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

***EN BANC***

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| COMMISSIONER OF INTERNAL REVENUE, Petitioner, | C.T.A. EB No. 686 (C.T.A. CASE NOS. 7230 & 7299) |
| - versus - | Members: ACOSTA, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.* |
| TEAM SUAL CORPORATION (FORMERLY MIRANT SUAL CORPORATION), Respondent. | Promulgated: MAY 2 2 2012 Cw Apolinario 3:00 p.m. |

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# DECISION

***Fabon-Victorino, J.:***

The petition at bar filed by the Commissioner of Internal Revenue on October 22, 2010, assails the Amended Decision dated November 26, 2009, as well as the Resolution denying her

Motion for Reconsideration dated September 7, 2010, both rendered by the Special First Division of the Court.

The salient facts are well established.

Petitioner is the Commissioner of Internal Revenue (CIR) empowered to act on and approve claims for refund or issuance of tax credit certificate as provided by law, with office located at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Quezon City.

Respondent, on the other hand, is a duly organized and existing domestic corporation with principal office at Barangay Pangascasan, Sual, Pangasinan. Petitioner is engaged in the business of power generation and the sale thereof to the National Power Corporation (NPC) under a Build Operate Transfer (BOT) Scheme. It is a VAT taxpayer with BIR Certificate of Registration bearing RDO Control No. 05-0181 and Taxpayer Identification No. 003-841-103. Originally it was registered with the Securities and Exchange Commission (SEC) as Pangasinan Electric Corporation, then it was changed to Southern Energy Pangasinan, Inc. on August 17, 1999, and further changed to Mirant Sual Corporation on June 28, 2001.

On November 13, 2002, respondent filed an Application for Effective Zero-Rate of its supply of electricity to NPC which the BIR Revenue District Office No. 5 at Alaminos, Pangasinan subsequently approved.

Respondent filed its quarterly VAT Returns for the four quarters of taxable year 2003 on April 24, July 25, October 27, 2003, and January 26, 2004, respectively. Respondent then filed its amended quarterly VAT returns for the first, second and fourth quarters of year 2003 on July 25, 2003, August 19, 2003, and July 26, 2004, respectively.

On December 20, 2004, respondent filed with the Bureau of Internal Revenue (BIR) an administrative claim for refund of its unutilized input VAT for the four quarters of the year 2003 in the total amount of P166,158,823.50.

On April 22, 2005, respondent filed a Petition for Review with the Court in Division docketed as CTA Case No. 7230, praying for refund or issuance of tax credit certificate in the amount of P67,527,025.75, allegedly representing unutilized input VAT paid on its domestic purchases of goods and services and importation of goods attributable to its zero-rated sales for the first quarter of the year 2003.

A parallel petition followed on July 22, 2005 asking for a similar relief but this time for the second, third, and fourth quarters of 2003 for amount of P98,631,797.75. The case was docketed as CTA Case No. 7299.

The two Petitions for Review were consolidated by virtue of the Resolution dated October 12, 2005 and subsequently submitted for decision on November 13, 2008.

On February 6, 2009, the Court in Division denied the consolidated petitions for failure of respondent to prove that it derived sales from power generation to qualify for VAT zero-rating under Republic Act No. 6136. The dispositive portion of the Decision reads as follows:

> "WHEREFORE, the instant Petition for Review is hereby DENIED for insufficiency of evidence.
>
> SO ORDERED."

Respondent assailed the adverse decision through a Motion for Reconsideration dated February 27, 2009, which the Court in Division partially granted in the Amended Decision promulgated on June 30, 2009, in this wise:

> "WHEREFORE, (respondent's) "Motion for Reconsideration" is PARTIALLY GRANTED and this Court's Decision dated February 06, 2009 denying (respondent's) Petition for Review is hereby MODIFIED. The Petition for Review in C.T.A. Case No. 7230 is hereby DISMISSED for being filed out of time, while the Petition for Review in C.T.A. Case No. 7299 is hereby PARTIALLY GRANTED.
>
> Accordingly, (petitioner) is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of (respondent) in the amount of P64,492,488.62, representing the latter's excess input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of taxable year 2003.
>
> SO ORDERED."

The dismissal of the claim for the 1st and 2nd quarters of 2003 was anchored in the Supreme Court ruling in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*[1] that the two-year prescriptive period for the filing of a claim for input VAT refund under Section 112(A) of the NIRC of 1997 is reckoned

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

from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT.

Unwavering, both respondent and petitioner assailed the Amended Decision of June 30, 2009, the former through a Motion for Partial Reconsideration dated July 17, 2009, while the latter, through a Motion for Reconsideration (of the Amended Decision dated June 30, 2009) dated July 20, 2009.

On November 26, 2009, the Court in Division promulgated another Amended Decision now the subject of the present petition, the dispositive portion of which reads as follows:

> "WHEREFORE, (respondent's) "Motion for Partial Reconsideration" is hereby GRANTED and this Court's Amended Decision dated June 30, 2009 denying (respondent's) claims for refund for the first and second quarters of 2003 is hereby REVERSED.
>
> On the other hand, (petitioner's) "Motion for Reconsideration" is hereby DENIED for lack of merit.
>
> Accordingly, (petitioner) is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of (respondent) in the amount of P84,772,666.06, representing the latter's excess input VAT attributable to its zero-rated sales for the first and second quarters of taxable year 2003.
>
> SO ORDERED."

Only petitioner sought a reconsideration of the foregoing decision in a motion dated December 11, 2009, which the Court in Division denied for lack of merit in the Resolution dated September 7, 2010.

Resolute in her position, petitioner now comes to the Court *En Banc*, raising the following issues, to wit:

> a. Whether the claim for refund made by respondent in CTA Case No. 7230 was filed out of time;
>
> b. Whether the appeal made to this Honorable Court by petitioner with respect to CTA Case No. 7299 was filed within the period allowed by law.

While petitioner admits that respondent's administrative claim for refund was seasonably filed on December 20, 2004, she insists that its judicial claim for refund of unutilized input VAT for the first quarter of 2003 was filed out of time pursuant to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997. Allegedly, this is in accord with the principle laid down in the case of Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) [Mirant case],[2] that the two-year prescriptive period for the filing of both administrative and judicial claims for input VAT refund under Section 112(A) of the Tax Code is 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. Counting from March 31, 2003 or the end of the first quarter of 2003, respondent had until March 31, 2005 to file its administrative as well as its judicial claims for refund. Hence, respondent's Petition for Review docketed as CTA Case No. 7230 was filed out of time on April 22, 2005.

The ruling in the Mirant Case should be upheld and applied in this case in complete disregard of respondent's contention that the said ruling is of "doubtful constitutional validity" as no evidence presented that it has been declared unconstitutional. Besides, this position is deemed a collateral attack on the said ruling which should not be countenanced.

The second Petition for Review filed by respondent docketed as CTA Case No. 7299 for refund of unutilized input VAT for the 2nd, 3rd, and 4th quarters of 2003 must be denied as well according to petitioner. Under Section 112(D) of the NIRC,

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

respondent had only 30 days from lapse of the 120-day period to act on the administrative claim for refund on April 19, 2005, or until May 20, 2005, to file its appeal. However, respondent filed the second Petitions for Review docketed as CTA No. 7299 only on July 22, 2005, rendering the Court in Division without jurisdiction to entertain it. Petitioner explains that the two-year period mandated in Section 112(A) of the NIRC, as amended, refers only to claims for refund in the administrative level. To rule otherwise will make the mandatory 120—30-day prescriptive period for appeal useless and render the Court "as a mere processor of administrative applications instead of dispenser of justice".

By way of comment, respondent counters that petitioner never raised as an issue its compliance with the 120-30-day period mandated in Section 112 of the NIRC during the trial of the two petitions. Hence, she is already estopped from invoking this defense on appeal before the Court *En Banc* as this constitutes a change of theory repugnant to the interest of justice and fair play. By virtue of her active participation in the trial below, which includes seeking affirmative relief from the Court in Division, petitioner is precluded from repudiating the Court's competence in determining the petitions.

Assuming that compliance with the periods in Section 112 of the NIRC is jurisdictional, as ruled in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* [Aichi case],[3] the principle should be applied prospectively and not retroactively given that at the time it filed the two petitions, the prevailing jurisprudence was that both the administrative and judicial claims for refund should be filed within two years from the date of payment of the tax or penalty under Section 229 of the NIRC. To apply the ruling retroactively is to impair the taxpayer's vested rights and nullify a right it enjoyed under the previous ruling. Moreover, only a decision or ruling *En Banc* may modify or reverse a principle or doctrine previously laid down by the Supreme Court, either in division or *en banc*.

Petitioner even cites the Court's consistent ruling, prior to the Aichi case, that the 30-day period to seek judicial recourse is merely permissive, provided that both the administrative and judicial claims for refund are filed within the two-year prescriptive period mandated under Sections 112 and 229 of the NIRC.

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[3] G.R. No. 184823, October 06, 2010.

Respondent also posits that the petitioner erroneously reckoned the two year prescriptive period for the filing of refund cases from the close of the taxable quarter as it should start from the filing of the quarterly VAT return. Despite admission that the Mirant Case was promulgated way before the resolution of the Court in Division, respondent maintains that the ruling therein should not be applied in the present cases. It should not be faulted for relying on the previous ruling which was the prevailing jurisprudence at the time it filed the two petitions.

Finally, respondent believes that it was able to prove all the requirements for its entitlement to the refund sought, namely; that its sales of power generation is subject to effectively zero percent VAT, that its unutilized creditable input taxes for year 2003 was fully substantiated, that it was not applied against any output VAT liability, and that both its administrative and judicial claims for refund were seasonably filed.

In the Resolution dated May 27, 2011, the instant petition was deemed submitted for decision with the Memorandum filed by respondent on April 20, 2011, but without any from petitioner, despite the opportunity granted.

The sole issue in this appeal is the timeliness of the filing of the respondent's judicial claims for refund docketed as CTA Case Nos. 7230 and 7299.

Section 112 of the NIRC, as amended, is instructive, viz:

> "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 x x
>
> (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. x x x"

The foregoing provision distinctly laid down the procedure for filing claims for refund of creditable input VAT, which the Supreme Court elucidated in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[4] the pertinent portions of which are quoted, as follows:

> "The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes."
>
> x x x
>
> To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.
>
> x x x
>
> Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax

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[4] G.R. No. 184823, October 06, 2010.

refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

x x x

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

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

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

> the 120-day period is crucial in filing an appeal with the CTA."

Thus, any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit certificate or refund of creditable input tax **within two years reckoned from the close of the taxable quarter when the relevant sales were made** pertaining to the input VAT. Unquestionably, the administrative claim for refund of creditable input VAT for the four taxable quarters of year 2003 was seasonably filed with petitioner on December 20, 2004, or within two years from the close of the taxable quarters when the relevant sales were made.

Under the same provision, petitioner had 120 days from the filing of its administrative claim on December 20, 2004, or until April 19, 2005, to act on the said claim. Counting thirty (30) days from the lapse of the allowable one hundred twenty (120)-day period in the administrative level, respondent had until May 19, 2005 to challenge petitioner's inaction before the Court of Tax Appeals. Hence, CTA Case No. 7230 was timely filed on April 22, 2005.

The same however may not be said insofar as CTA Case No. 7299 for refund of respondent's unutilized input VAT for the 2nd, 3rd, and 4th quarters of 2003 is concerned. The record shows that respondent's second Petition for Review was filed only on July 22, 2005, or 64 days after the 30-day period to appeal expired.

The 30-day period to assail petitioner's inaction on claims for refund as provided by Section 112 of the NIRC, is emphasized in Section 11 of R.A. No. 1125, the law which created the Court of Tax Appeals, as amended by R.A. No. 9282[5] and R.A. No. 9503, which reads as follows:

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

[5] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise Known as the law Creating the Court of Tax Appeals, and for Other Purposes.

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

Section 3, Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, further states that:

> "SEC 3. *Who may appeal; period to file petition.* –
>
> (a) **A party adversely affected by** a decision, ruling or **the inaction of the Commissioner of Internal Revenue on** disputed assessments or **claims for refund of internal revenue taxes**, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review within thirty days after** receipt of a copy of such decision or ruling, or **expiration of the period fixed by law for the Commissioner of Internal Revenue to act** on the disputed assessments. x x x" (emphasis ours)

Time and again, this Court has invariably ruled that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional.[6] The failure to perfect an appeal is not a mere technicality as it raises a jurisdictional problem which deprives the appellate court of jurisdiction over the appeal.[7] This is especially true since the CTA is a court of limited jurisdiction, and its jurisdiction to take cognizance of a case should be clearly conferred.[8]

A question of jurisdiction cannot be taken lightly considering that the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[9] The jurisdiction of the tribunal over the subject matter or nature of an action is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, it may dismiss the same *ex mero motu* or *motu proprio.*[10]

[6] Sehwani, Incorporated vs. In-N-Out Burger, Inc., G.R. No. 171053, October 15, 2007.
[7] Bello vs. NLRC, G.R. No. 146212, September 5, 2007.
[8] Southern Cross Cement Corporation vs. The Philippine Cement Manufacturers Corp., G.R. No. 158540, July 08, 2004.
[9] Commissioner of Internal Revenue vs. Villa, L-23988, January 02, 1928.
[10] Danao, et al. vs. Tappa, et al., G.R. NO. 181303, September 17, 2009.

Entrenched in our jurisdiction, is the principle that tax refunds, such as the cases covered by the present Petition for Review, are in the nature of tax exemption which are construed *strictissimi juris* against the taxpayer[11] and liberally in favor of the government as tax refunds involve a return of revenue from the government. The claimant/taxpayer must indubitably show the specific provision of the law from which the right arises and it cannot be allowed to exist upon mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund. To repeat, strict compliance with the conditions imposed for the return of revenue collected is a doctrine consistently applied in this jurisdiction.[12]

On the issue of prospective application of the principle laid down in the Aichi case, the Supreme Court had this much to say:

> In *Serrano v. National Labor Relations Commission*, an argument was raised similar to the case under consideration. Private respondent therein argued that the new doctrine pronounced by the Court should only be applied prospectively. Said postulation was ignored by the Court when it ruled:
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> > While a judicial interpretation becomes a part of the law as of the date that law was originally passed, this is subject to the

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[11] Philippine Bank Of Communications vs. CIR, G.R. No. 112024. January 28, 1999.
[12] CIR v. Rosemarie Acosta, G.R. No. 1540681, August 3, 2007.

> qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.
>
> It is apparent that private respondent misconceived the import of the ruling. The decision in Columbia Pictures does not mean that if a new rule is laid down in a case, it should not be applied in that case but that said rule should apply prospectively to cases arising afterwards. Private respondent's view of the principle of prospective application of new judicial doctrines would turn the judicial function into a mere academic exercise with the result that the doctrine laid down would be no more than a dictum and would deprive the holding in the case of any force.
>
> Indeed, when the Court formulated the Wenphil doctrine, which we reversed in this case, the Court did not defer application of the rule laid down imposing a fine on the employer for failure to give notice in a case of dismissal for cause. To the contrary, the new rule was applied right then and there. x x x.[13]

The Supreme Court had ruled on this particular issue and this Court needs only to follow it. By tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is. It is the final arbiter of any justiciable

[13] Cemco Holdings, Inc. vs. National Life Insurance Company, G.R. No. 171815, August 7, 2007.

controversy,[14] and all courts must take their bearings from the decision of the said Court.[15]

Respondent's lame excuse that it merely relied on the previous decisions prevailing at the time it filed the two Petitions for Review cannot be given credit. Significantly, respondent admitted that the Mirant Case was promulgated way before the assailed Decision was rendered by the Court in Division.

Having ruled that the first Petition for Review was seasonably filed, the Court needs to determine if respondent was able to comply with the other requirements to be entitled for refund for the 1st quarter of 2003, to wit:

> 1) the taxpayer must be VAT-registered;
> 2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; and
> 3) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.[16]

Per judicial admission made during the pre-trial conference, respondent is a registered VAT taxpayer in accordance with

[14] Dante Macuray v. NLRC, 270 SCRA 9.
[15] Systra Phil. V. CIR, 533 SCRA 776.
[16] Silicon Philippines, Inc. vs. CIR, G.R. No. 172378, January 17, 2011.

Section 107 of the Tax Code (now Section 236 of the National Internal Revenue Code), with BIR Certificate of Registration bearing RDO Control No. 05-0181 and Taxpayer Identification No. 003-841-103.[17]

Under Section 4, Rule 129 of the Rules of Court, a judicial admission made by a party in the course of the proceedings does not require proof.[18] The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made, which is not obtaining in the case at bar.

Anent the requisite that the taxpayer must be engaged in zero-rated or effectively zero-rated sales, the finding of the Court in Division as stated in the assailed Amended Decision promulgated on November 26, 2009, and to which the Court *En Banc* agrees, speaks for itself, thus:

> "x x x (respondent's) sales of power generation services are subject to zero percent [0%] VAT pursuant to Section 6 of R.A. No. 9136, otherwise know as the "Electric Power Industry Reform Act of 2001" [EPIRA]. (Respondent) was able to prove

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[17] Par. 4, Stipulation of Facts, Joint Stipulation of Facts and Issues dated December 20, 2005, Division docket page 292.

[18] Toshiba Information Equipment (Phils.), Inc. vs. CIR, G.R. No. 157594, March 15, 2010.

that it is a generation company and that it derived sales from power generation in the first and second quarters of 2003 in the total amount of P7,061,488,478.16 which were declared in its Quarterly VAT Returns for the same period as follows:

| **Exhibit** | **Taxable Quarter** | **Zero-rated Sales** |
|---|---|---|
| D | 1st Quarter | ₱3,596,438,393.77 |

An examination of the official receipts issued by (respondent) disclosed that the declared zero-rated sales in its Quarterly VAT Returns are fully substantiated."

To show that input taxes were incurred or paid, respondent submitted suppliers' invoices/official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDS) and BOC/bank official receipts in support of the input taxes reported in its Quarterly VAT Returns for the first quarter of 2003 amounting to P67,527,025.75. The same documents were examined and verified by a Court-commissioned ICPA[19] who reported the following:[20]

| | Findings | Exhibit | Amount |
|---|---|---|---|
| 1 | Input taxes claimed on local purchases properly supported by VAT invoices - capital goods goods-others | BB-1, p.1 | P 224,834.56 |
| | Input taxes claimed on local purchases properly supported by VAT invoices - goods-others | BB-1, p.1-9 | 2,255,970.66 |
| 2 | Input taxes claimed on local purchases of services properly supported by VAT ORs | BB-3 | 44,855,974.22 |
| 3 | Input taxes claimed on local purchases of services supported by TIN Non-VAT and stamped VAT-registered used before June 30, 2003 | BB-5 | 37,641.10 |
| 4 | Input taxes claimed on importation of capital goods and goods-others properly supported by original IEDs and | BB-7 | 3,653,088.00 |

[19] Jerome Antonio B. Constantino of Constantino Guadalquiver & Co.
[20] Exhibit "Y", pages 5 to 9.

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| | BOC/bank ORs | | |
| 5 | Input taxes claimed on importation of goods-others properly supported by original BOC/bank ORs and photocopied IEDs/IIEDs certified by BOC | BB-8 | 6,670,134.61 |
| 6 | Input taxes claimed on importation of goods supported by original BOC/bank ORs | BB-12 | 63,677.00 |
| 7 | Input taxes claimed on importation of goods supported by original BOC/bank ORs and photocopied IEDs | BB-13 | 6,691.00 |
| 8 | Input taxes claimed on importation of goods supported by original BOC/bank ORs and photocopied IEDs/IIED | BB-17 | 252.00 |
| 9 | Input taxes claimed on importation of services supported by BIR Form 1600 | BB-20 | 2,240,609.43 |
| ***Subtotal*** | | | ***P 60,008,872.58*** |
| 10 | Input taxes claimed on local purchases of goods and services without supporting documents | BB-39 | P 1,105,868.73 |
| ***Subtotal*** | | | ***P 1,105,868.73*** |
| 11 | Erroneous computation of input taxes claimed on local purchases of services | BB-32 | P 43,712.97 |
| ***Subtotal*** | | | ***P 43,712.97*** |
| 12 | Input taxes claimed on importation of goods supported by photocopied IEDs certified by BOC | BB-14 | P 12,399.00 |
| 13 | Input taxes claimed on importation of goods supported by photocopied IEDs/IIED and photocopied ORs certified by the BOC | BB-16 | 3,727.00 |
| 14 | Input taxes claimed on importation of goods supported by photocopied IEDs certified by BOC and photocopied BOC/bank ORs | BB-42 | 593.00 |
| 15 | Input taxes on importation of goods supported by original undated BOC/bank ORs and photocopied IEDs certified by the BOC | BB-59 | 135.00 |
| ***Subtotal*** | | | ***P 16,854.00*** |
| 16 | Input taxes claimed on local purchases of capital goods and goods-others properly supported by VAT invoices not dated within the taxable quarter but within the VAT-taxable year | BB-2 | P 9,580.00 |
| 17 | Input taxes claimed on local purchases of services properly supported by VAT ORs not dated within the taxable quarter but within the VAT-taxable year | BB-4 | 70.00 |
| 18 | Input taxes claimed on local purchases of capital goods and goods-others supported by VAT invoices without BIR permit number | BB-21 | 457,627.43 |
| 19 | Input taxes claimed on local purchases of goods supported by photocopied VAT invoices | BB-22 | 15,305.51 |
| 20 | Input taxes claimed on local purchases of capital goods and goods-others supported by documents other than VAT invoices (e.g. ORs, statement of accounts, delivery receipts, etc.) | BB-23 | 8,875.88 |
| 21 | Input taxes claimed on local purchases of goods supported by single invoices erroneously presented twice in the summary list | BB-24 | 1,860.00 |
| 22 | Input taxes claimed on local purchases of goods supported by VAT invoices not in the name of the Company | BB-28 | 2,855.29 |
| 23 | Input taxes claimed on local purchases of services supported by VAT ORs without BIR permit number | BB-29 | 6,526.22 |
| 24 | Input taxes claimed on local purchases of services supported by photocopied VAT ORs | BB-30 | 559,863.24 |
| 25 | Input taxes claimed on local purchases of services supported by documents other than VAT ORs (e.g. invoices, statement of accounts, etc.) | BB-31 | 525,924.53 |
| 26 | Input taxes claimed on local purchase of services supported by ORs issued not in the name of the Company | BB-34 | 3,259.09 |

| | | | |
|---|---|---|---|
| 27 | Input taxes claimed on local purchases of services supported by ORs with pre-printed TIN with stamped RDO # VAT | BB-36 | 20,623.80 |
| 28 | Input taxes claimed on local purchases of services which are supported by Non-VAT ORs | BB-37 | 16,886.36 |
| 29 | Input taxes claimed on importation of goods supported by original undated BOC ORs | BB-40 | 5,829.00 |
| 30 | Input taxes claimed on importation of goods supported by original BOC/bank ORs only dated outside the period of claim (i.e. 2002) | BB-41 | 55,847.00 |
| 31 | Input taxes claimed on importation of goods supported by photocopied IEDs/IIED certified by the BOC not in the name of the Company (i.e. Mirant Pagbilao) and original BOC ORs dated outside the period of claim (i.e. 2002) | BB-45 | 84.00 |
| 32 | Input taxes claimed on importation of goods without supporting documents | BB-47 | 141,321.00 |
| 33 | Input taxes on local purchases of goods supported by undated VAT invoices | BB-49 | 254,545.46 |
| 34 | Input taxes on local purchases of services supported by undated VAT ORs | BB-50 | 57,585.46 |
| 35 | Input taxes on local purchases of goods supported by invoices dated outside the period of claim | BB-51 | 3,212,120.01 |
| 36 | Input taxes on local purchases of services supported by ORs dated outside the period of claim | BB-52 | 110,253.88 |
| 37 | Input taxes on local purchases of services supported by ORs with pre-printed 'TIN-V' | BB-55 | 204,136.31 |
| 38 | Input taxes on importation of goods supported by original BOC/bank ORs dated outside the period of claim | BB-56 | 680,738.00 |
| ***Subtotal*** | | | ***P 6,351,717.47*** |
| **TOTAL** | | | **P 67,527,025.75** |

Input taxes classified under numbers 1 to 9 amounting to P60,008,872.58 represent respondent's valid claims as these are duly supported by required documents pursuant to Sections 110(A) and 113(A) of the NIRC of 1997 as implemented by Sections 4.104-1, 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95.

Further, the following input taxes amounting to P12,889.29 which represents input VAT covered by invoices or official receipts dated within the first quarter but was previously disallowed for being included in respondent's claim for the third and fourth quarters,[21] shall be added:

| Exhibit | Date | Supplier | Input Tax |
|---|---|---|---|
| DD-4Q-100, 101 | 1/3/2003 | Ace Diesel Parts Supply | P 407.00 |
| DD-4Q-540, 541 | 2/12/2003 | Fabricast Industries, Inc. | 181.82 |
| DD-4Q-667, 668 | 2/17/2003 | Federal Phil-Nippon Flow-Control, Inc. | 714.00 |
| DD-4Q-1373-1 | 2/17/2003 | RS Components Ltd. (Phils.) | 4,956.87 |
| DD-4Q-2417, 2418 | 1/30/2003 | FH Commercial, Inc. | 5,000.00 |
| DD-4Q-3255, 3256 | 3/4/2003 | Yana Chemodities, Inc. | 1,629.60 |
| | **TOTAL** | | **P 12,889.29** |

As regards the input taxes classified under number 10 amounting to P1,105,868.73, respondent presented the following documents to refute the ICPA findings:

| Exh. (ICPA Report) | Supplier | Exh. (Inv./OR) | Input VAT | Remarks |
|---|---|---|---|---|
| BB-30 | Shiloh Techno Services Corp. | HH | P 227,784.07 | Certified true copy only |
| BB-30 | Shiloh Techno Services Corp. | HH | 127,148.26 | Certified true copy only |
| BB-39 | Luzon Hydraulic Center | LL | 216.37 | Stamped TIN-VAT |
| BB-39 | Sycip Gorres Velayo & Co. | OO | 37,641.10 | Valid VAT OR |
| | | | **P 392,641.10** | |

Of the foregoing, only Exhibit "OO" is valid. Therefore, out of the P1,105,868.73 input VAT claim, the amount of P1,068,227.63 (P1,105,868.73 less P37,641.10) shall be disallowed.

[21] CTA Amended Decision dated June 30, 2009, page 15 and Annex A.

Insofar as the erroneously computed input taxes under number 11 in the amount of P43,712.97 is concerned, only the excess of the claimed amount over the input tax per invoice or official receipt amounting to P9,211.36 shall be disallowed, computed as follows:

| Exhibit | Supplier | Per Invoice | Claim | Difference |
|---|---|---|---|---|
| DD-1Q-1778, 1778a | Maunsell Phils., Inc. | P 6,353.61 | P 8,736.21 | P 2,382.60 |
| DD-1Q-1931, 1930 | Phil Nippon Cargo Express | 345.46 | 345.46 | - |
| DD-1Q-1948, 1948a | Phil Nippon Cargo Express | 1,647.08 | 1,647.08 | - |
| DD-1Q-1949, 1948 | Phil Nippon Cargo Express | 7,482.51 | 7,482.51 | - |
| DD-1Q-2456, 2452 | Smart Communications Inc. | 89.96 | 89.96 | - |
| DD-1Q-2628, 2628a | Tyco Integrated Systems | 6,157.75 | 7,697.18 | 1,539.43 |
| DD-1Q-2629, 2628 | Tyco Integrated Systems | 7,185.96 | 8,982.45 | 1,796.49 |
| DD-1Q-2643, 2643a | Welltech Service Corp. | 5,239.28 | 8,732.12 | 3,492.84 |
| | **TOTAL** | **P 34,501.61** | **P 43,712.97** | **P 9,211.36** |

Input taxes under numbers 12 to 15 amounting to P16,854.00 shall likewise be denied as they were supported by documents merely stamped as "certified true copy" or "certified photocopy". No indicium that the person who made the certification was the actual and authorized custodian of the said documents.

Finally, those under numbers 16 to 38 in the total amount of P6,351,717.47, must as well be disallowed for failure to meet the substantiation requirements under the pertinent provisions of the NIRC of 1997, as implemented by Revenue Regulations No. 7-95.

Thus, respondent's valid input VAT amounts to P60,093,904.58, computed as follows:

| | | |
|---|---|---|
| Claim for the 1st quarter of 2003 | | P 67,527,025.75 |
| Less: Disallowances | | |
| a. Valid claim included in 3rd & 4th quarters of 2003 | | (12,889.29) |
| b. Input taxes classified under Exhibit BB-39 | P 1,105,868.73 | |
| Less: Valid claim per Court's verification | 37,641.10 | 1,068,227.63 |
| c. Overstatement of claimed input taxes | | 9,211.36 |
| d. Input taxes supported by invoices or ORs stamped as "certified true copy" or "certified photocopy" | | 16,854.00 |
| e. Input taxes classified under Exhibits BB-2, BB-4, BB-21, BB-22, BB-23, BB-24, BB-28, BB-29, BB-30, BB-31, BB-34, BB-36, BB-37, BB-40, BB-41, BB-45, BB-47, BB-49, BB-50, BB-51, BB-52, BB-55, and BB-56 | | 6,351,717.47 |
| **Valid Input Taxes – 1st Quarter 2003** | | **P 60,093,904.58** |

A portion of the foregoing valid input taxes shall be applied against respondent's reported output tax liability for the first quarter of 2003 in the amount of P648.89.[22] Hence, input taxes attributable to respondent's zero-rated sales for the first quarter of 2003 amounted to P60,093,255.69, as computed below:

| | |
|---|---|
| Valid input taxes | P 60,093,904.58 |
| Less: Output VAT | 648.89 |
| **Excess input VAT** | **P60,093,255.69** |

[22] Exhibit "D"

Respondent carried-over the valid input VAT of P60,093,255.69 to the succeeding quarters, however, the same was not applied against any output tax liability as it was fully deducted as "Any VAT Refund/TCC Claimed" in the third quarter of 2005,[23] showing respondent's compliance with the requisite that the claimed input tax has not been applied against any output tax.

In fine, respondent is entitled to a refund or issuance of a tax credit certificate in the amount of P60,093,255.69, representing unutilized excess input VAT incurred in relation to zero-rated sales of power generation services.

**WHEREFORE,** the Petition for Review filed by petitioner Commissioner of Internal Revenue on October 22, 2010, is **PARTIALLY GRANTED**. The claim for refund for the 1st quarter of the year 2003, subject of CTA Case No. 7230, is hereby **GRANTED**. Petitioner is directed to refund or to issue a Tax Credit Certificate in favor of respondent Team Sual Corporation in the amount of P60,093,255.69, representing excess unutilized input VAT for the 1st quarter of year 2003.

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[23] Exhibit "U-2".

On the other hand, respondent's claim for refund of unutilized input VAT for the 2nd, 3rd, and 4th quarters of the year 2003 subject of CTA Case No. 7299 is **DENIED**, on jurisdictional ground.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

*We Concur:*

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

**(On Wellness Leave)**
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

**(On Wellness Leave)**
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice