REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MAIBARARA GEOTHERMAL, INC.,
Petitioner,

CTA CASE NOS. 8871, 8937, 8999 & 9042

-versus-

Members:

BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 02 2017
4:20 p.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

Before this Court are the consolidated cases filed by Maibarara Geothermal, Inc. to seek the refund of the amount of ₱9,165,912.74, allegedly representing unutilized input value-added tax (VAT) for the four quarters of taxable year 2012, broken down as follows:

CTA CASE NO.	YEAR 2012	INPUT VAT CLAIM
8871	1st Quarter	₱ 1,165,619.50[1]
8937	2nd Quarter	699,508.85[2]
8999	3rd Quarter	3,526,851.38[3]
9042	4th Quarter	3,773,933.01[4]
TOTAL		₱9,165,912.74

[1] Petition for Review, CTA Case No. 8871, docket, vol. I, p. 16.
[2] Petition for Review, CTA Case No. 8937, docket, vol. I, p. 16.
[3] Petition for Review, CTA Case No. 8999, docket, p. 27.
[4] Petition for Review, CTA Case No. 9042, docket, p. 20.

THE FACTS

Petitioner Maibarara Geothermal, Inc. is a corporation duly registered under the laws of the Philippines, with address at 7th Floor, JMT Building, ADB Avenue, Ortigas Center, Pasig City.[5]

Petitioner is duly registered with the Securities and Exchange Commission (SEC) with Company Registration No. CS201012659.[6] Its primary purpose is to "explore, extract, exploit, or otherwise obtain from the earth, store, hold, use, treat, reinject, prepare for market, buy, sell, distribute, exchange and transport geothermal steam and brine, and all their products, compounds and derivaties; to convert geothermal energy into electric power and to build, construct, erect, own, equip, install, operate, maintain, sell, lease power generation plants, facilities, machineries, equipment that utilize, geothermal energy; to sell, trade, transmit or distribute any electricity generated by such power plants; to utilize geothermal steam and brine for industrial, agricultural, health, tourism, mineral recovery and processing and other similar direct and indirect uses of geothermal steam and brine."[7]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who is vested by law with power to decide, approve, and grant a refund of internal revenue taxes or issue a tax credit certificate. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On March 31, 2014[8], June 30, 2014[9], September 29, 2014[10], and December 19, 2014[11], petitioner filed with the BIR Revenue District Office (RDO) No. 43A in Pasig City its administrative claims for refund involving its alleged unutilized input VAT for the 1st, 2nd, 3rd, and 4th quarters of 2012, attributable to zero-rated sales, in the following amounts:

TAXABLE PERIOD (2012)	DATE OF FILING THE ADMINISTRATIVE CLAIM FOR REFUND	AMOUNT CLAIMED FOR REFUND
1st Quarter	March 31, 2014	₱ 1,165,619.50
2nd Quarter	June 30, 2014	699,508.85
3rd Quarter	September 29, 2014	3,526,851.38
4th Quarter	December 19, 2014	3,773,933.01

[5] Par. A.1., Facts, Pre-Trial Order, CTA Case No. 8871, docket, vol. IV, p. 1635.
[6] Exhibit "P-1", CTA Case No. 8871, docket, vol. V, p. 1980.
[7] Exhibit "P-2", CTA Case No. 8871, docket, vol. V, p. 1981.
[8] Exhibits "P-9" to "P-10-b", CTA Case No. 8871, docket, vol. V, pp. 2015-2020.
[9] Exhibits "P-11" to "P-12-b", CTA Case No. 8871, docket, vol. V, pp. 2021-2027.
[10] Exhibits "P-13" to "P-14-b", CTA Case No. 8871, docket, vol. V, pp. 2028-2034.
[11] Exhibits "P-15" to "P-16", CTA Case No. 8871, docket, vol. V, pp. 2035-2040.

TOTAL	₱9,165,912.74

Alleging that respondent failed to act on the foregoing applications for refund within the 120-day period provided by law,[12] petitioner filed four (4) separate Petitions for Review on August 18, 2014, on November 26, 2014, on February 25, 2015, and on May 13, 2015, seeking the refund of its alleged unutilized input VAT as per its Quarterly VAT Returns for the 1st, 2nd, 3rd, and 4th quarters of taxable year 2012, respectively.

Respondent filed the respective Answers to the Petitions for Review on October 20, 2014[13], on January 21, 2015[14], on March 20, 2015[15], and on June 17, 2015[16], interposing the following special and affirmative defenses:

CTA Case Nos. 8871 and 8999:

"6. All claims for refund are governed by one same rule: that respondent still has to investigate and ascertain the veracity of the claim. As the Supreme Court stated in *Commissioner of Internal Revenue vs. Manila Electric Company, G.R. No. 121666, October 10, 2007,* 'A corporate taxpayer's option to avail of tax credit does not, however, mean that it is *ipso facto* granted.' Hence, petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.

7. In order to validly claim for refund or issuance tax credit certificate, it is imperative for petitioner to prove its compliance with the requirements laid down by the NIRC of 1997, as amended, and its implementing rules and regulations. Section 112 (A) of the NIRC of 1997, as amended, provides:

xxx xxx xxx

8. Hence, the aforementioned provision lays down the criteria governing claims for refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales:

a) the taxpayer is engaged in zero-rated or effectively zero-rated sales;
b) the input taxes are due or paid;
c) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

[12] CTA Case No. 8871, docket, vol. VI, pp. 2678-2680.
[13] CTA Case No. 8871, docket, vol. I, pp. 90-95.
[14] CTA Case No. 8937, docket, vol. I, pp. 90-93.
[15] CTA Case No. 8999, docket, vol. I, pp. 103-108.
[16] CTA Case No. 9042, docket, pp. 85-88.

d) the input taxes have not been applied against output taxes during and in the succeeding quarters;
e) the claim for refund is filed within the two-year prescriptive period.

9. In *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, G.R. No. 172129, September 12, 2008,* the Supreme Court held that the reckoning of the two-year prescriptive period for filing a claim for input VAT refund under Section 112(A) of the NIRC of 1997, as amended, should start from the close of the taxable quarter when the relevant sales were made pertaininig to the input VAT regardless of whether the said tax was paid or not. Petitioner must prove that it filed its administrative claim for refund for the 1st quarter of taxable year 2012 within the two-year prescriptive period.

10. As to the question of whether petitioner filed its judicial claim within the prescriptive period, Section 112(C) of the NIRC of 1997, as amended provides:

xxx xxx xxx

11. Section 112(D) of the NIRC clearly provides that the CIR has 120 days from the date of submission of the complete documents in support of the application for tax refund 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.

12. In *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue, G.R. Nos. 193301 and 194637, March 11, 2013,* the Supreme Court summarized the rules for the correct determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the NIRC, to wit:

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

2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of

the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative period may be considered to be denied by inaction;

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

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

13. A tax credit or refund, like tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit, in this case VAT input tax, by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's renevue regulations under which such privilege of credit or refund is accorded (*Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 180173, April 6, 2011*)."

Similarly, for CTA Case Nos. 8937 and 9042, respondent invoked Section 112(D) of the NIRC of 1997, the ruling in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*[17], and the doctrine that tax refund, like tax exemption, is strictly construed against the taxpayer. These arguments were raised by respondent in addition to the following affirmative defenses:

CTA Case Nos. 8937 and 9042:

"xxx in order to validly claim for refund, it is imperative for petitioner to prove its compliance with the requirements laid down by the NIRC of 1997, as amended, and its implementing rules and regulations, to wit:

a) The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing rules and regulations;

b) The invoicing and accounting requirements for VAT-registered persons, as well as the filing and

[17] G.R. No. 172129, September 12, 2008.

payment of VAT pursuant to the provisions of Section 113 and 114 of the 1997 NIRC, as amended. xxx

c) The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112 (C) of the 1997 NIRC, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of the such claim;

d) That the input taxes of xxx allegedly representing unutilized input VAT from its purchases of goods and services from VAT registered suppliers were:

   i. paid by the petitioner;
   ii. attributable to its zero-rated or effectively zero-rated sales; and
   iii. such input taxes paid should not have been applied against any output tax.

e) That petitioner's claim for tax credit/refund allegedly representing unutilized input VAT in the amount of xxx was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112(A) of the 1997 NIRC, as amended."

Both petitioner and respondent filed their respective Pre-Trial Briefs for CTA Case No. 8871 on November 21, 2014.[18]

On November 27, 2014, the pre-trial conference was held for CTA Case No. 8871[19] and the parties subsequently filed their Joint Stipulations of Facts and Issues[20] on December 4, 2014. The Court later issued the Pre-Trial Order[21] on January 12, 2015.

As for CTA Case No. 8937, respondent's Pre-Trial Brief and petitioner's Pre-Trial Brief were filed on February 18, 2015[22] and on February

[18] CTA Case No. 8871, docket, vol. I, pp. 125-133 and 478-480.
[19] CTA Case No. 8871, docket, vol. II, p. 810.
[20] CTA Case No. 8871, docket, vol. II, pp. 813-817.
[21] CTA Case No. 8871, docket, vol. II, pp. 822-827.
[22] CTA Case No. 8937, docket, vol. I, pp. 99-102.

26, 2015[23], respectively, and a pre-trial conference was held on March 3, 2015.[24]

On March 12, 2015, petitioner filed for CTA Case No. 8871 a Motion to Consolidate[25] CTA Case Nos. 8871, 8937, and 8999; which was later granted in a Resolution[26] dated March 20, 2015.

On May 29, 2015, petitioner filed for CTA Case Nos. 8871, 8937, and 8999 a Motion to Consolidate CTA Case Nos. 8871, 8937, 8999, and 9042 with Motion to Defer Pre-Trial Conference set on June 9, 2015.[27]

On June 5, 2015, respondent's Pre-Trial Brief was filed for CTA Case Nos. 8871, 8937, and 8999.[28]

The Court later issued a Resolution[29] on June 18, 2015, granting petitioner's Motion to Defer the Pre-Trial Conference and resetting the same to August 11, 2015. The Court also noted that respondent agreed to the consolidation of CTA Case No. 9042 with CTA Case Nos. 8871, 8937, and 8999.

On July 2, 2015, the Court granted the consolidation of CTA Case Nos. 9042, 8999, and 8937 with CTA Case No. 8871, the case bearing the lowest docket number.[30]

Petitioner filed the Consolidated Pre-Trial Brief[31] for CTA Case Nos. 8871, 8937, 8999, and 9042 on August 5, 2015. Meanwhile, respondent's Pre-Trial Brief[32] was filed on August 6, 2015.

The pre-trial conference was held for CTA Case Nos. 8871, 8937, 8999, and 9042 on August 11, 2015.[33] Subsequently, the parties filed their Consolidated Joint Stipulation of Facts and Issues[34] on August 24, 2015.

The Court later issued the Pre-Trial Order for CTA Case Nos. 8871, 8937, 8999, and 9042 on September 21, 2015.[35]

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[23] CTA Case No. 8937, docket, vol. I, pp. 103-111.
[24] CTA Case No. 8937, docket, vol. II, p. 893.
[25] CTA Case No. 8871, docket, vol. II, pp. 840-844.
[26] CTA Case No. 8871, docket, vol. II, pp. 847-848.
[27] CTA Case No. 8871 docket, vol. II, pp. 858-861.
[28] CTA Case No. 8871, docket, vol. II, pp. 863-865.
[29] CTA Case No. 8871, docket, vol. II, p. 868.
[30] CTA Case No. 8871, docket, vol. II, pp. 873-874.
[31] CTA Case No. 8871, docket, vol. III, pp. 996-1006.
[32] CTA Case No. 8871, docket, vol. IV, pp. 1595-1597.
[33] CTA Case No. 8871, docket, vol. IV, p. 1611.
[34] CTA Case No. 8871, docket, vol. IV, pp. 1613-1617.
[35] CTA Case No. 8871, docket, vol. IV, pp. 1634-1639.

During trial, petitioner presented the following witnesses: Mr. Helenio B. Seraspi, Accounting Manager[36]; Atty. Clifford Chua, Court-commissioned Independent Certified Public Accountant (CPA)[37]; Atty. Dan Dyonne Eminiano Gonzales, Legal Officer[38]; and Maria Victoria M. Olivar, Geosciences Manager[39].

Petitioner then filed its Formal Offer of Evidence[40] on May 4, 2016.

In the Resolution[41] dated May 30, 2016, the Court admitted petitioner's Exhibits "P-1" to "P-334", except exhibits "P-79", "P-80", "P-81", "P-83" to "P-90", "P-136", "P-138", "P-144", "P-146", "P-148", "P-162", "P-192", "P-193", "P-213", "P-230", "P-272", "P-275", "P-279", "P-281" to "P-283", "P-285", "P-286", "P-289", "P-290", "P-292", "P-293", "P-294", and "P-295"; which were denied admission for failure to submit the same to the Court.

On the other hand, respondent presented Revenue Officer Madonna D. Bognot as its lone witness during the hearing held on June 21, 2016. On the same hearing, respondent made an oral offer in open court of his documentary evidence; which were admitted by the Court.[42]

The consolidated cases were declared submitted for decision on August 31, 2016,[43] after both petitioner[44] and respondent[45] filed their respective Memorandum on August 22, 2016.

THE ISSUE

The lone issue stipulated by the parties for this Court's disposition is:[46]

> "Whether or not petitioner is entitled to the refund of the unutilized input VAT in the amount of Nine Million One Hundred Sixty Five Thousand Nine Hundred Twelve Pesos and 74/100 (Php9,165,912.74) for the taxable year of 2012."

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[36] Minutes of the hearing held on December 8, 2015, CTA Case No. 8871, docket, vol. IV, p. 1642.
[37] Minutes of the hearing held on March 15, 2016, CTA Case No. 8871, docket, vol. IV, p. 1944.
[38] Minutes of the hearing held on October 13, 2015, CTA Case No. 8871, docket, vol. VI, p. 1640.
[39] Minutes of the hearing held on January 26, 2016, CTA Case No. 8871, docket, vol. IV, pp. 1659.
[40] CTA Case No. 8871, docket, vol. V, pp. 1961-1979.
[41] CTA Case No. 8871, docket, vol. VI, pp. 2631-2632.
[42] Minutes of the hearing held on June 21, 2016, CTA Case No. 8771, docket, vol. VI, p. 2640.
[43] CTA Case No. 8871, docket, vol. VI, p. 2697.
[44] CTA Case No. 8871, docket, vol. VI, pp. 2663-2695.
[45] CTA Case No. 8871, docket, vol. VI, pp. 2654-2662.
[46] Issue, Pre-Trial Order, CTA Case No. 8771, docket, vol. IV, p. 1635.

RULING OF THE COURT

Relevant to the resolution of the stipulated issue is Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which is quoted hereunder for ready reference:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

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

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."

Based on the above-quoted Section 112(A) of the NIRC of 1997, as amended, the following requisites must be satisfied in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales:

a) the taxpayer is VAT-registered;
b) the taxpayer is engaged in zero-rated or effectively zero-rated sales;
c) the input taxes are due or paid;
d) the input taxes are not transitional input taxes;
e) the input taxes have not been applied against output taxes during and in the succeeding quarters;
f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
g) for zero-rated sales under Sections 106 (A) (2) (1) and (2); 106 (B); and 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;
h) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
i) the claim is filed within two years after the close of the taxable quarter when such sales were made.[47]

Before delving on each of the requisites, the timeliness of the filing of the instant claim for refund or issuance of tax credit certificate shall be determined first.

As stated in Section 112(A) of the NIRC of 1997, as amended, the administrative claim must be filed within two years after the close of the taxable quarter when the zero-rated sales were made. The application of the two-year period provided under Section 112(A) to administrative claims for tax refund or credit of unutilized input VAT is consistent with the ruling in the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[48], wherein the High Court said:

"***C. The Administrative Claims Were Timely Filed***

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[47] *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013.
[48] G.R. No. 191498, January 15, 2014.

> We sum up our conclusions so far: (1) it is only the administrative claim that must be filed within the two-year prescriptive period; and (2) the two-year prescriptive period begins to run from the close of the taxable quarter when the relevant sales were made."

The present claims cover input taxes incurred in the 1st, 2nd, 3rd, and 4th quarters of 2012, while the alleged relevant zero-rated sale was made on March 25, 2014 covered by the 1st taxable quarter of 2014 that closed on March 31, 2014. Counting two years from the said date, petitioner had until March 31, 2016 within which to file its administrative claim for tax credit/refund. Clearly, petitioner's administrative claims for refund were seasonably filed within the two-year prescriptive period, as shown below:

<table>
<tr><th>Case No.</th><th>Taxable quarter when the input tax was incurred</th><th>Taxable quarter when the relevant sale was made</th><th>Close of the taxable quarter</th><th>End of 2 years</th><th>Administrative Claim filed on</th></tr>
<tr><td>8871</td><td>1st Qtr 2012</td><td rowspan="4">March 25, 2014</td><td rowspan="4">March 31, 2014</td><td rowspan="4">March 31, 2016</td><td>March 31, 2014</td></tr>
<tr><td>8937</td><td>2nd Qtr 2012</td><td>June 30, 2014</td></tr>
<tr><td>8999</td><td>3rd Qtr 2012</td><td>September 29, 2014</td></tr>
<tr><td>9042</td><td>4th Qtr 2012</td><td>December 19, 2014</td></tr>
</table>

