Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SAN ROQUE POWER CORPORATION,
Respondent.

CTA EB No. 1402
(CTA Case No. 8675)

Present:
DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *J.J.*

Promulgated:

JAN 30 2017 3:10 p.m.

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DECISION

CASANOVA, *J.*:

Before Us is an appeal, by way of Petition for Review, filed by petitioner-Commissioner of Internal Revenue, from the Decision (the "Assailed Decision")[1] dated August 20, 2015 and Resolution (the "Assailed Resolution")[2] dated December 16, 2015, both rendered by the Court of Tax Appeals (CTA)-Third Division in CTA Case No. 8675 entitled Commissioner of Internal Revenue vs. San Roque Power Corporation.

The facts of the case as found by the CTA-Third Division and narrated in the Assailed Decision, are as follow:

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[1] Division Docket (Vol. III), pp. 1352-1372
[2] Ibid, pp. 1390-1394

"Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at Barangay San Roque, San Manuel, Pangasinan.

Petitioner is one of the generation companies under Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 whose sales of generated power is value-added tax zero-rated.

Petitioner is a duly registered Value-Added Tax ('VAT') taxpayer with Tax Identification No. 005-017-501.

Petitioner is likewise classified as a large taxpayer and under the jurisdiction of the Large Taxpayers Service of the Bureau of Internal Revenue ('BIR').

Respondent is the duly appointed Commissioner of the BIR empowered to perform the duties of her office, including, among others, to decide disputed assessments, taxes, fees or other charges under the law, as well as administrative claims for refund, with office address at the 4/F, BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed with the BIR its quarterly VAT returns for the period covering April 1, 2011 to March 31, 2012.

QUARTERLY RETURN	DATE FILED
April 1, 2011 to June 30, 2011	July 5, 2011
July 1, 2011 to September 30, 2011	October 18, 2011
October 1, 2011 to December 31, 2011	January 25, 2012
January 1, 2012 to March 31, 2012	April 24, 2012

On February 28, 2012, petitioner filed with the BIR-Revenue District Office ('RDO') No. 121 its Application for Refund/Tax Credit Certificate for the unutilized input VAT for the fiscal year/period April 1, 2011 to March 31, 2012.

On March 18, 2013, San Roque submitted additional documents to support its claim for tax refund or credit of its unutilized input taxes.

Respondent failed to act on San Roque's claim for tax refund/tax credit within the allowable period. Hence, petitioner filed the instant petition on July 24, 2013.

The Summons was issued on August 7, 2013.

On August 30, 2013, respondent filed by registered mail a Motion to Admit Answer with attached Answer.

On September 3, 2015, respondent filed a Manifestation stating that on August 30, 2013, respondent filed her Answer and Motion to Admit Answer.

In the Answer, respondent interposed as its Special and Affirmative Defenses, that the Court does not have jurisdiction over petitioner's claim for tax refund; that the burden of proof to establish entitlement to a tax refund rests upon petitioner, and its failure to discharge such burden is fatal to his claim; and that the claims of tax exemption must be justified by the clearest grant of law.

On September 23, 2013, petitioner filed a Manifestation with Motion for Time to File Reply.

On October 11, 2013, the Court issued a Resolution granting the Motion to Admit Answer and the Motion for Time to File Reply.

On November 6, 2013, petitioner filed its Reply.

On April 3, 2014, the parties filed their Joint Stipulation of Facts and Issues. On April 23, 2014, the Court issued the Pre-Trial Order.

Trial thereafter ensued.

Petitioner presented Ms. Laline Estayo, an accountant of San Roque, and Ms. Ma. Milagros F. Padernal - the Court-commissioned Independent Certified Public Accountant, as its witnesses and the documentary evidence marked as Exhibits 'P-1' to 'P-42'.

During the hearing on September 18, 2014, the respondent's counsel manifested that she had no witness to present since there was still no report of BIR investigation. Thereafter, as prayed for by the parties, the parties were granted thirty (30) days or until October 18, 2014 within which to file their respective memoranda.

On October 17, 2014, respondent filed her Memorandum. On October 20, 2014, San Roque filed its Memorandum.

This case was deemed submitted for decision in a Resolution dated November 4, 2014."

On August 20, 2015, the CTA-Third Division rendered the Assailed Decision which partially granted respondent's Petition for Review.

On September 15, 2015, petitioner filed a Motion for Partial Reconsideration (Re: Decision promulgated 20 August 2015)[3] which was subsequently denied in the Assailed Resolution promulgated on December 16, 2015.

On December 28, 2015, petitioner filed the instant Petition for Review with respondent's Comment (To Petition for Review)[4] on February 17, 2016.

In a Resolution[5] promulgated on February 24, 2016, the Court *En Banc* resolved to give due course to petitioner's Petition for Review and, likewise, required the parties to submit their respective memoranda within a non-extendible period of thirty (30) days from receipt of the Resolution. Upon submission of the required Memoranda or the expiration of the period for filing the same, the Petition for Review shall be deemed submitted for decision.

On March 1, 2016, petitioner filed a Manifestation[6] stating that, there being nothing to add, he is adopting the arguments raised in the Petition for Review filed on 28 December 2015 as his Memorandum in compliance with the Resolution of this Court promulgated on February 24, 2016. Petitioner's Manifestation was noted by the Court *En Banc* per Minute Resolution[7] dated March 3, 2016.

On March 30, 2016, respondent filed, thru registered mail, its Memorandum; and, on April 5, 2016, it filed a Manifestation[8] stating that:

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[3] Id., pp. 1373-1379
[4] *En Banc Rollo*, pp. 45-50
[5] Ibid, pp. 52-53
[6] Id., pp. 54-57
[7] Id., p. 58
[8] Id. pp. 60-63

> "1. On March 30, 2016, due to time constraints, respondent filed by registered mail its Memorandum with this Honorable Court. Likewise, respondent served by registered mail copies of the said Memorandum on the Third Division of this Honorable Court, the Office of the Solicitor General and counsel for petitioner as evidenced by the Affidavit of Service and Filing executed by Ms. Elena Rose M. Genosa. xxx
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> 2. In full compliance with the provisions of Section 4, Rule 5 of the Revised Rules of the Court of Tax Appeals, respondent hereby submits additional eleven (11) copies of its Memorandum."

The Court, in its Minute Resolution[9] promulgated on April 7, 2016, noted respondent's Manifestation.

The case was, thereafter, deemed submitted for decision per Resolution[10] dated May 4, 2016.

Hence, this Decision.

In its Petition for Review, petitioner raised the lone issue on whether or not the Third Division erred in finding that respondent is entitled to refund in the reduced amount of ₱33,821,333.10 allegedly representing unutilized input VAT for the fiscal period from 1 April 2011 to 31 March 2012.

We have carefully perused the facts, issue and arguments proffered by petitioner in his Petition for Review and find that the same are similar to and mere rehash of the arguments in his Motion for Partial Reconsideration (Re: Decision promulgated 20 August 2015) which had already been considered, exhaustively discussed and passed upon in the Assailed Decision and Assailed Resolution.

We agree with and reiterate the findings and conclusions of the CTA-Third Division in the Assailed Resolution resolving and dispensing of the issue and arguments raised by petitioner in his Petition for

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[9] Id., p. 78
[10] Id., pp. 94-95

Review. We, thus, quote with approval pertinent portions of the Assailed Resolution, viz:

> "The aforementioned issues and arguments have been raised and sufficiently passed upon by this Court in the Assailed Decision promulgated on August 20, 2015. Respondent's Motion for Partial Reconsideration is essentially a mere rehash and reiteration of the issues and arguments asserted in her Answer filed on August 30, 2013 and Memorandum filed on October 17, 2014. This being the case, the Court finds no reason to reverse the Assailed Decision.
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> Nevertheless, this Court will reiterate its previous ruling for emphasis. Based on the examination of relevant supporting documents, petitioner was able to prove its entitlement to the claim for refund or issuance of tax credit certificate for its unutilized input VAT attributable to its zero-rated sales for the fiscal period covering April 1, 2011 to March 31, 2012, but in the reduced amount of ₱33,821,333.10.
>
> It is well settled that in claims for VAT refund, the non-submission of complete supporting documents in the administrative level is NOT fatal to petitioner's judicial claim. This Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.
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> In the case of Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation), the Supreme Court ruled:
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> > 'The CIR's reliance on RMO 53-98 is misplaced. **There is nothing** in Section 112 of the NIRC, RR 3-88 or **RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT**. The subject of RMO 53-98 states that it is a Checklist of Documents to be Submitted by a Taxpayer upon

> **Audit** of his Tax Liabilities. . .' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable'.' (Emphasis supplied)

RMO No. 53-98 prescribes the documents required for submission by a taxpayer upon **audit** of its tax liabilities per type of tax, as well as the different mandatory audit reporting requirements to be prepared, submitted and attached to a tax audit docket by a Revenue Officer. In this case, petitioner was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the respondent.

'The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim.' Consequently, once the requirements provided under the NIRC and other pertinent rules and regulations have been met, a claimant should be considered successful in discharging its burden of proving its right to refund.

As earlier mentioned, this Court holds that petitioner has established its claim for tax refund/credit. Verily, with petitioner having complied with the requirements for tax refund/credit as ruled by this Court in its assailed Decision, and without respondent's contrary evidence, the burden of proof of establishing the propriety of the claim has been sufficiently discharged. Hence, the grant of refund is proper.

xxx xxx xxx."

WHEREFORE, foregoing considered and finding no reversible error in the Assailed Decision and Assailed Resolution, petitioner's Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice