REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

AICHI FORGING COMPANY OF ASIA, INC.,
Respondent.

EB No. 385
(CTA Case No. 7314)
Present:
ACOSTA, *PJ.*
CASTAÑEDA JR.,
BAUTISTA
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ*:

Promulgated:

JUL 3 1 2008 mAApolinario 2:10 p.m.

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DECISION

Casanova, J.

This is an appeal, by way of a Petition for Review,[1] filed by the petitioner-Commissioner of Internal Revenue (CIR) from the Decision[2] (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated November 21, 2007 in CTA Case No. 7314 entitled, "*Aichi Forging Company of Asia, Inc., petitioner vs. Commissioner of Internal Revenue, respondent*" partially granting respondent-Aichi Forging Company of Asia (AICHI)'s Petition for Review thus, ordering the CIR to refund in favor of AICHI the reduced amount of P5,519,185.13 representing the unutilized input taxes paid by AICHI on its domestic purchases of goods and importation of goods and services which are attributable to its zero-rated sales for the period covered July 1, 2003 to

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[1] CTA En Banc Docket, pp. 8-27.
[2] Annex "A", Petition for Review, CTA En Banc Docket, pp. 29-45.

September 30, 2003, and from the Resolution[3] (*Assailed Resolution*) dated April 9, 2008 denying CIR's Motion for Partial Reconsideration.

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

"Aichi Forging Company of Asia, Inc. (Petitioner) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Barrio Pulong Sta. Cruz, Sta. Rosa, Laguna, Philippines.[4] It is registered with the Bureau of Internal Revenue (BIR) as a VAT entity pursuant to Section 107 (now Section 236) of the National Internal Revenue Code (Tax Code) on May 19, 1995 and was consequently issued Certificate of Registration with RDO Control No. 95-570-000481 (BIR Form No. 1556)[5] and OCN IRC00000148499 (BIR Form No. 2302), respectively.[6]

Petitioner is engaged primarily in the business of manufacturing, producing and processing of all kinds of steel and steel by-products, particularly, but not limited to closed impression die steel forging and all automotive steel parts, and in subjecting such products to any process or treatment for purposes of increasing their value and utility, and engaged in the purchase, sale, and exportation of all kinds of steel and steel by-products.[7] Petitioner also registered its products "closed impression due steel forgings" and "tools and dies" as a pioneer status with the Board of Investments (BOI) on June 28, 1974, April 22, 1992, and June 8, 1995, under Registration Numbers DP-74-336, DP-92-057, and EP-95-132, respectively[8]. On May 31, 2005, BOI issued a Certification[9] showing the incentives being enjoyed by petitioner before it transferred its registration to the Philippine Economic Zone Authority (PEZA), with a further

[3] Annex "B", Petition for Review, CTA En Banc Docket, pp. 46-49.
[4] Par. 1, Joint Stipulation of Facts and Issues, Second Division Docket, p. 87.
[5] Exhibit "B", Second Division Docket, p. 200
[6] Par. 3, Joint Stipulation of Facts and Issues, Second Division Docket, p. 87.
[7] Exhibit "A-1", Second Division Docket, p. 187
[8] Par. 4, Joint Stipulation of Facts and Issues, Second Division Docket, p. 87.
[9] Exhibit "D", Second Division Docket, p. 202

statement that the incentives so enjoyed have already expired from the end of the tenth (10th) year from the date of registration.

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including inter alia, the power to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, or of VAT input taxes attributed to zero-rated revenue. He holds office at the BIR National Office Building, Diliman, Quezon City.[10]

For the period covering July 1, 2003 to September 30, 2003, petitioner allegedly generated and recorded zero-rated sales in the amount of P171,327,944.34[11] *and such amount was supposedly paid partly in Philippine Peso and in acceptable foreign currency, which was inwardly remitted in accordance with existing regulations of the Central Bank of the Philippines, pursuant to Section 106(A)(2)(a)(1), (2), and (3) of the Tax Code.*

On August 20, 2003 and September 15, 2003, petitioner filed its Monthly VAT Declaration (BIR Form No. 2550M) Return[12] *for the months of July and August 2003, respectively, and its original and amended VAT Return*[13] *for the 3rd quarter of 2003 (BIR Form No. 2550Q) on October 24, 2003 and November 18, 2003, respectively, and the succeeding quarters.*[14]

Petitioner's Amended Third Quarterly VAT Return[15] *shows that petitioner incurred VAT input taxes on domestic purchases of capital goods amounting to P439,889.97; on domestic purchases of goods other*

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[10] Par. 2, Joint Stipulation of Facts and Issues, Second Division Docket, p. 87
[11] Items No. 20 and 21 of Amended 3rd Quarter VAT Return (BIR Form No. 2550Q), Exhibit "G-1", Second Division Docket, p. 206
[12] Exhibits "E" and "F", Second Division Docket, pp. 203-204
[13] Exhibits "G" and "G-1", Second Division Docket, pp. 205-206
[14] Exhibits "I, J, K, L, M, N, O, and P", Second Division Docket, pp. 208-255.
[15] Exhibit "G-1", Second Division Docket, p. 206.

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than capital goods amounting to P1,248,945.77; input taxes on domestic purchases of services amounting to P2,448,967.42; on importation of capital goods amounting to P153,624.00; and importation of goods other than capital goods amounting to P2,230,553.00 or a total of P6,521,980.16.

Petitioner alleges that it paid all the aforementioned input taxes on its domestic purchases of goods, services, and capital goods, and importation of goods which are necessary in the course of its trade and business; and are all attributable to its zero-rated sales. All finished products manufactured were directly exported or sold to PEZA-registered enterprises resulting in indirect export sales.

Claiming that it has not applied its unutilized input taxes against any of its output tax liability during the same period (July 1, 2003 to September 30, 2003) or to any succeeding period or quarters, petitioner filed an Application for Tax Credit/Refund[16] *with respondent's Revenue District Office No. 057 in the amount of P6,521,980.16 on August 19, 2005. However, as of the present date, respondent has not acted upon petitioner's claim for refund. Thus, petitioner filed with this Court the instant Petition for Review on August 30, 2005, in order to toll the running of the two-year prescriptive period provided under Section 229 of the Tax Code of 1997."*

After trial on the merits, the *CTA Second Division* promulgated the *Assailed Decision*[17] on November 21, 2007, the dispositive portion of which reads as follows:

"WHEREFORE, *the instant Petition for Review is hereby* ***PARTIALLY GRANTED****. Respondent is hereby* ***ORDERED TO REFUND*** *in favor of petitioner the reduced amount of FIVE MILLION FIVE*

[16] Exhibit "H", Second Division Docket, p. 207.
[17] Supra, note 2.

> *HUNDRED NINETEEN THOUSAND ONE HUNDRED EIGHTY FIVE AND 13/100 (P5,519,185.13) representing the unutilized input taxes paid by petitioner on its domestic purchases of goods and importation of goods and services which are attributable to its zero-rated sales for the period covered July 1, 2003 to September 30, 2003.*
>
> ***SO ORDERED."***

Not satisfied with the above decision, petitioner-herein CIR filed a "Motion for Partial Reconsideration[18]" on December 12, 2007. On January 21, 2008, counsel for AICHI filed an "Opposition (to the Motion for Partial Reconsideration dated December 12, 2007)".[19]

In the *Assailed Resolution*[20] dated April 9, 2008, the *CTA Second Division* denied CIR's Motion for Partial Reconsideration for lack of merit.

On April 28, 2008, petitioner-CIR filed a "Motion for Extension of Time to File Petition for Review[21]" with the *CTA En Banc*. In a Resolution[22] dated April 30, 2008, the Court *En Banc* granted the said motion thereby giving petitioner a final and non-extendible period of fifteen (15) days from April 30, 2008 or until May 15, 2008, within which to file a Petition for Review. On May 5, 2008, petitioner-CIR filed the instant Petition for Review[23] with the *CTA En Banc*, praying that the Decision dated November 21, 2007 and the Resolution dated April 9, 2008 in CTA Case No. 7314 entitled, "*Aichi Forging Company of Asia, Inc., petitioner vs. Commissioner of Internal Revenue, respondent*" be reversed and set aside, and another decision be rendered denying AICHI's claim for refund.

Petitioner raised the sole issue[24] in the instant Petition for Review, to wit:

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[18] CTA Second Division Docket, pp. 434-444.
[19] CTA Second Division Docket. pp. 448-452.
[20] Supra, note 3.
[21] CTA En Banc Docket, p. 1-3.
[22] CTA En Banc Docket, p. 7.
[23] Supra, note 1.
[24] Ibid, p.14.

