Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CE LUZON GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

G.R. No. 197526

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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REPUBLIC OF THE PHILIPPINES, represented by the BUREAU OF INTERNAL REVENUE,
Petitioner,

G.R. No. 199676-77

-versus-

CE LUZON GEOTHERMAL POWER COMPANY, INC.,
Respondent.

x----------x

Present:

CARPIO, *J., Chairperson,*
PERALTA,
MENDOZA,
LEONEN, and
MARTIRES, *JJ.*

Promulgated:
26 JUL 2017

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DECISION

LEONEN, *J.*:

The 120-day and 30-day reglementary periods under Section 112(C) of the National Internal Revenue Code are both mandatory and jurisdictional. Non-compliance with these periods renders a judicial claim for refund of creditable input tax premature.

Before this Court are two (2) consolidated Petitions for Review concerning the prescriptive period in filing judicial claims for unutilized creditable input tax or input Value Added Tax (VAT).

The first Petition,[1] docketed as G.R. No. 197526, was filed by CE Luzon Geothermal Power Company, Inc. (CE Luzon) against the Commissioner of Internal Revenue. The second Petition,[2] docketed as G.R. Nos. 199676-77, was instituted by the Bureau of Internal Revenue, on behalf of the Republic of the Philippines, against CE Luzon.

CE Luzon is a domestic corporation engaged in the energy industry.[3] It owns and operates the CE Luzon Geothermal Power Plant, which generates power for sale to the Philippine National Oil Company-Energy Development Corporation by virtue of an energy conversion agreement.[4] CE Luzon is a VAT-registered taxpayer with Tax Identification Number 003-924-356-000.[5]

The sale of generated power by generation companies is a zero-rated transaction under Section 6 of Republic Act No. 9136.[6]

In the course of its operations, CE Luzon incurred unutilized creditable input tax amounting to ₱26,574,388.99 for taxable year 2003.[7] This amount was duly reflected in its amended quarterly VAT returns.[8] CE

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1 *Rollo* (G.R. No. 197526), pp. 14–90.
2 *Rollo* (G.R. No. 199676-77), pp. 10–38.
3 *Rollo* (G.R. No. 197526), p. 21, Petition for Review on Certiorari.
4 Id.
5 Id. at 20.
6 *Rollo* (G.R. No. 199676-77), p. 15.
Rep. Act No. 9136, sec. 6, par. 5 provides:
Section 6. Generation Sector. –
. . . .
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.
7 *Rollo* (G.R. No. 197526), p. 22.
8 Id. at 21–22.

Luzon then filed before the Bureau of Internal Revenue an administrative claim for refund of its unutilized creditable input tax as follows:

Quarter	Date of Filing	Unutilized Creditable Input Tax
1st	January 20, 2005	[₱]4,785,234.70
2nd	March 31, 2005	[₱]4,568,458.49
3rd	June 7, 2005	[₱]7,455,413.97
4th	June 7, 2005	[₱]9,765,281.83
	Total	[₱]26,574,388.99[9]

Without waiting for the Commissioner of Internal Revenue to act on its claim, or for the expiration of 120 days, CE Luzon instituted before the Court of Tax Appeals a judicial claim for refund of its first quarter unutilized creditable input tax on March 30, 2005.[10] The petition was docketed as CTA Case No. 7180.[11]

Meanwhile, on June 24, 2005, CE Luzon received the Commissioner of Internal Revenue's decision denying its claim for refund of creditable input tax for the second quarter of 2003.[12]

On June 30, 2005, CE Luzon filed before the Court of Tax Appeals a judicial claim for refund of unutilized creditable input tax for the second to fourth quarters of taxable year 2003.[13] The petition was docketed as CTA Case No. 7279.[14]

The material dates are summarized below:

Period of Claim Taxable Year 2003	Date of Filing Administrative Claim	Expiration of 120 days	Date of Receipt of Denial of Claim	Date of Filing of Petition for Review
1st quarter	January 20, 2005	May 20, 2005	-	March 30, 2005
2nd quarter	May 31, 2005	-	June 24, 2005	June 30, 2005

9 Id. at 22.
10 Id. at 217, Comment.
11 Id.
12 Id. at 216.
13 Id. at 217.
14 Id.

3rd quarter	June 7, 2005	October 5, 2005	-	June 30, 2005
4th quarter	June 7, 2005	October 5, 2005	-	June 30, 2005[15]

In his Answer,[16] the Commissioner of Internal Revenue asserted, among others, that CE Luzon failed to comply with the invoicing requirements under the law.[17]

In the Decision[18] dated April 21, 2009, the Court of Tax Appeals Second Division partially granted CE Luzon's claim for unutilized creditable input tax. It ruled that both the administrative and judicial claims of CE Luzon were brought within the two (2)-year prescriptive period.[19] However, the Court of Tax Appeals Second Division disallowed the amount of ₱3,084,874.35 to be refunded.[20] CE Luzon was only able to substantiate ₱22,647,638.47 of its claim.[21] The Court of Tax Appeals Second Division ordered the Commissioner of Internal Revenue to issue a tax credit certificate or to refund CE Luzon the amount of ₱22,647,638.47 representing CE Luzon's creditable input tax for taxable year 2003.[22]

CE Luzon and the Commissioner of Internal Revenue both moved for reconsideration.[23] In the Resolution[24] dated October 19, 2009, the Court of Tax Appeals Second Division denied both motions for lack of merit.

CE Luzon and the Commissioner of Internal Revenue then filed their respective Petitions for Review before the Court of Tax Appeals En Banc. The Petitions were docketed as C.T.A. EB No. 553 and C.T.A. EB No. 554, respectively.[25]

In the Decision[26] dated July 20, 2010, the Court of Tax Appeals En Banc partially granted CE Luzon's Petition for Review.[27] The Court of Tax Appeals En Banc ordered the Commissioner of Internal Revenue to issue a

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15 Id.
16 Id. at 110.
17 *Rollo* (G.R. No. 199676-77), pp. 17–19.
18 *Rollo* (G.R. No. 197526) pp. 107–126. The Decision was penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez of the Second Division, Court of Tax Appeals, Quezon City.
19 Id. at 124–125.
20 Id. at 23.
21 Id. at 119.
22 Id. at 125.
23 Id. at 23.
24 Id. at 128–133.
25 Id. at 23–24.
26 Id. at 136–162. The Decision was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla. Presiding Justice Ernesto D. Acosta dissented while Associate Justices Erlinda P. Uy and Amelia R. Cotangco-Manalastas were on leave.
27 Id. at 160.

tax credit certificate or to refund CE Luzon the amount of ₱23,489,514.64, representing CE Luzon's duly substantiated creditable input tax for taxable year 2003.[28]

However, on November 22, 2010, the Court of Tax Appeals En Banc rendered an Amended Decision,[29] setting aside its Decision dated July 20, 2010.[30] The Court of Tax Appeals En Banc ruled that CE Luzon failed to observe the 120-day period under Section 112(C) of the National Internal Revenue Code. Hence, it was barred from claiming a refund of its input VAT for taxable year 2003.[31] The Court of Tax Appeals En Banc held that CE Luzon's judicial claims were prematurely filed.[32] CE Luzon should have waited either for the Commissioner of Internal Revenue to render a decision or for the 120-day period to expire before instituting its judicial claim for refund:[33]

> WHEREFORE, premises considered:
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> 1) the Commissioner of Internal Revenue's "Motion for Reconsideration" is hereby GRANTED. Accordingly, our Decision dated July 20, 2010 in the above[-]captioned case is hereby RECALLED and SET ASIDE, and a new one is hereby entered DISMISSING CE Luzon's Petition for Review in C.T.A. EB No. 553 and GRANTING CIR's Petition for Review in C.T.A. EB No. 554. Accordingly, the Decision dated April 21, 2009 and Resolution dated October 19, 2009 rendered by the Former Second Division in C.T.A. CASE Nos. 7180 and 7279 are hereby REVERSED and SET ASIDE.
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> 2) For being moot and academic, CE LUZON's "Motion for Partial Reconsideration" is hereby DENIED.
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> SO ORDERED.[34]

CE Luzon moved for partial reconsideration.[35] On June 27, 2011, the Court of Tax Appeals En Banc rendered a second Amended Decision,[36] partially granting CE Luzon's claim for unutilized creditable input tax but only for the second quarter of taxable year 2003 and only up to the extent of

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28 Id. at 160–161.

29 Id. at 171–179. The Decision was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista dissented.

30 Id. at 25–26.

31 Id. at 173–174.

32 Id. at 176.

33 Id.

34 Id. at 178–179.

35 Id. at 26.

36 Id. at 91–105. The Decision was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas. Associate Justice Lovell R. Bautista dissented.

₱3,764,386.47.[37] The Court of Tax Appeals En Banc relied on *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[38] in partially granting the petition.

The Court of Tax Appeals En Banc found that CE Luzon's judicial claim for refund of input tax for the second quarter of 2003 was timely filed.[39] However, the Court of Tax Appeals En Banc disallowed ₱804,072.02 to be refunded because of CE Luzon's non-compliance with the documentation and invoicing requirements:[40]

> WHEREFORE, premises considered, CE Luzon Geothermal Power Company, Inc.'s "Motion for Reconsideration" is PARTLY GRANTED. Accordingly, our Amended Decision dated November 22, 2010 only in so far as it dismissed CE Luzon Geothermal Power Company, Inc.'s 2nd quarter claim, is hereby LIFTED and SET ASIDE, and another one is hereby entered ordering the Commissioner of Internal Revenue to REFUND or to ISSUE A TAX CREDIT CERTIFICATE in favor of CE Luzon Geothermal Power, Inc. in the reduced amount of THREE MILLION SEVEN HUNDRED SIXTY FOUR THOUSAND THREE HUNDRED EIGHTY SIX AND 47/100 PESOS (P3,764,386.47), representing its unutilized input VAT for the second quarter of taxable year 2003.
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> SO ORDERED.[41]

On September 2, 2011, CE Luzon filed before this Court a Petition for Review on Certiorari[42] challenging the second Amended Decision dated June 27, 2011 of the Court of Tax Appeals En Banc.[43] The Petition was docketed as G.R. No. 197526.[44]

On January 27, 2012, the Commissioner of Internal Revenue filed a Petition for Review on Certiorari[45] assailing the second Amended Decision dated June 27, 2011 and the Resolution dated December 1, 2011 of the Court of Tax Appeals En Banc[46] insofar as it granted CE Luzon's second quarter claim for refund.[47] The Petition was docketed as G.R. Nos. 199676-77.[48]

The Commissioner of Internal Revenue filed a Comment on the

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37 Id. at 104.
38 Id. at 95. 646 Phil. 710 (2010) [Per J. Del Castillo, First Division].
39 Id. at 101.
40 Id. at 101–103.
41 Id. at 104.
42 Id. at 14–90.
43 Id. at 27.
44 Id. at 14.
45 *Rollo* (G.R. No. 199676-77), pp. 10–38.
46 Id. at 11.
47 Id. at 33.
48 Id. at 10.

Petition for Review[49] in G.R. No. 197526 on February 7, 2012.

On April 11, 2012, the Petitions were consolidated.[50]

In the Resolution dated August 1, 2012, CE Luzon was required to file a comment on the Petition in G.R. Nos. 199676-77 and a reply to the comment in G.R. No. 197526.[51]

On November 14, 2012, CE Luzon filed its Comment on the Petition in G.R. Nos. 199676-77[52] and its Reply to the comment on the Petition in G.R. No. 197526.[53]

In the Resolution[54] dated June 26, 2013, this Court gave due course to the petitions and required the parties to submit their respective memoranda. Meanwhile, on July 19, 2013, CE Luzon filed a Supplement to its Petition.[55]

The Commissioner of Internal Revenue filed his Memorandum[56] on September 16, 2013 while CE Luzon filed its Memorandum[57] on September 20, 2013.

In its Petition docketed as G.R. No. 197526, CE Luzon asserts that its judicial claims for refund of input VAT attributable to its zero-rated sales were timely filed.[58] Relying on *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,*[59] CE Luzon argues that the two (2)-year prescriptive period under Section 229 of the National Internal Revenue Code[60] governs both the administrative and

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49 *Rollo* (G.R. No. 197526), 214–242.
50 *Rollo* (G.R. No. 199676-77), 343–344.
51 Id. at 345.
52 Id. at 358–375.
53 *Rollo* (G.R. No. 197526), pp. 269–308.
54 Id. at 323–323-A.
55 Id. at 328–339.
56 Id. at 344–366.
57 Id. at 368–405.
58 Id. at 28.
59 551 Phil. 519 (2007) [Per J. Chico-Nazario, Third Division].
60 TAX CODE, sec. 229 provides:
Section 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

judicial claims for refund of creditable input tax.[61] CE Luzon contends that creditable input tax attributable to zero-rated sales is excessively collected tax.[62]

CE Luzon asserts that since the prescriptive periods in Section 112(C) of the National Internal Revenue Code are merely permissive, it should yield to Section 229.[63] Moreover, Section 112(C) does not state that a taxpayer is barred from filing a judicial claim for non-compliance with the 120-day period.[64]

CE Luzon emphasizes that the doctrine in *Atlas* directly addressed the correlation between Section 229 and Section 112(C) of the National Internal Revenue Code. *Atlas* stated that a taxpayer seeking a refund of input VAT may invoke Section 229 because input VAT was an "erroneously collected national internal revenue tax."[65] CE Luzon points out that *Aichi* never established a binding rule regarding the prescriptive periods in filing claims for refund of creditable input tax.[66]

Assuming that *Aichi* correctly interpreted Section 112(C) of the National Internal Revenue Code, CE Luzon states that it should not be applied in this case because CE Luzon's claims for refund were filed before *Aichi's* promulgation.[67] The prevailing rule at the time when CE Luzon instituted its judicial claim for refund was that both the administrative and judicial claims should be filed within two (2) years from the date the tax is paid.[68]

In any case, CE Luzon argues that the Commissioner of Internal Revenue is estopped from assailing the timeliness of its judicial claims.[69] The Commissioner of Internal Revenue categorically stated in several of its rulings that taxpayers need not wait for the expiration of 120 days before instituting a judicial claim for refund of creditable input tax.[70] CE Luzon relies on the following Bureau of Internal Revenue issuances: (1) Section 4.104-2, Revenue Regulations No. 7-95; (2) Revenue Memorandum Circular No. 42-99; (3) Revenue Memorandum Circular No. 42-2003, as amended by Revenue Memorandum Circular No. 49-2003; (4) Revenue Memorandum Circular No. 29-2009; and (5) Bureau of Internal Revenue Ruling DA-489-03.[71]

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61 *Rollo* (G.R. No. 197526), p. 28.
62 Id. at 39–42.
63 Id. at 43–45.
64 Id. at 45.
65 Id. at 53.
66 *Rollo* (G.R. No. 197526), p. 50.
67 Id. at 301–303.
68 Id. at 39.
69 Id. at 66.
70 Id.
71 Id. at 66–67.

On the other hand, the Commissioner of Internal Revenue argues that Sections 112(C) and 229 of the National Internal Revenue Code need not be harmonized because they are clear and explicit.[72] Laws should only be construed if they are "ambiguous or doubtful in meaning."[73] Section 112(C) clearly provides that in claims for refund of creditable input tax, taxpayers can only elevate their judicial claim upon receipt of the decision denying their administrative claim or upon the lapse of 120 days.[74] Moreover, the tax covered in Section 112 is different from the tax in Section 229. Section 112(C) covers unutilized input tax. In contrast, Section 229 pertains to national internal revenue tax that is erroneously or illegally collected.[75]

The Commissioner of Internal Revenue further contends that CE Luzon's reliance on *Atlas* is misplaced.[76] *Atlas* neither directly nor indirectly raised the issue of prescriptive periods in filing claims for refund of input VAT. In addition, *Atlas* was decided under the old tax code.[77] The clear and categorical precedent regarding the issue of prescriptive periods in refunds of input VAT is *Aichi*.[78]

Although the Bureau of Internal Revenue has ruled that judicial claims for refund of input VAT may be brought within the two (2)-year period under Section 229, the Commissioner of Internal Revenue asserts that the State cannot be estopped by the errors or mistakes of its agents.[79] An erroneous construction does not create a vested right on those who have relied on it. Taxpayers can neither prevent the correction of the erroneous interpretation nor excuse themselves from compliance.[80]

In the Petition docketed as G.R. No. 199676-77, the Commissioner of Internal Revenue assails the June 27, 2011 Amended Decision and December 1, 2011 Resolution of the Court of Tax Appeals En Banc insofar as it granted CE Luzon's second quarter claim for refund of VAT for taxable year 2003.[81]

According to the Commissioner of Internal Revenue, taxpayers should comply with the provisions of Sections 236, 110(A), 113, and 114 of the National Internal Revenue Code when claiming a refund of unutilized creditable input tax. They should also meet the requirements enumerated

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72 Id. at 225–231. The Commissioner meant Section 112(C) in her Comment which mentioned Section 112 (D) instead.
73 Id. at 227.
74 Id. at 229.
75 Id.
76 Id. at 234–235.
77 Id. at 236.
78 Id. at 237.
79 Id. at 231–232.
80 Id. at 232.
81 *Rollo* (G.R. No. 199676-77), p. 11.

under the relevant Bureau of Internal Revenue regulations. Moreover, it must be proven that the input tax being claimed is attributable to zero-rated sales.[82] The Commissioner of Internal Revenue asserts that CE Luzon failed to comply with these requirements.[83]

On the other hand, CE Luzon argues that the Commissioner of Internal Revenue is estopped from questioning CE Luzon's non-compliance with the documentation requirements under the law. It points out that its administrative claim for input VAT for the second quarter of taxable year 2003 was denied by the Commissioner of Internal Revenue based on the finding that CE Luzon presumptively opted to carry over its excess input tax to the succeeding taxable quarters.[84]

CE Luzon further contends that non-submission of complete documents is not fatal to a judicial claim for refund of input tax.[85] The Court of Tax Appeals is not bound by the conclusions and findings of the Bureau of Internal Revenue.[86]

Finally, CE Luzon asserts that it has proven its entitlement to a refund of input VAT for the second quarter of 2003.[87] First, its judicial claim for refund was timely filed.[88] Second, its sales were effectively zero-rated transactions under Republic Act No. 9136.[89] Third, although it opted to carry over its excess input tax, its actual claim was deducted from the total excess input VAT and was not part of what was carried over to the succeeding taxable quarters.[90] CE Luzon adds that the Commissioner of Internal Revenue did not identify which documents it failed to submit.[91]

This case presents two (2) issues for resolution:

First, whether CE Luzon Geothermal Power, Inc.'s judicial claims for refund of input Value Added Tax for taxable year 2003 were filed within the prescriptive period;[92] and

Finally, whether CE Luzon Geothermal Power, Inc. is entitled to the refund of input Value Added Tax for the second quarter of taxable year

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82 Id. at 28–29.
83 Id. at 30.
84 Id. at 363–364.
85 Id. at 365–367.
86 Id. at 369.
87 Id. at 370.
88 Id.
89 Id. at 371.
90 Id.
91 Id.
92 *Rollo* (G.R. No. 197526), p. 28.

2003.[93] Subsumed in this issue is whether it has substantiated this claim.[94]

I

Excess input tax or creditable input tax is not an erroneously, excessively, or illegally collected tax.[95] Hence, it is Section 112(C) and not Section 229 of the National Internal Revenue Code that governs claims for refund of creditable input tax.

The 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."[96]

The VAT paid by a VAT-registered entity on its imports and purchases of goods and services from another VAT-registered entity refers to input tax.[97] On the other hand, output tax refers to the VAT due on the sale of goods, properties, or services of a VAT-registered person.[98]

Ordinarily, VAT-registered entities are liable to pay excess output tax if their input tax is less than their output tax at any given taxable quarter. However, if the input tax is greater than the output tax, VAT-registered persons can carry over the excess input tax to the succeeding taxable quarter or quarters.[99]

Nevertheless, if the excess input tax is attributable to zero-rated or

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93 *Rollo* (G.R. No. 199676–77) p. 25.

94 Id.

95 *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310, 365 (2013) [Per J. Carpio, En Banc].

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

97 TAX CODE, sec. 110(A)(3) provides:
Section 110. *Tax Credits.* –
(A) *Creditable Input Tax.* –
....
(3) ....
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.

98 *See* TAX CODE, sec. 110(A)(3).

99 TAX CODE, sec. 110(B) provides:
SECTION 110. *Tax Credits.* –
....
(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.

effectively zero-rated transactions, the excess input tax can only be refunded to the taxpayer or credited against the taxpayer's other national internal revenue tax. Availing any of the two (2) options entail compliance with the procedure outlined in Section 112,[100] not under Section 229, of the National Internal Revenue Code.

Section 229 of the National Internal Revenue Code, in relation to Section 204(C), pertains to the recovery of excessively, erroneously, or illegally collected national internal revenue tax. Sections 204(C) and 229 provide:

> Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> . . . .
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> . . . .
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> Section 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

The procedure outlined above provides that a claim for refund of excessively or erroneously collected taxes should be made within two (2) years from the date the taxes are paid. Both the administrative and judicial claims should be brought within the two (2)-year prescriptive period.

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[100] TAX CODE, sec. 110(B).

Otherwise, they shall forever be barred.[101] However, Section 229 presupposes that the taxes sought to be refunded were wrongfully paid.[102]

It is unnecessary to construe and harmonize Sections 112(C) and 229 of the National Internal Revenue Code. Excess input tax or creditable input tax is not an excessively, erroneously, or illegally collected tax because the taxpayer pays the proper amount of input tax at the time it is collected.[103] That a VAT-registered taxpayer incurs excess input tax does not mean that it was wrongfully or erroneously paid. It simply means that the input tax is greater than the output tax, entitling the taxpayer to carry over the excess input tax to the succeeding taxable quarters.[104] If the excess input tax is derived from zero-rated or effectively zero-rated transactions, the taxpayer may either seek a refund of the excess or apply the excess against its other internal revenue tax.[105]

The distinction between "excess input tax" and "excessively collected taxes" can be understood further by examining the production process vis-à-vis the VAT system. In *Commissioner of Internal Revenue v. San Roque*:[106]

> The input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person — the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.
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> In a claim for refund or credit of "excess" input VAT under Section 110 (B) and Section 112 (A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. *The term*

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101 *CBK Power Company Ltd., v. Commissioner of Internal Revenue*, 750 Phil. 748, 762–764 (2015) [Per J. Perlas-Bernabe, First Division].

102 *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310, 368–369 (2013) [Per J. Carpio, En Banc].

103 Id. at 365.

104 TAX CODE, sec. 110(B).

105 TAX CODE, sec. 112(A).

106 703 Phil. 310 (2013) [Per J. Carpio, En Banc].

> *"excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due.* Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.[107] (Citations omitted, emphasis supplied)

Considering that creditable input tax is not an excessively, erroneously, or illegally collected tax, Section 112(A) and (C) of the National Internal Revenue Code govern:

> Section 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales . . .
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> . . . .
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue 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 Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Section 112(C) of the National Internal Revenue Code provides two (2) possible scenarios.[108] The first is when the Commissioner of Internal Revenue denies the administrative claim for refund within 120 days.[109] The

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[107] Id. at 365–366.

[108] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, 646 Phil. 710, 732 (2010) [Per J. Del Castillo, First Division].

[109] Id.

second is when the Commissioner of Internal Revenue fails to act within 120 days.[110] Taxpayers must await either for the decision of the Commissioner of Internal Revenue or for the lapse of 120 days before filing their judicial claims with the Court of Tax Appeals.[111] Failure to observe the 120-day period renders the judicial claim premature.[112]

CE Luzon's reliance on *Atlas* is misplaced because *Atlas* did not squarely address the issue regarding the prescriptive period in filing judicial claims for refund of creditable input tax.[113] *Atlas* did not expressly or impliedly interpret Section 112(C) of the National Internal Revenue Code.[114] The main issue in *Atlas* was the reckoning point of the two (2)-year prescriptive period stated in Section 112(A).[115] The interpretation in *Atlas* was later rectified in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation.*[116]

It was *Aichi*[117] that directly tackled and interpreted Section 112(C) of the National Internal Revenue Code. In determining whether *Aichi*'s judicial claim for refund of creditable input tax was timely filed, this Court declared:

> Section 112 (D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.
>
> . . . .
>
> Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years . . . apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and

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110 Id.
111 Id. at 730–732.
112 Id. at 732.
113 *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310, 357–358 (2013) [Per J. Carpio, En Banc].
114 Id. at 358.
115 Id.
116 586 Phil. 712 (2008) [Per J. Velasco, Jr., Second Division].
117 646 Phil. 710 (2010) [Per J. Del Castillo, First Division].

> not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.[118]

The *Aichi* doctrine was reiterated by this Court in *San Roque*,[119] which held that the 120-day and 30-day periods in Section 112(C) of the National Internal Revenue Code are both mandatory and jurisdictional.[120]

In the present case, only CE Luzon's second quarter claim was filed on time. Its claims for refund of creditable input tax for the first, third, and fourth quarters of taxable year 2003 were filed prematurely. It did not wait for the Commissioner of Internal Revenue to render a decision or for the 120-day period to lapse before elevating its judicial claim with the Court of Tax Appeals.

However, despite its non-compliance with Section 112(C) of the National Internal Revenue Code, CE Luzon's judicial claims are shielded from the vice of prematurity. It relied on the Bureau of Internal Revenue Ruling DA-489-03,[121] which expressly states that "a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the [Court of Tax Appeals] by way of a Petition for Review."[122]

San Roque exempted taxpayers who had relied on the Bureau of Internal Revenue Ruling DA-489-03 from the strict application of Section 112(C) of the National Internal Revenue Code.[123] This Court characterized the Bureau of Internal Revenue Ruling DA-489-03 as a general interpretative rule,[124] which has "misle[d] all taxpayers into filing prematurely judicial claims with the C[ourt] [of] T[ax] A[ppeals]."[125] Although the Bureau of Internal Revenue Ruling DA-489-03 is an "erroneous interpretation of the law,"[126] this Court made an exception explaining that "[t]axpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law."[127]

Taxpayers who have relied on the Bureau of Internal Revenue Ruling DA-489-03, from its issuance on December 10, 2003 until its reversal on October 6, 2010 by this Court in *Aichi,* are, therefore, shielded from the vice

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118 Id. at 731.
119 703 Phil. 310 (2013) [Per J. Carpio, En Banc].
120 Id. at 371.
121 *Rollo* (G.R. No. 197526), pp. 67–68.
122 Id. at 68.
123 703 Phil. 310, 372–377 (2013) [Per J. Carpio, En Banc]. *See CBK Power Co., Ltd. v. Commissioner of Internal Revenue,* 744 Phil. 559 (2014) [Per J. Leonen, En Banc].
124 Id. at 376.
125 Id. at 373.
126 Id. at 376. *See* Separate Opinion of J. Leonen in *Commissioner of Internal Revenue v. San Roque Power Corp.*, 703 Phil. 310, 372–377 (2013) [Per J. Carpio, En Banc].
127 Id. at 374.

of prematurity.[128] CE Luzon may claim the benefit of the Bureau of Internal Revenue Ruling DA-489-03. Its judicial claims for refund of creditable input tax for the first, third, and fourth quarters of 2003 should be considered as timely filed.

However, the case should be remanded to the Court of Tax Appeals for the proper computation of creditable input tax to which CE Luzon is entitled.

II

In a Rule 45 Petition, only questions of law may be raised.[129] "This Court is not a trier of facts."[130] The determination of whether CE Luzon duly substantiated its claim for refund of creditable input tax for the second quarter of taxable year 2003 is a factual matter that is generally beyond the scope of a Petition for Review on Certiorari. Unless a case falls under any of the exceptions, this Court will not undertake a factual review and look into the parties' evidence and weigh them anew.

In the Petition docketed as G.R. Nos. 199676-77, the Commissioner of Internal Revenue failed to establish that this case is exempted from the general rule. Hence, this Court will no longer disturb the Court of Tax Appeals' findings on the matter.

WHEREFORE, the Petition in G.R. No. 197526 is **GRANTED** while the Petition in G.R. Nos. 199676-77 is **DENIED**. The Amended Decision dated June 27, 2011 of the Court of Tax Appeals En Banc in C.T.A. EB NO. 554 is **REVERSED** and **SET ASIDE**. However, the case is **REMANDED** to the Court of Tax Appeals for the determination and computation of creditable input tax to which CE Luzon Geothermal Power Company, Inc. is entitled.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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[128] Id. at 371–377.

[129] RULES OF COURT, Rule 45, sec. 1 provides:
Section 1. Filing of Petition with Supreme Court. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[130] *Don Orestes Romualdez Electric Cooperative, Inc. v. National Labor Relations Commission*, 377 Phil. 268, 274 (1999) [Per J. Pardo, First Division], *citing Caruncho III v. Commission on Elections*, 374 Phil. 308 (1999) [Per J. Ynares-Santiago, En Banc].

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

SAMUEL R. MARTIRES
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice