REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	C.T.A. EB No. 1171 (C.T.A. Case No. 8398)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS and RINGPIS-LIBAN, JJ.
SONY ERICSSON MOBILE COMMUNICATIONS INTERNATIONAL AB, Respondent.	Promulgated: OCT 2 8 2015 3:40 p.m.

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DECISION

FABON-VICTORINO, J.:

In this Petition for Review[1], petitioner Commissioner of Internal Revenue (CIR) seeks to reverse (1) the Decision[2] dated February 27, 2014, promulgated by the Court in Division in C.T.A. Case No. 8398, which partially granted respondent Sony Ericsson Mobile Communications International AB's claim for refund or issuance of Tax Credit Certificate (TCC) in the reduced amount of ₱4,120,277.45, representing respondent's unutilized input Value-added Tax (VAT) attributable to its zero-rated sales for the third (3rd) and fourth (4th) quarters of 2009; and (2) the Resolution[3]

[1] *En Banc* docket, pp. 1-8.
[2] *Ibid.*, pp. 9-22.
[3] *En Banc* docket, pp. 23-26.

dated April 30, 2014, which denied its Motion for Partial Reconsideration of the assailed Decision.

The undisputed facts as found by the Court in Division are as follows:

> (Respondent) Sony Ericsson Mobile Communications International AB is a Philippine branch of Sony Ericsson Mobile Communications International AB, which is a corporation organized and existing under the laws of Sweden. (Respondent) is duly registered with and licensed by the Securities and Exchange Commission (SEC) to transact business in the Philippines under SEC Company Registration No. A200208683[4]. It is also a VAT-registered entity as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. SRC0000172137, with Taxpayer's Identification Number 219-660-821-000[5]. (Respondent's) principal office address is at 7th Floor Octagon Building, San Miguel Avenue, Ortigas Complex, San Antonio, Pasig City.
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> (Petitioner) is the duly appointed Commissioner of the Bureau of Internal Revenue, the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refund and tax credit of taxes erroneously or illegally collected. She holds office at the BIR National Office Building, Diliman, Quezon City.
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> (Respondent) and Sony Ericsson Mobile Communications AB entered into a Sales Promotion and Marketing Services Agreement effective on January 1, 2006[6].
>
> On July 20, 2011, (respondent) filed its application for issuance of tax credit certificate or refund of its alleged unutilized input VAT in the amount of ₱9,171,960.79 covering the 2nd, 3rd and 4th quarters of calendar year 2009, along with

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[4] Exhibit "C".
[5] Exhibit "A".
[6] Exhibit "N".

> supporting documents, with the Revenue District Office No. 43A-Pasig[7].
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> In order to comply with the prescribed period for filing claims for refund of input VAT, (respondent) filed its judicial claim for refund or issuance of tax credit certificate before this Court on December 16, 2011.
>
> In her Answer[8] filed on February 3, 2012, (petitioner) basically contended that the petition for review should be dismissed because the 2nd quarter claim has already prescribed while the 3rd and 4th quarters claims were prematurely filed. Applying Section 112 (A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, and the ruling in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, (respondent's) claim for refund of the 2nd quarter VAT input taxes has already prescribed. For the 3rd and 4th quarters claims, the same have been filed prematurely. Moreover, (petitioner) argued that when (respondent) filed the judicial claim for tax refund/credit with this Court without waiting for the expiration of the 120-day period given to decide on such claim, such action is tantamount to a wanton disregard of the doctrine of administrative remedies.

After trial, the case was submitted for decision on September 10, 2013[9], petitioner having filed her Memorandum on July 19, 2013 and respondent, on September 9, 2013.

On February 27, 2014, the Court in Division rendered the assailed Decision partially granting respondent's Petition for Review in the reduced amount of ₱4,120,277.45. The Court in Division ratiocinated that respondent has sufficiently complied with the requisites for the refund of unutilized input VAT attributable to its zero-rated sales, but only to the extent of ₱4,120,277.45 out of the total claimed unutilized input VAT of ₱9,171,960.79, for the 3rd and 4th quarters of 2009.

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[7] Exhibits "B" to "B-1".
[8] CTA Case No. 8398, docket, pp. 35-40.
[9] Resolution dated September 10, 2013, CTA Case No. 8398, docket, p. 452.

Petitioner moved for the partial reconsideration of the Decision on March 19, 2014 but it was denied in the similarly assailed Resolution of April 30, 2014.

Hence, this Petition for Review before the Court *En Banc* filed on May 16, 2014, with the lone ground, to wit:

> "The majority in the 2nd division erred in deciding that Respondent was able to fully substantiate its claim for refund."

Petitioner argues that under Section 112 of the NIRC of 1997, as amended, respondent is required to substantiate the input VAT it paid by documentary evidence such as purchase invoices or official receipts, which in turn must also comply with the invoicing requirements provided under Revenue Memorandum Circular (RMC) No. 42-2003.

Citing *Panasonic Communication Imaging Corp. vs. Commissioner of Internal Revenue*[10], petitioner claims that the taxpayer has to be VAT-registered and must comply with the invoicing requirements under RMC No. 42-2003 to be entitled to refund claim, among others, otherwise, the claim for refund will be disallowed. Further, the printing of the word "zero-rated" on the invoice helps segregate sales that are subject to VAT from sales that are zero-rated.

Perusal of the invoices submitted by respondent allegedly shows that said invoices failed to comply with the requirement provided under Section 4.108-1b as the word "zero-rated" does not appear on the face of the invoices. Thus, for failure to substantiate its claim for refund, respondent is not entitled to refund.

Petitioner also contends that respondent's claim for refund includes transactions outside the period subject of refund. With the foregoing infirmities, petitioner invokes the principle that tax refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions.

[10] G.R. No. 178090, February 8, 2010.

In rejecting petitioner's averments, respondent in its Memorandum[11], counter-argues as follows: 1) petitioner merely reiterated the allegations contained in her Motion for Partial Reconsideration which had already been exhaustively passed upon by the Second Division of this Court; 2) respondent was able to fully substantiate its claim. The word "zero-rated" was stamped on the face of every respondent's invoice; 3) out-of-period claims may be allowed provided they comply with the requirements set forth in RMC 42-2003; and 4) respondent has sufficiently established and proved by clear and convincing evidence its entitlement to claim for refund of input VAT attributable to its zero-rated sales.

THE RULING OF THE COURT *EN BANC*

The instant Petition for Review is bereft of merit.

Indeed, petitioner's arguments are mere rehash of her previous arguments in her Motion for Partial Reconsideration before the Court in Division, which have been determined and passed upon in the assailed Decision of February 27, 2014 and reiterated in the similarly assailed Resolution of April 30, 2014. However, the Court *En Banc* will address anew petitioner's arguments if only to put her mind to rest.

Petitioner argues that respondent failed to substantiate its claim for refund as it failed to comply with the invoicing requirements under RMC No. 42-2003, specifically in Section 4.108-1b because of the absence of the word "zero-rated" on the face of its invoices.

However, in the assailed Decision of February 27, 2014, the Court has ruled that petitioner's sales to Sony Ericsson Mobile Communications AB for the 3rd and 4th quarters of 2009 in the aggregate amount of ₱76,800,264.28 are properly supported by valid VAT zero-rated official receipts thus, qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.[12]

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[11] *En Banc* docket, pp. 49-57.
[12] *En Banc* docket, p. 19.

Further, in the assailed Resolution of April 30, 2014, the Court in Division observed that the word "zero-rated" was clearly stamped on the face of respondent's invoices, which is sufficient compliance with Section 113(B)(2)(c) of the NIRC of 1997, as amended and as implemented by Section 4.113-1(B)(2)(c) of Revenue Regulations No. 16-05, which provides that if the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be *written* or *printed* prominently on the invoice or receipt.[13]

The Court likewise finds without merit petitioner's contention that respondent's claim for refund includes transactions outside the period being claimed for. Absent any evidence to back up petitioner's contention, the Court cannot make a reasonable conclusion as it is logically and legally flawed to draw conclusions from mere assumptions. To be sure, bare allegations, unsubstantiated by evidence, are not equivalent to proof.[14] In other words, mere allegations are not evidence.[15]

Finally, while it is true that an action for a tax refund partakes of the nature of an exemption, which cannot be allowed unless granted in the most explicit and categorical language, it is strictly construed against the claimant who must discharge such burden convincingly[16], however, tax refunds (or tax credits), are founded principally on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another.[17] The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law.[18]

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[13] *Ibid.*, p. 25

[14] *Domingo vs. Robles*, G.R. No. 153743, March 18, 2005, 453 SCRA 812, 818; *Ongpauco vs. Court of Appeals*, G.R. No. 134039, December 21, 2004, 447 SCRA 395, 400

[15] *Mayor vs. Belen*, G.R. No. 151035, June 3, 2004, 430 SCRA 561, 567; *Marubeni Corporation vs. Lirag*, 415 Phil. 29, 38 (2001).

[16] See *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999, 309 SCRA 87; *Philex Mining Corporation vs. Commissioner of Internal Revenue, et al.*, G.R. No. 120324, April 21, 1999, 306 SCRA 126; *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 122161, February 1, 1999, 302 SCRA 442; *Davao Gulf Lumber Corporation vs. Commissioner of Internal Revenue, et al.*, G.R. No. 117359, July 23, 1998, 293 SCRA 76; *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.*, G.R. No. 68282, May 26, 1995, 244 SCRA 332.

[17] *Ramie Textiles, Inc. vs. Hon. Mathay, Sr.*, 178 Phil. 482 (1979); *Puyat & Sons vs. City of Manila, et al.*, 117 Phil. 985 (1963).

[18] CIVIL CODE, Arts. 2142, 2154 and 2155.

As such, the Government is not exempt from the application of *solutio indebiti*.[19] Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected.[20] If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers.[21]

In the instant case, respondent had discharged this burden as observed by the Court in Division in the assailed Decision. The record shows that respondent has sufficiently established that it has sufficiently complied with the requisites for the refund of its unutilized input VAT attributable to its zero-rated sales, but only to the extent of ₱4,120,277.45 out of the total claimed unutilized input VAT of ₱9,171,960.79, for the 3rd and 4th quarters of 2009.

WHEREFORE, the Petition for Review filed by the Commissioner of Internal Revenue on May 16, 2014, is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision dated February 27, 2014 and the Resolution dated April 30, 2014 of the Court in Division in CTA Case No. 8398 are hereby **AFFIRMED *in toto***.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[19] *Commissioner of Internal Revenue vs. Fireman's Fund Insurance Co.,* G.R. No. L-30644, 9 March 1987, 148 SCRA 315, 324-325.
[20] *Commissioner of Internal Revenue vs. Tokyo Shipping Co.*, 314 Phil. 338 (1995).
[21] *AB Leasing and Finance Corporation vs. Commissioner of Internal Revenue,* 453 Phil. 297. Citing *BPI-Family Savings Bank, Inc. vs. Court of Appeals,* 330 SCRA 507, 510, 518 (200).

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

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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