REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

MINDANAO II GEOTHERMAL PARTNERSHIP, ***Petitioner,*** -versus- COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**C.T.A. CASE NOS. 7899**
MINDANAO II GEOTHERMAL PARTNERSHIP, ***Petitioner,*** -versus- COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**C.T.A. CASE NO. 7942**
MINDANAO II GEOTHERMAL PARTNERSHIP, ***Petitioner,*** -versus- COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**C.T.A. CASE NO. 7960** Members: BAUTISTA, Chairperson, PALANCA-ENRIQUEZ, and COTANGCO-MANALASTAS, JJ. **Promulgated:** AUG 1 2012 ABFernando 3:15 p.m.

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

The 30-day period within which to file an appeal with the CTA is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same *(Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, 522 SCRA 144).* This rule applies to cases of refund or issuance of tax credit under *Section 112 of the NIRC of 1997, as amended*, where the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or unacted claim with the CTA. Likewise, the premature filing of the claim/credit of input VAT before the CTA warrants a dismissal, inasmuch as no jurisdiction was acquired by the CTA *(Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., 632 SCRA 422).*

THE CASE

This is a Petition for Review filed by Mindanao II Geothermal Partnership (hereafter "petitioner") praying for the refund or issuance of a tax credit certificate (TCC) representing its creditable input value-added taxes (hereafter "input VAT") paid and attributed to its effectively zero-rated sales for taxable year 2007.

THE PARTIES

Petitioner is a partnership duly registered with the Securities and

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Exchange Commission, with principal address at Barangay Ilomavis, Kidapawan City, Cotabato.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. Summons, pleadings and other legal processes may be served at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

The facts of the case, as culled from the records, are as follows:

On March 11, 1997, petitioner entered into a Build-Operate-Transfer Contract with the Philippine National Oil Company-Energy Development Corporation(PNOC-EDC) for the finance, engineering, supply, installation, testing, commissioning, operation and maintenance of a 48.25 megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to petitioner at no cost. In turn, petitioner shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and in behalf of PNOC-EDC.

As a power generation company utilizing geothermal energy and steam, petitioner's sale of generated power and delivery of electric capacity and energy to NPC for and in behalf of PNOC-EDC, under the BOT contract, is VAT zero-rated, pursuant to *Section 108(B) of the NIRC of 1997, as amended by RA 9337.*

As a result of said transactions, petitioner allegedly incurred input VAT, which are attributed and allocated to effectively zero-rated sales in the amount of P8,255,554.02 for taxable year 2007.

On the following dates, petitioner filed with the BIR its Original Quarterly VAT Returns for taxable year 2007:

Taxable Quarter	Date of Filing of Original Return
1st	April 25, 2007
2nd	July 25, 2007
3rd	October 24, 2007
4th	January 28, 2008

On March 30, 2009, petitioner filed its administrative claim for refund of unutilized input VAT for taxable year 2007, together with the supporting documents.

Due to respondent's inaction, petitioner filed with the CTA the following Petitions for Review:

CTA Case No.	Quarters	Unutilized Input VAT	Date of Filing of Petition for Review
7899	1st	P4,048,011.48	March 31, 2009
7942	2nd	P1,484,924.01	June 30, 2009
7960	3rd & 4th	P2,722,618.53	August 12, 2009

On August 12, 2009, petitioner filed a "Motion to Consolidate C.T.A. Case No. 7960 with C.T.A. Case Nos. 7899 and 7942, which the Court granted. Thus, C.T.A. Case Nos. 7960 and 7942 were consolidated with C.T.A. Case No. 7899, the case bearing the lowest docket number.

