REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DELTEK SYSTEMS (PHILIPPINES) LTD., Petitioner,	**CTA CASE NO. 9445**
	Members:
-versus-	Castañeda, Jr., *Chairperson,* Mindaro-Grulla, and, Bacorro-Villena, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 11 2019 1:50 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

This case is a Petition for Review filed by petitioner Deltek Systems (Philippines) Ltd. against respondent Commissioner of Internal Revenue (CIR) on August 25, 2016, praying for the issuance of a tax credit certificate in the amount of Eighty-Four Million Three Hundred Two Thousand Eight Hundred Thirty-Eight Pesos and 02/100 (₱84,302,838.02), representing its alleged accumulated unused/excess input Value-Added Tax (VAT) as of the cancellation of its VAT registration.[1]

[1] Statement of the Case, Pre-Trial Order dated July 17, 2017, Docket, Vol. II, p. 711.

THE PARTIES

Petitioner is Philippine branch of Deltek Systems (Philippines) Ltd., a foreign corporation organized and existing under the laws of the State of Virginia, United States of America.[2]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is vested by the Tax Code with the authority, among others, to decide, approve and grant application for issuance of a tax credit certificate on the excess or unutilized input VAT.[3]

THE ANTECEDENTS

On January 19, 1999, petitioner was granted a license to do business in the Philippines by the Securities and Exchange Commission (SEC) to develop, market and support computer software, to render software development services, technical support, consulting services and marketing and sales support to corporations, associations, partnerships, individual and others.[4]

On March 24, 1999, petitioner registered with the Bureau of Internal Revenue (BIR) as a VAT-registered entity, with Tax Identification Number (TIN) 202-001-648-000.[5]

On May 30, 2014, petitioner registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Information Technology (IT) Enterprise and was issued a Certificate of Registration (COR) No. 14-085[6] and entered into a Registration Agreement[7] with PEZA, which was supplemented in 2015[8] and 2016.[9]

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[2] Exhibit "P-1", Docket, Vol. I, pp.168-199; Par. 1.1, I. Stipulation of Facts, Joint Stipulation of Facts and Issue (JSFI), Docket, Vol. II, p. 667.
[3] Par. 1.2, I. Stipulation of Facts, Joint Stipulation of Facts and Issue (JSFI), Docket, Vol. II, p. 667
[4] Exhibit "P-1", Docket, Vol. I, pp. 168-199.
[5] Exhibit "P-3-1", Docket, Vol. II, p. 761; Par. I.B. 2, ICPA Report, Exhibit "P-51", p. 2.
[6] Exhibit "P-4", Docket, Vol. I, p. 202; Par. I.B.3, ICPA Report, Exhibit "P-51", p. 2.
[7] Exhibit "P-5", Docket, Vol. I, pp. 203-212.
[8] Exhibit "P-6", Docket, Vol. I, pp. 213-216.
[9] Exhibit "P-7", Docket, Vol. I, pp. 217-221.

On August 14, 2014, pursuant to its PEZA registration and entitlement to the 5% Gross Income Tax (GIT) incentive, petitioner applied for the cancellation of its VAT registration with RDO No. 47 by filing an Application for Registration Information Update (BIR Form No. 1905).[10] The changes were reflected in COR No. 9RC0000415958 issued by BIR RDO No. 47 on September 12, 2014.[11]

On June 6, 2016, due to the changes in its registration, petitioner filed with the BIR a letter of request[12] and an administrative claim[13] for the issuance of a Tax Credit Certificate (TCC) in the amount of ₱84,302,838.02, representing the excess and/or unutilized input VAT as of the cancellation of its VAT registration.

Petitioner also filed an application for tax clearance with BIR RDO No. 47 and the tax verification was completed on March 27, 2017 through the issuance of a Delinquency Verification Report for Tax Clearance.[14]

Petitioner claims that the administrative claim was duly supported with the following documents required under Revenue Regulations No. 16-2005:

1. Copy of the old BIR Certificate of Registration (COR);
2. Copy of the current BIR COR;
3. Copy of the SEC License to Transact Business in the Philippines as well as the Articles of Incorporation and By-Laws;
4. Copy of Quarterly VAT returns from January 2009 to August 2014; (5) Annual Income Tax Returns for the years 2012 to 2014;
5. Copy of the Audited Financial Statements for the years 2012 to 2014;
6. Letter designating Isla Lipana & Co. as the authorized representative to assist the Company in the processing of its application for issuance of TCC;
7. Copies of purchase documents; and, gc

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[10] Exhibit "P-8", Docket, Vol. I, pp. 222-223; Letter to RDO No. 47 dated June 6, 2016, Exhibit "P-9", Docket, Vol. I, p. 224.
[11] Exhibit "P-2", Docket, Vol. I, p. 200.
[12] Exhibit "P-9", Docket, Vol. I, pp. 224-226.
[13] Exhibit "P-10", Docket, Vol. I, p. 227.
[14] Q&A Nos. 57-60, Amended Judicial Affidavit (JA) of Mr. Dhannel P. Masangkay dated July 26, 2017, Exhibit "P-50", Docket, Vol. II, p. 745; Exhibit "P-11", Docket, Vol. I, p. 228.

8. Official Receipts issued by petitioner's supplier of goods.[15]

On June 24, 2016, the BIR issued Letter of Authority (LOA) No. eLA201200036233 authorizing the examination of petitioner's books of accounts and other accounting records,[16] which was received by petitioner.

Thereafter, on August 17, 2016, petitioner received an undated letter[17] from RDO 47 recommending the denial of its request for the issuance of a TCC due to its failure to submit the complete documents enumerated in Revenue Memorandum Circular No. 54-2014.

Hence, on August 25, 2016, the petitioner filed the instant petition.

In his Answer with Motion to Dismiss,[18] which was filed through registered mail on October 28, 2016 and received by the Court on November 16, 2016, respondent alleged, *inter alia*, that petitioner's claim for refund or issuance of TCC was not fully substantiated by proper documents, such as sales invoices and official receipts, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code. Further, respondent asserts that the judicial claim was prematurely filed when petitioner filed the instant petition on August 25, 2016 or 80 days after filing of the administrative claim, which is less than the 120-day period granted by law for the Commissioner to act on the claim. He posits that the 120+30-day period is mandatory and jurisdictional. Hence, considering the petitioner violated the 120+30 day period, the filing of the petition for review is premature.

On December 14, 2016, petitioner filed its Comment/Opposition (to Respondent Commissioner of Internal Revenue's Answer with Motion to Dismiss).[19]

[15] Exhibit "P-50", Q&A No. 56, Amended JA of Mr. Dhannel P. Masangkay dated July 26, 2017, Docket, Vol. II, p. 743-744.
[16] ICPA Report dated August 14, 2017, Par. I.B.7, Exhibit "P-51", p. 3; Letter of Authority (LOA) No. eLA201200036233, Exhibit "P-53", Formal Offer of Documentary Evidence, Docket, Vol. II, p. 842.
[17] ICPA Report dated August 14, 2017, Par. I.B.8, Exhibit "P-51", p. 3; Undated Letter from RDO No. 47, Exhibit "P-54", Docket, Vol. II, p. 843.
[18] Docket, Vol. I, pp. 96-101.
[19] Docket, Vol. I, pp. 105-107.

In the Resolution dated February 8, 2017,[20] the Court denied respondent's Motion to Dismiss on the basis that the mandatory 120-day waiting period under Subsection(C) of Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, applies only to Subsection (A) thereof, which deals with refund of input tax attributable to zero-rated or effectively zero-rated sales and not to Subsection (B) of the same section which pertains to accumulated unused/excess input VAT as of the cancellation of VAT registration. Since petitioner's administrative claim is pursuant to Section 112(B) of the NIRC of 1997, as amended, the 120-day period does not apply.

On February 21, 2017, a Notice of Pre-Trial Conference[21] was issued by the Court setting the case for pre-trial conference on May 18, 2017. Accordingly, respondent's Pre-Trial Brief was filed thru registered mail on April 24, 2017 and received by the Court on May 9, 2017[22] while the petitioner's Pre-Trial Brief was filed on May 15, 2017.[23]

On May 18, 2017, the Pre-trial conference we held.[24] Thereafter, on June 5, 2017, the parties submitted their Joint Stipulation of Facts and Issue.[25] Consequently, the Court issued a Pre-Trial Order on July 17, 2017 and the pre-trial was deemed terminated.[26]

On June 29, 2017, the Court commissioned Ms. Krista V. Bambao as the independent certified public accountant (ICPA) to render a report on the case,[27] upon petitioner's motion filed on June 19, 2017.[28]

On August 14, 2017, the ICPA submitted her report with attachments to the Court.[29]

During the trial, petitioner presented the testimonies of the following witnesses, by way of Judicial Affidavits in lieu of direct

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[20] Docket, Vol. I, pp. 111-114.
[21] Docket, Vol. I, pp. 115-116.
[22] Docket, Vol. I, pp. 132-134.
[23] Docket, Vol. I, pp. 638-655.
[24] Minutes of the Hearing, May 18, 2017, Vol. II, Docket, pp. 657-660.
[25] Docket, Vol. II, pp. 667-673.
[26] Docket, Vol. II, pp. 711-719.
[27] Minutes of the Hearing, June 29, 2017, Docket, Vol. II, pp. 689-691.
[28] Docket, Vol. II, pp. 676-679.
[29] Exhibit "P-51", ICPA Report.

examination: Mr. Dhannel P. Masangkay,[30] Finance Director of petitioner and ICPA Krista V. Bambao.[31]

In the hearing[32] on February 6, 2018, respondent's counsel manifested that he will no longer present any evidence.

On February 21, 2018, petitioner filed its Formal Offer of Documentary Evidence.[33]

Thereafter, the Court issued a Resolution dated May 7, 2018,[34] admitting Exhibits "P-1", "P-2", "P-3", "P-3-2", "P-3-3", "P-3-4", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-45", "P-46", "P-47", "P-48", "P-49", "P-49-1", "P-50", "P-50-1", "P-51", "P-51-1", "P-52", "P-53", "P-54", "P-55 to P-65", "P-66 to P-106", "P-107 to P-120", "P-121 to P-135", "P-136 to P-159", "P-160 to P-175", "P-176 to P-182", "P-183-1 to P-183-12", "P-184-1 to P-184-12", "P-185-1 to P-185-12", "P-186-1 to P-186-12", "P-187-1 to P-187-12", "P-188-1 to P-188-6", "P-189-1 to P-189-2", "P-190", "P-190-1", "P-191", "P-191-1", "P-192", "P-193", "P-194", "P-194-1", "P-194-2", "P-194-3", "P-194-4", "P-194-5", "P-194-6", "P-195", "P-195-1", "P-195-2", "P-198 to P-596", "P-597 to P-1065", "P-1066" to "P-1220", "P-1223" to "P-1229", "P-1232" to "P-1239", "P-1241" to "P-1246", "P-1248" to "P-1259", "P-1262", "P-1264" to "P-1276", "P-1278" to "P-1280", "P-1282" to "P-1290", "P-1292" to "P-1296", "P-1298" to "P-1316", "P-1319" to "P-1320", "P-1323", "P-1325" to "P-1343", "P-1346" to "P-1357", "P-1359", "P-1361" to "P-1371", "P-1373" to "P-1412", "P-1414" to "P-1443", "P-1447" to "P-1461", "P-1464" to "P-1469", "P-1471", "P-1473" to "P-1589", "P-1591" to "P-1595", "P-1597" to "P-1598", "P-1600" to "P-1626", "P-1628" to "P-1665", "P-1666" to "P-1763", "P-1766" to "P-1775", "P-1777" to "P-1785", "P-1787" to "P-1796", "P-1802" to "P-1807", "P-1809" to "P-1819", "P-1821" to "P-1823", "P-1825" to "P-1829", "P-1831" to "P-1835", "P-1838" to "P-1842", "P-1845" to "P-1854", "P-1856", "P-1858" to "P-1993", "P-1995" to "P-2146", "P-2148", "P-2151" to "P-2160", "P-2162" to "P-2184", "P-2187" to "P-2223", "P-2225" to "P-2226", "P-2228" to "P-2265", "P-

[30] Exhibit "P-50", Amended Judicial Affidavit of Dhannel P. Masangkay dated July 26, 2017, Docket, Vol. II, pp. 730-760.
[31] Exhibit "P-3698", Judicial Affidavit of ICPA Krista V. Bambao dated September 6, 2017, Docket, Vol. II, pp. 782-797; TSN, February 6, 2018.
[32] Minutes of the Hearing, February 6, 2018, Docket, Vol. III, pp. 1457-1458.
[33] Docket, Vol. II, pp. 827-851.
[34] Docket, Vol. II, pp. 1400-1403.

2267", "P-2269" to "P-2275", "P-2277" to "P-2334", "P-2336" to "P-2359", "P-2362", "P-2364" to "P-2479", "P-2481" to "P-2495", "P-2499" to "P-2503", "P-2504" to "P-2731", "P-2733" to "P-3306", "P-3307" to "P-3663", "P-3665" to "P-3690", "P-3691-1 to P-3691-12", "P-3692-1 to P-3692-12", "P-3693-1 to P-3693-12", "P-3694-1 to P-3694-12", "P-3695-1 to P-3695-12", "P-3696-1 to P-3696-6", "P-3697", "P-3697-1", "P-3699", "P-3698", and "P-3698-1".

On the other hand, in the same resolution, the Court denied the admission of Exhibits "P-3-1", "P-196", "P-197-1 to P-197-2", "P-1221", "P-1222", "P-1230", "P-1231", "P-1240", "P-1247", "P-1260", "P-1261", "P-1263", "P-1277", "P-1281", "P-1291", "P-1297", "P-1317", "P-1318", "P-1321", "P-1322", "P-1324", "P-1344", "P-1345", "P-1358", "P-1360", "P-1372", "P-1413", "P-1444", "P-1445", "P-1446", "P-1462", "P-1463", "P-1470", "P-1472", "P-1590", "P-1596", "P-1599", "P-1627", "P-1764", "P-1765", "P-1776", "P-1786", "P-1797", "P-1798", "P-1799", "P-1800", "P-1801", "P-1808", "P-1820", "P-1824", "P-1830", "P-1836", "P-1837", "P-1843", "P-1844", "P-1855", "P-1857", "P-1994", "P-2147", "P-2149", "P-2150", "P-2161", "P-2185", "P-2186", "P-2224", "P-2227", "P-2266", "P-2268", "P-2276", "P-2335", "P-2360", "P-2361", "P-2363", "P-2480", "P-2496", "P-2497", "P-2498", "P-2732", and "P-3664".[35]

On May 30, 2018, petitioner filed an Omnibus Motion For: A. Partial Reconsideration of the Resolution dated 07 May 2018; and B. The Deferment of Submission of the Memorandum,[36] praying that the Court reconsider the denied exhibits and allow the submission of its memorandum within fifteen (15) days from receipt of the Court's resolution of its Omnibus Motion.

Subsequently, on June 14, 2018, petitioner filed a Reiterative Motion to Defer,[37] which the Court granted through a Resolution dated July 3, 2018.[38]

On October 1, 2018, pursuant to CTA Administrative Circular No. 02-2018 "Reorganizing the Three (3) Divisions of the Court",[39] this case was transferred from the First Division to the Second Division.[40]

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[35] *Id.*
[36] Docket, Vol. III, pp. 1405-1420.
[37] Docket, Vol. III, pp. 1438-1442.
[38] Docket, Vol. III, p. 1447.
[39] Dated September 18, 2018.
[40] Docket, Vol. III, p. 1453.

In its Resolution dated October 25, 2018, the Court granted petitioner's motion for partial reconsideration, thereby admitting the denied exhibits.[41]

On November 14, 2018, petitioner filed its Memorandum[42] while respondent failed to file his Memorandum.[43] Consequently, this case was deemed submitted for decision on December 17, 2018.[44]

THE ISSUE

As stipulated by the parties, the sole issue for this Court's resolution is:

> Whether or not petitioner is entitled to a tax credit certificate in the amount of ₱84,302,838.02 representing its accumulated excess and unutilized input VAT as of the cancellation of its VAT registration.[45]

THE COURT'S RULING

Petitioner asserts that it is entitled to a tax credit of its excess or unutilized input VAT attributable to the cancellation of its VAT registration as it was able comply and prove the following requisites: [46]

1. The taxpayer was a VAT-registered person that cancelled its VAT Registration;
2. The taxpayer has excess and/or unutilized input VAT as of the date of the cancellation of its VAT Registration;
3. The said input taxes were not applied against any output VAT liability; and

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[41] Docket, Vol. III, pp. 1460-1465.
[42] Docket, Vol. III, pp. 1466-1494,
[43] Records Verification Report dated November 27, 2018, Docket, Vol. III, p. 1496.
[44] Docket, Vol. III, p. 1497.
[45] II. Stipulation of Issue, JSFI, Docket, p. 668.
[46] Memorandum, Docket, pp. 1466-1494.

4. The application for issuance of a TCC must be filed within two years from the date of the cancellation of its VAT registration.

Further, petitioner reiterates the ruling of the Court that the petition for review was not prematurely filed. Hence, the Court has jurisdiction over the case.

Jurisdiction over the Petition for Review on the claim for refund/tax credit

As previously ruled by this Court, the petition review was not prematurely filed as Section 112(C) of the NIRC of 1997 only applies to Subsections A and B of the same section. However, the determination of whether the claim for refund was filed within the two-year period from the cancellation of registration must be resolved.

Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended by RA No. 9282 and 9503, provides that the Court of Tax Appeals (CTA) has exclusive appellate jurisdiction to review by appeal the decisions or inaction by the CIR on claims for refund, *viz.*:

> "Sec. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
>   1. **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
>   2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific

period of action, in which case the inaction shall be deemed a denial;" (*Emphasis supplied*)

In relation thereto, Section 112(B) of the NIRC of 1997, as amended, provides for the period when to file an administrative claim for refund with the BIR and judicial claim for refund with the CTA in relation to the unused input tax due to cancellation of VAT registration, to wit:

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

xxx xxx xxx

(B) *Cancellation of VAT Registration.* - **A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status** under Section 106(C) of this Code may, **within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax** which may be used in payment of his other internal revenue taxes." (*Emphasis supplied*)

Corollary thereto, Section 4.112-1(b) of Revenue Regulations (RR) No. 16-2005[47], provides as follows:

"SECTION 4.112-1. Claims for Refund/fax Credit Certificate of Input Tax.

xxx xxx xxx

(b) Cancellation of VAT registration

A VAT-registered person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Sec. 106(C) of the Tax Code **may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes**; Provided, however, that he shall be

[47] "*Consolidated Value-Added Tax Regulations of 2005*", September 1, 2005.

> entitled to a refund if he has no internal revenue tax liabilities against which the tax credit certificate may be utilized."

From the foregoing, it is clearly stated that a taxpayer whose registration has been cancelled due to (1) retirement from or cessation of business or (2) cessation of status under Section 106(C) of the NIRC of 1997, may within two (2) years from the date of cancellation of its registration, apply for the issuance of a TCC for any unused input tax which may be used to pay other internal revenue taxes.

The two-year period shall be reckoned from the first day of the following month from the time the taxpayer filed his written application for cancellation of registration with the Revenue Region of the Bureau of Internal Revenue where he is registered, in accordance with Section 236(F)(1) and 2(b) of the NIRC of 1997, as amended, to wit:

> "SEC. 236. *Registration Requirements.* –
>
> xxx xxx xxx
>
> (F) *Cancellation of Registration.* –
>
> (1) *General Rule.*-The registration of any person who ceases to be liable to a tax type shall be cancelled upon filing with the Revenue District Office where he is registered, an application for registration information update in a form prescribed therefor;
>
> (2) *Cancellation of Value-added Tax Registration.* - A VAT-registered person may cancel his registration for VAT if:
>
> xxx xxx xxx
>
> (b) He has ceased to carry on his trade or business, and does not expect to recommence any trade or business within the next twelve (12) months.
>
> **The cancellation of registration will be effective from the first day of the following month.** (*Emphasis supplied*)

In the instant case, petitioner filed its application for cancellation of VAT registration on August 14, 2014.[48] Accordingly, the cancellation of its VAT registration became effective on September 1, 2014, the first day of the following month. Counting two years therefrom, petitioner had until September 1, 2016 within which to file its administrative claim for refund/tax credit. Considering petitioner's administrative claim for refund was filed on June 6, 2016, clearly, the administrative claim[49] for refund was timely filed.

On whether petitioner is entitled to the issuance of TCC on the accumulated unutilized/excess input VAT as of the cancellation of its VAT registration, the Court rules in the negative.

Pursuant to the afore-quoted Section 4.112-1(b) of RR No. 16-2005 implementing Section 112(B) of the NIRC, as amended, in order to be entitled to a refund or issuance of a TCC for unutilized input VAT on the cancellation of registration due to retirement from or cessation of business, or due to changes in or cessation of status, petitioner must show that it has no internal revenue tax liabilities against which the TCC may be utilized.

In the CTA case of *SMI-ED Philippines Landholdings, Inc. vs. Commissioner of Internal Revenue*,[50] the Court denied the claim for refund of the petitioner on the basis that, aside from its failure to submit its VAT returns and audited financial statements, it also failed to submit a Tax Clearance Certificate. The pertinent portion of the decision states:

> "As to whether petitioner is entitled to the claimed unutilized input VAT for the subject period, We rule in the negative. Petitioner did not submit its VAT returns for taxable year 1998, 1st and 2nd quarters of 1999, 4th quarter of 2000, 3rd and 4th quarters of 2001 and 1st quarter of 2002. Without these documents, this Court cannot ascertain petitioner's actual unutilized input VAT as of November 30, 2002.
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> In addition, since the subject claim represents unutilized input VAT due to retirement from or cessation of business, it is vital that petitioner submit its audited financial statements in order for this Court to verify with certainty that it properly declared all of its

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[48] Exhibit "P-8", Docket, Vol. I, pp. 222-223; Letter to RDO No. 47 dated June 6, 2016, Exhibit "P-9", Docket, Vol. I, p. 224.
[49] Exhibits "P-7" and "P-7-a", Docket, pp. 399-409.
[50] CTA Case No. 6740, April 20, 2006, this decision of the CTA First Division was subsequently affirmed by the CTA *En Banc* in CTA EB Case No. 208, February 27, 2008.

sales/receipts for VAT purposes from the time of commencement of business until cessation of its operations. **In this connection, it is also incumbent upon petitioner to prove that it has satisfied all its tax liabilities. Petitioner should have presented a Certificate of Tax Clearance showing that it has settled all its tax obligations with the BIR.**

Section 112 (C) of the 1997 NIRC and Section 4.106-2 of Revenue Regulations No. 7-95 provide:

> SEC. 112. *Refunds or Tax Credits of Input Tax.–*
>
> xxx xxx xxx
>
> (C) *Cancellation of VAT Registration.* - A person whose VAT registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106 (C) this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.
>
> SEC. 4.106-2. *Procedures for claiming refunds or tax credits of input tax* - (a) xxx
>
> (b) *Cancellation of VAT registration* -- A person whose VAT registration has been cancelled due to retirement from or cessation of status under Section 100(c) of the Code may, within two (2) years from the date of cancellation apply for the issuance of a tax credit certificate for any unused internal revenue taxes. *However, he shall be entitled to a refund if he has no pending internal revenue tax liabilities.*

Petitioner though offered in evidence its Letter Request for Tax Clearance to prove that upon its closure, it formally requested for a tax clearance from the BIR. As the document indicates, it was a mere request for a tax clearance. There is no showing that petitioner was indeed issued a Tax Clearance Certificate as required by law and regulations, to prove that it had been cleared of any or all internal revenue tax liabilities.

Thus, even assuming, for the sake of argument, that petitioner was able to substantiate its claimed unutilized input VAT for the subject period, it is still not entitled to a refund/tax credit thereof considering that it failed to prove that it has no pending internal revenue tax liabilities." (*Emphasis and underscoring supplied*)

Based on Section 4.112-1(b) of the RR No. 16-2005 and the *SMI-ED* case, the presentation of a Tax Clearance Certificate by the taxpayer showing that it has no tax liabilities, is an *essential* requirement to claim a tax refund or issuance of a tax credit certification on unused input tax due to cessation of business or change or cessation of status (*i.e.*, cancellation of VAT registration).

Upon examining the records of the case, petitioner failed to present the tax clearance certificate issued by the BIR, to show that it has no internal revenue tax liabilities. It merely alleges that it filed an application for tax clearance and presented a Delinquency Verification Report for Tax Clearance issued by the BIR.[51] Such document cannot be considered as tax clearance as it does not clearly state that the petitioner has no pending tax liabilities, but merely verifies and checks the status of the taxpayer (*e.g.*, compliance with the requirements of the BIR, filing of tax returns, existence of open cases or outstanding tax liabilities and on-going assessments).

We reiterate that a claim for refund is in the nature of a claim for exemption. As such, they are regarded as a derogation of sovereign authority and is therefore to be considered *strictissimi juris* against the taxpayer.[52]

Considering that petitioner failed to present the tax clearance certificate, the Court is constrained to deny the claim for issuance of a TCC.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[51] Exhibit "P-11", Docket, Vol. I, p. 228.
[52] *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006

WE CONCUR:

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and 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.

ROMAN G. DEL ROSARIO
Presiding Justice