REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

TEAM SUAL CORPORATION (*formerly:* Mirant Sual Corporation),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 649
(CTA Case Nos. 6630 & 6733)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TEAM SUAL CORPORATION (formerly Mirant Sual Corporation),
Respondent.

CTA EB No. 651
(CTA Case Nos. 6630 & 6733)

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

Promulgated: SEP 15 2011 ArsApolinario 9:05 a.m.

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D E C I S I O N

UY, *J.*:

Before Us are consolidated Petitions for Review filed by Team Sual Corporation against Commissioner of Internal Revenue in CTA EB No. 649 on June 29, 2010, and by Commissioner of Internal Revenue against Team Sual

Corporation in CTA EB No. 651 on July 1, 2010 respectively seeking the following legal remedies:

1) In CTA EB No. 649, Team Sual Corporation ("Team Sual", for brevity) prays that the Court *En Banc* grant the refund or issuance of tax credit certificate in its favor for its input value-added tax (VAT) on local purchases of goods and services and on importations for the year 2001 in the amount of ₱ 12,761,224.50, in addition to the ₱ 144,564,112.19 granted by the Special First Division of this Court in CTA Case Nos. 6630 and 6733 entitled *"Team Sual Corporation (formerly: Mirant Sual Corporation), Petitioner, versus, Commissioner of Internal Revenue, Respondent"* in its Amended Decision promulgated on June 7, 2010.

2) In CTA EB No. 651, the Commissioner of Internal Revenue ("Commissioner", for brevity) prays that the Decision dated June 9, 2009 rendered in the same case, and the said Amended Decision, be reversed and set aside, and another one be rendered denying the entire claim for refund.

THE FACTS

Team Sual is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office at Barangay Pangascasan, Sual, Pangasinan. It is registered as a VAT taxpayer in accordance with Section 107 of the Tax Code [now Section 236 of the National Internal Revenue Code (NIRC) of 1997], with Bureau of Internal Revenue (BIR) Certificate of Registration bearing RDO Control No. 05-0181 and Taxpayer's Identification No. (TIN) 003-841-103.

Team Sual is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, and Transfer (BOT) Scheme. It was originally registered with the Securities and Exchange Commission under the name "Pangasinan Electric Corporation". Over the years, Team Sual changed its name to "Southern Energy Pangasinan, Inc." on August 17, 1999; "Mirant Sual Corporation" on June 28, 2001; and Team Sual on July 23, 2007.

The Commissioner is duly appointed and empowered to perform the duties of his office, including among others, the duty to act on and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Diliman, Quezon City.

On December 6, 2000, Team Sual filed with the BIR Revenue District Office No. 5-Alaminos, Pangasinan an Application for VAT Zero-Rate for the supply of electricity to NPC. The same was subsequently approved.

Team Sual filed its Quarterly VAT Returns for taxable year 2001 with the BIR on the following dates:

Period covered	***Date of filing***
1st Quarter-2001	April 18, 2001
2nd Quarter-2001	July 24, 2001
3rd Quarter-2001	October 24, 2001
4th Quarter-2001	January 24, 2002

In the said Returns, Team Sual declared zero-rated sales amounting to ₱ 13,970,077,071.38, taxable sales amounting to ₱ 98,819,987.19, output VAT of ₱ 9,881,998.46, and excess input VAT of ₱ 166,720,367.79; detailed as follows:

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				Input VAT		
2001	Zero-rated Sales/Receipts	Taxable Sales	Output VAT	On Domestic Purchases	On Importation	Excess Input VAT
1st Qtr	₱ 3,497,849,694.35	₱ 484,811.00	₱ 48,481.10	₱ 25,710,981.35	₱ 12,313,509.00	₱ 37,985,009.25
2nd Qtr	3,483,578,645.29	8,613,210.01	861,321.00	21,408,178.12	8,751,699.00	29,298,556.12
3rd Qtr	3,606,942,848.42	31,172,787.48	3,117,278.49	22,089,436.74	13,807,677.15	32,869,835.40
4th Qtr	3,381,705,883.32	58,549,178.70	5,854,917.87	63,103,992.89	9,317,892.00	66,566,967.02
	₱ 13,970,077,071.38	**₱ 98,819,987.19**	**₱ 9,881,998.46**	**₱ 132,321,589.10**	**₱ 44,280,777.15**	**₱ 166,720,367.79**

Pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, Team Sual filed an administrative claim for refund of the unutilized input VAT with the BIR on March 20, 2003 in the total amount of ₱ 166,720,367.79 for the four quarters of taxable year 2001.

Due to the Commissioner's inaction and upon the notion that in order to suspend the running of the two-year prescriptive period within which to file a judicial claim for refund/issuance of a tax credit certificate, Team Sual filed with the First Division of this Court a Petition for Review on March 31, 2003, docketed as CTA Case No. 6630, praying for the refund or issuance of tax credit certificate for its alleged unutilized input VAT for the first quarter of taxable year 2001 in the amount of ₱ 37,985,009.25. On July 23, 2003, Team Sual filed another Petition for Review docketed as CTA Case No. 6733, seeking the refund or issuance of tax credit certificate for its alleged unutilized input VAT for the second, third, and fourth quarters of taxable year 2001 in the amount of ₱ 128,735,358.54. At the instance of Team Sual, the said cases were consolidated on August 7, 2003.

The Commissioner respectively interposed certain Special and Affirmative Defenses in his Answers to the said Petitions for Review.

Trial proceeded.

Team Sual formally offered its evidence on December 18, 2006, submitting Exhibits "A" to "GGGGG", inclusive of submarkings; while the

Commissioner submitted the case for decision without making a formal of evidence.

On June 9, 2006, the First Division of this Court rendered a Decision, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. **ACCORDINGLY**, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE HUNDRED SEVENTEEN MILLION THREE HUNDRED THIRTY THOUSAND FIVE HUNDRED FIFTY PESOS AND 62/100 (P117,330,550.62)** to petitioner Mirant Sual Corporation, representing unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales to the National Power Corporation for the first, third, and fourth quarters of taxable year 2001.
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> **SO ORDERED**."

In the said Decision, the First Division of this Court ruled that Team Sual's claim for the second quarter of taxable year 2001 did not fall within the two-year prescriptive period. Thus, such claim was denied outright.

Subsequently, the Commissioner filed a Motion for Partial Reconsideration on July 3, 2009, praying that said Decision be reversed and set aside and another one be rendered denying the entire claim for refund. The Commissioner argued that Team Sual has not sufficiently proven its entitlement to a refund; that the First Division of this Court had no jurisdiction to act on the Petition for Review; and that the denial by inaction was proper in all respects.

On July 7, 2009, Team Sual filed its own Motion for Partial Reconsideration, praying that the same Decision be reconsidered by granting the refund or issuance of tax credit certificate, in addition to the amount already granted, of the disallowed (i) input VAT for the second quarter of taxable year 2001 amounting to ₱ 29,298,556.12, (ii) input VAT on local purchases of goods and services in the amount of ₱ 6,282,199.10 and ₱ 1,354,580.25, respectively, and input VAT on importations amounting to ₱ 6,393,027.00 (or a portion thereof).

On July 20, 2009, Team Sual filed its Comment/Opposition to the Commissioner's Motion for Partial Reconsideration, arguing that it had complied with the requirements of Section 112(D) of the NIRC of 1997, in the filing of its administrative and judicial claims for refund within the period provided under the law; and that it was able to prove that it is entitled to the claim for refund or issuance of a tax credit certificate.

Thereafter, Team Sual filed a Supplemental Motion for Partial Reconsideration on July 31, 2009, contending that the First Division of this Court erred in disallowing its input taxes of ₱ 12,761,224.50 on local purchases of goods and services, and on importations on the ground that the supporting documents are issued under its former name, because the change of name of Team Sual does not affect its identity nor its property, rights, or liabilities. Team Sual then prayed for the reconsideration of the said Decision, by granting the refund or issuance of tax credit certificate, in addition to the amount originally granted, of the disallowed (i) input VAT for the second quarter of taxable year 2001 amounting to ₱ 29,298,556.12 and (ii) input VAT on local purchases of goods and services, and on importations in the amount of ₱ 12,761,224.50.

In resolving the said Motions, the Special First Division of this Court promulgated an Amended Decision on June 7, 2010, the dispositive portion of which states:

> "**WHEREFORE**, respondent's *Motion for Partial Reconsideration* filed on July 3, 2009 and petitioner's *Supplemental Motion for Partial*

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> *Reconsideration* filed on July 31, 2009 are hereby **DENIED** for lack of merit. Petitioner's *Motion for Partial Reconsideration* filed on July 7, 2009 is hereby **PARTIALLY GRANTED** and this Court's Decision dated June 9, 2009 denying petitioner's claim for refund of unutilized input VAT for the second quarter of 2001 is hereby **MODIFIED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE HUNDRED FORTY FOUR MILLION FIVE HUNDRED SIXTY FOUR THOUSAND ONE HUNDRED TWELVE PESOS AND 19/100 (P144,564,112.19)** to petitioner Team Sual Corporation (formerly: Mirant Sual Corporation), representing unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales to the National Power Corporation for the first, second, third, and fourth quarters of taxable year 2001.
>
> **SO ORDERED.**"

Dissatisfied, Team Sual filed the present Petition for Review docketed as CTA EB No. 649 before the Court *En Banc*, praying that the refund or issuance of tax credit certificate to Team Sual for input VAT on local purchases of goods and services and on importations in the amount of ₱ 12,761,224.50, in addition to the ₱ 144,564,112.19 granted by the Special First Division of this Court. Team Sual's core thesis is that the said Division erred in disallowing its input taxes in the total amount of ₱ 12,761,224.50 on local purchases of goods and services and on importations because the supporting documents are issued under Team Sual's former name. According to Team Sual, the rule is that a change of name of a corporation does not affect its identity nor its property, rights, or liabilities.

For her part, the Commissioner likewise filed a Petition for Review docketed as CTA EB No. 651, praying that the Decision dated June 9, 2009 and the Amended Decision dated June 7, 2010, respectively rendered by the First Division and Special First Division, both of this Court, be reversed and set aside and another one be rendered denying the entire claim for refund. The

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Commissioner reiterated the arguments she raised in her Motion for Partial Reconsideration of the said Decision.

Considering that both cases are appeals from the same Amended Decision, CTA EB No. 651 was consolidated with CTA EB No. 649.[1]

In the Resolution dated July 15, 2010,[2] both parties, as respondents to the respective cases, were ordered by the Court *En Banc* to file their respective comment to the Petition for Review filed against them, with the right to file a reply thereto after receipt thereof.

On July 28, 2010, the Commissioner filed her Comment[3] to Team Sual's Petition for Review in CTA EB No. 649, arguing that the issues raised by Team Sual had already been conclusively passed upon and considered by the Former First Division of this Court in its Decision dated June 9, 2009. Hence, the Commissioner prays that said Petition be dismissed for lack of merit.

Team Sual filed its Comment[4] to the Commissioner's Petition for Review in CTA EB No. 651, contending that the Former First Division of this Court has jurisdiction to hear and decide the Team Sual's claim for refund of its unutilized input VAT since it has complied with the period required by law in filing the claim for refund of its unutilized input VAT for the four (4) quarters of taxable year 2001; and that Team Sual was able to prove that it is entitled to the claim for refund or issuance of a tax credit certificate.

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[1] CTA *En Banc* Resolution dated July 5, 2010, Docket (CTA EB No. 649), pp. 84 to 85.
[2] Docket (CTA EB No. 649), pp. 88 to 90.
[3] Docket (CTA EB No. 649), pp. 91 to 95.
[4] Docket (CTA EB No. 649), pp. 97 to 119.

Team Sual filed its Reply[5] to the Commissioner's Comment/Opposition to its Petition for Review on August 9, 2010. The Commissioner, however, never filed her Reply to Team Sual's Comment to her Petition for Review.

On September 15, 2010, the Court *En Banc* deemed the instant consolidated cases submitted for decision.[6]

Hence, this Decision.

THE ISSUE RAISED AND THE ASSIGNED ERROR

In its Petition for Review (CTA EB No. 649), Team Sual raises the following issue:

> "WHETHER OR NOT THE HONORABLE COURT'S SPECIAL FIRST DIVISION ERRED IN DISALLOWING PETITIONER'S INPUT TAXES OF ₱ 12,761,224.50 ON LOCAL PURCHASES OF GOODS AND SERVICES AND ON IMPORTATIONS ON THE GROUND THAT THE SUPPORTING DOCUMENTS ARE ISSUED UNDER PETITIONER'S FORMER NAME CONSIDERING THAT THE CHANGE OF NAME OF PETITIONER DOES NOT AFFECT ITS IDENTITY NOR ITS PROPERTY, RIGHTS, OR LIABILITIES."

On the other hand, in her Petition for Review (CTA EB No. 651), the Commissioner assigns the following error:

> "THE FORMER FIRST DIVISION ERRED IN GRANTING PETITIONER'S CLAIM FOR REFUND IN THE REDUCED AMOUNT OF P144,564,112.19 ALLEGEDLY REPRESENTING UNUTILIZED INPUT VAT FROM ITS DOMESTIC PURCHASES OF GOODS AND SERVICES AND IMPORTATION OF GOODS ATTRIBUTABLE TO ITS EFFECTIVELY ZERO-RATED SALES TO THE NATIONAL POWER CORPORATION FOR THE FIRST, THIRD AND FOURTH QUARTERS OF TAXABLE YEAR 2001, BECAUSE THE HONORABLE COURT HAD NO JURISDICTION TO ACT ON THE PETITION FOR REVIEW. ASSUMING THAT THE FORMER FIRST DIVISION HAD JURISDICTION, PETITIONER AVERS THAT HIS DENIAL BY INACTION WAS PROPER AND THAT RESPONDENT HAS NOT SUFFICIENTLY PROVEN ITS ENTITLEMENT TO A REFUND."

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[5] Docket (CTA EB No. 649), pp. 120 to 128.
[6] Resolution dated September 15, 2010, Docket (CTA EB No. 649), pp. 133 to 134.

For an orderly disposition of the case, We shall first tackle the error assigned by the Commissioner, since it involves the question of jurisdiction. Needless to state, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.[7]

THE COURT EN BANC'S RULING

On the question of jurisdiction.

The rule is that in order to ascertain whether a court has jurisdiction or not, the provisions of the law should be inquired into.[8]

Section 7 of Republic Act No. (RA) 1125[9], as amended by RA 9282[10], enumerates over which cases this Court has appellate jurisdiction. In part, it provides:

> "SEC. 7. *Jurisdiction.*— The CTA shall exercise:
>
> "(a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> xxx xxx xxx
>
> "(2) **Inaction by 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 Code** or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**; *(Emphases and underscoring supplied)*
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> xxx xxx xxx.

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[7] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, 2 January 1968.
[8] *Soller, et al. vs. Sandiganbayan, et al.*, G.R. Nos. 144261-62, 9 May 2001.
[9] AN ACT CREATING THE COURT OF TAX APPEALS.
[10] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

Furthermore, Section 11 prescribes how the said appeal should be taken, *viz*:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*— **Any party adversely affected by** a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**.
>
> "**Appeal should be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days** from the receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. xxx *(Emphases supplied)*
>
> "xxx xxx xxx."

One of the *"inaction*(s) *by the Commissioner of Internal Revenue"* being contemplated in the above-quoted provisions is that found in Section 112 of the NIRC of 1997—the provision to which Team Sual anchors its claim for refund or issuance of a tax credit certificate—wherein it *"provides a specific period of action"*, *i.e.*, a period of 120 days from the date of submission of complete documents for the Commissioner of Internal Revenue, to grant, in proper cases, a refund or to issue a tax credit certificate for creditable input taxes due or paid attributable to zero-rated or effectively zero-rated sales, to wit:

> "SEC. 112. *Refund 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: xxx
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> xxx xxx xxx

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"(D) *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 Subsections (A) and (B) 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**." *(Emphases supplied)*

Based on the foregoing, before going to this Court, the concerned VAT-registered person must file an administrative claim for the refund or issuance of tax credit of its/his input VAT attributable to zero-rated or effectively zero-rated sales, within two years reckoned from the close of the taxable quarter when the said sales were made.

For this Court to have appellate jurisdiction over the case, the VAT-registered person, who timely filed the said administrative claim, must await the decision or ruling of denial of such claim, whether full or partial, or the expiration of the 120-day period from the submission of complete documents in support of such claim, and then file before this Court a petition for review within 30 days from receipt of the said decision or ruling, or from the expiration of the said 120-day period, as the case may be. As for the latter case, the expiration of such period is necessary since it is only at that time that *"the inaction shall* (already) *be deemed a denial"*.[11]

[11] Section 7(a)(2), RA 1125, as amended by RA 9282.

In the landmark case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.***[12], the Supreme Court interpreted the provisions of Section 112(D) in this wise, and We quote:

> "In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, **respondent**[13] **did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.**
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> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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.' The phrase 'within two (2) years xxx apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)' within which to decide on the claim.
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> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. **As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**
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> xxx xxx xxx

[12] G.R. No. 184823, October 6, 2010.
[13] The refund claimant.

In fine, **<u>the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA</u>**." *(Emphasis and underscoring supplied)*

In this case, it is without doubt that Team Sual timely filed with the BIR on March 20, 2003, an administrative claim for the refund of its unutilized input VAT in the total amount of ₱ 166,720,367.79 for the four quarters of taxable year 2001, since it was made within the two-year period prescribed under Section 112(A) of the NIRC of 1997.

However, the Petition for Review in CTA Case No. 6630 involving the unutilized input VAT for the first quarter of taxable year 2001 was **prematurely** filed on March 31, 2003, since it was done before the lapse of, or within, the 120-day period prescribed under the above-quoted Section 112(D).

To bolster this point, a summary of the pertinent dates involved in this case is presented as follows:

Filing date of the administrative claim for the four quarters of 2001	***Last day of the 120-day period under Section 112(D) from the filing of the administrative claim***	***30-day period within which to file a petition for review under Section 112(D)***	***Filing date of the petition for review in CTA Case No. 6630***
March 20, 2003	July 18, 2003	July 19, 2003 to August 17, 2003	March 31, 2003

Although it would seem, from the wordings employed by the above-quoted Section 112, that the date of filing of the administrative claim is separate and distinct, albeit subsequent, from the date of submission of the complete documents in support thereof, it is apparent that Team Sual, upon filing the said administrative claims, simultaneously submitted the complete documents in support thereof. This is manifest in Team Sual's letter dated March 17, 2003,[14] wherein it was stated, *viz*:

> "In support of this application, we enclose a copy of the following documents:
>
> 1. VAT Registration Certificate;
> 2. Quarterly VAT Returns for the first, second, third and fourth quarters of 2001;
> 3. Summary of Input Tax Payments for the first, second, third and fourth quarters of 2000 showing the details of our client's purchases of goods and services as well as the corresponding input tax paid; and
> 4. Approved Application for Zero Rate for the year 2001."

Such being the case, We conclude that the 120-day period under Section 112(D) of the NIRC of 1997 commenced simultaneously with the filing of Team Sual's administrative claim.

Ergo, when Team Sual filed its appeal, as regards the inaction of the Commissioner on its claim for refund the unutilized input VAT for the first quarter of taxable year 2001, via the Petition for Review in CTA Case No. 6630 on March 31, 2003, the Court in Division has not acquired any appellate jurisdiction to entertain the same. Hence, said case should have been dismissed outright.

As aptly held in *Yao vs. Court of Appeals, et al.*[15]:

> "The right to appeal is **not** a constitutional, natural or inherent right. It is a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. Since the right to appeal is not a natural right nor a part of due process, **it may be exercised only in the manner and in accordance with the provisions of law**. Corollarily, **its requirements must be strictly complied with**.
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> "**That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional**. Non-compliance with such legal requirements is fatal, for it renders the decision sought to be appealed final and executory, with the end result that no court

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[14] Exhibit "E".
[15] G.R. No. 132428, October 24, 2000.

can exercise appellate jurisdiction to review the decision." *(Emphases supplied)*

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[16] and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[17] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[18]

It should be recalled that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[19] Thus, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[20]

In fine, Team Sual's claim for tax refund of its unutilized input VAT for the first quarter of taxable year 2001 should be denied for having been filed in violation of Section 112(D) of the NIRC of 1997.

Refund claims for the second, third, and fourth quarters of taxable year 2001.

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[16] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, 2 January 1968.
[17] *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.
[18] Please refer to *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.
[19] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962.
[20] Section 1, Rule 9, Rules of Court.

Anent the refund claims of Team Sual for the second, third and fourth quarters of 2001, the same have been timely filed, both at the administrative and judicial levels. Since the Commissioner prays for the denial of the entire claim of Team Sual, We shall determine whether the latter is entitled to the refund of the amount of input VAT pertaining to the said quarters.

In its VAT Returns for the second, third and fourth quarters of taxable year 2001, Team Sual reported excess input VAT amounting to ₱ 128,735,358.54, as follows:

Exhibit	Year 2001	Output Tax	Input Tax	Excess Input VAT
"G"	2nd Quarter	861,321.00	30,159,877.12	₱ 29,298,556.12
"H"	3rd Quarter	3,117,278.49	35,987,113.89	32,869,835.40
"I"	4th Quarter	5,854,917.87	72,421,884.89	66,566,967.02
TOTAL				**₱ 128,735,358.54**

In support of the alleged input VAT of ₱ 128,735,358.54, Team Sual presented its Schedules/Summaries of Domestic Purchases and Importation of Goods for taxable year 2001[21] and the related suppliers' invoices and official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC official receipts, bank debit advices/official receipts[22]. Upon verification of these documents, the Court-commissioned Independent Certified Public Accountant (ICPA), made the following findings in its Report dated June 3, 2004[23]:

	Findings	Annex	2nd Qtr	3rd Qtr	4th Qtr	Total
I	**Input Tax on Purchases of Goods**					
1	Erroneously Computed	***4-1***	₱ 113.64	₱ 20,169.53	₱ 19,636.36	₱ 39,919.53

[21] Exhibits "BB", "CC", "DD", and "EE".
[22] Exhibits "FF" to "II" (including submarkings).
[23] Exhibit "Z", pages 4 to 7.

2	Supported by VAT Invoices without BIR Permit Number	***4-2***	16,009.35	9,524.24	38,236.69	63,770.28
3	Supported by Photocopied VAT Invoices	***4-3***	572.83	376.60	13,424.65	14,374.08
4	Supported by Documents Other Than VAT Invoice	***4-4***	11,797.30		20,167.78	31,965.08
5	Supported by an Invoice without Pre-printed "TIN-VAT"	***4-5***			18,411.20	18,411.20
6	Supported by VAT Invoices with Pre-printed "TIN" only	***4-6***			4,495.47	4,495.47
7	Supported by Non-VAT Invoices	***4-7***		681.82		681.82
8	Supported by Invoices with Pre-printed "TAN-VAT"	***4-8***			50,788.00	50,788.00
9	Supported by Invoices with Pre-printed "VAT #"	***4-9***		37,210.50		37,210.50
	sub-total		***28,493.12***	***67,962.69***	***165,160.15***	***261,615.96***
II	**Input Taxes on Purchases of Services**					-
1	Erroneously Computed	***5-1***	44,801.67	34,713.69	23,436.78	102,952.14
2	Supported by VAT ORs without BIR Permit Number	***5-2***	4,460.32	24,209.34		28,669.66
3	Supported by Documents Other Than VAT OR	***5-3***	24,172.18	47,438.66	33,456.13	105,066.97
4	Supported by an OR with Pre-printed VAT Number only	***5-4***	1,353.50			1,353.50
5	Supported by an OR with Pre-printed TIN only	***5-5***				-
6	Supported by Non-VAT ORs	***5-6***		1,806.44		1,806.44
7	Supported by ORs issued not in the Name of the Company	***5-7***	4,780.80	3,104.32	147.00	8,032.12
	sub-total		***79,568.47***	***111,272.45***	***57,039.91***	***247,880.83***
III	**Input Taxes Claimed on Purchases of Goods and Services Without Supporting Documents**	***6***	1,526,214.93	246,788.64	1,074,990.78	2,847,994.35
	sub-total		***1,526,214.93***	***246,788.64***	***1,074,990.78***	***2,847,994.35***
IV	**Input Taxes Claimed on Importations**					-
1	Erroneously Computed	***7-1***	345.00	38,335.09		38,680.09
2	Supported Only by Certified True Copies of Informal IEDs (by Customs Broker)	***7-2***	8,722.00	18,996.00	1,582.00	29,300.00
3	Supported Only by Certified True Copies of IEDs (by Customs Broker) without the Input Tax amount	***7-3***	1,716.00	2,254.00	170,529.00	174,499.00
4	Supported Only by BOC and/or Bank Ors	***7-4***	85,572.00	700,785.15	1,662,761.00	2,449,118.15
5	Supported by Photocopied IEDs	***7-5***			23,382.00	23,382.00

6	Supported by Certified True Copies of IEDs (by Customs Broker) issued not in the Name of the Company	*7-6*		50,518.00		50,518.00
7	Without Supporting Documents	*7-7*	55,191.00	446,505.00	69,649.00	571,345.00
	sub-total		***151,546.00***	***1,257,393.24***	***1,927,903.00***	***3,336,842.24***
	TOTAL		**₱ 1,785,822.52**	**₱ 1,683,417.02**	**₱ 3,225,093.84**	**₱ 6,694,333.38**

The claimed input VAT of ₱ 261,615.96[24] and ₱ 247,880.83[25] on domestic purchases of goods and services, respectively, should be denied for failure to meet the substantiation requirements under Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5, 4.108-1 of Revenue Regulations (RR) No. 7-95.

As regards the above-computed input VAT in the amount of ₱ 2,847,994.35[26], Team Sual presented the following documents to rebut the said finding:

Supplier	Exhibit No.	2nd Qtr	3rd Qtr	4th Qtr	Total
Casipit Trading & Const	TT, ZZ			₱ 49,314.86	₱ 49,314.86
	TT, AAA			97,732.40	97,732.40
	TT,BBB			16,589.10	16,589.10
Victron UPS Phils., Inc.	DDD			13,636.36	13,636.36
Meralco Ind'l Eng'g Sev Corp.	FFF			27,296.29	27,296.29
Meralco Ind'l Eng'g Sev Corp.	HHH			225,696.59	225,696.59
Meralco Ind'l Eng'g Sev Corp.	III			200,290.95	200,290.95
Meralco Ind'l Eng'g Sev Corp.	III			128,209.84	128,209.84
Maunsell Phils., Inc.	FFFFF		₱ 105,320.49		105,320.49
Le Price International Corp.	TT, VV	₱ 144,811.93			144,811.93
Servicio Filipino, Inc.	TT, XX	50,978.34			50,978.34
Meralco Ind'l Eng'g Sev Corp.	EEE, GGG	331,597.29			331,597.29
Tadchem Marketing	CCC	6,321.00			6,321.00
Total		**₱ 533,708.56**	**₱ 105,320.49**	**₱ 758,766.39**	**₱ 1,397,795.44**

The Court *En Banc* finds the aforesaid documents valid, except for the official receipts marked as Exhibits "BBB" and "DDD" supporting the input taxes

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[24] No. I of the ICPA's Findings, detailed in Exhibit "Z", Annexes 4-1 to 4-9.
[25] No. II of the ICPA's Findings, detailed in Exhibit "Z", Annexes 5-1 to 5-7.
[26] No. III of the ICPA's Findings, detailed in Exhibit "Z", Annex 6.

of ₱ 16,589.10 and ₱ 13,636.36. The official receipt marked as Exhibit "BBB" bears the pre-printed TAN and VAT numbers of the supplier instead of the prescribed TIN-VAT number as provided under Section 4.104-5(b) of the RR No. 7-95, in relation to Section 113(A) of the NIRC of 1997. On the other hand, in Exhibit "DDD", the information contained therein is insufficient for this Court to ascertain if the input tax claim of ₱ 13,636.36 actually pertains to Team Sual's purchase of services.

Consequently, Team Sual's input VAT of goods and services without supporting documents, as found by the ICPA, should be reduced from ₱ 2,847,994.35 to ₱ 1,480,424.37[27].

As regards the ₱ 3,336,842.24 input VAT claim on importations[28], the Court *En Banc* finds the amount of ₱ 2,787,446.24[29] valid since the supporting BOC and/or bank statements clearly reflect the VAT amount paid by Team Sual. The rest of the claimed input taxes in the amount of ₱ 549,396.00 shall be denied for not being properly substantiated. The IEIRDs submitted cannot be given credence and probative value as they were merely stamped as "certified true copy" or "certified photocopy" and the Court *En Banc* cannot ascertain whether the certifier named therein is actually the custodian of the said documents. Also, some of the IEIRDs do not show any machine validation as to the payment of the customs duties and taxes indicated therein. While Team Sual submitted BOC and bank ORs and bank debit advices, the same were dated outside the period of the claim.

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[27] Computed as follows: ₱ 2,847,994.35 – [₱ 1,397,795 – (₱ 15,589.10 + ₱ 13,636.36)].
[28] No. IV of the ICPA's Findings, detailed in Exhibit "Z", Annexes 7-1 to 7-7.
[29] Annex A hereof.

Likewise, in her Reports dated June 3, 2004[30] and July 12, 2004[31], the ICPA made the following additional observations on Team Sual's claimed input taxes:

	Findings	Annex	2nd Qtr	3rd Qtr	4th Qtr	Total
1.	Input Taxes Claimed on Local Purchases of Goods Supported by VAT Invoices Issued in the Company's Former Name	*8*	₱ 2,301,551.03	₱ 5,367,192.88	₱ 915,006.22	₱ 8,583,750.13
2.	Input Taxes Claimed on Local Purchases of Services Supported by VAT ORs Issued in the Company's Former Name	*9*	2,100,680.00	1,089,900.60	264,679.65	3,455,260.25
3.	Input Taxes Claimed on Local Purchases of Goods Supported by Undated VAT Invoices	*10*	3,502.14	3,650.00		7,152.14
4.	Input Taxes Claimed on Local Purchases of Services Supported by Undated VAT ORs	*11*	1,035.46	5,066.80		6,102.26
5.	Input Taxes Claimed on Local Purchases of Goods which are Supported by VAT Invoices with Different TIN as compared with the TIN indicated in the Schedule of VAT Input Tax	*12*	214,059.48	134,970.70	228,311.70	577,341.88
6	Input Taxes Claimed on Local Purchases of Services which are Supported by ORs with Different TIN as compared with the TIN indicated in the Schedule of VAT Input Tax	*13*	3,320.00		4,993.10	8,313.10
7.	Input Taxes Claimed on Local Purchases of Goods Supported by Certified True Copies of VAT Invoices	*14*	9.10	2,186.70		2,195.80
8.	Input Taxes Claimed on Local Purchases of Services Supported by VAT ORs with Different Supplier's Name as Compared with the Name Indicated in the Schedule of VAT-Input Taxes	*15*	246.08	28,728.00	768.00	29,742.08

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[30] Exhibit "Z", pages 7 and 8.
[31] Exhibit "RR", pages 2 and 3.

9.	Input Taxes Claimed on Local Purchases of Goods which are Supported by VAT Invoices Dated Outside the Period of Claim	***16***	186,185.43	19,229.58	242,727.28	448,142.29
10.	Input Taxes Claimed on Local Purchases of Services which are Supported by ORs Dated Outside the Period of Claim	***17***	8,545.46		15,600.00	24,145.46
11.	Purchase from a Non-Resident Corporation which are Supported by BIR Form 1600 and ORs Dated Outside the Period of Claim	***18***			103,249.75	103,249.75
12.	Input Taxes Claimed on Importation of Goods Supported by Certified True Copies of IEDs (by the Bureau of Customs and/or Customs Broker) and/or Bank Debit Advice and/or Bank ORs Issued in the Name of Southern Energy Pangasinan Inc., former Name of the Company	***19A***	2,818,476.00	7,681,635.00	573,145.00	11,073,256.00
13.	Input Taxes Claimed on Importation of Goods Supported by Certified True Copies of IEDs (by Customs Broker) and Bureau of Customs ORs and Bank Debit Advice Issued in the Name of Southern Energy Pangasinan Inc., former Name of the Company	***19B***	151,350.00		4,711.00	156,061.00
14.	Input Taxes Claimed on Importation of Goods Supported by Certified True Copies of IEDs (by the Bureau of Customs) and Bank ORs and Debit Memos Issued in the Name of Southern Energy Pangasinan Inc., former Name of the Company	***19C***	85,614.00	1,504,103.00	638,420.00	2,228,137.00
15.	Input Taxes Claimed on Importation of Goods Supported by Certified True Copies of IEDs (by the Customs Broker) and Bank ORs and Debit Memos Issued in the Name of Southern Energy Pangasinan Inc., former Name of the Company	***19D***		9,130.00	18,325.00	27,455.00

16.	Input Taxes Claimed on Importation of Goods Supported by Certified True Copies of IEDs (by the Bureau of Customs)	***21A***	644,799.00	1,905,261.00	1,155,268.00	3,705,328.00
17.	Input Taxes Claimed on Importation of Goods Supported by Certified True Copies of IEDs (by theCustoms Broker)	***21B***	43,008.00	7,095.00		50,103.00
18.	Input Taxes Claimed on Importation of Goods Supported by Certified True Copies of IEDs (by the Bureau of Customs) and BOC ORs and Bank Debit Memos	***22A***		1,197,215.00	285,020.00	1,482,235.00
19.	Input Taxes Claimed on Importation of Goods Supported by Certified True Copies of IEDs (by the Customs Broker) and BOC ORs and Bank Debit Memos	***22B***	378.00			378.00
20.	Input Taxes Claimed on Importation of Goods Supported by Certified True Copies of IEDs (by the Bureau of Customs) and Bank ORs and Bank Debit Memos	***22C***	11,368.00	120,168.00		131,536.00
	Total		**₱ 8,574,127.18**	**₱ 19,075,532.26**	**₱ 4,450,224.70**	**₱ 32,099,884.14**

The claimed input VAT of ₱ 8,583,750.13[32] on local purchases of goods and input taxes of ₱ 3,455,260.25[33] on local purchases of services, respectively, may be allowed though the supporting invoices and official receipts covering the said amounts were issued under Team Sual's former name, Southern Energy Pangasinan, Inc. On this score, Team Sual's argument that the change of its name does not affect its identity nor its property, rights, or liabilities, is meritorious.

The claimed input taxes of ₱ 7,152.14[34] and ₱ 6,102.26[35] pertaining to local purchases of goods and services which are supported by undated invoices and official receipts, respectively, should be denied pursuant to Section 4.108-

[32] No. 1 of the ICPA's Findings, detailed in Exhibit "Z", page 7; Annex 8.
[33] No. 2 of the ICPA's Findings, detailed in Exhibit "Z", page 7; Annex 9.
[34] No. 3 of the ICPA's Findings, detailed in Exhibit "Z", page 7; Annex 10.
[35] No. 4 of the ICPA's Findings, detailed in Exhibit "Z", page 7; Annex 11.

1(2) of RR 7-95 in relation to Sections 113(A) and 237 of the NIRC of 1997, which requires that the date of the transactions must be indicated in the invoices/receipts.

The input VAT in the amounts of ₱ 577,341.88[36] and ₱ 8,313.10[37] which are supported by invoices or official receipts with different TIN as compared with the TIN indicated in the "Schedule of VAT-Input Tax" as well as the input taxes of ₱ 29,742.08[38] supported by official receipts with different suppliers' name as compared with the name indicated in the "Schedule of VAT-Input Tax" still represent Team Sual's valid claims notwithstanding such discrepancies, because the main evidence to be considered and scrutinized are the said invoices or official receipts. There being no discrepancy in the contents of the latter documents, the same should prevail.

The claimed input taxes of ₱ 2,195.80[39] on local purchases of goods supported by certified true copies of VAT invoices should be denied because it cannot be ascertained whether the certifiers named therein are actually the custodians of the said documents.

The input taxes in the amounts of ₱ 448,142.29[40] and ₱ 24,145.46[41] pertaining to Team Sual's local purchases of goods and services which are respectively supported by invoices or official receipts dated outside the period of claim, as well as the input taxes of ₱ 103,249.75[42] on Team Sual's purchases from non-residents which are supported by BIR Forms numbered 1600 and ORs

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[36] No. 5 of the ICPA's Findings, detailed in Exhibit "Z", page 8; Annex 12.
[37] No. 6 of the ICPA's Findings, detailed in Exhibit "Z", page 8; Annex 13.
[38] No. 8 of the ICPA's Findings, detailed in Exhibit "Z", page 8; Annex 15.
[39] No. 7 of the ICPA's Findings, detailed in Exhibit "Z", page 8; Annex 14.
[40] No. 9 of the ICPA's Findings, detailed in Exhibit "Z", page 8; Annex 16.
[41] No. 10 of the ICPA's Findings, detailed in Exhibit "Z", page 8; Annex 17.
[42] No. 11 of the ICPA's Findings, detailed in Exhibit "Z", page 8; Annex 18.

dated outside the period of claim should be disallowed. In this connection, Section 110(A) of the NIRC of 1997 is clear that the input tax shall be allowed as tax credit to the purchaser only upon consummation of sale or upon payment of the compensation, as the case may be. Accordingly, it is imperative for Team Sual 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 invoices, and where purchases of services were paid, as evidenced by VAT official receipts. It must be noted that the claimed input taxes of ₱ 448,142.29 and ₱ 24,145.46 pertain to the second, third and fourth quarters of 2001. Thus, the input VAT on purchases of goods which are supported by VAT invoices and the input taxes on purchases of services which are supported by VAT ORs bearing dates outside the said taxable quarters cannot be considered as valid supports for Team Sual's claimed tax credits in the said amounts.

As to the claimed input taxes on importations under nos. 12 to 20 of the ICPA's findings totaling ₱ 18,854,489.00[43], the Court *En Banc* finds that the input taxes in the amount of ₱ 16,359,437.00[44] represents Team Sual's valid claim as this is duly supported by BOC or bank official receipts and/or bank debit advices issued in the name of Team Sual and within the period of claim. The remaining amount of ₱ 2,495,052.00 shall be denied for not being properly substantiated.

To recapitulate, out of the ₱ 128,735,358.54 excess input VAT claim for the second, third and fourth quarters of 2001, only the amount of ₱ 123,110,001.68 is duly substantiated, computed as follows:

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[43] Exhibit "RR", pages 2 to 4; Annexes 19A to 22C.
[44] Annex B hereof.

Amount of Input VAT claim for 2001				₱ 166,720,367.79
Less: Prescribed Claim - 1st Qtr				37,985,009.25
Unprescribed Claim - 2nd, 3rd & 4th Qtrs				₱ 128,735,358.54
Less:	Not Properly Substantiated Claim - 2nd, 3rd & 4th Qtrs			
	Annexes 4-1 to 4-9, Exhibit "Z"		₱ 261,615.96	
	Annexes 5-1 to 5-7, Exhibit "Z"		247,880.83	
	Annex 6, Exhibit "Z"	₱ 2,847,994.35		
	Less: Valid additional docs presented	1,367,569.98	1,480,424.37	
	Annex 7-1 to 7-7, Exhibit "Z"	3,336,842.24		
	Less: Valid claim as per this Court's verification ***(Annex A hereof)***	2,787,446.24	549,396.00	
	Annex 10, Exhibit "Z"		7,152.14	
	Annex 11, Exhibit "Z"		6,102.26	
	Annex 14, Exhibit "Z"		2,195.80	
	Annex 16, Exhibit "Z"		448,142.29	
	Annex 17, Exhibit "Z"		24,145.46	
	Annex 18, Exhibit "Z"		103,249.75	
	Annex 19A, Exhibit "RR"	11,073,256.00		
	Annex 19B, Exhibit "RR"	156,061.00		
	Annex 19C, Exhibit "RR"	2,228,137.00		
	Annex 19D, Exhibit "RR"	27,455.00		
	Annex 21A, Exhibit "RR"	3,705,328.00		
	Annex 21B, Exhibit "RR"	50,103.00		
	Annex 22A, Exhibit "RR"	1,482,235.00		
	Annex 22B, Exhibit "RR"	378.00		
	Annex 22C, Exhibit "RR"	131,536.00		
	Total input tax on importations	18,854,489.00		
	Less: Valid claim as per this Court's verification ***(Annex B hereof)***	16,359,437.00	2,495,052.00	
Total Disallowed Input VAT - 2nd, 3rd, 4th Qtrs				5,625,356.86
Substantiated Claim - 2nd, 3rd and 4th Qtrs of 2001				**₱ 123,110,001.68**

WHEREFORE, all the foregoing considered, the Commissioner's Petition for Review in CTA EB No. 651 is hereby **DENIED.**

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On the other hand, Team Sual's Petition for Review in CTA EB No. 649 is hereby **PARTIALLY GRANTED**, but only insofar as the consideration of the portion of the refund claim disallowed by the court *a quo* upon the reason that the supporting documents were in Team Sual's former names.

The Decision promulgated on June 9, 2009 and Amended Decision dated June 7, 2010 by the Court in Division, are therefore **MODIFIED**. Accordingly, the Commissioner is hereby **ORDERED** to **REFUND** to Team Sual the amount of, or to **ISSUE A TAX CREDIT CERTIFICATE** in its favor amounting to, **ONE HUNDRED TWENTY THREE MILLION ONE HUNDRED TEN THOUSAND ONE PESOS and SIXTY EIGHT CENTAVOS (₱ 123,110,001.68)**, representing Team Sual's unutilized input VAT attributable to its effectively zero-rated sales to NPC for the second, third and fourth quarters of taxable year 2001.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(Concurs with the Concurring and Dissenting Opinion of Associate Justice Amelia R. Cotangco-Manalastas)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Separate Concurring Opinion)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

(Concurs with Presiding Justice Ernesto D. Acosta and Associate Justice Amelia R. Cotangco-Manalastas)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(With Concurring and Dissenting Opinion)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

Payee	Exhibit No.	2nd Qtr	3rd Qtr	4th Qtr	Total
ANNEX 7-1, EXHIBIT Z					
Bureau of Custom	HH-2864 to HH-2866		4,306.69		4,306.69
Bureau of Custom	HH-2869 to HH-2871		4,140.81		4,140.81
Bureau of Custom	HH-2921 to HH-2923		29,887.59		29,887.59
Sub-Total		-	***38,335.09***	-	***38,335.09***
ANNEX 7-2, EXHIBIT Z					
Bureau of Custom	HH-2416 to HH-2418		2,000.00		2,000.00
Bureau of Custom	HH-2421 to HH-2423		3,614.00		3,614.00
Bureau of Custom	HH-2498		1,801.00		1,801.00
Bureau of Custom	HH-2503		1,491.00		1,491.00
Bureau of Custom	HH-2849		1,930.00		1,930.00
Bureau of Custom	II-3609			1,582.00	1,582.00
Bureau of Custom	HH-2682 to HH-2684		2,382.00		2,382.00
Bureau of Custom	HH-2714 to HH-2719		3,549.00		3,549.00
Bureau of Custom	HH-2726 to HH-2728		2,229.00		2,229.00
Sub-Total		-	***18,996.00***	***1,582.00***	***20,578.00***
ANNEX 7-3, EXHIBIT Z					
Bureau of Custom	HH-2478 to HH-2480		179.00		179.00
Bureau of Custom	HH-2722 to HH-2724		1,195.00		1,195.00
Bureau of Custom	HH-2426		807.00		807.00
Bureau of Custom	HH-2784		73.00	12,145.00	12,218.00
Bureau of Custom	II-2925			173.00	173.00
Bureau of Custom	II-2945				-
Bureau of Custom	II-2883			151,778.00	151,778.00
Bureau of Custom	II-3106			522.00	522.00
Bureau of Custom	II-3111, II-3112			2,734.00	2,734.00
Sub-Total		-	***2,254.00***	***167,352.00***	***169,606.00***
ANNEX 7-4, EXHIBIT Z					
Bureau of Custom	GG	44,875.00			44,875.00
Bureau of Custom	GG-2366 to GG-2370	2,185.00			2,185.00
Bureau of Custom	GG-2401 to GG-2404	12,216.00			12,216.00
Bureau of Custom	GG	12,954.00			12,954.00
Bureau of Custom	GG-2439 to GG-2442	12,720.00			12,720.00
Bureau of Custom	GG-2550 to GG-2552	622.00			622.00
Bureau of Custom	HH-2293 to HH-2295		10,066.00		10,066.00
Bureau of Custom	HH-2297 to HH-2299		18,853.00		18,853.00
Bureau of Custom	HH-2301 to HH-2303		22,763.00		22,763.00
Bureau of Custom	HH-2384, HH-2386		20,133.00		20,133.00
Bureau of Custom	HH-2403, HH-2405		176.00		176.00
Bureau of Custom	HH-2407 to HH-2409		51.00		51.00
Bureau of Custom	HH-2411 to HH-2413		835.00		835.00
Bureau of Custom	HH-2430		22,736.15		22,736.15
Bureau of Custom	HH-2950		2,165.00		2,165.00
Bureau of Custom	HH-2963		96.00		96.00
Bureau of Custom	HH-2465 to HH-2467		50.00		50.00
Bureau of Custom	HH-2468		60.00		60.00
Bureau of Custom	HH-2470 to HH-2472		11,990.00		11,990.00
Bureau of Custom	HH-2474 to HH-2476		114.00		114.00
Bureau of Custom	HH-2647 to HH-2649		100.00		100.00
Bureau of Custom	HH-2788		151,214.00		151,214.00
Bureau of Custom	HH-2911 to HH-2913		421,196.00		421,196.00

Payee	Exhibit No.	2nd Qtr	3rd Qtr	4th Qtr	Total
Bureau of Custom	HH-2790, HH-2791		2,471.00		2,471.00
Bureau of Custom	II-2485			3,119.00	3,119.00
Bureau of Custom	II-2519			4,934.00	4,934.00
Bureau of Custom	II-2528			79,066.00	79,066.00
Bureau of Custom	II-2591			622.00	622.00
Bureau of Custom	II-2593			774.00	774.00
Bureau of Custom	II-2678			33,128.00	33,128.00
Bureau of Custom	II			3,921.00	3,921.00
Bureau of Custom	II-2569			58.00	58.00
Bureau of Custom	II-2570			71.00	71.00
Bureau of Custom	II-2571			85.00	85.00
Bureau of Custom	II-2643			97,063.00	97,063.00
Bureau of Custom	II-2644			9,164.00	9,164.00
Bureau of Custom	II-2679			33,223.00	33,223.00
Bureau of Custom	II-2680			74,411.00	74,411.00
Bureau of Custom	II-2687			134,113.00	134,113.00
Bureau of Custom	II-2690			182,492.00	182,492.00
Bureau of Custom	II-2754			123,025.00	123,025.00
Bureau of Custom	II-2772			236.00	236.00
Bureau of Custom	II-2803			3,005.00	3,005.00
Bureau of Custom	II-2812			3,778.00	3,778.00
Bureau of Custom	II-2808			39,253.00	39,253.00
Bureau of Custom	Ii-2861			55,842.00	55,842.00
Bureau of Custom	II-2886			124,598.00	124,598.00
Bureau of Custom	II-2894			65,139.00	65,139.00
Bureau of Custom	II-2897			204,104.00	204,104.00
Bureau of Custom	II-2982			77,248.00	77,248.00
Bureau of Custom	II-2984			6,720.00	6,720.00
Bureau of Custom	II-2985			53.00	53.00
Bureau of Custom	II-3065			7,068.00	7,068.00
Bureau of Custom	II-3102, II-3103			6,768.00	6,768.00
Bureau of Custom	II-3123			6,078.00	6,078.00
Sub-Total		***85,572.00***	***685,069.15***	***1,379,159.00***	***2,149,800.15***
ANNEX 7-5, EXHIBIT Z					
Bureau of Custom	II-2515			6,080.00	6,080.00
Bureau of Custom	II-2517			4,524.00	4,524.00
Bureau of Custom	II-2549			12,778.00	12,778.00
Sub-Total		-	-	***23,382.00***	***23,382.00***
ANNEX 7-6, EXHIBIT Z					
Bureau of Custom	HH-2442 to HH-2443		*5,584.00*		*5,584.00*
Bureau of Custom	HH-2446 to HH-2447		*44,934.00*		*44,934.00*
Sub-Total			***50,518.00***	-	***50,518.00***
ANNEX 7-7, EXHIBIT Z					
Bureau of Custom	HH-2435, HH-2438, HH-2439, HH-2440, HH-2444		12.00		12.00
Bureau of Custom	HH-2335 to HH-2336		36,369.00		36,369.00
Bureau of Custom	HH-2335 to HH-2336		242,335.00		242,335.00
Bureau of Custom	HH		44,784.00		44,784.00
Bureau of Custom	HH-2746		4,783.00		4,783.00
Bureau of Custom	HH		25.00		25.00

Payee	Exhibit No.	2nd Qtr	3rd Qtr	4th Qtr	Total
Bureau of Custom	HH-2516 to HH-2518		6,919.00		6,919.00
Sub-Total		-	*335,227.00*	-	*335,227.00*
Grand Total					**2,787,446.24**

Payee	Exhibit No.	2nd Qtr	3rd Qtr	4th Qtr	Total
ANNEX 19A, EXHIBIT RR					
Bureau of Custom	GG-2276 to GG-2280	319,983.00			319,983.00
Bureau of Custom	GG-2281 to GG-2285	18,255.00			18,255.00
Bureau of Custom	GG-2286 to GG-2290	180,446.00			180,446.00
Bureau of Custom	GG-2291 to GG-2295	31,264.00			31,264.00
Bureau of Custom	GG-2296 to GG-2300	34,234.00			34,234.00
Bureau of Custom	GG-2307 to GG-2311	14,278.00			14,278.00
Bureau of Custom	GG-2312 to GG-2316	7,404.00			7,404.00
Bureau of Custom	GG-2317 to GG-2321	7,450.00			7,450.00
Bureau of Custom	GG-2322 to GG-2326	9,010.00			9,010.00
Bureau of Custom	GG-2327 to GG-2331	29,931.00			29,931.00
Bureau of Custom	GG-2332 to GG-2336	70,455.00			70,455.00
Bureau of Custom	GG-2337 to GG-2341	147,532.00			147,532.00
Bureau of Custom	GG-2342 to GG-2346	171,588.00			171,588.00
Bureau of Custom	GG-2361 to GG-2365	155.00			155.00
Bureau of Custom	GG-2410 to GG-2414	691,937.00			691,937.00
Bureau of Custom	GG-2415 to GG-2419	149,808.00			149,808.00
Bureau of Custom	GG-2420 to GG-2424	67,494.00			67,494.00
Bureau of Custom	GG-2425 to GG-2429	78,931.00			78,931.00
Bureau of Custom	GG-2448 to GG-2452	16,334.00			16,334.00
Bureau of Custom	GG-2453 to GG-2457	16,769.00			16,769.00
Bureau of Custom	GG-2458 to GG-2462	25,135.00			25,135.00
Bureau of Custom	GG-2463 to GG-2467	8,233.00			8,233.00
Bureau of Custom	GG-2468 to GG-2472	5,405.00			5,405.00
Bureau of Custom	GG-2473 to GG-2477	397.00			397.00
Bureau of Custom	GG-2478 to GG-2482	425.00			425.00
Bureau of Custom	GG-2483 to GG-2487	9,418.00			9,418.00
Bureau of Custom	GG-2488 to GG-2492	32.00			32.00
Bureau of Custom	GG-2503 to GG-2507	304,979.00			304,979.00
Bureau of Custom	GG-2508 to GG-2512	401,194.00			401,194.00
Bureau of Custom			403,117.00		403,117.00
Bureau of Custom			75,397.00		75,397.00
Bureau of Custom			81,319.00		81,319.00
Bureau of Custom			204,650.00		204,650.00
Bureau of Custom			242,692.00		242,692.00
Bureau of Custom			86,385.00		86,385.00
Bureau of Custom			109,798.00		109,798.00
Bureau of Custom			240,439.00		240,439.00
Bureau of Custom			24,235.00		24,235.00
Bureau of Custom			78,976.00		78,976.00
Bureau of Custom			43,791.00		43,791.00
Bureau of Custom			9,765.00		9,765.00
Bureau of Custom			93.00		93.00
Bureau of Custom			907,504.00		907,504.00
Bureau of Custom			269,782.00		269,782.00
Bureau of Custom			73,750.00		73,750.00
Bureau of Custom			346,187.00		346,187.00
Bureau of Custom			439,252.00		439,252.00
Bureau of Custom			37,804.00		37,804.00
Bureau of Custom			35,081.00		35,081.00
Bureau of Custom			20,979.00		20,979.00
Bureau of Custom			44,565.00		44,565.00
Bureau of Custom			11,329.00		11,329.00
Bureau of Custom			45,316.00		45,316.00
Bureau of Custom			529.00		529.00
Bureau of Custom			4,137.00		4,137.00
Bureau of Custom			4,145.00		4,145.00

