REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1817** (CTA Case No. 8928)
-versus-	
LEPANTO CONSOLIDATED MINING COMPANY, *Respondent.*	

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LEPANTO CONSOLIDATED MINING COMPANY, *Petitioner,*	**CTA *EB* NOS. 1821** (CTA Case No. 8928)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 14 2019 11:35 a.m.

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D E C I S I O N

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by the Commissioner of Internal Revenue (CIR) on April 10, 2018 and the *Petition for Review*[2] filed by the Lepanto Consolidated

[1] *Rollo*, CTA EB No. 1817, pp. 12-22.
[2] *Rollo*, CTA EB No. 1821, pp. 40-58.

Mining Company (LCMC) on April 16, 2018 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[3] which pray for the modification, reversal and setting aside of the September 19, 2017 *Decision*[4] and March 7, 2018 *Resolution*[5] promulgated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 8928, entitled *"Lepanto Consolidated Mining Company vs. Commissioner of Internal Revenue,"* and the issuance of a new decision instead.

The dispositive portions of the assailed *Decision* and *Resolution* read as follows:

Decision[6] dated September 9, 2017:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **FIVE MILLION NINE HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED FIVE AND 40/100 PESOS (PHP5,987,505.40)**, representing excess and unutilized input VAT for the third and fourth quarters of CY 2012.
>
> **SO ORDERED**."

Resolution[7] dated March 7, 2018:

> "**WHEREFORE**, premises considered, Petitioner's Motion for Partial Reconsideration (Of Decision dated 19 September 2017) filed on October 12, 2017 and Respondent's Motion for Partial Reconsideration filed on October 13, 2017 are hereby **DENIED** for lack of merit.
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> **SO ORDERED**."

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[3] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[4] *Rollo*, CTA EB No. 1817, pp. 28-51.
[5] *Id.*, pp. 52-58.
[6] *Supra*, Note 4.
[7] *Supra*, Note 5.

The Facts

As culled from the assailed Decision, petitioner CIR has the authority to grant tax credits under the law, and holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[8]

On the other hand, petitioner LCMC is a duly organized and existing domestic corporation engaged in mining of gold and other precious metals, with principal place of business at 21/F Lepanto Bldg., 8747 Paseo de Roxas St., Barangay Bel Air, Makati City. It is registered with, and authorized by, the Board of Investments (BOI) as a new export producer/non-pioneer for gold bullions under BOI Certificate of Registration No. EP 2004-001, issued on January 5, 2004. It is a duly registered value-added tax (VAT) taxpayer with Taxpayer's Identification No. 000-160-247-000 since 1994 continuously up to the present.[9]

Petitioner LCMC filed its Quarterly VAT Return (BIR Form No. 2550-Q) for the third and fourth quarters of 2012 on October 17, 2012 and January 23, 2013, respectively. It then filed two (2) amended returns for the third quarter on January 23, 2013 and April 10, 2013; and one (1) for the fourth quarter on April 10, 2013.[10]

On June 20, 2014, the BIR VAT Credit Audit Division received petitioner LCMC's Applications for Tax Credits/Refunds (BIR Form No. 1914) for the periods July 1 to September 30, 2012 and October 1 to December 31, 2012, claiming for tax credit certificates (TCCs) in the amount of Php9,821,453.32 and Php5,887,342.07, respectively, representing unutilized or unapplied creditable VAT. It likewise submitted documents in support of its applications for tax credits.[11]

On account of the BIR's inaction, petitioner LCMC filed a Petition for Review on November 17, 2014.[12]

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[8] *Rollo*, CTA EB No. 1817, Decision dated September 19, 2017, p. 29.
[9] *Id.*
[10] *Id.*
[11] *Id.* at 30.
[12] *Id.*

After the trial, the CTA Third Division partially granted petitioner LCMC's claim for refund and ordered petitioner CIR, then respondent in the said case, to issue a TCC amounting to Php5,987,505.40 representing the excess and unutilized input VAT for the third and fourth quarters of calendar year (CY) 2012.[13]

Aggrieved by the said decision, both parties filed their respective motions for partial reconsideration. However, the Court in Division sustained the decision of the said case and denied both motions.[14]

Thus, Petitioner CIR filed a petition for review on April 10, 2018 under CTA EB No. 1817 while petitioner LCMC filed its petition for review on April 16, 2018 under CTA No. 1821, both before this Court.

On April 17, 2018, this Court had consolidated both said cases.[15] The parties were ordered by this Court to file their respective comment on said petitions.[16]

On June 18, 2018, petitioner LCMC, as respondent in CTA EB Case No. 1817, filed its Comment[17] after this Court granted[18] its motion for time to file comment[19]. On the other hand, petitioner CIR, as respondent in CTA EB Case No. 1821, failed to file his Comment despite due notice.[20]

Hence, on July 26, 2018, this Court declared the instant cases submitted for decision.[21]

The Issue

Whether or not petitioner LCMC is entitled to the claim for refund amounting to Php14,867,169.67 representing its excess and unutilized input VAT for the third and fourth quarters of CY 2012.

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[13] *Rollo*, CTA EB No. 1817, Decision dated September 19, 2017, p. 50.
[14] *Id.*, Resolution dated March 7, 2018, p. 58.
[15] *Id.*, *En Banc* Minute Resolution dated April 17, 2018, p. 59.
[16] *Id.*, Resolution dated May 11, 2018, pp. 61-62.
[17] *Id.* at pp. 68-115.
[18] *Id.*, Minute Resolution dated June 13, 2018, p. 67a.
[19] *Id.* at pp. 63-65.
[20] *Id.*, Records Verification dated June 22, 2018, p. 116.
[21] *Id.*, Resolution dated July 26, 2018, pp. 118-119.

Arguments of Petitioner CIR[22]

Petitioner CIR argues that the Court in Division erred in ruling that respondent LCMC, under CTA EB No. 1817, was entitled to the claim for refund because nowhere in the assailed decision was it shown that the amount of input VAT refund granted came from the purchases of goods that formed part of the zero-rated sale of finished products.

Arguments of Petitioner LCMC[23]

Petitioner LCMC argues that it is entitled to a claim for refund amounting to Php14,867,169.67 consisting of Php9,679,994.29 for the 3rd quarter and Php5,187,175.38 for the 4th quarter of CY 2012 considering said amounts were the allocation to its zero-rated sales.

Further, petitioner LCMC faulted the Court in Division for making another allocation of the above-mentioned amounts which have resulted in a double allocation of its zero-rated sales, a course of action not sanctioned under Section 112 of the 1997 National Internal Revenue Code (NIRC), as amended.

Ruling of the Court *En Banc*

Although the arguments raised by both parties were merely a rehash of earlier discourse and have already been discussed or passed upon by the Court in Division, We shall emphasize and reiterate the important part of the assailed Decision and Resolution pertaining to the above-mentioned alleged errors.

Under CTA EB No. 1817, Petitioner CIR faulted the Court in Division for partially granting the claim for refund considering that the alleged input VAT did not come from a finished product.

The theory of petitioner CIR is that input VAT is levied or imposed in every stage of the distribution process of sale, barter, exchange of goods or property or in the performance of

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[22] *Supra.*, Note 1.
[23] *Supra.*, Note 2.

services until it finally reaches the consumer. Such view refers to the conventional type of VAT.

Petitioner CIR should be aware that LCMC is engaged in mining of gold and other precious metals which are considered raw materials that are directly sold to foreign commodity traders abroad as found by the Court in Division. Hence, the input VAT by LCMC may be derived from the procurement or importation of its equipment used to mine said minerals.

The Court in Division, on the basis of the independent certified public accountant's (ICPA) report, found LCMC's input VAT came from the importation of its mine machineries and equipment amounting to Php22,720,736.59.[24] However, the amounts of Php833,435.74 and Php8,193.00 were disallowed by the Court in Division based on the exception made by the ICPA and for being an out of period claim, respectively. Thus, the valid input VAT was determined in the total amount of Php21,879,107.85 consisting of Php10,885,855.95 and Php10,993,251.90 for the third and fourth quarters of CY 2012, respectively.[25] Thus, petitioner CIR is totally mistaken.

As to petitioner LCMC's allegation, under CTA EB No. 1821, that the amount of the refund should be Php14,867,169.67, consisting of Php9,679,994.29 for the 3rd quarter and Php5,187,175.38 for the 4th quarter of CY 2012, we reiterate the following disquisition by the Court in Division, to wit:[26]

> "Since petitioner's input VAT allocated to vatable sales in the respective amounts of Php183,150.97 and Php975,245.68 for the third and fourth quarters of CY 2012 is not enough to cover its output VAT liability in the amounts of Php1,205,861.66 and Php5,806,076.52 for the third and fourth quarters of CY 2012, respectively; the valid input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT of Php1,022,710.69 and Php4,830,830.34 for the third and fourth quarters of CY 2012, respectively, to wit:
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> xxx xxx xxx
>
> Based on the foregoing, petitioner has excess input VAT of Php9,679,994.29 and Php5,187,175.38 for the third and fourth quarters, respectively, which can be attributed to

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[24] *Rollo*, CTA EB No. 1817, Decision dated September 19, 2017, pp. 47-48.
[25] *Id.*
[26] *Id.* at p. 49.

> the entire amount of Php1,084,234,088.00 zero-rated sales declared by petitioner in its Quarterly VAT Return for the third and fourth quarters of the same year. However, only the input VAT of Php3,095,430.27 and Php2,892,075.13 are attributable to the valid zero-rated sales of Php346,712,085.82 and Php604,507,504.07 for the third and fourth quarters of CY 2012, respectively, as computed below:.."

Petitioner LCMC, on its allegation of double allocation, insists that the Court in Division had already allocated the valid input VAT at Php9,679,994.29 for the 3rd quarter and Php5,187,175.38 for the 4th quarter of CY 2012, hence, the latter should have stopped there and awarded said amounts.

Petitioner LCMC should be aware that the Court in Division found that it had declared taxable sales subject to both zero percent (0%) and twelve percent (12%) rates, hence, the entire amount cannot be considered attributable to zero-rated sales, as explained in the assailed resolution, to wit:[27]

> As found by the Court in the Assailed Decision, petitioner declared taxable sales subject to both zero percent (0%) and twelve percent (12%) rates, and its input VAT cannot be directly or entirely attributed to any of the transactions, thus, in order to determine the amount of TCC that should be awarded to petitioner, the Court has to allocate the valid input VAT proportionately on the basis of the volume of its sales.
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> With regard to computation, it should be noted that in computing for the amount of TCC, any item disallowed from zero-rated sales are automatically excluded and are no longer taken into consideration in computing the final refund amount a taxpayer is entitled to. Thus, the Court sees no reason to deviate from its previous ruling.

Both parties should be aware that these are all factual findings of the Court in Division and in the absence of any allegation of grave abuse of discretion on the part of the latter, such findings must stay. *In Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*[28], the Supreme Court ruled that:

> "...it is fundamental that **the findings of fact by the CTA in Division are not to be disturbed without any**

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[27] *Rollo*, CTA EB No. 1817, Resolution dated March 7, 2018, pp. 55-56; Decision dated September 19, 2017, p. 48.
[28] G.R. No. 188016, January 14, 2015.

> **showing of grave abuse of discretion** considering that the members of the Division are in the best position to analyze the documents presented by the parties..." (*Emphasis supplied*)

Thus, absent of any allegation from the parties that the Court in Division committed a grave abuse of discretion in the determination of said factual findings, this Court has no reason to disturb the decision rendered by the Court in Division in the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the assailed September 9, 2017 *Decision*[29] and March 7, 2018 *Resolution*[30] are hereby **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[29] *Supra.*, Note 4.
[30] *Supra.*, Note 5.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice