REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Special Third Division[1]

MINDANAO II GEOTHERMAL PARTNERSHIP, *Petitioner,*	**CTA CASE NOS. 7899, 7942, & 7960** (CTA *EB* No. 957) (G.R. Nos. 213776 & 213777)
- *versus* -	Members: ***Bautista,*** *Chairperson* ***Fabon-Victorino,*** and ***Ringpis-Liban, JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUL 25 2017 10:28 a.m.

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AMENDED DECISION

BAUTISTA, J.:

The Case

Submitted anew for decision are the consolidated Petitions for Review docketed as CTA Case Nos. 7899[2] and 7942[3] pursuant to the Decision[4] of the Court of Tax Appeals ("CTA") *En Banc* dated November 11, 2013 partially granting the Petition for Review by remanding CTA Case Nos. 7899 and 7942 to the CTA Third Division ("Court in Division") for the proper and immediate determination of the propriety of the claim, and the specific amount of refund or tax credit certificate ("TCC") to which petitioner is entitled, if any; and

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[1] Pursuant to *Section 2 of Republic Act No. 1125, as amended,* and the *Memorandum* from Presiding Justice Roman G. Del Rosario dated *March 28, 2017,* designating the current Third Division to act on matters pertaining to CTA Case Nos. 7899, 7942 and 7960, in view of the retirement of Associate Justices Olga Palanca-Enriquez and Amelia Cotangco-Manalastas who were the members of the Third Division, which issued the Decision and Resolution dated August 1, 2012 and November 7, 2012, respectively.

[2] *Records, CTA Case No. 7899, Vol. 1, Petition for Review ("PFR"),* pp. 1-14, with annexes.

[3] *Id., CTA Case No. 7942, PFR,* pp. 1-17, with annexes.

[4] *Rollo, CTA Case No. 957, Vol. 1, Decision,* pp. 607-624.

denying the Petition for Review as to CTA Case No. 7960 for lack of merit.[5]

The consolidated Petitions for Review pray that judgment be rendered:

1. ordering respondent to refund or to issue a TCC in the amount of Php4,048,011.48 representing excess and unutilized creditable input taxes for the 1st Quarter of calendar year ("CY") 2007;[6] and

2. ordering respondent to refund or to issue a TCC in the amount of Php1,484,924.01 representing excess and unutilized creditable input taxes for the 2nd Quarter of CY 2007;[7]

The Parties[8]

Petitioner is a partnership duly registered with the Securities and Exchange Commission, with principal address at Barangay Homavis, Kidapawan City, Cotabatao.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR"), vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.

The Facts

The Court in Division reiterates the relevant facts[9] of the case as follows:

> On March 11, 1997, petitioner entered into a Build-Operate-Transfer [("BOT")] Contract with the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) for the finance, engineering, supply, installation, testing, commissioning, operation and maintenance of a 48.25

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[5] *Rollo, Vol. 1, Decision, Dispositive Portion,* p. 623.
[6] *Records, CTA Case No. 7899, PFR, Vol. 1, Prayer,* p. 7.
[7] *Id., CTA Case No. 7942, PFR, Vol. 1, Prayer,* p. 7.
[8] *Id., CTA Case Nos. 7899, 7942 and 7960, Vol. 1, Decision, The Parties,* pp. 430-431.
[9] *Id., The Facts,* pp. 431-441.

megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to petitioner at no cost. In turn, petitioner shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and [o]n behalf of PNOC-EDC.

As a power generation company utilizing geothermal energy and steam, petitioner's sale of generated power and delivery of electric capacity and energy to NPC for and [o]n behalf of PNOC-EDC, under the BOT contract, is VAT zero-rated, pursuant to *Section 108(B) of the NIRC of 1997, as amended by RA 9337 [("1997 NIRC")].*

As a result of said transactions, petitioner allegedly incurred input VAT, which are attributed and allocated to effectively zero-rated sales in the amount of P[hp]8,255,554.02 for taxable year 2007.

On the following dates, petitioner filed with the BIR its Original Quarterly VAT Returns for taxable year 2007:

Taxable Quarter	Date of Filing of Original Return
1st	April 25, 2007
2nd	July 25, 2007
3rd	October 24, 2007
4th	January 28, 2008

On March 30, 2009, petitioner filed its administrative claim for refund of unutilized input VAT for taxable year 2007, together with the supporting documents.

Due to respondent's inaction, petitioner filed with the [Court in Division] the following Petitions for Review:

CTA Case No.	Quarters	Unutilized Input VAT	Date of Filing of Petition for Review
7899	1st	P[hp]4,048,011.48	March 31, 2009
7942	2nd	P[hp]1,484,924.01	June 30, 2009
7960	3rd & 4th	P[hp]2,722,618.53	August 12, 2009

On August 12, 2009, petitioner filed a "Motion to Consolidate["] [CTA] Case No. 7960 with [CTA] Case Nos. 7899 and 7942, which the Court [in Division] granted. Thus, [CTA] Case Nos. 7960 and 7942 were consolidated with [CTA] Case No. 7899, the case bearing the lowest docket number.

In [CTA] Case No. 7899, respondent CIR, in her [A]nswer, alleged by way of special and affirmative defenses:

xxx xxx xxx

On the other hand, in [CTA] Case No. 7942, respondent CIR, in her [A]nswer, alleged by way of special and affirmative defenses:

xxx xxx xxx

Petitioner presented Michael L. Aguirre and Daisy C. Abenes, as witnesses, and documentary evidence, which were admitted by the Court [in Division] in its Resolutions dated May 18, 2011 and July 22, 2011.

On the other hand, respondent CIR was declared to have waived her right to present evidence for the repeated failure of respondent CIR's counsel to appear during the scheduled initial presentation of the evidence for respondent, despite notice.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Afterwhich, the case shall be deemed submitted for decision.

On September 22, 2011, petitioner filed its "Memorandum[."] On the other hand, respondent failed to file her memorandum despite notice; hence, on October 25, 2011, the case was deemed submitted for decision.

Records show that the Court in Division promulgated a Decision[10] dated August 1, 2012, with the dispositive portion[11] reading as follows:

WHEREFORE, premises considered:

1) As regards [CTA] Case No. 7899, the Petition for Review is hereby **DISMISSED** for having been prematurely filed;

2) As regards [CTA] Case No. 7942, the Petition for Review is hereby **DISMISSED** for having been prematurely filed; and

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[10] *Records, CTA Case Nos. 7899, 7942 and 7960, Vol. 1, Decision,* pp. 429-460; penned by Associate Justice Olga Palanca-Enriquez, with Associate Justice Amelia R. Contangco-Manalastas concurring and Associate Justice Lovell R. Bautista's Concurring and Dissenting Opinion.
[11] *Id., Dispositive Portion,* pp. 455-456.

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> 3) As regards [CTA] Case No. 7960, the Petition for Review is hereby **PARTLY GRANTED.** Accordingly, respondent CIR is hereby **ORDERED TO REFUND OR [TO] ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SIX THOUSAND SIX HUNDRED THIRTY FOUR PESOS AND 29/100 (P[hp]6,634.29),** representing unutilized input VAT paid on its domestic purchases of goods and services which are attributable to zero-rated sales for the third and fourth quarters of calendar year 2007.
>
> **SO ORDERED.**[12]

Petitioner filed a Motion for Reconsideration[13] on August 28, 2012; to which respondent filed a Comment (On Petitioner's Motion for Reconsideration)[14] on September 25, 2012.

On November 7, 2012 the Court resolved to deny[15] petitioner's Motion for Reconsideration, with the following dispositive portion[16] for reference:

> **WHEREFORE,** premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[17]

Not satisfied, petitioner filed with the Court *En Banc* a Motion for Additional Time to File Petition for Review[18] on November 27, 2012; which was granted by the Court *En Banc* in a Minute Resolution[19] dated November 29, 2012.

On December 12, 2012, petitioner filed *via* registered mail a Petition for Review[20] before the Court *En Banc* docketed as CTA *EB*

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[12] Emphases retained.
[13] *Records, CTA Case Nos. 7899, 7942 and 7960, Vol. 1, Motion for Reconsideration,* pp. 461-502.
[14] *Id., Vol. 2, Comment (On Petitioner's Motion for Reconsideration),* pp. 518-528.
[15] *Id., Resolution,* pp. 530-538.
[16] *Id., Resolution, Dispositive Portion,* p. 538.
[17] Emphases retained.
[18] *Rollo, Vol. 1, Motion for Additional Time to File Petition for Review,* pp. 1-47, with annexes.
[19] *Id., Minute Resolution,* p. 48.
[20] *Id., PFR,* pp. 51-229, with annexes.

No. 957; with respondent's Comment (Re: Petitioner's Petition for Review)[21] filed on March 15, 2013.

On April 3, 2013, the Court *En Banc* resolved[22] to give due course to the Petition for Review and required the parties to file their respective memoranda.

With the filing of petitioner's Memorandum[23] by registered mail on May 20, 2013, and respondent's Memorandum[24] on June 3, 2013, the case was deemed submitted for resolution[25] on July 3, 2013.

On November 11, 2013, the Court *En Banc* promulgated a Decision[26] which partially granted petitioner's Petition for Review. The dispositive portion[27] of the said Decision read as follows:

> **WHEREFORE**, premises considered, this Court resolves to **PARTIALLY GRANT** the instant petition for review. The assailed Decision dated August 1, 2012 and the assailed Resolution dated November 7, 2012 promulgated by the [Court in] Division are hereby **PARTIALLY REVERSED** and **SET ASIDE.**
>
> Accordingly, petitioner's claims for VAT refund or issuance of TCC under CTA Case Nos. 7899 and 7942 are hereby **REMANDED** to the [Court in] Division for the proper and immediate determination of the propriety of the claim. Thereafter, the [Court in] Division shall make a determination of the specific amount of refund or TCC to which petitioner is entitled[], if any.
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> As to the petitioner's claim for VAT refund or issuance of TCC under CTA Case No. 7960, the instant petition for review is hereby **DENIED** for lack of merit.
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> **SO ORDERED.**[28]

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[21] *Rollo, Vol. 1, Comment (Re: Petitioner's Petition for Review),* pp. 425-437.
[22] *Id., Resolution,* pp. 439-440.
[23] *Id., Vol. 2, petitioner's Memorandum,* pp. 530-590.
[24] *Id., respondent's Memorandum,* pp. 592-602.
[25] *Id., Resolution,* pp. 604-605.
[26] *Id., Decision,* pp. 607-624.
[27] *Rollo, Vol. 2, Decision, Dispositive Portion,* p. 623.
[28] Emphases retained.

Respondent and petitioner filed their Motions for Partial Reconsideration before the Court *En Banc* on December 10, 2013, the former by personal service[29] and the latter by registered mail[30].

After comments[31] were filed by both parties on the other's Motions for Reconsideration, the Court *En Banc* promulgated a Resolution on August 4, 2014 denying both Motions for Partial Reconsideration, with the following dispositive portion:

> **WHEREFORE,** premises considered, respondent's "**Motion for Partial Reconsideration (Re: Decision dated November 11, 2013)**" filed on December 10, 2013 and petitioner's "**Motion for Partial Reconsideration**" filed on December 10, 2013 are hereby **DENIED** for lack of merit.
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> **SO ORDERED.**[32]

Both parties filed their Petitions for Review on *Certiorari* before the Supreme Court which were docketed as G.R. Nos. 213776 and 213777, entitled "Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership" and "Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue," respectively.

On February 25, 2015, the Supreme Court First Division issued a Resolution[33] consolidating G.R. Nos. 213776 and 213777.

On June 29, 2015, the Supreme Court issued a Minute Resolution[34] denying both Petitions for Review on *Certiorari.* The pertinent portion of the Supreme Court Resolution reads as follows:

> xxx xxx xxx
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> Considering the allegations, issues, and arguments adduced in the petitions for review on *certiorari* in G.R. Nos. 213776 and 213777 of the Decision and Resolution dated November 11, 2013 and August 4, 2014, respectively, of the

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[29] *Rollo, Vol. 2, Motion for Partial Reconsideration (Re: Decision dated November 11, 2013),* pp. 628-640.
[30] *Id., Motion for Partial Reconsideration,* pp. 642-655.
[31] *Rollo, Vol. 2, Comment (To Respondent's Motion for Partial Reconsideration)* filed by registered mail on February 10, 2014, pp. 697-704; *Rollo, Vol. 2, Comment Re: Petitioner's Motion for Partial Reconsideration* filed by registered mail on June 3, 2014, pp. 738-745.
[32] Emphases retained.
[33] *Records, CTA Case Nos. 7899, 7942 and 7960, Vol. 3, Resolution,* pp. 1382-1383.
[34] *Id., Minute Resolution,* p. 1386.

> Court of Tax Appeals in CTA *EB* No. 957, the Court furthermore resolves to **DENY** the petitions for failure of petitioners to sufficiently show that the Court of Tax Appeals committed any reversible error in the challenged decision and resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction.

On November 9, 2016, the Supreme Court issued a Resolution[35] which reads as follows:

> **G.R. No. 213776 *(Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership)* and G.R. No. 213777 *(Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue).*** - Acting on the Office of the Solicitor General's motion for partial reconsideration of the Resolution dated June 29, 2015 which denied the petitions for review on *certiorari,* and considering that there is no substantial argument to warrant a modification of this Court's resolution, the Court resolves to **DENY** reconsideration with **FINALITY.**
>
> The comment/opposition of Mindanao II Geothermal Partnership, respondent in G.R. No. 213776 and petitioner in G.R. No. 213777, to the aforesaid motion for partial reconsideration is **NOTED.**
>
> ***NO FURTHER*** pleadings or motions shall be entertained herein.
>
> Let an **ENTRY** of judgment in these cases be made in due course.[36]

On February 18, 2016, the Resolution dated June 29, 2015 has become final and executory and has been recorded in the Book of Entries of Judgments.[37]

On December 21, 2016, the Court *En Banc* received the Letter of Transmittal from the Supreme Court dated June 22, 2016, with photocopies of the Resolution dated June 29, 2015 and the Entry of Judgment made therein.

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[35] *Records, CTA Case Nos. 7899, 7942 and 7960, Vol. 3, Resolution,* p. 1388.
[36] Emphases retained.
[37] *Records, CTA Case Nos. 7899, 7942 and 7960, Vol. 3,* p. 1392.

On April 4, 2017, petitioner's Motion for Issuance of Writ of Execution in CTA Case No. 7960 was granted and the Court in Division ordered the issuance of the corresponding Writ of Execution.

On May 26, 2017, the Court in Division ordered[38] both parties to file their respective manifestations regarding any supervening event that might affect the determination of petitioner's claim for VAT refund or for TCC in CTA Case Nos. 7899 and 7942.

On June 15, 2017, the Court's Judicial Records Division issued a Records Verification Report stating that both parties failed to comply with the Resolution of the Court in Division dated May 26, 2017.

On June 16, 2017, petitioner filed an Urgent Motion to Admit Attached Manifestation, which was granted by the Court in Division in a Resolution dated June 27, 2017. Consequently, petitioner's Manifestation stating that there are no supervening events that might affect the determination of its claim for VAT refund or for issuance of TCC was admitted and the case was submitted for resolution; hence this Amended Decision.

Issue

WHETHER PETITIONER IS ENTITLED TO THE CLAIM FOR REFUND OR TCC FOR THE 1ST AND 2ND QUARTERS OF CY 2007 IN THE AGGREGATE AMOUNT OF PHP5,532,935.49[39] REPRESENTING EXCESS AND UNUTILIZED CREDITABLE INPUT TAXES FOR THE 1ST AND 2ND QUARTERS OF CY 2007.

The Ruling of the Court

Petitioner's claim for refund or TCC is anchored on *Sections 112(A) and (C) of the 1997 National Internal Revenue Code as amended by RA No. 9337 ("1997 NIRC")*, which reads as follows:

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

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[38] *Records, CTA Case Nos. 7899, 7942 and 7960, Vol. 3, Resolution,* pp. 1466-1467.
[39] Php4,048,011.48 plus Php1,484,924.01.

> (A) *Zero-Rated or Effectively Zero-Rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(8)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.
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> 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.

Pursuant to the afore-quoted provisions and jurisprudence[40], a taxpayer may claim a refund or a TCC for input taxes paid on

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[40] *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 195175 & 199645, August 10, 2015, 765 SCRA 511; *Luzon Hydro Corporation v. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013, 709 SCRA 462; *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011, 659 SCRA 658; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011, 639 SCRA 521; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal*

purchases of goods and services attributable to zero-rated sales upon compliance with the following requisites:

1. the taxpayer-claimant must be VAT-registered;

2. there must be zero-rated or effectively zero-rated sales;

3. input taxes were incurred or paid;

4. such input taxes are attributable to zero-rated or effectively zero-rated sales;

5. said input taxes were not applied against any output VAT liability; and

6. the claim was filed within the prescriptive period.

<u>The administrative and judicial claims were timely filed.</u>

The sixth requisite regarding timeliness of petitioner's claim for refund or TCC shall no longer be discussed, in view of the Court *En Banc*'s Decision dated November 11, 2013 quoted hereunder, to wit:

> The first issue pertains to the dismissal of petitioner's judicial claims for refund or issuance of TCC in the cases docketed as CTA Case No. 7899 and 7942 on the ground of lack of jurisdiction by the [Court in] Division. Applying the doctrine laid down in *Aichi,* the [Court in] Division found that the petitions for review filed by petitioner in CTA Case No. 7899 and 7942 were prematurely filed and consequently dismissed the same for lack of jurisdiction.
>
> Records show that petitioner filed its administrative claim for refund or issuance of TCC for its unutilized input VAT for the taxable year 2007 on March 30, 2009. The judicial claim for its unutilized input VAT covering the first quarter of

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Revenue, G.R. No. 182364, August 3, 2010, 626 SCRA 567; *San Roque Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009, 605 SCRA 536; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007, 522 SCRA 657.

2007, docketed as CTA Case No. 7899, was filed on March 31, 2007 or one (1) day after petitioner's filing of its administrative claim. On the other hand, the judicial claim for its unutilized input VAT covering the second quarter of 2007, docketed as CTA Case No. 7942, was filed on June 30, 2009 or 28 days before the lapse of the 120-day period for respondent CIR to decide the claim.

Clearly, the [Court in] Division was correct in dismissing these cases for having been prematurely filed, based on prevailing jurisprudence when the assailed Decision was rendered.

Recent pronouncements of the Supreme Court *En Banc,* however, specifically in the cases of *San Roque, Taganito, and Philex,* declared:

xxx xxx xxx

Respondent's argument that petitioner cannot rely upon the doctrine laid down in *San Roque* is unavailing. The ruling itself grants petitioner the benefit of the excepted period even though petitioner, through its pleadings filed before this Court, consistently stated that it relied on the previous pronouncements of the CTA on the matter without ever mentioning its reliance on BIR Ruling No. DA-489-03. The Supreme Court unequivocally stated that the BIR ruling is a **<u>GENERAL INTERPRETATIVE RULE</u>** which misled "all taxpayers into filing prematurely judicial claims before the CTA" because "it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits."

In the case of *Nippon,* the Supreme Court clarified *San Roque, Taganito and Philex* in saying that:

xxx xxx xxx

As guide, the consolidated cases of *Mindanao I and II* are enlightening, wherein the Supreme Court stated:

> []We summarize the rules 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 1997 Tax Code, as follows:
>
> (1) An administrative claim must be filed with the CIR **within two years** after the close of the taxable

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> 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 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.[]** (*Emphases added*)

Based on the foregoing, the Supreme Court reiterated that the observance of the 120+30-day period is mandatory and jurisdictional. By way of exception, taxpayers who from December 10, 2003 up to October 6, 2010 filed their judicial claims for tax refund or issuance of tax credit certificate without regard to the 120+30-day period are exempted from the strict application of the same. As was discussed in *San Roque, Taganito and Philex,* **premature filing during the excepted period does not constitute an infirmity on the jurisdiction of the Court of Tax Appeals to act on the claim.**

As afore-discussed, petitioner filed its administrative claim for refund or issuance of TCC for its unutilized input VAT for the taxable year 2007 on March 30, 2009. Its judicial claims were filed before the CTA on March 31, 2009 for its unutilized input VAT covering the first quarter and on June 30, 2009 for its unutilized input VAT covering the second quarter, both of taxable year 2007.

In fine, the administrative claim was filed with the CIR within two years after the close of the taxable quarter when the zero-rated sales were made. This is well within the two-year period provided by Section 112 (A) of the NIRC of 1997 as

> amended by R.A. No. 9337. More importantly, **the judicial claims were filed within the period** during which petitioner may appropriately rely on BIR Ruling No. DA-489-03, thereby allowing the CTA Third Division to acquire jurisdiction thereon.[41]

The Supreme Court recognized *BIR Ruling No. DA-489-03,* a general interpretative rule, as a valid exception to the strict compliance with the 120+30-day prescriptive period. All taxpayers can rely on *BIR Ruling No. DA-489-03* from the time of its issuance on December 10, 2003 up to its reversal on October 6, 2010.[42] This doctrine was reiterated in the case of *Cargill Philippines, Inc. vs. Commissioner of Internal Revenue*[43], *viz.:*

> Nevertheless, the Court, in the case of *CIR v. San Roque Power Corporation (San Roque),* recognized an exception to the mandatory and jurisdictional nature of the 120-day period. *San Roque* enunciated that BIR Ruling No. DA-489-03 dated December 10, 2003, which expressly declared that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of petition for review," provided a valid claim for equitable estoppel under Section 246 of the NIRC.
>
> In the more recent case of *Taganito Mining Corporation v. CIR,* the Court reconciled the pronouncements in *Aichi* and *San Roque,* holding that from **December 10, 2003 to October 6, 2010** which refers to the interregnum when BIR Ruling No. DA-489-03 was issued until the date of promulgation of *Aichi,* taxpayer-claimants need not observe the stringent 120-day period; but before and after said window period, the mandatory and jurisdictional nature of the 120-day period remained in force, *viz.:*
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>> Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that **during the period December 10, 2003** (when BIR Ruling No. DA-489-03 was issued) **to October 6, 2010** (when the Aichi case was promulgated), **taxpayers-claimants need not observe the 120-day period** before it could file a judicial claim for

[41] *Rollo, Vol. 2, Decision,* pp. 614-618; Emphases retained.
[42] *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue (San Roque case),* G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.
[43] G.R. No. 203774, March 11, 2015, 753 SCRA 124.

> refund of excess input VAT before the CTA. **Before and after the aforementioned period (*i.e.*, December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim.**[44]

In the case at bar, petitioner filed its administrative claim for refund or TCC on March 30, 2009[45], while the judicial claims were filed on March 31, 2009[46] and June 30, 2009[47], for CTA Case Nos. 7899 and 7942, respectively, or during the period of effectivity of *BIR Ruling No. DA-489-03*, thus, it is within the window period stated in the *San Roque Case*, *i.e.*, when taxpayer-claimants need not wait for the expiration of the 120-day period before seeking judicial relief.

The Court shall now determine petitioner's compliance with the other requisites.

Petitioner is a VAT-registered entity and had zero-rated sales during the subject periods.

Petitioner complied with the first requisite considering that it is a VAT-registered taxpayer with BIR Certificate of Registration No. OCN 1997-108-008410 and Taxpayer Identification No. 004-766-953.[48]

As regards the second requisite, records show that petitioner owns and operates a 48.25-megawatt geothermal power plant facility, which has been accredited by the Department of Energy as a Block Power Production Facility[49] and with a Certificate of Compliance No. 03-10-GXT25-0025, dated October 15, 2003.[50] As a VAT-registered power generation company utilizing geothermal energy, petitioner's sale of generated power and delivery of electric capacity and energy to the NPC for and on behalf of PNOC-EDC, pursuant to the BOT contract, is VAT zero-rated in the amount of Php209,670,917.63 which was declared in its Quarterly VAT Returns for the first and second quarters of CY 2007, as follows:

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[44] Emphases retained.
[45] *Records, CTA Case Nos. 7899, 7942 and 7960, Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "E-1".*
[46] *Id., CTA Case No. 7899, Vol. 1,* p.1.
[47] *Id., CTA Case No. 7942,* p. 1.
[48] *Id., CTA Case Nos. 7899, 7942 and 7960, Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "C."*
[49] *Id., Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "D."*
[50] *Id., Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "FF."*

PERIOD (CY 2007)	ZERO-RATED SALES		EXHIBIT
1st Quarter	Php	106,208,158.43	"F," Line 17
2nd Quarter		103,462,759.20	"G," Line 17
TOTAL	**PHP**	**209,670,917.63**	

In support of the foregoing, petitioner submitted in evidence its sales invoices[51] and official receipts (ORs)[52], stamped with the words "ZERO RATED VAT," issued to its sole customer, PNOC-EDC, during the periods of the subject claim.

Consequently, petitioner's sale of electricity to PNOC-EDC in the aggregate amount of Php209,670,917.63 qualifies for VAT zero-rating.

Input VAT paid or incurred are attributable to zero-rated or effectively zero-rated sales.

In its Quarterly VAT Returns for the first[53] and second[54] quarters of CY 2007, petitioner declared input VAT on its domestic purchases of goods other than capital goods and services in the aggregate amount of Php5,532,935.49, broken down as follows:

DETAILS	1ST QUARTER		2ND QUARTER		TOTAL	
Input VAT on purchases of goods other than capital goods		-	Php	668.28[55]	Php	668.28
Input VAT on purchases of services	Php	4,048,011.48[56]		1,484,255.73[57]		5,532,267.21
TOTAL	**PHP**	**4,048,011.48**	**PHP**	**1,484,924.01**	**PHP**	**5,532,935.49**

Petitioner submitted various suppliers' invoices and ORs[58] in support of its claim on unutilized input taxes.

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[51] *Records, CTA Case Nos. 7899, 7942 and 7960, Exhibits Folder, Exhibits "U.1," "U.2," "U.5," "U.7," "V.1," "V.2," "V.5," and "V.8."*
[52] *Id., Exhibits "U.3A," "U.3B," "U.3C," "U.4," "U.6A," "U.6B," "U.6C," "U.8A," "U.8B," "U.8C," "V.3A," "V.3B," "V.3C," "V.6A," "V.6B," "V.6C," "V.9A," "V.9B," and "V.9C."*
[53] *Id., Exhibits Folder "A" to "P" and "BB" to "GG," Exhibit "F."*
[54] *Id., Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "G."*
[55] *Id., Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "G," line 21F.*
[56] *Id., Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "F," line 21J.*
[57] *Records, CTA Case Nos. 7899, 7942 and 7960, Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "G," line 21J.*
[58] *Id., Exhibit Folders "Q.1" - "Q.53;" "R.1" to "R.69B."*

Upon perusal of the said documents, the Court-commissioned Independent Certified Public Accountant ("ICPA"), Mr. Michael Aguirre, disallowed the following input VAT amounting to Php230,051.00 for not being supported with proper documents, to wit:

DETAIL	AMOUNT		REFERENCE
Purchases of services without original and valid OR and outside the 2007 covered period	Php	99,150.00	*Exhibit* "P," Annex D
Purchases of goods without original/valid sales invoice but with original/valid ORs		690.32	*Exhibit* "P," Annex E.1
Purchases of services with no date indicated in the ORs		130,210.68	*Exhibit* "P," Annex E.2
TOTAL	**PHP**	**230,051.00**	

However, out of the Php230,051.00 disallowed by the ICPA, only Php130,051.68 was claimed in the period covered, *i.e.*, 2nd quarter of CY 2007[59], thus it will be deducted from the unutilized input VAT.

To have a valid claim for refund, petitioner must comply with the invoicing requirements provided under *Section 11 of Republic Act ("RA") No. 9337*, amending *Section 113 of the 1997 NIRC.*

Section 11, RA No. 9337 reads as follows:

> *SEC. 11.* Section 113 of the same code, as amended, is hereby further amended to read as follows:
>
> > *SEC. 113 Invoicing and Accounting Requirements for VAT-Registered Persons. -*
> >
> > *Invoicing Requirements.* - A VAT-registered person shall issue:
> >
> > A VAT invoice for every sale, barter or exchange of goods or properties; and
> >
> > A VAT official receipt for every lease of goods or properties, and for sale, barter or exchange of services.
> >
> > *Information contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:

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[59] *Records, CTA Case Nos. 7899, 7942 and 7960, Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "P," Annex C.2A.*

> A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);
>
> The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:
>
> The amount of tax shall be shown as a separate item in the invoice or receipt;
>
> If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
>
> If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
>
> If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue a separate invoices or receipts for the taxable, exempt and zero-rated components of the sale.
>
> The date of transaction, quantity, unit cost and description of goods or properties or the nature of service; and
>
> In the case of sales in the amount of one thousand pesos (P[hp]1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client.

Applying the afore-quoted provisions to the case at bar, and after examination of the documentary exhibits submitted by petitioner, the

Court finds that petitioner failed to comply with the substantiation requirements for its claim for refund/TCC amounting to Php2,479,138.93, detailed as follows:

CUSTOMER	G/S	OR/INV NO.	EXH.	INPUT VAT		REASON FOR EXCEPTION
1st Quarter (Exh. "P," Annex C.1)						
Marubeni Energy Services Corp.	S	243	Q.1	Php	28,900.18	VAT not separately indicated in the OR
Marubeni Energy Services Corp.	S	243	Q.1		72,481.59	VAT not separately indicated in the OR
Marubeni Energy Services Corp.	S	243	Q.1		55,172.67	VAT not separately indicated in the OR
Marubeni Energy Services Corp.	S	243	Q.1		108,320.57	VAT not separately indicated in the OR
Plumas Transport Corp.	S	854	Q.3		9,107.14	VAT not separately indicated in the OR
Smart Communications	S	SOA	Q.6		148.63	Supported by Statement of Account
Triple Eight Travel	S	22024	Q.7		1,119.00	VAT not separately indicated in the OR
Universal Holidays Inc.	S	360355	Q.9		428.16	VAT not separately indicated in the OR
Marubeni Energy Services Corp.	S	245	Q.11		20,461.80	VAT not separately indicated in the OR
Marubeni Energy Services Corp.	S	245	Q.11		56,895.53	VAT not separately indicated in the OR
Marubeni Energy Services Corp.	S	245	Q.11		58,917.71	VAT not separately indicated in the OR
Marubeni Energy Services Corp.	S	245	Q.11		103,663.12	VAT not separately indicated in the OR
Plumas Transport Corp.	S	877	Q.13		9,107.14	VAT not separately indicated in the OR
Smart Communications	S	SOA	Q.18		191.35	Supported by Statement of Account
Triple Eight Travel	S	22404	Q.19		457.00	VAT not separately indicated in the OR
Julieto Marco	S	2132	Q.23		180.00	VAT not separately indicated in the OR
Mindanao 1 Geothermal	S	382	Q.25		195,452.96	VAT not separately indicated in the OR
PLDT	S		Q.27		217.64	Supported by Transaction Receipt
Triple Eight Travel	S	22405	Q.33		921.00	VAT not separately indicated in the OR
Ansuico Inc.	S	54379	Q.35		5,400.00	VAT not separately indicated in the OR
Plumas Transport Corp.	S	354	Q.40		9,107.14	VAT not separately indicated in the OR
Marubeni Energy Services Corp.	S	247	Q.44		30,288.96	VAT not separately indicated in the OR
Marubeni Energy Services Corp.	S	247	Q.44		39,341.33	VAT not separately indicated in the OR
Marubeni Energy Services Corp.	S	247	Q.44		45,183.04	VAT not separately indicated in the OR
Marubeni Energy Services Corp.	S	247	Q.44		83,623.21	VAT not separately indicated in the OR
Mindanao 1 Geothermal	S	388	Q.46		194,883.08	VAT not separately indicated in the OR
PLDT	S		Q.48		217.64	Supported by Transaction Receipt
Triple Eight Travel	S	22937	Q.52		1,255.00	VAT not separately indicated in the OR
2nd Quarter (Exh. "P," Annex C.2A)						
Amica Corporation	S	20	R.1	Php	164,736.00	VAT not separately indicated in the OR
Cifra Industrial Services	S	1162	R.3		15,285.00	VAT not separately indicated in the OR
Dawn's Café	G	7321	R.6		321.43	VAT not separately indicated in the Invoice
Jetour Philippines	S	14154	R.7		8,838.64	VAT not separately indicated in the OR
Julieto Marco	S	2142	R.10		420.00	VAT not separately indicated in the OR
Marubeni Energy Services	S	249	R.13		76,775.41	VAT not separately indicated in the OR
Marubeni Energy Services	S	249	R.13		47,319.90	VAT not separately indicated in the OR
Marubeni Energy Services	S	249	R.13		186,360.69	VAT not separately indicated in the OR
Marubeni Energy Services	S	249	R.13		272,320.95	VAT not separately indicated in the OR
PLDT	S		R.17		210.39	Supported by Transaction Receipt
Plumas Transport Corp.	S	384	R.19		9,107.14	VAT not separately indicated in the OR
Smart Communication	S	SOA	R.22		144.28	Supported by Statement of Account
Triple Eight Travel	S	23482	R.23		493.00	VAT not separately indicated in the OR
Triple Eight Travel	S	23482	R.23		1,255.00	VAT not separately indicated in the OR
Jetour Philippines	S	14247	R.25		8,959.90	VAT not separately indicated in the OR
Marubeni Energy Services	S	253	R.27		28,112.58	VAT not separately indicated in the OR
Marubeni Energy Services	S	253	R.27		44,639.72	VAT not separately indicated in the OR
Marubeni Energy Services	S	253	R.27		47,223.44	VAT not separately indicated in the OR
Marubeni Energy Services	S	253	R.27		96,995.34	VAT not separately indicated in the OR
PLDT	S		R.34		217.64	Supported by Transaction Receipt
Plumas Transport Corp.	S	399	R.36		9,107.14	VAT not separately indicated in the OR
Smart Communication	S	SOA	R.41		144.27	Supported by Statement of Account
Tan Delta Electric	S	2389	R.42		30,000.00	VAT not separately indicated in the OR
Triple Eight Travel	S	24138	R.44		1,255.00	VAT not separately indicated in the OR
Triple Eight Travel	S	24138	R.44		1,255.00	VAT not separately indicated in the OR
Triple Eight Travel	S	24571	R.46		1,255.00	VAT not separately indicated in the OR

Marubeni Energy Services	S	256	R.52		51,457.21	VAT not separately indicated in the OR
Marubeni Energy Services	S	256	R.52		39,833.93	VAT not separately indicated in the OR
Marubeni Energy Services	S	256	R.52		67,429.17	VAT not separately indicated in the OR
Marubeni Energy Services	S	256	R.52		124,239.35	VAT not separately indicated in the OR
PLDT	S		R.54		217.64	Supported by Transaction Receipt
Plumas Transport Corp.	S		R.56		9,107.14	VAT not separately indicated in the OR
Smart Communication	S	SOA	R.60		149.04	Supported by Statement of Account
Triple Eight Travel	S	24855	R.68		1,255.00	VAT not separately indicated in the OR
Triple Eight Travel	S	24855	R.68		1,255.00	VAT not separately indicated in the OR
TOTAL				**PHP**	**2,479,138.93**	

In addition, the Court disallows input VAT claim for the 1st Quarter of CY 2007 amounting to Php1,152,265.10 supported by Import Entry Declaration ("IED") No. 138403237 (BC Form No. 38-A)[60] for the following reasons:

1. No importation of goods or services has been declared by petitioner in its 1st quarterly VAT Return for CY 2007[61]. All input taxes incurred by petitioner for the 1st quarter of 2007 are attributable to its domestic purchase of services.

2. Assuming that such input VAT is attributed to importation of goods or services, the supporting IED does not have any machine validation or Bureau of Customs ("BOC") OR to prove payment of VAT, thus, it should be denied for VAT refund purposes.

Therefore, petitioner's substituted unutilized input VAT claim amounts to Php1,771,479.78, computed as follows:

DETAILS	**AMOUNTS**			
CTA Case No. 7899	Php	4,048,011.48		
CTA Case No. 7942		1,484,924.01	Php	5,532,935.49
Less: Disallowances				
Per ICPA	Php	130,051.68		
Per Court		2,479,138.93		
Exhibit "Q.37"		1,152,265.10	Php	3,761,455.71
SUBSTANTIATED UNUTILIZED INPUT VAT			**PHP**	**1,771,479.78**

Since petitioner's sales for the 1st and 2nd quarters of CY 2007 were all zero-rated, the substantiated input VAT of Php1,771,479.78 is entirely attributable thereto.

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[60] *Records, CTA Case Nos. 7899, 7942 and 7960, Exhibit Folders "Q.1" - "Q.53," Exhibit "Q.37."*
[61] *Id., Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "F," line 21H.*

Petitioner's input VAT payments were not applied against any output VAT liability.

A perusal of petitioner's 1st and 2nd Quarterly VAT Returns for CY 2007 shows that it has no output VAT liability against which the substantiated input VAT of Php1,771,479.78 may be applied or credited. Even though the claimed input VAT was carried over by petitioner to the succeeding 3rd[62] and 4th[63] quarters of CY 2007, the same remained unutilized as petitioner's output VAT liability of Php122,578.93[64] for the 3rd quarter of CY 2007 was already deducted from the claim in CTA Case No. 7690. Moreover, the Court further finds that in the first Quarterly VAT Return of CY 2008[65], petitioner indicated a zero (0.00)[66] amount in the portion "Input Tax Carried Over from Previous Quarter." Consequently, the substantiated input taxes for the 1st and 2nd quarters of CY 2007 in the amount of Php1,771,479.78 could not have been carried over or utilized in the 1st quarter of CY 2008 to the succeeding taxable periods.

In sum, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC in the amount of **Php1,771,479.78,** representing unutilized excess input VAT attributable to its zero-rated receipts for the 1st and 2nd quarters of CY 2007.

WHEREFORE, premise considered, the Petitions for Review are hereby **GRANTED** but in a modified amount. Respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE MILLION SEVEN HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED SEVENTY NINE AND 78/100 PESOS (Php1,771,479.78),** representing its creditable input value-added taxes paid and attributed to its effectively zero-rated sales for the first and second quarters of CY 2007.

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[62] *Records, CTA Case Nos. 7899, 7942 and 7960, Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "H-7," line 20A.*
[63] *Id., Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "I-6," line 20A.*
[64] *Id., Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "H," line 15B.*
[65] *Id., Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "J."*
[66] *Id., Exhibit Folder "A" to "P" and "BB" to "GG," Exhibit "J," line 20A.*

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended 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 Amended 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