REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

DEUTSCHE KNOWLEDGE SERVICES, PTE LTD.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 834
(CTA Case No. 7808)

Present:
Castañeda, *Jr.*,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:

FEB 04 2013 [handwritten signature] 1:00 p.m.

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DECISION

CASTAÑEDA, JR. *J.*:

This is a Petition for Review filed by petitioner Deutsche Knowledge Services, Pte. Ltd. before the Court of Tax Appeals (CTA) *En Banc* praying for the reversal of the Decision,[1] and Resolution,[2] respectively promulgated by the CTA Second Division on June 1, 2011 and September 7, 2011, and accordingly, to order respondent Commissioner of Internal Revenue (CIR) to refund or issue a tax credit certificate representing unutilized excess input value-added tax ("VAT") for the second (2^{nd}) to fourth (4^{th}) quarters of taxable year 2006 in the total amount of P22,084,718.84.

THE FACTS

The facts of the case as found by CTA Second Division are as follows: [initials]

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[1] *Rollo*, pp. 53-65; penned by Associate Justice Caesar A. Casanova, with Associate Justice Juanito C. Castañeda, Jr., and Associate Justice Cielito N. Mindaro-Grulla, concurring.
[2] *Ibid.*, pp. 67-71.

Petitioner-Deutsche Knowledge Services, Pte. Ltd. is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with its registered office address at One Raffles Quay, #17-10 South Tower, Singapore 048583.

It is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines by the Securities and Exchange Commission (SEC) on April 25, 2005 pursuant to the Omnibus Investment Code of 1987, as amended by Republic Act No. 8756 and its implementing rules and regulations, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development.

Petitioner acts as a shared services center, which handles regional as well as global accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-regulated entitles and product control. Petitioner purchased goods and services in the course of rendering services in the Philippines as a shared services center to entities engaged in business conducted outside the Philippines.

It is registered with the Bureau of Internal Revenue (BIR) as a value-added (VAT) taxpayer, with Taxpayer's Identification Number (TIN) 238-763-115-000 as evidenced by its Certificate of Registration OCN 9RC0000155974.

Respondent is the duly appointed Commissioner of Internal Revenue, with the authority to act as such, including the power to decide, approve and grant claims for issuance of tax credit certificate or refund of overpaid internal revenue taxes as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Petitioner filed its original Quarterly VAT Returns for the 2nd, 3rd and 4th Quarters of taxable year 2006 on the following dates:

Exhibit	Year 2006	Date Filed
C	2nd Qtr	July 25, 2006

[3] *Ibid.*, pp. 53-55.

D	3rd Qtr	October 25, 2006
E	4th Qtr	January 25, 2007

On June 30, 2008, petitioner filed an administrative claim with the BIR Revenue District Office No. 47, Makati City for the refund/issuance of TCC in the amount of P22,084,718.84, representing its unutilized input VAT attributable to zero rated sales, for the 2nd, 3rd and 4th Quarters of taxable period 2006.

Due to respondent's inaction, and in order to suspend the running of the two-year prescriptive period on the said administrative claim for refund, petitioner filed this instant Petition for Review on July 14, 2008.

On August 12, 2008, respondent filed his Answer interposing the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES:

"5. Granting *arguendo* that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.

6. Petitioner failed to demonstrate that the alleged tax sought for refund or tax credit has been or erroneously or illegally collected in violation of the tax laws relied upon by the petitioner.

7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable.

8. It is incumbent upon the petitioner to show that it has complied with the provision of Sections 108 and 112 in relation to Section 229 of the 1997 Tax Code, as amended.

9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (Emmanuel & Zenaida Aguilar v. Commissioner, CA-G.R. No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206).

10. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and, as such,

> they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

> On January 29, 2009, this Court, upon Motion of petitioner, appointed Mr. Romeo A. De Jesus, Jr. as Independent Certified Public Accountant.

> During trial, petitioner presented the following witnesses: Mr. Michael Praxedes, its Chief Financial Officer; Mr. Romeo A. De Jesus, Jr., the Independent Certified Public Accountant (CPA) duly commissioned by this Court; Ms. Andrea S. Peralta, its then Legal Entity Controller; and Ms. Aileen Felix-Romano, its Legal Entity Controller. Thereafter, on May 7, 2010, it filed its Formal Offer of Evidence, which this Court admitted in the Resolution dated August 13, 2010.

> In the Resolution dated December 23, 2010, the case was submitted for decision taking into consideration petitioner's Memorandum filed on December 6, 2010 and the Report dated December 21, 2010 of the Records Division that no memorandum has been filed for the respondent.[4]

On June 1, 2011, the CTA Second Division promulgated a Decision dismissing petitioner's Petition for Review, the dispositive portion of which reads as follows:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DISMISSED** on the ground that it was prematurely filed.

> **SO ORDERED.**[5]

Aggrieved, petitioner filed a "Motion for Reconsideration (Re: Decision dated June 1, 2011) on June 17, 2011. The CTA Second Division issued a Resolution on September 7, 2011, the dispositive portion reads as follows:

> **WHEREFORE,** premises considered, petitioner's *Motion for Reconsideration (Re: Decision dated June 1, 2011)* is hereby **DENIED** for lack of merit.

> **SO ORDERED.**[6]

Hence, this Petition for Review *En Banc.*

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[4] *Ibid.*, pp. 53-57.
[5] *Ibid.*, pp. 64.
[6] *Ibid.*, p. 71.

THE ISSUES

In the present Petition for Review, petitioner assigns the following errors:

I.
THE CTA-DIVISION ERRED IN HOLDING THAT THE 120-DAY PERIOD GIVEN TO RESPONDENT TO ACT ON THE APPLICATION FOR TAX REFUND OR CREDIT IS JURISDICTIONAL;

II.
THE CTA-DIVISION ERRED IN NOT FINDING THAT RESPONDENT WAS ESTOPPED FROM RAISING THE DEFENSE OF PREMATURITY FOR FAILURE TO ALLEGE SUCH DEFENSE IN HER ANSWER OR IN A MOTION TO DISMISS; and

III.
THE CTA-DIVISION ERRED IN GIVING AICHI RETROACTIVE EFFECT TO JUDICIAL CLAIMS FOR REFUND FILED BEFORE ITS PROMULGATION.[7]

THIS COURT'S RULING

The petition is without merit.

We affirm the ruling of the CTA Second Division DISMISSING the Petition for Review and DENYING the judicial claim as no jurisdiction was acquired by the CTA for failure to observe the mandatory 120-30 day period under Section 112 of the National Internal Revenue Code (NIRC) of 1997. This is based on the following grounds:

1. When the law provides a period within which to commence an action, such requirement is jurisdictional.[8]
2. The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[9]
3. The jurisdiction of a court may be questioned at any stage of the proceedings.

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[7] *Ibid.*, pp. 15-16.
[8] *Ker & Company, Ltd. vs. Court of Tax Appeals,* No. L-12396, January 31, 1962, 4 SCRA 160.
[9] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, Resolution dated April 24, 2007, 522 SCRA 144.

4. The principles laid down in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* [10] (*Aichi*) are applicable to the present case.

When the law provides a period within which to commence an action, such requirement is jurisdictional.

Section 112 (A) and (C) [11] of the NIRC of 1997, as amended, provide specific period of action for filing administrative and judicial claims for refund or issuance of tax credit certificate of unutilized input VAT attributable to zero-rated sales, to wit:

> Section 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 of 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 nonzero-rated sales.
>
> xxx 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 Subsections (A) and (B) hereof.

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[10] G.R. No. 184823, October 6, 2010, 632 SCRA 422. The *Aichi* case became final as per Supreme Court's Resolution dated December 6, 2010.
[11] Prior to Republic Act No. 9337 it was Section 112 (D).

> 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.-

Based on the foregoing, the administrative claim for refund of unutilized input VAT attributable to zero-rated sales may be filed within two (2) years after the close of the taxable quarter when the sales were made. The two (2)-year period refers solely to administrative claims filed with the CIR and not to appeals made to the CTA. Meanwhile, judicial claim for refund should be filed within thirty (30) days from receipt of the decision of the CIR or upon the expiration of the one hundred twenty (120) days in case of inaction of the CIR. The observance of these periods is mandatory and non-compliance therewith would result in the denial of the claim.

In the case of *Ker & Company, Ltd. vs. Court of Tax Appeals*,[12] the Supreme Court held that when the law provides a period within which to commence an action, such requirement is jurisdictional, pertinent portion of the decision states:

> While the right to appeal a decision of the Collector to the Tax Court is merely a statutory remedy, nevertheless the requirement that it must be brought within thirty days after receipt of the Collector's decision, or ruling is jurisdiction. "**If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss**" (Callahan vs. Chespeake & Ohio, 407 Supp. 323, mentioned on p. 175, Moran's Rules of Court, Vol. 1, 1952 Ed.). xxx **The right to appeal from the decision of the Collector being a statutory right, the same can be invoked only in accordance with the requisites provided by law** (Wee Poco v. Posadas, 64 Phil. 648). xxx (emphasis ours)

Also, the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue* [13] should be applied by analogy to the present case. The pertinent portion of the ruling states:

[12] No. L-12396, January 31, 1962, 4 SCRA 160.
[13] G.R. No. 168498, Resolution dated April 24, 2007, 522 SCRA 144.

> The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed assessments. **This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction** to entertain and determine the correctness of the assessments. **Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.**[14] (emphasis ours)

The Supreme Court ruled that the **30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction**. This applies to cases of refund under Section 112 where the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with the CTA.

Similarly in the case of *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation,*[15] the Supreme Court reiterated that **perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[16]

Applying the law and jurisprudence, We deny petitioner's refund for failure to observe the 120-30 day period under Section 112 (C) of the NIRC of 1997, as amended. Petitioner's administrative claim for refund was filed on June 30, 2008[17] while judicial claim was filed on July 14, 2008.[18] At this point, neither the CIR has rendered a decision prior to the filing of the judicial claim nor the 120-day period has expired.

The CTA is a court of special jurisdiction and can only take

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[14] *Ibid.*
[15] G.R. No. 167606, August 11, 2010, 628 SCRA 96.
[16] *Ibid.*
[17] *Rollo*, Petition for Review, page 11.
[18] Division Docket, pp. 1-7.

cognizance of such matters as are clearly within its jurisdiction.

Taking into consideration the CTA's special and limited jurisdiction, the decisions, rulings or inaction of the CIR are necessary in order to vest the CTA with jurisdiction to entertain the appeal.[19] The jurisdiction of the CTA is provided under Section 7 of Republic Act (RA) No. 1125, as amended by RA 9282, to wit:

> Sec. 7. Jurisdiction. — The CTA shall exercise:
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

The CTA shall exercise exclusive appellate jurisdiction to review by appeal the decisions as well as the inaction by the CIR in cases involving refunds of internal revenue taxes. In case where the NIRC provides a specific period for action, the CIR's inaction shall be deemed a denial.

Section 112 (C) of the NIRC provides specific period of action *i.e.*, the 120-day period within which the CIR shall render a decision. When no decision is made after the 120-day period, the taxpayer has 30 days within which to file an appeal with the CTA. If the taxpayer failed to do so, the taxpayer loses his right of judicial recourse. On the other hand, when a judicial claim is filed without awaiting the lapse of the 120-day period and there is no decision yet, the CTA acquires no jurisdiction as there is no decision or inaction to speak of.

The jurisdiction of a court may be questioned at any stage of the proceedings. gr

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[19] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, *supra*, note 9.

Petitioner argued that the defense of prematurity was never raised as among the special and affirmative defenses of respondent, hence, such defense was waived.

The argument must fail.

As discussed earlier, the prescriptive period of 120-30 days under Section 112 of the NIRC of 1997 is mandatory and jurisdictional. The rule is that the jurisdiction of a court may be questioned at any stage of the proceedings.[20] This defense may be interposed during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside.[21]

Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss.[22] It is one of the grounds that authorize a court to dismiss a case *motu proprio* [23] because lack of it affects the very authority of the court to take cognizance of and to render judgment on the action. [24] Therefore, the Court is empowered, on its own initiative, to raise the question of jurisdiction even it was not raised by the proper party.

The principles laid down in the case of Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.[25] are applicable to the present case.

The *Aichi* case is **controlling and should be applied outright** in all cases where the facts are substantially the same as the mentioned case. The *Aichi* case is an actual application of Section 112(A) and (C) of the NIRC where the Supreme Court disallowed the refund of unutilized input VAT due to prematurity of judicial claim as no jurisdiction was acquired by the CTA. To reiterate, the pertinent portion of the decision states:

[20] *Vargas vs. Caminas,* G.R. Nos. 137869 & 137940, June 12, 2008, 554 SCRA 305.
[21] *Ibid.*, citing *De Rossi vs. NLRC*, 373 Phil. 17, 26-27; 314 SCRA 245, 254 (1999).
[22] *Geonzon Vda. de Barrera vs. Heirs of Vicente Legaspi*, G.R. No. 174346, 12 September 2008, 565 SCRA 192, 198, citing *Francel Realty Corporation vs. Sycip*, G.R. No. 154684, 8 September 2005, 469 SCRA 424, 432.
[23] *Carmelita T. Panganiban vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 131471, January 22, 2003, 395 SCRA 624.
[24] *AsiaTrust Development Bank vs. First Aikka Development, Inc.*, G.R. No. 179558, June 1, 2011, 650 SCRA 172.
[25] G.R. No. 184823, October 6, 2010, 632 SCRA 422. The *Aichi* case became final as per Supreme Court's Resolution dated December 6, 2010.

> **In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.**[26] (emphasis ours)

It should be noted that the judicial claim in *Aichi* was filed on September 30, 2004, a date earlier than the judicial claim of herein petitioner (July 14, 2008). Yet, in *Aichi* case, the Supreme Court applied outright the ruling in *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Corporation, Inc.)*[27] which reckoned the two-year prescriptive period for filing an administrative claim for refund from the close of the taxable quarter when the relevant sales were made. Hence, We see no reason why We should depart from the recent *Aichi* and *Mirant* rulings.

While it is true that petitioner's judicial claim was filed even before the *Aichi* case was promulgated, however, this does not mean that the doctrine laid down in *Aichi* should only be applied prospectively. In the recent case of *Accenture, Inc. vs. Commissioner of Internal Revenue*,[28] the Supreme Court effectively debunked petitioner's argument, it says:

> Assuming that the foregoing is true, Accenture still argues that the tax appeals courts cannot be allowed to apply to *Burmeister* this Court's interpretation of Section 102(b) of the 1977 Tax Code, because the Petition of Accenture had already been filed before the case was even promulgated on 22 January 2007, to wit:
>
> > x x x While the Burmeister case forms part of the legal system and assumes the same authority as the statute itself, however, the same cannot be applied retroactively against the Petitioner because to do so will be prejudicial to the latter.
>
> The CTA *en banc* is of the opinion that Accenture cannot invoke the non-retroactivity of the rulings of the Supreme Court, whose interpretation of the law is part of that law as of the date of its enactment.
>
> We rule that the recipient of the service must be doing business outside the Philippines for the transaction to qualify for zero-rating under Section 108(B) of the Tax Code.

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[26] *Ibid.*
[27] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[28] G.R. No. 190102, July 11, 2012.

> This Court upholds the position of the CTA *en banc* that, because Section 108(B) of the 1997 Tax Code is a verbatim copy of Section 102(b) of the 1977 Tax Code, any interpretation of the latter holds true for the former.
>
> **Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one. When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister*, this interpretation became part of the law from the moment it became effective. It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.** (emphasis ours)

There can be no violation of petitioner's rights when the law in force at the time when petitioner filed its administrative and judicial claims is **Section 112 of the NIRC of 1997**, as amended. Considering that the applicable law here is the NIRC of 1997 which took effect on January 1, 1998,[29] petitioner is very well within its coverage. It is only upon the effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute. [30] The validity and obligatory force of a law proceed from the fact that it has first been promulgated. [31]

In conclusion, petitioner's judicial claim was prematurely filed which warrants a dismissal as no jurisdiction was acquired by the CTA. "A taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim."[32]

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **DISMISSED.** The assailed Decision dated June 1, 2011 and Resolution dated September 7, 2011 are hereby **AFFIRMED**. Accordingly, petitioner's judicial claim for refund of P22,084,718.84 is **DENIED** for lack of jurisdiction.

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[29] *Commissioner of Internal Revenue vs. McGeorge Food Industries, Inc.*, G.R. No. 174157, October 20, 2010, 634 SCRA 193, 200.
[30] *Abakada Guro Party List, et.al. vs. Cesar V. Purisima*, et.al. , G.R. No. 166715, August 14, 2008, 562 SCRA 251.
[31] *Mighty Corporation vs. E. & J. Gallo Winery*, G.R. No. 154342, July 14, 2004, 434 SCRA 473.
[32] *Supra*, note 25.

SO ORDERED.

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

WE CONCUR:

(With Separate Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

I concur in the result.
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

I concur in the result.
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
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DEUTSCHE KNOWLEDGE SERVICES PTE., LTD.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 834
(CTA Case No. 7808)

Present:
Castañeda, Jr., Acting P.J
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated

FEB 04 2013 Apolinario 1:00 p.m.

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SEPARATE OPINION

BAUTISTA, J.:

While the Court *En Banc* affirmed the ruling of the Second Division of the Court dismissing the Petition for Review and denying the judicial claim as no jurisdiction was acquired by the CTA for failure to observe the mandatory 120-30 day period under Section 112 of the National Internal Revenue Code ("NIRC") of 1997, as a, amended, I, on the other hand, stand on my decision that petitioner filed its administrative and judicial claim well within the prescriptive period as prescribed in Section 112(A) of the NIRC of 1997.

As can be gleaned from the records, petitioner filed its VAT returns for the 2nd to 4th quarters of calendar year ("CY") 2006, on the following dates:[1]

Period Covered	Date Filed
2nd quarter of 2006	July 25, 2006

[1] *Records* (CTA Case No. 7808), p. 83.

3rd quarter of 2006	October 25, 2006
4th quarter of 2006	January 25, 2007

Petitioner then filed its administrative claim with respondent for refund of unutilized input VAT on June 30, 2008.[2] Subsequently, it filed a Petition for Review with the Court in Division on July 14, 2008.

Concurrently, this Court in not a few instances ruled that the two (2)-year prescriptive period for filing a claim for VAT refund or tax credit should not be counted from the close of the quarter, but from the date of filing of the relevant return, for it is only during that time that the VAT liability or refundability can be determined.[3]

Further, in the computation of the two (2)-year period, a year is equivalent to three hundred sixty five (365) days, regardless of whether it is a regular year or a leap year.[4]

Therefore, petitioner had until the following dates within which to file its claims, *viz.*: for the period covering the second (2nd) quarter of the taxable year 2006, until July 25, 2008; for the period covering the third (3rd) quarter of the taxable year 2006, until October 25, 2008; and for the period covering the fourth (4th) quarter of the taxable year 2006, until January 25, 2009.

In light of the foregoing, I find petitioner's administrative and judicial claims filed within the two (2)-year period. Hence, jurisdiction was acquired on the subject claims.

Nevertheless, I find that petitioner is still not entitled to its claim for refund.

Aside from the requirement that the claim for refund is filed within the two-year prescriptive period, petitioner must still comply with the other requisites provided for in Section 112(A) of the (NIRC) of 1997, as amended, enumerated as follows:

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[2] *Ibid.*, at paragraph 6, p. 83.
[3] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[4] National Marketing Corporation *v.* Tecson, 139 Phil. 584 (1960), *citing People v. Del Rosario, 97 Phil 70, 71 (1955).*

1) that there must be zero-rated or effectively zero-rated sales;

2) that input taxes were incurred or paid;

3) that such input taxes are attributable to zero-rated or effectively zero-rated sales;

4) that input taxes were not applied against any output VAT liability

From the foregoing requirements, petitioner complied with the first, third, and fourth requisites.

On the first requisite, a review of the records reveals that indeed petitioner is duly registered with the BIR as a VAT taxpayer,[5] and that the services it performs in the Philippines, through its ROHQ, like: financial accounting; market and instrument control; enterprise cost control; and information systems integrity services,[6] are services "other than processing, manufacturing or repacking of goods." Hence, its sale is zero-rated or effectively zero-rated.

While on the third requisite, material is Section 108 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.* –
>
> *xxx xxx xxx*
>
> *(B) Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

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[5] Exhibit "B."
[6] Exhibit "JJJ-17," Notes to Financial Statements, No. 15.

> (1)Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

In this instance, petitioner alleges that for the 2nd to 4th quarters of 2006, its ROHQ generated sales from services rendered to non-resident foreign corporations engaged in business conducted outside of the Philippines for which it was paid for in Euro, or other acceptable foreign currency, remitted inward through the banking system and duly accounted for in accordance with the rules and regulations of the BSP; and that such services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,*[7] the Supreme Court explained that in order for the services to be rendered VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended [then Section 102(b)(2) of the NIRC of 1977, as amended], the following requisites must be met: 1) the services must be other than processing, manufacturing or repacking of goods; 2) payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and 3) the recipient of such services is doing business outside the Philippines. The pertinent portion of the Decision, reads:

[7] G.R. No. 153205, January 22, 2007, 512 SCRA 124.

> "The Tax Code not only requires that the services be other than processing, manufacturing or repacking of goods and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that the recipient of such services is doing business outside the Philippines. While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) where the listed services must be 'for other persons doing business outside the Philippines.' The phrase 'for other persons doing business outside the Philippines' not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term 'services' appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines."

In the instant case, for the 2nd to 4th quarters of CY 2006, it is shown that petitioner rendered services to the following entities:[8]

1. Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office;
2. Deutsche Bank Aktiengesellschaft, Inlandsbank;
3. Deutsche Bank Aktiengesellschaft, Filiale New York;
4. Deutsche Bank Aktiengesellschaft, Filiale London;
5. Deutsche Asia Pacific Holdings, Pte, Ltd.;
6. Deutsche Group Services, Pte., Limited;
7. Deutsche Securities, Inc.;
8. Deutsche Bank Aktiengesellschaft, Filiale Hongkong;
9. Deutsche Bank Aktiengesellschaft, Filiale Jakarta;
10. Deutsche Bank Aktiengesellschaft, Filiale Singapur;
11. Deutsche Bank (China) Co., Ltd., Shanghai Branch;
12. Deutsche Asset Management (Asia), Limited;

[8] Exhibit "IIII," "A6," "U4," "A3."

13. Deutsche Bank Real Estate (Japan) Y.K.;
14. DBOI Global Services Private, Limited;
15. Deutsche Bank Aktiengesellschaft, Filiale Bangkok;
16. Deutsche Bank Aktiengesellschaft, Filiale Mumbai;
17. Deutsche Bank Aktiengesellschaft, Filiale Seoul;
18. Deutsche Bank Aktiengesellschaft, Filiale Taipei;
19. Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office;
20. DB Finance, Inc.; and
21. DB Trust Company, Limited Japan.

These entities are non-resident foreign corporations engaged in business outside the Philippines as indicated in the following: SEC Certifications of Non-Registration of Corporation/Partnership;[9] Certifications from different government agencies in the country of origin of petitioner's clients, which are all duly authenticated by the nearest consulate of the Philippines;[10] and the Intragroup Service Agreements.[11] Thus, petitioner complied with the third requirement.

Moreover, on the fourth requisite, records show that the input tax was not applied against any output VAT liability. As shown in petitioner's Quarterly VAT Returns for the 1st Quarter of Taxable year 2007, line 20A,[12] which provides: "Input VAT Tax Carried Over from Previous Quarter/Excess over 70% of Output VAT," was left in blank. This only proves that the amount of input VAT applied for refund in the amount of Php22,084,718.84 has not been used against any output VAT liability. Thus, petitioner complied with the fourth requisite.

However, on the second requirement, records show that petitioner failed to demonstrate that the remittances of foreign currency payments correspond to its zero-rated sales. Even though petitioner submitted, in support of its inward remittances, its Fund Transfer Credit Advices, it cannot be ascertained whether these remittances pertain to the company's zero-rated sales for that period.

As can be seen in its "Schedule of Receipts/Collections from Zero-Rated Sales,"[13] the amounts in the column "Collection Amount

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[9] Exhibits "NNN" to "HHHH."
[10] Exhibits "J4" to "T4."
[11] Exhibits "V4" to "P5."
[12] Exhibit "F."
[13] Exhibit "MMM," Annex E.

per Bank Advice" do not correspond to the amount received by petitioner under the column "OR Amount (Php)." Further, petitioner did not present any other document that would explain such discrepancies. Thus, for failure of petitioner to provide proof anent the second requirement, its claim must fail. For the burden of proof to present all that is required for the successful prosecution of its claim rest on it.[14] Petitioner's mere allegation cannot be given credence for it is not evidence,[15] and is not equivalent to proof.[16]

Therefore, having failed to comply with the second requisite, petitioner failed to substantiate its claim.

In conclusion, the Petition for Review filed with the Court in Division, docketed as CTA Case No. 7808 was filed within the prescriptive period.

Nevertheless, I still vote for the **DISMISSAL** of the Petition for Review not on the ground of lack of jurisdiction but on the ground of insufficiency of evidence.

LOVELL R. BAUTISTA
Associate Justice

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[14] Rules of Court, Rule 131, Section 1. *Burden of proof. – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.*
[15] Martinez v. National Labor Relations Commission, G.R. No. 117495, May 29, 1997, 272 SCRA 793.
[16] Philippine National Bank v. Court of Appeals, G.R. No. 116181, April 17, 1996, 266 SCRA 136.