REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*En Banc*

**COMMISSIONER OF INTERNAL REVENUE,**
*Petitioner,*

-versus-

**MINDANAO I GEOTHERMAL PARTNERSHIP,**
*Respondent.*

**CTA EB No. 953**
(CTA Case No. 7801)

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**MINDANAO I GEOTHERMAL PARTNERSHIP,**
*Petitioner,*

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA EB No. 959**
(CTA Case No. 7801)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAY 12 2014 Apolinario 9:05 a.m.

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# DECISION

**RINGPIS-LIBAN, *J.*:**

Before the Court *En Banc* are consolidated Petitions for Review separately filed by the Commissioner of Internal Revenue (CIR) seeking the partial nullification of the subsequent Amended Decision dated October 25, 2012 and the nullification in its entirety of the Amended Decision dated July 10, 2012 rendered by the Second Division of this Court in CTA Case No. 7801 *(Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue)*, docketed as

CTA EB No. 953, and by Mindanao I Geothermal Partnership (Mindanao I), which seeks the nullification of the same Amended Decision dated July 10, 2012 and subsequent Amended Decision dated October 25, 2012 and for a new judgment to be rendered granting Mindanao I's claim for refund or issuance of tax credit certificate in the amount of ₱8,164,273.17, docketed as CTA EB No. 959.

The assailed Amended Decision partially granted Mindanao I's claim for refund in the amount of ₱5,681,141.22 representing its alleged excess or unutilized input tax attributable to zero-rated sales for the year 2006.

The subsequent Amended Decision denied CIR's "Motion for Partial Reconsideration (Re: Decision Promulgated on 10 July 2012)" and partially granted Mindanao I's "Motion for Partial Reconsideration" by modifying the Amended Decision and ordering CIR to refund or issue a tax credit certificate in favor of Mindanao I in the modified amount of ₱6,139,689.89.

## THE PARTIES

The Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other legal processes of this Honorable Court.

Mindanao I is a partnership duly registered with the Securities and Exchange Commission (SEC) with principal address at 36th Floor, Tower I, The Enterprise Center, Ayala Avenue, Makati City.

## THE FACTS[3]

Sometime in December 1994, Mindanao I entered into a Build-Operate-Transfer (BOT) Contract with the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) for the finance, engineering, supply, installation, testing, commissioning, operation and maintenance of the 47-megawatt geothermal power plant, provided that PNOC-EDC supplies and delivers steam to Mindanao I at no cost. In turn, Mindanao I converts the steam provided by PNOC-EDC into electric capacity and energy and delivers the same to the National Power Corporation (NPC) for and in behalf of

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[3] *Rollo*, pp. 55-61, as found by the 2nd Division.

PNOC-EDC.[4] Pursuant to the provisions of Executive Order No. 215, Mindanao I's 47-megawatt geothermal power plant project has been accredited by the Department of Energy (DOE) as a Private Sector Generation Facility, as evidenced by its DOE Certificate of Accreditation No. 95-03-07 issued on June 15, 1995.[5]

Mindanao I is duly registered with the BIR with Tax Identification No. 004-712-984-000 as a VAT entity, among others, with generation, collection and distribution of electricity as its registered lines of business.[6]

On June 26, 2001, Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA Law) took effect and which categorically provides that sales of generated power by generation companies shall be value added tax zero-rated.[7]

Also, under Section 108(B) of the Tax Code of 1997, as amended by Republic Act No. 9337, Mindanao I's sale of generated power and delivery of electric capacity and energy to the NPC for and in behalf of PNOC-EDC pursuant to the BOT contract is VAT zero-rated. Thus --

> "SEC. 108. -- *Value-added Tax on Sale of Services and Use or Lease of Properties.* x x x
>
> (B) Transaction Subject to Zero Percent (0%) Rate -- The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rates:
>
> x x x x x x
>
> (7) Sale of power of fuel generated through renewable source 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 cell and hydrogen fuels." *(Emphasis supplied)*

Mindanao I's major source of income is its delivery of electric energy or generated power to NPC for and in behalf of PNOC-EDC. In the course of its operation, Mindanao I made domestic purchases of goods and services from which transactions it accumulates creditable input taxes.

Mindanao I filed its Quarterly VAT Returns for the taxable year 2006 as follows: for the 1st Quarter on April 24, 2006 and July 25, 2006, for the 2nd

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[4] *Rollo,* p. 163. CTA EB No. 953.
[5] *Id.*, p. 45.
[6] *Id.,* p. 167, Joint Stipulation of Facts and Issues dated November 3, 2008 and approved by the Court in Division in a Resolution dated November 5, 2008.
[7] *Id.* at Note 4.

Quarter on July 25, 2006, for the 3rd Quarter on October 23, 2006, and for the 4th Quarter on January 22, 2007.[8]

On February 5, 2008, Mindanao I filed with the BIR Large Taxpayers Services a Request for Issuance of Tax Credit for Excess VAT Inputs in the amount of ₱10,776,696.32. This administrative claim for tax credit or refund claimed the accumulated excess and unutilized creditable input taxes for the period January 1 to December 31, 2006 in accordance with Section 112(A) of the Tax Code of 1997, as amended.

The CIR, however, failed to act on said claim for refund or issuance of tax credit certificate.[9]

Due to the CIR's inaction, on June 27, 2008, Mindanao I filed a Petition for Review praying that judgment be rendered ordering the CIR to refund or issue a tax credit certificate (TCC) in its favor in the amount of ₱8,471,410.30 allegedly representing the latter's excess and unutilized creditable input taxes attributable to zero-rated sales for the year 2006.[10]

On account of the Petition for Review filed by Mindanao I, Summons was served to the CIR requiring her to file an Answer.

On September 2, 2008, the CIR filed her Answer[11]. In her Answer, the CIR specifically denied most of the allegations of Mindanao I, and generally averred that Mindanao I has the burden of proof establishing its right to refund and prayed for the dismissal of Mindanao I's Petition for Review allegedly for lack of merit.

On October 3, 2008, Mindanao I filed its Pre-Trial Brief. During the Pre-Trial Conference on October 8, 2008, both parties agreed to submit a Joint Stipulation of Facts and Issues which the Second Division granted.

The parties submitted their Joint Stipulation of Facts and Issues on November 3, 2008 which was approved by the Court in a Resolution dated November 5, 2008.

Trial ensued thereafter. Both parties were given an opportunity to present their side of the case. Mindanao I presented Daisy Abenes, its General Office and Accounting Manager, and Michael Aguirre, the Court-Commissioned Independent CPA, as witnesses, and documentary evidence. The CIR, however, through counsel, manifested that she had no witness to

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[8] *Id.* at Note 6.
[9] *Id.* at p. 168.
[10] *Id.*
[11] CTA Case No. 7801, Docket, pp. 54-61, dated September 1, 2008.

present and that she was submitting the case for decision based on the pleadings.[12]

On November 10, 2009, Mindanao I filed its Formal Offer of Documentary Evidence which the Second Division admitted in a Resolution dated March 26, 2010.[13]

On June 22, 2010, the Second Division considered the case submitted for decision, with Mindanao I submitting its Memorandum on April 23, 2010 and the CIR submitting her Memorandum on June 18, 2010.[14]

On March 30, 2011, a Decision[15] was rendered by the Second Division **denying** the Petition for Review due to insufficiency of evidence. The dispositive portion thereof reads:

> "Consequently, petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱8,471,410.30, alleged to be representing its input VAT attributable to zero-rated sale/receipts from power generation services rendered to PNOC-EDC for taxable year 2006, cannot be granted.
>
> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence."[16]

The Second Division found that Mindanao I was not able to prove that it was a generation company qualified for VAT zero-rating under Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (R.A.) No. 9337, and in relation to Section 4.108-3 of Revenue Regulations (R.R.) No. 16-05 and Section 4, Rule 5 of the Implementing Rules and Regulations of R.A. No. 9136. Particularly, Mindanao I failed to submit its Energy Regulatory Commission (ERC) registration and Certificate of Compliance (COC) which would show that it is duly authorized by the ERC to operate facilities used in the generation of electricity.[17]

To rectify its omission, Mindanao I filed a Motion for New Trial on April 18, 2011, praying that the adverse Decision of March 30, 2011 be vacated and a new trial be allowed in order for it so submit the COC issued by the ERC to further prove that it is a generation company and its unutilized and/or excess input tax for the year 2006 were directly attributable to its zero-rated receipts from power generation. It argued that its non-submission was due to its excusable negligence and/or honest mistake in relying in good faith on the Court of Tax Appeal's (CTA) previous rulings that the submission of the

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[12] *Rollo*, p. 48.
[13] *Rollo*, p. 151.
[14] *Id.* at Note 7.
[15] *Rollo*, pp. 44-61, CTA EB No. 953, Decision dated March 30, 2011, 2nd Division, CTA Case No. 7801.
[16] *Id.* at pp. 60-61.
[17] *Rollo*, pp. 20-21, CTA EB No. 953, Amended Decision, 2nd Division, CTA Case No. 7801.

Certificate of Accreditation issued by the Department of Energy (DOE) is sufficient proof that an entity is a power generation company.[18]

In a Resolution dated August 23, 2011, Mindanao I's Motion for New Trial was granted in the interest of substantial justice as follows:

> "**WHEREFORE,** petitioner's Motion for New Trial is hereby **GRANTED.** The Decision promulgated on March 30, 2011 is hereby set aside, and the case shall stand for trial de novo.
>
> x x x
>
> **SO ORDERED."**[19]

Subsequently, Mindanao I's presentation of additional evidence ensued. On February 23, 2012, Mindanao I filed its Formal Offer of Evidence on New Trial. In a Resolution dated March 23, 2012, the Court in Division admitted all the additional evidence offered by Mindanao I. On June 5, 2012, the case was submitted anew for decision.[20]

On July 10, 2012, the Second Division promulgated its Amended Decision partially sustaining respondent's claim for refund, representing unutilized input taxes attributable to its zero-rated sales for the four quarters of 2006 in the reduced amount of ₱5,681,141.22. In the dispositive portion found in pages 12 and 13 of the aforementioned Decision, the Court held as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby ordered to refund or issue a tax credit certificate in favor of petitioner in the amount of ₱5,681,141.22, representing the latter's excess or unutilized input tax attributable to zero-rated sales for the year 2006.
>
> **SO ORDERED.**"[21]

Both the Mindanao I and the CIR filed their Motions for Partial Reconsideration on July 30, 2012 and July 31, 2012, respectively. The Second Division denied the CIR's motion in a subsequent Amended Decision promulgated on October 25, 2012 while partially granting Mindanao I's motion. The dispositive portion thereof held as follows:

> "**WHEREFORE,** premises considered, respondent's **"MOTION FOR PARTIAL RECONSIDERATION" (RE: Decision Promulgated on 10 July 2012)** filed on July 30, 2012, is

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[18] *Id.*
[19] *Rollo,* CTA EB No. 953, pp. 63-67.
[20] *Id.* at Note 12.
[21] *Rollo,* CTA EB No. 953, p. 31.

hereby DENIED for lack of merit. On the other hand, petitioner's **"MOTION FOR PARTIAL RECONSIDERATION"** filed on July 30, 2012, is hereby **PARTIALLY GRANTED.** Accordingly, the Amended Decision promulgated on July 10, 2012 is hereby **MODIFIED.** Respondent is hereby ordered to refund or issue a tax credit certificate in favor of petitioner in the amount of ₱6,139,869.89, representing the latter's excess or unutilized input tax attributable to zero-rated sales for the year 2006.

**SO ORDERED."**[22]

Not satisfied, both the CIR and Mindanao I filed separate Petitions for Review before the Court en Banc, docketed as CTA EB No. 953 and CTA EB No. 959, respectively.

On January 3, 2013, the Court En Banc resolved to consolidate CTA EB No. 959[23] with CTA EB No. 953[24] as both cases were appeals filed by the parties from the same Amended Decision and subsequent Amended Decision CTA Case No. 7801.

In a Resolution dated February 4, 2013[25], both parties were ordered to file their Comments. The CIR filed its Comment[26] on March 25, 2013 while Mindanao I filed its Comment[27] on April 3, 2013.

Mindanao I filed its Reply[28] on April 17, 2013 with leave of court.

In a Resolution dated April 10, 2013, the Court *En Banc* resolved to give due course to the Petition for Review and ordered the parties to submit their respective Memoranda.

On May 17, 2013, the CIR filed a "Manifestation (Re: Resolution promulgated on 10 April 2013) that she was adopting the arguments she raised in her Petition for Review as her Memorandum. Mindanao I posted its Memorandum on May 20, 2013 which the CTA received on June 7, 2013.

On July 3, 2013, the consolidated petitions were deemed submitted for decision.

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[22] *Rollo*, CTA EB No. 953, pp. 41-42.
[23] *Mindanao I Geothermal vs. Commissioner of Internal Revenue*, posted on December 4, 2012 and received by the Court on December 12, 2012.
[24] *Commissioner of Internal Revenue vs. Mindanao I Geothermal Partnership*, filed on November 29, 2012.
[25] *Rollo*, CTA EB No. 953, pp. 75-76.
[26] *Rollo*, CTA EB No. 953, pp. 90-100.
[27] *Rollo*, CTA EB No. 953, pp. 101-108.
[28] *Rollo*, CTA EB No. 953, pp. 118-123.

## ASSIGNMENT OF ERRORS

### CIR's Assigned Error in CTA EB No. 953

The Second Division erred in granting Mindanao I its claim for refund or issuance of a tax credit certificate in the amount of ₱6,139,869.89 representing its unutilized input VAT attributable to zero-rated sales for the year 2006.

### Mindanao I's Assigned Error in CTA EB No. 959

The Second Division erred in deducting the Peso equivalent of the Credit Memo (Exhibit AH 7) in the amount of ₱191,998,060.77 from Mindanao I's substantiated zero-rated sales covered by Invoice Nos. 220, 222, 226, 227, 228, 233, 235, 240, 241 (erroneously referred to in the credit memo) in that said zero-rated sales were duly substantiated with official receipts as found by the Second Division itself.

## CTA EB No. 953 (Petition for Review filed by CIR)

The CIR contends that Mindanao I's claim for refund was not properly documented in the administrative proceedings as it failed to submit complete supporting documents; that the 120-day period mandated by Section 112(d) did not start to run; that the Second Division has no jurisdiction over Mindanao I's claim for refund as it was prematurely filed in violation of the Doctrine of Exhaustion of Administrative Remedies; that the ERC Registration and Certificate of Compliance, being in the nature of forgotten evidence, is not a ground to grant a new trial; and that tax refunds are construed *strictissimi juris.*

## CTA EB No. 959 (Petition for Review filed by Mindanao I)

Mindanao I contends that the Peso equivalent of the credit memo (Exhibit AH 7) in the amount of ₱191,998,060.77 from Mindanao I's substantiated zero-rated sales covered by Invoice Nos. 220, 222, 226, 227, 228, 233, 235, 240, 241 (erroneously referred to in the credit memo) should not have been deducted by the Court in Division in that said zero-rated sales were duly substantiated with official receipts as found by the Court in Division itself.

The total substantiated zero-rated sales was in the amount of ₱474,507,234.73 and the Credit Memo (Exhibit AH 7) was not part of the total substantiated (supported with official receipts) zero-rated sales of Mindanao I.

Therefore, the peso equivalent amount of the Credit Memo should not have been deducted from the substantiated zero-rated sales.[31]

Mindanao I argues that the 75.2041212% rate of substantiated zero-rated sales should not have been adopted. Consequently, the refundable amount of Mindanao I's substantiated excess Input VAT directly attributable to zero-rated sales, as per Amended Decision dated July 10, 2012 would be ₱7,554,295.07 (₱7,554,295.07 multiply by 100%) and the additional refundable Input VAT also attributable to zero-rated sales, as per Amended Decision dated October 25, 2012 would be ₱609,978.10 (₱609,978.10 multiply by 100%) or a total of ₱8,164,273.17.

## RULING OF THE COURT EN BANC

Both Petitions are devoid of merit.

We find that the arguments raised by the CIR in its Petition for Review under consideration have already been exhaustively discussed in the Second Division's original Decision of March 30, 2011, its Amended Decision dated July 10, 2012, its Resolution dated August 23, 2011 (resolving Mindanao I's Motion for New Trial), and the subsequent Amended Decision dated October 25, 2012. Moreover, we find no cogent reason to reverse the findings and conclusions of the Second Division in the assailed rulings.

### Mindanao I is Entitled to a Refund of Its Substantiated Excess Input VAT.

In its first ground in support of its Petition for Review, the CIR contends that Mindanao I's claim for refund was not properly documented in the administrative proceedings and is, thus, not entitled to the relief demanded. Specifically, the CIR posits that Mindanao I a) failed to present the required ERC Registration and Certificate of Compliance during trial; and also b) failed to submit vital and relevant documents in conjunction with its administrative claim.

The first contention is moot as Mindanao I subsequently presented its ERC Registration and Certificate of Compliance when its Motion for New Trial was granted. The Second Division, therefore, had an opportunity to peruse its admissibility, materiality, relevancy, probative value and weight when it penned the assailed Decisions.

[31] *Rollo,* CTA EB No. 953, p. 177.

Both contentions of the CIR will be further explored in the discussion below.

**"Complete Documents" in Sec. 112(C) is Determined By The Taxpayer.**

As far as the construction of the phrase "complete documents" found in Section 112(c) of the NIRC of 1997, we affirm the discussion by the Second Division in the subsequent Amended Decision dated October 25, 2012, to wit:

> "The pronouncement in the case of *Team Sual Corporation (formerly: Mirant Sual Corporation) vs. Commissioner of Internal Revenue, and Commissioner of Internal Revenue vs. Team Sual Corporation (formerly: Mirant Sual Corporation)*[33] is enlightening as the Court *En Banc* discussed the proper interpretation of the term "complete documents" under Section 112(D) of the NIRC of 1997, to wit:
>
> > "In the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, the Supreme Court ruled:
> >
> > > The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.
> >
> > Although the above ruling refers to the interpretation of the term "relevant supporting documents" under Section 228 of the NIRC of 1997 pertaining to "Protesting of Assessment", We find no reason why the same doctrine cannot be applied in the interpretation of "complete documents" referred to under Section 112(D) of the same code x x x."
>
> Thus, the term "complete documents" under Section 112(D) [*now 112(C)*] of the NIRC should then be understood as **<u>those documents necessary to support the claim for refund as determined by the taxpayer</u>**. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot

[33] CTA EB Nos. 649 & 651, March 21, 2012.

> demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit.[34] Hence, **in the event that the taxpayer decides to submit only certain documents**, or, at the extreme, does not submit any supporting documents for its claim for refund or tax credit certificate under Section 112(D) of the NIRC of 1997, **the reckoning date of the 120-day period would, therefore, be the date of filing of application for refund**.
>
> x x x
>
> Since respondent [the CIR] neither sent any written notice informing petitioner [Mindanao I] that the aforesaid documents are incomplete nor required the latter to submit additional documents, respondent [the CIR] cannot now belatedly argue that petitioner [Mindanao I] was not able to submit the complete documents in support of its claim for refund or tax credit certificate." *(Emphasis ours)*

Furthermore, in our recent Decision in the consolidated cases of *CIR vs. Mindanao II Geothermal Partnership*[35] and *Mindanao II Geothermal Partnership vs. CIR*[36], we held that the non-submission of supporting documents in the administrative level is not fatal to a claim for refund.[37] The ratiocination thereof was explained in this wise:

> "The alleged non-submission of complete documents at the administrative level will not bar this Court from receiving, evaluating and appreciating evidence. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court.[38] The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.[39] Moreover, CTA being a court of record, the cases filed before it are litigated de novo and party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence

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[34] Diageo Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 7846 & 7865, January 16, 2012.

[35] CTA EB Case No. 690, April 4, 2012, formerly CTA Case Nos. 7595, 7638 & 7692.

[36] CTA EB Case No. 718, April 4, 2012, formerly CTA Case Nos. 7595, 7638 & 7692.

[37] *Id.* citing Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc., CTA EB No. 474, September 1, 2009.

[38] *Supra* at Notes 35 and 36, citing Commissioner of Internal Revenue vs. Toledo Power Company, CTA EB No. 589 (CTA Case No. 7471), September 15, 2010.

[39] *Id.* citing Consolidated cases of CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 553 and Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc., CTA EB No. 554, July 20, 2010, Commissioner of Internal Revenue vs. San Roque Power Corporation, CTA EB No. 523, April 15, 2010.

> require that these documents must be formally offered before the CTA.[40] Otherwise stated, judicial claims are being decided based on what has been presented and formally offered by party litigants during the trial of the case before the Court and not on the mere allegation of non-submission of complete documents before the BIR."

We affirm the finding of the Second Division in its original decision dated March 30, 2011 that Mindanao I's administrative claim for refund of the input VAT for the four quarters of 2006 was timely filed. The close of each taxable quarter of 2006 is reckoned from March 31, 2006, June 30, 2006, September 30, 2006, and December 31, 2006. Therefore, Mindanao I had until March 31, 2008, June 30, 2008, September 30, 2008, and December 31, 2008 within which to file its claim.[41] As it filed its administrative claim on February 5, 2008, such was filed on time.

Since we find that there has been no substantial abrogation of the requirement in Section 112(c) as regards the submission of "complete documents", the reckoning date of the 120-day period would be the date of application for refund. As Mindanao I filed its judicial claim on June 27, 2008, we find that it was also filed on time. Contrary to the claim of the CIR, therefore, there has been no violation of the doctrine of exhaustion of administrative remedies and the Second Division rightfully acquired jurisdiction over Mindanao I's judicial claim.

**The Motion for New Trial was Properly Granted.**

The CIR argues that the ERC Registration and Certificate of Compliance constitute forgotten evidence in an attempt to indirectly assail the grant of the Motion for New Trial[42] filed by Mindanao I. What the CIR is contending, albeit rather obliquely, is that forgotten evidence is not one of the grounds to grant a Motion for New Trial in accordance with Section 5 of Rule 15 of the Revised Rules of the Court of Tax Appeals[43] (RRCTA).

First, we agree with Mindanao I's contention that the right of the CIR to question the Resolution granting the Motion for New Trial has long passed.

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[40] *Id.* citing Commissioner of Internal Revenue vs. Manila Mining Corporation, G.R. No. 153204, August 31, 2005, 468 SCRA 571.
[41] *Rollo,* CTA EB No. 953, p. 59.
[42] *Rollo,* CTA EB No. 953, pp. 63-70.
[43] Rule 15, Sec. 5. *Grounds of motion for new trial.* -- A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant: (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or (b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.

That Resolution was promulgated by the Second Division on August 23, 2011, and the proper remedy of the CIR would have been to file a Motion for Reconsideration thereof, and subsequently, a Petition for Certiorari should that have been denied. As the CIR did not avail of those remedies, the Resolution granting the Motion for New Trial has already attained finality.

Second, we find no error in the Second Division's ruling that Mindanao I committed excusable negligence for its failure to present in evidence its ERC Registration and COC due to its reliance in good faith on the Court's previous rulings that the submission of the Certificate of Accreditation issued by the DOE is sufficient to prove that an entity is a power generation company.

We note that Mindanao I, in its Motion for New Trial, never invoked the ground of "newly discovered evidence". Had it done so, then the CIR's argument that it was merely forgotten evidence and not newly discovered evidence would have been successful. Instead, Mindanao I claimed that it initially failed to present its ERC Registration and COC due to honest mistake and/or excusable negligence. Mistake is some unintentional act, omission or error arising from ignorance, surprise, imposition or misplaced confidence.[44]

We agree that in this case, there was "mistake" arising from misplaced confidence because Mindanao I had honestly relied in good faith on the previous rulings of this Court in the cases of *Visayas Geothermal Power Company vs. CIR*[45] and *CE Luzon Geothermal Power Company vs. CIR*[46] that a Certificate of Accreditation issued by the DOE is sufficient to establish its status as a generation company.

**Mindanao I is Not Entitled to The Additional Amount Claimed.**

Mindanao I claims that "the Honorable Second Division **erred in deducting the Peso equivalent of the credit memo (Exh. AH-7) in the amount of ₱191,998,060.77** from M1GP's substantiated zero-rated sales covered by invoice numbers 220, 222, 226, 227, 228, 233, 235, 240 and 241 (erroneously referred to in the credit memo) in that said zero-rated sales were duly substantiated with official receipts as found by Honorable Second Division itself."

After careful evaluation, this Court is of the opinion that Mindanao I's contention has no merit.

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[44] Herrera, O., Remedial Law, 2000 Edition, p.193 citing Black's Law Dictionary, Fifth Edition, p. 903.
[45] CTA Case Nos. 6790 and 6838, January 18, 2007.
[46] CTA Case No. 6792, November 25, 2008.

It is not disputed that **Exhibit AH-7** is a **CREDIT MEMORANDUM** which covers the above-mentioned invoices with a total peso equivalent of ₱191,998,060.77 that was deducted from the total substantiated zero-rated sales of Mindanao I. A credit memo is a contraction of the term "credit memorandum", which is a document issued by the seller of goods or services to the buyer, reducing the amount that the buyer owes to the seller under the terms of an earlier invoice. The credit memo usually includes details of exactly why the amount stated on the memo has been issued, which can be used later to aggregate information about credit memos to determine why the company is issuing them.[47] Similarly, Black's Law Dictionary[48] defines credit memorandum as "a document used by a seller to inform a buyer that the buyer's account receivable is being credited (reduced) because of errors, returns, or allowances."

In other words, a Credit Memo is issued to correct the invoice that has already been processed and issued to the buyer or customer. Thus, in respect to the previously issued invoice evidencing sale transaction, a Credit Memo will reduce or eliminate the amount the buyer has to pay.

This court takes note that in the report of the ICPA,[49] the subject Credit Memo Exh. AH-7 was deducted from the total amount of Mindanao I's zero-rated sales. The amount of zero-rated sales, net of Credit Memo, was then compared to the amount of zero-rated sales reflected in its VAT Return which resulted in a discrepancy of ₱154,097,007.13. Such discrepancy was explained by Mindanao I thru the ICPA report in this wise:

> "M1GP justified that the discrepancy in zero-rated sales/Receipts of ₱154,097,007.13 was the effect of the timing of collection (VAT) against sales reporting (Income Tax) and the effect also of foreign exchange conversion."[50]

In essence, Mindanao I agreed to the deduction of the Credit Memo (Exh. AH-7) from the total zero-rated sales considering that Mindanao I itself justified that the discrepancy was due to timing difference and foreign exchange conversion and not due to the deduction of its Credit Memo. In other words, the subject Credit Memo of ₱191,998,060.77 was never reflected as part of petitioner's declared zero-rated sales in the amount of ₱375,656,506.01.

Accordingly, it is but proper for this Court to deduct the Credit Memo (Exh. Ah-7) from Mindanao I's total zero-rated sales in the same way that

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[47] http://www.accountingtools.com/credit-memo-definition.
[48] Sixth Edition by The Publisher's Editorial Staff, p.368.
[49] Exhibit "T", Annex B.
[50] Exhibit "T", page 8, par. 3.

Mindanao I itself and the ICPA deducted the subject Credit Memo in their schedule of zero-rated sales and in the VAT Returns.

**WHEREFORE,** premises considered, the above-captioned Petitions for Review are hereby **DISMISSED** for lack of merit. Accordingly, the July 10, 2012 Amended Decision and the October 25, 2012 subsequent Amended Decision promulgated by the Second Division in CTA Case No. 7801 entitled "Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue" are hereby **AFFIRMED** in toto.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

## CERTIFICATION

Pursuant to Section 13 of 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 this Court.

**ROMAN G. DEL ROSARIO**
*Presiding Justice*