

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

C.T.A. EB No. 504
(C.T.A. Case No. 6421)

Present:

-versus-

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

**TEAM SUAL CORPORATION
(formerly MIRANT SUAL
CORPORATION),**

Respondent.

Promulgated:

JUN 16 2010

H. Apolinario
9:40 a.m.

X- - - - - X

DECISION

CASTAÑEDA, JR., J.:

For review is the Decision dated January 26, 2009 granting the amount of P173,265,261.30 representing value added tax ("VAT") on *je*

domestic purchases and importation of goods and services for year 2000 in favor of Team Sual Corporation, and the Resolution dated June 19, 2009 denying the Commissioner of Internal Revenue's Motion for Partial Reconsideration, both issued by the Court in Division in CTA Case No. 6421 entitled, "MIRANT SUAL CORPORATION [formerly SOUTHERN ENERGY PANGASINAN, INC.] vs. COMMISSIONER OF INTERNAL REVENUE".

THE FACTS

Team Sual Corporation ("TSC") is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. TSC is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation ("NPC") under a Build, Operate, Transfer ("BOT") Scheme¹ and is registered with the Bureau of Internal Revenue ("BIR") as a VAT taxpayer with taxpayer identification number ("TIN") 003-841-103.² It is also previously known as Mirant Sual Corporation and Southern Energy Pangasinan, Inc.³

The Commissioner of Internal Revenue ("Commissioner") is a public official tasked to decide disputed assessments, refund of erroneously or *je*

¹ Joint Stipulation of Facts and Issues, CTA Case No. 6421, p. 147.

² Joint Stipulation of Facts and Issues, CTA Case No. 6421, p. 148.

³ *Ibid.*

excessively paid internal revenue taxes, fees or other charges, penalties, or other matters arising under Republic Act (R.A.) No. 8424, or also known as the, "1997 National Internal Revenue Code ("NIRC")", or other laws administered by the Bureau of Internal Revenue ("BIR").

On November 26, 1999, the Commissioner granted TSC's application for zero-rating arising from its sale of power generation services to NPC for taxable year 2000 pursuant to its Build-Operate-Transfer Agreement.

TSC filed its VAT returns for the first, second, third, and fourth quarters of taxable year 2000 on April 24, 2000, July 25, 2000, October 25, 2000 and January 25, 2001, respectively.⁴

Convinced that it is entitled to the unutilized input VAT of P179,314,926.56 from zero-rated sales to NPC for the taxable year 2000, TSC filed a claim for refund with the BIR.

Due to BIR's inaction on its refund claim, TSC filed a Petition for Review docketed as CTA Case No. 6421 before the Court in Division on April 1, 2002.

In ruling for TSC, the Court in Division issued a Decision dated January 26, 2009 ordering the Commissioner to refund or to issue a tax credit certificate in the reduced amount of P173,265,261.30 representing *je*

⁴ Exhibits "A", "B-8", "C" and "D". See CTA Case No. 6421, p. 548.

domestic purchases and importation of goods and services attributable to zero-rated sales to NPC for taxable year 2000.⁵

Dissatisfied, the Commissioner moved to partially reconsider the Decision dated January 26, 2009, however, in the Resolution dated June 19, 2009, the Court in Division denied the same for lack of merit.⁶

THE ISSUES

Unfazed, the Commissioner appealed to the Court *en banc* and interposed the following issues:

THE HONORABLE FIRST DIVISION OF THE COURT OF TAX APPEALS ERRED IN RESOLVING THAT RESPONDENT IS ENTITLED TO A PARTIAL REFUND OF ITS UNUTILIZED EXCESS INPUT VALUE-ADDED TAX ATTRIBUTABLE TO ITS ZERO-RATED SALES OF THE TAXABLE YEAR 2000

THE CLAIM FOR REFUND WAS FILED PREMATURELY.⁷

THE COURT'S RULING

**COMPLIANCE BY TSC ON THE
SUBSTANTIATION REQUIREMENTS AS
TO INPUT VAT OF P173,265,261.30** *jr*

⁵ Rollo, pp. 13-27. Penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justice Caesar A. Casanova with Concurring and Dissenting Opinion of Presiding Justice Ernesto D. Acosta.

⁶ Rollo, pp. 36-38.

⁷ Rollo, p. 3.

The Commissioner alleges that TSC is disqualified to claim for refund or tax credit in the reduced amount of P173,265,261.30 representing unutilized input VAT because it failed to submit pertinent documents. He further asserts that it is incumbent upon TSC to prove compliance with the following:

1. The registration requirements of a VAT taxpayer under Sections 6(a) and 6(b) of Revenue Regulations (RR) 6-97, in relation to Section 4.107-a(a) of RR No. 7-95, and Section 236 of the 1997 NIRC;
2. The invoicing and accounting requirements for VAT registered persons, as well as the filing and payment of VAT in accordance with the provisions of Sections 113 and 114 of the 1997 NIRC; and
3. The requirements as enumerated under Section 4.104-2 of RR No. 7-95 (Re: Persons who can avail of the Input Tax Credits).

The Commissioner contends that the input VAT of P13,926,697.51 allegedly paid on TSC's domestic purchases of non-capital goods and services, including services rendered by non-residents and importation of non-capital goods for the third and fourth quarters of 2001 and all the fourth quarters of 2002 attributable to its zero-rated sales have not been applied against any output tax nor carried over to the succeeding taxable quarter or quarters. *Jr*

TSC on the other hand, argues that it was able to prove its entitlement to the refund claim of P173,265,261.30 representing its unutilized input VAT for the year 2000.

TSC was able to establish its sale of power generation services to NPC subject to effectively zero (0%) rate VAT under Section 108 (B)(3) of the 1997 NIRC, in relation to Section 13 of R.A. 6395, as amended, or also known as the NPC Charter.

Both testimonial and documentary evidence show that TSC incurred unutilized creditable input VAT for the year 2000 duly substantiated by official receipts and invoices, bank debit advices, BOC official receipts, IEIRDS and other documents, including documents substantiating input VAT declared in its VAT returns for the four (4) quarters of taxable year 2000.

The unutilized creditable input VAT for the entire quarters of the taxable year 2000 in the amount of P173,266,300.85 was carried over to the succeeding taxable quarters and was only applied to the output tax liability of TSC in the amount of P1,039.55 as reflected in its VAT return for the third quarter of 2000. This resulted to an excess input VAT of P173,265,261.30 that is entirely attributable to TSC's zero-rated sales. Although, TSC's claimed input VAT was carried over to the succeeding quarters until the first quarter of 2002, the same was deducted from the available input VAT as of the first quarter of 2002. 

The Commissioner's contention is untenable.

The proper substantiation of input VAT on the purchase of goods and services is specifically provided in Sections 110, 106 and 108 of the 1997 NIRC, reading:

"SEC. 110. *Tax Credits.* –

"(A) *Creditable Input Tax.* -

"(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: xxxx

"(2) The input tax on domestic purchase of goods or properties shall be creditable:

"(a) To the purchaser upon consummation of sale and on importation of goods or properties; and xxxx

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

xxxx

"SEC. 106. ***Value-added Tax on Sale of Goods or Properties.***

"(A) Rate and Base of Tax. – **There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged,** such tax to be paid by the seller or transferor.

"(1) The term '*goods or properties*' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:

xxxx

"(D) *Determination of the Tax.* –

"(1) The tax shall be computed by multiplying the total amount indicated in the **invoice** by one-eleventh (1/11). *Je*

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"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

"(A) Rate and Base of Tax.– There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

"The phrase '***sale or exchange of services***' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration xxxx

"The term '***gross receipts***' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

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(C) *Determination of the Tax.* – The tax shall be computed by multiplying the total amount indicated in the **official receipt** by one-eleventh (1/11) (Emphasis supplied.)

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Simply stated, VAT on the sale of goods or properties accrue upon the ***consummation of sale*** regardless of whether or not the consideration thereof was actually received by the seller. It is for this reason that the afore-cited Section 106(D) (1) of the 1997 NIRC provides that the tax shall be computed by multiplying the total amount indicated in the ***invoice*** by one-eleventh (1/11). On the other hand, VAT on the sale of services arises upon ***actual or constructive receipt of the*** 

consideration, irrespective of whether or not the service has been rendered. In addition to this, Section 108(C) of the 1997 NIRC, provides that the tax on the sale of services shall be computed by multiplying the total amount indicated in the **official receipt** by one-eleventh $1/11$.⁸

Irrespective of the nature of the transaction, be it taxable, exempt, or zero-rated sales, the taxpayer shall issue VAT invoices pertaining to sales of goods, and official receipts as to sales of services.⁹

In the case of *AT & T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*¹⁰, this Court discussed the relevance of sales of services documented by official receipts and sales of goods by invoices as follows:

xxxx For every **sale of services, VAT shall be computed on the basis of gross receipts indicated in the official receipt**. The sale transaction becomes subject to VAT upon the actual or constructive receipt of the consideration whether or not the service has been rendered. In the same transaction, the output VAT of the seller becomes the input VAT of the purchaser.

This is to avoid the situation where the government could end up refunding a tax which was not even paid. It should be noted that the seller will only become liable to pay the output VAT upon receipt of payment from the purchaser. If we are to use sales invoice in the sale of services, an absurd situation will arise when the purchaser of the service 

⁸ *Nippon Express Philippines, Inc. v. Commissioner of Internal Revenue*, CTA EB Case No. 335, August 20, 2008.

⁹ *AT & T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, Resolution, CTA EB No. 291, February 18, 2008.

¹⁰ *AT & T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 381, September 24, 2008. See also *Northern Mindanao Power Corporation v. Commissioner of Internal Revenue*, CTA No. EB No. 312, July 18, 2008 and *Team Sual Corporation (formerly "Mirant Sual Corporation" and "Southern Energy Pangasinan, Inc.") v. Commissioner of Internal Revenue*, CTA EB Case No. 400, March 11, 2009.

can claim tax credit representing input VAT even before there is payment of the output VAT by the seller on the sale pertaining to the same transaction. As a matter of fact if the seller is not paid on the transaction, the seller of service would legally not have to pay output tax while the purchaser may legally claim input tax credit thereon. The government ends up refunding a tax which has not been paid at all. Hence, to avoid this, official receipt for the sale of services is an absolute requirement.

While the use of official receipt as proof of sale of services and sales invoice for sale of goods has already been recognized in NIRC of 1997 prior to its amendment, it was even clarified in the subsequent law under Republic Act (RA) No. 9337. In fact, during the Senate deliberation of Senate Bill No. 1950 which later on became RA No. 9337, it can be reasonably concluded that the true intendment of the legislature is to make a distinction between the VAT invoice and official receipt. The pertinent portion of the Senate deliberation provides:

The President: Mr. Sponsor, is it not better if we delegate these matters of strict implementation to the BIR rather than define it here in the law which might be difficult to change later on should there be a need to change it? These are matters of implementation and administration. If we provide appropriate standards, maybe we can delegate these implementation provisions to the Bureau Internal Revenue. Would that be an acceptable idea to the sponsor?

Senator Recto: To improve the system, Mr. President, **I think that we are better off putting it in the law insofar as a VAT invoice is for goods; a receipt is for services. And then it should be clear in the law that if one is selling an exempt product, it should be exempt; if one is selling a zero-rated product, it should be zero-rated; if one is selling at 10%, it should be 10%** so that it is clear to the consumer, to the taxpayer, how much taxes he paid. That is found in Europe.

Clearly, official receipt cannot be interchanged with sales invoice. Accordingly, the requirement of issuing a duly registered VAT official receipt with the imprinted word zero-rated is mandatory under the law and cannot be substituted especially for input VAT refund purposes. The law itself specified that an official receipt shall cover sales of services. It did not provide for any other document which can be used as an alternative to or in lieu of an official receipt.¹¹ (Emphasis supplied.) 

¹¹ *Ibid.*

The invoices or official receipts shall contain information in accordance with Section 113 of the 1997 NIRC and Section 4.108-1 of Revenue Regulations No. 7-95¹², to wit:

"SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –

"(A) Invoicing Requirements. – xxxx

"(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

"(2) 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.

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VAT INVOICE OR RECEIPT

SEC. 4.108-1. Invoicing Requirements – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.¹³

Out of the claimed amount of P179,314,926.56 for the four quarters of 2000, TSC was able to support input VAT of P173,266,300.85¹⁴. The *gc*

¹² Consolidated Value-Added Tax Regulations dated December 9, 1995.

¹³ Section 4.108-1, RR 7-95.

¹⁴ Rollo, p. 26.

disallowed amount is a) unsubstantiated by official receipts or invoices or by improper documents; b) it pertained outside the covered period; c) if with receipts or invoices, these documents were pre-printed with the wordings "TIN-V" or "TIN-NV" instead of "TIN-VAT"; and as per independent certified public accountant's findings on input VAT for which documents were subsequently submitted by TSC.

Input VAT Claim		P 179,314,926.56
Less: Disallowances		
a. Per independent CPA	P 6,426,367.22	
Less: input taxes for which documents were subsequently submitted by petitioner	5,389,564.98	1,036,802.24
b. Invalid documents supporting part of the claimed input tax of P5,389,564.98		2,490,490.66
c. Input taxes supported by invoices or official receipts with pre-printed "TIN-V" or "TIN-NV" instead of "TIN-VAT"		917,785.79
d. Input taxes on purchases of goods for which the related VAT invoices fall outside the period of claim		1,603,547.02
Total Disallowances		P 6,048,625.71
Substantiated Input VAT		P173,266,300.85¹⁵

Considering that TSC's VAT return for the third quarter of 2000 indicated an output tax due of P1,039.55 which should be deducted from the substantiated input tax of P173,266,300.85, this resulted to excess input tax of P173,265,261.30 entirely attributable to its zero-rated sales.¹⁶ *je*

¹⁵ *Ibid.*

¹⁶ Rollo, p. 26.

BOTH ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND MUST BE UNDERTAKEN WITHIN THE TWO YEAR PERIOD FROM THE CLOSE OF THE TAXABLE QUARTER WHEN THE SALES WERE MADE.

The Commissioner maintains that under Section 112(D) of the 1997 NIRC, he has 120 days within which to process refund claims of unutilized input VAT and the claimant must submit complete documents prior to the 120-day period. TSC can only appeal to the Court in Division after the expiration of the 120-day period in the event of inaction, or within 30 days from any adverse ruling denying its refund claim. Failure to strictly observe the mandated period would render the appeal useless.

TSC also failed to give the Commissioner sufficient time to investigate and evaluate administrative refund claim. On March 11, 2002, TSC filed its administrative claim for refund devoid of complete documents. It later filed the instant Petition on April 1, 2002. Clearly, 21 days had lapsed from the filing of the administrative claim to the filing of the Petition for Review with the Court in Division in violation of Section 112 (D) of the 1997 NIRC. Thus, the refund claim was prematurely filed.

The Commissioner elaborates that Section 112 of the 1997 NIRC is a distinct and different provision from Section 229 of the same Code. *Ja*

Section 229 only applies to erroneous payment or illegal collection of taxes; while Section 112 refers to refund of input VAT.

According to TSC, the law does not require the taxpayer to submit documents prescribed by Revenue Memorandum Order (RMO) No. 53-98 as a condition to a refund claim.

Judicial recourse within thirty (30) days after the lapse of the 120-day period is merely directory and not mandatory. Refund claim of input VAT must be filed within two year from the date of filing of the quarterly VAT return.

We disagree with the Commissioner's stance on the mandatory effect of the 120 day period and with TSC's posture on the reckoning point of the two year prescriptive period for refund of input VAT attributable to zero-rated or effectively zero-rated sales.

Refund claim of excess or unutilized input VAT attributable to zero-rated or effectively zero-rated sales is two years from the close of the taxable quarter when the sales were made pursuant to Section 112 of the 1997 NIRC, reading:

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

*"(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: xxxx

"(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

*" In case of full or partial denial 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 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.** xxxx (Emphasis supplied.)*

Under the law, the taxpayer-claimant **may** seek judicial redress for refund on excess or unutilized input VAT attributable to zero-rated sales or effectively zero-rated sales with the Court of Tax Appeals either within thirty (30) days from receipt of the denial of its claim for refund/tax credit, or after the lapse of the one hundred twenty (120) day period in the event of inaction by the Commissioner; provided that both administrative and judicial remedies must be undertaken within the two (2) year period from the close of the taxable quarter when the relevant sales were made. If the two year period is about to lapse, but the BIR has not yet acted on the application for refund, the taxpayer should file a Petition for Review with this Court within the two year period. Otherwise, the refund claim for 

unutilized input value added tax attributable to zero-rated sales or effectively zero-rated sales is time-barred.¹⁷

Subsections (A) and (D) of Section 112 of the 1997 NIRC under the heading "Refunds or Tax Credits of Input Tax" should be read in its entirety not in separate parts. Subsection (D) cannot be isolated from the rest of the subsections of Section 112 of the 1997 NIRC. A statute is passed as a whole, and is animated by one general purpose and intent. Its meaning cannot be extracted from any single part thereof but from a general consideration of the statute as a whole.¹⁸

The Supreme Court stresses that the two year prescriptive period for refund of unutilized input VAT attributable to zero-rated sales shall be counted from the close of the taxable quarter when the relevant sales were made. Indubitably, both administrative and judicial actions for refund must be filed within the two-year period.

**THE SUPREME COURT IS THE
ULTIMATE ARBITER. THE RECENT
DECISIONS IN THE CASES OF *MIRANT
PAGBILAO* AND *SAN ROQUE* MUST BE
CONFORMED TO UNDER THE
PRINCIPLE OF STARE DECISIS.** *Je*

¹⁷ *Commissioner of Internal Revenue v. Team Energy Corporation* (Formerly: *Mirant Pagbilao Corporation*), C.T.A. EB Case No. 422, August 14, 2009; *Commissioner of Internal Revenue v. San Roque Power Corporation*, C.T.A. EB Case No. 408, March 25, 2009 and *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation* (Formerly *Southern Energy Quezon, Inc.*), G.R. No. 172129, September 12, 2008.

¹⁸ *Romeo P. Gerochi v. Department of Energy*, G.R. No. 159796, July 17, 2007, 527 SCRA 696 and *Freedom from Debt Coalition v. Energy Regulatory Commission, et al.*, G.R. No. 161113, June 15, 2004, 432 SCRA 157.

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy.¹⁹ *All courts must take their bearings from the decisions of this Court.*²⁰

Maintaining stability in jurisprudence is of paramount importance under the principle of *stare decisis et non quieta movere* which simply means follow past precedents and do not disturb what has been settled. Where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisis is a bar to any attempt to relitigate the same issue.²¹ That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.²² Thus, *Mirant Pagbilao* and *San Roque* cases constitute as stare decisis to the case at bar.

In the 2008 Supreme Court Decision of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy & Power Corporation)*,²³

¹⁹ *Dante Nacuray, et al. v. National Labor Relations Commission*, G.R. Nos. 114924-27, March 18, 1997, 270 SCRA 9.

²⁰ *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, Resolution dated September 21, 2007, 533 SCRA 776, 781.

²¹ *Negros Navigation Co., Inc., v. Court of Appeals, et al.* G.R. No. 110398, November 7, 1997, 281 SCRA 534.

²² *Gregorio Castillo v. Sandiganbayan*, G.R. No. 138231. February 21, 2002, 377 SCRA 509.

Quezon, Inc.)²³, it was ruled that any refund claim or tax credit for unutilized creditable input VAT must be applied within two years from the close of the taxable quarter when the relevant sales were made pursuant to Section 112 of the 1997 NIRC. According to the Supreme Court, since the last creditable input VAT due for the period pertained to the progress billing as of September 6, 1996, the claimant had two years from September 30, 1996(for third quarter of the covered claim) until September 30, 1998 to file its refund application. Thus, Mirant's refund or tax credit claim filed on December 10, 1999 had already prescribed. The Supreme Court immediately applied the law, specifically Section 112 (A) of the 1997 NIRC on the reckoning point of the two year prescriptive period pertaining to refund claims of unutilized input VAT payments attributable to zero-rated or effectively zero-rated sales as follows:

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The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not. As the CA aptly puts it, albeit it erroneously applied the aforementioned Section 112(A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued." Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given the last creditable input VAT due for the period covering the

²³ G.R. No. 172129, September 12, 2008, 565 SCRA 154, 171.

progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.²⁴

The Supreme Court made similar pronouncements on the application of the two year prescriptive period and the reckoning point thereof in refund cases of unutilized input VAT attributable to zero-rated sales of electricity to NPC as shown in the case of *San Roque Power Corporation v. Commissioner of Internal Revenue* promulgated last November 25, 2009.²⁵ In that case, zero-rated sales from San Roque to NPC covered the year 2002. San Roque, filed its claim for refund for that period. Its judicial refund claim was filed on April 5, 2004. In applying Section 112 (A) of the 1997 NIRC, the Supreme Court through Justice Chico-Nazario explained that:

Respondent failed to act on the request for tax refund or credit of petitioner, which prompted the latter to file on 5 April 2004, with the CTA in Division, a Petition for Review, docketed as CTA Case No. 6916 before it could be barred by the two-year prescriptive period within which to file its claim. xxxx

The last requirement determines that the claim should be filed within two years after the close of the taxable quarter when such sales were made. **The sale of electricity to NPC was reported at the fourth quarter of 2002, which closed on 31 December 2002. Petitioner had until 30 December 2004 to file its claim for refund or credit. For the period January to March 2002, petitioner filed an amended request for refund or tax credit on 30 May 2003; for the period July 2002 to September 2002, on 27 February 2003; and for the period October 2002 to December 2002, on 31 July** *Je*

²⁴ *Ibid.*

²⁵ G.R. No. 180345, November 25, 2009.

2003. In these three quarters, petitioners seasonably filed its requests for refund and tax credit. However, for the period April 2002 to May 2002, the claim was filed prematurely on 25 October 2002, before the last quarter had closed on 31 December 2002.²⁶ (Emphasis supplied.)

In deference to the Supreme Court's rulings in the *Mirant Pagbilao* and *San Roque* cases, majority of the members of the CTA *en banc* reiterated the significance of filing both administrative and judicial claims for refund of unutilized input VAT attributable to zero-rated sales within the two-year prescriptive period from the close of the taxable quarter when relevant sales were made in the case of *Mindanao II Geothermal vs. Commissioner of Internal Revenue*²⁷, the pertinent excerpts of which provides:

It should be emphasized that when *Mirant* case was promulgated, *San Roque* case was already and still pending before the Supreme Court. Yet, the Supreme Court in deciding *San Roque* case, it retroactively adopted *Mirant* ruling. Noticeably, the judicial claim of *San Roque* was filed even earlier than the judicial claims of herein petitioner (April 5, 2004 for *San Roque* and April 22, July 7, and September 9, all in the year 2005 for herein petitioner). Hence, We see no reason why We should not adopt the same ruling to the instant case.²⁸

**THE SUPREME COURT IS CORRECT IN
APPLYING THE LAW PROSPECTIVELY
BECAUSE THE LAW TAKES EFFECT
UPON THE DATE OF ITS ENACTMENT
AND NOT UPON THE PROMULGATION** 

²⁶ *Ibid.*

²⁷ CTA EB No. 513, March 10, 2010.

²⁸ *Ibid.*

OF A JUDGMENT INTERPRETING THE LAW.

As previously discussed, refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales is governed by the provision of Section 112 (A) of the 1997 NIRC stating that 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. The 1997 NIRC took effect on January 1, 1998.

The *Mirant Pagbilao* and *San Roque* cases show that the Supreme Court prospectively applied Section 112(A) of the 1997 NIRC in ascertaining the reference point of the two year prescriptive period for refund of unutilized input VAT payments attributable to zero-rated or effectively zero-rated sales because the law takes effect upon the date of its enactment, and not upon the Court's interpretation of the law. The Court's interpretation of the law is part of that law as of the date of enactment because its interpretation merely establishes the contemporary legislative intent that the construed law purports to carry into effect.²⁹ *Je*

²⁹ *National Amnesty Commission v. Commission on Audit and Philippine Constitution Association v. Salvador Enriquez, Jr.* G.R. No. 156982, September 8, 2004, 437 SCRA 655 and *Philippine Constitution Association v. Salvador Enriquez, Jr.*, G.R. Nos. 113105, 113174, 113766 and 113888, August 19, 1994, 235 SCRA 506.

