# Maibarara Geothermal, Inc. vs. Commissioner of Internal Revenue

G.R. No. 250479, 18 July 2022, 2nd Division, *J.* J. Lopez

# Facts / Antecedents

- Maibarara Geothermal, Inc. (MGI) is a domestic corporation, VAT-registered, and registered also a Renewable Energy Developer with the DOE and BOI.

- MGI filed Quarterly VAT Returns for the four (4) quarter of 2011.

- On separate dates, MGI filed administrative claims with the BIR for the refund of unutilized input VAT covering the said quarters.

# Facts / Antecedents

- Due to inaction of the BIR, MGI filed its separate *Petitions for Review* before the CTA. Later, the said *Petitions* were consolidated.

- The CTA 1st Division denied the consolidated *Petitions for Review*. MGI's motion for reconsideration was likewise denied.

- MGI then elevated the case before the CTA *En Banc*, which rendered the assailed Decision, denying MGI's petition for review and affirming the rulings of the CTA 1st Division.

# Facts / Antecedents

- MGI moved for reconsideration, but the same was denied by the CTA *En Banc*.

- MGI then filed a *Petition for Review on Certiorari* before the SC.

# ISSUE

"Whether petitioner is entitled to the refund of its unutilized input VAT for the first, second, third, and fourth quarters of taxable year 2011."

# The SC's Ruling

- The Petition for Review on Certiorari was DENIED.
- The CTA *En Banc*'s Decision and Resolution were AFFIRMED.
- The CTA First Division's Decision and Resolution were AFFIRMED.

# Discussion

- Under the Philippine tax system, VAT is considered as an indirect tax.

- Indirect tax is a tax demanded, in the first instance, from, or is paid by, one person or entity in the expectation and intention of shifting the burden to someone else.

- As enunciated in *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company* [514 Phil. 255 (2005)]:

[I]ndirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to the [buyer], [the seller], in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.[21]

# Discussion (continuation)

- Under Section 105 of the NIRC, the persons liable to pay VAT are those who, in the course of trade or business, sell, barter, exchange, lease goods or properties, render services, and those who imports goods.

- Since VAT is an indirect tax, the seller of goods and services which also serves as an intermediary in a chain of manufacturers, suppliers, distributors, and consumers (i) shoulders the economic burden of VAT imposed on its purchases, and (ii) pays the VAT imposed on its sales. The first is called *input tax* and the second, *output tax*.

# Discussion (continuation)

- Section 110(A)(3) of the NIRC provides:

> The term "input tax" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.
>
> The term "output tax" means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

# Discussion (continuation)

- In a chain of production, the manufacturers, suppliers, and distributors – *i.e.*, those persons or entities which are engaged in economic activities, such as the production of goods, the provision of services, and the sale of goods and services – ultimately pass on the VAT to the final consumers.

- To implement this, the first party in that chain of production (*e.g.*, a manufacturer) passes on an output VAT to the next party in that chain (*e.g.*, a wholesale distributor), and such output VAT of the manufacturer is considered an input VAT on the wholesale distributor.

# Discussion (continuation)

- In turn, the second party in that chain further passes on an output VAT to another party (e.g., a retail distributor), and such output VAT of the wholesale distributor is considered an input VAT of the retail distributor.

- Finally, the last seller in that chain of production passes on the output VAT to the final consumer.

- For each party in this chain of production, the excess of output taxes over input taxes is paid for by the relevant party and passed on by that party to their immediate buyer.

# Discussion (continuation)

- Section 110(B) of the NIRC provides:

(B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

# Discussion (continuation)

- This seller-intermediary may, in the course of their trade or business, engage in two kinds of sale: domestic sales (or those where the buyer is domiciled in the Philippines) and export sales (or those where the buyer is domiciled in another country).

- If the sale is a domestic sale, the sale generates an output tax. If the sale is an export sale, the sale generally does not generate an output tax. The reason for the latter is that export sales are zero-rated transactions.

# Discussion (continuation)

- As a general rule, the VAT system uses the destination principle as a basis for the jurisdictional reach of the tax. Goods and services are taxed only in the country where they are consumed. To implement this principle, exports are zero-rated under the NIRC. (Refer to Section 106(2)(a), NIRC of 1997, as amended)

- This seller-intermediary, which may engage in export sales, or both domestic and export sales, incurs purchases imposed with VAT—*i.e.*, it incurs input taxes. The said purchases, which are inputs to its production or economic/business activity, may be utilized for the purpose of fulfilling its obligations in all its sales transactions.

# Discussion (continuation)

- If the sales are domestic sales, the domestic sales generate an output tax, and the output tax can be credited against the input tax. However, if the sales are export sales, the export sales do not generate an output tax, being zero-rated transactions, so there is no output tax that can be credited against the input tax.

- The latter is the reason why the seller-intermediary is then allowed to obtain a refund or tax credit on input taxes "attributable" to zero-rated transactions. [Refer to Section 112(A), NIRC of 1997, as amended]

# Discussion (continuation)

- To claim a refund or tax credit under Section 112(A), petitioner must comply with the following criteria:

(1) the taxpayer is VAT-registered;

(2) the taxpayer is engaged in zero-rated or effectively zero-rated sales;

(3) the input taxes are due or paid;

(4) the input taxes are not transitional input taxes;

(5) the input taxes have not been applied against output taxes during and in the succeeding quarters;

# Discussion (continuation)

(6) the input taxes claimed are attributable to zero-rated or effectively

zero-rated sales;

(7) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and

108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

# Discussion (continuation)

(8) where there are both zero-rated or effectively zero-rated sales and

taxable or exempt sales, and the input taxes cannot be directly and

entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

(9) the claim is filed within two years after the close of the taxable quarter when such sales were made.

[*San Roque Power Corporation vs. Commissioner of Internal Revenue*, 620 Phil. 554 (2009)]

# Discussion (continuation)

- Petitioner's contentions:

➢the two-year prescriptive period should be reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT;

➢(relying on *CIR vs. Mirant Pagbilao Corporation* [2008]), the *"relevant sales"* pertain to the sale of the supplier, and *"input VAT"* refers to the purchase of the buyer;

➢per *Mirant*, the reckoning date in counting the prescriptive period in filing a claim for refund or tax credit should be from the time the sales relating to the input VAT has occured;

# Discussion (continuation)

- Petitioner's contentions (continued):

➢ there is no requirement that the zero-rated or effectively zero-rated sales should be made during the same period as when the input taxes sought to be refunded were incurred or paid;

➢ the only requirement is that the input VAT sought to be refunded must be attributable to zero-rated or effectively zero-rated sales;

➢ the taxpayer-claimant must only establish the existence or presence of input taxes which are attributable to a zero-rated or effectively zero-rated sales;

# Discussion (continuation)

- Petitioner's contentions (continued):

➢ it is not necessary that the zero-rated or effectively zero-rated sales and the input taxes subject of the refund fall during the same period.

Main issue:

"...whether or not petitioner complied with the requirements to claim for a refund or tax credit under Section 112(A), in particular, the existence of zero-rated or effectively zero-rated sales, to which the input taxes it incurred may be attributed."

# Discussion (continuation)

- The SC has already ruled that any claim for refund or tax credit of unutilized input VAT must be attributable to zero-rated or effectively zero-rated sales.

- Any claim for refund or tax credit of unutilized input VAT must be clearly established by evidence showing the existence of zero-rated or effectively zero-rated sales to which the input VAT being refunded must be attributable. [Citing *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, 721 Phil. 202 (2013)]

# Discussion (continuation)

- In *Mirant*, the SC also clarified that the two-year prescriptive period for filing an administrative claim for refund begins to run from the close of the taxable quarter when the relevant sales were made, and not from the time the input VAT was incurred, thus:

(???)

# Discussion (continuation)

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." 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.[36]

# Discussion (continuation)

- In this case, petitioner admitted that it had no sales during the taxable year 2011 and only started selling during the first quarter of 2014.

- Petitioner has no zero-rated or effectively zero-rated sales during the first to fourth quarters of taxable year 2011. Thus, there is no output VAT against which the input VAT may be deducted.

- Hence, the input VAT incurred for the said period attributable thereto cannot be refunded.

# Discussion (continuation)

- It is clear under Section 112(A) that the refund or tax credit of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales.

- Accordingly, the SC found that petitioner failed to establish its claim for refund or tax credit of its unutilized input VAT for the first, second, third, and fourth quarters for taxable year 2011.

# Discussion (continuation)

- Citing *Mirant*, petitioner contends that the phrase "relevant sales" pertains to its purchase of goods and services from which it incurred input VAT, and not from the time of its zero-rated or effectively zero-rated sales.

- In other words, petitioner argues that it had "relevant sales" in 2011 pertaining to its purchases in 2011 from which it incurred input VAT. Thus, petitioner asserts that the two-year prescriptive period should be reckoned with from the time of the said purchase of goods and services from which it incurred input VAT.

# Discussion (continuation)

- The SC was not convinced.

- In *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)* [491 Phil. 317 (2005)], the SC explained the nature of the VAT and the entitlement to tax refund or credit of a zero-rated taxpayer, thus:

# Discussion (continuation)

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.

# Discussion (continuation)

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[.] 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.

# Discussion (continuation)

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.

# Discussion (continuation)

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.[38]

# Discussion (continuation)

- Our tax credit system allows a VAT-registered entity to credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports.

- However, there are enterprises that engage in exportation of local goods and services that are subject to zero-rated VAT instead of the regular rate of 12%.

# Discussion (continuation)

- The tax refund under Section 112(A) gives option to these enterprises, since exports of this nature do not incur output VAT, to claim as refund or applied as a tax credit the input VAT that is passed on to them.

- Therefore, it can be said that these enterprises are being incentivized by providing them an option whereby their unutilized input VAT may be claimed as refund or tax credit.

# Discussion (continuation)

- Viewed in this context, Section 112(A) is clearly intended for the tax refund or credit of input VAT directly attributable to zero-rated or effectively zero-rated sales as a form of incentive given to enterprises engaged in exports of local goods and services.

- Thus, whether applied as a refund or tax credit, the requisite attribution to the zero-rated or effectively zero-rated sales must clearly be shown; otherwise, it is not covered by the provisions of Section 112(A) and the claim for refund or tax credit will not prosper.

# Discussion (continuation)

- The SC agreed with the CTA *En Banc* that the phrase *"when the relevant sales were made"* refers to zero-rated or effectively zero-rated sales, and not to the purchase of goods and services from which it incurred input VAT.

- Through a plain reading of Section 112(A) it can be inferred that the phrase *"when the sales were made"* refers to zero-rated or effectively zero-rated sales.

# Discussion (continuation)

- Based on the heading of Section 112(A), it is clear that the intent of the said provision is to cover only the refund or tax credits of unutilized input VAT attributable to zero-rated or effectively zero-rated sales.

- This is further supported in the last sentence of Section 112(A) stating that *"where the taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any of the transactions, it shall be allocated proportionately on the basis of the volume of sales."*

# Discussion (continuation)

- This proportional allocation of the input taxes if the taxpayer-claimant is engaged in both zero-rated or effectively zero-rated sales and taxable or exempt sales clearly shows the intent of Section 112(A) to restrict the refund or tax credit of unutilized input VAT only to those which are directly attributable to the zero-rated or effectively zero-rated sales.

# Discussion (continuation)

- Moreover, contrary to the assertion of MGI, the phrase *"when the relevant sales were made pertaining to the input VAT"* as stated by this Court in *Mirant*, simply means that the input VAT that there were incurred must be regarded as being related to such "relevant sales", which should be zero-rated or effectively zero-rated.

- In other words, there must be a direct relation or attributability of the purchases that incurred input VAT to the *"relevant sales"* that were made.

# Discussion (continuation)

- If We (the SC) are to accept petitioner's interpretation of the ruling of this Court in *Mirant*, it will result in an absurd situation wherein the input VAT will be attributed from the *"purchase"* made by petitioner or the sales made by its supplier, and not from the sales made by petitioner, which is the taxpayer-claimant.

- As clearly provided in Section 112(A), the creditable input VAT must be attributable to the sales made by the taxpayer-claimant, in this case, MGI.

# Discussion (continuation)

- As mentioned in the *Luzon Hydro Corporation* case, there must be evidence showing the existence of zero-rated or effectively zero-rated sales to which the input VAT being refunded must be attributable.

- As admitted by petitioner, it had no zero-rated or effectively zero-rated sales from the first to fourth quarters of taxable year 2011. Thus, the CTA *En Banc* correctly ruled as follows:

# Discussion (continuation)

It is clear from the foregoing requisites that it is essential for the taxpayer-claimant to prove that it had zero-rated or effectively zero-rated sales during the pertinent taxable quarter unto which the input VAT, which is sought to be refunded, can be attributed to. **Thus, petitioner must first establish that zero-rated or effectively zero-rated sales unto which the input VAT can attributed to exist. It cannot be the other way around lest it is going to be putting the cart before the horse.**

# Discussion (continuation)

- It is well-settled that the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund. MGI failed to do so.

thank you