

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

SPECIAL FIRST DIVISION

MIRANT NAVOTAS CORPORATION
(formerly: Southern Energy
Navotas, Inc.),

Petitioner,

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

C.T.A. CASE NO. 6960

Members:

ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.

Promulgated:

JUN 07 2010 3:30 pm

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AMENDED DECISION

BAUTISTA, J.:

The Court resolves the following:

1. petitioner's *Motion for Reconsideration (re: Amended Decision dated August 11, 2009)* filed on August 28, 2009, praying for the reaffirmation of the *Decision* dated November 13, 2008;
2. respondent's *Motion for Reconsideration* filed on September 2, 2009, praying for the denial of petitioner's claim for refund in its entirety; and
3. petitioner's *Comment (on Respondent's Second Motion for Reconsideration dated September 1, 2009)* filed on September 18, 2009.

On November 13, 2008, the Court promulgated its *Decision* on the present case, the dispositive portion of which states:



"WHEREFORE, with the foregoing disquisitions, the *Petition for Review* is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P2,220,608.01, representing its unutilized input VAT for taxable year 2002.

SO ORDERED."

Consequently, respondent filed a *Motion for Reconsideration* on December 8, 2008; while petitioner filed a *Comment (on Respondent's Motion for Reconsideration)* on January 23, 2009.

On August 11, 2009, the Court rendered an *Amended Decision* with the following dispositive portion:

"WHEREFORE, premises considered, respondent's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED** and the *Decision* dated November 13, 2008 is hereby **MODIFIED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of P1,483,975.00, representing petitioner's unutilized input VAT for taxable year 2002.

SO ORDERED."

Inasmuch as both parties rely on different grounds for their *Motions for Reconsideration*, each *Motion* will be discussed separately.

On August 28, 2009, petitioner filed a *Motion for Reconsideration (re: Amended Decision dated August 11, 2009)* alleging the following assigned errors:

1. Petitioner's administrative and judicial claims for refund of excess and unutilized input VAT corresponding to the first quarter of 2002 were filed within the period provided in the National Internal Revenue Code (NIRC) of 1997;¹ and
2. The case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation* is not applicable and does not provide that the judicial action for VAT refund must also be filed within two (2) years from the close of taxable quarter.²

¹ Docket, p. 502

² Docket, p. 505



Petitioner argues that Section 112(A) of the NIRC of 1997, as amended, clearly provides that it is the "application" for the issuance of tax credit certificate or refund of creditable input tax that must be made within two years after the close of the taxable quarter. There is nothing in the said provision which states that the judicial action with this Court must likewise be filed within the said two-year period. In fact, it is Section 112(C) of the same Code which governs the filing of a judicial action for refund, providing that a taxpayer has thirty (30) days from either the receipt of the decision of the Commissioner denying the application, or the expiration of the one hundred twenty (120)-day period given to the Commissioner to resolve the application.

Petitioner also contends that in the case of **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)**³, what the Supreme Court ruled upon was the application for VAT refund with respondent Commissioner; which must be filed within the two-year period from the close of the pertinent taxable quarter. The High Court did not declare that the judicial action must likewise be filed within the said two-year period.

In resolving the same, the Court hereby stresses that every section, provision or clause of a statute must be expounded by reference to each other in order to arrive at the effect contemplated by the legislature.⁴ The intention of the legislator must be ascertained from the whole text of the law and every part of the act is to be taken into view.

Applying the aforesaid rule, it is necessary to consider not only Section 112 of the NIRC of 1997, but also the other provisions of the Tax Code.

³ G.R. No. 172129, September 12, 2008

⁴ Chartered Bank vs. Imperial, G.R. No. L-17222, March 15, 1921



Sections 112(A) and (D) of the NIRC of 1997 provide as follows:

"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:

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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." (*Emphasis supplied*)

It has been consistently held that the administrative claim and the subsequent appeal to this Court must be filed within the two-year prescriptive period.⁵ In the case of **Gibbs, et al. vs. Collector of Internal Revenue, et al.**⁶, the Highest Tribunal held that if the Collector (now Commissioner) takes time in deciding the claim and the two-year period is about to end, the suit or proceeding must be started in this Court before the end of the two-year period without awaiting the decision of the Collector. After all, after the two-year period, the taxpayer can no longer appeal to this Court.⁷

⁵ Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., et al., G.R. No. L-24108, January 3, 1968

⁶ G.R. No. L-13453, February 29, 1960

⁷ Commissioner of Internal Revenue vs. Accenture, Inc., C.T.A. EB No. 410 (C.T.A. Case No. 7387), March 18, 2009



Section 229 of the same Code further bolstered the two-year period requirement, to wit:

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*

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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: xxx" (Emphasis supplied)**

In the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue⁸**, the Supreme Court made the following pronouncements:

"Lastly, although the taxpayer's refundable or creditable input VAT may not be considered as illegally or erroneously collected, its refund/credit is a privilege extended to qualified and registered taxpayers by the very VAT system adopted by the Legislature. Such input VAT, the same as any illegally or erroneously collected national internal revenue tax, consists of monetary amounts which are currently in the hands of the government but must rightfully be returned to the taxpayer. Therefore, whether claiming refund/credit of illegally or erroneously collected national internal revenue tax, or input VAT, the taxpayer must be given equal opportunity for filing and pursuing its claim.

For the foregoing reasons, it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter. xxx"

The Court likewise takes note of the recent case of **TeaM Energy Corporation (Formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue⁹**, where this Court held:

⁸ G.R. Nos. 141104 and 148763, June 8, 2007

⁹ C.T.A. Case Nos. 7229 and 7298, October 5, 2009



"Although there is a recent case entitled *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly SOUTHERN ENERGY QUEZON, INC.)*, wherein the Supreme Court held that the reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made, this Court finds it proper to apply said ruling to cases filed after the promulgation date of the *Mirant Case*. To apply said ruling in the present case will in effect be giving the new doctrine retroactive application thereby impairing vested rights."

Following the afore-quoted decisions, the administrative and judicial claims for refund of excess input VAT must both be filed within two years from the filing of the Quarterly VAT Return.

Records indicate that petitioner filed its Quarterly VAT Returns for taxable year 2002 and filed the administrative and judicial claims on the following dates:

Period	Date Filed	Date Filed Administrative Claim	Date Filed Judicial Claim
1st Quarter	April 25, 2002	December 23, 2003	April 22, 2004
2nd Quarter	July 26, 2002	December 23, 2003	April 22, 2004
3rd Quarter	October 25, 2002	December 23, 2003	April 22, 2004
4th Quarter	January 27, 2003	December 23, 2003	April 22, 2004

Per this Court's findings, as stated in the assailed *Amended Decision*, petitioner has a substantiated input VAT of P2,221,335.28, detailed as follows:

	Findings	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
I.	Input taxes on domestic purchases of goods that are supported by VAT invoices and purchases of services that are supported by VAT ORs (<i>Annex 6</i>)	P 677,206.28	P 822,330.01	P 403,139.20	P 258,505.79	P 2,161,181.28
II.	Input tax on an importation of goods that is supported by original bank OR and photocopied IED certified as true copy of the BOC (<i>Annex 7</i>)	60,154.00				60,154.00
	Total	P737,360.28	P822,330.01	P403,139.20	P258,505.79	P2,221,335.28

Based on the foregoing, petitioner's claim for the first quarter of taxable year 2002 was timely filed; hence, the input VAT of P737,360.28 corresponding to

the said quarter will also be allowed. Accordingly, petitioner's input tax attributable to zero-rated sales for the first, second, third, and fourth quarters of taxable year 2002 now amounts to P2,221,335.28. From the substantiated input VAT of P2,221,335.28, the output VAT of P727.27 shall be deducted, leaving a refundable excess input VAT of P2,220,608.01.

The Court now proceeds to address respondent's *Motion*.

Respondent filed his *Motion for Reconsideration* on September 2, 2009, interposing the following ground:

"THE HONORABLE COURT ERRED IN RULING THAT IT IS FOR PETITIONER TO DETERMINE WHICH DOCUMENTS TO SUBMIT IN THE ADMINISTRATIVE APPLICATION FOR REFUND"

Respondent asserts that the submission of complete documents in the administrative proceedings is a requirement established by law and jurisprudence. Section 112(D) of the NIRC of 1997 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. Revenue Memorandum Order No. 53-98 purportedly enumerates all the required documents for substantiation of refund claims.

Respondent alleges that petitioner merely submitted five (5) classes of documents in the administrative proceedings, as evidenced by BIR records and as stated in the letter applying for refund dated December 19, 2003. Consequently, petitioner's failure to comply with the duly mandated legal requirements for claims for refund/tax credit warranted the denial by inaction of the administrative claim.

Respondent's *Motion* is unmeritorious.



It has been said often that the determination of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.¹⁰ And in the absence of abuse or improvident exercise of authority, findings of facts made by the Court must be accorded deference and respect.¹¹

This Court had already ruled in several cases that once the *Petition for Review* is filed, the Court acquires jurisdiction over the claim, and it is not bound to wait indefinitely for whatever action respondent may take. At stake are claims for refund and unlike assessments, no decision of respondent is required before one can go to this Court.¹²

In the *Comment (on Respondent's Second Motion for Reconsideration dated September 1, 2009)*, petitioner points out that respondent's *Motion for Reconsideration* is a prohibited pleading under Section 7 of Rule 15 of the Revised Rules of the Court of Tax Appeals. Furthermore, petitioner asseverates that respondent failed to present any evidence on the alleged non-submission of documents.

Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, provides:

"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.

¹⁰ El Greco Ship Manning and Management Corporation vs. Commissioner of Customs, C.T.A. EB No. 172 (C.T.A. Case No. 6618), March 14, 2007

¹¹ Union Refinery Corporation vs. Commissioner of Customs, C.T.A. EB No. 149 (C.T.A. Case No. 5917), January 15, 2007

¹² Commissioner of Internal Revenue vs. Toledo Power, Inc., C.T.A. EB No. 321, May 7, 2008



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All other cases involving rulings, orders or decisions filed with the CTA as provided for in Section 7 shall be raffled to its Divisions. **A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration or new trial before the same Division of the CTA within fifteen (15) days from notice thereof: xxx" (Emphasis supplied)**

Corollary thereto, the *Amended Decision* dated August 11, 2009 was rendered pursuant to Section 3 of Rule 14 of the Revised Rules of the Court of Tax Appeals, to quote:

"SEC. 3. *Amended decision.* – Any action modifying or reversing a decision of the Court *en banc* or in Division shall be denominated as Amended Decision."

In the case at bar, since an *Amended Decision* was issued and respondent was not satisfied with the same, it can file a *Motion for Reconsideration* of the *Amended Decision* before this Court, pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals, to wit:

"SECTION 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question."

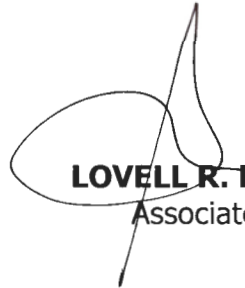
Hence, respondent's *Motion for Reconsideration* is not a prohibited pleading.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration* is hereby **DENIED** for lack of merit; while petitioner's *Motion for Reconsideration* is hereby **GRANTED**. Accordingly, the *Amended Decision* dated August 11, 2009 is hereby **MODIFIED**. Respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in



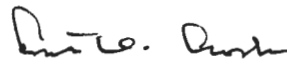
the amount of P2,220,608.01, representing its excess input VAT for taxable year 2002.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:



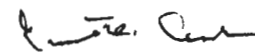
(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice



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
Chairperson, First Division

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

SPECIAL FIRST DIVISION

MIRANT NAVOTAS CORPORATION
(Formerly: Southern Energy
Navotas, Inc.)

CTA Case Nos. 6960

Petitioner,

Members:

- versus -

ACOSTA, Chairperson,
BAUTISTA, and,
CASANOVA, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

JUN 07 2010 ; 3:30 pm

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CONCURRING AND DISSENTING OPINION

I am in conformity with the majority in denying respondent's Motion for Reconsideration. I also concur with the prospective application of the ruling in *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*¹ with this case, which in effect granted herein petitioner's Motion for Reconsideration and ordered the refund or issuance of a tax credit certificate in favor of petitioner in the amount of P2,220,608.81.

I, however, disagree with the application by the majority of Section 229 of the 1997 NIRC with regard the period of two (2) years within which to file the judicial claim for refund or issuance of a tax credit certificate.



¹ GR No. 172129, September 12, 2008.

I would like to elucidate that the partial grant of refund or the issuance of a tax credit certificate to petitioner should be by virtue of its compliance to both Sections 112(A) and 112(D) and not Section 229 of the 1997 NIRC.

Notably, Sections 112(A) and (D)² of the 1997 NIRC specifically provide the basis and procedure for refunds or tax credits of input tax attributable to zero-rated sales. Conversely, Section 229³ of the 1997 NIRC applies generally to the recovery of taxes erroneously or illegally assessed or collected.

Sections 112(A) and (D), being specific provisions, prevail over Section 229 of the NIRC. As have already been established, a special and specific provision prevails over a general provision irrespective of their relative position in the statute. *Generalia specialibus non derogant*. Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the

² Section 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 of 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.

(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. (Emphasis Ours).

³ 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 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. (Emphasis Ours)



particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment. It is a principle in statutory construction that where two statutes are of equal theoretical application to a particular case, the one specially designed for said case must prevail over the other.⁴

In contrast with Section 229, Sections 112 (A) and (D) of the NIRC provide a period of two (2) years within which a VAT-registered person may apply for the issuance of a tax credit certificate or refund of excess or unutilized input VAT attributable to zero-rated sale after the close of the taxable quarter and an appeal be made to the CTA within thirty (30) days from the receipt of the decision of the Commissioner denying the claim or after the expiration of the one hundred twenty-day period of inaction of the Commissioner.

Applying the foregoing in the case at bar, there is no question as to the application of Section 112(A) with regard the administrative claim with the BIR. However, as to the 120-day period, under Section 112 (D), which ends on April 21, 2004, reckoned from the petitioner's application for refund or tax credit with the BIR on December 23, 2003, petitioner has 30-days therefrom within which to file the judicial claim with the CTA. Petitioner's filing of the judicial claim on April 22, 2004 is well within the thirty day period provided in Section 112(D) of the NIRC.

Therefore, petitioner's claim for refund or issuance of a tax credit certificate representing its excess input VAT for taxable year 2002 is granted pursuant to Sections 112(A) and (D) of the 1997 NIRC.


ERNESTO D. ACOSTA
Presiding Justice

⁴ *Commissioner of Customs v. Hon. Court of Tax Appeals, Smith Bell & Co.*, GR No. L-41861, March 23, 1987.