Judicial decisions interpreting the law as of the time of its effectivity is not tantamount to the passage of a new, law, but consists merely of a construction or interpretation of a pre-existing one.³⁰

We likewise disagree with TSC's argument that the *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*³¹ should be given weight as basis for determining the reckoning period of the two year prescriptive period from the date of filing of the quarterly VAT return. In the Atlas case, the claimant sought for refund or credit of input VAT on its purchases of capital goods and on its zero-rated sales for the taxable quarters of the years 1990 and 1992 when the applicable law at the time was the 1977 Tax Code, and not the 1997 NIRC. For comparison, the operative statute for the cases of *Mirant Pagbilao, San Roque, Mindanao Geothermal* and the case at bar is the 1997 NIRC. Clearly, TSC mistakenly applied the Atlas case to the instant case.

In consonance with the intent and wordings of Congress, the date of effectivity of the 1997 NIRC was on January 1, 1998. Logically, it is improper to treat the date of promulgation of the Supreme Court's Decision of the Mirant Pagbilao case as basis in applying the enforceability 

³⁰ *Eagle Realty Corporation v. Republic of the Philippines*, G.R. No. 151424, July 31, 2009, 594 SCRA 555 and *Kepco Ilijan Corporation v. Commissioner of Internal Revenue*, CTA Case No. 6590, Resolution dated July 23, 2009, both citing *Senarillos v. Hermosissima*, No. L-10662, December 14, 1956, 100 Phil. 501.

³¹ G.R. Nos. 141104 and 148763, June 8, 2007, 524 SCRA 73.

of the 1997 NIRC. It is not a license for courts to engage in judicial legislation. The duty of courts is to apply or interpret the law, not to make or amend it.³²

Applying the *Mirant Pagbilao* and *San Roque* cases, TSC filed its unutilized input VAT refund claim covering the four quarters of year 2000 with the BIR on March 11, 2002 and before the Court in Division on April 1, 2002, detailed as follows:

Period	Filing of Administrative Claim for Refund	Filing of Judicial Claim for Refund	Last Day to File Refund Claim
1 st Quarter 2000	March 11, 2002	April 1, 2002	March 31, 2002
2 nd Quarter 2000	March 11, 2002	April 1, 2002	June 30, 2002
3 rd Quarter 2000	March 11, 2002	April 1, 2002	September 30, 2002
4 th Quarter 2000	March 11, 2002 ³³	April 1, 2002 ³⁴	December 31, 2002

The last day for TSC to file its refund claim in both the administrative and judicial levels for the first, second, third and fourth quarters of year 2000 should be on March 31, 2002, June 30, 2002, September 30, 2002 and December 31, 2002, respectively. The refund claim for all the quarters of year 2000 was undertaken within the reglementary period. It bears stressing that although TSC's judicial claim for refund for the first quarter was filed on April 1, 2002, a working day, the same was timely made pursuant to Section 1, Rule 22 of the 1997 Rules of Civil Procedure because March 31, 2002 fell on a weekend. 

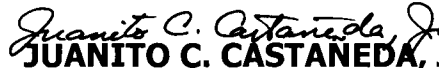
³² *Rommel Silverio v. Republic of the Philippines*, G.R. No. 174689, October 19, 2007, 537 SCRA 373.

³³ Joint Stipulation of Facts and Issues, CTA Case No. 6421, p. 148.

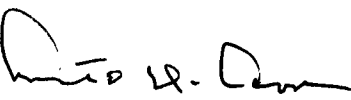
³⁴ CTA Case No. 6421.

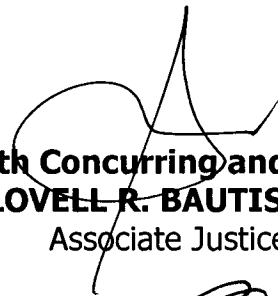
WHEREFORE, premises considered, the Petition for Review is hereby **DENIED**. The Commissioner is hereby ordered to refund TSC the aggregate amount of P173,265,261.30 representing unutilized input VAT on its domestic purchases and importation of goods and services attributable to zero-rated sales to NPC for the taxable year 2000.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:

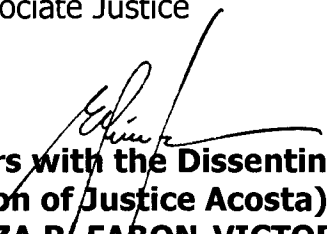

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice


(With Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


**(Concurs with the Concurring and
Dissenting Opinion of Justice Bautista)**
CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

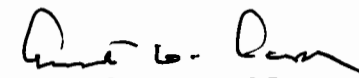

**(Concurs with the Dissenting
Opinion of Justice Acosta)**
ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

En Banc

**COMMISSIONER OF INTERNAL REVENUE, CTA EB No. 504
(CTA Case No. 6421)**

Petitioner,

Members:

ACOSTA, P.J.,
CASTAÑEDA
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

-versus-

**TEAM SUAL CORPORATION
(formerly MIRANT CORPORATION), SUAL**

Respondent.

Promulgated:

JUN 16 2010

*Propalman
S. R. O. M.*

X ----- X

DISSENTING OPINION

Foremost, I regret that I must dissent to the conclusions reached by the majority and to the reasons employed by them in arriving thereat.

On the issue of substantiation, the majority ruled that in evidencing input VAT for purposes of claiming a tax refund/credit, "irrespective of the nature of the transaction, be it taxable, exempt or zero-rated sales, the taxpayer shall issue VAT invoices pertaining to sale of goods, and official receipts as to sales of services."

En

This is contrary however to the clear intention of the law in Sections 113 and 237 of the National Internal Revenue Code of 1997 (NIRC) which readily reveals that invoices can be validly used interchangeably with official receipts in evidencing input VAT for purposes of claiming a tax refund/credit, *viz*:

“SEC. 113. Invoicing and Accounting Requirements for VAT registered persons –

*(A) Invoicing Requirements – A VAT-registered person, shall, for every sale, **issue an invoice or receipt.** In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:*

- (1) A statement that the seller is a VAT-registered person followed by his taxpayer's identification number (TIN); and*
- (2) 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.” xxx*

“SEC. 237. Issuance of Receipts or Sales of Commercial Invoices. – All persons subject to an internal revenue tax shall, for each sale, or transfer of merchandise or for services rendered valued at Twenty five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices,** prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service; Provided however, That in case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, regardless of amount where the sale or transfer is made by a person liable to value added tax to another person also liable to value added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations, or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser; customer or client: Provided further, That where the purchaser is a VAT registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer's Identification Number (TIN) of the purchaser.”
xxx

Moreover, under *Section 237* of the NIRC, all persons subject to an internal revenue tax are required to ***issue duly registered receipts or sales or commercial invoices*** for each sale, or transfer of merchandise or for services rendered valued at Twenty Five Pesos (₱25.00) or more. Also, under *Section 113*

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of the NIRC, a VAT-registered person is mandated to *issue an invoice or receipt* for every sale.

Aside from these two NIRC provisions, *Section 110* of the NIRC and *Section 4.106-5 of Revenue Regulations No. 7-95*, likewise show the intention to accept other evidence to substantiate claims for VAT refund, particularly the use of either a VAT invoice or receipt. *Section 110* provides that any input tax *evidenced by a VAT invoice or official receipt*, issued in accordance with *Section 113* shall be creditable against the output tax. On the other hand, *Section 4.106-5* provides that input tax should be *supported by an invoice or receipt*.

From the above, a VAT-registered person must not only issue an invoice or receipt for every sale but more importantly, *the creditable input tax may be evidenced by either a VAT invoice or official receipt*. The use of the disjunctive term "or" in the aforecited provisions connote that either act qualifies as two different evidences of input VAT.¹ It is indicative of the intention of the BIR and the lawmakers to use the same interchangeably in the sale of goods or services. The taxpayer may therefore present either an invoice or a receipt and it should not have any negative repercussion on its claim. Both are evidence of receipt of income by the issuer.

In *Commissioner of Internal Revenue vs. Manila Mining Corporation*,² the Supreme Court defined an invoice and a receipt as:

¹ The word "or" has been defined as a disjunctive particle used to express an alternative or to give a choice of one among two or more things (**Black's Law Dictionary**, 6th Edition, 1990, page 1095).

² G.R. No. 153204. August 31, 2005.

Jen

"Sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.

"Receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.

and held that:

“For a judicial claim for refund to prosper, however, respondent (claimant) must not only prove that it is a VAT registered entity and that it filed its claims within the prescriptive period. It must also **substantiate** the input VAT paid by purchase **invoices or official receipts.**”

It should be noted above that the Supreme Court made no distinction between an invoice and an official receipt. Manila Mining’s sale of goods, in that case, gold in particular, to the Central Bank, as export sales, may be substantiated by either an invoice or an official receipt. According to the Supreme Court, these **sales invoices or receipts** issued by the supplier are necessary to substantiate the actual amount or quantity of goods sold and their selling price, taken collectively are the best means to prove the input VAT payments. It was only unfortunate that in the Manila Mining case, neither sales invoice nor official receipts was submitted to the Court.

The Court must therefore, not differentiate between the evidentiary value of an invoice, an official receipt and other documentary evidence to prove the fact of petitioner’s sale of goods and services. After all, the pertinent laws, as well as



jurisprudence, made no pronouncement as to the use of only official receipts to substantiate purchases of services, and invoices to support purchases of goods, to the exclusion of all other proofs equally relevant and competent. On the contrary, official receipts and invoices are used in the law interchangeably.

More importantly still, on the issue of prescription, the majority recognizes that Section 112(D) of the NIRC provides for a 120-day period from submission of complete documents within which the Commissioner may grant or deny the taxpayer's application for refund or issuance of tax credit certificate. However, the majority stressed that "both administrative and judicial remedies must be undertaken within the two (2) year period from the close of the taxable quarter when the relevant sales were made. If the two year period is about to lapse, but the BIR has not yet acted on the application for refund, the taxpayer should file a Petition for Review with this Court within the two year period. Otherwise, the refund claim for unutilized input value added tax attributable to zero-rated sales or effectively zero-rated sales is time-barred."

I again respectfully disagree with the foregoing. I believe that the two-year prescriptive period in Section 112(A) of the NIRC³ merely sets a limitation on the period to file an administrative claim. Simply put, it excludes the filing of a judicial claim before this Court.

If we adhere to the interpretation that the two-year period includes both the administrative and judicial claims, the 120-day period and the 30-day appeal

³ Prior to its amendment by Republic Act 9337, "An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes" effective July 1, 2005.



period provided in the same Section 1129D) will be disregarded and rendered inutile. Situations arise wherein taxpayers file their administrative and judicial claims at a point when the two-year prescriptive period is about to prescribe as what have been actually happening in some cases filed before this Court. Thereafter, the Commissioner will be deprived of the opportunity to review the taxpayers claim as so mandated under the NIRC. Nonetheless, taxpayers will always find justification for their action on the fact that the two-year period is about to prescribe, with this scheme, we become an indirect venue for processing administrative claims for refund or tax credit, which function is rightfully reserved to the Commissioner.

In comparison, limiting the two-year period under Section 112(A) to the filing of administrative claims will be beneficial to all the parties. Taxpayers will be given two years to file their administrative claims sans fear of losing the right to seek judicial relief, the Commissioner shall be given the entire 120-day period to study the taxpayers' claims, and the Court will be limited to reviewing decisions of the Commissioner on claims for refund of input taxes rather than be bombarded with cases that should have been decided administratively. In addition, the 120-day period and the 30-day appeal period in Section 112 (D) will not be disregarded.

Needless to state, the legal fiat that we should avoid, if possible, a construction that renders any part of the statute meaningless or extraneous must be emphasized. A law should be interpreted with a view to upholding rather than destroying it. One portion of a statute should not be construed to destroy another.

Jim

A construction that would render a provision inoperative or ineffective should be avoided. The provisions should be harmonized and reconciled, if possible; they should be construed together as means to effect the purpose of the law. The most general and absolute term of one section may be qualified and limited by conditions and exceptions contained in another so that all may stand together.⁴

It should be noted also that unlike Section 229 of the NIRC which clearly state that “no suit or proceeding shall be filed after the expiration of two years from the date of payment,” Section 112 (A) does not contain a similar limitation. The obvious reason, therefore, is because Section 112 (D) now has its own limitation set on the taxpayer’s right to file a judicial appeal before the Court.

To explain further, prior to amendments introduced to the 1977 Tax Code, the “period” within which to file a judicial claim for refund of input taxes is not provided under Section 106 of the 1977 Tax Code, viz:

SECTION 106. Refunds or tax credits of input tax.

—
(a) *Export Sales.* — An exported who is a VAT-registered person may within two years from the date of exportation, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.

(b) *Zero-rated or effectively zero-rated sales.* — Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such

⁴ Ruben Agpalo, Statutory Construction, Fifth Ed. (2003), pp. 256-257.



sales to the extent that such input tax has not been applied against output tax.

(c) *Capital goods.* — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application for refund may be made only after the expiration of 2 succeeding quarters following the quarter in which the importation or local purchase was made: Provided, That a VAT-registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of registration or actual start of business operations, whichever comes later: Provided, however, That the application is filed not later than 2 years from the dates herein prescribed.

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(e) *Period within which refund of input taxes may be made by the Commissioner.* — The Commissioner shall refund input taxes within 60 days from the date the application for refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraph (a), (b) and (c) as the case may be.

By the subsequent amendments introduced by Republic Act No. 7716 or “The Expanded Value Added Tax Law” and later by Republic Act 8424 or “The Tax reform Act of 1997” which took effect on May 28, 1994 and January 1, 2008, respectively, Congress manifested its intent to fill up the void and provided for a period to appeal before this Court.

Thus, under the Tax Reform Act of 1997,⁵ Section 106 is renumbered as Section 112 and the 60-day period given to the Commissioner to act on the claim for refund of input taxes was increased to 120 days. It reads:

Section 112. Refunds or Tax Credits of Input Tax. —

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

xxx

⁵ Prior to its amendment by Republic Act 9337, "An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes" effective July 1, 2005.

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(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - **In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**

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

To repeat, prior to its amendment, Section 106 of the 1977 Tax Code provides for the following periods only:

- a. period when taxpayer may file its administrative claim; and,
- b. period for which the Commissioner shall act on the claim.

It thus failed to provide a prescriptive period for judicial appeal unlike in the present Section 112 (D) of the NIRC. This is the reason why the period of limitation provided in Section 230 (now 229) of the NIRC is applied to cases of refund of input taxes, as in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*.⁶ However, with the introduction of the 30-day appeal period, I am of the opinion that there is no need to extend the application of Section 229 on such cases.



⁶ G.R. Nos. 141104 and 148763, June 8, 2007.

Applying, therefore, Section 112(D) in relation to Sections 112(A) and (B) of the NIRC in the case at bar, respondent's filing of its administrative claim for refund on March 11, 2002 is well within the 2-year period provided under Section 112(A) and (B). However, its judicial appeal via a Petition for Review before this Court on April 1, 2002, or barely 21 days after the filing of the administrative claim, did not afford the petitioner-Commissioner the 120-day period required in Section 112(D). Therefore, the Petition for Review filed by respondent is premature. Such is a violation of the doctrine of exhaustion of administrative remedies.

It is a sound rule that, before one resorts to the courts, the administrative remedy provided by law must first be exhausted.⁷ A party seeking an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to court action.⁸

This non-exhaustion of administrative remedies renders the action premature, *i.e.*, the claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court.⁹ The premature invocation of court's intervention is fatal to one's cause of action.



⁷ Rufino Lopez & Sons, Inc. vs. Court of Tax Appeals, 100 Phil 580.

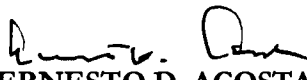
⁸ Commissioner of Internal Revenue vs. Rosemarie Acosta, G.R. No. 154068, August 3, 2007.

⁹ Carale vs. Abarintos, G.R. No. 120704, March 3, 1997.

Accordingly, absent any finding of waiver or *estoppel*, the case is susceptible of dismissal for failure to state a cause of action.¹⁰

Thus, I am in the opinion that it was an error on the part of the Court in Division to have entertained the case and eventually partially grant the claim for refund or issuance of tax credit certificate and for the Court *En Banc* to have denied the appeal of the Commissioner. In the first place, the initial Petition filed by the taxpayer (now, respondent) should have dismissed herein Petition for its failure to state a cause of action.

Accordingly, for reasons stated above, I vote for the **GRANT** of the instant Petition.


ERNESTO D. ACOSTA
Presiding Justice

I CONCUR:


ESPERANZA R. FABON-VICTORINO
Associate Justice

¹⁰ Paat vs. Court of Appeals, G.R. No. 111107, January 10, 1997; 266 SCRA 167, pp. 175-177.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB NO. 504
(CTA Case No. 6421)

Present:

-versus-

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

TEAM SUAL CORPORATION
(formerly MIRANT SUAL
CORPORATION),

Respondent.

Promulgated:

JUN 16 2010

*Pro Appellate
Division*

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CONCURRING AND DISSENTING OPINION

BAUTISTA, J.

I agree with the findings of the Court *En Banc* that from the total claimed input taxes of P179,314,926.56, respondent was able to substantiate only the amount of P173,266,300.85. And since respondent's VAT return for the third quarter of the year 2000 reflected an output tax due of P1,039.55, the said amount shall be deducted from



the substantiated input tax of P173,266,300.85, thus, the remaining excess input tax in the amount of P173,265,261.30 is entirely attributable to respondent's zero-rated sales.

I also concur with the pronouncement of the Court in Division that judicial recourse under Section 112(D) of the 1997 National Internal Revenue Code ("NIRC") is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period provided under Sections 112 and 229 of the 1997 NIRC, as amended.

It is a well-settled doctrine in statutory construction that the word "*may*" when used in a statute, is merely permissive and operates to confer discretion. It cannot be construed as having a mandatory effect.

Thus, as this Court consistently ruled, the taxpayer-claimant has the option of seeking judicial redress for refund of excess or unutilized input VAT attributable to zero-rated sales or effectively zero-rated sales with this Court either within thirty (30) days from receipt of the denial of its claim for refund or tax credit, or after the lapse of the one hundred twenty (120)-day period in the event of inaction by the Commissioner; provided that both administrative and judicial remedies must be undertaken within the two (2)-year period.

It is to be stressed further that if the 2-year prescriptive period is about to expire, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or its inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court.¹ Otherwise, the claim for refund of unutilized input tax attributable to zero-rated sales or effectively zero-rated sales will be time-barred.

¹ Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., CTA EB No. 416, February 4, 2009, Commissioner of Internal Revenue v. San Roque Power Corporation, CTA EB No. 408, March 25, 2009,

With all due respect, however, I beg to disagree when the majority of the Court *En Banc* enunciated that it is improper to treat the date of the promulgation of the Supreme Court's Decision in the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*, G.R. No. 172129, September 12, 2008 ("*Mirant SC Case*"), as the basis in applying the enforceability of Section 112(A) of the 1997 NIRC.

As I pointed out in the recent case of *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, CTA EB No. 513 (CTA Case Nos. 7227, 7287 and 7317), March 10, 2010, it is my view that the *Mirant SC Case* should be applied prospectively.

The Supreme Court aptly elucidated the prospectivity principle of judicial decisions in the case of *Co. v. Court of Appeals*,² to wit:

The principle of prospectivity has also been applied to judicial decisions which, "although in themselves not laws, are nevertheless evidence of what the laws mean, . . . (this being) the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system . . .'"

So did this Court hold, for example, in *Peo. v. Jabinal*, 55 SCRA 607, 611:

It will be noted that when appellant was appointed Secret Agent by the Provincial Government in 1962, and Confidential Agent by the Provincial Commander in 1964, the prevailing doctrine on the matter was that laid down by Us in *People v. Macarandang* (1959) and *People v. Lucero* (1958). Our decision in *People v. Mapa*, reversing the aforesaid doctrine, came only in 1967. The sole question in this appeal is: should appellant be acquitted on the basis of Our rulings in *Macarandang* and *Lucero*, or should his conviction stand in view of the complete reverse of the *Macarandang* and *Lucero* doctrine in *Mapa*? . . .

Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason

Commissioner of Internal Revenue v. CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.

² G.R. No. 100776, October 28, 1993, 277 SCRA 444.



why under Article 8 of the New Civil Code, “Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system . . .” The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court’s construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim “*legis interpretation legis vim obtine*” – the interpretation placed upon the written law by a competent court has the force of law. The doctrine laid down in *Lucero* and *Macarandang* was part of the jurisprudence, hence, of the law of the land at the time appellant was found in possession of the firearm in question and where he was arraigned by the trial court. **It is true that the doctrine was overruled in the Mapa case in 1967, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.** This is especially true in the construction and application of criminal laws, where it is necessary that the punishment of an act be reasonably foreseen for the guidance of society. *(Boldfacing supplied)*

While decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that “laws shall have no retroactive effect unless the contrary is provided.” This is expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward.³ Thus, the *Mirant SC Case* should be applied prospectively and not retroactively to the prejudice of taxpayers and litigants who relied in good faith on the prevailing jurisprudence at the time of the filing of the judicial claim for refund. The same consideration underlies the recent ruling of this Court in the case of *Team Energy Corporation (Formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue*, CTA Case Nos. 7229 & 7298, October 5, 2009, where the First Division of this Court made the following pronouncement:

³ *Spouses Gauvain and Bernardita Benzonan v. Court of Appeals*, G.R. No. 97973, January 27, 1992, 205 SCRA 515, citing *Francisco v. Certeza*, No. L-16849, November 29, 1961, 3 SCRA 565.



Although there is a recent case entitled *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly SOUTHERN ENERGY QUEZON, INC.)*, wherein the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made, this Court finds it proper to apply said ruling to cases filed after the promulgation date of the *Mirant Case*. **To apply said ruling in the present case will in effect be giving the new doctrine retroactive application thereby impairing vested rights.** (*Boldfacing supplied*)

When respondent filed its administrative claim with the BIR on March 11, 2002 and the Petition for Review with the Court in Division on April 1, 2002, the rule that the reckoning of the two-year period is the date of filing of the quarterly VAT return has become a well-established doctrine and adopted in numerous decisions of this Court, citing as basis the ruling in the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*.⁴ Thus, in the case of *JIDECO Manufacturing Philippines, Inc. v. CIR*, CTA Case No. 6552, September 16, 2004, which was affirmed by the Court *En Banc*,⁵ the Court in Division ruled that:

As we have already elucidated in our Resolution dated July 20, 1998 in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 5296, the two-year prescriptive period for the filing of claims for VAT refund should be reckoned from the date of filing of the corresponding quarterly VAT returns in order to harmonize the provisions of Section 112(B) of the NIRC of 1997 with Sections 114(A) and 229 of the same Code.

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In the cases of *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Appeals*, G.R. No. 83736, dated January 15, 1992 and *ACCRA Investments Corporation vs. Commissioner of Internal Revenue*, 204 SCRA 957, the Supreme Court held that the two (2)-year period should be counted from the filing of the final income tax return, because it is only during that date that the exact tax liability or refundability of the tax can be determined. In the same manner, it is only after the filing of the quarterly VAT return that we can determine the VAT liability or refundability of VAT. It should be noted

⁴ G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.

⁵ EB No. 53, June 7, 2005.

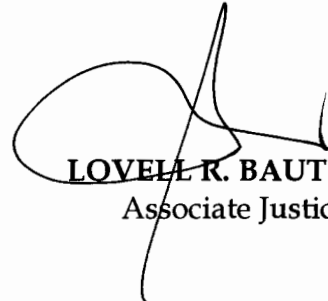


that the basic requirement is that VAT refund can only be granted to the extent that the input taxes have not been applied against output tax. All these matters can only be determined if a return is filed. It is logical therefore, that the two-year period should not immediately be counted from the close of the quarter but from the prescribed date of filing of the VAT return.

Taxpayers and litigants relied in good faith on the afore-quoted jurisprudence, and it would be the height of injustice to apply a new doctrine to a pending case involving a party who already invoked a contrary view and who acted in good faith thereon prior to the issuance of the said doctrine.⁶

Based on the foregoing disquisition, the ruling in the *Mirant SC Case* that the reckoning of the 2-year prescriptive period should be from the close of the taxable quarter should be applied prospectively *i.e.*, only to administrative and judicial claims filed after September 12, 2008.

Accordingly, I vote for the denial of the Petition for Review.



LOVELL R. BAUTISTA
Associate Justice

I CONCUR:



CAESAR A. CASANOVA
Associate Justice

⁶ Land Bank of the Philippines v. De Leon, G.R. No.143275, March 20, 2003, 399 SCRA 376.