REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SONY MOBILE COMMUNICATIONS INTERNATIONAL AB,
Respondent.

CTA *EB* NO. 1785
(CTA Case No. 8874)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

DEC 05 2019 11:48 a.m.

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R E S O L U T I O N

MANAHAN, J.:

On August 18, 2017, the Court in Division rendered a Decision partially granting Sony Mobile Communications International AB's (Sony Mobile) claim for refund of unutilized input taxes, as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, Respondent is **ORDERED TO REFUND** in favor of Petitioner the amount of P1,633,869.88, representing Petitioner's unutilized input taxes attributable to zero-rated sales for calendar year 2012.
>
> **SO ORDERED**.

The Commissioner of Internal Revenue (CIR) filed his appeal with the Court *En Banc*, which appeal was later denied in the Decision dated July 25, 2019, *to wit:*

> **WHEREFORE**, the Petition for Review, filed by the Commissioner of Internal Revenue, through registered mail on March 5, 2018, is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Thus, petitioner CIR filed his *Motion for Reconsideration* on August 13, 2019, assailing the *En Banc*'s Decision.

The CIR argues that based on the Memorandum Report of Revenue Officer Mayrose M. Vega, it was found that there was a carryover of the excess 2012 input tax to the succeeding year 2013 and its utilization as input tax for purchases of goods exceeding One Million Pesos for the 2nd and 3rd quarters of the same year. The CIR also states that Sony Mobile did not submit complete documents in support of its administrative claim for refund/tax credit. Finally, the CIR argues that taxes are the lifeblood of the government and that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.

On September 23, 2019, Sony Mobile filed its *Comment (Re: Motion for Reconsideration dated August 9, 2019)* where it states that the CIR's arguments are a reiteration of the allegations which the Court in Division and *En Banc* had already ruled upon. Sony Mobile reiterates that it had no output taxes for 2012, as such, there is no way that the input taxes carried over were utilized; that the amount claimed for refund was deducted from the VAT return for the 3rd quarter of taxable year 2013; and, that the input VAT being claimed is attributable to zero-rated sales. Finally, Sony Mobile states that while claims for tax refunds are construed *strictissimi juris*, it is equally important to observe the rights of the taxpayers in the exercise of the power of taxation.

Indeed, the arguments raised by the CIR have been fully addressed in the assailed Decision and Resolution of the Court in Division, and affirmed by the assailed Decision dated July 25, 2019.

The CIR did not present any evidence to support the allegations that the input VAT carried over were utilized in 2013, or that the said input VAT was not attributable to effectively zero-rated sales. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[1] Thus, absent proof to the contrary, the findings of the Court in Division will not be disturbed, *to wit:*

> Since Petitioner reported 100% zero-rated sales for CY 2012, the substantiated input VAT of P1,633,869.88 is wholly attributable thereto.
>
> Moreover, although the claimed input VAT was carried over by Petitioner in its succeeding Quarterly VAT Returns, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Return for the third quarter of taxable year 2013. Consequently, the subject claim no longer formed part of the excess input VAT of P2,566,710.17 as of the end of the third quarter of 2013, which was carried over/applied to the succeeding fourth quarter of 2013.

As to the CIR's argument that Sony Mobile did not submit complete documents, the same is being raised for the first time and cannot be allowed.[2]

Based on the foregoing, the Court *En Banc* finds no compelling reason to modify nor reverse the findings of the Court in Division.

WHEREFORE, the *Motion for Reconsideration* filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] *Real v. Belo*, G.R. No. 146224, January 26, 2007.
[2] *Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc.*, G.R. No. 222436, July 23, 2018.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice