

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

DAICOLOR PHILIPPINES, INC.,
Petitioner,

CTA CASE NO. 7629

- versus -

Members:

ONE-STOP-SHOP INTER-
AGENCY TAX CREDIT AND DUTY
DRAWBACK CENTER,
DEPARTMENT OF FINANCE
(OSS-DOF) AND COMMISSIONER
OF INTERNAL REVENUE,
Respondent.

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUL 06 2010

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AMENDED DECISION

CASTAÑEDA, JR., J.:

This resolves:

1. respondent's *Motion for Partial Reconsideration* filed on December 23, 2009, with petitioner's *Comment (to Respondent's Motion for Partial Reconsideration)* filed on February 4, 2010; and
2. petitioner's *Motion for Reconsideration* filed on December 23, 2009, with respondent's *Opposition (Re: Motion for Partial Reconsideration)* filed on February 8, 2010.

Both motions seek the reconsideration of this Court's *Decision* dated December 3, 2009, the dispositive portion of which states:

"WHEREFORE, premises considered, the instant
Petition for Review is hereby **PARTLY GRANTED.**

jr

Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **EIGHT HUNDRED FIFTY SEVEN THOUSAND SIX HUNDRED ELEVEN PESOS AND 36/100 (P857,611.36)** in favor of petitioner, representing its unutilized input VAT for the second, third, and fourth quarters of taxable year 2005.

SO ORDERED."

In respondent's *Motion for Partial Reconsideration*, he interposed the following arguments: (1) petitioner has not sufficiently proven its entitlement to a refund; (2) this Court had no jurisdiction to act on the *Petition for Review*; and (3) the denial by inaction was proper in all respects.

On the other hand, petitioner filed its *Motion for Reconsideration* raising the following assignment of errors: (1) the Court erred in disallowing petitioner's claim for refund of input value-added tax (VAT), pertaining to the first quarter of 2005 in the amount of P555,756.82, due to prescription; (2) the Court erred in disallowing the zero-rated sales of petitioner because the supporting invoices thereon including the direct export sales do not bear the word "zero-rated sales"; and (3) assuming, *arguendo*, that the disallowance made by this Court with respect to petitioner's 2005 claim for VAT refund is not bereft of merit, however, for allocation purposes, the computation set forth by the Court in its questioned *Decision* should not be maintained.

Perusal of the grounds raised by respondent in his *Motion for Partial Reconsideration* reveals that the same are practically mere reiteration of the arguments contained in his *Memorandum* filed on December 19, 2008. The said arguments had been considered and addressed in the assailed *Decision*. Therefore, this Court will no longer address the same. 

Going now to petitioner's *Motion for Reconsideration*, petitioner posits that its judicial claim for the first quarter of 2005 was filed on time, invoking the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*¹ (*Atlas case*), considering that the application of the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*² would violate the doctrine of prospective application of laws.

This Court is not persuaded.

A close reading of the *Atlas Case* would reveal that the same pertains to the interpretation of the provision under the NIRC of 1977 and not on the subject matter of this case, which is Section 112 under the NIRC of 1997, as amended. As properly held by this Court in the assailed *Decision*, the applicable jurisprudence in this case is *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*³ (*Mirant case*), which settled the proper interpretation of Section 112 of the NIRC of 1997, as amended.

Moreover, in the recent case of *San Roque Power Corporation vs. Commissioner of Internal Revenue*⁴, the Supreme Court reckoned the two-year prescriptive period provided under Section 112(A) of the National Internal Revenue Code of 1997, as amended, from the close of the taxable quarter when the sales were made. The pertinent portion of the said case reads:

"The last requirement determines that the claim should be filed within two years after the close of the taxable quarter

¹ G.R. Nos. 141104 and 148763, June 8, 2007

² G.R. No. 172129, September 12, 2008

³ *Supra*

⁴ G.R. No. 180345, November 25, 2009

when such sales were made. The sale of electricity to NPC was reported at the fourth quarter of 2002, which closed on 31 December 2002. Petitioner had until 30 December 2004 to file its claim for refund or credit. For the period January to March 2002, petitioner filed an amended request for refund or tax credit on 30 May 2003; for the period July 2002 to September 2002, on 27 February 2003; and for the period October 2002 to December 2002, on 31 July 2003. In these three quarters, petitioners seasonably filed its requests for refund and tax credit. However, for the period April 2002 to May 2002, the claim was filed prematurely on 25 October 2002, before the last quarter had closed on 31 December 2002."

Accordingly, this Court sustains its findings that petitioner's claim for refund of the input taxes for the first quarter of 2005 was filed out of time on the basis of the *Mirant case*.

As to petitioner's second assignment of error that this Court erred in disallowing the zero-rated sales of petitioner because the supporting invoices, including the direct export sales do not bear the word "zero-rated sales", the same had also been exhaustively discussed in the subject *Decision*.

Moving on to petitioner's third argument, this Court finds the same meritorious. Considering that the amount of P138,503,722.43, pertaining to the first quarter zero-rated sales, was already disallowed by this Court on the ground of prescription, the divisor for the computation of petitioner's excess input tax attributable to substantiated zero-rated sales should have been P557,046,893.38 instead of P715,550,615.81. Thus, the computation of petitioner's excess input tax attributable to substantiated zero-rated sales in the assailed *Decision* is hereby amended as follows:

Declared zero-rated sales
Barred by prescription
Total Reported Zero-rated Sales

P	715,550,615.81
	<u>-138,503,722.43</u>
P	<u>577,046,893.38</u>



Substantiated Zero-rated Sales	P359,905,909.55
Divided by Total Reported Zero-rated Sales	+577,046,893.38
Multiplied by Substantiated Excess Input VAT	x 1,705,068.80
Excess Input Tax Attributable to Substantiated Zero-rated Sales	<u>P 1,063,456.62</u>

WHEREFORE, premises considered, respondent's *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit; while petitioner's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the assailed *Decision* is hereby **AMENDED** to read as follows:

"**WHEREFORE**, premises considered, the instant *Petition for Review* is hereby **PARTLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE MILLION SIXTY-THREE THOUSAND FOUR HUNDRED FIFTY-SIX PESOS AND 62/100 (P1,063,456.62)** in favor of petitioner, representing its unutilized input VAT for the second, third and fourth quarters of taxable year 2005."

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

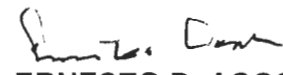
ATTESTATION

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


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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 Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice