

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**MINDANAO II GEOTHERMAL
PARTNERSHIP,**

Petitioner,

C.T.A. EB No. 513

(C.T.A. Case Nos. 7227,
7287 and 7317)

-versus-

Present:

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

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

PROMULGATED:

MAR 10 2010

11:45 a.m.

X-----X

D E C I S I O N

CASTAÑEDA, JR., J.:

This is a Petition for Review filed before the Court of Tax Appeals *en banc* assailing the Decision dated September 22, 2008 and the Amended Decision dated June 26, 2009 issued by the CTA First Division entitled, "*Mindanao II Geothermal Partnership vs. Commissioner of Jr*

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Internal Revenue,” docketed as C.T.A. Case Nos. 7227, 7287, and 7317.¹

The assailed Amended Decision PARTIALLY GRANTED the petition seeking the refund or issuance of tax credit certificate representing unutilized input Value Added Tax (VAT) for the third and fourth quarters of 2003. As quoted from the amended decision, the award of tax refund/tax credit was reduced from the amount of P7,703,957.79 to P2,980,887.77, representing petitioner’s unutilized input VAT for the third and fourth quarters of taxable year 2003.

THE FACTS

The facts of the case as found by the CTA First Division are as follows:

Petitioner is a partnership duly registered with the Securities and Exchange Commission with principal address at Barangay Ilomavis, Kidapawan City, North Cotabato. It is registered as a Value-Added Tax (VAT) Taxpayer with the Bureau of Internal Revenue. It has been accredited as a Block Power Production Facility by the Department of Energy.

Respondent, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Agham Road, Quezon City.

On March 11, 1997, petitioner allegedly entered into a Built-Operate-Transfer (BOT) Contract with the Philippine National Oil Corporation – Energy Development Company (PNOC-EDC) for finance, engineering, supply, installation, testing, commissioning, operation, and maintenance of a 48.25 megawatt geothermal power plant, provided that PNOC-EDC shall supply and deliver steam to petitioner at no cost. In turn, petitioner shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and in behalf of PNOC-EDC. 

¹ *Rollo*, pp. 32-61. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, concurring.

Petitioner alleges that its sale of generated power and delivery of electric capacity and energy of petitioner to NPC for and in behalf of PNOC-EDC is its only revenue-generating activity which is in the ambit of VAT zero-rated sales under EPIRA Law, which states:

"Republic Act No 9136

Electric Power Industry Reform Act of 2001 (EPIRA)

CHAPTER II

Organization and Operation of the Electric Power Industry

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SECTION 6. *Generation Sector* – Generation of electric power, a business affected with public interest shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety, and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

Upon the implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements."

(Emphasis supplied) 

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In relation thereto, Section 6 of Chapter II and Section 6 of Rule 5 of its Implementing Rules and Regulations state that:

RULE 5

Generation Sector

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SECTION 6. *Generation Charges and VAT.* –

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(b) Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by a Generation Company shall, from the effectivity of the Act, be zero-rated for the purpose of imposition of value-added tax. Towards this end, the imposition of zero percent (0%) VAT shall apply to the sale of generated power by a Generation Company through all stages of sale until it reaches the End-user. The DOE, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from effectivity of these rules."

Hence, the amendment of the NIRC of 1997 modified the VAT rate applicable to sales of generated power by generation companies from ten (10%) percent to zero percent (0%).

In the course of its operation, petitioner makes domestic purchases of goods and services and accumulates therefrom creditable input taxes. Pursuant to the provisions of the National Internal Revenue Code (NIRC), petitioner alleges that it can use its accumulated input tax credits to offset its output tax liability. Considering, however that its only revenue-generating activity is VAT zero-rated under RA No. 9136, petitioner's input tax credits remained unutilized.

Thus, on the belief that its sales qualify for VAT zero-rating, petitioner adopted the VAT zero rating of the EPIRA in computing for its VAT payable when it filed its Quarterly VAT Returns on the following dates:

CTA Case No.	Period Covered (2003)	Date of Filing	
		Original Return	Amended Return
7227	1 st Quarter	April 23, 2003	July 3, 2002, April 1, 2004, October

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			22, 2004
7287	2 nd Quarter	July 22, 2003	April 1, 2004
7317	3 rd Quarter	Oct. 27, 2003	April 1, 2004
7317	4 th Quarter	Jan. 26, 2004	April 1, 2004

Considering that it has accumulated unutilized creditable input taxes from its only revenue-generating activity, petitioner filed an application for refund and/or issuance of tax credit certificate with the BIR's Revenue District Office at Kidapawan City on April 13, 2005 for the four quarters of 2003.