As to the timeliness of the judicial claims, it is necessary to quote the provision under Section 11 of Republic Act (RA) No. 1125[49], as amended by RA No. 9282[50], which provides the period of limitation within which to appeal before this Court, in relation to Section 112(C) of the NIRC of 1997, as amended, to wit:

> "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 the receipt of such decision or ruling or after the

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[49] An Act Creating the Court of Tax Appeals.

[50] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No.1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

> expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal should 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*)

Aside from the mandate of the foregoing provision that a petition for review must be filed with this Court within thirty (30) days from the receipt of the decision or ruling, or the expiration of the period fixed by law to act thereon, such as the period under Section 112(C) of the NIRC of 1997, as amended, the mandatory nature of the periods under Section 112(C) was likewise upheld in the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[51], wherein the High Tribunal said:

> "To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the **120+30 day mandatory and jurisdictional periods**. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as **mandatory and jurisdictional.**" (*Emphasis supplied*)

Furthermore, in the case of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[52], the Supreme Court, in applying the ruling in the *San Roque* case, provided a Summary of Rules on Prescriptive Periods Involving VAT as a guide on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the NIRC of 1997, to wit:

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

[51] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[52] G.R. Nos. 193301 and 194637, March 11, 2013.

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

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

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

A taxpayer-claimant only has a period of thirty (30) days from the expiration of the 120-day period of inaction of the BIR Commissioner to file its judicial claim with this Court, with the exception of claims made during the effectivity of BIR Ruling No. DA-489-03 (from December 10, 2003 to October 5, 2010). Failure to do so, the judicial claim shall prescribe.

Applying the foregoing, the Court finds that petitioner's judicial claims for the 1st, 2nd, 3rd, and 4th quarters of 2012 were timely filed within the "120+30" day period, as shown below:

Case No.	Administrative Claim together with the supporting documents filed on	End of 120 days	End of 30 days	Petition for Review filed on
8871	March 31, 2014	July 29, 2014	August 28, 2014	August 18, 2014
8937	June 30, 2014	October 28, 2014	November 27, 2014	November 26, 2014
8999	September 29, 2014	January 27, 2015	February 26, 2015	February 25, 2015
9042	December 19, 2014	April 18, 2015	May 18, 2016	May 13, 2015

The Court shall now proceed to determine petitioner's compliance with the remaining requisites for refund of input VAT.

As to the first requisite that the taxpayer must be a VAT-registered entity, petitioner submitted its BIR Certificate of Registration No. OCN3RC0000483772 with Taxpayer's Identification Number (TIN) 007-843-328-000. Accordingly, the Court finds that the first requisite was satisfied by petitioner.

With regard to the requisite that the taxpayer should be engaged in zero-rated or effectively zero-rated sales, petitioner claims that the sale of fuel from renewable energy sources or power generated from renewable energy, such as geothermal energy, is a transaction or activity subject to zero percent (0%) value-added tax, pursuant to the NIRC of 1997, as amended, and Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008.

The Court agrees with petitioner.

Section 108(B)(7) of the NIRC of 1997, as amended, provides that sale of power generated through renewable sources of energy is among the transactions subject to zero percent (0%) VAT, to wit:

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

Further, Section 4.108-5(b)(7) of Revenue Regulations (RR) No. 16-2005, implementing the foregoing provision, qualifies the applicability of such zero-rating as follows:

> "SECTION 4.108-5. *Zero-Rated Sale of Services.* –
>
> xxx xxx xxx

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

xxx xxx xxx

(7) **Sale of power or fuel generated through renewable sources of energy such as,** but not limited to, biomass, solar, wind, hydropower, **geothermal** and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; *Provided, however*, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power." (*Emphasis supplied*)

Corollary to the above provisions, Section 4.108-3(f) of Revenue Regulations No. 16-2005 states:

"SECTION 4.108-3. *Definitions and Specific Rules on Selected Services.* –

xxx xxx xxx

(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts: *Provided*, **That sale of power or fuel generated through renewable sources of energy such as**, but not limited to, biomass, solar, wind, hydropower, **geothermal**, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels **shall be subject to 0% VAT**.

'*Generation companies*' refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the R.A. No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities." (*Emphasis supplied*)

Clearly, from the foregoing, to qualify for VAT zero-rating, petitioner must prove by sufficient evidence that it is engaged in the sale of power or fuel generated through renewable sources of energy.

Based on its Articles of Incorporation, petitioner's primary purpose is to explore, extract, exploit, or otherwise obtain from the earth, store, hold, use, treat, reinject, prepare for market, buy, sell, distribute, exchange and transport geothermal steam and brine, and all their products, compounds and derivaties; **to convert geothermal energy into electric power** and to build, construct, erect, own, equip, install, operate, maintain, sell, lease power generation plants, facilities, machineries, equipment that utilize, geothermal energy; **to sell, trade, transmit or distribute any electricity generated by such power plants**; to utilize geothermal steam and brine for industrial, agricultural, health, tourism, mineral recovery and processing and other similar direct and indirect uses of geothermal steam and brine.[53]

Records further show that petitioner owns and operates Geothermal Power Plant in Sitio Capoz, Brgy. San Rafael, Sto. Tomas, Batangas as indicated in its Certificate of Compliance issued by the Energy Regulatory Commission on October 13, 2007.[54] It is also registered with the Department of Energy (DOE) as "an RE Developer of Geothermal Energy Resources"[55] and with the Board of Investment (BOI) as a "New Renewable Energy Developer of a 20 MW Maibarara Geothermal Power Generation Project". Likewise, its BIR Certificate of Registration indicates that petitioner is engaged in generation, collection, and distribution of electricity.[56]

Furthermore, in its Amended Quarterly VAT Return for the first quarter of 2014, petitioner reflected zero-rated sales/receipts in the amount of ₱39,032,500.00[57], pertaining to its gross receipts from sale of electricity to Trans-Asia Oil and Energy Development Corporation (Trans-Asia) as evidenced by the Billing Statement[58], official receipt (OR) issued by petitioner to Trans-Asia for the period of February 8-25, 2014[59] and their Energy Supply Agreement[60].

Such sale of electricity generated through a renewable source of energy, particularly, geothermal, qualifies for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended.

Having resolved that petitioner had valid VAT zero-rated receipt for the 1st quarter of 2014 in the amount of ₱39,032,500.00, the Court shall now proceed to determine whether petitioner incurred or paid input taxes in connection with the said zero-rated sales.

[53] Exhibit "P-2", docket, vol. V, p. 1981.
[54] Exhibit "P-6", docket, vol. V, p. 2011.
[55] Exhibit "P-3", docket, vol. V, p. 2002.
[56] Exhibit "P-7", docket, vol. V, p. 2012.
[57] Exhibit "P-33", docket, vol. V, p. 2129.
[58] Exhibit "P-51", docket, vol. V, p. 2468.
[59] Exhibit "P-52", docket, vol. V, p. 2469.
[60] Exhibit "P-50", docket, vol. V, pp. 2448-2467.

To prove that petitioner incurred/paid the excess input VAT, it submitted various suppliers' invoices, official receipts, and Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs).[61]

Notably, petitioner also alleges that it incurred and paid input VAT on certain purchases of goods and services relative to the development, construction and installation of its renewable energy facilities necessary to generate the power sold. The input VAT are allegedly attributable to petitioner's subsequent sale of power generated through renewable sources of energy, particularly, geothermal energy.

In this regard, it must be pointed out that petitioner's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities are also zero-rated.

While the Court finds that petitioner is engaged in zero-rated or effectively zero-rated sales for its sales of electricity to Trans-Asia, petitioner's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities are also zero-rated in accordance with Section 15(g) of RA No. 9513 or the Renewable Energy Act of 2008.

RA No. 9513, which was approved on December 16, 2008, provides that all renewable energy (RE) Developers, such as herein petitioner, are entitled to zero-rated VAT on their purchases of local supply of goods, properties and services needed for the development, construction and installation of their plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors. The said incentive given to RE Developers is found under Section 15(g), Chapter VII of RA No. 9513, which reads as follows:

> "CHAPTER VII
> GENERAL INCENTIVES
>
> SECTION 15. *Incentives for Renewable Energy Projects and Activities.* – RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
>
> xxx xxx xxx

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[61] Exhibits "P-63" to "P-334", Binder of Exhibits.

(g) Zero Percent Value-Added Tax Rate. – The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors." *(Emphasis supplied)*

The law was implemented by DOE Circular No. DC2009-05-0008 issued by the Department of Energy on May 25, 2009. The portion of the circular pertinent to the above-quoted provision is cited hereunder:

"PART III.
Incentives for Renewable Energy Projects and Activities

RULE 5.
General Incentives and Privileges for Renewable Energy Development

SECTION 13. *Fiscal Incentives for Renewable Energy Projects and Activities*

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

xxx xxx xxx

G. *Zero Percent Value-Added Tax Rate*

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

(a) Sale of fuel from RE sources or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels;

(b) Purchase of local goods, properties and services **needed for the development, construction, and installation of the plant facilities** of RE Developers; and

(c) **Whole process of exploration and development of RE sources up to its conversion into power**, including, but not limited to, the services performed by subcontractors and/or contractors." *(Emphasis supplied)*

As admitted by petitioner, and as evidenced by its registration with the DOE, petitioner is "an RE Developer of Geothermal Energy Resources"[62] and as such, its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities are subject to zero percent VAT, including purchases needed for the whole process of exploration, and development of RE sources up to its conversion into power.

The circumstances in these consolidated cases are similar to the case of *Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue*[63]. In the said case, petitioner therein sought the refund of its input taxes attributable to zero-rated sales. However, the Court of Tax Appeals *En Banc*, affirming the Decision of this Court in Division[64], found that the purchases pertaining to the input taxes claimed are also subject to zero percent VAT rate; thus, no output VAT shall be shifted to the taxpayer. The Court of Tax Appeals *En Banc* concluded that petitioner therein is not entitled to refund or issuance of tax credit certificate from its purchases of goods and services. The pertinent portion of the said case reads:

[62] Exhibit "P-3", docket, vol. V, p. 2002.
[63] CTA EB No. 403 (CTA Case No. 7022), May 29, 2009.
[64] CTA Case No. 7022, March 10, 2008.

"xxx **sales of goods or property to PEZA-registered enterprises made by VAT registered suppliers from the customs territory shall be subject to 0% VAT**, pursuant to *Sec. 106(A)(2)(a)(5), of the NIRC, of 1997, as amended*, in relation to *Article 77(2) of the Omnibus Investments Code*. While all sales of services to PEZA-registered enterprises, made by VAT registered suppliers from the customs territory, shall be subject to 0% VAT, pursuant to *Section 108(B)(3) of the NIRC of 1997, as amended*, in relation to the provisions of *RA 7916* and the 'Cross Border Doctrine' of the VAT system.

xxx xxx xxx

The Cross Border Doctrine provides that no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority *(Section 2, Revenue Memorandum Circular No. 74-99).*

Since an ECOZONE is regarded as a foreign territory by *RA 7916*, the sales of goods and services therefore by VAT registered enterprises to PEZA-registered enterprises are subject to VAT at zero percent rate. **Accordingly, no output VAT shall be shifted to or passed on to PEZA-registered enterprises; conversely, no input VAT shall be paid by PEZA-registered enterprises from said purchases. There being no input VAT paid by PEZA-registered enterprises, it necessarily follows that they are not entitled to refund, or issuance of tax credit certificate from their purchases of goods and services.**

Records show that petitioner is a PEZA registered entity, as evidenced by its PEZA Certificate of Registration No. 02-072 *(Exhibit 'C')*. Applying the foregoing doctrine, petitioner is therefore subject to VAT at zero percent rate. Accordingly, no output VAT shall be shifted to it; hence, petitioner is not entitled to refund or issuance of tax credit certificate from its domestic purchases of goods and services.

It bears stressing that in the aforecited *Toshiba case*, the Supreme Court, citing *Revenue Memorandum Circular No. 42-03*, categorically stated that 'for invoices/receipts issued upon the effectivity of RMC No. 74-99, the claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA-registration; should be denied'. Since petitioner's claim for refund or issuance of tax credit certificate pertains to input VAT on its domestic purchases of goods and services for the period May 1, 2002 to December 31, 2002 *(Exhibits 'W-1' to W-241')*, which is after the effectivity of *Revenue Memorandum Circular No.*

74-99, petitioner is therefore not entitled to refund, pursuant to the *Toshiba case* and *Revenue Memorandum Circular No. 42-03.*

To allow petitioner a refund or issuance of tax credit certificate of input VAT on its domestic purchases of goods and services, when there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich petitioner at the expense of the government. Under the law, no one shall unjustly enrich himself at the expense of another. *'Niguno non deue enriquecerse tortizamente condano de otr' (Ong Yong, et al. vs. David S. Tiu, et al., 375 SCRA 640).* Said ruling is equally true in the field of taxation, particularly in cases involving claims for refunds.

In instances when petitioner paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, petitioner's recourse is not against the government, but against the seller who shifted to it the output VAT. *Revenue Memorandum Circular No. 42-03* is clearly instructive on this matter:

> 'In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.'

Pursuant to *Revenue Memorandum Circular No. 42-03*, petitioner's recourse for those purchases of goods and services where it paid VAT is not a claim for refund against the government, or the issuance of a tax credit certificate; but to seek reimbursement of the input VAT paid from its suppliers of goods and services.

For all the foregoing, this Court therefore rules that petitioner, being a PEZA registered enterprise, is not entitled to refund or issuance of a tax credit certificate of its claim for unutilized input VAT, in the amount of P50,124,086.75, attributable to its domestic purchases of goods, other than capital goods, and services for the period May 1, 2002 to December 31, 2002." (*Emphasis supplied*)

From the foregoing, it can be derived that when the purchases of goods and services by a taxpayer are zero-rated, no output VAT shall be shifted to or passed on to the said taxpayer. Thus, no input VAT shall be paid by the said taxpayer from said purchases. There being no input VAT that should be paid by the taxpayer on the zero-rated purchases, it necessarily follows that they are not entitled to refund or issuance of tax credit certificate from the said purchases of goods and services.

Similarly, in these consolidated cases, petitioner's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities are subject to zero percent VAT, since petitioner is registered as RE Developer of Geothermal Energy Resources. Applying by analogy the CTA *En Banc* ruling, no output VAT shall likewise be shifted to or passed on to the RE Developer. Therefore, no input VAT shall be paid by the RE Developer from said purchases. Since there is no input VAT that should be paid by the RE Developer, it necessarily follows that they are not entitled to refund or issuance of tax credit certificate from their purchases of local supply of goods, properties and services relative to the development, construction, and installation of its renewable energy facilities.

If in spite of the zero-rating of purchases, petitioner paid the input VAT, petitioner's recourse is not against the government, but against the seller who shifted to it the output VAT.

This is in line with the pronouncement of the Supreme Court in the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[65], which affirmed the ruling of this Court in the afore-quoted case of *Coral Bay*, the pertinent portion of which are quoted hereunder:

> "The petitioner's principal office was located in Barangay Rio Tuba, Bataraza, Palawan. Its plant site was specifically located inside the Rio Tuba Export Processing Zone - a special economic zone (ECOZONE) created by Proclamation No. 304, Series of 2002, in relation to Republic Act No. 7916. As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, **no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT** following RMC No. 42-03, which provides:
>
>> In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT

[65] G.R. No. 190506, June 13, 2016.

returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.

In the meantime, **the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.**

We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner." (*Emphasis supplied*)

Even though VAT, as an indirect tax, is allowed to be shifted to the buyer, such as petitioner in this case, the reporting and remittance of the VAT paid to the BIR remained with the seller. Thus, even assuming that petitioner paid the input VAT on its purchases which are subject to zero percent, the supplier/seller is still the proper party to claim for the tax refund, and not petitioner.

At this juncture, the Court stresses that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. A refund is not a matter of right by the mere fact that a taxpayer has undisputed excess input VAT or that such tax was admittedly illegally, erroneously or excessively collected.[66]

Considering that petitioner failed to prove that it is entitled to refund, the input taxes pertaining to purchases related to the development, construction, and installation of its renewable energy facilities, the instant claims for refund in the total amount of ₱9,165,912.74 allegedly representing unutilized input taxes attributable to zero-rated sales must necessarily fail.

WHEREFORE, premises considered, the Petitions for Review filed on August 18, 2014, on November 26, 2014, on February 25, 2015, and on May 13, 2015 are **DENIED** for lack of merit.

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[66] *Harte-Hanks Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205721, September 14, 2016.

SO ORDERED.

Ma. Belen S

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice