REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CE CASECNAN WATER AND ENERGY COMPANY, INC., Petitioner,	**CTA CASE NO. 8788**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 16 2016 9:00 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

Before this Court is respondent's **Motion for Reconsideration (Re: Decision dated 4 May 2016)**, filed on May 19, 2016, with petitioner's **Comment (Re: Motion for Reconsideration dated May 18, 2016)**, filed through registered mail on June 27, 2016 and received by the Court on July 7, 2016.

Respondent seeks reconsideration of the Court's Decision dated May 4, 2016 (assailed Decision)[1], the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱23,833,961.10**,

[1] Docket, pp. 659-698.

representing its unutilized excess input VAT attributable to its zero-rated sales for the four quarters of calendar year 2012.

SO ORDERED."

It is respondent's contention that this Court erred in ruling that petitioner is entitled to refund in the amount of ₱23,833,961.10 representing the alleged unutilized excess input value-added tax (VAT) attributable to its zero-rated sales for the four quarters of calendar year 2012.

According to respondent, petitioner failed to substantiate its claim for refund because of the non-compliance with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing regulations under Revenue Regulations (RR) No. 16-2005. Allegedly, petitioner was not able to prove its strict compliance with the submission of all supporting and relevant documents provided under Revenue Memorandum Order (RMO) No. 53-98 and other existing rules and regulations to warrant the grant of its claim for refund. Respondent insists that mere filing of an administrative claim for refund or for the issuance of tax credit certificate without submitting the complete documents in support of the application thereof is not conclusive to sustain the right to a claim for refund or a tax credit.

Respondent invokes the doctrine of exhaustion of administrative remedies which presumes that the administrative body, board, or officer, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. Thus, the alleged non-compliance with a condition precedent renders the Petition for Review dismissible.

It is the respondent's position that since there was no valid administrative claim filed due to petitioner's failure to submit documents in its administrative claim for tax refund/credit, this Court has no jurisdiction to entertain the petition and the same cannot exercise its appellate power to review. Also, respondent alleges that petitioner failed to prove that no other claim for refund has been filed with the Board of Investment (BOI), Department of Finance (DOF), Special Economic Zones/Freeport Zones as no certifications from the said agencies were presented by petitioner either to the Bureau of Internal Revenue (BIR) or to this Court.

Meanwhile, petitioner opposes the Motion for Reconsideration on the ground that it submitted the complete documents in support of its administrative claim for refund as shown by the evidence presented in Court. According to petitioner, the phrase "complete documents" refers to documents that are necessary to support the application for refund or tax credit as determined by the taxpayer. Petitioner cited the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, wherein the Supreme Court ruled that it is the taxpayer who ultimately determines when the supporting documents are complete for the purpose of commencing and continuing the running of the 120-day period, except when respondent requires additional documents. Allegedly, respondent neither required nor requested petitioner to submit additional documents to supplement its administrative claim. Even if petitioner failed to submit complete supporting documents in the administrative level, it is not fatal to petitioner's judicial claim because the Court has the authority to look into the pieces of evidence presented during the trial.

Petitioner also avers that RMO No. 53-98 is merely an issuance addressed to the BIR examiners to inform the latter of the documents that may be required or requested from a taxpayer during the conduct of an audit related to the administrative claim for refund. Petitioner asserts that nowhere is it stated in RMO No. 53-98 that non-compliance with the substantiation requirements would preclude a taxpayer from availing the judicial remedies.

After a careful evaluation of the respondent's arguments, the Court finds the same as mere rehash of the previous arguments which have already been passed upon extensively in the assailed Decision.

On the issue of non-submission of supporting documents at the administrative level, the Court reiterates its findings in the assailed Decision, to wit:

> "Records reveal that upon filing of the administrative claim on November 19, 2013, petitioner simultaneously submitted the supporting documents, to wit:

'In support of our request, we enclose the following documents for your perusal:

1. Duly accomplished Bureau of Internal Revenue (BIR) Form No. 1914 — 'Application for Tax Credits/Refunds'
2. Schedule/Summary list of domestic purchases of non-capital goods/capital goods not exceeding ₱1 million/services; domestic purchases/ importations of capital goods exceeding ₱1 million with amortization of deferred input VAT; importations of non-capital goods; and services rendered by non-residents for first to fourth quarters of 2012— print-out/soft copies
3. Invoices and official receipts issued by domestic suppliers of goods and services
4. Single administrative documents/ Import entry internal revenue declarations and/or official receipts issued by the Bureau of Customs (BOC)/Statements of settlement of duties and taxes/Bank certifications/Invoices issued by foreign suppliers of goods
5. BIR Forms 1600 — 'Withholding VAT returns' and payment acknowledgment receipts for 2012
6. BIR Forms 2550Q — 'Quarterly VAT Returns' for first to fourth quarters of 2012 — original (returns only) and amended (returns and schedules)
7. BIR Forms 2550Q – 'Quarterly VAT returns' for first to third quarters of 2013 and Schedule which shows that the claim for VAT refund for 2012 was not utilized/applied against output VAT for succeeding quarters
8. Schedule/Summary list of zero-rated and VATable sales for first to fourth quarters of 2012 — print out/soft copies
9. Summary of allocation of actual input VAT attributable to energy, water delivery, and miscellaneous collections

10. Zero-rated sales invoices issued to NIA
11. Zero-rated official receipts issued to NIA
12. VAT sales invoices issued to NIA
13. VAT official receipts issued to NIA
14. VAT official receipts issued for miscellaneous collections
15. Certificate of accreditation issued by DOE
16. Certificate of compliance issued by the Energy Regulatory Commission — original and renewal
17. Project Agreement between CE Casecnan and NIA
18. Certificate of filing of amended articles of incorporation issued by the Securities and Exchange Commission (SEC)
19. General Information Sheet filed with the SEC
20. Certificate of registration issued by the BIR
21. Form 0605 — 'Annual VAT registration fee' payment for the year 2012
22. BIR Form 1702 — 'Annual income tax return' for taxable year ended December 31, 2012 together with the audited financial statements
23. BIR Forms 2306 — 'Certificate of Final VAT' for January to December 2012
24. Authority to print official receipts/sales invoices and use of computerized accounting system issued by the BIR
25. Books of accounts for 2012 (in CD copy)
26. Summary of Philippine Dealing System (PDS) exchange rates used by CE Casecnan
27. Certification that CE Casecnan has not filed a similar claim for refund duly issued by the Department of Finance
28. Certification that VAT on importation of goods (capital and non-capital) were duly remitted to the BOC

29. Copy of Section 6, Chapter II of RA 9136 or the EPIRA Law
30. Copy of Section 108(B)(7) and Section 112(A) of RA 9337 or the National Internal Revenue Code, as amended
31. Copy of Section 4.108-5 of RR 16-2005 or the Consolidated Value-Added Tax Regulations of 2005'

Contrary to respondent's allegation, petitioner informed respondent, through the Letter dated November 19, 2013, that the enumerated documents are considered as the complete supporting documents, *viz*:

> 'We wish to inform you that these constitute the complete set of documents and schedules of CE Casecnan to support its input VAT claim for the first to fourth quarters of calendar year 2012. Further, the books of accounts and accounting records of CE Casecnan are already available for your audit and verification. xxx"

Considering the factual findings in the assailed Decision, there is no merit on respondent's argument that the petition is dismissible for failure of petitioner to submit complete supporting documents at the administrative level.

As regards the determination of what constitutes "complete supporting documents", it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing the running of the 120-day period. The ruling of the Supreme Court in the recent case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[2] is instructive, thus:

> "xxx for purposes of determining ***when*** the supporting documents have been completed – *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of*

[2] G.R. No. 207112, December 8, 2015.

the 120-day period. After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.

xxx xxx xxx

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund – it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are *actually* complete as required by law – is for the CIR and the courts to determine. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State."

Likewise, respondent's allegations that petitioner failed to strictly comply with the submission of all supporting and relevant documents provided under RMO No. 53-98 must fail. The Supreme Court held that RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities.[3] As explained in *Commissioner of Internal Revenue vs. Team Sual Corporation* (*formerly Mirant Sual Corporation*)[4]:

> "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'."

In view of the foregoing, there is no cogent reason to reverse the Court's findings and conclusions in the assailed Decision. Petitioner was able to sufficiently prove its entitlement to a refund or issuance of a tax credit certificate in the reduced amount of ₱23,833,961.10, representing its unutilized excess input VAT attributable to its zero-rated sales for the four quarters of calendar year 2012.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision dated 4 May 2016)** is **DENIED** for lack of merit.

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[3] *Ibid.*

[4] G.R. No. 205055, July 18, 2014.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice