Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

CE LUZON GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

CTA CASE NO. 7890

For: Refund or Issuance of a Tax Credit Certificate

-versus-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 2 9 2011 11:30 A.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on March 30, 2009 by CE Luzon Geothermal Power Company, Inc. as petitioner against the Commissioner of Internal Revenue (CIR), as respondent.

The said petition is an appeal from respondent CIR's inaction on petitioner's administrative claim for tax refund or issuance of tax credit certificate in the amount of P10,895,847.59, representing alleged unutilized input value-added tax (VAT) paid on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods attributable to its zero-rated sales to the Philippine National Oil Company–Energy Development Corporation (PNOC-EDC) for the taxable year 2007.

Petitioner CE Luzon Geothermal Power Company, Inc. is a corporation duly organized and existing under Philippine laws, with its principal place of business at Ormoc City, Leyte. It is registered with the Bureau of Internal Revenue (BIR), as a VAT taxpayer, with Taxpayer's Identification No.(TIN) 003-924-356-000.

Petitioner is engaged in the business of power generation through geothermal energy and the subsequent sale thereof to PNOC-EDC pursuant to an Energy Conversion Agreement (ECA). It is accredited and certified as such by the Department of Energy (DOE) as evidenced by its DOE Certificate of Accreditation (OSAC 94-12) issued on June 15, 1994.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed with the BIR its Original Quarterly VAT Returns for the first to fourth quarters of 2007 on the following dates:

Taxable Quarter	Date of Filing of Original Return
First	April 23, 2007
Second	July 25, 2007
Third	October 25, 2007
Fourth	January 24, 2008

On February 12, 2009, petitioner filed an administrative claim for the refund or issuance of a tax credit certificate (TCC) for its unutilized input VAT with the Large Taxpayers Audit and Investigation Division I of the Bureau of Internal Revenue, in the total amount of P10,895,847.59 for the four quarters of the year 2007.

Due to respondent's inaction and in order to suspend the running of the two-year prescriptive period within which to file a judicial claim for the refund/issuance of a tax credit certificate, petitioner filed with this Court a Petition for Review on March 30, 2009, docketed as CTA Case No. 7890.

On May 8, 2009, respondent filed her Answer interposing the following defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).
>
> 5. The amount of P10,895,847.59 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of non-capital and services, services rendered by non-residents, importation of non-capital and domestic purchases of capital goods which are attributable to its zero-rated sales from the period first quarter to the 4th quarter of the year 2007 is not properly documented.
>
> 6. Petitioner must prove that it has complied with the provisions of Section 112 (A) and (D) of the National Internal Revenue Code of 1997 (1997 Tax Code) on the prescriptive period for claiming tax refund/credit.
>
> 7. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma, which is a condition sine qua non prior to the filing of judicial claim. Further, Section 112 (D) of the 1997 Tax Code, as amended, requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

8. Petitioner must prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations 7-95.

   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 (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670).

   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).

SPECIAL AND AFFIRMATIVE DEFENSE

The Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of the petitioner to comply with the provision of Section 112 (D) of the 1997 Tax Code which provides, thus:

> 'SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (D) *Period within which refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial 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.**' (Emphasis supplied)
>
> As stated in the petition, petitioner filed the administrative claim for refund with respondent on February 12, 2009. Subsequently, on March 30, 2009, the instant petition was filed. Obviously the 120 days given to the Commissioner to decide on the claim has not yet lapsed when the petition was filed. The petition was prematurely filed, hence, it must be dismissed for lack of jurisdiction."

On June 5, 2009, petitioner filed its Reply (Re: Respondent's Answer dated 8 May 2009).

On August 27, 2009, this Court commissioned Ms. Annalyn B. Artuz as an Independent Certified Public Accountant (CPA) upon motion of petitioner, pursuant to Rules 12 and 13 of the Revised Rules of the Court of Tax Appeals.

During trial, petitioner presented as witnesses the Court-commissioned Independent CPA, Ms. Annalyn B. Artuz, and petitioner's Head of Tax Services, Ms. Leilah Yasmin E. Alpad. Thereafter, on July 23, 2010, petitioner filed its Formal Offer of Evidence submitting Exhibits "A" to "R", and "T" to "Y," inclusive of sub-markings; which this Court admitted in the Resolutions dated September 3, 2010 and November 17, 2010. On

September 23, 2010, petitioner filed its Supplemental Formal Offer of Evidence submitting Exhibits "R-6-L-2Q-00498" to "R-6-L-2Q-00838"; which this Court admitted in the Resolution dated November 17, 2010.

The documentary evidence formally offered are as follows:

Exhibits	Description
A	Amended Articles of Incorporation of CE Luzon Geothermal Power Company, Inc. (Petitioner) duly registered with the Securities and Exchange Commission under SEC Reg. No. ASO94-004356
B	Certificate of Accreditation (OSAC 94-12) of Petitioner issued by the Department of Energy (DOE) on June 15, 1994
C	Certificate of Registration of Petitioner issued by the Bureau of Internal Revenue (BIR)
D	Energy Conversion Agreement between Petitioner and PNOC-EDC (180 MW Power Plant – Mahanagdong Agreement between PNOC-EDC and CE Philippines Ltd. and California Energy Company, Inc. dated September 18, 1993)
E	Petitioner's unamended Quarterly VAT Return for the 1st Quarter of calendar year (CY) 2007 filed on April 23, 2007 via the BIR's electronic filing and payment system (EFPS)
E-1	Petitioner's Amended Quarterly VAT Return for the 1st Quarter of CY 2007 filed on April 30, 2007 via the BIR's EFPS
E-2	Petitioner's Amended Quarterly VAT Return for the 1st Quarter of CY 2007 filed on July 31, 2007 via the BIR's EFPS

E-3	Petitioner's Amended Quarterly VAT Return for the 1st Quarter of CY 2007 filed on January 20, 2009 via the BIR's EFPS
F	Petitioner's unamended Quarterly VAT Return for the 2nd Quarter of CY 2007 filed on July 25, 2007 via the BIR's EFPS
F-1	Petitioner's Amended Quarterly VAT Return for the 2nd Quarter of CY 2007 filed on July 30, 2007 via the BIR's EFPS
F-2	Petitioner's Amended Quarterly VAT Return for the 2nd Quarter of CY 2007 filed on January 20, 2009 via the BIR's EFPS
G	Petitioner's unamended Quarterly VAT Return for the 3rd Quarter of CY 2007 filed on October 25, 2007 via the BIR's EFPS
G-1	Petitioner's Amended Quarterly VAT Return for the 3rd Quarter of CY 2007 filed on December 13, 2007 via the BIR's EFPS
G-2	Petitioner's Amended Quarterly VAT Return for the 3rd Quarter of CY 2007 filed on January 20, 2009 via the BIR's EFPS
H	Petitioner's unamended Quarterly VAT Return for the 4th Quarter of CY 2007 filed on January 24, 2008 via the BIR's EFPS
H-1	Petitioner's Amended Quarterly VAT Return for the 4th Quarter of CY 2007 filed on January 30, 2008 via the BIR's EFPS
H-2	Petitioner's Amended Quarterly VAT Return for the 4th Quarter of CY 2007 filed on February 22, 2008 via the BIR's EFPS

H-3	Petitioner's Amended Quarterly VAT Return for the 4^{th} Quarter of CY 2007 filed on January 20, 2009 via the BIR's EFPS
I	Petitioner's Amended Quarterly VAT Return for the 1^{st} Quarter of CY 2008 filed on February 24, 2009 via the BIR's EFPS
J	Petitioner's Amended Quarterly VAT Return for the 2^{nd} Quarter of CY 2008 filed on February 24, 2009 via the BIR's EFPS
K	Petitioner's Amended Quarterly VAT Return for the 3^{rd} Quarter of CY 2008 filed on February 24, 2009 via the BIR's EFPS
L	Petitioner's Amended Quarterly VAT Return for the 4^{th} Quarter of CY 2008 filed on February 24, 2009 via the BIR's EFPS
L-1	Petitioner's Amended Quarterly VAT Return for the 4^{th} Quarter of CY 2008 filed on June 22, 2009 via the BIR's EFPS
M	Petitioner's administrative claim for refund of or issuance of a tax credit certificate (TCC) for its unutilized input VAT for the period from the 1^{st} quarter to the 4^{th} quarter of CY 2007 dated February 11, 2009 and filed with the BIR National Office, Large Taxpayers Audit and Investigation Division I (BIR LTAID I) on February 12, 2009
M-1	Signature of Ms. Trinity S. Gatuz on page 2 of Petitioner's administrative claim
N	Petitioner's Amended Quarterly VAT Return for the 4^{th} quarter of CY 2006 filed on July 31, 2007
O	Petitioner's administrative claim for refund of its unutilized input VAT for the period from the 1^{st} quarter to the 4^{th} quarter of CY 2006 dated September 10,

	2007 and filed with the BIR LTAID I on September 11, 2007
P	Independent CPA Report on Claims of CE Luzon Geothermal Power Company, Inc. for Refund or Issuance of Tax Credit Certificate (TCC) Representing Unutilized Input Value-Added Tax on Purchases Attributable to Zero-Rated Sales of Generated Power Pursuant to R.A. No. 9136 or the EPIRA Law, Court of Tax Appeals Case No. 7738 dated November 10, 2008
Q	Sworn Statement of Ms. Leilah Yasmin E. Alpad to Questions Propounded by Atty. Cielito May T. Velasquez dated July 29, 2009
Q-1	Signature of Ms. Leilah Yasmin E. Alpad
R	Independent CPA Report on Claim for Refund of or Issuance of Tax Credit Certificate (TCC) Representing Unutilized Input Value Added Tax (VAT) on Domestic Purchases of Non-capital Goods and Services, Importation of Non-Capital Goods and Services Rendered by Non-Residents Attributable to Zero-Rated Sales of Generated Power Pursuant to Republic Act (RA) No. 9136 or the Electric Power Industry Reform Act (EPIRA) Law of 2001 for the Period from January 1 to December 31, 2007, Court of Tax Appeals Case No. 7890 dated September 26, 2009
R-1	Summary of Sales Invoices of Petitioner for CY 2007
R-2.1 to R-2.8	Sales Invoices of Petitioner issued to PNOC-EDC for CY 2007
R-3	Summary of Official Receipts issued by Petitioner to PNOC-EDC for CY 2007
R-4.1 to R-4.27	Official Receipts of Petitioner issued to PNOC-EDC for CY 2007
R-5-1Q.1 to	Schedule of Petitioner's Input VAT for CY 2007

R-5-1Q.3	
R-5-2Q.1 to R-5-2Q.3	
R-5-3Q.1 to R-5-3Q.2	
R-5-4Q.1 to R-5-4Q.2	
R-6-L-1Q.00001 to R-6-L-1Q.01026	Documents Supporting Petitioner's Claim for Input Tax Credits for the Calendar Year 2007
R-6-L-2Q.00001 to R-6-L-2Q.00497	
R-6-L-3Q.00001 to R-6-L-3Q.00447	
R-6-L-4Q.00001 to R-6-L-4Q.00089	
R-7-1Q.1 to R-7-1Q.9	Petitioner's Trial Balance for CY 2007
R-7-2Q.1 to R-7-2Q.10	
R-7-3Q.1 to R-7-3Q.10	
R-7-4Q.1 to R-7-4Q.10	
R-7-1.1 to R-7-1.53	Petitioner's General Ledger for CY 2007
R-7-2.1 to R-7-2.12	

R-8.1 to R-8.3	Petitioner's Final Amended Quarterly VAT Return for the 1st Quarter of CY 2007
R-9	Signature of Ms. Annalyn B. Artuz
T	Sworn Statement of Ms. Annalyn B. Artuz to Questions Propounded by Atty. Cielito May T. Velasquez dated October 14, 2009
T-1	Signature of Ms. Annalyn B. Artuz
U	Supplemental Sworn Statement of Ms. Leilah Yasmin E. Alpad to Questions Propounded by Atty. Cielito May T. Velasquez dated November 13, 2009
U-1	Signature of Ms. Leilah Yasmin E. Alpad
V	Petitioner's Monthly Remittance Return of Value Added Tax and Other Percentage Taxes Withheld for the Month of September filed on October 10, 2007 via the BIR's EFPS
W	Petitioner's Monthly Remittance Return of Value Added Tax and Other Percentage Taxes Withheld for the Month of November filed on December 09, 2007 via the BIR's EFPS
X	Certificate of Completion (05-10-GXT13348-13367) of Petitioner issued by the Energy Regulatory Commission (ERC) on October 5, 2005
Y	Supplemental Sworn Statement of Ms. Leilah Yasmin E. Alpad to Questions Propounded by Atty. Cielito May T. Velasquez dated May 14, 2010
Y-1	Signature of Ms. Leilah Yasmin E. Alpad

As to respondent, upon oral motion of petitioner's counsel, the right of respondent to present evidence was deemed waived due to the absence of respondent's counsel, Atty. Leo D. Mauricio, during the March 21, 2011 hearing for the initial presentation of respondent's evidence and considering that this case was reset for the last time during the hearing on February 14, 2011.

Thus, the Court directed petitioner to file its Memorandum within thirty (30) days from March 21, 2011; while respondent was given a period of twenty (20) days to file her Memorandum from receipt of the Resolution dated March 21, 2011.

The case was submitted for decision on April 27, 2011, taking into consideration petitioner's Memorandum filed on April 19, 2011 and the Report dated April 26, 2011 of the Records Division that no memorandum has been filed by respondent.

The parties' jointly stipulated issues submitted for this Court's resolution, are as follows:

> "15. Whether or not Petitioner's unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2007 amounting to P10,895,847.59 is substantiated by documentary evidence in the form of invoices and official receipts.
>
> 16. Whether or not Petitioner's unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2007 amounting to P10,895,847.59 was applied or credited

against any output VAT of the Petitioner in the subsequent quarter or quarters.

17. Whether or not Petitioner is entitled to a refund of and/or issuance of a TCC for its unutilized input VAT amounting to P10,895,847.59, which input VAT: (i) arose from Petitioner's domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods; and (ii) are all attributable to Petitioner's zero-rated sales of generated power to EDC.

18. Whether or not this Honorable Court has jurisdiction to act on the instant Petition for Review."

The foregoing issues can be summarized as follows:

"Whether or not petitioner is entitled to a refund or issuance of TCC for its unutilized input VAT payments amounting to P10,895,847.59, arising from its domestic purchases of goods and services, services rendered by non-residents, and importation of non-capital goods attributable to its zero-rated sales for the four taxable quarters of 2007."

This Court will first address the issue pertaining to the jurisdiction of this Court.

The jurisdiction of this Court is defined under Republic Act No. 1125, as amended by Republic Act No. 9282. Sections 7(a) (2) and 11 of Republic Act No. 1125, as amended, provide:

"SEC. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal as herein provided:

xxx xxx xxx

(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.**

xxx xxx xxx

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or **inaction** of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.** xxx" *(Emphasis supplied)*

Pursuant to the above provisions, this Court has appellate jurisdiction over a Petition for Review filed by any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, within thirty (30) days from receipt of the said decision or ruling, or in case of inaction of the Commissioner of Internal Revenue, from the expiration of the period fixed by law to act thereon.

The specific provision of law governing the period to file claims for refund or tax credit of input VAT is Section 112 of the NIRC of 1997, as amended by Republic Act No. 9337, which is herein quoted, to wit:

> "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: 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 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**." (*Emphasis supplied*)

Based on the foregoing, petitioner must comply with the following requisites to be entitled to a refund or tax credit of input taxes attributable to zero-rated or effectively zero-rated sales:

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 sales or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

Section 112(A) of the NIRC of 1997 requires that the taxpayer's application for refund or tax credit of unutilized or excess creditable input VAT arising from its domestic purchases of goods and services and importation of non-capital goods, which are attributable to its zero-rated or effectively zero-rated sales, must be made within two years after the close of the taxable quarter when such sales were made.

In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*, the Supreme Court aptly stated that:

"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, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed." *(Emphasis supplied)*

Thus, the reckoning of the two-year prescriptive period for the filing of a claim for refund/credit of input VAT on zero-rated sales is not from the date of filing of the corresponding quarterly VAT return and payment of the tax but **from the close of the taxable** quarter when the pertinent sale or transaction was made.

The instant claim involves input VAT on zero-rated sales incurred during the four quarters of the taxable year 2007. Petitioner had until the following dates to file its administrative claim for refund or issuance of a tax credit certificate:

Year 2007	Close of Taxable Quarter	Last Day for Filing of Administrative Claim
1st Qtr	March 31, 2007	March 31, 2009
2nd Qtr	June 30, 2007	June 30, 2009
3rd Qtr	September 30, 2007	September 30, 2009
4th Qtr	December 31, 2007	December 31, 2009

Records show that petitioner filed its administrative claim on February 12, 2009. Clearly, petitioner's administrative claim for the four quarters of 2007 was filed well within the two-year prescriptive period.

As to whether petitioner's judicial claim for tax refund/credit was filed in accordance with Section 112(C) of the NIRC of 1997, as amended, which governs claims for refund or tax credit of input VAT, records however show that petitioner filed on **March 30, 2009** the instant Petition for Review, or seventy-four (74) days prior to the expiration of the 120-day period.

In applying Section 112(C) of the NIRC of 1997, as amended, which was formerly Section 112(D) of R.A. No. 8424 prior to its amendment by R.A. No. 9337, the Supreme Court in the more recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi case)* held in this wise:

> "Section 112 (D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
>
> In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales.' The phrase 'within two (2) years ... apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) 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) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**

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

In fine, **the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.**" (*Emphasis supplied*)

Following the *Aichi case*, the 120-day period mentioned in Section 112(C) of the NIRC of 1997, as amended, is crucial in filing an appeal with this Court.

It is undisputed that petitioner filed on February 12, 2009 its administrative claim for refund or issuance of a tax credit certificate together with the supporting documents before the BIR. Counting from February 12, 2009, respondent had until June 12, 2009 to act upon the said administrative claim, but petitioner filed on **March 30, 2009** the instant Petition for Review, or seventy-four (74) days prior to the expiration of the 120-day period. In the *Aichi case,* the filing of the Petition for Review without waiting for the expiration of the aforesaid 120-day period is fatal. Accordingly, this Court has not acquired jurisdiction over the instant Petition for Review.

The right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and it may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.

In fine, this Court deems it no longer necessary to resolve the other stipulated issues.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

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

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division