REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB NO. 410
(C.T.A. Case No. 7387)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

ACCENTURE, INC.,
Respondent.

Promulgated:
MAR 18 2009 Apolinario 1:50 p.m.

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D E C I S I O N

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue pursuant to paragraph 2, Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282 and Rule 8,

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[1] *Rollo*, pp. 7 – 51 with Annexes.

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Section 3(b) of the Revised Rules of the Court of Tax Appeals, praying for the reversal of:

1. the Decision dated June 3, 2008 rendered by the Second Division of the Court ("Court in Division") in CTA Case No. 7387, which partially granted herein respondent's claim for tax refund or issuance of a tax credit certificate in the amount of ₱57,760,131.74, representing its unutilized input value-added tax ("VAT") on domestic purchases of its goods and services for the period commencing from September 1, 2003 until August 31, 2004; and
2. the Resolution of the Court in Division promulgated on July 15, 2008, which denied herein petitioner's Motion for Partial Reconsideration.

Antecedent Facts

Antecedent facts to set us on a proper perspective are those lucidly set out by the Court in Division:

> "Petitioner[2] is a domestic corporation duly registered with the Securities and Exchange Commission, and existing under and by virtue of the Philippine laws, with principal office address at MSE Building, Ayala Avenue, Makati City. It is a value-added tax taxpayer duly registered as such with the Bureau of Internal Revenue (BIR), in accordance with *Section 236 of the NIRC of 1997*, as amended, with VAT Registration Certificate No. 000-845-543-000.
>
> As stated in its Articles of Incorporation, petitioner is primarily engaged in the business of providing management consulting and management information consulting services, including, but not limited to business integration, strategic services, change management services, systems integration, systems management, the development, sale and/or

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[2] Herein respondent.

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licensing of software, and the sale of hardware and related products, either as principal or agent.

Respondent,[3] on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to act as such, including, *inter alia*, the power to decide, approve and grant claims for refunds or tax credits of overpaid internal revenue taxes as provided by law, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other court processes.

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During the period from September 1, 2003 to August 31, 2004, petitioner filed the following Monthly and Quarterly VAT Returns on these dates:

Month	Date Filed	Exhibits
September 2003	October 24, 2003	"D"
October 2003	November 20, 2003	"E"
November 2003 (1st Quarter)	December 22, 2003	"F"
December 2003	January 23, 2004	"G"
January 2004	February 23, 2004	"H"
February 2004 (2nd Quarter)	March 23, 2004	"I"
March 2004	April 26, 2004	"J"
	April 26, 2004 (Amended)	"K"
April 2004	May 25, 2004	"L"
May 2004 (3rd Quarter)	June 25, 2004	"M"
	July 27, 2004 (Amended)	"N"
June 2004	July 23, 2004	"O"
	July 29, 2004 (Amended)	"P"
July 2004	August 25, 2004	"Q"
August 2004 (4th Quarter)	September 24, 2004	"R"

During the four (4) quarters of the period, the Quarterly VAT Returns of petitioner showed the following:

	1st Quarter Ending November 30, 2003		2nd Quarter Ending February 29, 2004	
Domestic Purchases	**Amount**	**Input VAT**	**Amount**	**Input VAT**
Capital Goods	23,263,529.00	2,326,352.90	52,224,351.50	5,222,435.15
Goods other than Capital Goods	167,134,485.50	16,713,448.55	123,380,097.40	12,338,009.74
Services	58,699,932.10	5,869,993.21	74,485,137.70	7,448,513.77
Total Input VAT		24,909,794.66		25,008,958.66
Zero-Rated Sales		824,103,109.50		755,277,064.27
Total Sales		914,601,199.66		826,136,102.44

	3rd Quarter	4th Quarter

[3] Herein petitioner.

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	Ending May 31, 2004		Ending August 31, 2004	
Domestic Purchases	Amount	Input VAT	Amount	Input VAT
Capital Goods	145,487,625.30	14,548,762.53	250,360,383.90	25,036,038.39
Goods other than Capital Goods	36,414,585.90	3,641,458.59		0.00
Services	143,242,393.10	14,324,239.31	92,483,964.20	9,248,396.42
Total Input VAT		32,514,460.43		34,284,434.81
Zero-Rated Sales		927,429,478.44		1,362,639,542.45
Total Sales		937,802,579.94		1,373,736,100.95

Thus, petitioner had a total zero-rated sales of P3,869,449,194.66 and paid a total input VAT of P116,717,648.56, broken down as follows:

Period	Zero-rated Sales	Input VAT
1st Quarter	824,103,109.50	24,909,794.66
2nd Quarter	755,277,064.27	25,008,958.66
3rd Quarter	927,429,478.44	32,514,460.43
4th Quarter	1,362,639,542.45	34,284,434.81
Total Input VAT	**3,869,449,194.66**	**116,717,648.56**

On November 18, 2005, petitioner filed an administrative claim for refund or issuance of tax credit certificate of its unutilized input VAT credit on its domestic purchases of taxable goods, which are directly attributed to its zero-rated sales of services for the period in the total amount of P110,982,729.25, computed as follows:

Period	Input VAT
1st Quarter	22,418,815.19
2nd Quarter	22,758,152.38
3rd Quarter	31,864,171.22
4th Quarter	33,941,590.46
Total Input VAT	**110,982,729.25**

(Exhibit "C")

For failure of respondent to act on petitioner's claim for refund, on December 20, 2005, petitioner elevated its case to this Court by way of a Petition for Review.

On February 10, 2006, respondent filed her *Answer* alleging that the amount of P110,982,729.25 being claimed by petitioner, as alleged unutilized input VAT on domestic purchases of goods and services for the period commencing from 1 September 2003 until 31 August 2004 was not properly documented; petitioner must show that it has complied with the provisions of *Section 204(C) and 229 of the 1997 Tax Code* on the prescriptive period for claiming tax refund/credit; and claims for refund are construed strictly against the claimant for the same partake the nature

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of exemption from taxation, and as such, they are looked upon with disfavor.

Petitioner presented Emmanuel Y. Mendoza, the Court-commissioned Independent CPA; Loida S. Samson, its Country Controller; and Leonardo M. Jose, its Tax and Statutory Specialist, as witnesses; and documentary evidence, marked as *Exhibits "A"* to *"EEE"*, inclusive of their submarkings. Except for *Exhibits "SS-1353"*, *"TT-936"*, *"TT-938"*, *"TT-940"*, *"TT-943* to *"TT-951"*, *"TT-953"* to *"TT-956"*, *"TT-958"* to *"TT-1325"*, *"TT-1328"*, *"TT-1332"*, *"TT-1334"* to *"TT-1344"*, *"TT-1346"*, *"TT-1347"*, *"TT-1349"*, *"TT-1351"*, *"TT-1352"*, *"TT-1355"* to *"TT-1361"*, *"UU-2419"*, *"UU-2423"*, *"UU-2428"*, *"UU-2429"*, *"UU-2434"*, *"UU-2436"*, *"UU-2439"*, *"UU-2448"*, *"UU-2454"*, *"UU-2456"*, *"UU-2458"* to *"UU-2460"*, *"UU-2463"*, *"UU-2465"* to *"UU-2471"*, *"UU-2506"*, *"VV-851"*, *"VV-857"*, *"VV-861"* and *"VV-862,"* the Court admitted all the other exhibits in a Resolution dated January 2, 2008.

Upon manifestation of counsel for respondent that he will not present any evidence, both parties were granted thirty (30) days from January 14, 2008 to file their simultaneous memoranda. Petitioner was granted an extension of thirty (30) days from February 13, 2008 to file its memorandum.

Both parties having filed their respective memoranda, the case was deemed submitted for decision on March 17, 2008."[4]

The Ruling of the Court in Division

On June 3, 2008, the Court in Division rendered its Decision which partially granted herein respondent's claim for tax refund or issuance of a tax credit certificate in the amount of ₱57,760,131.74, representing its unutilized input VAT on domestic purchases of its goods and services for the period commencing from September 1, 2003 until August 31, 2004.

The Court in Division found that respondent's sales of services are zero-rated pursuant to Section 108 (B)(2) of the NIRC of 1997 since it renders management consulting and management information consulting services

[4] *Rollo*, pp. 28-32, Decision, C.T.A. Case No. 7387, pp. 2-6.

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and related products, either as principal or agent, as well as other related business activities to its various foreign clients, the considerations for which are paid for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP"). However, according to the Court in Division, only zero-rated sales in the amount of ₱3,869,449,194.66 were substantiated. Hence, the Court in Division ruled that only the allowable input tax attributable to such zero-rated sales can be the proper subject of a claim for refund.

The Court in Division then found that only the input VAT of ₱62,282,420.88 was properly substantiated, in accordance with the invoicing requirements prescribed under *Sections 110(A) and 113(A) of the NIRC of 1997, as amended*, and as implemented by *Sections 4.104-1, 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95.*

The Court in Division also held that respondent still had to pay output tax in the amount of ₱1,795,389.91 since respondent's input tax allocated to taxable sales amounting to ₱351,576.09 would not entirely cover its output tax liability of ₱2,146,966.00. However, such output tax could not be offset against its respondent's input tax carried-over from the previous quarter in the amount of ₱161,820,406.23 because petitioner did not present VAT invoices or official receipts to prove the existence of that amount. Consequently, respondent's output tax payable was applied against its substantiated claimed

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input tax allocated to zero-rated sales, resulting to a refundable input tax of ₱57,760,131.74 only.

Lastly, the Court in Division ruled that the subject claim no longer formed part of the excess input VAT of ₱241,671,616.93 as of the first quarter of 2006, which was to be carried over/applied to the succeeding second quarter of 2006 and that both the administrative and judicial claims for refund or tax credit certificate were filed within the two-year prescriptive period.

The *fallo* of the Decision reads as follows:

> "**WHEREFORE**, premises considered, 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 in the reduced amount of **FIFTY SEVEN MILLION SEVEN HUNDRED SIXTY THOUSAND ONE HUNDRED THIRTY ONE AND 74/100 PESOS (P57,760,131.74)**, representing unutilized input VAT on domestic purchase of its goods and services for the period commencing from September 1, 2003 until August 31, 2004.
>
> **SO ORDERED.**"

Aggrieved, herein petitioner filed a Motion for Partial Reconsideration of the aforementioned Decision which was denied for lack of merit by the Court in Division in its Resolution dated July 15, 2008.

Thus, petitioner initiated this recourse to the Court *En Banc*.

The Issue

The solitary issue raised by petitioner is whether or not respondent is entitled to a tax refund or credit of its unutilized VAT input taxes on its purchases of goods and services in the amount of ₱57,760,131.74 for the period commencing from September 1, 2003 to August 31, 2004.

Petitioner's Arguments

Petitioner contends that respondent failed to show that its purchases of goods and services were made in the course of its trade and business. It also alleges that respondent failed to show that the said purchases were properly supported by VAT invoices and/or official receipts and other documents such as entries made in its subsidiary purchase journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the 1997 NIRC, as amended and pursuant to Section 4.104-5(a) & (b) of Revenue Regulations ("RR") 7-95.

Petitioner also asserts that respondent failed to prove that the input taxes amounting to ₱57,760,131.74 allegedly paid on its domestic purchases of goods and services were attributable to its zero-rated sales and that such have not been applied against any output tax nor carried over in the succeeding taxable quarters.

Lastly, petitioner insists that the 120-day period in Section 112(D) of the NIRC applies to the instant case and not the 2-year period in Section 229 of the same Code since the case involves a claim for refund of unutilized VAT. Consequently, respondent can appeal to the Court only after the expiration of the said 120-day period or within thirty (30) days from the decision of petitioner denying its claim for refund. Considering that the 120-day period

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has not expired when respondent lodged its judicial claim on December 20, 2005, the Court in Division obtained no jurisdiction over such claim.

Respondent's Counter-arguments

Respondent points out that its unutilized creditable input taxes for the period covering September 2003 up to August 2004 were duly substantiated by documentary evidence in the form of schedules, invoices, official receipts, statement of accounts, bank statements and other relevant documents.

Respondent also maintains that its administrative and judicial claims for refund were properly filed within the 2-year prescriptive period required under Sections 229 and 112(A) of the NIRC, in relation to Sections 4.106-1 and 4.106-2 of RR 7-95, as amended. The earliest quarter covered by its claim is the quarter ending November 30, 2003, for which it filed its VAT return on December 22, 2003. Counting from this date, it had until December 22, 2005 within which to file its administrative and judicial claims for refund. It filed its administrative claim for refund on November 18, 2005 and its Petition for Review on December 20, 2005.

The Ruling of the Court En Banc

The Petition for Review has merit.

The administrative and judicial claims for refund were filed within the period provided by law

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At the outset, the Court *En Banc* shall discuss petitioner's arguments on the Court's jurisdiction and the applicable prescriptive period. Contrary to the assertion of petitioner, the Court in Division had jurisdiction over this case and it correctly ruled that respondent's administrative and judicial claims for refund were filed within the prescriptive period of two (2) years.

Section 112(A) of the 1997 NIRC outlines the procedure for Refunds or Tax Credits of Input Tax, *viz*:

> "**SEC. 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 where made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales." (*Emphasis supplied*)

It is well-settled that a taxpayer must comply with the following requisites to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated or effectively zero-rated sales:

1. There must be zero-rated or effectively zero-rated sales;
2. Input VAT payments were incurred or made;

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3. The claimed input VAT payments are directly attributable to zero-rated sales;

4. The claimed input VAT payments were not applied against any output tax during the period covered by the claim and in the succeeding periods;

5. Both administrative and judicial claims for a tax credit or refund were filed within two (2) years from the filing of the quarterly VAT return(s) covered by the claim[5] as provided under Section 4.106-2(c) of RR 7-95, in relation to Section 112(D) of the NIRC; and

6. The claimed input VAT payments are duly supported by VAT invoices or official receipts[6], in accordance with Section 4.104-5 of RR 7-95, in relation to Section 113 and 237 of the NIRC.

The Court *En Banc* has ruled that the 2-year prescriptive period in claiming a refund of unutilized or excess input VAT in the administrative and judicial levels is reckoned from the date of filing of the quarterly VAT return.[7]

[5] Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue. Resolution, C.T.A. Case No. 5296, July 20, 1998; Taganito Mining Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 5983, October 11, 2001; Air Liquide Philippines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs, C.T.A. Case No. 5748, January 23, 2002.

[6] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue, C.T.A. EB Case No. 219, (C.T.A. Case No. 6493), February 18, 2008 *citing Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue G.R. No. 166732, April 27, 2007, 522 SCRA 657.*

[7] Commissioner of Internal Revenue v. Matsushita Business Machine Corporation of the Philippines, C.T.A. EB No. 290 (C.T.A. Case No. 6495), January 17, 2008. Kepco Philippines Corp. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 107 (C.T.A. Case No. 6413), June 29, 2007; Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.), C.T.A. EB Case No. 251 (C.T.A. Case Nos. 6628 & 6732), May 30, 2007.

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Thus, a taxpayer has two (2) years from the date of filing of the quarterly VAT return to file <u>both</u> its administrative and judicial claims for refund.

The Court *En Banc* finds no merit in petitioner's contention that respondent's judicial claim was prematurely filed since the 120 days given to the Commissioner of Internal Revenue to decide on the claim under Section 112 (D) of the 1997 NIRC had yet to lapse when the Petition for Review was filed with the Court on December 20, 2005. Section 112(D) [*now Section 112 (C)*] provides:

> "SEC. 112. **Refunds or Tax Credits of Input Tax.** –
>
> xxx xxx xxx
>
> **(D) Period within which Refund or Tax Credit of Input Taxes shall be Made.** – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days** from the receipt of the decision denying the claim or **after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**" (*Emphasis supplied*)

The use of the word "may" in the afore-quoted provision indicates that judicial recourse within thirty days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period. It is a settled doctrine in statutory construction that the word "may" when used in a statute, is

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permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.[8]

Corollary thereto, the Honorable Court of Appeals has ruled that when the 2-year prescriptive period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, the latter should file a Petition for Review with the Court of Tax Appeals within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to the Court of Tax Appeals. The Court of Appeals ratiocinated in this wise:[9]

> "It appears therefore, that **it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case.** This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.
>
> Incidentally, the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal. **The law fixed the same period – two years – for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be made in court.** Indeed, only the latter case presupposes the existence of a

[8] Republic Planters Bank v. Hon. Enrique A. Agana, Sr. et.al., G.R. No. 51765, March 3, 1997, 269 SCRA 1.
[9] Commissioner of Internal Revenue v. Hitachi Computer Products (Asia) Corporation, CA-G.R. SP No. 63340, February 7, 2002 *citing Gibbs v. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil 232, Johnson Lumber Co. vs. CTA, 101 Phil 151.*

> prior decision of the Commissioner which could be subjected to review by the court. **In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former** (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*Emphasis supplied*)

It is well to note that the Bureau of Internal Revenue has cited the foregoing disquisition of the Court of Appeals as basis when it made the following ruling:

> "In reply, please be informed that **a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the CTA may acquire jurisdiction, particularly if the claim is about to prescribe.** The Tax Code fixed the period of two (2) years for filing a claim for refund with the Commissioner [Sec. 112(A) in relation to Sec. 204(c)] and for filing a case in court [Section 229]. **Hence, a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law**."[10] (*Emphasis supplied*)

A review of the records of this case reveals that the earliest quarter covered by respondent's claim for refund is the quarter ending November 30, 2003. Respondent filed its Quarterly VAT Return on December 22, 2003.[11] Thus, respondent had until December 22, 2005 to file both its administrative and judicial claims for refund. It is clear therefore that respondent timely filed its administrative claim for refund[12] for the period beginning September 1, 2003 up to August 31, 2004 with the BIR on *November 18, 2005*, pursuant to Section 112(A) of the NIRC, in relation to Section 4.106-2(c) of RR 7-95. Respondent's

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[10] BIR Ruling [DA-489-03] dated December 10, 2003, signed by Deputy Commissioner (Legal and Enforcement Group) Jose Mario C. Buñag.
[11] *Records*, pp. 29-30.
[12] *Id.*, pp. 54-63.

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judicial claim for refund for unutilized input VAT covering the same period was likewise seasonably filed on *December 20, 2005*.[13]

Respondent failed to prove that it is entitled to a refund

Nevertheless, after a careful review of the records of this case and in line with the decision of the Supreme Court in ***Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.***[14], a reversal of the assailed Decision and Resolution becomes necessary.

As previously mentioned, the following are the requisites for the granting of a claim for refund or tax credit:

1. There must be zero-rated or effectively zero-rated sales;

2. Input taxes were incurred or paid;

3. Such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;

4. Such input VAT payments were not applied against any output VAT liability during and in the succeeding quarters;

5. Such input VAT payments are duly supported by VAT invoices or official receipts; and

6. The claim for refund was filed within the two-year prescriptive period.

With regard to the first requisite, the Court in Division found that respondent's sales of services are zero-rated pursuant to Section 108(B)(2) of the 1997 NIRC since respondent renders management consulting and

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[13] *Records*, pp. 1-63, with Annexes.
[14] G.R. No. 153205, January 22, 2007, 512 SCRA 124.

management information consulting services, including, but not limited to, business strategic services, change management services, systems integration, systems management, the development, sale and/or licensing of software, and the sale of hardware and related products, either as principal or agent, and other related business activities, to its various foreign clients, the considerations for which are paid for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

Said Section 108(B)(2) of the 1997 NIRC imposes a VAT at zero percent (0%) on revenues derived from sale of services aside from processing, manufacturing or repacking of goods for other person doing business outside the Philippines which goods are subsequently exported, provided that the transaction is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*. It reads as follows:

> "**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.** -
>
> xxx xxx xxx
>
> **(B) Transactions Subject to Zero Percent (0%) Rate.** – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods **for other persons doing business outside the Philippines** which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).
>
> (2) **Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable**

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> **foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).**" *(Emphasis supplied)*

Thus, a taxpayer must comply with the following requirements for its services to qualify for zero-rating:

1. The recipient of its business is doing business outside the Philippines;

2. The payment of its service fees was in acceptable foreign currency; and

3. The accounting of such remittance was in accordance with rules of the BSP.

Relative thereto, the Supreme Court declared in the case of ***Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.***[15] that another essential condition for qualification to zero-rating under Section 108(B)(2) [*then Section 102(b)(2)*] is that the recipient of such services is doing business outside the Philippines, to wit:

> "The Tax Code not only requires that the services be other than 'processing, manufacturing, or repacking of goods' and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that **the recipient of such services is doing business *outside* the Philippines.** While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) where the listed services must be 'for other persons doing business outside the Philippines.' The phrase 'for other persons doing business outside the Philippines' not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term 'services' appearing in the second paragraph of Section 102(b). **In short, services other than processing, manufacturing, or repacking of**

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[15] *Supra*, note 14.

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> **goods must likewise be performed for persons doing business outside the Philippines.**
>
> This can only be the logical interpretation of Section 102(b)(2). If the provider and recipient of the 'other services' are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102(b)(2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution." *(Emphasis supplied)*

In view of the foregoing discussion and jurisprudential pronouncement, it becomes essential to re-examine and re-evaluate respondent's evidence.

Respondent formally offered as evidence its Schedule of Zero-Rated Sales – Local *(Annex D of Exhibit "JJ")*, Schedule of Billings and Remittances *(Annex C of Exhibit "JJ")*, Intercompany Payment Requests *(Exhibits "WW-1" to "WW-11")*, Official Receipts *(Exhibits "XX-1" to "XX-11")*, Billing Statements *(Exhibits "YY-1" to "Y-11")*, Memo Invoices-Receivable *(Exhibits "ZZ-1" to "ZZ-90)*, Memo Invoices-Payable *(Exhibits "AAA-1" to "AAA-73")*, Bank Statements *(Exhibits "BBB-1" to "BBB-11")*, and presented the testimony of its Country Controller, Ms. Loida S. Samson *(Exhibit "II")* in order to buttress its claim that the bulk of its sales are zero-rated or effectively zero-rated.

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However, the Court *En Banc* finds that no evidence was presented to prove that the foreign clients to whom respondent renders services are clients doing business outside the Philippines. The documents submitted by respondent merely establish that sales transactions exist, that the payments of its service fees were in acceptable foreign currency, and that the proceeds of such sales transactions were inwardly remitted to the Philippines and accounted for in accordance with the rules of the BSP.

Even the Judicial Affidavit of Ms. Loida S. Samson, respondent's Country Controller[16], contains no proof that the "foreign clients" of respondent are doing business outside the Philippines. Page Nineteen (19) of her Affidavit contains the following:

> "Q: What is the general business of Accenture, Inc.?
>
> A: As stated in its Article of Incorporation marked as Exhibit "A", Accenture primarily provides management consulting and management information consulting services, including but not limited to, business integration, strategic services, systems integration and systems management.
>
> Q: Who are the clients of Accenture?
>
> A: **Accenture serves foreign clients in providing consulting and management information consulting services**." *(Emphasis supplied)*

In the same vein, the Judicial Affidavit[17] and Reports[18] prepared by Mr. Emmanuel Y. Mendoza, the Independent CPA, are bereft of any statement or finding that respondent's foreign clients are doing business outside the

[16] *Records*, pp. 121 - 141, Exhibit "II", identified during the June 7, 2006 hearing.
[17] *Records*, pp. 182 - 192, Exhibit "FFF", identified during the July 2, 2007 hearing.
[18] *Records*, CPA Report dated September 15, 2006 (Three Binders) and CPA Report dated October 10, 2006 (Three Binders).

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Philippines. Respondent's allegation that its clients were "foreign clients" is insufficient to meet the requirement of the law and jurisprudence that the recipient of its service is doing business outside the Philippines.

Furthermore, the Court *En Banc* agrees with the disquisition of the Second Division of the Court on this matter in the case of ***Accenture, Inc. v. Commissioner of Internal Revenue dated August 7, 2008***[19] which was also adopted by the First Division of the Court in the recent case of ***Accenture, Inc. v. Commissioner of Internal Revenue dated November 13, 2008***[20], *viz*:

> "**The phrase 'foreign clients' is couched in its generality that the Court cannot just simply assume that they are engaged in doing business outside the Philippines.** A 'foreign client' may also be engaged in doing business in the Philippines and in that case, when petitioner and recipient of its services are both doing business in the Philippines, their transaction falls squarely under Section 108(A) of NIRC of 1997 governing domestic sale or exchange of services subject to 12% VAT. **Even if there is an allegation that these foreign clients are doing business outside the Philippines, still the Court cannot give weight to such allegation**. Mere allegations are not sufficient but must be accompanied by supporting evidence."[21]*(Emphasis supplied)*

Since respondent's said allegation has no supporting evidence, it failed to prove that its sales of services to its "foreign clients" qualify for zero percent (0%). It bears stressing that the Supreme Court has consistently ruled that "actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the

[19] C.T.A. Case Nos. 7158, 7285 & 7313.
[20] C.T.A. Case No. 7046.
[21] *Supra*, note 19.

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taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven."[22]

Consequently, this Court applies such rule in its decisions and "believes that in claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent and supporting evidence, then the granting thereof could prove to be improper, if not difficult."[23]

In fine, respondent herein has the burden of proof to establish the factual basis of its claim. Since it failed to do so, its claim must be denied. With such conclusion, the Court *En Banc* shall no longer discuss the other requisites.

WHEREFORE, the instant Petition for Review is hereby **GRANTED.** Accordingly, the assailed Decision promulgated on June 3, 2008 and the Resolution dated July 15, 2008 are hereby **REVERSED and SET ASIDE**. Respondent's claim for refund or issuance of tax credit certificate is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[22] Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008, 546 SCRA 163.

[23] Accenture, Inc. v. Commissioner of Internal Revenue, *supra*, note 19 and 20, *both citing ECW Joint Venture Inc. v. Commissioner of Internal Revenue, CTA Case No. 6398, May 26, 2003*

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

See attached Separate Concurring Opinion
(With Separate Concurring Opinion)
OLGA PALANCA-ENRIQUEZ
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 this Court.

ERNESTO D. ACOSTA
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ACCENTURE , INC.,
Respondent.

C.T.A. EB No. 410
(CTA Case No. 7387)

Present:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:
MAR 18 2009 Apolinario 1:50 p.m.

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DISSENTING OPINION

ACOSTA, P.J.:

Raised before the Court *En Banc* is the issue of whether respondent is entitled to a refund or credit of its unutilized VAT input taxes on its purchases of goods and services for the period from September 1, 2003 to August 31, 2004. The majority, in reversing the Second Division, found that respondent failed to comply with the requirement of proving that the recipient of its services was doing business outside the Philippines. This requirement was said to be another essential condition for qualification to zero-rating under Section 108(B)(2) of the National Internal Revenue Code (NIRC), in the case **Commissioner of Internal Revenue vs. Burmeister and Wain Scandidavian Contractor Mindanao, Inc.**[1]

[1] G.R. No. 153205, January 22, 2007.

After a re-evaluation of the facts and the issues presented, the undersigned is of the opinion that the findings of the Second Division should be upheld. Despite the above-mentioned decision, Section 108(B)(2) of the NIRC, prior to the amendment introduced by Republic Act No. 9337 (R.A. 9337), was correctly applied by the Second Division. It states:

> SEC. 108. **Value-added Tax on Sale of Services and Use or Lease of Properties**.- xxx
>
> **(B) Transactions Subject to Zero-Percent (0%) Rate**.- The following services performed in the Philippines by VAT-registered persons shall be subject to zero-percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).
>
> (2) **Services other than those mentioned in the preceding paragraph, the consideration of which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas** (BSP).

As found by the Second Division, "petitioner's sale of services are zero-rated pursuant to the above provision because it rendered management consulting and management information consulting services, xxx". The Second Division also found that only a portion of the claim was substantiated as they were supported by "zero-rated official receipts, billing statements, and memo invoices to its various foreign clients, the consideration for which was are paid for in accordance with the rules and regulations of the BSP".

Under the Section 108(B)(2), the only requirement for zero-rating under Section 108(B)(2) is that the services were paid for in acceptable foreign currency and accountable for in accordance with BSP regulations. In fact the Supreme Court, in **Commissioner of Internal Revenue vs. American Express International, Inc.**[2] held that "[I]nterpellations on the subject in the halls of the Senate xxx reveal a clear intent on

[2] G.R. No. 152609, June 29, 2005.

the part of the legislators not to impose the condition of being 'consumed abroad' in order for the services performed in the Philippines by a VAT- registered person to be zero-rated.". Section 102(B)(2) of the NIRC is very clear. No statutory construction or interpretation is needed. Neither can conditions or limitations be introduced when none is provided for. Rewriting of the law is a forbidden ground that only Congress may tread upon.[3]

In this case, the documents submitted by petitioner established that its sales transactions existed, the payments of such service fees were in foreign currency, and that the proceeds of such sales transactions were inwardly remitted to the Philippines and accounted for in accordance with the rules of the Bangko Sentral ng Pilipinas. Since these are the only requirements of the law applicable at that time and because respondent was able to show compliance with these requirements[4], albeit not as to the entire amount of its claim, the partial grant of the claim was correctly made by the Second Division.

Diametrically opposed to the above Section 108(B)(2) is the Section 108(B)(2) as amended by RA 9337. As amended, added as requirement to be entitled to VAT zero-rating under par. (B)(2) of Section 108 is that the recipient of the services should be doing business outside of the Philippines. As amended by R.A. 9337, Section 108(B)(2) now reads:

> SEC. 108. **Value-added Tax on Sale of Services and Use or Lease of Properties.**- xxx
>
> **(B) Transactions Subject to Zero-Percent (0%) Rate**.- The following services performed in the Philippines by VAT-registered persons shall be subject to zero-percent (0%) rate:
>
> (1)Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable

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[3] Supra.
[4] Schedule of Zero-Rated Sales-Local (Annex D of Exhibit "JJ"), Schedule of Billings and Remittances (Annex C of Exhibit "JJ"), Intercompany Payment Requests (Exhibits "WW-1 to WW-11"), Official Receipts (Exhibits "XX-1 to XX-11"), Billing Statements (Exhibits "YY-1 to YY-11"), Memo Invoices-Receivable (Exhibits "ZZ-1 to ZZ-90"), Memo Invoices-Payable (Exhibits "AAA-1 to AAA-73"), Bank Statements (Exhibits "BBB-1 to BBB-11"), and the testimony of its Country Controller, Ms. Loida S. Samson (Exhibit "II")

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> foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).
>
> (2)Services other than those mentioned in the preceding paragraph, **rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed**, the consideration of which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

As stated above, the requirement that the services were rendered to a person engaged in business conducted outside the Philippines, or to a nonresident person not engaged in business who is outside the Philippines when the services was rendered, was introduced by R.A 9337. Before such amendment, the law only requires that services were paid for in acceptable foreign currency and accountable for in accordance with BSP regulations. Since R.A. 9337 became effective only on November 1, 2005, the amendment should not prejudice respondent whose claim is for the period September 2004 to August 2005.

In view of the above, I vote for the denial of the Petition for Review and the *in toto* upholding of the Second Division Decision.

ERNESTO D. ACOSTA
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ACCENTURE, INC.,
Respondent.

C.T.A. EB NO. 410
(C.T.A. CASE NO. 7387)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

MAR 18 2009 1:50 p.m.

x -- x

SEPARATE CONCURRING OPINION

PALANCA-ENRIQUEZ, J.:

In view of the decision of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., 512 SCRA 124*, which clarified *Section 102(b)(2) of the NIRC of 1977, as amended*, (now *Section 108(B)(2) of the 1997 Tax Code, as amended*), to wit:

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> "The Tax Code not only requires that the services be other than 'processing, manufacturing or repacking of goods' and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that the recipient of such service is doing business outside the Philippines. While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) where the listed services must be 'for other persons doing business outside the Philippines.' The phrase 'for other persons doing business outside the Philippines' not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term 'services' appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines."

I have no alternative, but to reverse my previous stand in C.T.A. Case No. 7387, partially granting the claim for refund or issuance of tax credit certificate to respondent Accenture, Inc. Accordingly, I vote to GRANT the instant Petition for Review in C.T.A. EB No. 410.

OLGA PALANCA-ENRIQUEZ
Associate Justice

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