In C.T.A. CASE No. 7899, respondent CIR, in her answer, alleged by way of special and affirmative defenses:

> "6. The amount of P4,048,011.48 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of capital goods other than capital and services for the first quarter of the year 2007 is not properly documented.
>
> 7. Petitioner must prove that it has complied with the provisions of Section 112(A) and (C) of the NIRC of 1997, as amended, on the prescriptive period for claims for VAT refund/credit.
>
> 8. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to RMO No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma. Furthermore, Section 112(D) of the NIRC of 1997, as amended, requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the

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taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

9. Petitioner must prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of RR No. 7-95.

10. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit (Asia Petroleum Co. v. Llanes, 49 Phil 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil 670).

11. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such; they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).

12. The CTA has no jurisdiction to entertain the instant petition for review for failure on the part of the petitioner to comply with the provisions of Section 112 (D) of the 1997 Tax Code which provides, thus:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> 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

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application filed in accordance with Subsection (A) hereof.

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

13. As stated in the petition, petitioner filed the administrative claim for refund with respondent on March 30, 2009. Subsequently, on March 31, 2009 or only one day thereafter, the instant petition was filed. Obviously the 120 days given to respondent to decide on the claim had not yet lapsed when the petition was filed. The petition was prematurely filed, hence, it must be dismissed for lack of jurisdiction. "

On the other hand, in C.T.A. CASE No. 7942, respondent CIR, in her answer, alleged by way of special and affirmative defenses:

"6. The amount of P1,484,924.01 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of capital goods other than capital and services for the 2nd quarter of the year 2007 is not properly documented.

7. Petitioner must prove that it has complied with the provisions of Section 112(A) and (C) of the NIRC of 1997, as amended, on the prescriptive period for claims for VAT refund/credit.

8. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to RMO No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative

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claim for refund, the administrative claim thereof being mere pro-forma. Furthermore, Section 112(D) of the NIRC of 1997, as amended, requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

9. Petitioner must likewise prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of RR No. 7-95.

10. In an action for tax refund/credit, the *onus probandi* is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit (Asia Petroleum Co. v. Llanes, 49 Phil 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil 670).

11. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such; they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).

12. The CTA has no jurisdiction to entertain the instant petition for review for failure on the part of the petitioner to comply with the provisions of Section 112 (C) of the 1997 Tax Code which provides, thus:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
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> xxx xxx
>
> *(C)Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the

> Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

13. As stated in the petition, petitioner filed the administrative claim for refund with respondent on March 30, 2009. Subsequently, on June 30, 2009 or only ninety (90) days thereafter, the instant petition was filed. Obviously the 120 days given to respondent to decide on the claim had not yet lapsed when the petition was filed. The petition was prematurely filed, hence, it must be dismissed for lack of jurisdiction."

While in C.T.A. CASE No. 7960, respondent CIR, in her answer, alleged by way of special and affirmative defenses:

"5. The amount of P2,722,618.53 being claimed by petitioner as alleged excess and unutilized creditable input taxes for the 3rd and 4th quarters of the year 2007 was not properly documented.

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. To support its claim, it is imperative for petitioner to prove the following, viz:

a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a(a) of RR No. 7-95, and Section 236 of the NIRC of 1997;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund in pursuance to RMO No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim. It is worthy of emphasis that Section 112(D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of P2,722,618.53 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the third and fourth quarters of taxable year 2007 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112(A) and (D);

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the NIRC of 1997, and in pursuance to Section 4.104-5(a) and (b) of RR No. 7-95;

g. The requirements as enumerated under Section 4.104-2 of RR No. 7-95;

8. The petition for review was prematurely filed. Section 112(D) of the NIRC of 1997 categorically provides, thus:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
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> xxx xxx
>
> *(C)Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

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> 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."

There was likewise no proof of compliance with the prescribed checklist of requirements to be submitted involving a claim for VAT refund pursuant to RMO No. 53-98, hence, there was no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the NIRC of 1997. It is worthy of emphasis that Section 112(D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law.