Payee	Exhibit No.	2nd Qtr	3rd Qtr	4th Qtr	Total
Bureau of Custom			93.00		93.00
Bureau of Custom			5,442.00		5,442.00
Bureau of Custom			12.00		12.00
Bureau of Custom			7,213.00		7,213.00
Bureau of Custom			107.00		107.00
Bureau of Custom	HH-2433 to HH-2435, HH-2440		2,358.00		2,358.00
Bureau of Custom	HH-2521 to HH-2523		147,633.00		147,633.00
Bureau of Custom	HH-2526, HH-2527		545,204.00		545,204.00
Bureau of Custom	HH-2601 to HH-2603		32,827.00		32,827.00
Bureau of Custom	HH-2657 to HH-2659		28.00		28.00
Bureau of Custom	HH-2667 to HH-2669, HH-2674, HH-2679		3,475.00		3,475.00
Bureau of Custom	HH-2669, HH-2672, HH-2674, HH-2679, HH-2689		10,489.00		10,489.00
Bureau of Custom	HH-2677 to HH-2679		980.00		980.00
Bureau of Custom	HH-2687 to HH-2689		804.00		804.00
Bureau of Custom	HH-2739 to HH-2741		1,080.00		1,080.00
Bureau of Custom	HH-2759 to HH-2761		420,146.00		420,146.00
Bureau of Custom	HH-2764 to HH-2766		618,635.00		618,635.00
Bureau of Custom	HH-2769 to HH-2771		76,776.00		76,776.00
Bureau of Custom	HH-2774 to HH-2776		8,633.00		8,633.00
Bureau of Custom	HH-2806 to HH-2808		131.00		131.00
Bureau of Custom	HH-2821 to HH-2823		2,001.00		2,001.00
Bureau of Custom	HH-2875 to HH-2876		257,456.00		257,456.00
Bureau of Custom	HH-2880		311,829.00		311,829.00
Bureau of Custom	HH-2898 to HH-2900		74,487.00		74,487.00
Bureau of Custom	HH-2908 to HH-2910		574,549.00		574,549.00
Bureau of Custom	HH-2926 to HH-2928		33,843.00		33,843.00
Bureau of Custom	HH-2975 to HH-2977		704,387.00		704,387.00
Bureau of Custom				306.00	306.00
Bureau of Custom				4,435.00	4,435.00
Bureau of Custom				13,190.00	13,190.00
Bureau of Custom				162.00	162.00
Bureau of Custom				184.00	184.00
Bureau of Custom				967.00	967.00
Bureau of Custom				1,724.00	1,724.00
Bureau of Custom				2,635.00	2,635.00
Bureau of Custom				3,177.00	3,177.00
Bureau of Custom				1,234.00	1,234.00
Bureau of Custom				2,011.00	2,011.00
Bureau of Custom				3,195.00	3,195.00
Bureau of Custom				5,376.00	5,376.00
Bureau of Custom				6,014.00	6,014.00
Bureau of Custom				5,381.00	5,381.00
Bureau of Custom				3,214.00	3,214.00
Bureau of Custom				1,507.00	1,507.00
Bureau of Custom				2,352.00	2,352.00
Bureau of Custom				9.00	9.00
Bureau of Custom				1,140.00	1,140.00
Bureau of Custom				6,957.00	6,957.00
Bureau of Custom				12,984.00	12,984.00
Bureau of Custom				3,082.00	3,082.00
Bureau of Custom				4,481.00	4,481.00
Bureau of Custom				2,546.00	2,546.00
Bureau of Custom				3,266.00	3,266.00
Bureau of Custom				6,413.00	6,413.00
Bureau of Custom				4,072.00	4,072.00
Bureau of Custom				9,961.00	9,961.00

Payee	Exhibit No.	2nd Qtr	3rd Qtr	4th Qtr	Total
Bureau of Custom	II-2469 to II-2471			643.00	643.00
Bureau of Custom	II-2605			1,648.00	1,648.00
Bureau of Custom	II-2617 to II-2619			1,960.00	1,960.00
Bureau of Custom	II-2699 to II-2701			18,922.00	18,922.00
Bureau of Custom	II-2709 to II-2711			10,444.00	10,444.00
Bureau of Custom	II-2719 to II-2721			43,729.00	43,729.00
Bureau of Custom	II-2916 to II-2918			343,095.00	343,095.00
Bureau of Custom	II-2988 to II-2990			168.00	168.00
Bureau of Custom	II-2993 to II-2995			292.00	292.00
Bureau of Custom	Ii-3088 to II-3090			38,095.00	38,095.00
Bureau of Custom	II-3115			2,087.00	2,087.00
Bureau of Custom	II-3120			87.00	87.00
Sub-total		***2,818,476.00***	***7,681,635.00***	***573,145.00***	***11,073,256.00***
ANNEX 19B, EXHIBIT RR					
Bureau of Custom		151,350.00	-	-	151,350.00
Bureau of Custom				116.00	116.00
Bureau of Custom				4,595.00	4,595.00
Sub-total		***151,350.00***	**-**	***4,711.00***	***156,061.00***
ANNEX 19 C, EXHIBIT RR					
Bureau of Custom	GG-2396 to GG-2400	4,929.00			4,929.00
Bureau of Custom	GG-2430 to GG-2434	19,129.00			19,129.00
Bureau of Custom	GG-2493 to GG-2497	13,570.00			13,570.00
Bureau of Custom	GG-2498 to GG-2502	1,031.00			1,031.00
Bureau of Custom	GG-2513 to GG-2517	31,192.00			31,192.00
Bureau of Custom	GG-2518 to GG-2522	11,712.00			11,712.00
Bureau of Custom	GG-2523 to GG-2527	4,051.00			4,051.00
Bureau of Custom			6,504.00		6,504.00
Bureau of Custom			2,967.00		2,967.00
Bureau of Custom			18,047.00		18,047.00
Bureau of Custom			3,935.00		3,935.00
Bureau of Custom			24,119.00		24,119.00
Bureau of Custom			56,879.00		56,879.00
Bureau of Custom	HH-2331, HH-2332		120,633.00		120,633.00
Bureau of Custom	HH-2340, HH-2342		243,108.00		243,108.00
Bureau of Custom	HH-2365, HH-2367		22,449.00		22,449.00
Bureau of Custom	HH-2389, HH-2391		16,082.00		16,082.00
Bureau of Custom	HH-2394, HH-2396		63,174.00		63,174.00
Bureau of Custom	HH-2451, HH-2452		65,231.00		65,231.00
Bureau of Custom	HH-2483 to HH-2485		36,617.00		36,617.00
Bureau of Custom	HH-2507 to HH-2509		6,500.00		6,500.00
Bureau of Custom	HH-2563, HH-2564		53,315.00		53,315.00
Bureau of Custom	HH-2588 to HH-2590		22,587.00		22,587.00
Bureau of Custom	HH-2592, HH-2593		43,823.00		43,823.00
Bureau of Custom	HH-2596 to HH-2598		83,300.00		83,300.00
Bureau of Custom	HH-2606 to HH-2608		72,739.00		72,739.00
Bureau of Custom	HH-2611 to HH-2613		25,284.00		25,284.00
Bureau of Custom	HH-2616 to HH-2618		14,401.00		14,401.00
Bureau of Custom	HH-2621 to HH-2623		106,871.00		106,871.00
Bureau of Custom	HH-2630 to HH-2632		45,926.00		45,926.00
Bureau of Custom	HH-2635 to HH-2637		33,752.00		33,752.00
Bureau of Custom	HH-2639 to HH-2641		22,718.00		22,718.00
Bureau of Custom	HH-2643to HH-2645		44,862.00		44,862.00
Bureau of Custom	HH-2652 to HH-2654		18,570.00		18,570.00
Bureau of Custom	HH-2712 to HH-2714, HH-2719		46,094.00		46,094.00
Bureau of Custom	HH-2743 to HH-2745		9,784.00		9,784.00
Bureau of Custom	HH-2931 to HH-2932		22,085.00		22,085.00
Bureau of Custom	HH-2935 to HH-2937		15,683.00		15,683.00

Payee	Exhibit No.	2nd Qtr	3rd Qtr	4th Qtr	Total
Bureau of Custom	HH-2955 to HH-2957		136,064.00		136,064.00
Bureau of Custom				104,701.00	104,701.00
Bureau of Custom				13,276.00	13,276.00
Bureau of Custom				14,159.00	14,159.00
Bureau of Custom				8,267.00	8,267.00
Bureau of Custom				6,393.00	6,393.00
Bureau of Custom				325,547.00	325,547.00
Bureau of Custom	II-2474 to II-2476			6,782.00	6,782.00
Bureau of Custom	II-2483, II-2484			8,937.00	8,937.00
Bureau of Custom	II-2728 to II-2730			24,837.00	24,837.00
Bureau of Custom	II-2940 to II-2942			33,282.00	33,282.00
Bureau of Custom	II-3083 to II-3085			71,689.00	71,689.00
Bureau of Custom	II-3093 to II-3095			20,550.00	20,550.00
Sub-total		***85,614.00***	***1,504,103.00***	***638,420.00***	***2,228,137.00***
Annex 19D, Exhibit RR					
Bureau of Custom			9,130.00		9,130.00
Bureau of Custom	II-2737 to II-2739			18,325.00	18,325.00
Sub-total		-	***9,130.00***	***18,325.00***	***27,455.00***
ANNEX 21A, EXHIBIT RR					
Bureau of Custom	HH-2692 to HH-2694		3,657.00		3,657.00
Bureau of Custom	HH-2750 to HH-2752		6,920.00		6,920.00
Bureau of Custom	HH-2903 to HH-2905		90,324.00		90,324.00
Bureau of Custom	HH-2626, HH-2627		273,264.00		273,264.00
Bureau of Custom	HH-2731, HH-2732		339.00		339.00
Bureau of Custom	HH-2735, HH-2736		323.00		323.00
Bureau of Custom	HH-2884 to HH-2886		238,585.00		238,585.00
Bureau of Custom	HH-2889 to HH-2891		61,816.00		61,816.00
Bureau of Custom	HH-2916 to HH-2918		33,555.00		33,555.00
Bureau of Custom	HH-2980 to HH-2983		52,656.00		52,656.00
Bureau of Custom	II-2497, II-2498			46,002.00	46,002.00
Bureau of Custom	II-2531			1,409.00	1,409.00
Bureau of Custom	II-264O to II-2642			7,228.00	7,228.00
Bureau of Custom	II-2647 to II-2649			11,353.00	11,353.00
Bureau of Custom	II-2666			15,566.00	15,566.00
Bureau of Custom	II-2675, II-2676			24,286.00	24,286.00
Bureau of Custom	II-2704 to II-2706			10,364.00	10,364.00
Bureau of Custom	II-2714 to II-2716			31,930.00	31,930.00
Bureau of Custom	II-2733			67,324.00	67,324.00
Bureau of Custom	II-2780			599.00	599.00
Bureau of Custom	II-2785			879.00	879.00
Bureau of Custom	II-2800			2,708.00	2,708.00
Bureau of Custom	II-2826			5,998.00	5,998.00
Bureau of Custom	II-2836			6,083.00	6,083.00
Bureau of Custom	II-2850			10,401.00	10,401.00
Bureau of Custom	II-2855			10,757.00	10,757.00
Bureau of Custom	II-2891 to II-2893			129,090.00	129,090.00
Bureau of Custom	II-2912			92,670.00	92,670.00
Bureau of Custom	II-2978 to II-2980			4,126.00	4,126.00
Bureau of Custom	II-3002 to II-3004			9,321.00	9,321.00
Bureau of Custom	II-2750 to II-2752			58,786.00	58,786.00
Bureau of Custom	II-2950 to II-2952			20,689.00	20,689.00
Bureau of Custom	II-2973 to II-2975			70.00	70.00
Bureau of Custom	II-2776			346.00	346.00
Bureau of Custom	II-2535			14,445.00	14,445.00
Sub-total		-	***761,439.00***	***582,430.00***	***1,343,869.00***
ANNEX 21B, EXHIBIT RR					
Bureau of Custom	HH-2454 to HH-2458		5,051.00		5,051.00

Payee	Exhibit No.	2nd Qtr	3rd Qtr	4th Qtr	Total
Bureau of Custom	HH-2459 to HH-2463		2,044.00		2,044.00
Sub-total		-	***7,095.00***	-	***7,095.00***
ANNEX 22A, EXHIBIT RR					
Bureau of Custom	HH-2859 to HH-2861		367,365.00		367,365.00
Bureau of Custom	HH-2893 to HH-2895		539,435.00		539,435.00
Bureau of Custom	HH-2970 to HH-2972		211,198.00		211,198.00
Bureau of Custom	II-2590			229.00	229.00
Bureau of Custom	II-2723 to II-2725			86,272.00	86,272.00
Bureau of Custom	II-2756 to II-2758			123,063.00	123,063.00
Bureau of Custom	II-2836			3,778.00	3,778.00
Bureau of Custom	II-2877			15,169.00	15,169.00
Bureau of Custom	II-2902			29,219.00	29,219.00
Bureau of Custom	II-2954 to II-2956			27,290.00	27,290.00
Sub-total		-	***1,117,998.00***	***285,020.00***	***1,403,018.00***
ANNEX 22B, EXHIBIT RR					
Bureau of Custom	GG-2371 to GG-2378	378.00	-	-	378.00
Sub-total		***378.00***	-	-	***378.00***
ANNEX 22C, EXHIBIT RR					
Bureau of Custom	HH-2854 to HH-2856		120,168.00		120,168.00
Sub-total		-	***120,168.00***	-	***120,168.00***
TOTAL		**3,055,818.00**	**11,201,568.00**	**2,102,051.00**	**16,359,437.00**

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TEAM SUAL CORPORATION (formerly: MIRANT SUAL CORPORATION),
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 649
(CTA Case Nos. 6630 & 6733)

x- -x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus-

TEAM SUAL CORPORATION (formerly: MIRANT SUAL CORPORATION),
Respondent.

CTA EB No. 651
(CTA Case Nos. 6630 & 6733)

Present:
Acosta, *P.J.*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:

SEP 15 2011 Apolinario 9:05 a.m.

x- x

CONCURRING AND DISSENTING OPINION

COTANGCO-MANALASTAS, *J.*:

With reverence to the viewpoints of my esteemed colleagues, expressed in the *Decision* penned by the Honorable Associate Justice Erlinda P. Uy, I respectfully submit my concurring and dissenting opinion to underscore the basis of my concurrence, as well as my dissension, to some of the issues raised in the *Decision*.

I concur with the ponencia of Associate Justice Erlinda P. Uy dismissing CTA EB No. 651 and partially granting CTA EB No. 649, insofar as the consideration of the portion of Team Sual Corporation's (Team Sual) refund claim for the 2nd, 3rd, and 4th quarters of 2001 disallowed by the Court *a quo* upon the reason that the supporting documents were in Team Sual's former names.

However, I would like to register my dissent from the majority decision denying Team Sual Corporation's (Team Sual) claim for tax refund of unutilized input value-added tax (VAT) for the first (1st) quarter of taxable year 2001 on the ground that the Court in Division has not acquired jurisdiction to entertain the same.

CTA EB No. 651 (Commissioner of Internal Revenue, petitioner)

In the said Petition for Review, the Commissioner of Internal Revenue (CIR) alleges that TEAM Sual Corporation: [1]failed to comply with the sixth requisite for refund/tax credit, involving the timeliness of the claim for refund or issuance of tax credit certificate; and [2] has not sufficiently proven its entitlement to a refund.

TIMELINESS of the administrative and judicial claims for refund or the issuance of tax credit certificates in relation to the Court's JURISDICTION to act on the petition.

The CIR puts in issue his argument that this Court has no jurisdiction to act on the present claim for refund/tax credit pointing to the fact that TEAM Sual Corporation failed to give CIR a period of 120 days granted by law to process its claim for refund/tax credit, hence, the Petitions for Review filed by Team Sual Corporation on March 31, 2003 and July 23, 2003 were both prematurely filed.

Administrative claim

On the question as to whether TEAM Sual complied with the prescriptive period for the administrative claim for refund or issuance of tax credit certificate of unutilized input tax, I agree with the finding that Team Sual Corporation timely filed with the Bureau of Internal Revenue (BIR) on March 20, 2003 its administrative claim for refund of its unutilized input VAT in the amount of P166,720,367.79 for the four quarters of 2001.

Relevant is the provision of Section 112(A) of the NIRC of 1997 which prescribes the reckoning of the 2-year period within which to make a claim for refund or tax credit, *i.e., from the close of the taxable quarter when the sales were made.* Applying the foregoing provision in this case, suffice it to say that TEAM Sual timely filed its administrative claim [March 20, 2003] for refund/tax credit of unutilized input VAT having filed the same within 2 years reckoned from the close of the taxable quarters when the sales were made [four quarters of 2001].

Judicial claim

As to whether TEAM Sual timely filed its judicial claim for refund or issuance of tax credit certificate of unutilized input tax, Section 112(D) of the NIRC of 1997 is instructive. Section 112(D) of the NIRC of 1997 clearly provides that the CIR has "120 days from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the Court of Tax Appeals (CTA) within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the CTA within 30 days.[1]

The non-observance of the 120-30 days required under Section 112(D) of the NIRC of 1997 or the premature invocation of the court's jurisdiction, is a violation of the doctrine of exhaustion of administrative remedies. This failure to observe the doctrine of exhaustion of administrative remedies is fatal to one's cause of action, thus, absent any waiver or *estoppel,* the case is susceptible of dismissal for *lack of cause of action*[2].

Failure to exhaust administrative remedies, however, does not affect the jurisdiction of the court. Non-exhaustion of administrative remedies only renders the action premature, that the claimed cause of action is not ripe for judicial determination.[3]

In this case, records reveal that:

Quarter (2001)	CTA Case	Administrative Claim Filed	End of 120 Days for the BIR Commissioner to Decide the Claim	End of 30 Days from the expiration of the 120 days	Date Judicial Claim Filed
1st	CTA Case No. 6630	March 20, 2003	July 18, 2003	August 17, 2003	March 31, 2003
2nd, 3rd, & 4th	CTA Case No. 6733	March 20, 2003	July 18, 2003	August 17, 2003	July 23, 2003

A perusal of the foregoing table instantly shows that in CTA Case No. 6630 TEAM Sual failed to wait for the decision of the CIR or the lapse of the 120-day period before filing its appeal to this Court. Clearly, the filing of the judicial claim for the 1st quarter of 2001 in CTA Case No. 6630 is premature. Nevertheless, since

[1] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.
[2] *Montanez vs. PARAD, et al.*, G.R. No. 183142, September 17, 2009.
[3] Merida Water District, et al. vs. Francisco Bacarro, et al., G.R. No. 165993, September 30, 2008 citing *Rosario v. Court of Appeals*, G.R. No. 89554, July 10, 1992, 211 SCRA 384, 387; *Carale v. Abarintos*, G.R. No. 120704, March 3, 1997, 269 SCRA 132, 141.

the premature filing of claim for refund and/or tax credit or failure to exhaust administrative remedies is not jurisdictional, such defense is therefore **waivable** or may be considered **waived** pursuant to Section 1, Rule 9 of the Rules of Court, which provides that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except if dismissal is based on the ff. grounds, to wit: lack of jurisdiction, *litis pendentia*, *res judicata*, and prescription.

Records show that CIR failed to allege in his Answer the premature filing of petitioner's judicial claim for tax refund for the 1st quarter of 2001 as one of his special and affirmative defenses in CTA Case No. 6630, thus, respondent is **deemed to have waived** the premature filing of the petition as a ground for dismissal. Accordingly, the Court *En Banc* should give due course to TEAM Sual's judicial claim for refund/tax credit for the 1st quarter of 2001 in CTA Case No. 6630; thus my dissent from the majority decision denying same.

As regards TEAM Sual's judicial claim for refund/tax credit for the 2nd, 3rd, and 4th quarters of 2001, docketed as CTA Case No. 6733, the table above visibly shows that TEAM Sual observed the "120-30 day period" by waiting for the lapse of 120 days [July 18, 2003] before filing its judicial claim for refund within 30 days from the end of the 120 days allotted for the CIR to act on the claim. Thus, my concurrence with majority's ruling partially granting CTA EB No. 649, insofar as the consideration of the portion of Team Sual's refund claim for the 2nd, 3rd, and 4th quarters of 2001 disallowed by the Court *a quo* upon the reason that the supporting documents were in Team Sual's former names.

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Issue on TEAM Sual's entitlement to refund has been exhaustively passed upon and resolved by the Court a quo.

Apropos CIR's contention that TEAM Sual has not sufficiently proven its entitlement to refund, *i.e., it failed to prove compliance with the VAT registration requirements, failed to show that its purchases were in the course of trade and business, failed to show that said purchases were properly supported by VAT invoices and/or official receipts*, the Court *a quo's Decision* and *Amended Decision* reveals that these arguments raised by CIR in its Petition for Review for the consideration of this Court have already been intricately and appropriately passed upon and resolved in the said *Decision* and *Amended Decision.* Hence, I find no plausible reason to disturb the ruling of the Court *a quo* insofar as the aforementioned contentions/issues are concerned.

With the above discussion, I find apropos the ruling of my esteemed colleagues dismissing CTA EB No. 651 filed by the Commissioner of Internal Revenue.

CTA EB No. 649 (TEAM Sual Corporation, petitioner)

TEAM Sual Corporation proffers for the determination of this Court the issue as to whether the Court *a quo* erred in disallowing its input taxes of P12,761,224.50 on local purchases of goods and services and on importations on the ground that the supporting documents were issued under TEAM Sual's former name. TEAM Sual's petition heavily focused its discussion on arguments which advocate its entitlement to the refund/tax credit of its input taxes albeit the supporting documents were issued under its former corporate name.

I agree with the majority position partially granting CTA EB No. 649, insofar as the consideration of the portion of Team Sual's refund claim for the 2nd, 3rd, and 4th quarters of 2001 disallowed by the Court *a quo* upon the reason that the supporting documents were in Team Sual's former names.

On the matter concerning the effects of a change in corporate name, the pronouncement made by the Supreme Court in the case of *Republic Planters Bank vs. Court of Appeals and Fermin Canlas*[4] is enlightening, *viz:*

xxx

> "The corporation, **upon such change in its name**, is in **no sense a new corporation**, nor the successor of the original corporation. **It is the same corporation with a different name**, and its character is in no respect changed.
>
> A change in the corporate name does not make a new corporation, and whether effected by special act or under a general law, **has no effect on the identity of the corporation, or on its property, rights, or *liabilities***.
>
> The corporation continues, as before, responsible in its new name for all debts or other liabilities which it had previously contracted or incurred." (Emphasis ours)

xxx

In a more recent case of *P.C. Javier & Sons, Inc., et al. vs. Hon. Court of Appeals, et al.*[5], the Supreme Court had the occasion to reiterate its stance on the effect of change of corporate name:

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[4] G.R. No. 93073, December 21, 1992 citing 6 Fletcher, Cyclopedia of the Law of Private Corporations, pp. 224-225 (Rev. ed., 1968); Mutual Building & Loan Association vs. Corum, 220 Cal. 282, citing Corpus Juris; 30 P- 2d 509, 514 (1934)- Pilsen Brewing Co. vs. Wallace, 291 ILL. 59, 125 N.E. 714, 8 A.L.R. 579 (1919); Ozan Lumber Co. vs. Davis Sewing Machine Co., 284 F-161 (1922); 18 C.J.S. 572.
[5] G.R. No. 129552, June 29, 2005 citing Avon Dale Garments, Inc. v. National Labor Relations Commission, G.R. No. 117932, 20 July 1995, 246 SCRA 733, 737; Republic Planters Bank v. Court of Appeals, G.R. No. 93073, 21 December 1992, 216 SCRA 738, 745.

"A change in the corporate name does not make a new corporation, whether effected by a special act or under a general law. It has no effect on the identity of the corporation, or on its property, rights, or liabilities. The corporation, upon such change in its name, is in no sense a new corporation, nor the successor of the original corporation. It is the same corporation with a different name, and its character is in no respect changed."

xxx

In view of the foregoing considerations:

[1] I vote for the **DISMISSAL** of the Petition for Review, docketed as **CTA EB Case No. 651**, filed by the Commissioner of Internal Revenue; and

[2] I vote for the **PARTIAL GRANT** of the Petition for Review, docketed as **CTA EB Case No. 649,** filed by Team Sual Corporation, however, I dissent from the outright denial of TEAM Sual's judicial claim for refund/tax credit for the 1st quarter of 2001 on the ground that the Court in Division has not acquired jurisdiction to entertain the same.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

TEAM SUAL CORPORATION
(Formerly Mirant Sual Corporation),
Petitioner,

CTA EB CASE NO. 649
(CTA Case Nos. 6630 & 6733)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x--x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB CASE NO. 651
(CTA Case Nos. 6630 & 6733)

-versus-

Present:
Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

TEAM SUAL CORPORATION
(Formerly Mirant Sual Corporation),
Respondent.

Promulgated:
SEP 15 2011 Aespolinario 9:05 a.m.

x--x

Separate Concurring Opinion

BAUTISTA, J.:

I concur with the denial of the Petition for Review, docketed as CTA EB Case No. 651, filed by the Commissioner of Internal Revenue ("CIR"), for being a mere rehash and considering that no compelling arguments have been raised.

I likewise concur with the partial grant of the Petition for Review, docketed as CTA EB Case No. 649, filed by Team Sual Corporation ("TSC").

Nonetheless, I must point out my view with the modification made by the Court *En Banc* in the assailed Decision dated June 7, 2010.

In the assailed Decision, the Special First Division of the Court partially granted TSC's claim in the reduced amount of ₱144,564,112.19. On the other hand, the Court *En Banc,* in like manner, partially granted TSC's claim for refund, however, further reducing the amount awarded to ₱123,110,001.68.

The majority of the Court *En Banc* states that the reduction of the award is due to the findings that TSC's claim for the first quarter of the taxable year 2001 should be denied for having been filed in violation of Section 112(C) of the 1997 National Internal Revenue Code ("NIRC"),[1] as amended.[2]

However, a plain reading of Section 112(C) of the 1997 NIRC, as amended, will show that the provision use the word *"may,"* which as settled in statutory construction connotes permissiveness, rather than of a restrictive or mandatory in nature.

Consistent with the aforementioned provision's permissive nature, the judicial recourse to this Court within thirty (30) days after the lapse of the one

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[1] (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.

[2] As amended by Republic Act No. 9337.

hundred twenty (120)-day period, therefore, is merely directory, and not mandatory nor jurisdictional; subject only to the period provided under Sections 112(A)[3] and 229[4] of the same Code.

Therefore, if the two (2)-year prescriptive period is about to expire, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or its inaction after the expiration of the one hundred twenty (120)-day period before the taxpayer can lodge its appeal with this Court.[5]

To stress, both the administrative and judicial claims must be *both* filed within the two (2)-year period,[6] otherwise, the Court will be deprived of jurisdiction to entertain the case.[7]

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[3] 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 transactions, it shall be allocated proportionately on the basis of the volume of sales.

[4] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been 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, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[5] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.

[6] Commissioner of Internal Revenue *v.* Victorias Milling Co., Inc., No. L-24108, January 3, 1968, 22 SCRA 12.

[7] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB No. 410 (CTA Case No. 7387), March 18, 2009.

Additionally, when TSC filed its administrative claim before the CIR on March 18, 2003, and its subsequent Petition for Review before this Court on March 31, 2003, the then prevailing doctrine on the reckoning of the prescriptive period within which to file administrative and judicial claims for refund or tax credit of input tax is counted not from the close of the taxable quarter,[8] but from the filing of the relevant return.[9]

It need not be stated that the Supreme Court, being the court of last resort, is the final arbiter of all legal questions properly brought before it, and that its decision in any given case constitutes the law of that particular case. Once its judgment become final it is binding on all inferior courts, and hence beyond their power and authority to alter or modify.[10]

However, the Court's decisions should not be, as to a given period of time, upon the same or similar facts and under the same or similar circumstances, as fluctuating as to engender the phenomenon described by Mr. Justice Thompson of the Supreme Court of Virginia as *ignis fatuus.*[11]

In the case of *Magtoto v. Manguera, et al.*,[12] the High Tribunal sitting *En Banc* made the following pronouncement:

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[8] Commissioner of Internal Revenue *v.* Mirant Pagbilao Corporation [Formerly Southern Energy Quezon, Inc.], G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[9] Atlas Consolidated Mining and Development Corporation *v.* Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[10] Jose Kabigting *v.* The Acting Director of Prisons, G.R. No. L-15548, October 30, 1962.
[11] Ramon Torres *v.* Tan Chim, G.R. No. L-46593, February 3, 1940, 69 Phil. 518, *citing Perkins v. Clemente et al., 1 Pat and (Va.) 153.*
[12] G.R. Nos. L-37201-02, L-37424, and L-38929, March 3, 1975, 63 SCRA 4, Concurring Opinion penned by Justice Felix Q. Antonio, with Justices Antonio P. Barredo and Cecilia Muñoz-Palma, concurring.

> The final authority of this Court rests upon public respect for its decisions. That public respect is based upon an image which represents this Court as declaring legal principles with an authority and certainty that the people may place upon it their *bona fide* reliance and reasonable expectations. To hold now that public officers, who have acted in justifiable reliance on Our aforecited doctrines, have transgressed the Constitution, would certainly not strengthen public respect on the authority of Our judgments.
>
> **Where there has been justifiable reliance on Our decisions, and those who have so relied may be substantially harmed if retroactive effect is given, where the purpose of the new rule can be adequately effectuated without giving it retroactive operation, or where retroactive operation might greatly burden the administration of justice, then it is Our duty to apply the new rule prospectively.**
>
> The factual and textual bases for a contrary rule, are at best, less than compelling. Relevant is the Court's duty to assess the consequences of its action. More than the human dignity of the accused in these cases is involved. There is the compelling realization that substantial interests of society may be prejudiced by a retrospective application of the new exclusionary rule. Thus, the values reflected transcend the individual interests of the herein accused, and involve the general security of society. The unusual force of the countervailing considerations strengthens my conclusion in favor of prospective application. xxx (*Boldfacing supplied.*)

Thus, with the doctrine in the aforecited case in mind, as well as, the factual milieu present in the case at bench, the reckoning of the prescriptive period, *i.e.*, from the filing of the relevant return, should apply.

With this, I find the Petition for Review, docketed as CTA EB Case No. 651, filed by CIR, bereft of merit, while the Petition for Review, docketed as CTA EB Case No. 649, filed by TSC, should be partially granted.

In conclusion, the refund of the amount of ₱144,564,112.19, representing TSC's unutilized input tax from its domestic purchases of goods and services and importation of goods attributable to effectively zero-rated sales to the National

Power Corporation for the four quarters of the taxable year 2001 should be sustained.

Accordingly, I vote for the **DISMISSAL** of the Petition for Review, docketed as CTA EB Case No. 651, filed by the Commissioner of Internal Revenue, and therefor, for the **PARTIAL GRANT** of the Petition for Review, docketed as CTA EB Case No. 649, filed by Team Sual Corporation, however, in the amount as stated in the Amended Decision dated June 7, 2010.

LOVELL R. BAUTISTA
Associate Justice