REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TEAM ENERGY CORPORATION,
Respondent.

CTA EB No. 603
(CTA Case Nos. 7229 & 7298)

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

PROMULGATED:

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) before the Court of Tax Appeals (CTA) *En Banc* assailing the Decision[1] dated October 5, 2009 and the Resolution[2] dated February 23, 2010

[1] *Rollo*, pp. 28-54. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta, concurring and dissenting, and Associate Justice Lovell R. Bautista, concurring.
[2] *Rollo*, pp. 55-66.

promulgated by the CTA First Division in the case entitled "*TeaM Energy Corporation (Formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue,*" docketed as CTA Case Nos. 7229 & 7298.

The assailed decision PARTIALLY GRANTED the petition seeking the refund or issuance of a tax credit certificate in favor of herein respondent in the total amount of P70,700,533.01 allegedly representing unutilized input value-added tax (VAT) paid on its domestic purchases of goods and services and importation of goods attributable to zero-rated sales for all the four quarters of the calendar year 2003.

THE FACTS

The facts of the case as found by the CTA First Division are as follows:

> Petitioner[3] is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal office at Pagbilao Grande Island, Pagbilao, Quezon. It is engaged in the business of power generation and the subsequent sale to the National Power Corporation (NPC) under a Build, Operate, Transfer (BOT) agreement. Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (1997 NIRC) as evidenced by BIR Certificate of Registration bearing RDO Control No. 96-600-002498 with Taxpayer Identification No. 001-726-870.
>
> Respondent,[4] on the other hand, is the Commissioner of Internal Revenue who is duly appointed and empowered to perform the duties of his office, including, among others, the duty to act and approve claim[s] for refund or issuance of tax credit certificate of overpaid internal revenue taxes as provided by law, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons and other court processes.
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> Petitioner was originally registered with the Securities and Exchange Commission (SEC) under the name "Hopewell Power

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[3] Herein respondent.
[4] Herein petitioner.

(Philippines) Corporation" which was subsequently changed to "Southern Energy Quezon, Inc.," on September 22, 1999. On June 28, 2001, petitioner's name was again changed to "Mirant Pagbilao Corporation."

On November 13, 2002, petitioner filed with the BIR Audit Information, Tax Exemption and Incentives Division, an Application for Effective Zero-Rate of its supply of electricity to the NPC, which was subsequently approved.

For the calendar year 2003, petitioner filed its original and amended VAT returns on the following dates:

QUARTER	**ORIGINAL RETURN**	**AMENDED RETURN**
1ST	April 25, 2003	July 25, 2003
2ND	July 25, 2003	October 27, 2003
3RD	October 27, 2003	-
4TH	January 24, 2004	July 26, 2004

On December 17, 2004, petitioner filed an administrative claim for refund of unutilized input VAT with the Revenue District Office No. 60 at Lucena City on December 17, 2004 in the total amount of P83,465,353.50.

On April 22, 2005, receiving no favorable response from respondent, petitioner filed a Petition for Review before this Court, docketed as CTA Case No. 7229, claiming for the refund of the amount of P15,085,320.31 corresponding to the 1st quarter VAT claim for the calendar year 2003.

On July 22, 2005 petitioner filed CTA Case No. 7298 for its corresponding judicial VAT refund claims for the 2nd to 4th quarters of 2003 summing up to P63,380,033.19.

In CTA Case No. 7229, respondent alleged the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;
>
> 5. The amount of P15,085,320.31 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of goods and services and importation of goods for the first quarter of 2003 is not properly documented; *gc*

6. The decision of the Supreme Court in the case of Maceda *vs.* Macaraig 223 SCRA 217 (1993) which states that the NPC is exempt from all taxes, duties, fees, imposts, charges and restrictions of the Republic of the Philippines and its provinces, cities and municipalities, is not applicable to the instant petition. What is being exempted in said decision is NPC per se and such exemption does not extend to the supplier such as the petitioner in the instant case;

7. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

8. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue *vs.* Ledesma, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. *vs.* Commissioner of Internal Revenue, 124 SCRA 1211)**."

In CTA Case No. 7298, respondent alleged the following Special and Affirmative Defenses:

"3. He reiterates and repleads the preceding paragraphs of the Answer as part of his Special and Affirmative Defenses;

4. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;

5. To support its claim, it is imperative for petitioner to prove the following, *viz*:

    a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1(a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code as amended;

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

d. That the input taxes of P68,380,033.19 allegedly paid by the petitioner on its purchases of goods and services for the second, third and fourth quarters of the year 2003 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

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

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits);

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

7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(C*ommissioner of Internal Revenue vs. Ledesma*, 31 SCRA and 95)** [*sic]* and as such, they are looked upon with disfavor **(*Western Minolco Corp. vs. Commissioner of Internal Revenue*, 124 SCRA 1211).**"

On August 24, 2005, petitioner filed a Motion for Consolidation seeking to merge CTA Case Nos. 7229 and 7298. This Court granted said motion on October 12, 2005.

The parties submitted their Joint Stipulation of Facts and Issues on December 22, 2005 which this Court approved on January 3, 2006.

After trial, petitioner submitted its Formal Offer of Evidence on November 23, 2007. This Court admitted all of petitioner's exhibits on January 10, 2008.

Respondent, for his part, failed to present any evidence so that on June 17, 2008 he was declared by the Court to have waived his right to present evidence. After considering the respective memorandum of the parties, filed on July 16, 2008 by the petitioner and on September 4, 2008 by the respondent, the case was submitted for decision on October 9, 2008.

On February 24, 2009, petitioner filed a Motion to Change Caption praying that the caption of the instant case be changed to "*TeaM Energy Corporation (formerly Mirant Pagbilao Corporation and Southern Energy Quezon. Inc.), Petitioner, vs. Commissioner of Internal revenue 2009 [sic]*. On March 24, 2009, this Court granted said prayer *via* a Resolution.[5]

On October 5, 2009, the Court in Division rendered the assailed Decision partially granting the Petition for Review filed by herein respondent Team Energy Corporation (TEC). The dispositive portion of the assailed Decision reads as follows:

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a tax credit certificate to the petitioner in the amount of P70,700,533.01.
>
> **SO ORDERED**.

Aggrieved, the CIR filed a Motion for Partial Reconsideration on October 29, 2009. The same was denied for lack of merit by the Court in Division in its Resolution promulgated on February 23, 2010.[6] The dispositive portion of the assailed Resolution reads as follows:

> **WHEREFORE**, there having no new matters or issues advanced by the respondent in his Motion which may compel this Court to reverse, modify or amend the October 5, 2009 Decision of the CTA *Special First Division*, respondent-CIR's "Motion for Partial Reconsideration" is hereby **DENIED** for lack of merit.
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> **SO ORDERED**. *[initials]*

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[5] *Rollo*, pp. 28-34.
[6] *Supra,* note 2.

Hence, this Petition for Review *En Banc* filed on March 31, 2010.

THE ISSUE

In the present Petition for Review, petitioner raises a lone assignment of error:

> THE HONORABLE FIRST DIVISION ERRED IN PARTIALLY GRANTING RESPONDENT'S JUDICIAL CLAIM FOR REFUND REPRESENTING ITS ALLEGED UNUTILIZED INPUT VALUE-ADDED [*sic*] (VAT) ON DOMESTIC PURCHASES AND IMPORTATIONS OF GOODS AND SERVICES ATTRIBUTABLE TO ZERO-RATED SALES IN THE TOTAL AMOUNT OF P70,700,533.01 FOR ALL QUARTERS OF CALENDAR YEAR 2003.[7]

The CIR's arguments

The CIR argues that TEC failed to comply with the jurisdictional period within which to file its judicial claim for refund of its unutilized input VAT as provided under Section 112 of the 1997 NIRC. First, the CIR maintains that the thirty (30) day-period under Section 112 is jurisdictional, thus, TEC's judicial claim for second, third and fourth quarters of 2003 must be dismissed for lack of jurisdiction. Based on the records of the case, TEC filed its administrative claim for refund on December 17, 2004, while the judicial claims before this Court for the second, third and fourth quarters of the same taxable year was filed on July 22, 2005.[8] Pursuant to the aforementioned provision, the CIR claims that she had until April 16, 2005, from the filing of TEC's administrative claim on December 17, 2004, within which to act on the said claim for refund/tax credit. And in case of full or partial denial, or failure to act

[7] *Rollo*, page 14.
[8] Docketed as CTA Case No. 7298.

thereto, TEC must elevate its claim before this Court within thirty (30) days from April 16, 2005, or until May 17, 2005; otherwise, it will forever lose its right to appeal its case. Apparently, the filing by TEC of its judicial claim with this Court on July 22, 2005 was made after the jurisdictional period provided by law.

Second, the CIR avers that TEC's claim for refund of its unutilized input VAT for the first and second quarters of the taxable year 2003 were filed beyond the two (2)-year period prescribed under Section 112(A) of the 1997 NIRC as interpreted by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation* (Mirant). [9] She asserts that from the close of the taxable quarter when the relevant sales were made, *i.e.,* from March 31, 2003 for the first quarter, and June 30, 2003 for the second quarter, TEC's claim for refund in the administrative and judicial levels should have been filed on March 31, 2005 and June 30, 2005, respectively NOT on April 22, 2005,[10] for the first quarter and on July 22, 2005 [11] as what happened in this case.

The TEC's counter-arguments

Meanwhile, in its Comment/Opposition, TEC counters that the thirty 30-day period prescribed under Section 112(C)[12] of the 1997 NIRC, as amended, is not mandatory but rather directory for the use of the word "may" operates to confer discretion. It claims that so long as the taxpayer institutes the actions

[9] G.R. No. 172129, September 17, 2008, 565 SCRA 154.
[10] Docketed as CTA Case No. 7229.
[11] *Supra*, note 7.
[12] As amended by Republic Act No. 9337.

in the administrative and judicial levels within the 2-year prescriptive period, this Court has jurisdiction to hear and decide the claim for refund/tax credit. It also opposes the CIR's assertion on the application of the Mirant ruling as it will result to injustice considering that it had relied in good faith on the prevailing jurisprudence, the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* (*"Atlas case"*),[13] wherein the 2-year prescriptive period is reckoned not from the close of the taxable quarter but from the filing of the pertinent return, when it filed its claim for refund/tax credit.

THIS COURT'S RULING

The Court *En Banc* finds the petition partly meritorious.

Prescriptive period for filing administrative and judicial claims on VAT refund cases.

On prescription, the Court shall address the two relevant issues present in this case. The first is the reckoning point of the prescriptive period on administrative claim for VAT refund and second is the period within which to file judicial claim for VAT refund.

As early as the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue* [14] (*Intel* case) promulgated on April 27, 2007, the Supreme Court listed down all requisites in the application for refund

[13] G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[14] G.R. No. 166732, April 27, 2007, 522 SCRA 657.

or issuance of tax credit certificate for unutilized input VAT attributable to zero-rated or effectively zero-rated transactions. One of the requisites listed therein is the period within which the claim must be filed, i.e, within two (2) years after the close of the taxable quarter when such sales were made.

The pertinent portion of the *Intel* case provides:

> Under Sections 106 (A)(2)(a)(1) in relation to 112(A) of the Tax Code, a taxpayer engaged in zero-rated or effectively zero-rated transactions may apply for a refund or issuance of a tax credit certificate for input taxes paid attributable to such sales upon complying with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated (like export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; **(3) the claim must be filed within two years after the close of the taxable quarter when such sales were made;** xxx (emphasis ours)

The said ruling was affirmed and applied in the case of *Mirant* [15] where the Supreme Court literally applied the letter of the law and reckoned the two-year prescriptive period from the close of the taxable quarter when the relevant sales were made. This was upheld in the most recent case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[16] (*Aichi*). The pertinent portion of the Supreme Court's ruling in *Aichi* states:

> ***Unutilized input VAT must be claimed within two years after the close of the taxable quarter when the sales were made***

[15] *Supra*, note 9.
[16] G.R. No. 184823, October 6, 2010.

In computing the two-year prescriptive period for claiming a refund/credit of unutilized input VAT, the Second Division of the CTA applied Section 112(A) of the NIRC, which states:

> 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. (Emphasis supplied.)

The CTA *En Banc,* on the other hand, took into consideration Sections 114 and 229 of the NIRC, which read:

> SEC. 114. Return and Payment of Value-Added Tax. –
>
> (A) In General. – Every person liable to pay the value-added tax imposed under this Title shall **file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.
>
> Any person, whose registration has been cancelled in accordance with Section 236, shall file a return

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> and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, That only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.
>
> x x x x
>
> SEC. 229. Recovery of tax erroneously or illegally collected. –
>
> No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied.)

Hence, the CTA *En Banc* ruled that the reckoning of the two-year period for filing a claim for refund/credit of unutilized input VAT should start from the date of payment of tax and not from the close of the taxable quarter when the sales were made.

The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections ge

> **204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes**." xxx (emphasis ours)
>
> xxx xxx xxx
>
> In view of the foregoing, we find that the CTA *En Banc* erroneously applied Sections 114(A) and 229 of the NIRC in computing the two-year prescriptive period for claiming refund/credit of unutilized input VAT. **To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.** (emphasis ours)
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> xxx xxx xxx

Thus, the applicable provision for administrative claim for VAT refund is Section 112 (A) of the 1997 NIRC and the two (2)-year period should be reckoned from the close of the taxable quarter when the sales were made. "The phrase "within two (2) years xxx apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA."[17] Considering that the two (2)-year period pertains to administrative claim and not to judicial claims, respondent's administrative claim for the four quarters of 2003 filed on December 17, 2004 is very well within the period prescribed by law.

With the above cited ruling, the argument that the *Mirant* decision should only be applied prospectively and should not be made to apply to judicial claims for refund of excess input VAT pending with the courts at the time of issuance of the *Mirant* decision has been put to rest. It bears stressing that the *Mirant* ruling was affirmed and applied outright in *Aichi* case

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[17] *Supra*, note 16.

notwithstanding the fact that the claim for refund involved the third quarter of the taxable year 2002 (July 1, 2002 to September 30, 2002) and both its administrative and judicial claims were still pending prior to the promulgation of *Mirant*. Hence, We see no reason why We should depart from the *Aichi* ruling considering the periods involved in the said case were earlier than the periods in the present case, yet, the Supreme Court applied the *Mirant* ruling without any qualifications.

As regards the period within which to file judicial claims, Section 112 (C) of the 1997 NIRC, as amended, finds application. The pertinent portion of which is quoted hereunder:

> **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 Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.
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> xxx xxx xxx xxx

Accordingly, 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. The two (2)-year prescriptive period under Section 112 (A) applies only to administrative claim, "in fact, applying the two-year period to judicial claims would render nugatory Section 112(D)[18] of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D)[19] of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA." [20]

Applying the foregoing considerations, the judicial claim relating to the first quarter was timely filed while for the second, third and fourth quarters of taxable year 2003, it was filed beyond the thirty (30)-day period prescribed by law. The administrative claim was filed on December 17, 2004 which is also presumably the date petitioner submitted supporting documents in the absence of any evidence to the contrary. From December 17, 2004, the CIR has one hundred twenty (120) days or until April 16, 2005 within which to render a decision. No decision was rendered. As a result of the inaction, petitioner has thirty (30) days from April 17, 2005 until May 16, 2005 within which to elevate the case before the CTA. The judicial claim for the first quarter was timely filed

[18] Now Section 112 (C) under RA 9337.
[19] *Ibid.*
[20] *Supra*, note 16.

on April 22, 2005; whereas for the second, third and fourth quarters, judicial claim was filed on July 22, 2005, way beyond the 30-day period to file an appeal. Thus, We are constrained to deny respondent's claim for the second, third and fourth quarters of 2003.

We reiterate the ruling that "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."[21]

All requisites must be complied with in order that claim for input VAT refund attributable to zero-rated sales may be granted.

Having resolved the timeliness of the administrative and judicial claims for the first quarter of 2003, We shall now proceed with the other requisites that must be complied with in order that respondent will be entitled to a refund of its first quarter input VAT attributable to its zero-rated sales, to wit:

1. 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; and
4. that the input taxes were not applied against any output VAT liability.

Upon examination of the records of the case and as correctly found by the Court in Division, the respondent's zero-rated sales for the first quarter amounting to

[21] *Supra,* note 16.

P3,170,914,604.24 were fully substantiated and that no output VAT liability for the first quarter of 2003 was declared in its First Quarter VAT Return.[22] Moreover, the subject claim was neither applied against any output tax nor carried over to the succeeding quarter.[23]

After having complied with the first and fourth requisites, We shall now determine the second and third requirements. In the First Quarter VAT Return, respondent declared an input VAT of P15,085,320.31. However, not all the input VAT declared for the first quarter will be refunded since there were disallowances due to non-observance of substantiation requirements under Sections 110 and 113 of the 1997 NIRC, as implemented by Sections 4.104-1, 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95.

The breakdown of disallowances for the first quarter is as follows:

	Findings	Exh.	1st Quarter
1	Input taxes claimed on importation of goods supported by photocopied IEDs certified by the BOC	W-10	31,864.00
2	Input taxes claimed on importation of goods supported by photocopied IEDs certified by the BOC and photocopied BOC /Bank ORs	W-11	32,702.00
3	Input taxes claimed on local purchases of goods supported by documents other than VAT invoices (e.g. ORs, statements of accounts, delivery receipts, etc.)	W-17	78,134.65
4	Input taxes claimed on local purchases of goods supported by invoices without BIR Permit	W-18	19,063.63
5	Input taxes claimed on local purchases of goods supported	W-19	19,110.00

[22] Exhibit "C".
[23] Assailed Decision, *rollo*, p. 44.

	by NON VAT invoices		
6	Input taxes claimed on local purchases of goods supported by a single invoice erroneously presented twice in the summary lists	W-20	6,763.65
7	Input taxes claimed on local purchases of goods supported by invoices with pre-printed "TIN" only	W-21	14,200.00
8	Input taxes claimed on local purchases of goods supported by invoices without pre-printed "TIN-VAT"	W-23	4,909.09
9	Input taxes claimed on local purchases of goods supported by VAT invoices issued not in the name of the Company	W-24	9,475.46
10	Input taxes claimed on local purchases of goods supported by invoices with pre-printed "TAN-VAT"	W-25	12,136.36
11	Input taxes claimed on local purchases of services supported by documents other than VAT ORs (e.g. invoices)	W-26	180,739.90
12	Erroneously computed input taxes claimed on local purchases of services	W-27	2,473.85
13	Input taxes claimed on local purchases of services supported by ORs without BIR Permit	W-28	23,721.17
14	Input taxes claimed on local purchases of services supported by ORs with pre-printed "TIN" only	W-29	12,822.26
15	Input taxes claimed on local purchases of services supported by ORs stamped "TIN VAT"	W-30	15,813.85
16	Input taxes claimed on purchases of services supported by single OR erroneously presented twice in the summary lists	W-32	283.03
17	Input taxes claimed on local purchases of services supported by VAT ORs issued not in the name of the Company	W-33	5,785.34
18	Input taxes claimed on importation of goods supported by single BOC OR erroneously presented twice in the summary lists	W-37	21,294.00
19	Input taxes claimed on importation of goods supported by	W-38	1,713.00

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	an undated BOC OR issued to "Mirant" only		
20	Input taxes claimed on importation of goods supported by photocopied BOC OR only	W-39	741.00
21	Input taxes claimed on importation of goods not issued in the name of the Company	W-41	57,000.00
22	Input taxes claimed on importation of goods without supporting documents	W-42	108,061.10
23	Input taxes claimed on local purchases of goods which are supported by invoices dated outside the period of claim (i.e. dated within the fourth quarter of 2002 and first quarter of 2004).	W-43	1,676,462.36
24	Input taxes claimed on local purchases of goods which are supported by invoices with pre-printed TIN-V instead of TIN-VAT	W-44	22,675.24
25	Input taxes claimed on local purchases of services which are supported by ORs with pre-printed TIN-V instead of TIN-VAT	W-47	125,089.23
26	Input taxes claimed on local purchases of services which are supported by ORs dated outside the period of claim (i.e. within the fourth quarter of 2002 and first quarter of 2004).	W-48	93,315.73
27	Input taxes claimed on local purchases of services which are supported by ORs with different OR number as reported in the summary lists.	W-49	248,090.00
28	Input taxes claimed on local purchases of services supported by undated ORs.	W-50	378.00
29	Input taxes claimed on importation of goods supported by photocopied IEDs certified by the BOC and original BOC/Bank ORs dated outside period of claim	W-52	203,403.00
30	Input taxes claimed on importation of goods supported by photocopied informal IEDs and original BOC/ Bank ORs dated outside period of claim	W-53	47,311.00
31	Input taxes claimed on importation of goods supported by photocopied IEDs certified by the BOC and photocopied BOC/Bank ORs dated outside period of claim	W-54	11,301.00

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32	Input taxes claimed on importation of goods supported by original Bank OR dated outside period of claim	W-55	3,297.00
33	Input taxes claimed on importation of goods supported by photocopoed IEDs and original BOC/Bank ORs dated outside period of claim	W-56	10,142.00
34	Input taxes claimed on importation of goods supported by photocopied informal IEDs and undated BOC/Bank ORs	W-57	2,067.00
35	Input taxes claimed on local purchases of goods/ services supported by VAT invoices/official receipts which are dated outside period of claim	Annex A., item no.1	253,853.15
36	Without supporting documents	Annex A, item no. 2	567,735.59
		Total	**3,923,927.64**

Although it is true that the CTA is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of ones claims. [24] Thus, from the foregoing disallowances, the total refundable input VAT for the first quarter amounts to P 11,161,392.67, computed as follows:

	Php
Input VAT claim for the first quarter	15,085,320.31
Less: Disallowances	3,923,927.64
Substantiated input VAT	**11,161,392.67**

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *En Banc* is **PARTIALLY GRANTED.** The assailed Decision and Resolution of the First Division dated October 5, 2009 and February 23, 2010,

[24] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 181858, November 24, 2010.

respectively, are hereby **MODIFIED**. Accordingly, petitioner is ORDERED to refund in favor of respondent the reduced amount of Eleven Million One Hundred Sixty One Thousand Three Hundred Ninety Two and Sixty Seven Centavos (P11,161,392.67) representing unutilized input value-added tax (VAT) paid on its domestic purchases of goods and services and importation of goods attributable to its zero-rated sales for the first quarter of taxable year 2003.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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.

ERNESTO D. ACOSTA
Presiding Justice

ANNEX A

TEAM ENERGY CORPORATION
(formerly Mirant Pagbilao Corporation and
Southern Energy Quezon, Inc.)
-vs- COMMISSIONER OF INTERNAL REVENUE
CTA EB 603 (CTA CASE NOS. 7229 & 7298)
OTHER INPUT VAT DISALLOWANCES
FOR THE FIRST TO FOURTH QUARTERS OF 2003

Exhibit	Vendor	Ref No.	Date	1st Qtr
1. Input taxes claimed on local purchases of goods/services supported by VAT invoices/official receipts dated outside period of claim				
a. Per Listing under Exhibit W-3				
JJ-586,587	ALSTOM PHILIPPINES , INC.	5174	11/18/02	9,480.00
JJ-591	ANGEL ARTS CO. INC.	0350	12/20/02	600.00
JJ-621,622	BGM GARDEN AND LANDSCAPING	0951	12/20/02	581.82
JJ-646,647	CATHAY INDUSTRIAL & MILL SUPPLY, INC.	55274	10/03/02	(874.00)
JJ-646,647	CATHAY INDUSTRIAL & MILL SUPPLY, INC.	55274	10/03/02	2,254.00
JJ-715,716	D' SEALING ENTERPRISES	0756	12/10/02	12,500.00
JJ-175,176	FH COMMERCIAL, INC.	16120	12/26/02	1,500.00
JJ-192,193	ILAYA SUPERSTORE	2744	10/09/02	447.27
JJ-215,216	JM BRENTON INDUSTRIES CORP.	1692	12/04/02	10,500.00
KK-217,218	JUNEAU INDUSTRIAL CORP.	60483	12/03/02	939.50
JJ-229,230	JUNNA INDUSTRIAL CORPORATION	53534	12/11/02	304.00
JJ-1980,1981	KARNANI, INC.	10555	07/30/02	1,590.91
JJ-1080,1081	LE DREAV MANUFATURING & TRADING	0232	12/05/02	340.91
JJ-1080,1082	LE DREAV MANUFATURING & TRADING	0236	12/05/02	1,050.00
JJ-1084,1085	LE DREAV MANUFATURING & TRADING	0238	12/09/02	12,272.73
JJ-246,247	LEELENG COMMERCIAL, INC.	011849	10/08/02	590.91
JJ-2155,2156	MACHINE-AID TECH. PHILIPPINES, INC.	7106A	12/27/02	14,565.46
JJ-1118,1119	MEGATECH RESOURCES CORP.	4105	09/03/02	1,818.19
JJ-284,285	METROWIDE COMMODITIES CORPORATION	0424	12/27/02	39,716.37
JJ-1172,1173	MICHELENE'S MART	054	11/08/02	672.73
JJ-1232,1232	MONARK EQUIPMENT CORPORATION	WO000017820	12/26/02	67,622.28
JJ-324,325	PHILCOPY CORPORATION	196216	12/12/02	

				5,610.00
JJ-342,343	PINNACLE PARTS CO.	9203	12/13/02	4,080.00
JJ-1357,1358	RS COMPONENTS LIMITED (PHILS.)	P24165	12/10/02	3,126.41
JJ-444,445	THE TRADERS HOTEL MANILA	114722	12/09/02	263.64
KK-476,477	THRIVE ZEAL INDUSTRIES, INC.	7376	11/15/02	5,454.55
JJ-456,457	TRACKSTAR ENTERPRISES CORP.	11979	11/28/02	5,836.37
JJ-1466-1,1466-2	UNIDYNAMICS PHILIPPINES CORPORATION	001345A	12/15/02	50,309.10
JJ-1566,1567	WEBFORGE PHILIPPINES, INC.	PH4932	11/28/02	700.00
			Total	**253,853.15**

2. *Without supporting documents*

a. Per Listing under Exhibit W-3

CCMS FOOD PRODUCTS	BVA-0556		1,054.55
CHRIS JANN MARKETING INC	18305		1,151.65
CHRIS JANN MARKETING INC	71416		1,178.69
DATA COMPUTER FORMS, INC.	039030		1,297.64
DATA COMPUTER FORMS, INC.	039031		1,297.64
EAGLE STAR INDUSTRIAL SALES CORP.	26575	04/10/03	700.00
MONTE VISTA HOTSPRINGS & CONFERENCE RESORT	LN-17453	05/16/03	3,792.73
MONTE VISTA HOTSPRINGS & CONFERENCE RESORT	MN-17451	05/15/03	3,792.73
SHOPRITE CTR & GEN MDSE	13884		86.18
SHOPRITE CTR & GEN MDSE	14974		173.09
SHOPRITE CTR & GEN MDSE	13878		177.00
SHOPRITE CTR & GEN MDSE	14435		211.36
SHOPRITE CTR & GEN MDSE	14434		254.55
SHOPRITE CTR & GEN MDSE	13871		286.55
SHOPRITE CTR & GEN MDSE	14972		336.36
SHOPRITE CTR & GEN MDSE	14961		400.73
SHOPRITE CTR & GEN MDSE	13880		408.27
SHOPRITE CTR & GEN MDSE	13881		418.18
SHOPRITE CTR & GEN MDSE	13877		528.14
SHOPRITE CTR & GEN MDSE	13870		594.18
SHOPRITE CTR & GEN MDSE	14968		597.36
SHOPRITE CTR & GEN MDSE	14853		932.73

SHOPRITE CTR & GEN MDSE	14438	941.42
SHOPRITE CTR & GEN MDSE	13889	1,012.36
SHOPRITE CTR & GEN MDSE	14960	1,110.18
SHOPRITE CTR & GEN MDSE	14856	1,204.14
SHOPRITE CTR & GEN MDSE	14959	1,246.09
SHOPRITE CTR & GEN MDSE	14973	1,377.27
SHOPRITE CTR & GEN MDSE	13879	1,456.82
SHOPRITE CTR & GEN MDSE	13882	1,629.55
SHOPRITE CTR & GEN MDSE	13883	1,709.55
SHOPRITE CTR & GEN MDSE	14971	2,004.68
SHOPRITE CTR & GEN MDSE	14437	2,035.27
SHOPRITE CTR & GEN MDSE	13876	2,667.60
SHOPRITE CTR & GEN MDSE	14857	2,718.82
ST. PANCRATIUS CONCRETE PRODUCTS	1048	539.55
ST. PANCRATIUS CONCRETE PRODUCTS	PAG-0368	4,332.50
SUNLIFE BOOKSTORE	19666	159.09
	Subtotal	**45,815.20**

c. Per Listing under Exhibit W-5

ASIA CORROSION SERVICES, INC.	1583	20,596.91
ASIA OVERSEAS TRANSPORT CO., INC.	55879	90.91
ASIA OVERSEAS TRANSPORT CO., INC.	55879	1,311.61
BERMONT EXPRESS INTERNATIONAL INC.	6159	19.31
BERMONT EXPRESS INTERNATIONAL INC.	6159	75.00
BEST HOTEL MANAGEMENT, INC.	51696645	47,190.00
BETHRO TRADING	1985	134.55
CARGOHAUS, INC.	836340	20.66
CARGOHAUS, INC.	854476	82.91
DELSAN OFFICE SYSTEMS CORPORATION	32629	695.46
DUSIT HOTEL NIKKO	257313	849.77
FUJI XEROX PHILIPPINES, INC.	5628	511.64
FUJI XEROX PHILIPPINES, INC.	10035	912.27
FUJI XEROX PHILIPPINES, INC.	11428	1,038.91
HORSEPOWER BUILDER & INDUSTRIAL	619 / 0002	

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SUPPLY			4,545.46
HORSEPOWER BUILDER & INDUSTRIAL SUPPLY	0630		22,727.28
KPI ELEVATORS, INC.	4531		11,596.82
KPI ELEVATORS, INC.	4353		11,596.82
KPI ELEVATORS, INC.	4355		11,596.82
NEW WORLD INTERNATIONAL DEVELOPMENT PHILS. INC	56153		339.94
NEW WORLD INTERNATIONAL DEVELOPMENT PHILS. INC	55603		339.94
NEW WORLD INTERNATIONAL DEVELOPMENT PHILS. INC	55647		439.95
PAC-ATLANTIC LINES (PHILS), INC.	0109046		418.19
PENN REFRIGERATION & AIRCONDITION	2533		3,407.09
PEOPLE'S AIR CARGO & WAREHOUSING CO., INC	153113/1466		854.94
PEOPLE'S AIR CARGO & WAREHOUSING CO., INC	1230		19.34
PHILIPPINE LONG DISTANCE TELEPHONE CO	0044	12/17/02	4,418.76
PHIL-NIPPON CARGO EXPRESS CORP.	1244	03/12/03	531.90
PHIL-NIPPON CARGO EXPRESS CORP.	1244	03/12/03	542.86
		Subtotal	**146,906.02**

e. Per Listing under Exhibit W-12

BUREAU OF CUSTOMS	97954543		167.00
BUREAU OF CUSTOMS	LBP 12004257		32,448.00
BUREAU OF CUSTOMS	1.03E+08		6,466.00
		Subtotal	**39,081.00**

f. Per Listing under Exhibit W-13

BUREAU OF CUSTOMS	1230		997.00
		Subtotal	**997.00**

i. Per Listing under Exhibit W-35		435,632.97
Less: Input VAT per Additional Documents Submitted		
first set of documents		(90,078.40)
second set of documents		(10,618.20)
	Subtotal	**334,936.37**
	Total	**567,735.59**