To date, the application for refund by herein petitioner remains unacted by the respondent. Hence, these three petitions filed on April 22, 2005 covering the 1st quarter of 2003; July 7, 2005 for the 2nd quarter of 2003; and September 9, 2005 for the 3rd and 4th quarters of 2003. At the instance of the petitioner, these petitions were consolidated on March 15, 2006 as they involve the same parties and the same subject matter. The only difference lies with the taxable periods involved in each petition.

Respondent, in her Answers, interposed the following special and affirmative defenses:

For CTA Case No. 7227:

- "4. On the face of the petition, petitioner's administrative and judicial claim has prescribed;
5. As petitioner states in its petition before this Honorable Court, the subject of its claim for refund, are accumulated excess input tax for the first quarter of 2003, in the amount of P3,160,984.69;
6. The specific, applicable provision of law governing the period for filing applications for refund of input taxes attributable to VAT zero-rated sales is Section 112 (A) of the Tax Code of 1997. The said section provides:

"SEC. 112. Refunds or tax Credits of Input Tax

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- (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 *je*

the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales x x x." (*emphasis supplied*)

By this specific provision of law, the two-year limitation on claims for refund of input tax attributable to zero-rated sales commences **from the close of the taxable quarter** when the sales were made;

8. On the other hand, Sections 204 (C) and 229 of the Tax Code of 1997 provide for a period of limitation of two years from the date of payment of tax for filing a claim for refund of taxes erroneously or illegally collected. It should be noted that both these provisions are general provisions governing such claims regardless of type of tax;
9. The seeming inconsistency is eliminated by utilizing legal rules of interpretation and construction. The applicable rule is *Generalia specialibus non derogant*. Where there is in the same statute a particular or special provision, and also a general one which in its most comprehensive sense would include what is embraced in the special or particular provision, the latter must be operative, and the general provision can only affect such cases as are not within the particular provision. In other words, Section 112 (A) of the Tax Code, a specific provision on claims for refund of input tax attributable to zero-rated sales, must be operative and Sections 204 and 229 of the same, both more general provisions, can only govern those cases outside the ambit of Section 112 (A);
10. Petitioner, who claims to be VAT registered, whose sales are alleged to be zero-rated, and who is claiming for refund of input taxes attributable to the said zero-rated sales, is a proper subject of Section 112 (A) of the Tax Code. Therefore, its claim for refund should be filed within two years after the close of the first taxable quarter of 2003, or commencing from 1 April 2003 up to 1 April 2005. To interpret otherwise would make portions of Section 112 (A) inoperative, in violation of an accepted legal maxim;
11. Petitioner avers that it filed its administrative claim with the Bureau on 13 April 2005, or fourteen (14) days from the lapse of the two year period. Petitioner filed its judicial claim on 22 April 2005, or twenty-one (21) days after the expiration of the period for filing a claim for refund. Thus, petitioner's claim, filed beyond the period mandated by law, cannot prosper; *Je*

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12. Petitioner's claim for refund is subject to administrative investigation by the Bureau;
13. Petitioner must prove that it paid the alleged VAT input taxes for the period in question;
14. Petitioner must prove that the same alleged input VAT was not utilized against any output VAT liability;
15. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112 (A) of the Tax Code of 1997;
16. Petitioner must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated sales;
17. Granting without conceding, that the two-year period of limitation does not commence from 1 April 2003, petitioner must prove that the claim was filed within the two (2) year period prescribed in Section 229 of the tax Code;
18. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;
19. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation;

For CTA Case No. 7287:

- "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
5. The amount of P1,562,085.33 being claimed by the petitioner as alleged excess and/or unutilized input tax for the 2nd quarter of the year 2003 was not properly documented;
6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
7. Petitioner must show that it has complied with the provisions of Sections 204 (c) and Section 229 of the Tax Code on the prescriptive period for claiming tax refund/credit; *je*

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8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and such, they are looked upon with bwith [with] disfavor[.] (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

CTA Case No. 7317:

- "4. He reiterates and repleads the preceding paragraphs of this [his] answer as part of his Special and Affirmative Defenses;
5. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;
6. To support its claim, it is imperative for petitioner to prove the following, viz:
 - a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
 - b. The invoicing and accounting requirements of VAT registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code as amended;
 - c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of the administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, the petitioner's failure to submit proof of compliance with the above-stated requirements

