REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

TOLEDO POWER COMPANY,
Respondent.

CTA EB No. 321
(CTA Case Nos. 6805 & 6851)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Ringpis-Liban, *JJ.*

Promulgated:
NOV 02 2016 ; 4:00 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is an Amended Decision rendered only with respect to **CTA Case No. 6851** pursuant to the Decision of the Supreme Court in the case of **"Commissioner of Internal Revenue, petitioner, v. Toledo Power Company, respondent"**, docketed as **G.R. No. 183880**, promulgated on January 20, 2014,[1] the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant petition is **PARTIALLY GRANTED**. The Commissioner of

[1] CTA EB No. 321 Docket, pp. 207-217.

Internal Revenue is hereby **ORDERED** to refund or issue tax credit certificate in favor of Toledo Power, Inc.[2] only for the fourth quarter of 2001. This case is hereby **REMANDED** to the Court of Tax Appeals for the proper computation of the refundable amount representing unutilized input VAT for the fourth quarter of 2001.

SO ORDERED."

THE FACTS

The present consolidated cases involve claims for refund or issuance of tax credit certificate of Toledo Power Company (Toledo) against the Commissioner of Internal Revenue (CIR), as follows:

In **CTA Case No. 6805**: for the amount of ₱5,909,588.96 representing unutilized input value-added tax (VAT) attributable to zero-rated sales for the 3rd quarter of taxable year 2001; and

In **CTA Case No. 6851**: for the amount of ₱3,219,781.31 representing unutilized input VAT for the 4th quarter of taxable year 2001.

As mentioned earlier, this Amended Decision pertains only to **CTA Case No. 6851** considering that the Petition for Review in CTA Case No. 6805 was denied by the Supreme Court on the ground of lack of jurisdiction for being prematurely filed.

The pertinent facts relative to CTA Case No. 6851, as narrated in the Decision dated May 17, 2007 of the former First Division of this Court (Court in Division), and which remain undisputed, are quoted below:

"Petitioner (Toledo) is a general partnership duly organized and existing under Philippine laws, with principal office at Sangi, Toledo City, Cebu. It is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc., and is registered with

[2] In a Minute Resolution dated June 23, 2014, the Supreme Court granted respondent's Motion to Correct Caption of the Decision dated January 20, 2014 reflecting respondent's correct name from "Toledo Power, Inc." to "Toledo Power Company", CTA Case No. 6805 Docket, pp. 896-897.

the Bureau of Internal Revenue (BIR) as a Value Added Tax taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) with Tax Identification No. 003-883-626-VAT and BIR Certificate of Registration bearing RDO Control No. 94-083-000300.

On June 20, 2002, petitioner filed an application with the Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance pursuant to the Implementing Rules and Regulations of R.A. 9136, otherwise known as the "Electric Power Industry Reform Act of 2007" (EPIRA).

On October 25, 2001, petitioner filed with the BIR Revenue District Office (RDO) No. 83 at Toledo City, Province of Cebu, its Quarterly VAT Return for the third quarter of 2001 declaring, among others, the following:

Zero Rated Sales/Receipts		P143,000,032.37
Taxable Sales-Sale of Scrap/Others		378,651.74
Output Tax		34,422.89
Less:	Input Tax	
	On Domestic Purchases	4,765,458.58
	On Importation of Goods	1,242,792.00
Total Available Input Tax		6,008,250.58
Excess Input Tax & Overpayment		(P5,973,827.69)

However, an amended Quarterly VAT Return for the same quarter of 2001 was filed on November 22, 2001. The amended return shows unutilized input VAT credits of P5,909,588.96 arising from petitioner's taxable purchases for the third quarter of 2001 and the following other information:

Zero Rated Sales/Receipts		P143,000,032.37
Taxable Sales-Sale of Scrap/Others		378,651.74
Output Tax		34,422.89
Less:	Input Tax	
	On Domestic Purchases	4,718,099.85
	On Importation of Goods	1,225,912.00
Total Available Input Tax		5,944,011.85
Excess Input Tax & Overpayment		(P5,909,588.96)

Thus, for the third quarter of 2001, petitioner allegedly has unutilized input VAT in the total amount of P5,909,588.96 on its domestic purchase of taxable goods and services and importation of goods, which purchases and importations are all attributable to its zero-rated sale of power generation services to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc. Said input VAT of P5,909,588.96 paid by petitioner on its domestic purchase of goods and services for the third quarter of 2001 allegedly remained unutilized against output VAT liability in said period or even in subsequent quarters.

On January 25, 2002, petitioner filed with the BIR RDO No. 83 at Toledo City, Province of Cebu, its Quarterly VAT Return for the fourth quarter of 2001 declaring, among others, the following:

Zero Rated Sales/Receipts	P127,259,720.44
Taxable Sales-Sale of Scrap/Others	309,697.50
Output Tax	28,154.33
Less: Input Tax	
On Domestic Purchases	1,374,608.64
On Importation of Goods	1,873,327.00
Total Available Input Tax	3,247,935.64
Excess Input Tax & Overpayment	(P3,219,781.31)

Thus, petitioner allegedly had an excess input VAT credits of P3,219,781.31 for the fourth quarter of 2001 which remained unutilized against output VAT liability in said period or even in the subsequent quarters.

For the third and fourth quarters of 2001, petitioner incurred and accumulated input VAT from its domestic purchase of goods and services, which are all attributable to its zero-rated sales of power generation services to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc. in the total amount of P9,129,370.27. Said excess and unutilized input VAT was allegedly not utilized against any output VAT liability in the subsequent quarters nor carried over to the succeeding taxable quarters.

On September 30, 2003, pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed with the BIR RDO No. 83, an administrative claim for refund of unutilized input VAT for the third and fourth quarters of 2001 in the amounts of P5,909,588.96 and P3,219,781.31, respectively, or the aggregate amount of P9,129,370.27.

Respondent (CIR) has not ruled upon petitioner's administrative claim and in order to preserve its right to file a judicial claim for the refund or issuance of a tax credit certificate of its unutilized input VAT, petitioner filed a Petition for Review to suspend the running of the two-year prescriptive period under Section 112(D) of the 1997 NIRC and Section 4.106-2(c) of Revenue Regulations No. 7-95, as amended. On October 24, 2003[,] petitioner filed a Petition for Review for the refund or issuance of a tax credit certificate in the amount of P5,909,588.96 for the third quarter of 2001, docketed as CTA Case No. 6805 and on January 22, 2004, filed another Petition for Review for the refund or issuance of tax credit certificate in the amount of P3,219,781.31 for the fourth quarter of 2001, docketed as CTA Case No. 6851, both for its unutilized input VAT paid by petitioner on its domestic purchases of goods and services and importation of goods attributable to zero-rated sales.

On January 30, 2004, petitioner filed a Motion for Consolidation [of] CTA Case Nos. 6805 and 6851, since these cases involve the same parties, same facts, and [same] issues. The said Motion was granted in open court on February 27, 2004 and confirmed in a Resolution dated March 8, 2004.

In his Answers to the two Petitions for Review for the two cases of Toledo Power Co. v. CIR, docketed as CTA Case Nos. 6805 and 6851, respondent asserted the following Special and Affirmative Defenses, to wit:

> '3. He reiterates and pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses;
>
> 4. Petitioner's claims for refund is subject to administrative investigation/examination by the respondent; gr

5. To support its claim, it is imperative for petitioner to prove the following, viz:

    a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

    b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section[s] 113 and 114 of the Tax Code[,] as amended;

    c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

    d. That the input taxes of [P5,909,588.96 & P3,219,781.31] allegedly paid by the petitioner on its (domestic) purchases of goods and services for the [third and fourth] quarter of 2001 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters:

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A)(2) and 113 of the Tax Code, as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits);

6. Furthermore, in action for refund[,] the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {P.I.} v. Llanes, 49 Phil. 446 cited in Collector of Internal

Revenue v. Manila Jockey Club, Inc., 98 Phil. 670);

7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.'

After presenting its testimonial and documentary evidence, petitioner formally offered its evidence on February 16, 2006. On March 24, 2006, this Court promulgated a Resolution admitting all the exhibits offered by petitioner. Respondent, on the other hand, failed to adduce any evidence.

In a Resolution dated July 6, 2006, this consolidated case was ordered submitted for decision with only petitioner's Memorandum, as respondent failed to file one within the period given by the Court. *(Citations omitted)*

On May 17, 2007, the Court in Division rendered its Decision partially granting Toledo's claim for refund in the reduced amount of ₱8,553,050.44.[3] The CIR filed a Motion for Partial Reconsideration but the same was denied for lack of merit.[4]

Aggrieved, the CIR filed a Petition for Review before the Court *En Banc*, docketed as CTA EB No. 321.[5] In a Decision dated May 7, 2008, the Court *En Banc* denied CIR's Petition and affirmed with modification the Court in Division's Decision.[6] The dispositive portion of the Court *En Banc*'s Decision is quoted as follows:

"**WHEREFORE**, premises considered, the Petition for Review *En Banc* is **DENIED** for lack of merit. Accordingly, the Decision dated May 17, 2007 and Resolution dated October 15, 2007 are **AFFIRMED with MODIFICATION**. Petitioner is hereby **ORDERED to REFUND** to respondent the sum of **EIGHT MILLION EIGHTY EIGHT THOUSAND ONE HUNDRED FIFTY ONE PESOS AND SEVEN CENTAVOS (P8,088,151.07)** only for the third and fourth quarters of taxable year 2001.

SO ORDERED."

[3] CTA Case No. 6805 Docket, pp. 308-324.
[4] *Ibid.*, pp. 353-359.
[5] *Id.*, pp. 366-377.
[6] *Id.*, pp. 498-511.

In a Resolution dated July 18, 2008, the CIR's Motion for Reconsideration of the Court *En Banc*'s Decision was likewise denied for lack of merit.[7]

As a result, the CIR filed a Petition for Review on Certiorari with the Supreme Court, docketed as G.R. No. 183880, in which the CIR seeks the reversal of the Court *En Banc*'s Decision and Resolution in CTA EB No. 321.

In a Decision dated January 20, 2014, the Supreme Court pronounced that "to validly claim a refund or tax credit of input tax, compliance with the 120+30 day rule under Section 112 of the Tax Code[8] is mandatory." Applying the ruling in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[9] the Supreme Court denied Toledo's claim for refund of unutilized input taxes for the 3rd quarter of taxable year 2001 for being prematurely filed. On the other hand, it allowed the claim for refund of unutilized input VAT for the 4th quarter of 2001 since the same falls within the exception provided in the Court's most recent rulings. Consequently, the Supreme Court remanded the case to the Court of Tax Appeals (CTA) for the proper computation of the refundable amount representing unutilized input VAT for the 4th quarter of 2001. The BIR filed a Motion for Partial Reconsideration, which was denied with finality.[10]

On August 12, 2016, this Court received from the Supreme Court copies of the following:[11]

a. Supreme Court's Decision dated January 20, 2014 in G.R. No. 183880; and

b. Notice of Entry of Judgment for G.R. No. 183880, which judgment has become final and executory on August 1, 2014.

Thus, in a Resolution of this Court dated September 26, 2016, the remanded case was deemed submitted for decision.[12]

Hence, this Amended Decision.

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[7] *Id.*, pp. 560-562.
[8] National Internal Revenue Code of 1997, as amended (1997 NIRC).
[9] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.
[10] Supreme Court Minute Resolution dated June 23, 2014, CTA Case No. 6805 Docket, pp. 896-897.
[11] CTA EB No. 321 Docket, pp. 203-220.
[12] *Ibid.*, pp. 223-225.

THE ISSUE

The sole issue for determination of this Court pertains to the proper amount of excess and unutilized input VAT that must be refunded/credited in favor of Toledo Power Company for the 4th quarter of taxable year 2001.

THE COURT *EN BANC*'S RULING

A careful examination of the evidence submitted to the Court shows that for the fourth quarter of 2001, Toledo declared in its Quarterly VAT Return the following information:[13]

Taxable sales	₱ 309,697.50
Zero-rated sales	127,259,720.44
Total sales	₱ 127,569,417.94
Total available input tax	₱ 3,247,935.64
Less: Output tax	28,154.33
Excess Input tax	**₱ 3,219,781.31**

As regard the substantiation of Toledo's zero-rated sales of electricity, the Court-commissioned independent CPA (ICPA)[14] found that of the declared zero-rated sales of ₱127,259,720.44, only ₱124,295,599.52[15] is properly substantiated by VAT official receipts. The rest in the amount of ₱2,964,120.92[16] should be disallowed for not being supported by invoices.

Section 113 of the NIRC of 1997, as amended, clearly provides:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> **(A) *Invoicing Requirements.*—A VAT-registered person shall issue:**
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and

[13] Exhibit J.
[14] Mr. Emmanuel Y. Mendoza of Mendoza Querido & Co.
[15] Exhibit R, Annex C-6.
[16] *Ibid.*, Annex C-7.

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.*—The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client." *(Emphasis supplied)*

Inasmuch as only a portion of Toledo's zero-rated sales is substantiated, only the portion of the input tax claimed attributable thereto will be refunded. The rate to be applied is 97.6708%, computed as follows:

Substantiated zero-rated sales	₱124,295,599.52
Divided by total declared zero-rated sales	₱127,259,720.44
Rate of substantiated zero-rated sales	**97.6708%**

As to the input taxes for the subject taxable quarter, the ICPA findings reveal that there are out-of-period claims amounting to ₱20,696.34.[17] Further, the ICPA reported the following findings of input taxes in the amount of ₱115,574.50:[18]

[17] Exhibit R, Annex A-15.
[18] *Ibid.*, pp. 5-7.

	Findings	4th Quarter
A	Input VAT on domestic purchases of services supported by documents other than VAT ORs.	₱ 182.72
B	Input VAT on domestic purchases of goods supported by invoices with printed "TAN-VAT".	1,406.95
C	Input VAT on domestic purchases of goods supported by invoices with no TIN indicated.	-
D	Input VAT on domestic purchases of goods supported by invoices with printed "NV".	-
E	Input VAT on domestic purchases of services supported by ORs with printed "TIN" only.	1,441.15
F	Input VAT on domestic purchases of goods supported by invoices with printed "TIN" only.	1,645.45
G	Input VAT on domestic purchases of goods supported by photocopied VAT invoices.	240.00
H	No available supporting documents presented.	110,658.23
	TOTAL	**₱ 115,574.50**

The foregoing, as well as the out-of-period claims, should be disallowed for not complying with the invoicing requirements provided for by pertinent law and regulations.

In fine, Toledo's substantiated unutilized input taxes for the fourth quarter of 2001 amounted to ₱3,083,510.47, computed as follows:

Total available input taxes		₱3,247,935.64
Less: Disallowed input taxes		
Out-of-period claims	₱ 20,696.34	
Per ICPA findings	115,574.50	136,270.84
Substantiated available input VAT		₱3,111,664.80
Less: Output tax		28,154.33
Substantiated unutilized input VAT		**₱3,083,510.47**

It was established that Toledo's unutilized input taxes were "neither applied against its output VAT liability during the subject quarter nor carried over [xxx] to the succeeding taxable quarter as shown in the Quarterly VAT return for the first quarter of 2002."[19]

Thus, Toledo has sufficiently proven that it is entitled to a refund or tax credit of its substantiated unutilized input taxes attributable to its

[19] Decision, CTA Case Nos. 6805 & 6851, *Toledo Power Company v. Commissioner of Internal Revenue*, May 17, 2007, p. 15, CTA Case No. 6805 Docket, p. 322.

substantiated zero-rated sales of electricity as a generation company for the fourth quarter of 2001 in the amount of ₱3,011,689.65, computed as follows:

Total available input taxes		₱3,247,935.64
Less: Disallowed input taxes		
Out-of-period claims	₱ 20,696.34	
Per ICPA findings	115,574.50	136,270.84
Substantiated available input VAT		₱3,111,664.80
Less: Output tax		28,154.33
Substantiated unutilized input VAT		₱3,083,510.47
Multiply by the ratio of substantiated zero- rated sales to the total zero-rated sales:	₱124,295,599.52 / ₱127,259,720.44	97.6708%
Refundable input tax		**₱3,011,689.65**

WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by Toledo Power Company in CTA Case No. 6851 is **PARTIALLY GRANTED**. Accordingly, the Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of Toledo Power Company in the amount of **THREE MILLION ELEVEN THOUSAND SIX HUNDRED EIGHTY NINE PESOS AND SIXTY FIVE CENTAVOS (P3,011,689.65)** representing its unutilized input VAT for the 4th quarter of taxable year 2001.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
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