Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

TAKENAKA CORPORATION–PHILIPPINE BRANCH, Petitioner,	**G.R. No. 193321**
	Present:
- versus -	LEONARDO-DE CASTRO, Acting Chairperson, BERSAMIN, PERLAS-BERNABE, *JARDELEZA, and CAGUIOA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 19 2016

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DECISION

BERSAMIN, *J.*:

The petitioner as taxpayer appeals before the Court the adverse decision entered on March 29, 2010[1] and the resolution issued on August 12, 2010[2] in C.T.A. EB No. 514, whereby the Court of Tax Appeals (CTA) *En Banc* respectively denied its claim for refund of excess input value-added tax (VAT) arising from its zero-rated sales of services for taxable year 2002, and denied its ensuing motion for reconsideration.

The factual and procedural antecedents, as narrated by the CTA *En Banc*, are quoted below:

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* In lieu of Chief Justice Maria Lourdes P. A. Sereno, who inhibited for being a former counsel in a related case, per the raffle of October 12, 2016.

1 *Rollo,* pp. 49-67; penned by Associate Justice Olga Palanca-Enriquez (retired), with Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy and Associate Justice Caesar A. Casanova concurring; Presiding Justice Ernesto D. Acosta was on leave.

2 Id. at 69-74; presiding Associate Justice Acosta dissented, and was joined by Associate Justice Casanova (see *rollo,* pp. 75-77).

Respondent Takenaka, as a subcontractor, entered into an On-Shore Construction Contract with Philippine Air Terminal Co., Inc. (PIATCO) for the purpose of constructing the Ninoy Aquino Terminal III (NAIA-IPT3).

PIATCO is a corporation duly organized and existing under the laws of the Philippines and was duly registered with the Philippine Economic Zone Authority (PEZA), as an Ecozone Developer/Operator under RA 7916.

Respondent Takenaka filed its Quarterly VAT Returns for the four quarters of taxable year 2002 on April 24, 2002, July 22, 2002, October 22, 2002 and January 22, 2003, respectively. Subsequently, respondent Takenaka amended its quarterly VAT returns several times. In its final amended Quarterly VAT Returns, the following were indicated thereon:

Exh.	Year	Zero-rate	Taxable	Output VAT	Input VAT	
	2002	Sales/Receipts	Sales		This Quarter	Excess
Q	1st	P854,160,170.42	P5,292,340.00	P529,234.00	P52,044,766.05	P51,515,532.05
II	2nd	599,459,273.90			60,588,638.09	60,588,638.09
DDD	3rd	480,168,744.90			55,234,736.15	55,234,736.15
VVV	4th	304,283,710.15			30,494,993.51	30,494,993.51
TOTAL		P2,238,071,899.37	P5,292,340.00	P529,234.00	P198,363,133.80	P197,833,899.80

On January 13, 2003, the BIR issued VAT Ruling No. 011-03 which states that the sales of goods and services rendered by respondent Takenaka to PIATCO are subject to zero-percent (0%) VAT and requires no prior approval for zero rating based on Revenue Memorandum Circular 74-99.

On April 11, 2003, respondent Takenaka filed its claim for tax refund covering the aforesaid period before the BIR Revenue District Office No. 51, Pasay City Branch.

For failure of the BIR to act on its claim, respondent Takenaka filed a Petition for Review with this Court, docketed as C.T.A. Case No. 6886.

After trial on the merits, on November 4, 2008, the Former First Division rendered a Decision partly granting the Petition for Review and ordering herein petitioner CIR to refund to respondent Takenaka the reduced amount of ₱53,374,366.52, with a Concurring and Dissenting Opinion from Presiding Justice Ernesto D. Acosta.

Not satisfied, on November 26, 2008, respondent Takenaka filed a "Motion for Reconsideration".

During the deliberation of respondent Takenaka's "Motion for Reconsideration", Associate Justice Caesar A. Casanova changed his stand and concurred with Presiding Justice Ernesto D. Acosta, while the original *Ponente*, Associate Justice Lovell R. Bautista, maintained his stand. Thus, respondent Takenaka's "Motion for Reconsideration" was granted by the Former First Division in its Amended Decision dated March 16, 2009, with a Dissenting Opinion from Associate Justice Lovell R. Bautista.

> On April 7, 2009, petitioner CIR filed a "Motion for Reconsideration" of the Amended Decision, which the Former First Division denied in a Resolution dated June 29, 2009, with Associate Justice Lovell R. Bautista reiterating his Dissenting Opinion.[3]

Consequently, the respondent filed a petition for review in the CTA *En Banc* to seek the reversal of the March 16, 2009 decision and the June 29, 2009 resolution of the CTA Former First Division.[4]

On March 29, 2010, the CTA *En Banc* promulgated its decision disposing thusly:

> **WHEREFORE,** premises considered, the present Petition for Review is hereby **GRANTED.** Accordingly, the Amended Decision dated March 16, 2009 and Resolution dated June 29, 2009 rendered by the Former First Division are hereby **REVERSED** and **SET ASIDE,** and another one is hereby entered **DENYING** respondent Takenaka's claimed input tax attributable to its zero rated sales of services for taxable year 2002 in the amount of ₱143,997,333.40.
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> **SO ORDERED.**[5]

Later on, through the resolution dated August 12, 2010,[6] the CTA *En Banc* denied the petitioner's motion for reconsideration.

Hence, this petition for review on *certiorari*.

Issue

The lone issue is whether or not the sales invoices presented by the petitioner were sufficient as evidence to prove its zero-rated sale of services to Philippine Air Terminal Co., Inc. (PIATCO), thereby entitling it to claim the refund of its excess input VAT for taxable year 2002.

Ruling of the Court

We deny the appeal.

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3 Id. at 52-54.
4 Id. at 50.
5 Id. at 66-67.
6 Supra note 2.

First of all, the Court deems it appropriate to determine the timeliness of the petitioner's judicial claim for refund in order to ascertain whether or not the CTA properly acquired jurisdiction thereof. Well-settled is the rule that the issue of jurisdiction over the subject matter may at any time either be raised by the parties or considered by the Court *motu proprio*. As such, the jurisdiction of the CTA over the appeal could still be determined by this Court despite its not being raised as an issue by the parties.[7]

In *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue,*[8] the Court has underscored that:

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

In this case, the following dates are relevant to determine the timeliness of the petitioner's claim for refund, to wit:

Amount Claimed and Taxable Period covered	**Close of quarter when sales were made**	**Last day for filing administrative claim for refund (2 years)**	**Actual date of filing of administrative claim for refund**	**Last day for filing judicial claim with CTA (120+30)**	**Actual filing of judicial claim with CTA**
₱51,515,532.05, 1st quarter of 2002	March 31, 2002	March 31, 2004	April 11, 2003	September 8, 2003	**March 10, 2004**
₱60,588,638.09, 2nd quarter of 2002	June 30, 2002	June 30, 2004			

[7] *Northern Mindanao Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 185115, February 18, 2015, 750 SCRA 733, 737-738.

[8] G.R. No. 193301 and 194637, March 11, 2013, 693 SCRA 49, 89.

₱55,234,736.15, 3rd quarter of 2002	September 30, 2002	September 30, 2004			
₱30,494,993.51, 4th quarter of 2002	December 31, 2002	December 31, 2004			

Based on the foregoing, the petitioner's situation is actually a case of late filing and is similar with the case of Philex Mining Corporation in *Commissioner of Internal Revenue v. San Roque Power Corporation.*[9]

The petitioner timely filed its administrative claim on April 11, 2003, within the two-year prescriptive period after the close of the taxable quarter when the zero-rated sales were made. The respondent had 120 days, or until August 9, 2003, to decide the petitioner's claim. Considering that the respondent did not act on the petitioner's claim on or before August 9, 2003, the latter had until September 8, 2003, the last day of the 30-day period, within which to file its judicial claim. However, it brought its petition for review in the CTA only on March 10, 2004, or 184 days after the last day for the filing. Clearly, the petitioner belatedly brought its judicial claim for refund, and the CTA did not acquire jurisdiction over the petitioner's appeal.

We note, however, that the petitioner's judicial claim was brought well within the two-year prescriptive period. Be that as it may, it must be stressed that the two-year prescriptive period refers to the period within which the taxpayer can file an administrative claim, not the judicial claim with the CTA.[10] Accordingly, the CTA should have denied petitioner's claim for tax refund or credit for lack of jurisdiction.

Nonetheless, the CTA did not err in denying the claim for refund on the ground that the petitioner had not established its zero-rated sales of services to PIATCO through the presentation of official receipts. In this regard, as evidence of an administrative claim for tax refund or tax credit, there is a certain distinction between a *receipt* and an *invoice*. The Court has reiterated the distinction in *Northern Mindanao Power Corporation v. Commissioner of Internal Revenue*[11] in this wise:

> Section 113 of the NIRC of 1997 provides that a VAT invoice is necessary for every sale, barter or exchange of goods or properties, while a VAT official receipt properly pertains to every lease of goods or properties; as well as to every sale, barter or exchange of services.
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> The Court has in fact distinguished an invoice from a receipt in *Commissioner of Internal Revenue v. Manila Mining Corporation*:

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9 G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336, 388-390.
10 Id. at 391.
11 Supra note 7, at 743-744.

> **A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.**
>
> **A "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.**
>
> A VAT invoice is the seller's best proof of the sale of goods or services to the buyer, while a VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. A VAT invoice and a VAT receipt should not be confused and made to refer to one and the same thing. Certainly, neither does the law intend the two to be used alternatively. (Bold underscoring supplied for emphasis)

The petitioner submitted sales invoices, not official receipts, to support its claim for refund. In light of the aforestated distinction between a receipt and an invoice, the submissions were inadequate for the purpose thereby intended. The Court concurs with the conclusion of the CTA *En Banc*, therefore, that "[w]ithout proper VAT official receipts issued to its clients, the payments received by respondent Takenaka for providing services to PEZA-registered entities cannot qualify for VAT zero-rating. Hence, it cannot claim such sales as zero-rated VAT not subject to output tax."[12]

Under VAT Ruling No. 011-03, the sales of goods and services rendered by the petitioner to PIATCO were subject to zero-percent (0%) VAT, and required no prior approval for zero rating based on Revenue Memorandum Circular 74-99.[13] This notwithstanding, the petitioner's claim for refund must still be denied for its failure as the taxpayer to comply with the substantiation requirements for administrative claims for tax refund or tax credit. The Court explains why in *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*:[14]

> In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. **Hence, the mere fact that petitioner's application for zero-rating has been approved by the CIR does not, by itself, justify the grant of a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as**

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12 *Rollo*, p. 64.

13 Id. at 52-53.

14 G.R. No. 181136, June 13, 2012, 672 SCRA 350, 362.

well as by revenue regulations implementing them. (Bold underscoring supplied for emphasis)

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on March 29, 2010 in C.T.A. EB No. 514; and **DIRECTS** the petitioner to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ATTESTATION

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

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice