586 Phil. 712

SECOND DIVISION

[G.R. No. 172129, September 12, 2008]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MIRANT PAGBILAO CORPORATION (FORMERLY SOUTHERN ENERGY QUEZON, INC.), RESPONDENT.

D E C I S I O N

VELASCO JR., J.:

Before us is a Petition for Review on Certiorari under Rule 45 assailing and seeking to set aside the Decision[1] dated December 22, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 78280 which modified the March 18, 2003 Decision[2] of the Court of Tax Appeals (CTA) in CTA Case No. 6133 entitled *Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue* and ordered the Bureau of Internal Revenue (BIR) to refund or issue a tax credit certificate (TCC) in favor of respondent Mirant Pagbilao Corporation (MPC) in the amount representing its unutilized input value added tax (VAT) for the second quarter of 1998. Also assailed is the CA's Resolution[3] of March 31, 2006 denying petitioner's motion for reconsideration.

The Facts

MPC, formerly Southern Energy Quezon, Inc., and also formerly known as Hopewell (Phil.) Corporation, is a domestic firm engaged in the generation of power which it sells to the National Power Corporation (NPC). For the construction of the electrical and mechanical equipment portion of its Pagbilao, Quezon plant, which appears to have been undertaken from 1993 to 1996, MPC secured the services of Mitsubishi Corporation (Mitsubishi) of Japan.

Under Section 13[4] of Republic Act No. (RA) 6395, the NPC's revised charter, NPC is exempt from all taxes. In *Maceda v. Macaraig*,[5] the Court construed the exemption as covering both direct and indirect taxes.

In the light of the NPC's tax exempt status, MPC, on the belief that its sale of power generation services to NPC is, pursuant to Sec. 108(B)(3) of the Tax Code,[6] zero-rated for VAT purposes, filed on December 1, 1997 with Revenue District Office (RDO) No. 60 in Lucena City an Application for Effective Zero Rating. The application covered the

construction and operation of its Pagbilao power station under a Build, Operate, and Transfer scheme.

Not getting any response from the BIR district office, MPC refiled its application in the form of a "request for ruling" with the VAT Review Committee at the BIR national office on January 28, 1999. On May 13, 1999, the Commissioner of Internal Revenue issued VAT Ruling No. 052-99, stating that "the supply of electricity by Hopewell Phil. to the NPC, shall be subject to the zero percent (0%) VAT, pursuant to Section 108 (B) (3) of the National Internal Revenue Code of 1997."

It must be noted at this juncture that consistent with its belief to be zero-rated, MPC opted not to pay the VAT component of the progress billings from Mitsubishi for the period covering April 1993 to September 1996--for the E & M Equipment Erection Portion of MPC's contract with Mitsubishi. This prompted Mitsubishi to advance the VAT component as this serves as its output VAT which is essential for the determination of its VAT payment. Apparently, it was only on April 14, 1998 that MPC paid Mitsubishi the VAT component for the progress billings from April 1993 to September 1996, and for which Mitsubishi issued Official Receipt (OR) No. 0189 in the aggregate amount of PhP 135,993,570.

On August 25, 1998, MPC, while awaiting approval of its application aforestated, filed its quarterly VAT return for the second quarter of 1998 where it reflected an input VAT of PhP 148,003,047.62, which included PhP 135,993,570 supported by OR No. 0189. Pursuant to the procedure prescribed in Revenue Regulations No. 7-95, MPC filed on December 20, 1999 an administrative claim for refund of unutilized input VAT in the amount of PhP 148,003,047.62.

Since the BIR Commissioner failed to act on its claim for refund and obviously to forestall the running of the two-year prescriptive period under Sec. 229 of the National Internal Revenue Code (NIRC), MPC went to the CTA via a petition for review, docketed as CTA Case No. 6133.

Answering the petition, the BIR Commissioner, citing *Kumagai-Gumi Co. Ltd. v. CIR*,[7] asserted that MPC's claim for refund cannot be granted for this main reason: MPC's sale of electricity to NPC is not zero-rated for its failure to secure an approved application for zero-rating.

Before the CTA, among the issues stipulated by the parties for resolution were, in gist, the following:

1. Whether or not [MPC] has unapplied or unutilized creditable input VAT for the 2nd quarter of 1998 attributable to zero-rated sales to NPC which are proper subject for refund pursuant to relevant provisions of the NIRC;

2. Whether the creditable input VAT of MPC for said period, if any, is

substantiated by documents; and

3. Whether the unutilized creditable input VAT for said quarter, if any, was applied against any of the VAT output tax of MPC in the subsequent quarter.

To provide support to the CTA in verifying and analyzing documents and figures and entries contained therein, the Sycip Gorres & Velayo (SGV), an independent auditing firm, was commissioned.

The Ruling of the CTA

On the basis of its affirmative resolution of the first issue, the CTA, by its Decision dated March 18, 2003, granted MPC's claim for input VAT refund or credit, but only for the amount of PhP 10,766,939.48. The *fallo* of the CTA's decision reads:

> In view of all the foregoing, the instant petition is PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to REFUND or in the alternative, ISSUE A TAX CREDIT CERTIFICATE in favor of the petitioner its unutilized input VAT payments directly attributable to its effectively zero-rated sales for the second quarter of 1998 in the reduced amount of P10,766,939.48, computed as follows:
>
> Claimed Input VAT P148,003,047.62
>
> Less: Disallowances
>
> a.) As summarized by SGV & Co. in its initial report (Exh. P)
>
> I. Input Taxes on Purchases of Services:
> 1. Supported by documents other than VAT Ors P 10,629.46
> 2. Supported by photocopied VAT OR 879.09
> II. Input Taxes on Purchases of Goods:
> 1. Supported by documents other than VAT invoices 165,795.70
> 2. Supported by Invoices with TIN only 1,781.82
> 3. Supported by photocopied VAT invoices 3,153.62
> III. Input Taxes on Importation of Goods:
> 1. Supported by photocopied documents [IEDs and/or Bureau of Customs (BOC) Ors] 716,250.00

2.	Supported by broker's computations	91,601.00	990,090.69
b.)	Input taxes without supporting documents as summarized in Annex A of SGV & Co.'s supplementary report (CTA records, page 134)		252,447.45
c.)	Claimed input taxes on purchases of services from Mitsubishi Corp. for being substantiated by dubious OR		135,996,570.00[8]
	Refundable Input		P10,766,939.48

SO ORDERED.[9]

Explaining the disallowance of over PhP 137 million claimed input VAT, the CTA stated that most of MPC's purchases upon which it anchored its claims for refund or tax credit have not been amply substantiated by pertinent documents, such as but not limited to VAT ORs, invoices, and other supporting documents. Wrote the CTA:

> We agree with the above SGV findings that out of the remaining taxes of P136,246,017.45, the amount of P252,477.45 was not supported by any document and should therefore be outrightly disallowed.
>
> As to the claimed input tax of P135,993,570.00 (P136,246,017.45 less P252,477.45) on purchases of services from Mitsubishi Corporation, Japan, the same is found to be of doubtful veracity. While it is true that said amount is substantiated by a VAT official receipt with **Serial No. 0189** dated April 14, 1998 x x x, it must be observed, however, that said VAT allegedly paid pertains to the services which were rendered for the period 1993 to 1996. x x x

The Ruling of the CA

Aggrieved, MPC appealed the CTA's Decision to the CA via a petition for review under Rule 43, docketed as CA-G.R. SP No. 78280. On December 22, 2005, the CA rendered its assailed decision modifying that of the CTA decision by granting most of MPC's claims for tax refund or credit. And in a Resolution of March 31, 2006, the CA denied the BIR Commissioner's motion for reconsideration. The decretal portion of the CA decision reads:

> WHEREFORE, premises considered, the instant petition is GRANTED. The assailed Decision of the Court of Tax Appeals dated March 18, 2003 is hereby

MODIFIED. Accordingly, respondent Commissioner of Internal Revenue is ordered to refund or issue a tax credit certificate in favor of petitioner Mirant Pagbilao Corporation its unutilized input VAT payments directly attributable to its effectively zero-rated sales for the second quarter of 1998 in the total amount of P146,760,509.48.

SO ORDERED.[10]

The CA agreed with the CTA on MPC's entitlement to (1) a zero-rating for VAT purposes for its sales and services to tax-exempt NPC; and (2) a refund or tax credit for its unutilized input VAT for the second quarter of 1998. Their disagreement, however, centered on the issue of proper documentation, particularly the evidentiary value of OR No. 0189.

The CA upheld the disallowance of PhP 1,242,538.14 representing zero-rated input VAT claims supported only by photocopies of VAT OR/Invoice, documents other than VAT Invoice/OR, and mere broker's computations. But the CA allowed MPC's refund claim of PhP 135,993,570 representing input VAT payments for purchases of goods and/or services from Mitsubishi supported by OR No. 0189. The appellate court ratiocinated that the CTA erred in disallowing said claim since the OR from Mitsubishi was the best evidence for the payment of input VAT by MPC to Mitsubishi as required under Sec. 110(A)(1)(b) of the NIRC. The CA ruled that the legal requirement of a VAT Invoice/OR to substantiate creditable input VAT was complied with through OR No. 0189 which must be viewed as conclusive proof of the payment of input VAT. To the CA, OR No. 0189 represented an undisputable acknowledgment and receipt by Mitsubishi of the input VAT payment of MPC.

The CA brushed aside the CTA's ruling and disquisition casting doubt on the veracity and genuineness of the Mitsubishi-issued OR No. 0189. It reasoned that the issuance date of the said receipt, April 14, 1998, must be taken conclusively to represent the input VAT payments made by MPC to Mitsubishi as MPC had no real control on the issuance of the OR. The CA held that the use of a different exchange rate reflected in the OR is of no consequence as what the OR undeniably attests and acknowledges was Mitsubishi's receipt of MPC's input VAT payment.

The Issue

Hence, the instant petition on the sole issue of "whether or not respondent [MPC] is entitled to the refund of its input VAT payments made from 1993 to 1996 amounting to [PhP] 146,760,509.48."[11]

The Court's Ruling

As a preliminary matter, it should be stressed that the BIR Commissioner, while making reference to the figure PhP 146,760,509.48, joins the CA and the CTA on their disposition on the propriety of the refund of or the issuance of a TCC for the amount of PhP

10,766,939.48. In fine, the BIR Commissioner trains his sight and focuses his arguments on the core issue of whether or not MPC is entitled to a refund for PhP 135,993,570 (PhP 146,760,509.48 - PhP 10,766,939.48 = PhP 135,993,570) it allegedly paid as creditable input VAT for services and goods purchased from Mitsubishi during the 1993 to 1996 stretch.

The divergent factual findings and rulings of the CTA and CA impel us to evaluate the evidence adduced below, particularly the April 14, 1998 OR 0189 in the amount of PhP 135,996,570 [for US$ 5,190,000 at US$1: PhP 26.203 rate of exchange]. Verily, a claim for tax refund may be based on a statute granting tax exemption, or, as *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*[12] would have it, the result of legislative grace. In such case, the claim is to be construed *strictissimi juris* against the taxpayer,[13] meaning that the claim cannot be made to rest on vague inference. Where the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, the claimant must show that he clearly falls under the exempting statute. On the other hand, a tax refund may be, as usually it is, predicated on tax refund provisions allowing a refund of erroneous or excess payment of tax. The return of what was erroneously paid is founded on the principle of *solutio indebiti*, a basic postulate that no one should unjustly enrich himself at the expense of another. The caveat against unjust enrichment covers the government.[14] And as decisional law teaches, a claim for tax refund proper, as here, necessitates only the preponderance-of-evidence threshold like in any ordinary civil case.[15]

We apply the foregoing elementary principles in our evaluation on whether OR 0189, in the backdrop of the factual antecedents surrounding its issuance, sufficiently proves the alleged unutilized input VAT claimed by MPC.

The Court can review issues of fact where there are divergent findings by the trial and appellate courts

As a matter of sound practice, the Court refrains from reviewing the factual determinations of the CA or reevaluate the evidence upon which its decision is founded. One exception to this rule is when the CA and the trial court diametrically differ in their findings,[16] as here. In such a case, it is incumbent upon the Court to review and determine if the CA might have overlooked, misunderstood, or misinterpreted certain facts or circumstances of weight, which, if properly considered, would justify a different conclusion.[17] In the instant case, the CTA, unlike the CA, doubted the veracity of OR No. 0189 and did not appreciate the same to support MPC's claim for tax refund or credit.

Petitioner BIR Commissioner, echoing the CTA's stand, argues against the sufficiency of OR No. 0189 to prove unutilized input VAT payment by MPC. He states in this regard that the BIR can require additional evidence to prove and ascertain payment of creditable input VAT, or that the claim for refund or tax credit was filed within the prescriptive period, or

had not previously been refunded to the taxpayer.

To bolster his position on the dubious character of OR No. 0189, or its insufficiency to prove input VAT payment by MPC, petitioner proffers the following arguments:

(1) The input tax covered by OR No. 0189 pertains to purchases by MPC from Mitsubishi covering the period from 1993 to 1996; however, MPC's claim for tax refund or credit was filed on December 20, 1999, clearly way beyond the two-year prescriptive period set in Sec. 112 of the NIRC;

(2) MPC failed to explain why OR No. 0189 was issued by Mitsubishi (Manila) when the invoices which the VAT were originally billed came from the Mitsubishi's head office in Japan;

(3) The exchange rate used in OR No. 0189 was pegged at PhP 26.203: USD 1 or the exchange rate prevailing in 1993 to 1996, when, on April 14, 1998, the date OR No. 0189 was issued, the exchange rate was already PhP 38.01 to a US dollar;

(4) OR No. 0189 does not show or include payment of accrued interest which Mitsubishi was charging and demanded from MPC for having advanced a considerable amount of VAT. The demand, per records, is embodied in the May 12, 1995 letter of Mitsubishi to MPC;

(5) MPC failed to present to the CTA its VAT returns for the second and third quarters of 1995, when the bulk of the VAT payment covered by OR No. 0189--specifically PhP 109,329,135.17 of the total amount of PhP 135,993,570--was billed by Mitsubishi, when such return is necessary to ascertain that the total amount covered by the receipt or a large portion thereof was not previously refunded or credited; and

(6) No other documents proving said input VAT payment were presented except OR No. 0189 which, considering the fact that OR No. 0188 was likewise issued by Mitsubishi and presented before the CTA but admittedly for payments made by MPC on progress billings covering service purchases from 1993 to 1996, does not clearly show if such input VAT payment was also paid for the period 1993 to 1996 and would be beyond the two-year prescriptive period.

The petition is partly meritorious.

Belated payment by MPC of its obligation for creditable input VAT

As no less found by the CTA, citing the SGV's report, the payments covered by OR No. 0189 were for goods and service purchases made by MPC through the progress billings from Mitsubishi for the period covering April 1993 to September 1996--for the E & M Equipment Erection Portion of MPC's contract with Mitsubishi.[18] It is likewise undisputed that said payments did not include payments for the creditable input VAT of

MPC. This fact is shown by the May 12, 1995 letter[19] from Mitsubishi where, as earlier indicated, it apprised MPC of the advances Mitsubishi made for the VAT payments, i.e., MPC's creditable input VAT, and for which it was holding MPC accountable for interest therefor.

In net effect, MPC did not, for the VATable MPC-Mitsubishi 1993 to 1996 transactions adverted to, immediately pay the corresponding input VAT. OR No. 0189 issued on April 14, 1998 clearly reflects the belated payment of input VAT corresponding to the payment of the progress billings from Mitsubishi for the period covering April 7, 1993 to September 6, 1996. SGV found that OR No. 0189 in the amount of PhP 135,993,570 (USD 5,190,000) was duly supported by bank statement evidencing payment to Mitsubishi (Japan).[20] Undoubtedly, OR No. 0189 proves payment by MPC of its creditable input VAT relative to its purchases from Mitsubishi.

OR No. 0189 by itself sufficiently proves payment of VAT

The CA, citing Sec. 110(A)(1)(B) of the NIRC, held that OR No. 0189 constituted sufficient proof of payment of creditable input VAT for the progress billings from Mitsubishi for the period covering April 7, 1993 to September 6, 1996. Sec. 110(A)(1)(B) of the NIRC pertinently provides:

> **Section 110.** *Tax Credits.* -
>
> A. *Creditable Input Tax.* -
>
> (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:
>
> x x x x
>
> (b) **Purchase of services on which a value-added tax has been actually paid**. (Emphasis ours.)

Without necessarily saying that the BIR is precluded from requiring additional evidence to prove that input tax had indeed paid or, in fine, that the taxpayer is indeed entitled to a tax refund or credit for input VAT, we agree with the CA's above disposition. As the Court distinctly notes, the law considers a duly-executed VAT invoice or OR referred to in the above provision as sufficient evidence to support a claim for input tax credit. And any doubt as to what OR No. 0189 was for or tended to prove should reasonably be put to rest by the SGV report on which the CTA notably placed much reliance. The SGV report stated that "[OR] No. 0189 dated April 14, 1998 is for the payment of the VAT on the progress billings" from Mitsubishi Japan "for the period April 7, 1993 to September 6, 1996 for the

E & M Equipment Erection Portion of the Company's contract with Mitsubishi Corporation (Japan)."[21]

VAT presumably paid on April 14, 1998

While available records do not clearly indicate when MPC actually paid the creditable input VAT amounting to PhP 135,993,570 (USD 5,190,000) for the aforesaid 1993 to 1996 service purchases, the presumption is that payment was made on the date appearing on OR No. 0189, i.e., April 14, 1998. In fact, said creditable input VAT was reflected in MPC's VAT return for the second quarter of 1998.

The aforementioned May 12, 1995 letter from Mitsubishi to MPC provides collaborating proof of the belated payment of the creditable input VAT angle. To reiterate, Mitsubishi, via said letter, apprised MPC of the VAT component of the service purchases MPC made and reminded MPC that Mitsubishi had advanced VAT payments to which Mitsubishi was entitled and from which it was demanding interest payment. Given the scenario depicted in said letter, it is understandable why Mitsubishi, in its effort to recover the amount it advanced, used the PhP 26.203: USD 1 exchange formula in OR No. 0189 for USD 5,190,000.

No showing of interest payment not fatal to claim for refund

Contrary to petitioner's posture, the matter of nonpayment by MPC of the interests demanded by Mitsubishi is not an argument against the fact of payment by MPC of its creditable input VAT or of the authenticity or genuineness of OR No. 0189; for at the end of the day, the matter of interest payment was between Mitsubishi and MPC and may very well be covered by another receipt. But the more important consideration is the fact that MPC, as confirmed by the SGV, paid its obligation to Mitsubishi, and the latter issued to MPC OR No. 0189, for the VAT component of its 1993 to 1996 service purchases.

The next question is, whether or not MPC is entitled to a refund or a TCC for the alleged unutilized input VAT of PhP 135,993,570 covered by OR No. 0189 which sufficiently proves payment of the input VAT.

We answer the query in the negative.

Claim for refund or tax credit filed out of time

The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:

> (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: x x x. (Emphasis ours.)

The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not**. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued."[22] Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed.

Reckoning for prescriptive period under Secs. 204(C) and 229 of the NIRC inapplicable

To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:

Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*-- The Commissioner may -

x x x x

(c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

x x x x

> Sec. 229. *Recovery of Tax Erroneously or Illegally Collected.*-- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, 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.)

Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.

MPC's creditable input VAT not erroneously paid

For perspective, under Sec. 105 of the NIRC, creditable input VAT is an indirect tax which can be shifted or passed on to the buyer, transferee, or lessee of the goods, properties, or services of the taxpayer. The fact that the subsequent sale or transaction involves a wholly-tax exempt client, resulting in a zero-rated or effectively zero-rated transaction, does not, standing alone, deprive the taxpayer of its right to a refund for any unutilized creditable input VAT, albeit the erroneous, illegal, or wrongful payment angle does not enter the equation.

In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, the Court explained the nature of the VAT and the entitlement to tax refund or credit of a zero-rated taxpayer:

> Viewed broadly, the VAT is a uniform tax x x x levied on every importation of goods, whether or not in the course of trade or business, or imposed on each sale, barter, exchange or lease of goods or properties or on each rendition of services in the course of trade or business as they pass along the production and distribution chain, the tax being limited only to the value added to such goods, properties or services by the seller, transferor or lessor. It is an indirect tax that may be shifted or passed on to the buyer, transferee or lessee of the goods,

properties or services. As such, it should be understood not in the context of the person or entity that is primarily, directly and legally liable for its payment, but in terms of its nature as a tax on consumption. In either case, though, the same conclusion is arrived at.

The law that originally imposed the VAT in the country, as well as the subsequent amendments of that law, has been drawn from the *tax credit method*. Such method adopted the mechanics and self-enforcement features of the VAT as first implemented and practiced in Europe x x x. Under the present method that relies on invoices, an entity can credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports.

If at the end of a taxable quarter the output taxes charged by a seller are equal to the input taxes passed on by the suppliers, no payment is required. It is when the output taxes exceed the input taxes that the excess has to be paid. If, however, the input taxes exceed the output taxes, the excess shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer or credited against other internal revenue taxes.

x x x x

Zero-rated transactions generally refer to the export sale of goods and supply of services. The **tax rate is set at zero**. When applied to the tax base, such rate obviously results in no tax chargeable against the purchaser. **The seller of such transactions charges no output tax, but can claim a refund of or a tax credit certificate for the VAT previously charged by suppliers**.[23] (Emphasis added.)

Considering the foregoing discussion, it is clear that Sec. 112(A) of the NIRC, providing a two-year prescriptive period reckoned from the close of the taxable quarter when the relevant sales or transactions were made pertaining to the creditable input VAT, applies to the instant case, and not to the other actions which refer to erroneous payment of taxes.

As a final consideration, the Court wishes to remind the BIR and other tax agencies of their duty to treat claims for refunds and tax credits with proper attention and urgency. Had RDO No. 60 and, later, the BIR proper acted, instead of sitting, on MPC's underlying application for effective zero rating, the matter of addressing MPC's right, or lack of it, to tax credit or refund could have plausibly been addressed at their level and perchance freed the taxpayer and the government from the rigors of a tedious litigation.

The all too familiar complaint is that the government acts with dispatch when it comes to tax collection, but pays little, if any, attention to tax claims for refund or exemption. It is

high time our tax collectors prove the cynics wrong.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated December 22, 2005 and the Resolution dated March 31, 2006 of the CA in CA-G.R. SP No. 78280 are **AFFIRMED** with the **MODIFICATION** that the claim of respondent MPC for tax refund or credit to the extent of PhP 135,993,570, representing its input VAT payments for service purchases from Mitsubishi Corporation of Japan for the construction of a portion of its Pagbilao, Quezon power station, is **DENIED** on the ground that the claim had prescribed. Accordingly, petitioner Commissioner of Internal Revenue is ordered to refund or, in the alternative, issue a tax credit certificate in favor of MPC, its unutilized input VAT payments directly attributable to its effectively zero-rated sales for the second quarter in the total amount of PhP 10,766,939.48.

No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

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[1] *Rollo*, pp. 32-44. Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Andres B. Reyes, Jr. and Monina Arevalo-Zenarosa.

[2] Id. at 47-63. Penned by Presiding Judge Ernesto D. Acosta concurred in by Associate Judges Juanito C. Castañeda, Jr. and Lovell R. Bautista.

[3] Id. at 45-46.

[4] Sec. 13. Non-profit Character of the Corporation; **Exemption from all Taxes, Duties, Fees, Imposts and other Charges by Government and Governmental Instrumentalities**. - The [NPC] shall be non-profit and shall devote all its returns x x x as well as excess revenues from its operation, for expansion. To enable [NPC] to pay its indebtedness and obligations x x x [it] is hereby declared exempt:

> (a) From the payment of all taxes, duties, fees, imposts, charges, costs and service x x x and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;
>
> (b) From all income taxes, franchise taxes and realty taxes x x x;
>
> (c) From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and

(d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power.

[5] G.R. No. 88291, May 31, 1991, 197 SCRA 771.

[6] *Transactions Subject to Zero Percent (%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero-percent rate: x x x (3) Services rendered to persons whose exemption under special laws x x x effectively subjects the supply of such services to zero percent (0%) rate.

[7] CTA Case No. 4670, July 29, 1997.

[8] Should be 135,99**3**,570.00 as per this petition and CA decision.

[9] Supra note 2, at 62.

[10] Supra note 1, at 43.

[11] *Rollo*, p. 15.

[12] G.R. Nos. 167274-75, July 21, 2008.

[13] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, citing *Commissioner of Internal Revenue v. Solidbank Corp.,* G.R. No. 148191, November 25, 2003, 416 SCRA 436, 461.

[14] *Commissioner of Internal Revenue v. Fireman's Fund Insurance Co.*, No. L-30644, March 9, 1987, 148 SCRA 315, cited in *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, supra.

[15] *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, ibid.

[16] *Uy v. Villanueva*, G.R. No. 157851, June 29, 2007, 526 SCRA 73, 84.

[17] *Samala v. Court of Appeals*, G.R. No. 130826, February 17, 2004, 423 SCRA 142, 146.

[18] *Rollo*, p. 57.

[19] Id. at 60.

[20] Id. at 57.

[21] Id.

[22] Id. at 37.

[23] G.R. No. 153866, February 11, 2005, 451 SCRA 132, 141-143.
