

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

KEPCO ILIJAN CORPORATION,
Petitioner,

CTA EB CASE NO. 517
(CTA Case No. 6590)

-versus-

Present:

**ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
PALANCA-ENRIQUEZ
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

MAY 06 2010

2:40 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court en banc under Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, of the Decision¹ dated May 7, 2009, rendered by the former Second Division of this Court² in CTA Case No. 6590, and its Resolution³ dated July 23, 2009.

¹ En banc Docket, pp. 49-65.

² Penned by Associate Justice Olga Palanca-Enriquez, concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Erlinda P. Uy.

³ En Banc Docket, pp. 43-47

Petitioner Kepco Ilijan Corporation seeks a reversal of both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated May 7, 2009:

"WHEREFORE, premises considered, the petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED**.

SO ORDERED."

Resolution dated July 23, 2009:

"WHEREFORE, premises considered, petitioner's 'Motion for Reconsideration' is hereby **DENIED** for **LACK OF MERIT**.

SO ORDERED."

The facts quoted from the Decision of the former Second Division of this Court are undisputed:

"Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at Suite 2501-A, 25th Floor, Tektite Tower I, Exchange Road, Ortigas Centre, City of Pasig. It is a VAT-registered taxpayer engaged in the production and sales of electricity, as an independent power producer (Exhibit 'A').

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 25, 2001, petitioner filed its Quarterly VAT Return(Exhibit 'B') for the fourth quarter of calendar year 2000 with the BIR, reflecting the following:

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<i>Input Tax Carried Over from Previous Quarter</i>	<i>1,146,358,112.36</i>
<i>Domestic Purchases for the Quarter</i>	<i>147,951,468.58</i>
<i>Importation of Goods for the Quarter</i>	<i>385,219,033.66</i>
<i>Total Available Input Tax</i>	<i>1,679,528,614.60</i>

On January 10, 2003, petitioner filed with the BIR a letter claiming for refund of the input tax in the amount of P533,170,502.24, representing the VAT allegedly paid on domestic purchases and importation of capital goods/equipment and services for the fourth quarter of calendar year 2000 (Exhibit 'D').

On January 22, 2003, petitioner filed the instant Petition for Review in view of the inaction of respondent.

On March 13, 2003, respondent filed his Answer alleging the following special and affirmative defenses:

'5. That the herein petitioner is not entitled to the refund of the amounts prayed for in the instant petition for review;

6. That the instant petition for review was prematurely filed as petitioner has not exhausted the administrative remedies required by law and jurisprudence on the actions of this nature as no decision has as yet been rendered by the respondent;

7. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action.

8. Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action.'

On October 11, 2003, petitioner filed a 'Motion for Leave of Court to Amend Attached Petition for Review' and its 'Amended Petition for Review', which the Court granted and admitted in its Resolution dated October 24, 2003."

During trial on the merits, petitioner presented documentary and testimonial evidence. Respondent was considered to have waived his

right to present evidence after his counsel repeatedly failed to appear despite due notice for the presentation of evidence for the respondent.

On May 7, 2009, the former Second Division promulgated its Decision, the pertinent portion of which reads:

"In this case, petitioner is claiming for the input VAT accumulated for the fourth quarter of calendar year 2000, hence, the (2) year prescriptive period should be reckoned from December 31, 2000, which is the close of the taxable quarter when the importations and purchases were made. Counting from December 31, 2000, petitioner had until December 31, 2002 within which to file its claim both in the administrative level and judicial levels.

Records show that petitioner filed its claim on January 10, 2003 (Exhibit 'D-2') and the present Petition for Review on January 22, 2003. Clearly, both the administrative claim for refund and the instant Petition for Review were filed out of time. Petitioner, therefore is barred from claiming refund of the input taxes for the fourth quarter of calendar year 2000 in the amount of P533,170,502.24 due to prescription.

In view of the foregoing discussion, the Court finds it no longer necessary to discuss petitioner's compliance with the other requisites for refund of input taxes on domestic purchases and importation of capital goods/equipment.

WHEREFORE, premises considered, the petition is hereby ***DENIED DUE COURSE***, and accordingly, ***DISMISSED***.

SO ORDERED."

Petitioner's Motion for Reconsideration therefrom was denied in a Resolution dated July 23, 2009, hence, this Petition for Review was filed before the Court En Banc.

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Petitioner assigns this sole issue -

"WHETHER OR NOT THE (former) CTA SECOND DIVISION ERRED WHEN IT RETROACTIVELY APPLIED THE 2008 MIRANT CASE, LEADING TO THE AUTOMATIC DISMISSAL/DENIAL OF THE PRESENT CLAIM FOR REFUND."

Petitioner argues that:

- (1) the complete Senarillos Doctrine should be applied;
- (2) rules of procedure should not be given retroactive effect if it would result in great injustice and impair substantive rights;
- (3) even if a tax refund is a statutory privilege and not a vested right, such privilege may evolve into a property right protected by due process; and
- (4) no doctrine of law laid down by the Supreme Court in a decision rendered en banc or in a division may be modified or reversed except by the court sitting en banc.

We find no merit therein.

Suffice it to say that petitioner is claiming for refund of its input value added tax allegedly incurred for the fourth quarter of calendar year 2000 from its importations and domestic purchases of capital goods/equipment and services. Thus, the applicable provision is Section 112 (B) of the NIRC of 1997, as amended.

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Petitioner invokes the ruling in the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue⁴ (**Atlas Case**) but this is misplaced. That the **Atlas Case** confirmed the jurisprudential rule for the past ten (10) years on the reckoning of the counting of the two-year prescriptive period vis-a-vis the case of Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation⁵ (**Mirant Case**) should be distinguished from the instant case as follows:

1. The claim for refund in the *Atlas Case* is anchored on input VAT on zero-rated sales unlike in the instant case which is a claim for refund on input VAT based on purchases and importation of capital goods;

2. The applicable law prevailing and applicable in the *Atlas Case* was the Tax Code of 1977, as amended while the applicable law in the instant case is the National Internal Revenue Code (NIRC) of 1997, as amended;

3. In the *Atlas Case*, a perusal of the provisions pertaining to the period for application for the issuance of a tax credit certificate or refund of input vat of zero rated sales differ

⁴ G.R. Nos. 141104 & 1487636, June 8, 2007

⁵ G.R. No. 172129, September 12, 2008

from input vat on purchases of capital goods and export sales in the Tax Code of 1977 . For Export sales it is **within two years from the date of exportation and if zero-rated or effectively zero-rated sales it is within two years after the close of the quarter when such sales were made.** However, for Capital goods, the application for the issuance of a tax credit certificate or refund of input vat may be made **only after the expiration of 2 succeeding quarters following the quarter in which the importation or local purchase was made. We quote:**

SECTION 106. Refunds or tax credits of input tax. — (a) **Export Sales.** — An exporter who is a VAT-registered person may **within two years from the date of exportation**, apply for the issuance of a tax credit certificate or refund of the input tax attributable to the goods exported, to the extent that such input tax has not been applied to output tax and upon presentation of proof that the foreign exchange proceeds has been accounted for in accordance with the regulations of the Central Bank of the Philippines.

(b) **Zero-rated or effectively zero-rated sales.** — Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, **within two years after the close of the quarter when such sales were made**, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.

(c) **Capital goods.** — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. **The application for refund may be**

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made only after the expiration of 2 succeeding quarters following the quarter in which the importation or local purchase was made: Provided, That a VAT-registered person who is just commencing business may apply for refund of input taxes under this paragraph not earlier than 180 days from the date of registration or actual start of business operations, whichever comes later: Provided, however, That the application is filed not later than 2 years from the dates herein prescribed. (Emphasis ours)

4. The decision in the ***Atlas Case*** determines the application for the issuance of a tax credit certificate or refund of input vat of zero rated sales and should not be made applicable to input vat on purchases of capital goods which should be made **after the expiration of 2 succeeding quarters following the quarter in which the importation or local purchase was made** or zero export sales which should be made **within two years from the date of exportation** in accordance with the Tax Code of 1977;

5. In the ***Mirant Case***, although the applicable law prevailing in the said case and in the instant case is the NIRC of 1997, as amended, the subject matter is different. In the ***Mirant Case***, the claim for refund was anchored on input VAT on zero-rated sales unlike in the instant case, which is based on purchases of capital goods; and

6. The pronouncement by the Supreme Court in the ***Atlas Case*** that ***“xxx, it is more practical and reasonable to count the two-year prescriptive period for filing a claim for***

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refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter” and the subsequent declaration in the **Mirant Case** that “ *The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.*”, applies only to Zero-rated or Effectively Zero-rated Sales.

Apparently, petitioner’s claim that the alleged retroactive application of this Court’s Division of the **Mirant Case** in relation to the **Atlas Case** is without merit considering that the provisions of law in question in these cases are separate and distinct from the specific law on the claim for refund of input tax on capital goods. Having stated that the **Mirant Case** and the **Atlas Case** are not applicable in the instant case, We find it no longer necessary to discuss petitioner’s other arguments.

The crux of the issue is the application of Section 112 (B) of the NIRC of 1997, as amended . We quote:

“SEC. 112. Refunds or Tax Credits of Input Tax. —

“(B) Capital Goods. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. **The**

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application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.
(Emphasis ours)

In interpreting the afore-quoted provision, we are guided by the basic rule in statutory construction that when the law is clear and unambiguous, this Court is left with no alternative but to apply the same according to its clear language.⁶ Only when the law is ambiguous or of doubtful meaning may this court interpret or construe its true intent. Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. A statute is ambiguous if it is admissible of two or more possible meanings, in which case, the Court is called upon to exercise one of its judicial functions, which is to interpret the law according to its true intent.⁷

Section 112(B) of the NIRC of 1997, as amended is clear and unambiguous. For capital goods- a taxpayer may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased only within two (2) years after the close of the taxable quarter when the importation or purchase was made. The law

⁶ Security Bank and Trust Company vs. Regional Trial Court of Makati, Branch 61, Magtanggol Eusebio and Leila Ventura, G.R. No. 113926, October 23, 1996.

⁷ Manuel G. Abello, Jose C. Conception, Teodoro D. Regala, Avelino V. Cruz vs. Commissioner of Internal Revenue and Court of Appeals, G.R. No. 120721. February 23, 2005

is clear and it leaves no room for interpretation, thus, it must be applied in accordance with its letters. The Supreme Court has consistently ruled⁸ that:

"xxx. This Court had steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible. No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. Where a requirement or condition is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed."

In fine, this Court's Division was correct when it concluded that:

"Section 112(B) of the NIRC of 1997, as amended, clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for internal revenue tax due the taxpayer must be claimed within two (2) years reckoned from the close of the taxable quarter when the relevant capital goods were imported or locally purchased pertaining to the input VAT regardless of whether said tax was paid or not. The reckoning frame would always be the end of the quarter when capital were imported or locally purchased, regardless when the input VAT was paid."

Records disclose that petitioner is claiming for refund of the alleged input tax in the amount of P533,170,502.24, representing the VAT allegedly paid on domestic purchases and importation of capital goods/equipment and services for the fourth quarter of the calendar year 2000. December 31, 2000 is the close of the taxable quarter when the importations and purchases were made. Consequently, petitioner had until December 31,

⁸Security Bank and Trust Company vs. Regional Trial Court of Makati, Branch 61, Magtanggol Eusebio and Leila Ventura, G.R. No. 113926, October 23, 1996. Citing Quijano v. Development Bank of the Philippines, 35 SCRA 270

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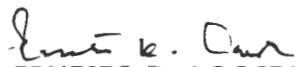
2002 within which to apply for the issuance of a tax credit certificate or refund of input taxes. Unfortunately, petitioner filed its claim for refund on January 10, 2003. Evidently, petitioner's claim for refund has prescribed.

WHEREFORE premises considered, the petition is hereby **DENIED**. The Decision of the former Second Division of this Court in CTA Case No. 6590, dated May 7, 2009, and its Resolution, dated July 23, 2009, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

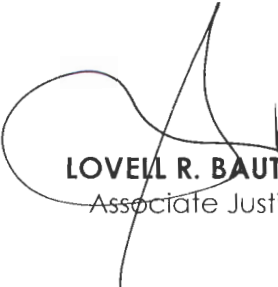

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice




JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice

ON LEAVE
CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice

