

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION*

CE LUZON GEOTHERMAL POWER
COMPANY, INC.,

Petitioner,

C.T.A. CASE NO. 7393

Members:

-versus-

ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

MAR 02, 2010, 9:10 A.M.

x-----x

AMENDED DECISION

BAUTISTA, J.:

For this Court's resolution are the following:

- 1) Petitioner's "Motion for Partial Reconsideration (Re: Decision dated 26 August 2009)," with Annexes, filed on September 22, 2009; "Comment/Opposition (Re: Respondent's Motion for Reconsideration dated 23 September 2009)" filed on October 21,

* The First Division before CTA Administrative Circular No. 01-2010, "Implementing the Fully Expanded Membership in the Court of Tax Appeals," took effect on January 5, 2010.

2009; and "Reply (Re: Respondent's Opposition to Petitioner's Motion for Partial Reconsideration dated 12 October 2009)" filed on October 30, 2009; and

- 2) Respondent's "Motion for Reconsideration (Re: Decision promulgated on 26 August 2009)" filed on September 23, 2009; and "Opposition (Re: Petitioner's Motion for Reconsideration)" filed on October 12, 2009;

On August 26, 2009, the Court promulgated a Decision with the following dispositive portion:

WHEREFORE, petitioner's claim for refund or issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P19,264,022.79, representing its excess/unutilized input VAT for the period covering the four quarters of taxable year 2004.

SO ORDERED.

Petitioner's Motion for Partial Reconsideration

In its Motion for Partial Reconsideration, petitioner moves for the reconsideration of the disallowed input VAT with regard to the amounts of P24,962.13,¹ P19,890.48,² P45,110.75,³ P793,745.14,⁴ P3,045.45,⁵ P258.00,⁶ P19,332.01,⁷

¹ Exhibits "EE" and "MM," Annexes L-1Q-A12, L-2Q-A12, L-3Q-A12, and L-4Q-A12.

² Exhibits "EE" and "MM," Annexes L-1Q-B12, L-2Q-B12, L-3Q-B12, and L-4Q-B12.

³ Exhibits "EE" and "MM," Annexes L-1Q-A7-1, L-2Q-A7-1, L-3Q-A7-1, and L-4Q-A7-1.

⁴ Exhibits "EE" and "MM," Annexes L-1Q-B7-1, L-2Q-B7-1, L-3Q-B7-1, and L-4Q-B7-1.

⁵ Exhibits "EE" and "MM," Annex L-4Q-A18.

⁶ Exhibits "EE" and "MM," Annex L-4Q-B18.

⁷ Exhibits "EE" and "MM," Annexes L-1Q-G4, L-2Q-G4, and L-4Q-G4.

P4,220.70,⁸ P157,551.60,⁹ P38,675.69,¹⁰ P2,440.09,¹¹ P9,375.23,¹² P1,399.09,¹³ and P84,892.41.¹⁴ It proffers the following grounds:

6.1. Based on substantive law:

6.1.1. This Honorable Court erred in ruling that some of Petitioner's official receipts and invoices supporting its unutilized input VAT did not comply with the invoicing requirements of the Tax Code. With due respect, Petitioner submits that this Honorable Court failed to appreciate the legal implications of Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue¹⁵ ("Intel") relative to the rules on substantiation of input VAT.

6.1.1.1. As held in Intel, the indication of the word "TIN-V" (instead of "TIN-VAT") on the official receipts and invoices supporting a taxpayer's input VAT is sufficient for VAT purposes.

6.1.1.2. Under the principle of *stare decisis*, a point of law established by the Supreme Court will generally be followed by the same court and by all courts of lower rank.

6.1.1.3. It is a settled legal principle in administrative law that administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law.

6.1.2. The presentation in evidence of certified true copies of the official receipts and invoices issued by Petitioner's suppliers is not fatal to Petitioner's claim for refund.

6.1.3. This Honorable Court erred when it did not order the refund of the amounts of P19,332.01 and P4,220.70,

⁸ Exhibits "EE" and "MM," Annexes L-1Q-79 to 92, L-1Q-93 to 106, L-1Q-107 to 119, L-1Q-68 to 78, L-2Q-155 to 167, L-2Q-168 to 177, L-2Q-145 to 154, L-3Q-288 to 299, L-3Q-300 to 312, L-3Q-313 to 328, L-4Q-131 to 145, L-4Q-146 to 154, L-4Q-155 to 163.

⁹ Exhibits "EE" and "MM," Annexes L-1Q-499, L-1Q-500, L-1Q-501, L-1Q-502, L-1Q-291, L-1Q-294, L-1Q-296, L-2Q-36, L-2Q-595, L-2Q-596, L-3Q-511, L-4Q-381, and L-4Q-382.

¹⁰ Exhibits "EE" and "MM," Annexes L-2Q-688, L-3Q-1049, L-3Q-1051.

¹¹ Exhibits "EE" and "MM," Annexes L-2Q-420a and L-2Q-402a.

¹² Exhibits "EE" and "MM," Annexes L-4Q-761 and L-4Q-757.

¹³ Exhibit "KK-L3Q."

¹⁴ Exhibits "EE" and "MM," Annexes L-3Q-1391, L-4Q-749 and L-4Q-753.

¹⁵ G.R. No. 166732, April 27, 2007, 522 SCRA 657.

representing input VAT passed-on to Petitioner by its suppliers of petroleum products. Petitioner respectfully submits that, under existing laws and jurisprudence, Petitioner is entitled to claim as refund the input VAT paid by Petitioner on its purchase of petroleum products.

6.1.4. As held in Intel, the BIR authority to print is not among the information required to be indicated in the official receipts and invoices.

6.1.5. Petitioner's documents supporting its purchases of goods and services and importation of goods are (1) issued in the name of Petitioner, (2) properly substantiated by valid official receipts and invoices, (3) properly marked, and (4) properly supported by import entry and internal revenue declarations and official receipts issued by the Bureau of Customs.

6.2. Based on procedural law:

6.2.1. This Honorable Court erred when it failed to consider the Respondent's failure to raise any question regarding the compliance of Petitioner's supporting official receipts and invoices with the invoicing requirements of the Tax Code in promulgating the 26 August 2009 Decision. Thus, the Respondent was deemed to have waived or abandoned any objection which he may have regarding the invoicing requirements.

Petitioner argues that based on the provisions of the National Internal Revenue Code of 1997 and settled jurisprudence, the indication of the word "TIN-V" is sufficient for VAT purposes. Sections 113, 237 and 238 of the Tax Code do not state that a VAT invoice or receipt should contain the words "TIN-VAT" and/or that failure to indicate such words would be tantamount to the disallowance of the input VAT. It also claims that the same requirements were reiterated and confirmed by the Supreme Court in the Intel case, thus, the Court has no reason to deny petitioner's input VAT.



Petitioner asserts as well that only in Revenue Regulations ("R.R.") No. 7-95 did the indication of the words "TIN-VAT" in invoices and receipts were required. Since it is well-settled that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce, an administrative regulation cannot therefore prescribe an additional requirement in the absence of any law amending the Tax Code. It also alleges that even assuming that the indication of the words "TIN-VAT" is a valid regulatory requirement with fatal consequences, it is a mere technicality imposed by the Secretary of Finance which should not prevail over the substantive right to seek refund of unutilized input VAT.

Sections 113, 237 and 238 of the Tax Code, as amended, provide as follows:

SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

(A) *Invoicing Requirements.* – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

(B) *Accounting Requirements.* – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

xxx

xxx

xxx



SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That in the case of sales, receipts or transfers in the amount of One Hundred Pesos (P100.00) or more, regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipt or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer's Identification Number of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section.

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* – All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon the recommendation of the Commissioner.

All persons who print receipts or sales or commercial invoices shall maintain a logbook/register of taxpayers who availed of their

printing services. The logbook/register shall contain the following information:

(1) Names, Taxpayer Identification Numbers of the persons or entities for whom the receipts or sales or commercial invoices were printed; and

(2) Number of booklets, number of sets per booklet, number of copies per set and the serial numbers of the receipts or invoices in each booklet.

Section 4.108-1 of Revenue Regulations ("R.R.") No. 7-95 requires the following:

Sec. 4.108-1. Invoicing Requirements. – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. The name, TIN and address of seller;
2. Date of transaction;
3. Quantity, unit cost and description of merchandise or nature of service;
4. The name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. The word "zero-rated" imprinted on the invoice covering zero-rated sales; and
6. The invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT Invoice." All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the Code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

A perusal of the aforequoted NIRC provisions *vis-à-vis* Section 4.108-1 of R.R. No. 7-95 reveals that contrary to the claim of petitioner, Section 4.108-1 of R.R. No. 7-95, is not without any legal basis. Neither does it conflict with the law it seeks to implement.

In the case of *Marubeni Philippines Corporation v. Commissioner of Internal Revenue*,¹⁶ the Court held that the issuance of R.R. No. 7-95 was made pursuant to respondent's duty of implementing the provisions of the law. It is an act of tax administration which is not violative of the rule on non-delegation of delegated powers.

Further, petitioner's reliance on the Intel case is misplaced. The Court, in a Resolution in *CE Cebu Geothermal Power Company v. Commissioner of Internal Revenue*,¹⁷ elucidated as follows:

It is a cardinal rule of statutory construction that courts must give effect to the general legislative intent that can be discovered from or is unraveled by the four corners of the statute, and in order to discover said intent, the whole statute, and not only a particular provision thereof, should be considered.

Petitioner failed to consider Section 110 of the Tax Code of 1997, which provides as follows:

SEC. 110. Tax Credits. –

(A) Creditable Input Tax. –

¹⁶ C.T.A. EB Case No. 319 (C.T.A. Case No. 6215), June 23, 2008.

¹⁷ C.T.A. Case Nos. 6791 & 6836, Resolution dated October 6, 2008.

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

xxx xxx xxx

(b) Purchase of services on which a value-added tax has been actually paid.

xxx xxx xxx

By virtue of the foregoing provision, it is clear that the input VAT shall be creditable to the output VAT when such input VAT is "evidenced by a VAT invoice or official receipt."

The Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, provided the definition of the term "VAT Invoice" under Section 4.108-1 of Revenue Regulations No. (R.R.) 7-95, thus:

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT Invoice." All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

The said Revenue Regulations was promulgated for the effective enforcement of the provisions of the Tax Code of 1997.

The rule is that as long as administrative issuances relate solely to carrying into effect the provisions of the law, they are valid and have the force of law. Here, there is no indication that, in defining the term "VAT Invoice" under the said Regulations, the Secretary of Finance went beyond the terms and provisions of the Tax Code. In fact, it is quite the opposite, since it aids taxpayers in identifying which are considered as a "VAT Invoice" for the purpose of claiming input VAT.

Furthermore, it is noteworthy that the above-quoted Section 110 was recently re-enacted under Section 8 of Republic Act (R.A.) No. 9337.



By virtue of such re-enactment, the principle of legislative approval of administrative interpretation by re-enactment clearly obtains in this case. The principle provides that "the re-enactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction." Stated differently, when a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the Legislature thereafter re-enacts the provisions without substantial change, such action is to some extent confirmatory that the ruling carries out the legislative purpose.

In the interpretation of re-enacted statutes the Court will follow the construction which they received when previously in force. The Legislature will be presumed to know the effect which such statute originally had, and by re-enactment to intend that they should again have the same effect. It is not necessary that a statute should be re-enacted in identical words in order that the rule may apply. It is sufficient if it is re-enacted in substantially the same words. The rule has been held to apply to the re-enactment of a statute which received a practical construction on the part of those who are called upon to execute it.

In the *Intel* case, the purchasers of goods of petitioner therein are foreign entities which are, logically, not VAT-registered in our country nor liable to pay VAT in our jurisdiction; while in this case, the sole customer of petitioner is a local entity, the Philippine National Oil Company-Energy Development Corporation, which, in all probability, is a VAT-registered person or at least liable to pay VAT in this jurisdiction.

In the *Intel* case, the evil sought to be avoided in requiring the imprinting of the words "zero-rated" and/or "TIN-VAT" on the invoice or official receipt covering zero-rated transactions is *not* present. Such being the case, petitioner cannot simply dismiss the invoicing requirements as "mere technicality" imposed by the Secretary of Finance.

Thus, Section 4.108-1 of R.R. No. 7-95 does not in any way amplify the context of Sections 113, 237 and 238 of the NIRC, but is a preventive measure to ensure the



effective implementation of the Tax Code. As such, it is a valid regulation which has the force and effect of the law, and partakes of the nature of a statute.¹⁸

Petitioner likewise asserts that the Court erred in disallowing the input VAT paid on domestic purchases of goods and services in the amounts of P3,045.45, and P258.00, or in the aggregate amount of P3,303.45 on the ground that the supporting invoices were only certified true copies of the original. Considering that the Independent Certified Public Accountant ("CPA") affirmed the questioned official receipts and invoices, and that respondent chose not to interpose any objection, nor present any evidence against the present claim, the same constitutes sufficient evidence for claiming refund of unutilized input VAT incurred. Thus, it claims that the denial was based merely on account of technicality and/or misapprehension of facts.

A scrutiny of the invoice and official receipts in the amounts of P3,045.45¹⁹ and P258.00,²⁰ reveals that it was noted "certified true copy" by Mr. Paul Gaw, and stamped "certified true xerox copy" by Mr. Erlito B. Magallanes, respectively.

Lest it be overlooked, the Rules of Court is of suppletory application in this Court,²¹ and Section 3 of Rule 130 of the Revised Rules of Court expressly provides that when the subject of the inquiry is the contents of the document, no evidence shall be admissible other than the original document itself. Further, under Section 20 of Rule 132 of the Revised Rules of Court, before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved

¹⁸ *Mirant (Navotas II) Corporation (formerly: Southern Energy Navotas II Power, Inc.) v. Commissioner of Internal Revenue*, C.T.A. EB No. 226 (C.T.A. Case Nos. 6636 and 6728), September 11, 2007.

¹⁹ *Exhibit "KK," Annex "L-4Q-462a."*

²⁰ *Exhibit "KK," Annex "L-4Q-616c."*

²¹ Section 3 of Rule 1 of the Revised Rules of the Court of Tax Appeals.



either: (a) by anyone who saw the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker. Any other private document need only be identified as that which it is claimed to be.

While there is no fixed criterion as to what constitutes competent evidence to establish the authenticity of a private document, the best proof available must be presented.²²

In the case of *Commissioner of Internal Revenue v. Manila Mining Corporation*,²³ the Supreme Court enunciated:

Thus, CTA Circular No. 1-95 provides:

1. The party who desires to introduce as evidence such voluminous documents must present: (a) Summary containing the total amount/s of the tax account or tax paid for the period involved and a chronological or numerical list of the numbers, dates and amounts covered by the invoices or receipts; and (b) a Certification of an independent Certified Public Accountant attesting to the correctness of the contents of the summary after making an examination and evaluation of the voluminous receipts and invoices. Such summary and certification must properly be identified by a competent witness from the accounting firm.
2. The method of individual presentation of each and every receipt or invoice or other documents for marking, identification and comparison with the originals thereof need not be done before the Court or the Commissioner anymore after the introduction of the summary and CPA certification. It is enough that the receipts, invoices and other documents covering the said accounts or payments must be pre-marked by the party concerned and submitted to the Court in order to be made accessible to the adverse party whenever she/he desires to check and verify the

²² Bough v. Cantiveros, 40 Phil. 213 (1919).

²³ G.R. No. 153204, August 31, 2005, 468 SCRA 571.



correctness of the summary and CPA certification. However, the originals of the said receipts, invoices or documents should be ready for verification and comparison in case doubts on the authenticity of the particular documents presented is raised during the hearing of the case.

The circular, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the Court. It does not relieve respondent of its imperative task of pre-marking photocopies of sales receipts and invoices and submitting the same to the court **after the independent CPA shall have examined and compared them with the originals**. Without presenting these pre-marked documents as evidence – from which the summary and schedules were based, the court cannot verify the authenticity and veracity of the independent auditor's conclusions. (*Boldfacing supplied*)

Inasmuch as the invoice and official receipt were never authenticated, and the Court-commissioned Independent CPA had examined and compared only the certified true copies, the Court cannot verify the authenticity and veracity of the said documents.

It is to be stressed that the purpose of requiring the production of original documents is for the prevention of fraud or inaccuracy. It serves as a protection against erroneous or inaccurate depiction of the contents of the documents which may be attributable to mistake in memory, faulty transcription, or plain and simple bad faith. And it is only upon satisfactory showing that the original document cannot be produced due to its loss or destruction that the best available secondary proof of its evidence may be permitted.²⁴

Petitioner also asseverates that the Court erred in disallowing the input VAT in amount of P38,675.69 on the ground that the supporting official receipts and

²⁴ Section 5 of Rule 130 of the Revised Rules of Court.



invoices did not contain the BIR's authority to print. It maintains that the official receipts and invoices in the amount of P38,675.69 show the BIR's authority to print. In any case, it invokes the case of Intel, wherein the Supreme Court held that the BIR's authority to print is not among the required information needed to be indicated in the official receipts and invoices.

The Court verified that *Exhibits "EE" and "MM," Annex L-3Q-1049 and Annex L-3Q-1051*, which support the input VAT in the amounts of P1,527.27 and P2,625.45, respectively, did contain the required BIR's authority to print. However, *Annex "L-2Q-688,"* which supports the input VAT of P34,522.97, pre-marked by the Independent CPA, failed to include in the machine copy the BIR authority to print as compared to that attached by the petitioner in its Motion for Partial Reconsideration.

In the recent case of *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue*,²⁵ the Supreme Court affirmed the ruling in the Intel case that the "BIR authority to print" is *not* one of the items required to be indicated on the invoices or receipts.

Therefore, the amounts of P1,527.27, P2,625.45, and P34,522.97 shall be allowed by the Court. Consequently, the amount granted in the assailed Decision shall be increased from P19,264,022.79 to P19,302,698.48.

Petitioner likewise points out the following: (1) that the supporting invoices and official receipts were issued in the name of CE Luzon Geothermal Power Company, Inc.; (2) that the input VAT on purchases of goods and services were

²⁵ G.R. No. 178090, February 8, 2010.



properly supported by VAT invoices and VAT official receipts; (3) that the input VAT in the amount of P1,399.09 paid and incurred from purchases of goods from Techno Mech Industrial Corporation is properly supported by Invoice No. 1442; and (4) that the importations of goods are properly supported by Import Entry and Internal Revenue Declarations ("IEIRD") and official receipts issued by the Bureau of Customs. Since the findings of the Independent CPA on petitioner's compliance with the invoicing requirements cannot be downplayed, it argues that the official receipts and invoices contain all the needed information to substantiate its input VAT.

The Court does not agree.

A review of the records reveals that the invoices and official receipts examined and verified by the Independent CPA were not issued in the name of petitioner as compared to the annexes attached in petitioner's Motion for Partial Reconsideration. Likewise, the amounts of P1,477.27²⁶ and P962.82²⁷ were supported by documents other than a VAT invoice, and the amounts of P5,500.00²⁸ and P3,875.23²⁹ were supported by documents other than a VAT official receipt.

The Court also confirms the denial of the amount of P1,399.09, and the IEIRDs with its respective official receipts issued by the Bureau of Customs in the light of Section 34 of Rule 132 of the Revised Rules of Court prescribing that no evidence shall be considered unless formally offered. To allow a party to submit such evidence goes against the orderly administration of justice. Thus, the belatedly-

²⁶ Exhibits "EE" and "MM," Annex L-2Q-420a.

²⁷ Exhibit "EE" and "MM," Annex L-2Q-402a.

²⁸ Exhibit "EE" and "MM," Annex L-4Q-761.

²⁹ Exhibit "EE" and "MM," Annex L-4Q-757.



submitted official receipts and unmarked document cannot be made as a basis for the reconsideration of the assailed Decision.

Petitioner further contends that prior to the effectivity of Republic Act No. 9337 on November 1, 2005, Section 109(e) of the Tax Code exempts from VAT the sale or importation of petroleum products. Considering that the suppliers levied and passed-on the VAT knowing that at the time when the transaction took place such is exempt therefrom, and that it is undisputed that petitioner actually paid the input VAT passed-on by the suppliers from the purchases during calendar year 2004, such input VAT paid constitutes erroneously paid taxes under Section 229 of the Tax Code. Thus, pursuant to Section 113(d) of the Tax Code, Section 4.113-4 of Revenue Regulations No. 16-05, and Revenue Memorandum Circular No. 62-05, it is entitled to refund of the input VAT on its purchases of petroleum products in the amount of P23,552.71.

Section 4.103-1 of R.R. No. 7-95 provides:

SEC 4.103-1. Exemptions. – (A) In general. – An exemption means that the sale of goods or properties and/or services and the use or lease of properties is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid.

The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject to VAT. On the other hand, **a VAT-registered purchaser of VAT-exempt goods/properties or services which are exempt from VAT is not entitled to any input tax on such purchase despite the issuance of a VAT invoice or receipt.** (*Boldfacing supplied*)

Clearly, petitioner is not entitled to any refund or credit on input taxes it previously paid as provided under the afore-quoted provision.



Finally, petitioner posits that it presented credible, verifiable and un rebutted evidence to prove its entitlement to its claim for refund or tax credit. It argues that since a claim for tax refund necessitates only the preponderance of evidence threshold like in any ordinary civil case, and further, respondent failed to rebut the evidence despite plenty of opportunities to evaluate the veracity and the completeness of the evidence, both in the administrative and judicial level, petitioner has presented evidence to overcome the burden. Thus, it is entitled to the full amount of its claim for refund or tax credit.

The Court, consistent with the principle that “taxes are the lifeblood of the nation,” must emphasize that claimants of tax refunds bear the burden of proving the factual basis of their claims, for tax refunds are in the nature of tax exemptions, and the statutes of which are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.

To simply allow petitioner to prevail and compel a tax refund or credit without proving its claim would not be proper. As an important facet of the government, such cannot be left to the sole control and discretion of the taxpayer.³⁰

Respondent's Motion for Reconsideration

On the other hand, respondent's ground for its Motion for Reconsideration is as follows:

PETITIONER IS NOT ENTITLED TO THE REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF P22,764,594.40, REPRESENTING UNUTILIZED INPUT VAT COVERING THE FIRST TO FOURTH QUARTER (SIC) OF TAXABLE YEAR 2004.



³⁰ San Carlos Milling Corporation Co., Inc. v. Commissioner of Internal Revenue, G.R. No. 103379, November 23, 1993, 228 SCRA 13

For his part, respondent argues that based on Section 112 of the Tax Code, the Petition for Review was filed beyond the prescriptive period based on the following table:

Date when Administrative claim for refund was filed	120 days under Section 112(D) of the NIRC of 1997	30 days under Section 112(D) of the NIRC of 1997	Last day for filing the Petition for Review with the CTA	Date when Petition for Review was filed before the CTA
April 12, 2005 (First Quarter of Taxable Year 2004)	April 13 to August 8, 2005	August 9 to September 7, 2005	September 7, 2005	December 29, 2005
December 14, 2005 (Second to Fourth Quarter of Taxable Year 2004)	December 15, 2005 to April 13, 2006	April 14 to May 13, 2006	May 13, 2006	December 29, 2005

From the foregoing, and considering that claims for refund are held in *strictissimi juris* against the taxpayer, respondent avers that clearly the Petition for Review filed before this Court was made beyond the prescriptive period.

The Court does not agree.

The Court had succinctly held in the case of *Commissioner of Internal Revenue v. CE Cebu Geothermal Power Company, Inc., and vice versa*,³¹ that the use of the word “may” in Section 112 (D) indicates that judicial recourse within thirty days after the lapse of the 120-day period is directory and permissive, and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Section 229³² of the NIRC. It is a well-settled doctrine in statutory

³¹ C.T.A. EB Nos. 426 & 427 (C.T.A. Case Nos. 6791 & 6836), May 29, 2009.

³² SECTION 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

construction that the word “may” when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.

Thus, a taxpayer cannot be faulted for taking advantage of the full two-year period set by law for filing a claim for refund for there is no provision in the Tax Code requiring the claim for refund to be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the Court to review the ruling of the Commissioner of Internal Revenue on appeal.³³

In view therefore, respondent’s Motion for Reconsideration must fail.

WHEREFORE, petitioner’s Motion for Partial Reconsideration is hereby **PARTIALLY GRANTED.** The Decision dated August 26, 2009 is hereby **MODIFIED.** On the other hand, respondent’s Motion for Reconsideration is hereby **DENIED** for lack of merit.

Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of petitioner in the increased amount of P19,302,698.48, representing its excess/unutilized input VAT for the period covering the four quarters of taxable year 2004.

SO ORDERED.

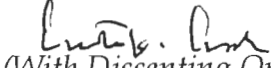


LOVELL R. BAUTISTA
Associate Justice

the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

³³ Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc., C.T.A. EB No. 416 (C.T.A. Case No. 7271), February 4, 2009.

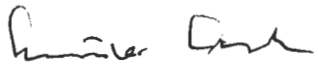
WE CONCUR:


(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice


CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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's Division.


ERNESTO D. ACOSTA
Presiding Justice