Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MIRAMAR FISH COMPANY, INC., Petitioner,	**G.R. No. 185432** Present:
- versus -	CARPIO, *J.*, Chairperson, BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 04 2014

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DECISION

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the 18 November 2008 Decision[1] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 375 affirming *in toto* the 22 October 2007 Decision and the 19 February 2008 Resolution of the Second Division of the CTA (CTA in Division) in C.T.A. Case No. 6905, which denied due course and dismissed petitioner's claim for the issuance of a tax credit certificate (TCC) in its favor representing the alleged unutilized and/or unapplied input Value Added Tax (VAT) on purchases of goods and services attributable to zero-rated sales in the amount of ₱12,741,136.81 for taxable years 2002 and 2003.

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1 *Rollo*, pp. 59-77; Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Olga Palanca-Enriquez concurring; while Presiding Justice Ernesto D. Acosta issued a Concurring and Dissenting Opinion thereto.

The Facts

The undisputed factual antecedents of the case, as stipulated by the parties,[2] are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Brgy. Recodo, Zamboanga City. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended, with VAT Registration No. 01-930-001570-V and Tax Identification No. (TIN) 005-847-661. On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.

On 4 June 2002, petitioner was registered with the Board of Investments (BOI) as a new export producer of canned tuna and canned pet food with non-pioneer status, having been issued BOI Certificate of Registration No. EP 2002-077.

Petitioner filed its Quarterly VAT Returns (BIR Form No. 2550Q) for taxable year 2002 with the BIR on the following dates:

Particular Quarter	**Date of Filing of Quarterly VAT Return**
First Quarter	25 April 2002
Second Quarter	8 July 2002
Third Quarter	22 October 2002
Fourth Quarter	27 January 2003

The administrative claim for refund in the form of a TCC of petitioner's alleged unutilized input VAT in the amount of ₱6,751,751.65 for taxable year 2002 was filed with the BIR on 24 February 2003.[3]

Petitioner filed its Quarterly VAT Returns (BIR Form No. 2550Q) for taxable year 2003 with the BIR on the following dates:

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2 Id. at 113-115; Joint Stipulation of Facts and Issues, Annex "D," Petition for Review.

3 Id. at 127-128; Letter of Request for VAT Claim dated 24 February 2003, Annex "F-1," Petition for Review.

Particular Quarter	Date of Filing Quarterly VAT Return
First Quarter	10 April 2003
Second Quarter	16 July 2003
Third Quarter	17 October 2003
Fourth Quarter	26 January 2004

Its administrative claim for refund in the form of a TCC of the alleged unutilized input VAT in the amount of ₱5,895,912.38 for taxable year 2003 was thereafter filed on 15 March 2004.[4]

Subsequently, an administrative claim for the refund or issuance of a TCC in the aggregate amount of ₱12,741,136.81 allegedly representing unutilized or unapplied VAT input taxes attributable to petitioner's zero-rated transactions or its export sales for taxable years 2002 and 2003, was filed on 25 March 2004.[5]

Consequently, since no final action has been taken by respondent on petitioner's various administrative claims, the latter filed a Petition for Review before the CTA on 30 March 2004 docketed as C.T.A. Case No. 6905.

The Ruling of the CTA in Division

In a Decision dated 22 October 2007,[6] the CTA in Division denied due course and dismissed petitioner's claim for the issuance of a TCC on the sole ground that the sales invoices presented in support thereof did not comply with the invoicing requirements provided for under Section 113[7] of

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4 Id. at 129-130; Letter of Request for VAT Claim dated 15 March 2004, Annex "F-2," Petition for Review.

5 Id. at 122-126; Letter dated 25 March 2004, Annex "E," Petition for Review.

6 Id. at 162-181; Penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy concurring.

7 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; 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.*

the NIRC of 1997, as amended, and Section 4.108-1 of Revenue Regulations (RR) No. 7-95.[8] The court *a quo* explained that petitioner's failure to indicate that it is a VAT-registered entity and/or to imprint the word "zero-rated" on the subject invoices or receipts were fatal to its claim; hence, it was left with no other recourse but to deny petitioner's claim. Having rendered such ruling, the CTA in Division decided not to pass upon other incidental issues raised before it for being moot.[9]

On 19 February 2008, the CTA in Division denied petitioner's Motion for Reconsideration for lack of merit.

Aggrieved, respondent appealed to the CTA *En Banc* by filing a Petition for Review under Section 18 of Republic Act (RA) No. 1125, as amended by RA No. 9282, on 2 April 2008, docketed as C.T.A. EB No. 375.

The Ruling of the CTA En Banc

The CTA *En Banc* ruled in its 18 November 2008 Decision,[10] that the contentions raised by petitioner are mere reiterations of its arguments contained in its Motion for Reconsideration of the 22 October 2007 Decision in C.T.A. Case No. 6905. Simply put, it dismissed the petition and affirmed in its entirety the subject Decision and Resolution of the CTA in Division considering that it found no cogent reason and justification to disturb the findings and conclusion spelled out therein.

Consequently, this Petition for Review wherein petitioner seeks the reversal of the aforementioned Decision for being not in accord with the law and the applicable Decisions of this Court, constituting a departure from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision, based on the following grounds:

> A. PETITIONER HAS COMPLIED WITH THE STATUTORY REQUIREMENTS FOR CLAIMING A REFUND OF EXCESS AND UNUTILIZED INPUT VAT UNDER SECTION 112(A), IN

> (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. (Italics supplied)

8 *Rollo*, pp. 175-176; CTA in Division Decision dated 22 October 2007, Annex "H," Petition for Review.

9 Id. at 180.

10 Id. at 59-77.

RELATION TO SECTION 106(A)(2)(A)(1), TAX CODE. COMPLIANCE WITH THE INVOICING REQUIREMENTS UNDER THE TAX CODE AND RR NO. 7-95 IS NOT A CONDITION PRECEDENT FOR CLAIMING A REFUND OF EXCESS AND UNUTULIZED INPUT VAT UNDER SECTION 106(A)(2)(A)(1), IN RELATION TO SECTION 112(A) OF THE TAX CODE.

B. THERE IS NOTHING IN THE TAX CODE AND IN RR NO. 7-95 WHICH STATES THAT FAILURE TO COMPLY WITH THE BIR'S INVOICING REQUIREMENTS WILL NULLIFY THE VAT ZERO-RATING OF AN EXPORT SALE UNDER SECTION 106(A)(2)(A)(1) OF THE TAX CODE.

C. BASED ON THE SUPREME COURT'S RULING IN INTEL CASE, FAILURE TO INDICATE THE WORDS "TIN-V" AND "ZERO-RATED" ON THE INVOICES COVERING EXPORT SALES IS NOT FATAL TO A TAXPAYER'S CLAIM FOR REFUND OF EXCESS INPUT VAT UNDER SECTION 112(A), IN RELATION TO SECTION 106(A)(2)(A)(1) OF THE TAX CODE.

D. REVENUE MEMORANDUM CIRCULAR NO. 42-03 IS INVALID BECAUSE IT OVERRIDES THE CLEAR PROVISION OF THE TAX CODE.[11]

The Issue

The issue for this Court's consideration is whether or not petitioner is entitled to a TCC in the amount of ₱12,741,136.81 allegedly representing its excess and unutilized input VAT for the taxable years 2002 and 2003, in accordance with the provisions of the NIRC of 1997, as amended, other pertinent laws, and applicable jurisprudential proclamations.

Our Ruling

In view of the recent pronouncements made in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[12] which has finally settled the issue on proper observance of the prescriptive periods in claiming for refund of creditable input tax due or paid attributable to any zero-rated or effectively zero-rated sales, we find a need for this Court to review the factual findings of the CTA in order to attain a complete determination of the issue presented.

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11 Id. at 25-26.

12 G.R. Nos. 187485, 196113, and 197156, 12 February 2013, 690 SCRA 336.

At the outset, this Court is not unaware that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised.[13] The Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the [CTA] are conclusive and binding on the Court[14] – and they carry even more weight when the [CTA *En Banc*] affirms the factual findings of the trial court.[15] However, this Court had recognized several exceptions to this rule,[16] including instances when the appellate court manifestly overlooked relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

Records of this case reveal that the CTA in Division in C.T.A. Case No. 6905 merely focused on the strict compliance with the invoicing and accounting requirements set forth under Sections 113 and 237 of the NIRC of 1997, as amended, in relation to Section 4.108-1 of Revenue Regulations (RR) No. 7-95. These same findings were adopted and affirmed *in toto* by the CTA *En Banc* in the assailed 18 November 2008 Decision.[17]

While the invoicing requirements is a valid issue, we find it imperative to first and foremost determine whether or not the CTA properly acquired jurisdiction over petitioner's claim covering taxable years 2002 and 2003, taking into consideration the timeliness of the filing of its judicial claim pursuant to Section 112 of the NIRC of 1997, as amended, and consistent with the pronouncements made in the *San Roque* case. Clearly, the claim of petitioner for the TCC can proceed only upon compliance with the jurisdictional requirement.

Section 7 of RA No. 1125,[18] which was thereafter amended by RA No. 9282,[19] clearly defined the appellate jurisdiction of the CTA:

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13 *Salcedo v. People*, 400 Phil. 1302, 1304 (2000).

14 *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, 28 April 2004, 428 SCRA 79, 85-86.

15 *Borromeo v. Sun*, 375 Phil. 595, 602 (1999).

16 *Supra* note 14.

17 *Rollo*, pp. 59-77.

18 "AN ACT CREATING THE COURT OF TAX APPEALS" which took effect on 16 June 1954.

19 "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO.1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES" which took effect on 23 April 2004. This Act was a consolidation of Senate Bill No. No. 2712 and House Bill No. 6673 finally passed by the Senate and the House of Representatives on 8 December 2003 and 2 February 2004, respectively.

> **Section 7. *Jurisdiction***. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.
>
> (1) **Decisions of the Collector of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;[20] (Emphasis supplied)
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> x x x x

Relative thereto, Section 11 of the same law prescribes how the said appeal should be taken, to wit:

> **Section 11. *Who may appeal; effect of appeal.*** – Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals **may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling**. [21] (Emphasis and underscoring supplied)

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[20] RA 9282 amended this provision as follows:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**; x x x (Emphasis supplied)

[21] RA 9282 amended this provision as follows:

> 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**.

x x x x

The timeliness in the administrative and judicial claims can be found in Section 112 of the NIRC of 1997, as amended. It reads:

> 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: x x x
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> x x x x
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> (D)[22] *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) 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.**
>
> x x x x (Emphasis and underscoring supplied)

As earlier stated, the proper interpretation of the above-quoted provision was finally settled in the *San Roque* case[23] by this Court sitting *En Banc*. The relevant portions of the discussion pertinent to the focal issue in the present case are quoted hereunder as follows:

> To repeat, a claim for tax refund or credit, like a claim for tax refund exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is

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> **Appeal should be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days** from the receipt of the decision or ruling or **in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. x x x (Emphasis supplied)

22 Presently Section 112(C) upon the effectivity of Republic Act No. 9337 on 1 November 2005.

23 Supra note 12.

> **compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional**.[24] (Emphasis supplied)

In *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue,* ,[25] the Second Division of this Court, in applying therein the ruling in the *San Roque* case, provided a Summary of Rules on Prescriptive Periods Involving VAT as a guide for all parties concerned, to wit:

> We summarize the rules on the determination of **the prescriptive period for filing a tax refund or credit of *unutilized input VAT* as provided in Section 112 of the 1997 Tax Code,** as follows:
>
> (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. **If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.**
>
> (3) **A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.**
>
> (4) **All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.**[26] (Emphasis supplied)

Certainly, it is evident from the foregoing jurisprudential pronouncements that a taxpayer-claimant only had a limited period of thirty (30) days from the expiration of the 120-day period of inaction of the Commissioner of Internal Revenue (CIR) to file its judicial claim with the

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24 Id. at 398-399.
25 G.R. Nos. 193301 and 194637, 11 March 2013, 693 SCRA 49.
26 Id. at 89.

CTA, with the exception of claims made during the effectivity of BIR Ruling No. DA-489-03 (from 10 December 2003 to 5 October 2010).[27] Failure to do so, the judicial claim shall prescribe or be considered as filed out of time.

Applying the foregoing discussion in the case at bench, although it appears that petitioner has indeed complied with the required two-year period within which to file a refund/tax credit claim with the BIR by filing its administrative claims on 24 February 2003 and 25 March 2004 (within the period from the close of the taxable quarters for the years 2002 and 2003, respectively, when the relevant sales or purchases were made), this Court finds that petitioner's corresponding judicial claim insofar as to the four quarters of taxable year 2002 was filed beyond the 30-day period, detailed hereunder as follows:

Taxable year (close of taxable quarters)	*Filing date of the administrative claim (within the 2-year period)*	*Last day of the 120-day period under Section 112(D) from the date of submission of complete documents in support of its application*	*Last day of the 30-day period to judicially appeal said inaction*	*Filing date of the Petition for Review*
Taxable year 2002 1st Quarter (31 March 2002) 2nd Quarter (30 June 2002) 3rd Quarter (30 September 2002) 4th Quarter (31 December 2002)	24 February 2003[28]	24 June 2003	**24 July 2003**	**30 March 2004**
Taxable year 2003 1st Quarter (31 March 2003) 2nd Quarter (30 June 2003) 3rd Quarter (30 September 2003) 4th Quarter (31 December 2003)	25 March 2004[29]	23 July 2004	**22 August 2004**	**30 March 2004**

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27 "BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the '**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review**." See *Commissioner of Internal Revenue v. San Roque Power Corporation,* supra note 12 at 401.

28 *Rollo*, pp. 127-128; Included thereto is a Transmittal Receipt showing that petitioner simultaneously submitted complete documents in support of its application for refund covering taxable year 2002.

29 Id. at 122-126

Section 112(D) specifically states that in case of failure on the part of the respondent to act on the application within the 120-day period prescribed by law, petitioner only has thirty (30) days after the expiration of the 120-day period to appeal the unacted claim with the CTA. Since petitioner's judicial claim for the aforementioned quarters for taxable year 2002 was filed before the CTA only on 30 March 2004,[30] which was way beyond the mandatory 120+30 days to seek judicial recourse, such non-compliance with the mandatory period of thirty (30) days is fatal to its refund claim on the ground of prescription.

Distinctly, in its attempt to justify the timeliness of its judicial claim covering taxable year 2002, petitioner made it appear in its Letter dated 25 March 2004 that there has been an amendment on its administrative claim covering taxable year 2002. It explained:

> We wish to make it clear that this letter, insofar as the 2002 claim is concerned, amends the original claim for refund or issuance of TCC filed on February 24, 2003. **Please note that the difference between the amount claimed in the original administrative claim filed (P6,751,751.65) and that claimed in this letter (P6,845,224.42) is in view of the fact that the original claim merely took into consideration the amount which, at that time, could be supported by the "Summary Name of Suppliers, Invoices and Official Receipts". As abovementioned, the amount for 2002 subject of the instant claim is based on the figures reflected in the VAT returns filed for 2002**.[31] (Emphasis supplied)

However, we are not persuaded by such allegation considering that while there was a supposed difference in the amounts being claimed for refund in the Letter of Request for VAT Claim dated 24 February 2003 and in the Letter dated 25 March 2004, a scrutiny of the subject letters reveals that both rely on the figures reflected in the VAT returns filed for 2002. Contrary to petitioner's assertion, the Transmittal Receipt attached to the 24 February 2003 Letter visibly shows that it has simultaneously submitted various documents in support of its 2002 claim, including a copy of the VAT return for 2002.[32] Thus, this Court cannot consider the subsequent Letter dated 25 March 2004 to have amended the previous one covering its refund claim for taxable year 2002. For this reason, failure of petitioner to observe the 30-day period under Section 112 of the NIRC of 1997, as amended, through its belated filing of the Petition for Review before the CTA warrants a dismissal with prejudice for lack of jurisdiction.

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30 More than eight (8) months had lapsed since the last day allowed by law to file the appropriate judicial claim.

31 *Rollo*, p. 123; Letter dated 25 March 2004, p. 2, Annex "E," Petition for Review.

32 Id. at 128.

On the other hand, this Court has allowed the amendment of petitioner's refund claim covering taxable year 2003 contained in the 25 March 2004 Letter since there was a statement therein that there were amended quarterly VAT returns filed on 12 March 2004.[33] Such undisputed factual allegation is considered a valid justification in amending its earlier administrative letter dated 15 March 2004. The aforesaid rationalization is not without any legal basis as can be gleaned from the declaration in the *San Roque* case, wherein the High Court considered the administrative claims for refund of San Roque properly amended by reason of the amended quarterly VAT returns.[34] As a result, the 120+30 day prescriptive periods to seek judicial recourse for petitioner's refund claim involving taxable year 2003 shall commence only on 25 March 2004, and not on 15 March 2004.

Parenthetically, even if it is shown that petitioner did not strictly comply with the mandatory 120+30 day prescriptive periods[35] under Section 112 of the NIRC of 1997, as amended, its administrative claim covering taxable year 2003 falls within the effectivity of BIR Ruling No. DA-489-03 (10 December 2003 to 5 October 2010), being an exception thereto. Hence, there is no more need for petitioner to wait for the 120-day period to expire before it can file its appropriate judicial claim before the CTA. Accordingly, the CTA indeed acquired jurisdiction over petitioner's refund claim for taxable year 2003.

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33 Id. at 124; Letter dated 25 March 2004, p. 3, Annex "E," Petition for Review.

34 *Commissioner of Internal Revenue v. San Roque Power Corporation,* supra note 12 at 356-380, which states:

> "On the construction and development of the San Roque Multi-Purpose Project which comprises of the dam, spillway and power plant, [San Roque] allegedly incurred, excess input VAT in the amount of ₱559,709,337.54 for taxable year 2001 which it declared in its Quarterly VAT Returns filed for the same year. **[San Roque] duly filed with the BIR separate claims for refund, in the total amount of ₱559,709,337.54, representing unutilized input taxes as declared in its VAT returns for taxable year 2001.**
>
> **However, on March 28, 2003, [San Roque] filed amended Quarterly VAT Returns for the year 2001 since it increased its unutilized input VAT to the amount of ₱560,200,283.14. Consequently, [San Roque] filed with the BIR on even date, separate amended claims for refund in the aggregate amount of ₱560,200,283.14**.
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> x x x x
>
> On 10 April 2003, **a mere 13 days after it filed its amended administrative claim with the Commissioner on 28 March 2003**, San Roque filed a Petition for Review with the CTA docketed as CTA Case No. 6647. x x x" (Emphasis and underscoring supplied)

35 Pursuant to Section 112 of the NIRC of 1997, as amended, and consistent with the pronouncements made in the *San Roque* case, petitioner needs to wait for the CIR to resolve its subject administrative claim filed on 25 March 2004 within the mandatory 120-day period (or until 23 July 2004), before it can file its judicial claim within 30 days therafter (or until 22 August 2004).

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[36] and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[37] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[38]

Having ruled on the jurisdictional aspect of this case, we next discuss the significance of strict compliance with the invoicing requirements under existing laws and prevailing jurisprudence in order to be entitled to a refund claim of excess and/or unutilized input VAT.

This is not novel.

It is worth mentioning that the High Court already ruled on the significance of imprinting the word "zero-rated" for zero-rated sales covered by its receipts or invoices, pursuant to Section 4.108-1 of Revenue Regulations No. 7-95.[39] Thus, in *Panasonic Communications Imaging*

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36 *Rollo,* pp. 113-115.

37 *Laresma v. Abellana*, 484 Phil. 766, 778 (2004).

38 Please refer to *De Guzman v. Escalona*, 186 Phil. 431, 437-438 (1980).

39 The Consolidated Value-Added Tax Regulations, issued on 9 December 1995 and implemented beginning 1 January 1996, provides:

> **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;**
> 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 "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

Corporation of the Philippines v. Commissioner of Internal Revenue,[40] the Second Division of this Court enunciated:

> But when petitioner Panasonic made the export sales subject of this case, *i.e.*, from April 1998 to March 1999, the rule that applied was **Section 4.108-1 of RR 7-95, otherwise known as the Consolidated Value-Added Tax Regulations, which the Secretary of Finance issued on December 9, 1995 and took effect on January 1, 1996. It already required the printing of the word "zero-rated" on the invoices covering zero-rated sales.** When R.A. 9337 amended the 1997 NIRC on November 1, 2005, it made this particular revenue regulation a part of the tax code. This conversion from regulation to law did not diminish the binding force of such regulation with respect to acts committed prior to the enactment of that law.
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> Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTA's First Division, **the appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect.**
>
> Further, the printing of the word "zero-rated" on the invoice helps segregate sales that are subject to 10% (now 12%) VAT from those sales that are zero-rated. Unable to submit the proper invoices, petitioner Panasonic has been unable to substantiate its claim for refund.
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> x x x x
>
> This Court held that, since the "BIR authority to print" is *not* one of the items required to be indicated on the invoices or receipts, the BIR erred in denying the claim for refund. Here, however, **the ground for denial of petitioner Panasonic's claim for tax refund—the absence of the word 'zero-rated' on its invoices—is one which is specifically and precisely included in the above enumeration. Consequently, the BIR**

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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. (Emphasis supplied)

[40] G.R. No. 178090, 8 February 2010, 612 SCRA 28. See also *Hitachi Global Storage Technologies Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 174212, 20 October 2010, 634 SCRA 205, 212.

> **correctly denied Panasonic's claim for tax refund**.[41] (Emphasis supplied)

For emphasis, the settled rule is that absence or non-printing of the word "zero-rated" in petitioner's invoices is fatal to its claim for the refund and/or tax credit representing its unutilized input VAT attributable to its zero-rated sales.

Equally essential herein, Section 113 of the NIRC of 1997, as amended, categorically provides that a VAT-registered entity, like petitioner, shall issue a duly registered VAT invoice or official receipt, which must contain "a statement that the seller is a VAT-registered person." Therefore, as correctly articulated by the CTA *En Banc*, compliance with the aforesaid invoicing requirements is mandatory. Thus:

> It bears stressing that the law and regulations are explicit in emphasizing strict compliance with the invoicing requirements because for the same transactions the output VAT of the seller becomes the input VAT of the purchaser. Pursuant to *Sections 106(D)(1) and 108(C) of the NIRC of 1997, as amended*, in relation to *Section 110 of the same Code*, the output or input tax on the sale or purchase of goods is determined by the total amount indicated in the invoice, while the output or input tax on the sale or purchases of services is determined by the total amount indicated in the official receipt. Since petitioner is engaged in the sale of goods, specifically, canned tuna and canned pet food *(Joint Stipulation of Facts and Issues, par. 3)*, its output tax, if any, will be determined by the total amount indicated in the invoices. **Thus, as required by *Section 113 of the NIRC of 1997, as amended*, petitioner's sales invoices must indicate that it is a VAT-registered person, which in this case was not complied with by petitioner**.[42] (Emphasis supplied)

At this juncture, and to settle strictness in compliance, we go to the textbook lesson that if the language of the law is clear, explicit and unequivocal, it admits no room for interpretation but merely application. A statute clear and unambiguous on its face need not be interpreted; stated otherwise, the rule is that only statutes with an ambiguous or doubtful meaning may be the subject of statutory construction.[43] The provisions of Sections 113 and 237 of the NIRC of 1997, as amended, and Section 4.108-1 of RR No. 7-95, are clear in enumerating the invoicing requirements necessary to be shown in order to qualify as duly registered receipts or sales or commercial invoices issued by VAT-registered entities, such as petitioner

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41 Id. at 36-38.

42 *Rollo*, p. 176; CTA in Division Decision dated 22 October 2007, Annex "H," Petition for Review.

43 *Daoang v. The Municipal Judge, San Nicolas, Ilocos Norte*, 242 Phil. 774, 777 (1988) citing 2 Sutherland, *Statutory Construction*, 3rd ed., Section 4502, p. 316.

herein, for the purpose of claiming for refund of creditable input tax due or paid attributable to any zero-rated or effectively zero-rates sales. Absent compliance, the unavoidable result is immediate denial of the claim.

By way of reiteration, the CTA has no jurisdiction over petitioner's judicial appeal covering its refund claim for taxable year 2002 on the ground of prescription, consistent with the ruling in the *San Roque* case. While as to its refund claim for taxable year 2003, the same shall likewise be denied for failure of petitioner to comply with the mandatory invoicing requirements provided for under Section 113 of the NIRC of 1997, as amended, and Section 4.108-1 of RR No. 7-95.

WHEREFORE, the petition is **DENIED**. No costs.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELLA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest 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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.

MARIA LOURDES P. A. SERENO
Chief Justice