REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MINDANAO II GEOTHERMAL PARTNERSHIP,
Respondent.

C.T.A. EB NO. 863
(C.T.A. CASE NO. 7800)

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MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 865
(C.T.A. CASE NO. 7800)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:
OCT 23 2012 apolinario 1:05 p.m.

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

Before the Court *En Banc* are consolidated Petitions for Review separately filed by the Commissioner of Internal Revenue (hereinafter "CIR") which seeks to nullify the Amended Decision dated September 20, 2011 and Resolution dated January 12, 2012 rendered by the First Division of this Court in C.T.A. Case No. 7800, docketed as C.T.A. EB No. 863, and by Mindanao II Geothermal Partnership (hereinafter "Mindanao II"), which seeks to reconsider the same Amended Decision dated September 20, 2011 and Resolution dated January 12, 2012 insofar as it disallowed Mindanao II's input taxes in the amount of P5,981,203.22 and to render a new judgment granting Mindanao II's claim for refund or issuance of tax credit certificate in the additional amount of P5,981,203.22, docketed as C.T.A. EB No. 865. The respective dispositive portions of said Amended Decision and Resolution read, as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent Commissioner of Internal Revenue is hereby ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner Mindanao II Geothermal Partnership the reduced amount of ONE MILLION FOUR HUNDRED NINETY SEVEN THOUSAND SIX HUNDRED NINETY ONE PESOS

AND ELEVEN CENTAVOS (Php1,497,691.11), representing the latter's unutilized input VAT attributable to zero-rated sales/receipts from power generation services for the year 2006.

SO ORDERED."

"**WHEREFORE**, the Motions for Partial Reconsideration dated October 14, 2011 and October 12, 2011, filed by the Commissioner of Internal Revenue and Mindanao II Geothermal Partnership, respectively, are hereby **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

The Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), empowered to determine and approve claims for refund or tax credit, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City, where she may be served with summons and other processes of this Court.

On the other hand, Mindanao II Geothermal Partnership (hereinafter "Mindanao II") is a partnership duly registered with the Securities and Exchange Commission and existing under the laws of the Philippines, with principal address at Barangay Ilomavis, Kidapawan City, North Cotabato.

THE FACTS

The facts, as found by the First Division, are, as follows:

Mindanao II executed a Build-Operate-Transfer ("BOT") contract with the Philippine National Oil Corporation-Energy Development Corporation ("PNOC-EDC") to finance, construct, design, test, operate, maintain and repair a 48.25-megawatt geothermal power plant in Kidapawan, North Cotabato, provided PNOC-EDC would supply and deliver steam to Mindanao II at no cost. Under the BOT, Mindanao II shall convert the steam into electric capacity and energy and deliver them to the National Power Corporation ("NPC") for and in behalf of PNOC-EDC. Mindanao II's 48.25-megawatt geothermal power plant project has been accredited by the Department of Energy as a Block Power Production Facility under the Implementing Rules and Regulations of Executive Order No. 215, as amended, as evidenced by its DOE Certificate of Accreditation No. 99-08-52, issued on August 10, 1999.

Mindanao II claims that as an accredited power generation company utilizing geothermal energy, its sale of generated power and delivery of electricity to NPC for and in behalf of PNOC-EDC is VAT zero-rated, under *Section 108 (B) of the NIRC of 1997, as amended* by *RA 9337*. The sale is its lone revenue generating activity.

In the course of its operation, Mindanao II purchased domestic goods and services, other than capital goods, and accumulated from such purchases, creditable input taxes, which remained unutilized. In its original and amended Quarterly VAT Returns for the four quarters of 2006, Mindanao II reflected its VAT zero-rated sales/receipts in the amount of P556,163,849.79 and unutilized input VAT in the amount of P7,842,632.34, detailed, as follows:

Exhibit	Year 2006	Date Filed	Zero-Rated Sales/Receipts	Unutilized Input VAT
"E"	1st Qtr	August 22, 2006	P147,839,344.90	P3,161,629.67
"F"	2nd Qtr	July 25, 2006	160,169,303.42	1,775,091.70
"G"	3rd Qtr	October 25, 2006	83,639,429.02	1,416,049.78
"H"	4th Qtr	January 25, 2007	164,515,772.45	1,489,861.19

On February 8, 2008, Mindanao II filed with the BIR Revenue District Office No. 108-Kidapawan City an administrative claim for refund or issuance of tax credit certificate in the amount of P7,842,632.34 for the four quarters of taxable year 2006. However, the CIR failed to act on said claim for refund or issuance of tax credit certificate.

On June 27, 2008, Mindanao II filed with this Court in Division a Petition for Review, docketed as C.T.A. Case No. 7820.

In her Answer, the CIR alleged by way of special and affirmative defenses that Mindanao II's claim for refund or issuance of TCC is subject to administrative investigation/examination by the BIR; taxes collected are presumed to be in accordance with laws and regulations; Mindanao II must comply with the following requisites: (1) that it is a VAT registered taxpayer, (2) the invoicing and accounting requirements, (3) submission of complete documents in support of its administrative claim for refund, pursuant to *Section 112 (C) of the NIRC of 1997, as amended*, (4) the input tax was paid by the claimant, attributable to its zero-rated or effectively zero-rated sales and such input tax should not been applied against any output tax; Mindanao II's claim for refund or issuance of TCC of unutilized input tax was filed within the two-year period under *Section 112(A) of the NIRC of 1997, as amended*; in an action for tax refund/credit, the burden of proof rests upon the taxpayer; and basic is the rule that tax refunds are in the nature of tax exemptions and are construed *strictissimi juris* against the entity claiming the same.

After trial on the merits, on January 19, 2011, the First Division rendered a Decision dismissing the Petition for Review.

On February 7, 2011, Mindanao II filed a "Motion for New Trial" praying that the Decision dated January 19, 2011 be vacated and a new trial be allowed in order for petitioner to submit the Certificate of Compliance ("COC") issued by the Energy Regulatory Commission ("ERC") to further prove that it is a generation company and its unutilized input taxes for taxable year 2006 are directly attributable to its zero-rated sales from power generation, which was granted by the First Division in its Resolution dated April 12, 2011, and Mindanao II was allowed to present additional evidence.

Mindanao II presented Ivy P. Acosta, as additional witness, and additional documentary evidence, marked as *Exhibits "R" to "T"*, inclusive of their submarkings, which were all admitted by the First Division in a Resolution dated June 30, 2011.

On September 20, 2011, the First Division issued an Amended Decision partially granting the Petition For Review.

On October 13, 2011, Mindanao II filed a "Motion for Partial Reconsideration" of the Amended Decision dated September 20, 2011, to which the CIR filed a "Comment".

On the other hand, on November 10, 2011, the CIR filed a "Motion for Partial Reconsideration", to which Mindanao II filed a "Comment/Opposition".

On January 12, 2012, the First Division denied both Motions For Partial Reconsideration for lack of merit.

Not satisfied, both the CIR and Mindanao II filed separate Petitions for Review before the Court *en Banc*, docketed as CTA E.B. No. 863 and CTA E.B. No. 865, respectively.

Without necessarily giving due course to the petition, on February 21, 2012, we required Mindanao II to file its Comment on the CIR's Petition for Review in C.T.A. EB No. 863, not a motion to dismiss, within ten (10) days from notice, afterwhich, the petition shall be deemed submitted for decision, unless the Court *En Banc* decides to require the parties to submit their simultaneous memoranda.

On March 6, 2012, the Court *en Banc* ordered the consolidation of CTA E.B. Case No. 865 with CTA E.B. Case No. 863, the case bearing the lower docket number, pursuant to *Section 1, Rule 31 of the Revised Rules of Court*.

On April 16, 2012, it appearing from the records of CTA EB No. 865 that prior to its consolidation with CTA EB No. 863 no comment has yet been filed by the CIR, in the interest of substantial justice, the CIR was given a period of ten (10) days from notice within which to file its "Comment".

Both parties having filed their respective "Comment", on May 28, 2012, we gave due course to the consolidated petitions, and ordered both parties to file their simultaneous memoranda, within a non-extendible period of thirty (30) days from notice; afterwhich, the consolidated petitions shall be deemed submitted for decision.

On June 14, 2012, the CIR filed its "Memorandum", while on June 29, 2012, Mindanao II filed its "Memorandum".

On July 25, 2012, the consolidated petitions were deemed submitted for decision.

CIR's Assigned Error in C.T.A. EB No. 863

> MINDANAO II IS NOT ENTITLED TO A REFUND OR THE ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF P1,497,691.00 REPRESENTING UNUTILIZED VALUE-ADDED TAX FOR TAXABLE YEAR 2006.

Mindanao II's Assigned Errors in C.T.A. EB No. 865

I

> THE DANGER THAT GOVERNMENT MAY REFUND A TAX WHICH WAS NOT EVEN PAID IS ABSENT IN THE PRESENT CASE CONSIDERING THAT BOTH THE INVOICES ISSUED BY PETITIONER'S CUSTOMERS (PROOF OF TRANSACTION) AND THE OFFICIAL RECEIPTS ALSO ISSUED BY SAID CUSTOMERS (PROOF OF PAYMENT) WERE PRESENTED IN EVIDENCE.

II

> THE PRINCIPLE OF *SOLUTIO INDEBITI* SHOULD GOVERN THIS CASE AND TECHNICALITIES AND LEGALISMS SHOULD YIELD TO THE SUBSTANTIVE MERITS OF PETITIONER'S CLAIM.

III

> THE DENIAL OF PETITIONER'S CLAIM ON A TECHNICALITY WILL GO AGAINST THE DECLARED POLICIES OF THE EPIRA LAW.

CTA E.B. No. 863 (Petition For Review filed by CIR)

The CIR contends that Mindanao II is not entitled to refund or the issuance of a tax credit certificate for failure to submit all the necessary and relevant documents prescribed by *RMO 53-98* with the CIR in the administrative level before resorting to judicial review.

On the other hand, Mindanao II counters that the issue raised by the CIR has already been exhaustively discussed and passed upon by the First Division in its Resolution dated January 12, 2012. Considering that the CIR did not raise any new and substantial arguments; then, its petition should be dismissed for lack of merit.

CTA E.B. No. 865 (Petition For Review filed by Mindanao II)

Mindanao II contends that it presented as proof of its input tax payments both the invoices issued by its customers showing the amount of the tax as a separate item and the official receipts also issued by said customers as proof of petitioner's payments of said invoices. Since both the proof of transaction and proof of payment had been presented as evidence, the danger that the government may end up refunding a tax which has not even been paid is totally absent in the present case.

Considering that the proof of transaction, as well as the proof of payment, particularly in the purchase of services, had been presented in evidence, technicalities and legalisms should yield to the substantive merits of Mindanao II's claim. Technicalities and legalisms should not be used by the government to enrich itself at the expense of its law-abiding citizens. To deny its input tax in the additional amount of P5,981,203.22 on a technicality will go against the declared policies of the EPIRA law.

The CIR, on the other hand, counters that the decision of the First Division denying the amount of P5,981,203.22 is correct.

THE COURT *EN BANC'S* RULING

Both petitions are devoid of merit.

CTA E.B. No. 863 (Petition For Review filed by CIR)

As regards CTA E.B. No. 863, we agree with Mindanao II that the issue raised by the CIR has already been exhaustively discussed and passed upon by the First Division in its Resolution dated January 12, 2012.

We have consistently ruled that the requirements listed under *RMO 53-98* refer mainly to the requirements for refund or tax credit in the administrative level for purposes of establishing the authenticity of a taxpayer's claim for refund or credit. However, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. In this Court, in addition to the provisions of the Rules of Court, *RA 9282, as amended*, the law creating the CTA, the *Revised Rules of the CTA, as amended*, and the provisions of the NIRC govern.

Section 7 (a) (1) of RA 9282 provides that the CTA shall exercise exclusive appellate jurisdiction to review by appeal the decisions of the Commissioner of Internal Revenue in cases involving refunds of internal revenue taxes; while *Section 7 (a) (2) of the same Act* provides that the CTA shall exercise exclusive appellate jurisdiction to review by appeal the inaction of the Commissioner of Internal Revenue in cases involving refunds of internal revenue taxes. Corollary thereto, *Section 11 of the same Act* provides that any party adversely affected by a decision, or inaction by the CIR may file an appeal with the CTA within a period of thirty (30) days after the receipt of such decision or after the expiration of the period fixed by law for action referred to in *Section 7 (a) (2)*.

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In conjunction thereto, the second paragraph of *Section 112 (C) of the NIRC of 1997, as amended*, provides:

> **"SEC. 112 Refunds or Tax Credits of Input Tax. –**
>
> xxx xxx
>
> (c) Period within which Refund or Tax Credit of Input Taxes shall be Made. –
>
> 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."
>
> xxx xxx."

From the foregoing, it is clear that in order for the CTA to acquire jurisdiction over the judicial claim for refund or tax credit, there must be a decision or inaction of the CIR on the claims for refund or credit and the taxpayer appeals said decision or inaction to the CTA, within thirty (30) days from the receipt of the decision or the expiration of the one hundred twenty (120)-day period. During the trial, it is the duty of the claimant to prove its entitlement to the claim for refund or credit, and the

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question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.

As found by the First Division, Mindanao II is entitled to a claim for refund or tax credit in the amount of P1,497,691.11, representing its unutilized input VAT attributable to its zero-rated sales for the year 2006.

We agree with the First Division that Mindanao II was able to substantiate its claim for refund or credit of its unutilized input VAT for the year 2006 in the amount of P1,497,691.11, attributable to its zero-rated sales, specifically, from the sale of power or fuel generated through renewable sources of energy, or the geothermal energy, pursuant *to RA 9337*.

C.T.A. EB No. 865 (Petition For Review filed by Mindanao II)

As regards C.T.A. EB No. 865, Mindanao II's contentions are devoid of merit.

Substantiation Requirements of Input VAT

As regards Mindanao II's first contention, *Section 113 of the NIRC of 1997, as amended by RA 9337*, provides:

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

(A) Invoicing Requirements. – A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) Information Contained in the VAT Invoice or VAT Official Receipt. – The following information shall be indicated in the VAT invoice or VAT official receipt:

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

(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: Provided, That:

(a) **The amount of the tax shall be shown as a separate item in the invoice or receipt**;

xxx" *(Emphasis supplied)*.

Pursuant to the above provision, one of the invoicing and accounting requirements for VAT-Registered Persons is that the amount of the tax should be shown as a separate item in the invoice or receipt.

Thus, we agree with the First Division in denying the amounts of P475,407.000 as input VAT on purchase of goods supported by invoice, as the amount of the tax is not shown as a separate item in the invoice, and P5,539,461.04 as input VAT on purchases of services supported by invoice and official receipt, as the amount of the tax is not shown as a separate item in the receipt, or the total amount of P6,016,192.37.

The aforementioned *Section 113(A)* expressly provides that for the sale of goods or properties, VAT invoice shall be issued; while for the sale of services, VAT official receipt shall be issued.

Corollary thereto, *Section 4.110-8 of Revenue Regulations 16-2005* provides:

> "SEC. 4.110-8. Substantiation of Input Tax Credits. –
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
>
> (1) For the importation of goods – import entry or other equivalent document showing actual payment of VAT on the imported goods.

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(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

xxx xxx."

It is clear that input tax credits incurred from purchases of goods and properties must be substantiated by invoices showing the information required in *Sections 113 and 237 of the NIRC of 1997, as amended by RA 9337*; while input tax credits incurred from purchases of services must be substantiated by official receipts showing the information required under *Sections 113 and 237 of the same Code.*

In the case at bench, Mindanao II failed to comply with the above substantiation requirements.

In the case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue, 636 SCRA 183*, the Supreme Court ruled, as follows:

> "Although it is true that the CTA is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of Kepco's claims. Verily, the CTA *En Banc* correctly disallowed the input VAT that did not meet the required standard of substantiation."

Liberality should not Yield to the Statutory Requirements

Mindanao II's second contention, that the principle of *solutio indebiti* should govern in this case and technicalities and legalisms should yield to the substantive merits of its claim cannot be sustained.

In the instant case, Mindanao II is not claiming for refund of erroneously paid taxes, rather it is claiming for refund or credit of unutilized input VAT based on a "tax exemption" provision of the *NIRC of 1997, as amended by RA 9337*, subjecting to zero percent rate its sales of power or fuel generated through renewable sources of energy; consequently, no output VAT was passed on by Mindanao II on said sales of service.

Settled is the rule that claims for tax refunds, when based on statutes granting tax exemption or tax refund, partake of the nature of an exemption; thus the rule of strict interpretation against the taxpayer-claimant similarly applies *(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc., 624 SCRA 358)*. It is because tax exemption is a result of legislative grace. And he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken *(Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, 559 SCRA 183)*. Accordingly, the taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. This burden cannot be offset by the non-observance of procedural technicalities by the government's tax agents when the non-observance of the remedial measure addressing it does not in any manner prejudice the taxpayer's due process rights, as in the present case *(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc., supra, 624 SCRA 358)*.

Since Mindanao II failed to comply with the statutory requirements prescribed in *Section 113 of the NIRC of 1997, as amended by RA 9337*, then liberality cannot be applied in the instant case.

Thus, in the case of *Uy vs. Public Estates Authority, 589 SCRA 20*, the Supreme Court ruled:

> "Neither can we hold PEA liable based on *solutio indebiti*, the legal maxim that no one should enrich itself at the expense of another. As we explained in *Powton Conglomerate, Inc. vs. Agcolicol*,
>
> 'the principle of unjust enrichment cannot be validly invoked by the respondent who, through his own act or omission, took the risk of being denied payment for additional costs by not giving the petitioners prior notice of such costs and/or by not securing their written consent thereto, as required by law and their contract'."

Hence, the principle of *solutio indebiti* applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause *(Siga-an vs. Villanueva, 576 SCRA 708)*.

Both elements are lacking in the present case. First, the input VAT paid by Mindanao II to its suppliers of goods and services is a consequence of being a VAT-registered taxpayer, which is mandated by law. Second, the payment of input VAT is not made through mistake. Mindanao II is claiming for refund or credit of the input VAT paid because the same became unutilized as a consequence of a legislative grace subjecting to zero percent-rate its sale of power or fuel generated through renewable sources of energy. The granting of refund, however, is not automatic; the claimant must prove entitlement to it by complying with the requirements prescribed by law. Failure to comply with the requirements will not entitle the claimant to refund or credit, such as in the instant case.

The EPIRA Law is not Applicable in the Present Case

As regards Mindanao II's third and last contention, it must be emphasized that Mindanao II was partly granted its claim for refund or issuance of tax credit certificate in the amount of P1,497,691.11, not because of the EPIRA law, but because of *Section 6 of RA 9337*, amending *Section 108 (B) (7) of the NIRC of 1997*, subjecting to zero percent rate the sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies, such as fuel cells and hydrogen fuels. Hence, Mindanao II's contention that the denial of its claim will go against the declared policies of the EPIRA law, as enunciated in the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue, 605 SCRA 563-564* ("San Roque case"), is without merit.

Mindanao II cannot rely on the ruling of the San Roque case because in the San Roque case the claim for refund covered the period January to December 2002; as such the governing law at that time was *RA 9136*, otherwise known as the EPIRA law. *Section 6 of the EPIRA* law provides: "pursuant to the objective of lowering electricity rates to end users sales of generated power by generation companies shall be value-added tax zero-rated", and *Section 75* thereof provides: "This Act shall, unless the context indicates otherwise, be construed in favor of the establishment, promotion, preservation of competition and people empowerment so that the widest participation of the people, whether direct or indirect, is ensured". Thus, the Supreme Court ruled, as follows:

> "The objectives as set forth in the EPIRA Law can only be achieved if government were to allow petitioner and other similarly situated to obtain the input tax credits available under the law. Denying petitioner such credits

would go against the declared policies of the EPIRA Law."
(San Roque Poqwer Corporation vs. Commissioner of Internal Revenue, 605 SCRA 564)

Accordingly, the Supreme Court relaxed the application of the law on claims for refund and granted San Roque's claim for taxable year 2002.

However, it bears stressing that the instant case involves claims for refund of Mindanao II covering the period January to December 2006; hence, the governing law is no longer the EPIRA law, but *RA 9337*, which took effect on November 1, 2005. *Section 24 of RA 9337* expressly repealed *Section 6 of the EPIRA Law*, to wit:

> "**SEC. 24.** *Repealing Clause.* - The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> (A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of National Power Corporation (NPC);
>
> **(B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies**; and
>
> (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which

> are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly" *(Emphasis supplied)*.

Since *Section 6 of the EPIRA Law* has been expressly repealed, Mindanao II cannot rely on the San Roque case in order that its claim for refund for taxable year 2006 in the instant case be decided in the same manner that the San Roque case was decided.

Finding no reversible error, we affirm the assailed Amended Decision dated September 20, 2011 and Resolution dated January 12, 2012 rendered by the First Division.

WHEREFORE, premises considered, the above-captioned petitions are hereby **DISMISSED** for lack of merit. Accordingly, the assailed Amended Decision dated September 20, 2011 and Resolution dated January 12, 2012 are hereby **AFFIRMED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

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(CTA Case No. 7800)

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

Promulgated:
OCT 2 3 2012 1:05 p.m.

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CONCURRING AND DISSENTING OPINION

BAUTISTA, J.

Based on the records of the case, the First Division of the Court ("Court in Division") promulgated a Decision dated January 19, 2011, the *fallo* of which, to quote:

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

Aggrieved, Mindanao II Geothermal Partnership ("MIIGP") filed a Motion for New Trial, for which the Court in Division finding merit thereto, issued an Amended Decision on September 20, 2011, which states as follows:

> **WHEREFORE,** the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Mindanao II Geothermal Partnership the reduced amount of **ONE MILLION FOUR HUNDRED NINETY SEVEN THOUSAND SIX HUNDRED NINETY ONE PESOS AND ELEVEN CENTAVOS (₱1,497,691.11)**, representing the latter's unutilized input VAT attributable to zero-rated sales/receipts from power generation services for the year 2006.
>
> **SO ORDERED.**

Both MIIGP and the Commissioner of Internal Revenue ('CIR") then filed their respective Motions for Partial Reconsideration, to which the Court in Division issued a Resolution dated January 12, 2012, to wit:

> **WHEREFORE,** the Motions for Partial Reconsideration dated October 14, 2011, and October 12, 2011, filed by the Commissioner of Internal Revenue and Mindanao II Geothermal Partnership, respectively, are hereby **DENIED,** for lack of merit.
>
> **SO ORDERED.**

Thereafter, the CIR filed a Petition for Review before the Court *En Banc,* on February 1, 2012, docketed as CTA EB Case No. 863, while MIIGP filed its Petition for Review, on February 15, 2012, docketed as CTA EB Case No. 865.

CTA EB CASE NO. 863

The Court *En Banc* dismissed the Petition for Review filed by the CIR for lack of merit, and accordingly, affirmed the Amended Decision dated September 20, 2011, and Resolution dated January 12, 2012. However, a perusal of the records of the case shows that MIIGP filed its Quarterly Returns on the following dates:

Period Covered	Date Filed	Exhibit
1st Quarter 2006 – Original	April 25, 2006	*"B"*
Amended	May 10, 2006	*"C"*
Amended	July 25, 2006	*"D"*
Amended	August 22, 2006	*"E"*
2nd Quarter 2006	July 25, 2006	*"F"*
3rd Quarter 2006	October 25, 2006	*"G"*
4th Quarter 2006	January 25, 2007	*"H"*

From the said dates, MIIGP filed its administrative claim for refund or issuance of tax credit certificate for the four quarters of the taxable year 2006 on February 8, 2008, and claiming inaction on the part of CIR, MIIGP filed a Petition for Review before the Court in Division on June 27, 2008.

When MIIGP filed its claims before the aforementioned *fora*, the prevailing jurisprudence is that the two (2)-year prescriptive period for filing a claim for refund or tax credit should not be counted from the close of the quarter, but from the date of filing of the return, for it is only during that time that the tax liability or refundability can be determined. The return referred thereto is the original return, and not merely an amended one. Thus, MIIGP cannot conveniently make the reckoning of the two (2) year prescriptive period from an amended return, but from its original return filed on April 25, 2006, in accordance with Section 114(A) of the 1997 National

Internal Revenue Code, as amended, which states:

> SEC. 114. *Return and Payment of Value-Added Tax* –
>
> (A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.

From the foregoing, I find MIIGP's claim covering the first (1st) quarter of the taxable year 2006, filed beyond the prescribed period.

As to the second (2nd) to fourth (4th) quarters of the same taxable year, I agree that these were made within the two (2)-year prescriptive period for filing a claim for refund or tax credit.

CTA EB CASE NO. 865

On the other hand, I agree with the Court *En Banc* that the Petition for Review filed by MIIGP should be dismissed, however, not for lack of merit, but for lack of jurisdiction.

Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals, states as follows:

> RULE 15
> MOTION FOR RECONSIDERATION OR NEW TRIAL
>
> SECTION 1. *Who may and when to file motion.* - Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

And Section 3 of Rule 14 of the Revised Rules of the Court of Tax Appeals, to wit:

RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

xxx xxx xxx

> SEC. 3. *Amended decision.* – Any action modifying or reversing a decision of the Court *en banc* or in Division shall be denominated as Amended Decision.

The Amended Decision dated September 20, 2011 is the Court in Division's ruling on MIIGP's Motion for New Trial.

Accordingly, from the Amended Decision, the party adversely affected may file a Petition for Review before the Court *En Banc*, in accordance with Sections 1 and 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals, which state:

> SECTION 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
>
> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition.* –
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional

period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

In the case of *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*,[1] the Court *En Banc* aptly ruled in this wise:

> xxx. A careful reading of the subject Amended Decision would reveal that it does not totally vacate nor supersede the original Decision. In fact, the dispositive portion in the said Amended Decision clearly states that it merely "MODIFIED" the original Decision. Thus, there are certain aspects in the original Decision which remained undisturbed, such as the finding that the amount of ₱3,521,129.50, representing input value-added tax claim for the third and fourth quarters of 2003 is available for refund. Such undisturbed aspects necessitate reference to the original Decision.
>
> Furthermore, it must be pointed out that the denomination of the Amended Decision in question, as such, does not necessarily entail that the previous or original Decision has been reversed in its entirety, for it may only be modified, as in this case. This is in accordance with Section 3 of Rule 14 of the RRCTA and Section 3 of Rule VIII of the Internal Rules of the Court of Tax Appeals, which respectively provide as follows:
>
> Sec. 3 of Rule 14 of the RRCTA:
>
> "SEC. 3. *Amended decision.* – Any action modifying or reversing a decision of the Court en banc or in Division shall be denominated as Amended Decision."
>
> Sec. 3 of Rule VIII of the Internal Rules of the Court of Tax Appeals:
>
> "SEC. 3. *Resolutions.* – Any disposition other than on the merits shall be embodied in a Resolution. Any action modifying or reversing a Decision of the Court en banc or in Division shall be denominated as Amended Decision."
>
> Moreover, a perusal of the arguments raised in the Motion for Partial Reconsideration filed on July 21, 2009 by petitioner shows that these are either: a mere rehash of the arguments raised in her Motion for

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[1] CTA EB Case No. 610 (CTA Case Nos. 7227, 7287, & 7317) dated November 2, 2010.

> Partial Reconsideration filed on October 14, 2008, or a mere reference to the basic issues which have already been passed upon by the Court in Division in the assailed Amended Decision. A second motion for reconsideration which contains mere iterations and reiterations of the same points and arguments over and over again becomes, in effect, a mere dilatory strategy and consequently nothing more than *pro forma*.

Nonetheless, MIIGP filed a Motion for Partial Reconsideration which constitutes a violation of Section 7 of Rule 15 of the Revised Rules of the Court of Tax Appeals, to wit:

> SEC. 7. *No second motion for reconsideration or for new trial.* – No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order.

And since the earlier-quoted Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals only provides a party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration – which in the case at bench is the Amended Decision dated September 20, 2011, partially granting MIIGP's Motion for New Trial – fifteen days from receipt of the same within which to elevate the case to the Court *En Banc*, therefore, the Motion for Partial Reconsideration of the Amended Decision filed by MIIGP did not toll the fifteen-day reglementary period to file its Petition for Review before the Court *En Banc*. It follows then that the Petition for Review filed by MIIGP before the Court *En Banc*, was appealed out of time.

From the foregoing, I find the Petition for Review filed by MIIGP should be dismissed, not for lack of merit, but on procedural ground.

CTA EB CASE NOS. 863 & 865

With the foregoing disquisitions, I find the Petition for Review filed by the CIR, docketed as CTA EB Case No. 863, partially meritorious, insofar as the claim covering the first (1st) quarter of the taxable year 2006 is concerned; while for the second (2nd) to fourth (4th) quarters of the taxable year 2006, I find the same filed within the prescribed period at the time the claims were made.

On the other hand, the Petition for Review filed by the MIIGP, docketed as CTA EB Case No. 865, should be dismissed for lack of jurisdiction.

Accordingly, I vote that the Petition for Review filed by the Commissioner of Internal Revenue, docketed as CTA EB Case No. 863, be **PARTIALLY GRANTED**, insofar as the period covering the first (1st) quarter is concerned, due to prescription. On the other hand, I vote that the Petition for Review filed by Mindanao II Geothermal Partnership, docketed as CTA EB Case No. 865, be **DISMISSED**, due to lack of jurisdiction.

LOVELL R. BAUTISTA
Associate Justice