considered as a zero-rated VAT transaction, petitioner must prove compliance with the pertinent provisions of Republic Act (R.A.) No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001," such as Sections 4 (x) and 6 thereof, to wit:

"SECTION 4. *Definition of Terms.* –

xxx xxx xxx

(x) 'Generation Company' refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.

xxx xxx xxx

SECTION 6. *Generation Sector.* – Generation of electric power, a business affected with public interest, shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC), a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

xxx xxx xxx."[29]

Additionally, Sections 1 and 4 (a) of Rule 5 of the Implementing Rules and Regulations (IRR) of R.A. No. 9136, also emphasize the need to obtain a Certificate of Compliance from the Energy Regulatory Commission (ERC), *viz*:

"RULE 5. GENERATION SECTOR.

SECTION 1. *Guiding Principle.*

xxx xxx xxx

No Person may engage in the Generation of Electricity as a new Generation Company unless such Person has received a COC from the ERC to operate facilities used in the Generation of Electricity. A Person that demonstrates compliance with the standards and requirements of this Rule 5, and such other terms and conditions as determined by the ERC to be appropriate to ensure that Persons comply with all applicable legal and regulatory requirements, shall be issued a COC.

xxx xxx xxx

SECTION 4. *Obligations of a Generation Company.* –

(a) A COC shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.

xxx xxx xxx."

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[29] Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies was repealed by Section 24 of R.A. No. 9337.

In this case, petitioner is registered with the BOI as a "New Operator of Wind Power Generation Plant" as shown by Certificate of Registration No. 2004-108 issued by the Board of Investments on September 20, 2004.[30] Moreover, petitioner was issued a Certificate of Compliance (COC) by the ERC as evidenced by ERC COC No. 05-06-GN6-8245.[31]

Based on the foregoing, it is clear that petitioner was able to sufficiently comply with the COC requirement under R.A. No. 9136 and its IRR, and has thus proven that its sales under the Electricity Sales Agreement[32] with INEC, were in fact, zero-rated VAT transactions.

As regards the timeliness of the filing of its claim, We are in agreement with petitioner's submission that it filed its administrative and judicial claim for refund within the period required by law.[33]

In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.),*[34] the Supreme Court held that the reckoning of the two-year prescriptive period for filing a claim for input VAT refund under Section 112(A) of the NIRC of 1997 should start from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.

In this case, the instant claim pertains to unutilized/excess input VAT incurred during the 3rd and 4th quarters of 2008. Reckoned from the close of the taxable quarters when the relevant sales were made on September 30, 2008[35] and December 31, 2008,[36] petitioner had until September 30, 2010 and December 31, 2010, respectively, within which to file its administrative claim for refund before the BIR.

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[30] Par. 6, Admitted Facts, "Joint Stipulation of Facts and Issues," Docket (Vol. 1), p. 231; Exhibits "B" and "B-1," Docket (Vol. II), pp. 666 to 671.
[31] Exhibits "T" and "T-1," Docket (Vol. II), pp. 825 to 828.
[32] Exhibits "D" and "D-1," Docket (Vol. II), pp. 684 to 721.
[33] Par. 46, Discussion, "Memorandum," Docket (Vol. III), p. 1440.
[34] G.R. No. 172129, September 12, 2008.
[35] Exhibit "G," Docket (Vol. II), p. 724.
[36] Exhibit "J," Docket (Vol. II), p. 727.

Considering that the administrative claim for refund was filed on August 23, 2010[37], petitioner's administrative claim was filed on time.

With respect to the filing of the judicial claim, Section 112 (C) of the NIRC of 1997, as amended, provides as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

The mandatory nature of the 120-day period was discussed by the Supreme Court in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue,*[38] wherein it held that:

> "It is undisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January

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[37] Exhibits "L" and "M," Docket (Vol. II), pp. 729 to 734.
[38] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**

Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.

The charter of the CTA expressly provides that its jurisdiction is to review on appeal "**decisions** of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review." *(Emphasis in the original.)*

The foregoing interpretation was reiterated by the Supreme Court in the more recent consolidated cases of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, and Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue,*[39] wherein it provided a "Summary of Rules on Prescriptive Periods Involving VAT," *viz*:

"We summarize the rules on **the determination of the prescriptive period for filing a tax refund or credit**

[39] G.R. Nos. 193301 and 194637, March 11, 2013.

of *unutilized input VAT* as provided in Section 112 of the 1997 Tax Code, as follows:

(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) **A judicial claim must be filed with the CTA within 30 days** from the receipt of the CIR's decision denying the administrative claim or **from the expiration of the 120-day period without any action from the CIR**.

(4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on October 6, 2010, as an exception to the mandatory and jurisdictional 120+30 day periods."[40] *(Emphasis supplied.)*

In the instant case, petitioner filed its administrative claim on August 23, 2010.[41] Subsequently on September 14, 2010, the authorized representative of respondent, Jamie B. Santiago, Regional Director, Makati City, issued a Letter of Authority in connection with petitioner's subject claim for refund.[42] Thereafter, petitioner submitted documents in support of its claim for refund as evidenced by its transmittal letter dated November 4, 2010.[43] Counting 120 days from the date of submission of petitioner's supporting documents, respondent had until March 4, 2011, within which to act on petitioner's administrative claim. However,

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[40] *Ibid.*
[41] Exhibits "L" and "M," Docket (Vol. II), pp. 729 to 734.
[42] Exhibit "N," Docket (Vol. II), p. 735.
[43] Exhibit "WW," Docket (Vol. II), p. 882.

respondent failed to do so within the said period. Correspondingly, petitioner had thirty (30) days from March 4, 2011, or until April 3, 2011, within which to file its judicial claim before this Court. Considering that the instant Petition for Review was filed on April 1, 2011,[44] the filing of petitioner's judicial claim was made on time.

Anent the fourth and final requisites, petitioner allegedly generated zero-rated sales for the third and fourth quarters of taxable year 2008, in the total amount of P105,622,920.74, broken down as follows:

Exhibit	Period	Zero-rated Sales
G	3rd Quarter 2008	P 25,253,157.83
K	4th Quarter 2008	P 80,369,762.91
	TOTAL	**P105,622,920.74**

To support its claim, petitioner presented the Summary List of Sales[45] and the related official receipts (OR) issued to INEC.[46]

The Court commissioned Independent CPA, Leticia C. Tagle, examined the above-mentioned documents and found that there was a difference of P7,775,084.14 between the total amount per OR (P97,847,836.60) and the total zero-rated sales per VAT Returns (P105,622,920.74).[47]

As represented, the difference of P7,775,084.14 pertains to uncollected/unpaid accrued sales which were reported in the books and VAT Returns of petitioner, for which reason petitioner instituted a money claim before the ERC against INEC.[48] However, petitioner failed to submit documents to support its allegation. Hence, the substantiated zero-rated sales shall be based on the official receipts submitted before this Court.

[44] Petition for Review, Docket (Vol. I), pp. 1 to 14.
[45] Exhibits "P" and "R," Docket (Vol. II), pp. 737 to 739; 778 to 780.
[46] Exhibits "HHH-463" to "HHH-469," Docket (Vol. II), pp. 1361 to 1367.
[47] Exhibit "III", Paragraph 14, pages 9 to 10.
[48] Exhibit "III", Paragraph 15, page 10.

Except for Official Receipt No. 57[49], with the corresponding amount of P30,634,465.59, for being outside the period of claim, this Court finds the official receipts in order. Consequently, petitioner's substantiated zero-rated sales amount to P67,213,371.01 (P97,847,836.60 less P30,634,465.59).

Considering that only a portion of the declared zero-rated sales was properly substantiated, only a portion of the substantiated input tax attributable thereto shall be granted based on the following rate:

Properly substantiated zero-rated sales	P 67,213,371.01
Divided by total zero-rated sales per VAT Returns	P105,622,920.74
Rate	**63.6352134 %**

As regards petitioner's input taxes for the 3rd and 4th quarters of 2008, its Quarterly VAT Returns show a total input tax for the current year amounting to P6,751,004.07.[50]

It should be noted that petitioner's claim amounts to P6,751,004.51. ICPA Tagle reported the following findings on petitioner's input tax for the 3rd and 4th quarters of 2008:[51]

Exhibit	Reference	Particulars	Amount	
YY	Schedule 1	Purchase of services/leases	P 2,275,847.76	
ZZ	Schedule 2	Purchase of goods and importation	P 4,370,273.13	
		Total input VAT claim with supporting documents		P 6,646,120.89
		Less: Adjustment		
AAA	Schedule 3	Input VAT per OR/invoices	P 4,668.80	
BBB	Schedule 4	Correct input VAT	P 4,241.68	P 427.12
		Adjusted input VAT claim properly substantiated		**P 6,645,693.77**

[49] Exhibit "HHH-469," Docket (Vol. II), p. 1367.
[50] Exhibits "G" and "K," Docket (Vol. II), pp. 724 and 728.
[51] Exhibit "III", Paragraph 7, page 7.

Anent the adjustment above, upon examination of the VAT Returns for the subject quarters, the Independent CPA found that petitioner reported the purchases and the correct input tax corresponding thereto in the amount of P4,241.68. Thus, the discrepancy of P427.12 will not diminish nor affect petitioner's input tax claim.[52]

For the remaining amount of petitioner's claim, the Independent CPA found the following:[53]

Exhibit	Reference	Particulars	Amount
DDD	Schedule 6	Input VAT without supporting VAT invoices and ORs/Documents for retrieval	P 68,617.35
EEE	Schedule 7	Supporting documents other than VAT ORs/VAT invoices	23,825.07
FFF	Schedule 8	VAT amount not specified in OR/invoices	10,549.11
GGG	Schedule 9	VAT ORs issued outside period of claim	1,928.46
		Unaccounted item/s	390.31
		TOTAL	**P105,310.30**

The foregoing should be disallowed for the reasons stated. In addition, the substantiated input tax found by the Independent CPA should be further reduced by P55,232.45 for the following reasons:

Findings	Input Tax
Purchase of services which were supported by "TIN-V" ORs, instead of "TIN-VAT" ORs as required by Section 4.113-1 of Revenue Regulations No. 16-2005 and pursuant to the case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue.*[54]	P 2,796.86[55]
Purchase of goods which were supported by "TIN-V" invoices, instead of "TIN-VAT" invoices required by Section 4.113-1 of Revenue Regulations No. 16-2005 and pursuant to the case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*[56]	13,120.25[57]

[52] Exhibit "III", Paragraphs 8 and 9, pages 7 to 8.
[53] Exhibit "III", Paragraph 10, page 8.
[54] G.R. No. 181858, November 24, 2010.
[55] Exhibits "HHH-172" and "HHH-174," Docket (Vol. II), pp. 1135 to 1136.
[56] *Supra.*

Purchase of goods which were supported by cash register machine tapes without the information required by Section 4.110-8 (a) (2) and (4) of Revenue Regulations No. 16-2005 and Sections 113 and 237 of the NIRC of 1997, as amended by R.A. No. 9337.	586.49[58]
Purchase of goods which were supported by VAT ORs instead of VAT invoices as required by Section 113 of the NIRC of 1997, as amended by R.A. No. 9337.	38,514.56[59]
Purchase of goods which were supported by non-VAT invoices.	214.29[60]
Total	**P 55,232.45**

Petitioner reported purchases of capital goods exceeding P1,000,000.00 or in the amount of P14,981,748.89[61] for the 3rd quarter of 2008, which is broken down as follows:[62]

Exhibit	Vendor	Amount	Input VAT
HHH to HHH-1	Asiaphil Manufacturing Industries, Inc.	P3,214,285.71	P385,714.29
HHH-6 to HHH-10	Power Dimension Inc.	5,589,563.56	670,747.83
HHH-11 to HHH-12	Power Dimension Inc.	3,132,830.50	375,939.66
HHH-84 to HHH-87	Power Dimension Inc.	3,045,069.12	365,408.30
TOTAL		**P14,981,748.89**	**P1,797,810.08**

The input taxes of the capital goods purchased for the months of July and September 2008 form part of petitioner's claim and was

[57] Exhibits "HHH-29" to "HHH-38," "HHH-40," "HHH-48," "HHH-54," "HHH-68," "HHH-127," "HHH-130," "HHH-134" to "HHH-137," "HHH-143," "HHH-155," "HHH-164," "HHH-171," "HHH-177," "HHH-179," "HHH-181," "HHH-184," "HHH-186," "HHH-189" to "HHH-190," "HHH-203," "HHH-216" "HHH-217," "HHH-220" to "HHH-222," "HHH-226," "HHH-231," "HHH-233," "HHH-235," "HHH-237" to "HHH-238," "HHH-241" to "HHH-242," "HHH-246," "HHH-249" to "HHH-251," "HHH-255" to "HHH-256," "HHH-327," "HHH-330" to "HHH-332," "HHH-345-a," "HHH-352-a," "HHH-354," "HHH-359" to "HHH-360," "HHH-362," "HHH-364," "HHH-435," "HHH-438," "HHH-440," "HHH-443," and "HHH-448," Docket (Vol. II), pp. 1042 to 1044, 1048, 1050, 1062, 1115 to 1118, 1120, 1126, 1130, 1134, 1137 to 1142, 1150, 1159 to 1160, 1163, 1165 to 1168, 1170 to 1172, 1243, 1246, 1251, 1255, 1284, 1286 to 1289, 1338, 1345, 1347 to 1348, and 1351.
[58] Exhibits "HHH-191," "HHH-192," and "HHH-420," Docket (Vol. II), pp. 1143 and 1331.
[59] Exhibits "HHH-207," "HHH-345," and "HHH-449," Docket (Vol. II), pp. 1152, 1280, and 1352.
[60] Exhibit "HHH-421," Docket (Vol. II), pp. 1331.
[61] Exhibits "E" and "G," Docket (Vol. II), pp. 722 and 724.
[62] Exhibit "Q," Docket (Vol. II), pp. 740 to 777.

found to be duly substantiated by the Independent CPA. However, input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed in full during the month of acquisition, or spread over a period of time, depending on the aggregate acquisition cost, excluding the VAT component, of the capital goods in the calendar month. If the aggregate acquisition cost exceeds one million pesos, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if the aggregate acquisition cost does not exceed 1 million pesos, the total input taxes will be allowable as credit in the month of acquisition.

Section 110 (A) (2) of the NIRC of 1997, as amended, provides:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> xxx xxx xxx
>
> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
>
> xxx xxx xxx
>
> *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 (P1,000,000): *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 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 upon payment of the compensation, rental, royalty or fee.
>
> x x x x."

Moreover, Section 4.110-3 of Revenue Regulations No. 16-2005, as amended, also provides:

> "SEC. 4.110-3. *Claim for Input Tax on Depreciable Goods.* — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:
>
> (a) If the estimated useful life of a capital good is five (5) years or more – The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.
>
> (b) If the estimated useful life of a capital good is less than five (5) years – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.
>
> xxx xxx xxx."

Applying the foregoing provisions to the present case, out of the P1,797,810.08 input VAT incurred by petitioner on capital goods for the third quarter of 2008, only the amount P167,600.73 is creditable or refundable for the third and fourth quarters of taxable year 2008, computed as follows:

Month Capital Asset Acquired	Corresponding Input tax (total)	Maximum life of asset (months)	Monthly Input tax credit	Allowable Input tax credit for 3rd and 4th quarters of 2008
July 2008	P 385,714.29	60	P 6,428.57	P 38,571.43
July 2008	670,747.83	60	11,179.13	67,074.78
July 2008	375,939.66	60	6,265.66	37,593.97
September 2008	365,408.30	60	6,090.14	24,360.55
	P 1,797,810.08		**P 29,963.50**	**P 167,600.73**

In sum, petitioner's substantiated excess input taxes amount to P4,960,251.97, as computed below:

Input tax claim		P6,751,004.51
Less: Disallowances:		
Input tax claim per Petition for Review	P 6,751,004.51	
Less: Input tax per VAT Returns	6,751,004.07	0.44
Per ICPA findings		105,310.30
Per Court's findings		55,232.45
Input tax on purchase of capital goods >P1M	P 1,797,810.08	
Less: Allowable input tax credit for period of claim	167,600.73	1,630,209.35
Substantiated excess input taxes		**P 4,960,251.97**

Applying the ratio of substantiated zero-rated sales previously computed, petitioner's refundable excess input taxes amount to P3,156,466.93, computed thus:

Substantiated excess input taxes	P 4,960,251.97
Ratio of substantiated zero-rated sales to declared zero-rated sales	63.6352134%
Refundable excess input taxes	**P 3,156,466.93**

As evidenced by its Quarterly VAT Returns from the third quarter of 2008[63] to the third quarter of 2010[64], petitioner was able to prove that the input VAT of P3,156,466.93 was not applied against any output VAT in the succeeding quarters. Although petitioner carried over the claimed unutilized input VAT for the third and fourth quarters of 2008 to the succeeding quarters until the month of August

[63] Exhibit "G," Docket (Vol. II), p. 724.
[64] Exhibit "OO," Docket (Vol. II), p. 874.

2010, the same was deducted as "VAT Refund/TCC Claimed" from the total available input tax of P13,129,726.61.[65]

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of Three Million One Hundred Fifty Six Thousand Four Hundred Sixty Six Pesos and Ninety Three Centavos (P3,156,466.93), representing unutilized input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of taxable year 2008.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
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.

ERLINDA P. UY
Associate Justice
Chairperson

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[65] Exhibit "O," Docket (Vol. II), p. 736.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice