Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

TEAM ENERGY CORPORATION (formerly MIRANT PAGBILAO CORP.), Petitioner,	**G.R. No. 190928**
	Present:
- versus -	VELASCO, JR., *J.*, *Chairperson,* PERALTA, ABAD, MENDOZA, and LEONEN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** January 13, 2014

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DECISION

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision[1] dated August 14, 2009 and Resolution[2] dated January 5, 2010 of the Court of Tax Appeals (*CTA*) *En Banc* in CTA EB No. 422, which modified the Decision[3] dated May 16, 2008 and Resolution[4] dated September 8, 2008 of the CTA First Division, insofar as it reduced the amount of refund granted from ₱69,618,971.19 to ₱51,134,951.40.

The facts follow.

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1 Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta, dissenting and concurring, and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova, concurring; *rollo*, pp. 36-55.

2 *Id.* at 69-78.

3 Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, concurring; *id.* at 13-30.

4 *Id.* at 32-34.

On the following dates, petitioner filed with the Bureau of Internal Revenue (*BIR*) its first to fourth quarterly value-added tax (*VAT*) returns for the calendar year 2002:

Quarter	*Date Filed*
First	April 25, 2002
Second	July 23, 2002
Third	October 25, 2002
Fourth	January 27, 2003

Subsequently, on December 22, 2003, petitioner filed an administrative claim for refund of unutilized input VAT with Revenue District Office No. 60, Lucena City, in the total amount of ₱79,918,002.95 for calendar year 2002.

However, due to respondent's inaction, petitioner elevated its claim before the CTA First Division on April 22, 2004.

In his Answer, respondent interposed the following special and affirmative defenses:

> 5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the respondent;
>
> 6. To support its claim, it is imperative for petitioner to prove the following, *viz.*:
>
> a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
>
> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;
>
> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the

> Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.
>
> d. That the input taxes of ₱79,918,002.95 allegedly paid by the petitioner on its purchases of goods and services for the four (4) quarters of the year 2002 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;
>
> e. That petitioner's administrative and judicial claims for tax credit or refund of unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the TAX Code, as amended;
>
> f. That petitioner's domestic purchases of goods and services were made in the course of its trade and business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);
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> g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits);
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> 7. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications;
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> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and, as such, they are looked upon with disfavor.[5]

After trial on the merits, the CTA First Division rendered judgment as follows:

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[5] *Id.* at 40-43. (Citations omitted)

> **WHEREFORE, IN VIEW OF ALL THE FOREGOING**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Thus, Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **SIXTY NINE MILLION SIX HUNDRED EIGHTEEN THOUSAND NINE HUNDRED SEVENTY-ONE AND 19/100 PESOS (₱69,618,971.19)**, representing unutilized input value-added taxes paid by petitioner on its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales of power generation services to the National Power Corporation for the taxable year 2002.
>
> **SO ORDERED**.[6]

Not satisfied, respondent filed his Motion for Partial Reconsideration against said decision, which the CTA First Division denied in a Resolution dated September 8, 2008.

On October 10, 2007, respondent filed a Petition for Review with the CTA *En Banc*.

In a Decision dated August 14, 2009, the CTA *En Banc* affirmed the CTA First Division's decision with the modification that the refundable amount be reduced to ₱51,134,951.40. The *fallo* reads:

> **WHEREFORE**, premises considered, the petition is hereby **PARTLY GRANTED**. The assailed Decision dated May 16, 2008 and Resolution dated September 8, 2008 are hereby **AFFIRMED**, with modification that only ₱51,134,951.40 is the refundable amount to respondent for taxable year 2002. Accordingly, the Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of Team Energy Corporation the reduced amount of **FIFTY-ONE MILLION ONE HUNDRED THIRTY- FOUR THOUSAND NINE HUNDRED FIFTY-ONE AND 40/100 (₱51,134,951.40)**, representing the latter's excess and unutilized input VAT for the period covering calendar year 2002.
>
> **SO ORDERED**.[7]

Unfazed, petitioner filed a motion for reconsideration against said Decision, but the same was denied in a Resolution dated January 5, 2010.

Hence, the present petition wherein petitioner raises the following issues for our resolution:

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6 *Id*. at 30. (Emphasis in the original)

7 *Id*. at 54-55. (Emphasis in the original)

> THE CTA *EN BANC* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISALLOWED PETITIONER'S INPUT VAT FOR THE FIRST QUARTER AMOUNTING TO ₱18,484,019.79 BASED ON PRESCRIPTION BECAUSE:
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> A. PETITIONER FILED ITS JUDICIAL CLAIM FOR REFUND WELL WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD RECKONED FROM THE DATE OF FILING OF THE QUARTERLY VAT RETURN PURSUANT TO LONG STANDING JURISPRUDENCE, WHICH THE HONORABLE COURT EXPRESSLY RECOGNIZED IN ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION V. COMMISSIONER OF INTERNAL REVENUE, G.R. NOS. 141104 & [148763], JUNE 8, 2007 ("ATLAS CASE").
>
> B. THE CTA *EN BANC* SHOULD NOT HAVE HASTILY RELIED ON THE CONTRARY RULING OF THE HONORABLE COURT IN COMMISSIONER OF INTERNAL REVENUE V. MIRANT PAGBILAO CORPORATION, G.R. NO. 172129, SEPTEMBER 12, 2008 ("MIRANT PAGBILAO CASE") AS THE HONORABLE COURT COULD NOT HAVE INTENDED TO REVERSE THE DOCTRINE IN THE ATLAS CASE IN THE LIGHT OF ARTICLE VIII, SECTION 4 (3) OF THE CONSTITUTION.
>
> C. ASSUMING, BUT WITHOUT CONCEDING, THAT THE MIRANT PAGBILAO CASE REVERSED THE DOCTRINE IN THE ATLAS CASE, THE SAME SHOULD BE APPLIED PROSPECTIVELY AND NOT RETROACTIVELY TO THE PREJUDICE OF PETITIONER WHO RELIED IN GOOD FAITH ON PREVAILING JURISPRUDENCE AT THE TIME OF FILING OF ITS JUDICIAL CLAIM FOR REFUND.[8]

Simply, the sole issue for our resolution is whether or not petitioner timely filed its judicial claim for refund of input VAT for the first quarter of 2002.

To appropriately address this issue, it is relevant to quote Sections 112 (A) and (C) of the Tax Code, *viz.*:

> SEC. 112. *Refund 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

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8 *Id*. at 120-121.

> 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 good 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.
>
> x x x x
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. – In proper cases, the Commissioner shall grant a refund or issue a 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 Subsection (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.

In its assailed decision, the CTA *En Banc* reduced petitioner's claim for refund of its excess or unutilized input VAT to ₱51,134,951.40 on the ground that petitioner's judicial claim for the first quarter of 2002 was filed beyond the two-year period prescribed under Section 112 (A) of the Tax Code, to wit:

> As regards the fifth requisite, *Section 112 (A) of the NIRC of 1997, as amended*, provides that a VAT-registered taxpayer whose sale is 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 refund or issuance of a TCC of its creditable input tax or paid attributable to such sales.
>
> In the recent case of *Commissioner of Internal Revenue v. Mirant Pagbilao (Formerly Southern Energy Quezon, Inc.)*, 565 SCRA 154 (hereafter referred to as the "Mirant Case"), the Supreme Court definitely settled the issue on the reckoning of the prescriptive period on claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales, as follows:
>
> x x x x
>
> Pursuant to the above ruling of the Supreme Court, it is clear that the two-year prescriptive period provided in *Section 112 (A) of the NIRC of 1997, as amended*, should be counted not from the payment of the tax, but from the close of the taxable quarter when the sales were made.
>
> Pursuant to the above ruling of the Supreme Court, the following are the pertinent dates relevant to petitioner's claim for refund:

Period (2002)	Close of Taxable Quarter	Last Day for Filing of the Claim
1st Quarter	March 31, 2002	March 31, 2004
2nd Quarter	June 30, 2002	June 30, 2004
3rd Quarter	September 30, 2002	September 30, 2004
4th Quarter	December 31, 2002	December 31, 2004

> Record shows that respondent filed its administrative claim for refund or issuance of a TCC on December 22, 2003, while the judicial claim for refund was filed on April 22, 2004. Since respondent filed its judicial claim for refund for the four quarters of 2002, only on April 22, 2004, twenty-two (22) days from March 31, 2004, the last day prescribed by the Mirant Case, respondent is barred from claiming refund of its unutilized input taxes for the first quarter of 2002.
>
> Therefore, the claim for refund granted by the First Division of this Court in the amount of ₱69,618,971.19 should be reduced by deducting the portion of the claim corresponding to the first quarter that had already prescribed, x x x.
>
> x x x x
>
> In sum, the Court *En Banc* finds that the total substantiated input tax filed within the two-year prescriptive period of respondent TeaM Energy amounts to ₱51,134,951.40 only.[9]

Recently, however, in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*[10] (*San Roque ponencia*), this Court emphasized that Section 112 (A) and (C) of the Tax Code must be interpreted according to its clear, plain and unequivocal language.

In said case, we held that the taxpayer can file his administrative claim for refund or issuance of tax credit certificate anytime within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will then have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. Thus, the Court expounded:

> Section 112 (C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:
>
> x x x the taxpayer affected may, **within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period**,

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9 *Id*. at 49-53.

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

> appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

This law is clear, plain and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

x x x x

There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period.

First, Section 112 (A) clearly, plainly and unequivocally provides that the taxpayer "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 the creditable input tax due or paid to such sales." In short, **the law states that the taxpayer may apply with the Commissioner for a refund or credit "within two (2) years," which means at anytime within two years. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription.**

Second, Section 112 (C) provides that the Commissioner shall decide the application for refund or credit "within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A)." The reference in Section 112 (C) of the submission of documents "in support of the application filed in accordance with Subsection (A)" means that the application in Section 112 (A) is the administrative claim that the Commissioner must decide within the 120-day period. In short, the two-year prescriptive period in Section 112 (A) refers to the period within which the taxpayer can file an administrative claim for tax refund or credit. **Stated otherwise, the two-year prescriptive period does not refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner. As held in *Aichi*, the "phrase 'within two years x x x apply for the issuance of a tax credit or refund" refers to applications for refund/credit with the CIR and not to appeals made to the CTA."**

Third, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days), then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. **Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive**

> **period**. Thus, if the taxpayer files his administrative claim on the 611th day, the Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period.
>
> **The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law. It results in truncating 120 days from the 730 days that the law grants the taxpayer for filing his administrative claim with the Commissioner. This Court cannot interpret a law to defeat, wholly or even partly, a remedy that the law expressly grants in clear, plain and unequivocal language.**
>
> Section 112 (A) and (C) must be interpreted according to its clear, plain and unequivocal language. **The taxpayer can file his administrative claim for refund or credit at any time within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA.** This is not only the plain meaning but also the only logical interpretation of Section 112 (A) and (C).[11] (Emphasis supplied)

Based on the aforequoted discussions, we therefore disagree with the CTA *En Banc*'s finding that petitioner's judicial claim for the first quarter of 2002 was not timely filed.

The *San Roque* ponencia firmly enunciates that the taxpayer can file his administrative claim for refund or credit at any time within the two-year prescriptive period. What is only required of him is to file his judicial claim within thirty (30) days after denial of his claim by respondent or after the expiration of the 120-day period within which respondent can decide on its claim.

Here, there is no question that petitioner timely filed its administrative claim with the Bureau of Internal Revenue within the required period. However, since its administrative claim was filed within the two-year prescriptive period and its judicial claim was filed on the first day after the expiration of the 120-day period granted to respondent, to decide on its claim, we rule that petitioner's claim for refund for the first quarter of 2002 should be granted.

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[11] *Commissioner of Internal Revenue v. San Roque Power Corporation*, *supra*, at 387-392. (Citations omitted; emphasis in the original)

All told, we revert to the CTA First Division's finding that petitioner's total refundable amount should be ₱69,618,971.19, representing petitioner's unutilized input VAT paid on its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales of power generation services to the National Power Corporation for the taxable year 2002.

WHEREFORE, in view of the foregoing, the Decision dated August 14, 2009 and Resolution dated January 5, 2010 of the Court of Tax Appeals *En Banc,* in CTA EB No. 422 are hereby **AFFIRMED** with **MODIFICATION** that petitioner's total refundable amount shall be ₱69,618,971.19.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

I concur in result, consistent with my position in CIR v. San Roque (2013)

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been 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