Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

TEAM ENERGY CORPORATION (formerly: MIRANT PAGBILAO CORPORATION and SOUTHERN ENERGY QUEZON, INC.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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REPUBLIC OF THE PHILIPPINES rep. by the BUREAU OF INTERNAL REVENUE,
Petitioner,

-versus-

TEAM ENERGY CORPORATION,
Respondent.

G.R. No. 197663

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G.R. No. 197770

Present:

VELASCO, JR., *J., Chairperson,*
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:
March 14, 2018

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DECISION

LEONEN, *J.*:

For a judicial claim for Value Added Tax (VAT) refund to prosper, the claim must not only be filed within the mandatory 120+30-day periods. The taxpayer must also prove the factual basis of its claim and comply with the 1997 National Internal Revenue Code (NIRC) invoicing requirements and other appropriate revenue regulations. Input VAT payments on local purchases of goods or services must be substantiated with VAT invoices or official receipts, respectively.

The Petitions for Review in G.R. Nos. 197663 and 197770 seek to reverse and set aside the April 8, 2011 Decision[1] and July 7, 2011 Resolution[2] of the Court of Tax Appeals En Banc in CTA EB No. 603. The assailed Decision affirmed with modification the October 5, 2009 Decision[3] and February 23, 2010 Resolution[4] of the Court of Tax Appeals in Division, granting Team Energy Corporation (Team Energy) a tax refund/credit in the reduced amount of ₱11,161,392.67, representing unutilized input VAT attributable to zero-rated sales for the taxable year 2003. The assailed Resolution denied the respective motions for reconsideration filed by Team Energy and the Commissioner of Internal Revenue (Commissioner).

Team Energy is a VAT-registered entity with Certificate of Registration No. 96-600-002498. It is engaged in power generation and electricity sale to National Power Corporation (NPC) under a Build, Operate, and Transfer scheme.[5]

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1 *Rollo* (G.R. No. 197663), pp. 54–80, inclusive of Annex A. The Decision was penned by Associate Justice Juanito C. Castañeda, Jr.; concurred in by Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas; concurred and dissented by Presiding Justice Ernesto D. Acosta (pp. 81–84); and dissented by Associate Justice Lovell R. Bautista (pp. 85–90) of the Court of Tax Appeals, En Banc.

2 Id. at 91–101. The Resolution was penned by Associate Justice Juanito C. Castañeda, Jr.; concurred in by Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, and Esperanza R. Fabon-Victorino; concurred and dissented by Presiding Justice Ernesto D. Acosta (pp. 102–105); and dissented by Associate Justice Lovell R. Bautista of the Court of Tax Appeals, En Banc. Associate Justices Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas were on wellness leave.

3 Id. at 13–36 (inclusive of Annex A). The Decision, docketed as CTA Case Nos. 7229 and 7298, was penned by Associate Justice Caesar A. Casanova, concurred in by Associate Justice Lovell R. Bautista, and concurred and dissented by Presiding Justice Ernesto D. Acosta (pp. 37–39) of the First Division, Court of Tax Appeals, Quezon City.

4 Id. at 41–46. The Resolution was penned by Associate Justice Caesar A. Casanova, concurred in by Associate Justice Lovell R. Bautista, and concurred and dissented by Chairperson Ernesto D. Acosta (pp. 47–52) of the Special First Division, Court of Tax Appeals, Quezon City.

5 Id. at 13–14.

On November 13, 2002, Team Energy filed with the Bureau of Internal Revenue (BIR) "an Application for Effective Zero-Rate of its supply of electricity to the NPC, which was subsequently approved."[6]

For the year 2003, Team Energy filed its Original and Amended Quarterly VAT Returns on the following dates and with the following details:

Quarter	Original Return	Amended Return	Zero-rated Sales	Input VAT
1st	April 25, 2003	July 25, 2003	₱ 3,170,914,604.24	₱ 15,085,320.31
2nd	July 25, 2003	October 27, 2003	3,034,739,252.93	15,898,643.56
3rd	October 27, 2003	-	2,983,478,607.66	21,151,308.57
4th	January 24, 2004	July 26, 2004[7]	3,019,672,908.84	31,330,081.06
Total			**₱ 12,208,805,373.67**[8]	**₱ 83,465,353.50**[9]

On December 17, 2004, Team Energy filed with the Revenue District Office No. 60 in Lucena City a claim for refund of unutilized input VAT in the amount of ₱83,465,353.50, for the first to fourth quarters of taxable year 2003.[10]

On April 22, 2005, Team Energy appealed before the Court of Tax Appeals its 2003 first quarter VAT claim of ₱15,085,320.31. The appeal was docketed as CTA Case No. 7229.[11]

Opposing the appeal, the Commissioner averred that the amount claimed by Team Energy was not properly documented and that NPC's exemption from taxes did not extend to its electricity supplier such as Team Energy.[12]

On July 22, 2005, Team Energy appealed its VAT refund claims for the second to fourth quarters of 2003 in the amount of ₱68,380,033.19, docketed as CTA Case No. 7298.[13]

As special and affirmative defenses, the Commissioner alleged that it

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6 Id. at 14.
7 Id. at 14–15.
8 Id. at 23.
9 Id. at 25.
10 Id. at 56.
11 Id.
12 Id. at 56–57.
13 Id. at 56. The CA Decision states ₱63,380,033.19 on this page but the correct amount is ₱68,380,033.19. *See rollo* (G.R. 197663), p. 58.

was imperative upon Team Energy to prove its compliance with the registration requirements of a VAT taxpayer; the invoicing and accounting requirements for VAT-registered persons; and the checklist of requirements for a VAT refund under Revenue Memorandum Order No. 53–98. Furthermore, the Commissioner contended that Team Energy must prove that the claims were filed within the prescriptive periods and that the input taxes being claimed had not been applied against any output tax liability or were not carried over in the succeeding quarters.[14]

On October 12, 2005, the two (2) cases were consolidated.[15]

The Court of Tax Appeals First Division partially granted Team Energy's petition.[16] It held that NPC's exemption from direct and indirect taxes had long been resolved by this Court.[17] Consequently, NPC's electricity purchases from independent power producers, such as Team Energy, were subject to 0% VAT pursuant to Section 108(B)(3) of the 1997 NIRC.[18]

The Court of Tax Appeals First Division further ruled that ₱20,986,302.67 out of the reported zero-rated sales of ₱12,208,805,373.67 must be excluded for Team Energy's failure to submit the corresponding official receipts, leaving a balance of ₱12,187,819,071.00 as substantiated zero-rated sales.[19] Consequently, only 99.83%[20] of the validly supported input VAT payments being claimed could be considered.

The Court of Tax Appeals First Division likewise disallowed ₱12,642,304.32 of Team Energy's claimed input VAT for its failure to meet the substantiation requirements under Sections 110(A) and 113(A) of the 1997 NIRC and Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95 or the Consolidated Value Added Tax Regulations.[21] Team Energy's reported output VAT liability of ₱776.36 in its Quarterly VAT Return for the third quarter of 2003 was further deducted from the substantiated input VAT.[22] The Court of Tax Appeals used the following computation in determining Team Energy's total allowable input VAT:

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14 Id. at 57–58.
15 Id. at 59.
16 Id. at 30.
17 Id. at 21.
18 Id. at 20.
19 Id. at 24.
20 Id.; Computed as follows:

Substantiated zero-rated sales	₱12,187,819,071.00
Divided by total declared zero-rated sales	₱12,208,805,373.67
Rate of substantiated zero-rated sales	**99.83%**

21 Id. at 25.
22 Id. at 28.

Substantiated Input VAT	₱70,823,049.18
Less: Output VAT	776.36
Excess: Input VAT	70,822,272.82
Multiply by rate of substantiated zero-rated sales	99.83%
Excess input VAT attributable to substantiated zero-rated sales	**₱70,700,533.01**[23]

Finally, on the issue of prescription, the Court of Tax Appeals First Division held that "[t]he reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the date of filing of the corresponding quarterly VAT return."[24] It explained that this Court's ruling in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[25] to the effect that "the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made,"[26] must be applied to cases filed after the promulgation of *Mirant*. Accordingly, Team Energy's administrative claim filed on December 17, 2004, and judicial claims filed on April 22, 2005 and July 22, 2005 were well within the two (2)-year prescriptive period.[27]

The dispositive portion of the October 5, 2009 Decision provided:

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. [The Commissioner of Internal Revenue] is hereby **ORDERED** to **REFUND** or **ISSUE** a tax credit certificate to [Team Energy] in the amount of P70,700,533.01.
>
> **SO ORDERED**.[28] (Emphasis in the original)

Upon the denial of her Motion for Reconsideration, the Commissioner filed on March 31, 2010 a Petition for Review with the Court of Tax Appeals En Banc.[29] She argued that the Court of Tax Appeals First Division erred in allowing the tax refund/credit as Team Energy's administrative and judicial claims for the first and second quarters were filed beyond the two (2)-year period prescribed in Section 112(A) of the 1997 NIRC.[30] Additionally, she averred that Team Energy's judicial claims for the second, third, and fourth quarters of 2003 were filed beyond the 30-day period to appeal under Section 112 of the 1997 NIRC.[31] Team Energy filed its Comment/Opposition to the Petition.[32]

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23 Id. at 29.
24 Id.
25 586 Phil. 712 (2008) [Per J. Velasco, Jr., Second Division].
26 *Rollo* (G.R. No. 197663), p. 30.
27 Id.
28 Id.
29 *Rollo* (G.R. No. 197770), p. 18.
30 *Rollo* (G.R. No. 197663), p. 62.
31 Id. at 61–62.
32 Id. at 62.

On April 8, 2011, the Court of Tax Appeals En Banc promulgated its Decision, partially granting Team Energy's petition. It held that Team Energy's judicial claim for refund for the second, third, and fourth quarters of 2003 was filed only on July 22, 2005 or beyond the 30-day period prescribed under Section 112(D)[33] of the 1997 NIRC. Consequently, the claim for these quarters must be denied for lack of jurisdiction. Furthermore, the Court of Tax Appeals En Banc found Team Energy entitled to a refund in the reduced amount of ₱11,161,392.67, representing unutilized input VAT attributable to its zero-rated sales for the first quarter of 2003.

The dispositive portion of the Court of Tax Appeals En Banc April 8, 2011 Decision read:

> **WHEREFORE**, on the basis of the foregoing considerations, the Petition for Review . . . is **PARTIALLY GRANTED.** The assailed Decision and Resolution of the First Division dated October 5, 2009 and February 23, 2010, respectively, are hereby **MODIFIED.** Accordingly, [the Commissioner] is ORDERED to refund in favor of [Team Energy] the reduced amount of Eleven Million One Hundred Sixty[-]One Thousand Three Hundred Ninety[-]Two [Pesos] and Sixty[-]Seven Centavos (P11,161,392.67) representing unutilized input value-added tax (VAT) paid on its domestic purchases of goods and services and importation of goods attributable to its zero-rated sales for the first quarter of taxable year 2003.
>
> **SO ORDERED.**[34] (Emphasis in the original)

The separate partial motions for reconsideration of Team Energy and the Commissioner were denied in the Court of Tax Appeals En Banc July 7, 2011 Resolution.[35]

Team Energy and the Commissioner filed their separate Petitions for Review before this Court, docketed as G.R. Nos. 197663[36] and 197770,[37] respectively.

After the parties have filed their respective comments to the petitions and replies to these comments, this Court directed them to submit their respective memoranda in its July 1, 2013 Resolution.[38]

Team Energy filed its Consolidated Memorandum[39] while the Commissioner filed a Manifestation,[40] stating that she was adopting her

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33 Now Section 112 (C), pursuant to RA 9337.
34 *Rollo* (G.R. No. 197663), pp. 74–75.
35 Id. at 100.
36 Id. at 112–141.
37 *Rollo* (G.R. No. 197770), pp. 8–37.
38 *Rollo* (G.R. No. 197663), pp. 368–370.
39 Id. at 376–414.
40 Id. at 371.

Comment dated February 21, 2012[41] as her Memorandum.

The issues for this Court's resolution are as follows:

First, whether or not the Court of Tax Appeals erred in disallowing Team Energy Corporation's claim for tax refund of its unutilized input VAT for the second to fourth quarters of 2003 on the ground of lack of jurisdiction;

Second, whether or not the Court of Tax Appeals erred in failing to recognize the interchangeability of VAT invoices and VAT official receipts to comply with the substantiation requirements for refunds of excess or unutilized input tax under Sections 110 and 113 of the 1997 National Internal Revenue Code, resulting in the disallowance of ₱258,874.55; and

Finally, whether or not Team Energy Corporation's failure to submit the Registration and Certificate of Compliance issued by the Energy Regulatory Commission (ERC) disqualifies it from claiming a tax refund/credit.

I

The prescriptive periods regarding judicial claims for refunds or tax credits of input VAT are explicitly set forth in Section 112(D)[42] of the 1997 NIRC:

> Section 112. *Refunds or Tax Credits of Input Tax.* —
> . . . .
>
> (D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, ***the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals***. (Emphasis supplied)

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41 Id. at 275–305.

42 Now Section 112(C), per amendments introduced by Republic Act No. 9337 (2005).

The text of the law is clear that resort to an appeal with the Court of Tax Appeals should be made within 30 days either from receipt of the decision denying the claim or the expiration of the 120-day period given to the Commissioner to decide the claim.

It was in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[43] where this Court first pronounced that observance of the 120+30-day periods in Section 112(D)[44] is crucial in filing an appeal with the Court of Tax Appeals. This was further emphasized in *Commissioner of Internal Revenue v. San Roque Power Corporation*[45] where this Court categorically held that compliance with the 120+30-day periods under Section 112 of the 1997 NIRC is mandatory and jurisdictional. Exempted from this are VAT refund cases that are prematurely filed before the Court of Tax Appeals or before the lapse of the 120-day period between December 10, 2003, when the BIR issued Ruling No. DA-489-03, and October 6, 2010, when this Court promulgated *Aichi*.[46]

Section 112(D)[47] is consistent with Section 11 of Republic Act No. 1125, as amended by Section 9 of Republic Act No. 9282 (2004), which provides a 30-day period of appeal either from receipt of the adverse decision of the Commissioner or from the lapse of the period fixed by law for action:

> Section 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, . . . 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)[48] herein.
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> Appeal shall 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.** (Emphasis supplied)

In this case, Team Energy's judicial claim was filed beyond the 30-

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43 646 Phil. 710 (2010) [Per J. Del Castillo, First Division].

44 Now Section 112(C), per amendments introduced by Republic Act No. 9337 (2005).

45 703 Phil. 310 (2013) [Per J. Carpio, En Banc].

46 Id. at 398–399.

47 Now Section 112(C), per amendments introduced by Republic Act No. 9337 (2005).

48 Section 7. *Jurisdiction.* — The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
. . . .
(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations 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 of action, in which case the inaction shall be deemed a denial**[.]

day period required in Section 112(D). The administrative claim for refund was filed on December 17, 2004.[49] Thus, BIR had 120 days to act on the claim, or until April 16, 2005. Team Energy, in turn, had until May 16, 2005 to file a petition with the Court of Tax Appeals but filed its appeal only on July 22, 2005, or 67 days late. Thus, the Court of Tax Appeals En Banc correctly denied its claim for refund due to prescription.

Team Energy argues, however, that the application of the *Aichi* doctrine to its claim would violate the rule on non-retroactivity of judicial decisions.[50] Team Energy adds that when it filed its claims for refund with the BIR and the Court of Tax Appeals, both the administrative and judicial claims for refund must be filed within the two (2)-year prescriptive period.[51] Moreover, Revenue Regulations No. 7-95 did not require a specific number of days after the 60-day, now 120-day, period given to the Commissioner to decide on the claim within which to appeal to the Court of Tax Appeals.[52] Team Energy contends that to deny its claim of ₱70,700,533.01 duly proven before the Court of Tax Appeals First Division "would result to unjust enrichment on the part of the government."[53]

This Court is not persuaded.

When Team Energy filed its refund claim in 2004, the 1997 NIRC was already in effect, which clearly provided for: (a) 120 days for the Commissioner to act on a taxpayer's claim; and (b) 30 days for the taxpayer to appeal either from the Commissioner's decision or from the expiration of the 120-day period, in case of the Commissioner's inaction.

"Rules and regulations [including Revenue Regulations No. 7-95] or parts [of them] which are contrary to or inconsistent with [the NIRC] are . . . amended or modified accordingly."[54]

This Court, in construing the law, merely declares what a particular provision has always meant. It does not create new legal obligations. This Court does not have the power to legislate. Interpretations of law made by courts necessarily always have a "retroactive" effect.[55]

In *Aichi*, where the issue on prematurity of a judicial claim was first raised and passed upon, this Court applied outright its interpretation of the

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49 *Rollo* (G.R. No. 197663), p. 56.
50 Id. at 387.
51 Id. at 388.
52 Id. at 393–394.
53 Id. at 396.
54 TAX CODE, sec. 291.
55 *See Dissenting Opinion of J. Leonen* in *Commissioner of Internal Revenue v. San Roque Power Corp.*, 719 Phil. 137 (2013) [Per J. Carpio, En Banc].

1997 NIRC's language on the mandatory character of the 120+30-day periods. Consequently, it ordered the dismissal of *Aichi*'s appeal due to premature filing of its claim for refund/credit of input VAT. The administrative and judicial claims in *Aichi* were filed on September 30, 2004, even prior to the filing of Team Energy's claims.

San Roque dealt with judicial claims which were either prematurely filed or had already prescribed. That case, specifically in G.R. No. 197156, *Philex Mining Corporation v. Commissioner of Internal Revenue,* involved the filing of a judicial claim beyond the 30-day period to appeal as in this case. Then and there, this Court rejected Philex Mining Corporation's (Philex) judicial claim because of late filing:

> Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim long after the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
>
> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. **The inaction of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable.** The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.[56] (Emphasis supplied, citation omitted)

Philex filed its judicial claim on October 17, 2007, before *Aichi* was promulgated.

The proper application of the mandatory and jurisdictional nature of the 120+30-day periods, whether prospective or retroactive, was, in fact, at the heart of this Court *en banc*'s debates in *San Roque*.

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[56] *Commissioner of Internal Revenue v. San Roque Power Corporation*, 703 Phil. 310, 362–363 (2013) [Per J. Carpio, En Banc].

Some justices were of the view that the mandatory and jurisdictional nature of the 120+30-day periods must be applied prospectively, or at the earliest upon the effectivity of Revenue Regulations No. 16-2005,[57] or upon the finality of *Aichi*.[58] Still others[59] argued for retroactive application to all undecided VAT refund cases regardless of the period when the claim for refund was made.

The majority held that the 120+30-day mandatory periods were already in the 1997 NIRC when the taxpayers filed their judicial claims. The law is clear, plain, and unequivocal and must be applied exactly as worded. However, the majority considered as an exception, for equitable reasons, BIR Ruling No. DA-489-03, which expressly stated that taxpayers need not wait for the lapse of the 120-day period before seeking judicial relief. Thus, judicial claims filed from December 10, 2003, when BIR Ruling No. DA-489-03 was issued, to October 6, 2010, when the *Aichi* doctrine was adopted, were excepted from the strict application of the 120+30-day mandatory and jurisdictional periods.

San Roque Power Corporation (San Roque) filed a motion for reconsideration and supplemental motion for reconsideration in G.R. No. 187485, arguing for the prospective application of the 120+30-day mandatory and jurisdictional periods. This Court denied *San Roque* with finality on October 8, 2013.[60]

In *Commissioner of Internal Revenue v. Mindanao II Geothermal*

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[57] RR 16-2005, otherwise known as the Consolidated Value-Added Tax Regulations of 2005, became effective on **November 1, 2005**. The prefatory statement of RR 16-2005 provides:

Pursuant to the provisions of Secs. 244 and 245 of the National Internal Revenue Code of 1997, as last amended by Republic Act No. 9337 (Tax Code), in relation to Sec. 23 of the said Republic Act, these Regulations are hereby promulgated to implement Title IV of the Tax Code, as well as other provisions pertaining to Value-Added Tax (VAT). These Regulations supersedes Revenue Regulations No. 14-2005 dated June 22, 2005.

In the *Dissenting Opinion of J. Velasco* in *Commissioner of Internal Revenue v. San Roque Power Corp.*, 719 Phil. 137, 400–434 (2013) [Per J. Carpio, En Banc], J. Velasco, joined by Justices Mendoza and Perlas-Bernabe, opined that the permissive treatment of the 120+30-day periods should be reckoned not from December 10, 2003 when BIR Ruling No. DA-489-03 was issued, but from January 1, 1996 (the effective date of Revenue Regulation (RR) No. 7-95, which still applied the two (2)-year prescriptive period to judicial claims) to October 31, 2005 (prior to the effective date of RR No. 16-2005). He explained that it was only in RR No. 16-2005 (effective November 1, 2005), particularly Section 4.112-1, where the reference to the two (2)-year prescriptive period in conjunction with the filing of a judicial claim for refund/credit of input VAT was deleted.

[58] *Separate Dissenting Opinion of C.J. Sereno* in *Commissioner of Internal Revenue v. San Roque Power Corp.*, 719 Phil. 137, 395–400 (2013) [Per J. Carpio, En Banc].

[59] In the *Separate Opinion of J. Leonen* in *Commissioner of Internal Revenue v. San Roque Power Corp.*, 719 Phil. 137, 388–395 (2013) [Per J. Carpio, En Banc], J. Leonen, joined by Justice Del Castillo, argued that the plain text of Section 112 of the 1997 NIRC would already put the private parties within a reasonable range of interpretation that would serve them notice as to the remedies that were available to them. An erroneous construction placed upon the law by the Commissioner, even if it has been followed for years, must be abandoned. When the text of the law is clear, unbridled administrative discretion to read it otherwise cannot be condoned.

[60] *See Commissioner of Internal Revenue v. San Roque Power Corporation*, 719 Phil. 137 (2013) [Per J. Carpio, En Banc].

Partnership,[61] Mindanao II Geothermal Partnership (Mindanao II) filed its administrative and judicial claims on October 6, 2005 and July 21, 2006, respectively, prior to the promulgation of *Aichi* and *San Roque.* While its administrative claim was found to have been timely filed, this Court nevertheless denied its refund claim because the judicial claim was filed late or only 138 days after the lapse of the 120+30-day periods. This Court held that the 30-day period to appeal was mandatory and jurisdictional, applying the ruling in *San Roque.* It further emphasized that late filing was absolutely prohibited.

Since then, the 120+30-day periods have been applied to pending cases,[62] resulting in denial of taxpayers' claims due to late filing. This Court finds no reason to except this case.

Further, the Commissioner's inaction on Team Energy's claim during the 120-day period is "deemed a denial," pursuant to Section 7(a)(2)[63] of Republic Act No. 1125, as amended by Section 7 of Republic Act No. 9282. Team Energy had 30 days from the expiration of the 120-day period to file its judicial claim with the Court of Tax Appeals. Its failure to do so rendered the Commissioner's "deemed a denial" decision as final and inappealable.

Team Energy's contention that denial of its duly proven refund claim would constitute unjust enrichment on the part of the government is misplaced.

"Excess input tax is not an excessively, erroneously, or illegally collected tax."[64] A claim for refund of this tax is in the nature of a tax exemption, which is based on Sections 110(B) and 112(A) of 1997 NIRC, allowing VAT-registered persons to recover the excess input taxes they have paid in relation to their zero-rated sales. "The term 'excess' input VAT simply means that the input VAT available as [refund] credit exceeds the

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61 724 Phil. 534 (2014) [Per C.J. Sereno, First Division].

62 *Commissioner of Internal Revenue v. Toledo Power Co.*, 766 Phil. 20 (2015) [Per CJ Sereno, First Division]; *CE Casecnan Water and Energy Company, Inc. v. Commissioner of Internal Revenue,* 764 Phil. 595 (2015) [Per J. Leonen, Second Division]; *Northern Mindanao Power Corp. v. Commissioner of Internal Revenue,* 754 Phil. 146 (2015) [Per CJ Sereno, First Division]; *Rohm Apollo Semiconductor Phils. v. Commissioner of Internal Revenue,* 750 Phil. 624 (2015) [Per CJ Sereno, First Division]; *CBK Power Co. Ltd. v. Commissioner of Internal Revenue,* 724 Phil. 686 (2014) [Per CJ Sereno, First Division]; *Commissioner of Internal Revenue v. Dash Engineering Philippines, Inc.*, 723 Phil. 433 (2013) [Per J. Mendoza, Third Division].

63 Section 7. *Jurisdiction.* — The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
. . . .
(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations 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 of action, in which case the inaction shall be deemed a denial**[.] (Emphasis supplied)

64 *Dissenting Opinion* of J. Leonen in *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310, 389 (2013) [Per J. Carpio, En Banc].

output VAT, not that the input VAT is excessively collected because it is more than what is legally due."[65] Accordingly, claims for tax refund/credit of excess input tax are governed not by Section 229 but only by Section 112 of the NIRC.

A claim for input VAT refund or credit is construed strictly against the taxpayer.[66] Accordingly, there must be strict compliance with the prescriptive periods and substantive requirements set by law before a claim for tax refund or credit may prosper.[67] The mere fact that Team Energy has proved its excess input VAT does not entitle it as a matter of right to a tax refund or credit. The 120+30-day periods in Section 112 is not a mere procedural technicality that can be set aside if the claim is otherwise meritorious. It is a mandatory and jurisdictional condition imposed by law. Team Energy's failure to comply with the prescriptive periods is, thus, fatal to its claim.

II

On the disallowance of some of its input VAT claims, Team Energy submits that "at the time when the unutilized input VAT [was] incurred in 2003, the applicable NIRC provisions did not create a distinction between an official receipt and an invoice in substantiating a claim for refund."[68] Section 113 of the 1997 NIRC, prior to its amendment by Republic Act No. 9337 in 2005, provides:

> Section 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 (TIN); 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.

Team Energy posits that Section 113, prior to its amendment by

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65 *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310, 366 (2013) [Per J. Carpio, En Banc].

66 *See Microsoft Philipines, Inc. v. Commissioner of Internal Revenue,* 662 Phil. 762 (2011) [Per J. Carpio, Second Division]; *CIR v. Manila Mining Corporation,* 505 Phil. 650, 671 (2005) [Per J. Carpio Morales, Third Division].

67 *See Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310 (2013) [Per J. Carpio, En Banc]; *Commissioner of Internal Revenue v. Manila Mining Corp.*, 505 Phil. 650 (2005) [Per J. Carpio Morales, Third Division].

68 *Rollo* (G.R. No. 197663), p. 397.

Republic Act No. 9337, must be applied to its input VAT incurred in 2003, and that the disallowed amount of ₱258,874.55 supported by VAT invoice or official receipts should be allowed.

Team Energy's contention is untenable.

Claimants of tax refunds have the burden to prove their entitlement to the claim under substantive law and the factual basis of their claim.[69] Moreover, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[70]

Under Section 110(A)(1) of the 1997 NIRC, creditable input tax must be evidenced by a VAT invoice or official receipt, which must in turn reflect the information required in Sections 113 and 237 of the Code, *viz:*

> Section 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 (TIN); 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.
>
> . . . .
>
> Section 237. *Issuance of Receipts or Sales or Commercial Invoices.* — **All persons subject to an internal revenue tax** shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, **showing the date of transaction, quantity, unit cost and description of merchandise or nature of service**: *Provided, however*, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of amount, **where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax**; or where the receipt is issued to cover payment made as rentals,

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[69] *See Luzon Hydro Corp. v. Commissioner of Internal Revenue,* 721 Phil. 202 (2013) [Per J. Bersamin, First Division]; *Commissioner of Internal Revenue v. Seagate Technology (Philippines),* 491 Phil. 317 (2005) [Per J. Panganiban, Third Division]; *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue,* 547 Phil. 332 (2007) [Per J. Corona, First Division].

[70] *Bonifacio Water Corp. v. Commissioner of Internal Revenue,* 714 Phil. 413 (2013) [Per J. Peralta, Third Division]; *Microsoft Philipines, Inc. v. Commissioner of Internal Revenue,* 662 Phil. 762 (2011) [Per J. Carpio, Second Division].

commissions, compensations or fees, **receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.** (Emphasis supplied)

Section 4.108-1 of Revenue Regulations No. 7-95 summarizes the information that must be contained in a VAT invoice and a VAT official receipt:

> Section 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; and
> 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 invoice or receipts and this shall be considered as a "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 for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 [now Sections 106 and 108] 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)

In this case, the Court of Tax Appeals disallowed Team Energy's input VAT of ₱258,874.55, which consisted of:

1. Input taxes of ₱78,134.65 claimed on local purchase of goods supported by documents other than VAT invoices;[71] and

[71] *Rollo* (G.R. No. 197663), p. 71.

2. Input taxes of ₱180,739.90 claimed on local purchase of services supported by documents other than VAT official receipts.[72]

Team Energy submits that the disallowances "essentially result from the non-recognition [by] the [Court of Tax Appeals] En Banc of the interchangeability of VAT invoices and VAT [official receipts] in a claim for refund of excess or unutilized input tax."[73]

In *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue,*[74] this Court was confronted with the same issue on the substantiation of the taxpayer-applicant's zero-rated sales of services. In that case, AT&T Communications Services Philippines, Inc. (AT&T) applied for tax refund and/or tax credit of its excess/unutilized input VAT from zero-rated sales of services for calendar year 2002. The Court of Tax Appeals First Division, as affirmed by the En Banc, denied AT&T's claim "for lack of substantiation" on the ground that:

> [C]onsidering that the subject revenues pertain to gross receipts from services rendered by petitioner, **valid VAT official receipts** and not mere sales invoices **should have been submitted** in support thereof. Without proper VAT official receipts, the foreign currency payments received by petitioner from services rendered for the four (4) quarters of taxable year 2002 in the sum of US$1,102,315.48 with the peso equivalent of P56,898,744.05 cannot qualify for zero-rating for VAT purposes.[75] (Emphasis in the original)

Reversing the Court of Tax Appeals, this Court held that since Section 113 did not distinguish between a sales invoice and an official receipt, the sales invoices presented by AT&T would suffice provided that the requirements under Sections 113 and 237 of the Tax Code were met. It further explained:

> Sales invoices are recognized commercial documents to facilitate trade or credit transactions. They are proofs that a business transaction has been concluded, hence, should not be considered bereft of probative value. Only the preponderance of evidence threshold as applied in ordinary civil cases is needed to substantiate a claim for tax refund proper.[76] (Citations omitted)

However, in a subsequent claim for tax refund or credit of input VAT filed by AT&T for the calendar year 2003, the same issue on the

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72 Id. at 72.
73 Id. at 134.
74 640 Phil. 613 (2010) [Per J. Carpio Morales, Third Division].
75 Id. at 615.
76 Id. at 618–619.

interchangeability of invoice and official receipt was raised. This time in *AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue*,[77] this Court held that there was a clear delineation between official receipts and invoices and that these two (2) documents could not be used interchangeably. According to this Court, Section 113 on invoicing requirements must be read in conjunction with Sections 106 and 108, which specifically delineates sales invoices for sales of goods and official receipts for sales of services.