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- warrants immediate dismissal of the petition for review.
- d. That the input taxes of P3,521,129.50 allegedly paid by the petitioner on its purchases of goods and services for the period July 1 to December 31, 2003 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;
 - e. That the petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the tax Code, as amended;
 - f. That petitioner's domestic purchases of goods and services were made in the course of its trade and business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code as amended, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);
 - g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits);
7. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications. (*Asiatic Petroleum Co. {P.I.} v. Llanes*, 49 Phil. 466 cited in *Collector of Internal Revenue v. Manila Jockey Club, Inc.* 98 Phil. 670);
8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

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Acting on the petition, the First Division of this Court rendered a Decision on September 22, 2009, which partially granted the Petition. The dispositive portion of the decision reads:

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED to REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the modified amount of **SEVEN MILLION SEVEN HUNDRED THREE THOUSAND NINE HUNDRED FIFTY SEVEN AND 79/100 PESOS (P7,703,957.79)** representing its unutilized input VAT for the four (4) quarters of the taxable year 2003.²

The respondent and the petitioner each filed their Motion for Partial Reconsideration dated October 14 and 16, 2008 respectively. In an Amended Decision dated June 26, 2009, which disposes the Motion for Partial Reconsideration filed by each parties, the First Division denied the motion of the Petitioner for lack of merit and granted the Motion of the respondent in which they were ordered to refund to the petitioner the modified amount of TWO MILLION NINE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED EIGHTY SEVEN AND 77/100 PESOS (P2,980,887.77) representing its unutilized input VAT for the third and fourth quarters of taxable year 2003.

Hence, this petition for review *en banc*.

THE ISSUES

The issues in this case are as follows: *Je*

² *Rollo*, p. 51.

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- I. Whether or not Petitioner's right to due process has been violated when the First Division of this Court invalidated the claim of petitioner for the first and second quarters of 2003 allegedly on the ground of prescription, applying retroactively the ruling of the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*.³
- II. Whether or not the sale of the fully depreciated Nissan Patrol is a one-time transaction and is not incidental to the VAT zero-rated operation of the petitioner.
- III. Whether or not the input taxes being claimed for refund or tax credit by Petitioner substantially complied with the requisites for refund or tax credit in that –
 - a. The amount of P2,090.16 was brought about by the timing difference in the recording of the Foreign Currency Deposit Transaction.
 - b. The amount of P2,752.00 arose from the out-of-pocket expenses reimbursed to SGV & Company (SGV).
 - c. The amount of P487,355.93 was unapplied or was not included in Petitioner's claim for refund or tax credit for the year 2004 subject matter of C.T.A. Case No. 7507.
- III. Whether or not the doctrine of *strictissimi juris* as applied to tax exemptions be relaxed to give effect to the very purpose of EPIRA Law.

THE COURT'S RULING

The Petition is devoid of merit.

There is no justifiable reason to depart from the pronouncement of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao* on 

³ G.R. No. 172129, September 12, 2008, 565 SCRA 154.

**the application of Section 112 of
the NIRC of 1997.**

To begin with, the applicable law to the instant claim for refund is the National Internal Revenue Code (NIRC) of 1997 specifically Section 112⁴ which provides:

"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." (emphasis and underscoring supplied)

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It is clear from the above cited provision that the reckoning of the two (2)-year prescriptive period for filing the application for refund/credit of input VAT attributable to zero-rated sales or effectively zero-rated sales shall be counted from the close of the taxable quarter when the sales were made. This provision was used by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon Inc.) (Mirant case)*,⁵ the literal application of which to the instant case is now being questioned by the petitioner. 

⁴ Prior to its amendment under Republic Act (RA) No. 9337.

⁵ *Supra*, note 1.

Petitioner pointed out that the case of *Mirant* does not find application in the instant case and instead it asserted the ruling in the *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*⁶ (*Atlas* case) which provided that the two-year prescriptive period should be reckoned from the date of the filing of the quarterly VAT returns and payment of the tax due. It anchored its claim on the fact that since it filed their Petition for Review on April 22, July 7, and September 9, all in the year 2005, the ruling in *Atlas* case should be applicable and not the latest Supreme Court ruling in the *Mirant* case. It posited that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in a division may be modified or reversed except by the court sitting *en banc*. It further argued that it should not be penalized for having relied in good faith in the rulings laid down in the *Atlas* case as well as that of the previous rulings of this Court in several cases.

We are not persuaded.

First, the applicable provision of law in the instant case which can be found under Section 112 of NIRC of 1997 is clear and unambiguous. Under the *verba legis* rule, if the words of the law are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without any interpretation.⁷ It is not within the province of the Court to inquire into the wisdom of the law, for indeed, we are bound by the words of the statute.⁸ As in the case of *Abello vs. Commissioner of Internal Revenue*⁹ the Supreme Court enunciated: *Je*

⁶ G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.

⁷ *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159610, June 12, 2008, 554 SCRA 398.

⁸ *Commissioner of Customs vs. Manila Star Ferry, Inc.*, G.R. Nos. L-31776-78, October 21, 1993, 227 SCRA 317.

⁹ G.R. No. 120721, February 23, 2005, 452 SCRA 162 citing the case of *Rizal Commercial Banking Corporation vs. Intermediate Appellate Court*, G.R. No. 74851, December 9, 1999, 320 SCRA 279, 289.

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It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application (*Cebu Portland Cement Co. v. Municipality of Naga*, 24 SCRA 708 [1968]).

Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed (*Chartered Bank Employees Association v. Ople*, 138 SCRA 273 [1985]; *Luzon Surety Co., Inc. v. De Garcia*, 30 SCRA 111 [1969]; *Quijano v. Development Bank of the Philippines*, 35 SCRA 270 [1970]).

Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent. Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. A statute is ambiguous if it is admissible of two or more possible meanings, in which case, the Court is called upon to exercise one of its judicial functions, which is to interpret the law according to its true intent.

Second, the *Atlas* ruling was not modified by *Mirant*. It is noteworthy that in the *Atlas* case, petitioner claimed for a refund/credit of the input VAT on its purchases of capital goods for the taxable quarters of the years 1990 and 1992 where the applicable law was the then Tax Code of 1977. In contrast with the *Mirant* case where the present NIRC of 1997 was applied. Clearly, the two cases involved different tax codes. Hence, there is no modification of ruling to speak of.

If indeed there was modification of the *Atlas* ruling, the Supreme Court effected and adopted outright in the *Mirant* case the literal application of Section 112 (A) of the NIRC of 1997 notwithstanding the existence of a contrary rule in the *Atlas* case. Significantly, *Mirant* case itself confirmed the retroactive application of the Supreme Court's current view in the reckoning of the two-year prescriptive period in a claim for refund. *jr*

Further, petitioner's contention of non-retroactivity of *Mirant* ruling runs counter to a more recent decision of the Supreme Court in the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue* (*San Roque* case).¹⁰ In *San Roque* case, petitioner *San Roque* filed a claim for refund of its unutilized input VAT for the period covering January to December 2002. It filed its judicial claim on April 5, 2004. In determining the reckoning of the two-year prescriptive period, the Supreme Court held:

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

It should be emphasized that when *Mirant* case was promulgated, *San Roque* case was already and still pending before the Supreme Court. Yet, the Supreme Court in deciding *San Roque* case, it retroactively adopted *Mirant* ruling. Noticeably, the judicial claim of San Roque was filed even earlier than the judicial claims of herein petitioner(April 5, 2004 for San Roque and April 22, July 7, and September 9, all in the year 2005 for herein petitioner). Hence, We see no reason why We should not adopt the same ruling to the instant case.

Moreso, assuming arguendo that the *Mirant* case modified *Atlas* ruling, it is nonetheless clear that the provision itself, standing alone, provides that input VAT payments attributable to zero-rated or effectively *je*

¹⁰ G.R. No. 180345, November 25, 2009.

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zero-rated sales not otherwise applied against output tax may be claimed **within two years after the close of the taxable quarter when the sales were made.** And, where a provision of law speaks categorically, the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. All that has to be done is to apply it in every case that falls within its terms.¹¹

We do not presume to reverse the current decision of the Supreme Court on the ground that a new ruling or doctrine violates any constitutional provision absent any pronouncement from it as such. It should be noted that the Supreme Court, by tradition and in our system of judicial administration has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take bearings.¹²

Third, the law takes effect from the time of its effectivity and not from the time of the promulgation of a decision applying the law. Considering that the applicable law here is the NIRC of 1997 which took effect on January 1, 1998,¹³ petitioner is very well within its coverage. Notably, it is only upon the effectivity of the statute that legal rights and obligations become available to those entitled by the language of the statute.¹⁴ The validity and obligatory force of a law proceed from the fact that it has first been promulgated.¹⁵

Fourth, the Court's interpretation of the law is part of the law as of the date of its enactment since the Court's interpretation merely establishes contemporary legislative intent that construed the law 

¹¹ *Carmelino F. Pansacola vs. Commissioner of Internal Revenue*, G.R. No. 159991, November 16, 2006, 507 SCRA 81 citing the case of *Allied Brokerage Corporation vs. Commissioner of Customs*, No. L- 27641, August 31, 1971, 40 SCRA 555, 559, 560.

¹² *Commissioner of Internal Revenue vs. Michael J. Lhuiller Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178 citing the case of *GSIS vs. Court of Appeals*, 334 Phils. 163, 175.

¹³ *Ibid.*

¹⁴ *Abakada Guro Party List, et.al. vs. Cesar V. Purisima, et.al.*, G.R. No. 166715, August 14, 2008, 562 SCRA 251.

¹⁵ *Mighty Corporation vs. E. & J. Gallo Winery*, G.R. No. 154342, July 14, 2004, 434 SCRA 473.

purports to carry into effect.¹⁶ Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one, and that is precisely the situation obtaining in this case.¹⁷

Lastly, an action for a tax refund partakes of the nature of an exemption, which cannot be allowed unless granted in the most explicit and categorical language, it is strictly construed against the claimant who must discharge such burden convincingly.¹⁸ Unfortunately, for the petitioner in this case, it failed to discharge the burden as shown by its prescribed claim.

Thus, there is no justifiable reason to depart from the ruling of the Supreme Court in the *Mirant* case.

The sale of a fully depreciated Nissan Patrol is incidental to the VAT zero-rated transaction of the petitioner pursuant to Section 105 of NIRC of 1997,

Petitioner argued that since the primary operation of petitioner is to convert steam delivered or supplied to it by the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) into electricity to be delivered to the National Power Corporation (NPC) for and in behalf of PNOC-EDC, therefore, the sale of the fully depreciated Nissan Patrol does not come within the ambit of the primary operations of petitioner as to be considered having been made in the course of trade or business as provided for under Section 105 of NIRC of 1997. Petitioner further *jr*

¹⁶ *Philippine Constitution Association vs. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506 citing *People vs. Licera*, 65 SCRA 270.

¹⁷ *Kepco Ilijan Corporation vs. Commissioner of Internal Revenue*, C.T.A. Case No. 6590, Resolution dated July 23, 2009 citing *Senarillos vs. Hermosissima, et. al.*, No. L-10662, December 14, 1956, 100 Phil. 501.

¹⁸ *Commissioner of Internal Revenue vs. Acesite (Philippines) Hotel Corporation*, G.R. No. 147295, February 16, 2007, 516 SCRA 93.

argued that since the sale of the Nissan Patrol is a one-time transaction, it should not be subjected to output tax.

We are not persuaded.

Section 105 of NIRC of 1997, as amended states that:

Section 105. Persons Liable – Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

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The phrase 'in the ordinary course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit, private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

Based on the foregoing, the VAT is imposed on a sale or transaction entered into by a person in the course of any trade or business. A transaction will be characterized as having been entered into by a person in the course of trade or business if it is: (1) regularly conducted; and (2) undertaken in pursuit of a commercial or economic activity. Likewise, transactions that are made incidental to the pursuit of a commercial or economic activity are considered as entered into in the course of trade or business. "Incidental" means something else as primary; something necessary, appertaining to, or depending upon another, which is termed the principal. Hence, an isolated transaction is not necessarily disqualified from being made incidentally in the course of trade or business.¹⁹

Here, petitioner's primary business is to convert the steam delivered and supplied to it by PNOC-EDC into electricity to be delivered

¹⁹ *CS Garments vs. Commissioner of Internal Revenue*, C.T.A. EB Case No. 287, January 14, 2008.

- to the NPC for and in behalf of the former. In carrying out its business, petitioner acquired, and eventually sold the fully depreciated Nissan Patrol vehicle. Prior to the sale, the motor vehicle formed part of petitioner's assets being used in its business operations. Therefore, the sale of the motor vehicle is an incidental transaction because the said vehicle was purchased and used in furtherance of petitioner's business.

- **There is no cogent reason to disturb the ruling of the First Division of this Court in upholding the findings of the Independent Certified Public Accountant in disallowing the input taxes being claimed for tax credit or refund.**

- Petitioner argued that the First Division erred in its findings of disallowing the input taxes being claimed for refund or tax credit as it substantially complied with the requisites for refund or tax credit in the total amount of P 522,059.91. First, petitioner claims the input VAT in the amount of P2,090.16 which is the timing difference between the amount of P 1,162,422.46 as evidenced by the acknowledgment receipt by the Government Service Insurance System (GSIS) and the amount of P 1,160,352.30, which is reflected in BIR Form 2307. Second, the input VAT claim in the amount of P 29,861.82 which is derived from a transaction with Tokio Marine Malayan Insurance and Citibank N.A. Manila. Third, the claim of the input VAT in the amount of P 2,752.00, representing the out of the pocket expenses reimbursed to SGV & Company which was included in the computation of the input VAT. Finally, the amount of P 487,355.93 representing the input VAT claims from the purchase of services which are supported by valid 2003 invoices but paid only in 2004 as indicated in the official receipts. *jr*

A further evaluation of the records of the case revealed that the foregoing were all purchases of services, as such, petitioner should satisfy the substantiation requirements as provided for under Section 113(A) in relation to Section 237 of NIRC of 1997 as implemented by Section 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations 7-95 to which petitioner failed to comply.

The doctrine of *strictissimi juris* on tax exemptions cannot be relaxed in this case.

Petitioner claimed that on account of the rationale for the enactment of EPIRA Law and in view of the fact that petitioner undoubtedly falls within the coverage of the EPIRA Law, the doctrine of *strictissimi juris* be relaxed to give effect to the intent of the Legislature.

We are not convinced.

While EPIRA law finds application in this case, it should also be emphasized that this case is a tax refund case involving revenue laws. Revenue laws are not intended to be liberally construed and must be faithfully and strictly implemented as held in the case of *Commissioner of Internal Revenue vs. Acosta*:²⁰

Entrenched in our jurisprudence is the principle that tax refunds are in the nature of tax exemptions which are construed *strictissimi juris* against the taxpayer and liberally in favor of the government. As tax refunds involve a return of revenue from the government, the claimant must show indubitably the specific provision of law from which her right arises; it cannot be allowed to exist upon a mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language *actually used* by the legislature in granting the refund. To repeat, strict compliance with the conditions imposed for the return of revenue collected is a doctrine consistently applied in this jurisdiction.

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²⁰ G.R. No. 154068, August 3, 2007, 529 SCRA 177.

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xxx Revenue statutes are substantive laws and in no sense must their application be equated with that of remedial laws. As well said in a prior case, revenue laws are not intended to be liberally construed. Considering that taxes are the lifeblood of the government and in Holmes's memorable metaphor, the price we pay for civilization, tax laws must be faithfully and strictly implemented.

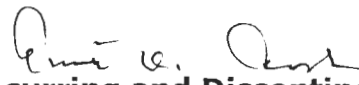
Meanwhile, in the recent case of *San Roque*,²¹ the Supreme Court granted its claim for refund of its unutilized input VAT by liberally construing the sixth requirement in a claim for refund, that is, the existence of zero-rated or effectively zero-rated sales to which creditable input taxes may be attributed. However, We cannot allow the same liberal construction here when the issues confronting the instant case are prescription and substantiation requirements.

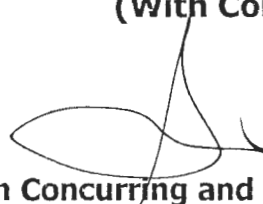
WHEREFORE, on the basis of the foregoing considerations, the Petition for Review *en banc* is **DISMISSED** for lack of merit. Accordingly, the Decision dated September 22, 2008 and the Amended Decision dated June 26, 2009 issued by the First Division are **AFFIRMED**.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:


(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice


(With Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice

²¹ *Supra*, note 10.

DECISION

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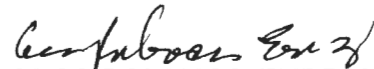
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**(Concurs with the Concurring and
Dissenting Opinion of Justice Bautista)**

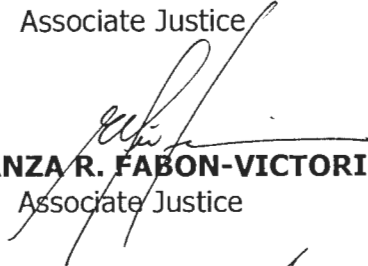
CAESAR A. CASANOVA

Associate Justice



OLGA PALANCA-ENRIQUEZ

Associate Justice



ESPERANZA R. FABON-VICTORINO

Associate Justice



CIELITO N. MINDARO-GRULLA

Associate Justice



AMELIA R. COTANGCO-MANALASTAS

Associate Justice

CERTIFICATION

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



ERNESTO D. ACOSTA

Presiding Justice