REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, ***Petitioner,***	**C.T.A. EB NO. 768** **(C.T.A. CASE NO. 7470)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
TEAM SUAL CORPORATION (Formerly: Mirant Sual Corporation), ***Respondent.***	**Promulgated:**
	JUL 2 7 2012 ______

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereafter "petitioner") under *Section 11 of RA 9282, as amended,* in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as* *amended*, which seeks to reverse and set aside the Decision dated March 4, 2010 and Amended Decision dated April 5, 2011, rendered by the Special First Division of this Court in C.T.A. Case No. 7470, entitled "Team Sual Corporation (Formerly: Mirant Sual Corporation) vs. Commissioner of Internal Revenue," the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **SEVENTY EIGHT MILLION NINE THOUSAND EIGHT HUNDRED NINETY ONE PESOS AND 56/100 (P78,009,891.56)** to petitioner, representing unutilized excess input VAT attributable to its effectively zero-rated sales to NPC for the four quarters of taxable year 2004.
>
> **SO ORDERED.**"
>
> "**WHEREFORE**, premises considered, respondent's **"Motion for Partial Reconsideration"** is hereby **DENIED** for lack of merit while petitioner's **"Motion for Partial Reconsideration"** is hereby **PARTIALLY GRANTED**.
>
> Accordingly, petitioner's claim for refund or issuance of tax credit certificate representing unutilized input VAT for taxable year 2004 is **GRANTED** in the total adjusted amount of **NINETY SIX MILLION EIGHT HUNDRED FORTY SIX THOUSAND AND TWO HUNDRED THIRTY FOUR PESOS AND 31/100 (P96,846,234.31)** or an additional **EIGHTEEN MILLION EIGHT HUNDRED THIRTY SIX THOUSAND AND THREE HUNDRED FORTY TWO PESOS AND 75/100 (P18,836,342.75)** on its previously granted claim of **SEVENTY EIGHT**

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MILLION NINE THOUSAND EIGHT HUNDRED NINETY ONE PESOS AND 56/100 (P78,009,891.56).

SO ORDERED."

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue ("CIR"), with the authority, among others, to decide, approve and grant tax credit and/or refund, and holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On the other hand, respondent Team Sual Corporation ("respondent TSC") is a domestic corporation duly organized and existing under Philippine laws, with principal office at Bo. Panascasan, Sual, Pangasinan.

THE FACTS

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

Respondent TSC is principally engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, Transfer scheme.

Respondent is registered with the BIR as a value-added tax (VAT) taxpayer, in accordance with Section 236 of the NIRC of 1997, with Tax

Identification No. 003-841-103, as shown on its BIR Certificate of Registration bearing RDO Control No. 05-0181.

On December 19, 2003, respondent filed with Revenue District Office No. 5 at Alaminos City an Application for Effectively-Zero rate of its supply of electricity to NPC for the period January 1, 2004 to December 31, 2004, which was approved.

On December 21, 2005, respondent filed with Revenue District Office No. 5 at Alaminos City a written application for refund or issuance of TCC of its excess and unutilized input value-added tax (VAT) in the amount of P103,302,627.88 for the four quarters of calendar year 2004.

Due to inaction of the BIR, on April 24, 2006, respondent filed with this Court in Division a Petition for Review, docketed as C.T.A. Case No. 7470.

On March 4, 2010, the Special First Division rendered a decision partially granting respondent's claim for refund in the amount of P78,009,891.56.

On April 5, 2010, the CIR filed a "Motion For Partial Reconsideration". On the other hand, on April 6, 2010, Team Sual Corporation filed a "Motion for Partial Reconsideration with Motion For Partial New Trial".

On May 19, 2010, the Special First Division granted Team Sual Corporation's "Motion for Partial New Trial" and held in abeyance the resolution of the both parties' Motions for Partial Reconsideration.

On April 5, 2011, the Special First Division denied the CIR's "Motion for Partial Reconsideration" for lack of merit, and partially granted Team Sual Corporation's "Motion for Partial Reconsideration".

On May 12, 2011, the CIR filed the instant Petition for Review raising the sole:

ISSUE

THE SPECIAL FIRST DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT IS ENTITLED TO A REFUND OR TAX CREDIT CERTIFICATE IN THE AMOUNT OF P96,846,234.31 BECAUSE THE FACT IS THAT RESPONDENT FAILED TO SUBMIT THE LEGALLY REQUIRED DOCUMENTS IN ITS ADMINISTRATIVE APPLICATION FOR REFUND.

Without necessarily giving due course to the Petition for Review, on June 2, 2011, we ordered respondent TSC to file its comment, not a motion to dismiss, within ten (10) days from notice.

On June 21, 2011, respondent TSC filed its "Comment/Opposition (to petitioner's Petition for Review)".

On July 15, 2011, we issued a Resolution directing both parties to file their simultaneous memoranda, within thirty (30) days from notice.

On August 22, 2011, respondent TSC filed its Memorandum.

Despite notice, petitioner CIR failed to file her Memorandum.

On October 5, 2011, the case was deemed submitted for decision.

THE COURT *EN BANC'S* RULING

The petition is without merit.

Petitioner CIR contends that *Section 112(D) of the NIRC of 1997, as amended,* provides that the submission of complete relevant documents before the BIR in support of its claim for refund is a mandatory requirement; the non-submission of complete supporting documents will not commence the 120-day period for the CIR to decide and thus, it was premature for respondent TSC to bring the instant case to the CTA; and such failure to present evidence in the administrative claim merits the denial of the same through inaction.

Respondent TSC, on the other hand, counter-argues that it had submitted all the necessary supporting documents in its administrative claim, and assuming but without conceding that it failed to submit all the legally required documents listed in RMO No. 53-98, such failure is not fatal to its claim.

The Court rules for respondent TSC.

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

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

Pursuant to the above-quoted provision, the commissioner may decide the claim for refund of unutilized input VAT payments, within one hundred twenty (120) days from the submission of the complete supporting documents. What is crucial, therefore, is what constitutes the complete supporting documents.

Revenue Memorandum Order No. 53-98 prescribes the requisites to substantiate a taxpayer's claim for refund of its unutilized input VAT on purchases of goods and services, to wit:

> "A. Requirements from Taxpayers (Annex B)
> 1. Proof of claimed tax credits
> 2. Proof of Tax Compliance Certificate applied
> 3. Xerox copy of used Tax Credit Certificate (TCC) with the annotation of issued TDM at the back, if applicable
> 4. Proof of payment of deficiency tax, if any
>   - Current year/period
>   - Previous year/period
> 5. Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable
> 6. Xerox copies of the Official Receipts evidencing VAT payments on imported purchases, if applicable
> 7. Proof of exemption under special law, if applicable
> 8. Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
> 9. Certification of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
> 10. Proof of "approval of Effective Zero-rating of Sales", if applicable
> 11. Proof that the acceptable foreign currency proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, if applicable
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> Annex B-1
> VALUE-ADDED TAX (For audit involving claim for Refund/TCC)
>
> a. Requirements from taxpayer
>   I. Requirements mentioned in Annex B
>   II. Additional General Requirements

(1) 3 copies of "Application for VAT Credit/Refund"
(2) Summary List of Local Purchases specifying the following:
   a. Registered name of supplier
   b. VAT number of supplier
   c. Invoice number
   d. Date of Invoice
   e. OR no.
   f. Date of OR
   g. Amount of purchase
   h. Input Tax
   i. Total Invoice amount
(3) Photocopies of VAT purchases of goods and official receipts for purchase of services.
(4) Summary of importation made during the period with the following details:
   a. Date of Invoice
   b. Supplier
   c. Item
   d. A WB/BL No.
   e. Date of Arrival
   f. Total Value
   g. Date of Payment
   h. OR No.
   i. VAT
(5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payments of VAT
(6) VAT returns filed for the quarter showing the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT return for the succeeding quarter.
(7) Certification of taxpayer showing the amount of Zero-rated sales, Taxable sales, and Exempt sales.
(8) A statement showing the amount and description of the sale of goods and services,

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the name of persons or entities to whom the goods or services were sold and the date of the transactions, where the applicant's zero-rated transactions are regulated by certain government agency

(9) Articles of incorporation

(10) Sales Contract/Agreement

(11) BOI Certificate of Registration

(12) BIR Certificate of Registration

(13) Certification from BOI, DOF, BOC, PEZA, etc. that subject taxpayer has not filed similar claim for refund covering the same period

(14) Sworn statement that ending inventory as of the close of the period covered by the claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter

(15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter

(16) Copy of the ITR and Certified Financial Statements, if applicable

(17) Beginning and ending inventory of raw materials, work-in-process. xxx"

A perusal of the above prescribed requirements shows that a taxpayer must only submit the requirements, which are relevant and applicable to its claim for refund.

In the instant case, records show that respondent TSC submitted the following documents in support of its application for VAT refund:

1. BIR Certificate of Registration *(Annex "A", Petition For Review, C.T.A. Case No. 7470, vol. 1, p. 13)*;
2. Quarterly VAT returns for the first, second, third and fourth quarters of 2004 *(Exhibits "D", "E", "F", "G", & "H")*;
3. Summary of Input Tax Payments for the first, second, third and fourth quarters of 2004 showing details of purchases of goods and services as well as the corresponding input tax paid *(Exhibits "D" to "D-3", "E" to "E-5-b", "F" to "F-4-b", "H-3" to "H-4-c"*;
4. VAT official receipts and invoices for the first, second, third and fourth quarters of 2004 *(Exhibits "QQ-7" to "QQ-21-d", "RR-17", "SS-1" to "SS-19", & "TT-1" to TT-18")*;
5. Approved Certificate for Zero-Rate *(Exhibit "A")*; and
6. Application for Tax Credit/Refund (BIR Form 1914) *(Exhibit "B-3")*.

The submission of the foregoing documents with the administrative claim constitutes compliance with the requirements of RMO No. 53-98, as the said documents are the relevant documents applicable to respondent TSC's claim. Considering that respondent TSC filed its administrative claim on December 21, 2005, and submitted the said supporting documents at the same time, the 120-day period started to commence on December 21, 2005. Upon the expiration of the 120-day period on April 20, 2006, TSC had thirty (30) days from April 21, 2006 or until May 21, 2006 to file a Petition for Review with this Court in Division. Therefore, TSC timely filed its Petition for Review on April 24, 2006.

Finding no reversible error, we affirm the assailed Decision dated March 4, 2010 and Amended Decision dated April 5, 2011 rendered by the Special First Division of this Court in C.T.A. Case No. 7470.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and, accordingly **DISMISSED** for lack of merit. The Amended Decision dated April 5, 2011 is hereby **AFFIRMED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I concur in the result.)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

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

ERNESTO D. ACOSTA
Presiding Justice