> Although it appears under [Section 113 of the 1997 NIRC] that there is no clear distinction on the evidentiary value of an invoice or official receipt, it is worthy to note that the said provision is a general provision which covers all sales of a VAT[-]registered person, whether sale of goods or services. It does not necessarily follow that the legislature intended to use the same interchangeably. The Court therefore cannot conclude that the general provision of Section 113 of the NIRC of 1997, as amended, intended that the invoice and official receipt can be used for either sale of goods or services, because there are specific provisions of the Tax Code which clearly delineates the difference between the two transactions.
>
> In this instance, Section 108 of the NIRC of 1997, as amended, provides:
>
> > SEC. 108. ***Value-added Tax on Sale of Services*** and Use or Lease of Properties. —
> >
> > . . . .
> >
> > (C) Determination of the Tax — The tax shall be computed by multiplying the total amount indicated in the ***official receipt*** by one-eleventh (1/11).
>
> Comparatively, Section 106 of the same Code covers sale of goods, thus:
>
> > SEC. 106. ***Value-added Tax on Sale of Goods or Properties.*** —
> >
> > . . . .
> >
> > (D) Determination of the Tax. — The tax shall be computed by multiplying the total amount indicated in the ***invoice*** by one-eleventh (1/11).
>
> Apparently, the construction of the statute shows that the legislature intended to distinguish the use of an invoice from an official receipt. It is more logical therefore to conclude that subsections of a statute under the same heading should be construed as having relevance to its heading. The legislature separately categorized VAT on sale of goods from VAT on sale of services, not only by its treatment with regard to tax but also with respect to substantiation requirements. Having been grouped

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[77] 747 Phil. 337 (2014) [Per J. Perez, First Division]. *See also KEPCO Philippines Corporation v. CIR*, G.R. No. 181858, 24 November 2010, 636 SCRA 166 [Per J. Mendoza, Second Division] cited in *Northern Mindanao Power Corp. v. Commissioner of Internal Revenue*, G.R. No. 185115, February 18, 2015 [Per C.J. Sereno, First Division].

> under Section 108, its subparagraphs, (A) to (C), and Section 106, its subparagraphs (A) to (D), have significant relations with each other.
>
> Legislative intent must be ascertained from a consideration of the statute as a whole and not of an isolated part or a particular provision alone. This is a cardinal rule in statutory construction. For taken in the abstract, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those with which it is associated. Thus, an apparently general provision may have a limited application if viewed together with the other provisions.[78] (Emphasis supplied, citation omitted)

This Court reiterates that to claim a refund of unutilized or excess input VAT, purchase of goods or properties must be supported by VAT invoices, while purchase of services must be supported by VAT official receipts.

For context, VAT is a tax imposed on each sale of goods or services in the course of trade or business, or importation of goods "as they pass along the production and distribution chain."[79] It is an indirect tax, which "may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services."[80] The output tax[81] due from VAT-registered sellers becomes the input tax[82] paid by VAT-registered purchasers on local purchase of goods or services, which the latter in turn may credit against their output tax liabilities. On the other hand, for a non-VAT purchaser, the VAT shifted forms part of the cost of goods, properties, and services purchased, which may be deductible as an expense for income tax purposes.[83]

Panasonic Communications Imaging Corp. v. Commissioner of Internal Revenue[84] explained the concept of VAT and its collection through the tax credit method:

> The VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. Under the VAT method of taxation, which is invoice-based, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports. For example, when a seller charges VAT on its sale, it issues an invoice to the buyer, indicating the amount of VAT he charged.

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78 *AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue*, 747 Phil. 337, 356–357 (2014) [Per J. Perez, First Division].

79 *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 332 (2005) [Per J. Panganiban, Third Division].

80 TAX CODE, sec. 105.

81 "Output tax" means the VAT due on the sale or lease of taxable goods, properties or services by a VAT-registered or VAT-registrable person. *See* last paragraph of Sec. 110(A)(3) of the Tax Code.

82 "'[I]nput tax' means the [VAT] due from or paid by a VAT-registered person in the course of his [or her] 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." *See* Sec. 110(A)(3) of the Tax Code.

83 *See Commissioner of Internal Revenue v. Benguet Corporation*, 501 Phil. 343 (2005) [Per J. Tinga, Second Division].

84 625 Phil. 631 (2010) [Per J. Abad, Second Division].

> For his part, if the buyer is also a seller subjected to the payment of VAT on his sales, he can use the invoice issued to him by his supplier to get a reduction of his own VAT liability. The difference in tax shown on invoices passed and invoices received is the tax paid to the government. In case the tax on invoices received exceeds that on invoices passed, a tax refund may be claimed.
>
> Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes equal to the input taxes that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment 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.[85] (Citations omitted)

Our VAT system is invoice-based, i.e. taxation relies on sales invoices or official receipts. A VAT-registered entity is liable to VAT, or the output tax at the rate of 0% or 10% (now 12%) on the gross selling price[86] of goods or gross receipts[87] realized from the sale of services. Sections 106(D) and 108(C) of the Tax Code expressly provide that VAT is computed at 1/11 of the total amount indicated in the *invoice* for sale of goods or *official receipt* for sale of services.[88] This tax shall also be recognized as input tax credit to the purchaser of the goods or services.

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85 Id. at 638–639.

86 "The term '*gross selling price*' means the total amount of money or its equivalent **which the purchaser pays or is obligated to pay** to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price." (Emphasis supplied) *See* last paragraph of Section 106(A)(1) of the Tax Code.

87 "The term '*gross receipts*' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced **payments actually or constructively received** during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax." (Emphasis supplied) *See* last paragraph of Section 108(A) of the Tax Code.

88 TAX CODE, secs. 106 and 108 provide:

Section 106. *Value-added Tax on* ***Sale of Goods or Properties.*** —

(A) *Rate and Base of Tax.* — These shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the **gross selling price or gross value in money of the goods or properties sold**, bartered or exchanged, such tax to be paid by the seller or transferor. . . .

. . . .

(D) *Determination of the Tax.* —

(1) **The tax shall be computed by multiplying the total amount indicated in the *invoice* by one-eleventh (1/11).**

(2) *Sales Returns, Allowances and Sales Discounts.* — The value of goods or properties sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued. Sales discount granted and indicated in the invoice at the time of sale and the grant of which does not depend upon the happening of a future event may be excluded from the gross sales within the same quarter it was given.

Section 108. *Value-added Tax on* ***Sale of Services and Use or Lease of Properties.*** —

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of **gross receipts derived from the sale or exchange of services**, including the use or lease of properties. . . .

. . . .

Under Section 110[89] of the 1997 NIRC, the input tax on purchase of goods or properties, or services is creditable:

> (a) To the purchaser upon consummation of sale and on importation of goods or properties;
>
> (b) To the importer upon payment of the VAT prior to the release of the goods from the custody of the Bureau of Customs; and
>
> [(c)] [T]o the purchaser [of services], lessee [of property] or licensee upon payment of the compensation, rental, royalty or fee.

A VAT-registered person may opt, however, to apply for tax refund or credit certificate of VAT paid corresponding to the zero-rated sales of goods, properties, or services to the extent that this input tax has not been applied

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(C) *Determination of the Tax.* — **The tax shall be computed by multiplying the total amount indicated in the *official receipt* by one-eleventh (1/11).** (Emphasis supplied)

[89] TAX CODE, sec. 110 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:
(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.
(b) Purchase of services on which a value-added tax has been actually paid.
(2) The input tax on domestic purchase of goods or properties shall be creditable.
(a) To the purchaser upon consummation of sale and on importation of goods or properties; and
(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.
(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:
(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and
(b) A ratable portion of any input tax which cannot be directly attributed to either activity.
. . . .

(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. Any input tax attributable to the purchase of capital goods or 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.
(C) *Determination of Creditable Input Tax.* — The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.
The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also those filed with other government agencies, such as the Board of Investments and the Bureau of Customs.

against the output tax.

Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.

The Court of Tax Appeals further pointed out that the noninterchangeability between VAT official receipts and VAT invoices avoids having the government refund a tax that was not even paid.

> It should be noted that the seller will only become liable to pay the output VAT upon receipt of payment from the purchaser. If we are to use sales invoice in the sale of services, an absurd situation will arise when the purchaser of the service can claim tax credit representing input VAT even before there is payment of the output VAT by the seller on the sale pertaining to the same transaction. As a matter of fact[,] if the seller is not paid on the transaction, the seller of service would legally not have to pay output tax while the purchaser may legally claim input tax credit thereon. The government ends up refunding a tax which has not been paid at all. Hence, to avoid this, VAT official receipt for the sale of services is an absolute requirement.[90]

In conjunction with this rule, Revenue Memorandum Circular No. 42-03[91] expressly provides that an "invoice is the supporting document for the claim of input tax on purchase of goods whereas official receipt is the supporting document for the claim of input tax on purchase of services." It further states that a taxpayer's failure to comply with the invoicing requirements will result to the disallowance of the claim for input tax. Pertinent portions of this circular provide:

> A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/[tax credit certificate] is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the

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90 *Rollo* (G.R. No. 197663), p. 98.

91 Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters (2003).

> right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.

Pursuant to Sections 106(D) and 108(C) in relation to Section 110 of the 1997 NIRC, the output or input tax on the sale or purchase of goods is determined by the total amount indicated in the VAT invoice, while the output or input tax on the sale or purchase of services is determined by the total amount indicated in the VAT official receipt.

Thus, the Court of Tax Appeals properly disallowed the input VAT of ₱258,874.55 for Team Energy's failure to comply with the invoicing requirements.

III

The Commissioner submits that the Court of Tax Appeals En Banc erred in granting Team Energy a tax refund/credit of ₱11,161,392.67, representing unutilized input VAT attributable to zero-rated sales of electricity to NPC.[92] She maintains that Team Energy is not entitled to any tax refund or credit because it cannot qualify for VAT zero-rating under Republic Act No. 9136[93] or the Electrical Power Industry Reform Act (EPIRA) Law for failure to submit its ERC Registration and Certificate of Compliance.[94] She avers that to operate a generation facility, Team Energy must have a duly issued ERC Certificate of Compliance, without which an entity cannot be considered a power generation company and its sales of generated power will not qualify for VAT zero-rating.[95]

The Court of Tax Appeals rejected this argument on the ground that

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92 *Rollo* (G.R. No. 197770), p. 28.

93 Rep. Act No. 9136, sec. 6 provides:

> Section 6. *Generation Sector.* — Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.
>
> Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.
>
> Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.
>
> The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements.

94 *Rollo* (G.R. No. 197770), pp. 21–22.

95 Id. at 24.

the issue was raised for the first time in a motion for partial reconsideration, *viz:*

> [The Commissioner] raised the issue of [Team Energy's] failure to submit the Registration and Certificate of Compliance (COC) issued by ERC for the first time in the instant Motion for Partial Reconsideration. The said issue was neither raised in the Court a quo nor in the Petition for Review with the Court En Banc. The rule is well settled that no question will be considered by the appellate court which has not been raised in the court below. When a party deliberately adopts a certain theory, and the case is tried and decided upon the theory in the court below, he will not be permitted to change his theory on appeal, because to permit him to do so would be unfair to the adverse party. Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. In the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,*[96] the Supreme Court said:
>
> > The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process. This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has consistently been rejected.
>
> Also, both parties stipulated and recognized in the Joint Stipulation of Facts and Issues that [Team Energy] is principally engaged in the business of power generation. Moreover, [the Commissioner] acknowledged [Team Energy's] sale of electricity to the NPC as zero-rated evidence[d] by the approved Application for VAT zero-rating.[97]

The Commissioner now asserts that her counsel's mistake in belatedly raising the issue should not prejudice the State, as it is not bound by the errors of its officers or agents.[98] She adds that despite the Stipulation of Facts, the Court of Tax Appeals should have determined Team Energy's compliance with Republic Act No. 9136 or the EPIRA Law because the burden lies on the taxpayer to prove its entitlement to a refund.[99]

The Commissioner's argument is misplaced.

Team Energy's claim for unutilized or excess input VAT was anchored not on the EPIRA Law but on Section 108(B)(3)[100] of the 1997 NIRC, in

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96 G.R. No. 168498 (Resolution), [April 24, 2007], 550 Phil. 316–326.

97 *Rollo* (G.R. No. 197770), pp. 83–84.

98 Id. at 30.

99 Id. at 31.

100 Sec. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –

. . . .

relation to Section 13 of Republic Act No. 6395[101] or the NPC's charter,[102] before its repeal by Republic Act No. 9337. One of the issues presented before the Court of Tax Appeals First Division was "[w]hether or not the power generation services rendered by [Team Energy] to NPC are subject to zero percent (0%) VAT pursuant to Section 108(B)(3)."[103] Otherwise stated, the Court of Tax Appeals First Division was confronted with the legal issue of whether NPC's tax exemption privilege includes the indirect tax of VAT to entitle Team Energy to 0% VAT rate. The Court of Tax Appeals aptly resolved the issue in the affirmative, consistent with this Court's pronouncements[104] that NPC is exempt from all taxes, both direct and indirect, and services rendered by any VAT-registered person or entity to NPC are effectively subject to 0% rate.

Indeed, the requirements of the EPIRA law would apply to claims for refund filed under the EPIRA. In such case, the taxpayer must prove that it has been duly authorized by the ERC to operate a generation facility and that it derives its sales from power generation. This was the thrust of this Court's ruling in *Commissioner of Internal Revenue v. Toledo Power Company (TPC).*[105]

In *Toledo,* the Court of Tax Appeals granted Toledo Power Company's

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(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

. . . .

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate[.]** (Emphasis supplied)

101 Rep. Act No. 6395, sec. 13 provides:

Section 13. *Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and other Charges by Government and Governmental Instrumentalities.* — The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation is hereby declared exempt:

(a) From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions 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 to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;

(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. (Repealed by Section 24 of Republic Act No. 9337 [July 1, 2005]).

102 *Rollo* (G.R. No. 197663), p. 402.

103 *Rollo* (G.R. No. 197770), p. 105.

104 *See CBK Power Co. Ltd. v. Commissioner of Internal Revenue,* 724 Phil. 686 (2014) [Per CJ Sereno, First Division]; *Kepco Philippines Corp. v. Commissioner of Internal Revenue,* 656 Phil. 68 (2011) [Per J. Mendoza, Second Division]; *San Roque Power Corp. v. Commissioner of Internal Revenue,* 620 Phil. 554 (2009) [Per J. Chico-Nazario, Third Division]; *Philippine Geothermal Inc. v. Commissioner of Internal Revenue,* 503 Phil. 278 (2005) [Per J. Quisumbing, First Division].

105 774 Phil. 92 (2015) [Per J. Del Castillo, Second Division].

(TPC) claim for refund of unutilized input VAT attributable to sales of electricity to NPC, but denied refund of input VAT related to sales of electricity to other entities[106] for failure of TPC to prove that it was a generation company under the EPIRA. This Court held that TPC's failure to submit its ERC Certificate of Compliance renders its sales of generated power not qualified for VAT zero-rating. This Court, in affirming the Court of Tax Appeals, held:

> Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4 (x) of the same law states that a generation company "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Corollarily, **to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.**
>
> . . . .
>
> In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA.[107] (Emphasis supplied)

Here, considering that Team Energy's refund claim is premised on Section 108(B)(3) of the 1997 NIRC, in relation to NPC's charter, the requirements under the EPIRA are inapplicable. To qualify its electricity sale to NPC as zero-rated, Team Energy needs only to show that it is a VAT-registered entity and that it has complied with the invoicing requirements under Section 108(B)(3) of the 1997 NIRC, in conjunction with Section 4.108-1 of Revenue Regulations No. 7-95.[108]

Finally, the Commissioner is bound by her admission in the Joint Stipulation of Facts and Issues,[109] concerning the prior approval of Team Energy's 2002 Application for Effective Zero-Rate of its supply of

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[106] Id. at 98. Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation (ACMDC), and Atlas Fertilizer Corporation (AFC);

[107] *Commissioner of Internal Revenue v. Toledo Power Company,* 774 Phil. 92, 111–114 (2015) [Per J. Del Castillo, Second Division].

[108] *See Kepco Philippines Corp. v. Commissioner of Internal Revenue,* 656 Phil. 68 (2011) [Per J. Mendoza, Second Division]. *See also Panasonic Communications Imaging Corp. v. Commissioner of Internal Revenue,* 625 Phil. 631 (2010) [Per J. Abad, Second Division].

[109] *Rollo* (G.R. No. 197770), pp. 103–106.

electricity to the NPC.[110] Thus, she is estopped from asserting that Team Energy's transactions cannot be effectively considered zero-rated.

In sum, the Court of Tax Appeals En Banc found proper the refund of ₱11,161,392.67, representing unutilized input VAT attributable to Team Energy's zero-rated sales for the first quarter of 2003.[111] This Court accords the highest respect to the factual findings of the Court of Tax Appeals[112] considering its developed expertise on the subject, unless there is showing of abuse in the exercise of its authority.[113] This Court finds no reason to overturn the factual findings of the Court of Tax Appeals on the amounts allowed for refund.

WHEREFORE, the Petitions are **DENIED.** The April 8, 2011 Decision and July 7, 2011 Resolution of the Court of Tax Appeals En Banc in CTA EB No. 603 are **AFFIRMED.**

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

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[110] Id. at 104.

[111] Id. at 63.

[112] *Commissioner of Internal Revenue. v. Toledo Power, Inc.*, 725 Phil. 66 (2014) [Per J. Peralta, Third Division] *citing Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, 529 Phil. 785 (2006) [Per J. Chico-Nazario, First Division].

[113] *Commissioner of Internal Revenue v. Team Sual Corp.*, 739 Phil. 215 (2014) [Per J. Carpio, Second Division]; *Kepco Philippines Corp. v. Commissioner of Internal Revenue*, 650 Phil. 525 (2011) [Per J. Mendoza, Second Division].

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.

ANTONIO T. CARPIO
Acting Chief Justice