Since petitioner did not submit complete documents in support of its administrative claim for refund as indicated under Section 112(D) of the NIRC of 1997, the 120-day period starts to run on 30 March 2009, the date when it filed its administrative claim for refund. The said period is yet to expire on 28 July 2009. Hence, the 30-day period within which to file the petition for review is yet to expire on 27 August 2009. This being so, the Second Division had no jurisdiction to act on the instant petition for review.

Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Second Divison is without jurisdiction to entertain the Petition for Review.

> Petitioner's failure to comply with a condition precedent prior to the institution of its petition for review makes it dismissible for absence of jurisdiction on the part of the Honorable Court.
>
> 9. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

Petitioner presented Michael L. Aguirre and Daisy C. Abenes, as witnesses, and documentary evidence, which were admitted by the Court in its Resolutions dated May 18, 2011 and July 22, 2011.

On the other hand, respondent CIR was declared to have waived her right to present evidence for the repeated failure of respondent CIR's counsel to appear during the scheduled initial presentation of the evidence for respondent, despite notice.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Afterwhich, the case shall be deemed submitted for decision.

On September 22, 2011, petitioner filed its "Memorandum". On the other hand, respondent failed to file her memorandum despite notice; hence, on October 25, 2011, the case was deemed submitted for decision.

ISSUE

As stipulated by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THIS HONORABLE COURT HAS JURISDICTION OVER THE PRESENT CASE.

II

WHETHER OR NOT PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS WERE TIMELY FILED.

III

WHETHER OR NOT PETITIONER'S SALE OF GENERATED POWER BY GEOTHERMAL ENERGY QUALIFIES AS VAT ZERO-RATED UNDER RA NO. 9136, THEN AND EFFECTIVE NOVEMBER 1, 2005, UNDER THE 1997 TAX CODE, AS AMENDED BY RA 9337.

IV

WHETHER OR NOT THE AMOUNT OF P8,255,554.02 REPRESENTS THE ACCUMULATED EXCESS AND UNUTILIZED CREDITABLE INPUT TAXES PAID BY PETITIONER WITHIN THE YEAR 2007 DIRECTLY ATTRIBUTABLE TO ITS PRIMARY SOURCE OF REVENUE WHICH IS VAT ZERO-RATED.

V

WHETHER OR NOT PETITIONER'S EXCESS AND UNUTILIZED INPUT TAXES FOR YEAR 2007 IS DULY SUPPORTED BY PERTINENT DOCUMENTS, SUCH AS

VAT-COMPLIANT INVOICES AND OFFICIAL RECEIPTS.

VI

WHETHER OR NOT THE ACCUMULATED EXCESS AND UNUTILIZED INPUT TAXES PAID BY PETITIONER WITHIN THE YEAR 2007 IN THE TOTAL AMOUNT OF P8,255,554.02 REMAINS UNUTILIZED AND/OR UNAPPLIED.

Principal Issue

The issue to be resolved is whether or not petitioner is entitled to a refund or issuance of a TCC representing its excess and unutilized input VAT for the four quarters of taxable year 2007 in the aggregate amount of P8,255,544.02.

THE COURT'S RULING

The petition is partly meritorious.

Before resolving the principal issue raised in this petition, the Court deems it necessary to first determine whether the present Petitions for Review were timely filed.

In this regard, *Section 112 of the NIRC of 1997, as amended,* provides:

"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**

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the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, that where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods 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: Provided, finally, that for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

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

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-

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> day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

In the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc., supra,* the Supreme Court ruled that the second paragraph of *Section 112(C) of the NIRC of 1997, as amended,* envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA.

Applying the above ruling to this case, records show that on March 30, 2009, petitioner filed with the BIR an administrative claim for refund for taxable year 2007, which is within the two year prescriptive period from the close of the taxable quarter when the sales were made, pursuant to *Section 112 (A) of the NIRC of 1997, as amended.* Counting 120 days from March 30, 2009, pursuant to *Section 112 (C) of the NIRC of 1997, as amended,* the CIR had until July 28, 2009 to decide petitioner's administrative claim. Since the CIR failed to act on petitioner's administrative claim for refund, pursuant to *Section 112 (C) of the NIRC of 1997, as amended,* the taxpayer had 30 days from July 29, 2009, or until August 27, 2009 to appeal the inaction to the CTA.

C.T.A. Case Nos. 7899 and 7942

As regards C.T.A. Case No. 7899, records show that petitioner filed the Petition for Review on March 31, 2009, barely 1 day after filing its application for refund with respondent CIR.

As to C.T.A. Case No. 7942, records show that petitioner filed the Petition for Review on June 30, 2009, 28 days before the lapse of the 120-day period for respondent CIR to decide the claim.

Clearly, both Petitions for Review, docketed as C.T.A. Case Nos. 7899 and 7942, were prematurely filed, as petitioner did not wait for the lapse of the 120 days before filing its appeal with the CTA, in violation of *Section 112(C) of the NIRC of 1997, as amended.*

Pursuant to the Aichi ruling, the premature filing of petitioner's judicial claims for refund/credit of input VAT with this Court warrants a dismissal, inasmuch as no jurisdiction was acquired by this Court.

C.T.A. Case No. 7960

As regards C.T.A. Case No. 7960, records reveal that petitioner filed the Petition for Review on August 12, 2009. Since petitioner had until August 27, 2009 within which to file its judicial claim for refund, the claims for the third and fourth quarters of 2007, subject of C.T.A. case No. 7960, were therefore, filed on time.

Pursuant to *Section 112 (A) of the NIRC of 1997, as amended,* in order to be entitled to a refund or issuance of a TCC of input VAT paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1) there must be zero-rated or effectively zero-rated sales;
2) that input taxes were incurred or paid;
3) that such input taxes are attributable to zero-rated sales or effectively zero-rated sales;
4) that the input taxes were not applied against any output VAT liability; and
5) that the claim for refund was filed within the two-year prescriptive period.

Thus, it is imperative that petitioner should be able to prove the above prescribed requisites.

First Requisite:
There must be zero-rated or effectively zero rated sales

As regards the first requisite, petitioner contends that its sales of electricity as a power generation company, qualify for VAT zero-rating, under *Section 108(B)(7) of the NIRC of 1997, as amended*, which provides:

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

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(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:

xxx xxx

(7) 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 sources using technologies such as fuel cells and hydrogen fuels.

xxx xxx."

Corollary thereto, *Section 4.108-5(C)(7) of Revenue Regulations No. 16-2005* which implements the said provision, provides:

"SEC. 4.108-5. Zero-Rated Sales of Service --

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(C) Transactions Subject to Zero Percent (0%) VAT Rate – The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:

xxx xxx

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels: Provided, however,

> that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power.
>
> xxx xxx"

To qualify for VAT zero-rating, petitioner must therefore, be able to establish that: (1) it is a VAT-registered company; and (2) its sale of power is generated through renewable sources of energy.

After a careful review and examination of the evidence on record, the Court finds that the above prescribed requisites have been duly established by petitioner.

As to the first requisite, records show that petitioner is duly registered with the BIR with Tax Identification No. 004-766-953 as a VAT entity.

As regards the second requisite, records show that petitioner owns and operates a 48.25-megawatt geothermal power plant facility, which has been accredited by the Department of Energy, as a Block Power Production Facility (Exhibit "D") and a Certificate of Compliance No. 03-10-GXT25-0025, dated October 15, 2003. As a VAT-registered power generation company utilizing geothermal energy, petitioner'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 in the amount of P175,965,639.50 which was declared in its Quarterly VAT Returns for the same period, as follows:

Exhibit	Year 2007	Zero-Rated Sales/Receipts
	3rd Quarter	88,706,977.90
	4th Quarter	87,258,661.60
		P 175,965,639.50

Thus, petitioner's sales of electricity as a power generation company amounting to P175,965,639.50 qualify for VAT zero-rating.

Second and Third Requisites:
Input taxes were incurred or paid and that such input taxes are attributable to zero-rated sales or effectively zero-rated sales

Having resolved that petitioner's gross receipts from power generation services rendered to NPC for the third and fourth quarters of 2007 in the amount of P175,965,639.50 qualify for VAT zero-rating, We now proceed to determine the amount of input VAT attributable thereto.

Section 113(A) and (B) of the NIRC of 1997, as amended by RA 9337, provides:

> "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

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(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;

(b) If the sale is exempt from value-added tax, the term "**VAT-exempt sale**" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term "**zero-rated sale**" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: "*Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client."

Pursuant to the above provision, purchases of goods must be supported by VAT invoices, while purchases of services must be supported by VAT official receipts. In addition, the VAT invoice or official receipt must contain the following information: (1) the seller is a VAT-registered person, followed by his taxpayer's identification number; (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, the amount of the tax shall be shown as a separate item in the invoice or receipt; (3) the date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and (4) in the case of sales in the amount of one thousand pesos (P1,000) or more, where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client.

In support of its claimed unutilized input taxes reflected in its Quarterly VAT Returns for the third and fourth quarters of 2007, in the amount of P2,722,618.53, petitioner presented various suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC and bank official receipts *(Exhibit "UU" as summarized in Exhibit "TT")*.

Upon a careful perusal of said documents, the Court finds that only the invoice issued by 128 Convenient Store (*Exhibit S.15*) and official receipt issued by SGV& Co. (*Exhibit T.60*) amounting to P6,634.29, complied with the requirements prescribed in *Section 113 (A) and (B) of the NIRC of 1997, as amended by RA 9337.* The rest of the input VAT claims for the third and fourth quarters of 2007 are hereby disallowed for the following reasons:

Exh.	**Inv/OR #**	**Inv/OR Date**	**Supplier**		**Input VAT**
1) Domestic purchases of goods and services supported by an invoice or receipt, respectively, outside of the 3rd and 4th quarters of 2007					
S.1	0007	06/30/07	Austin Herrick	P	237, 199.91
S.4	3556	05/31/07	Mabuhay Vinyl Corp		11,151.99
S.7	39052	6/15/07	Nalco Philippines, Inc		17,117.93
S.26A	39161	06/28/07	Nalco Philippines, Inc		17,249.39
T.49	8156	06/22/07	Mabuhay Vinyl Corp		11,131.53
T.52	0251	04/27/07	Marubeni Energy Services		403,471.37
2) Purchase of goods or services supported by invoice or receipt, respectively, with company TIN and VAT component not indicated therein					
S.5	0258	07/10/07	Marubeni Energy Services		P 221,946.10
S.14	1904	08/02/07	Breadcart Bakeshop		147.30
S.16	1915	08/05/07	Breadcart Bakeshop		227.68
S.17	8759	08/02/07	Dawn's Café		160.71
S.18	19408	08/28/07	House of Travel		674.00
S.24	0261	08/08/07	Marubeni Energy Services		253,199.65
S.46	14530	09/28/07	Jetour Philippines, Inc.		1,281.00
S.48	2151	09/20/07	Julieto Marco		60.00
S.50	0263	09/07/07	Marubeni Energy Services		321,668.93
T.3	14591	10/26/07	Jetour Philippines, Inc.		1,317.00
T.7	0265	10/08/07	Marubeni Energy Services		259,644.13
T.25	0271	11/12/07	Marubeni Energy Services		337,940.92
T.44	20296	12/12/07	House of Travel		1,126.00
T.46	2227	12/19/07	Julieto Marco		4,260.00
T.50	0272	12/10/07	Marubeni Energy Services		420,040.02
3) Purchase of services and goods supported by receipt or invoice, respectively, not in the name of the company					
S.8	184830	07/05/07	PLDT	P	217.64
S.54	229594	09/05/07	PLDT		217.64
T.30	273288	11/05/07	PLDT		217.64
4) Purchase of goods or services supported by invoice or receipt, respectively, VAT component not indicated therein					
S.10	0441	07/13/07	Plumas Transportation Corp	P	9,107.14

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S.20	41096	08/04/07	Julie's Bakeshoppe		26.25
S.29	0450	08/10/07	Plumas Transportation Corp		9,107.14
S.36	25732	08/03/07	Triple Eight Int'l Travel		2,538.00
S.38	26204	08/31/07	Triple Eight Int'l Travel		1,223.00
S.40	388232	11/28/07	Universal Holidays, Inc		298.92
S.42	1265	09/28/07	CIFRA Industrial Services		10,259.64
S.44	5126	09/25/07	Exhibits Asia, inc.		5,357.14
S.52	0326	09/28/07	Peamkonstruct Builders		99,399.84
S.56	0470	09/07/07	Plumas Transportation Corp		9,107.14
S.60	26201	09/07/07	Triple Eight Int'l Travel		2,538.00
S.62	26517	09/28/07	Triple Eight Int'l Travel		1,281.00
T.1	55033	10/05/07	Ansuico, inc.		13,200.00
T.13B	495713	10/10/07	TNT Express		795.39
T.32	0553	11/16/07	Plumas Transportation Corp		9,767.14
T.36	27179	11/09/07	Triple Eight Int'l Travel		642.00
T.38	27623	11/29/07	Triple Eight Int'l Travel		656.00
T.40	66208	12/28/07	General Electric Philippines, Inc.		46,714.28
T.58	0562	12/07/07	Plumas Transportation Corp		9,107.14
T.62	27624	12/07/07	Triple Eight Int'l Travel		3,274.00

5) Purchase of goods or services supported by invoice or receipt, respectively, with company name, TIN and VAT component not indicated therein

S.12	0047	07/23/07	Smart Communications Inc.	P	147.48
S.32	0019	08/23/07	Smart Communications Inc.		156.40
S.58	0031	09/24/07	Smart Communications Inc.		468.55
T.11	0002	10/23/07	Smart Communications Inc.		328.64
T.34	0064	11/21/07	Smart Communications Inc.		473.59

6) Purchase of goods or services supported by invoice or receipt, respectively, with company TIN not indicated therein

S.23	0003617	07/09/07	Mabuhay Vinyl Corp	P11,281.56
T.6A	0003730	08/23/07	Mabuhay Vinyl Corp	P11,281.56
T.6B	0003664	07/30/07	Mabuhay Vinyl Corp	P11,377.04
T.27	0021128	10/16/07	Maxandrea Hotel	225.00

7) Purchase of goods not supported by an invoice and purchases of services not supported by receipts

S.21	Kidapawan Mega center Corp	P	56.33
S.27	PLDT		217.64
S.31	Showa Manpower Services		267.86
S.34	Survive Marketing		65.09
S.35	Survive Marketing		29.63
T.9	PLDT		217.64
T.56	PLDT		217.64

Fourth Requisite:
Input taxes were not applied against any output VAT liability

As regards the fourth requisite, a perusal of petitioner's Quarterly VAT Returns for the four quarters of 2007 *(Exhibits "F", "G", "H" and "I")*, shows that it has no output tax liability against which the substantiated

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input VAT of P6,634.29 may be applied or credited. The Court further finds that the input VAT of P6,634.29 was not carried to the succeeding first quarter of 2008 *(Exhibit "J")*.

In sum, the Court finds that petitioner is entitled to a refund or issuance of a TCC, representing unutilized input VAT paid on its domestic purchases of goods and services attributable to zero-rated sales for the third and fourth quarters of 2007, but only in the reduced amount of P6,634.29.

WHEREFORE, premises considered:

1) As regards C.T.A. Case No. 7899, the Petition for Review is hereby **DISMISSED** for having been prematurely filed;

2) As regards C.T.A. Case No. 7942, the Petition for Review is hereby **DISMISSED** for having been prematurely filed; and

3) As regards C.T.A. Case No. 7960, the Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent CIR is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SIX THOUSAND SIX HUNDRED THIRTY FOUR PESOS and 29/100 (P6,634.29)**, representing unutilized input VAT paid on its domestic

purchases of goods and services which are attributable to zero-rated sales for the third and fourth quarters of calendar year 2007.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

CTA CASE NO. 7899

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---x

MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

CTA CASE NO. 7942

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---x

MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7960

Members:
BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

AUG 1 2012
ABFunono 3:15 p.m.

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Where there has been justifiable reliance on Our decisions, and those who have so relied may be substantially harmed if retroactive effect is given, where the purpose of the new rule can be adequately effectuated without giving it retroactive operation, or where retroactive operation might greatly burden the administration of justice, it is Our duty to apply the new rule prospectively;[3] for it would be the height of injustice to impose a new ruling, on the basis of the so-called "adherence to precedence."

For emphasis, the latter issued doctrine is clearly promulgated *after* the taxpayer-claimant had faithfully relied and complied with the Court's former ruling. And even the taxpayer-claimant itself could not have foreseen that after it had filed its claims before the administrative and judicial *fora*, a subsequent ruling, either modifying or overruling a previous one, would be issued that would put to naught its claims.

Prior determinations deemed to have finality and acted upon accordingly, demands examination. The effect of a subsequent ruling as to invalidity may have to be considered in various aspects. It may have consequences which cannot just be ignored.[4]

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[3] Magtoto *v.* Manguera, *et al.*, G.R. Nos. L-37201-02, L-37424, and L-38929, March 3, 1975, 63 SCRA 4, Concurring Opinion penned by Justice Felix Q. Antonio, with Justices Antonio P. Barredo and Cecilia Muñoz-Palma, concurring.

[4] Albino S. Co *v.* Court of Appeals, *et al.*, G.R. No. 100776, October 28, 1993, 277 SCRA 444, *citing Chicot County Drainage District v. Baxter States Bank, 308 US 371, 374 [1940].*

CONCURRING AND DISSENTING OPINION

BAUTISTA, J.:

While I concur with the order of refund or issuance of a tax credit certificate insofar as the Petition for Review, docketed as CTA Case No. 7960 is concerned; I must, nevertheless, point out my non-concurrence with the findings that the Petitions for Review, docketed as CTA Case No. 7899 and CTA Case No. 7942 were prematurely filed, for the factual milieu present in the case at bench must be taken into consideration – the then prevailing jurisprudence at the time the claim was lodge in this Court.

The Court must note that when petitioner filed its claim for refund/tax credit with respondent on March 30, 2009, and the consequent Petitions for Review on the following dates: March 31, 2009, covering the first (1st) quarter of the taxable year 2007, docketed as CTA Case No. 7899; June 30, 2009, covering the second (2nd) quarter of the taxable year 2007, docketed as CTA Case No. 7942; and August 12, 2009, covering the third (3rd) and fourth (4th) quarters of the taxable year 2007, docketed as CTA Case No. 7960, the then controlling doctrine in this forum is that of the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.]*.[1] It was merely unfortunate that during the pendency of the case at bench that the Supreme Court issued the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[2]

[1] G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[2] G.R. No. 184823, October 6, 2010.

Applying the above disquisitions, petitioner had until two (2) years from the close of the relevant taxable quarters of the year 2007, within which to file *both* its administrative and judicial claims.

With this, I find the administrative and judicial claims filed within the prescribed period.

Accordingly, I vote that the Petitions for Review, docketed as CTA Case No. 7899 and CTA Case No. 7942 be **GRANTED**, subject to the verification of the subject claims.

LOVELL R. BAUTISTA
Associate Justice