WHETHER OR NOT RESPONDENT IS ENTITLED TO A TAX REFUND/TAX CREDIT REPRESENTING ALLEGED UNUTILIZED INPUT TAXES PAID ON DOMESTICE PURCHASES OF GOODS AND IMPORTATION OF GOODS AND SERVICES WHICH ARE ATTRIBUTABLE TO ZERO-RATED SALES FOR THE PERIOD COVERING 1 JULY 2003 TO 30 SEPTEMBER 2003.

The CTA *En Banc* promulgated a Resolution[25] on May 22, 2008, ordering the respondent-AICHI to file a Comment on the said Petition for Review, within ten (10) days from receipt of the said Resolution. In compliance with the said Resolution, AICHI filed a "Comment (To the Petition for Review dated April 30, 2008)" on June 4, 2008.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its assailed Decision and Resolution.

To support respondent's claim for refund, it is imperative for AICHI to prove that it has complied with the registration requirements of a value-added taxpayer. However, petitioner argues that AICHI failed to show that its purchases of goods and services were made in the course of its trade or business. Further, AICHI failed to show that the said purchases were properly supported by VAT invoices and/or official receipts and other documents showing that it actually paid VAT in accordance with Sections 110 (A)(2) and 113 of the 1997 NIRC, as amended and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95.

We are not persuaded.

As aptly discussed by the *CTA Second Division* in the assailed Decision, and *We* quote, to wit:

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[25] CTA En Banc Rollo., p. 45-46.

"Under Article 112(A) of the 1997 Tax Code, a VAT-registered entity, such as petitioner, whose sales are zero-rated or attributable to zero-rated sales, may validly claim refund of its unutilized input VAT, provided there is compliance with the requirements laid down in said provision which reads as:

> ***'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 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 transaction, it shall be allocated proportionately on the basis of the volume of sales."*

Pursuant to the above quoted provision, petitioner must comply with the following requisites: (1) the taxpayer is VAT-registered; (2) the taxpayer is engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

This Court finds that petitioner has complied with all three (3) requisites provided in Section 112 of the 1997 Tax Code, as amended.

First, the Certificate of Registration with RDO Control No. 95-570-000481 (BIR Form No. 1556)[26] *and OCN IRC00000148499 (BIR Form No.*

[26] Exhibit "B", Second Division Docket, p. 200.

2302)[27]*, issued by respondent proved compliance with the requirement that petitioner must be VAT-registered.*

Second, the pieces of evidence submitted by petitioner such as sales invoices, VAT returns and other relevant documents show that it is engaged in sales which are zero-rated. In this case, it is undisputable that most of the sales entered into by petitioner from July 1, 2003 to September 30, 2003 were all export sales to PEZA-registered entities[28] *and are therefore considered indirect export sales subject to 0% VAT. These PEZA-registered enterprises had paid their purchases to petitioner in Philippine Peso as evidenced by Official Receipts issued by petitioner and recorded in its Cash Receipts Book.*[29] *Zero-rated sales whenever made by a VAT-registered person to a PEZA-registered entity shall be subject to 0% VAT, pursuant to Section 106 (A)(2)(a)(5) of the 1997 NIRC, as amended, in relation to Revenue Memorandum Circular (RMC) No. 74-99, quoted hereunder for ready reference:*

> ***'SEC. 106. Value-added Tax on Sale of Goods or Properties.–***
>
> *(A) Rate and Base of Tax.–There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.*
>
> *xxx xxx xxx*
>
> *(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:*
>
> *(a) Export Sales. – The term 'export sales' means:*
>
> *xxx*
>
> *(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."*

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[27] Exhibit "C", Second Division Docket, p. 201.
[28] Aichi Steel Corporation, Asian Transmission Corporation, Isuzu Autoparts Manufacturing Corporation, Laguna Autoparts Manufacturing Corporation, and Toyota Autoparts Philippines Corporation.
[29] Independent CPA Report, p. 8, Second Division Docket, p. 265.

> ***"Revenue Memorandum Circular No. 74-99***
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> ***SECTION. 3.- Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise. —***
>
> *(1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:*
>
> *(a) Sale of goods (i.e., merchandise). — This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.*
>
> *(b) Sale of service. — This shall be treated subject to zero percent (0%) VAT under the 'cross border doctrine' of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.*
>
> *xxx xxx xxx*
>
> *3. In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT system."*

Third, petitioner filed its administrative claim for refund on August 19, 2005[30] *and the present Petition on August 30, 2005, both within the two-year prescriptive period from October 24, 2005, the date when*

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[30] Exhibit "H", Second Division Docket, p. 207.

petitioner filed its Original Quarterly VAT Return for the Third Quarter of 2002.[31]

As to the fourth and last requisite, an examination of the evidence on record discloses that petitioner did not carry over its unutilized input VAT for the Third Quarter of 2003. This is evidenced by petitioner's Quarterly VAT Returns for the succeeding quarters: Third and Fourth Quarters of 2003; all four (4) quarters of 2004; and First and Second Quarters of 2005.[32] *Inasmuch as petitioner did not carry over to the succeeding quarters its unutilized input VAT for the Third Quarter of taxable year 2003, the same may then be refunded, pursuant to Section 112(A) of the 1997 Tax Code, as amended, in relation to Section 4.100-2(a) of Revenue Regulations No. 7-95.*

However, the Court finds that the input VAT being claimed for refund was not fully supported by sufficient documentary evidence which necessarily resulted in the reduction of refundable input VAT, particularly, in the amount of ***P5,519,185.13****, computed as follows:*

Claimed Input VAT		**P 6,521,980.16**
Less:		
Outside the period covered-local purchases	131,903.70	
Outside the period covered-importation	52,701.00	
Missing official receipts and sales invoices-local Purchases	81,728.45	
Missing official receipts and sales invoices-importation	5,073.00	
Name of payee is not indicated- local purchases	182.92	
Undated Official Receipt- importation	975.00	
Difference between VAT return & purchases Schedule	65,848.37	338,412.44
Total Substantiated Input Tax		P 6,183,567. 72
Less: Output VAT		664,382.59
Total Input VAT available for refund		**P 5,519,185.13**

Relative to the observations made by the Independent Certified Public Accountant (CPA) pertaining to the claimed input taxes paid on local purchase and importations in the respective amounts of P131,903.70 and P52,701.00 totalling P184,604.70, the same shall be denied because the dates of the related VAT invoices and official receipts fall outside the period of claim. As such, the input VAT supported by VAT invoices and official receipts dated earlier than the period of claims can no longer be the subject of a refund claim. Petitioner ought to have declared these input taxes in the corresponding taxable quarters when

[31] *Atlas Consolidated Mining and Development Corporation vs. CIR, G.R. Nos. 141104 and 148763, June 8, 2007*
[32] Exhibits "G", "G-1", "I", "J", "K", "L", "M", "N", "O", and "P", Second Division Docket, pp. 205-206 & pp. 208-255.

payments for the services were made as evidenced by VAT official receipts and when purchases of goods were consummated as evidenced by VAT invoices, as held by this Court in the case of ***Lepanto Consolidated Mining Co., vs. Commissioner of Internal Revenue***[33]*. The pertinent portions of the said Decision are hereunder quoted, to wit:*

> *'We agree with the respondent.*
>
> *The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:*
>
> *'SEC. 110. Tax Credits. —*
>
> *(A) Creditable input Tax. —*
> *(2) The input tax on domestic* ***purchase of goods*** *or properties shall be creditable:*
>
> *(a) To the purchaser* ***upon consummation*** *of sale and on importation of goods or properties; and*
>
> *However, in the case of* ***purchases of services****, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee* ***upon payment*** *of the compensation, rental, royalty or fee.'*
>
> *It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty, or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states 'upon consummation', in the case of domestic purchases of goods, and 'upon payment', in the case of purchases of services. It does not provide any qualification, such as 'upon delivery of invoice or official receipt' which is the main thesis of petitioner's contention.*

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[33] *CTA Case Nos. 6368 and 6480, December 15, 2004.*

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In a resolution of the case entitled ***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004****, this Court elucidated that "the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoices evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, i.e., upon issuance by the seller of the VAT official receipt evidencing receipt of the payment for services performed or yet to be performed."*

Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.

Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110(A) in relation with Section 112(A) of the 1997 National Internal Revenue Code.*' (Emphasis supplied)*

While it is true that Article 112(A) of the 1997 Tax Code, as amended, allows tax refund or credit on input tax of zero-rated or effectively zero-rated sale, nonetheless, compliance with certain invoicing requirement must be met before such claim for refund or credit can be granted. Sections 113(A) and 237 of the 1997 Tax Code, provides for the invoicing requirements for VAT-registered persons. Section 4-108-1 of Revenue Regulations No. 7-95, specifically enumerates the information that must appear on the face of receipts or invoices issued by all VAT-registered persons. The applicable portions thereof are quoted hereunder:

"SEC. 4.108-1. ***Invoicing Requirements****.- All VAT-registered persons shall, for every sale or lease of*

goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;

2. date of transaction;

3. quantity, unit cost and description of merchandise or nature of service;

4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;

5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and

6. the invoice value or consideration.

xxx xxx xxx

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax.

If the taxable person is engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records."

Thus, the amounts of P81,728.45, P5,073.00, P182.92 and P975.00, corresponding to the input VAT arising from petitioner's purchases of capital goods and services and its importations that are not duly supported by VAT Invoices/Official Receipts, in clear violation of Section 113(A) of the 1997 Tax Code, as amended, and those with insufficient information required under Section 4.108.1 of Revenue Regulations No. 7-95, should be disallowed.

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The Independent CPA found that there was a noted input VAT difference in the amount of P65,848.37 between purchases and input VAT that petitioner paid both for local purchases and importation as appearing in the VAT return filed for the Third Quarter of 2003 and the schedule of purchases and VAT. There being no supporting documents to substantiate petitioner's claim as to this discrepancy, the same should likewise be denied. The details of which are as follows:

	Per VAT Return	Per Schedule	Purchases Difference	Input VAT Difference
Local Purchases - Services	24,489,673.77	23,834,580.11	655,093.66	65,509.37
Importation – Other than Capital goods	22,305,530	22,302,140	3,390	339.00
Total Noted Difference between the VAT return and Schedule				**65,848.37**

Finally, a careful examination of petitioner's Monthly and Quarterly VAT Return covering the period July 1, 2003 to September 30, 2003 readily showed that while such return reflected that petitioner had zero-rated sales, sales subject to 10% VAT, and exempt sales; there are actually only two (2) types of sales appearing on the Schedule submitted by petitioner to the Court commissioned Independent CPA, namely: (1) zero-rated sales, and (2) sales subject to 10% VAT. Moreover, the input VAT being applied for by petitioner in the amount of P6,521,980.16 was not reduced by the amount of P664,351.91 representing the total output VAT for sales that are subject to 10% VAT."

Petitioner further contends that under Section 112 (D) of the 1997 NIRC, petitioner has 120 days within which to process claims for refund of unutilized input tax. Thus, AICHI can appeal to the Court only after the expiration of the 120-day period granted by law or within thirty days from the decision of petitioner denying its claim for refund. By filing its administrative claim for refund on August 19, 2005 and appealed before the Court on August 30, 2005, petitioner argues that AICHI violated the mandatory provisions of the 1997 NIRC. Thus, the filing of the instant Petition for Review was premature.

Again, We do not agree.

As discussed by the CTA Second Division in the assailed Resolution, which is hereunder quoted for reference:

> *"Petitioner's 'Petition for Review' was not prematurely filed. As the Court correctly held in the assailed Decision, both the administrative and judicial claims for refund were filed within the two-year prescriptive period.*
>
> *In a situation where the Commissioner of Internal Revenue delays in responding to a written claim for refund, it devolves upon the taxpayer not to wait for the Commissioner's reply, but within a reasonable time prior to the expiration of the two-year period, to file its petition to the Court of Tax Appeals and to consider the continuing inaction of the Commissioner as tantamount to denial so as to permit him to have a cause of action.*[34] *No words can actually be found preventing the taxpayer from filing a judicial claim for refund until a certain length of time has elapsed within the two-year prescriptive period. What is being mandated to be observed is merely the filing of the claim for refund within such two-year period.*[35] *Because of the time requirement, absence of the decision must not deter petitioner from appealing to this Court at the soonest possible time.*[36] *Hence, the Court correctly found that the instant case has not been filed prematurely but instituted seasonably."*

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed November 21, 2007 Decision and April 9, 2008 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the November 21, 2007 Decision and April 9, 2008 Resolution of the *CTA Second Division* in CTA

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[34] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.
[35] *Pizza Vest Transnational Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 5464, March 27, 2000.
[36] *Babcock-Hitachi (Phils.) Inc. vs. The Commissioner of Internal Revenue*, CTA Case No. 4623, November 10, 1995.

Case No. 7314 entitled, "*AICHI Forging Company of Asia, Inc. petitioner vs. Commissioner of Internal Revenue, respondent*" are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
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

OLGA PALANCA-ENRIQUEZ
Associate Justice

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 before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice