REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE Petitioner,	**CTA EB No. 1397** (CTA Case No. 7393)
	Present:
- versus -	**DEL ROSARIO**, P.J., **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** and **RINGPIS-LIBAN,** **MANAHAN**, JJ.
CE LUZON GEOTHERMAL POWER COMPANY, INC., Respondent.	***Promulgated:*** JUN 07 2017 3:27 p.m.

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DECISION

UY, J.:

The instant ***Petition for Review***[1] was filed on January 4, 2016 by petitioner, Commissioner of Internal Revenue, against respondent, CE Luzon Geothermal Power Company Inc., praying for reconsideration, reversal, and setting aside of the ***Amended Decision*** dated July 27, 2015[2] and the ***Resolution*** dated December 1, 2015[3], both rendered by the Special First Division of this Court (Court in Division) in CTA Case No. 7393, entitled ***"CE Luzon Geothermal Power Company, Inc., Petitioner, versus***

[1] EB Docket, pp. 8 to 17.
[2] EB Docket, pp. 20 to 89; Ponencia of Associate Justice Lovell R. Bautista, and concurred by Associate Justice Caesar A. Casanova.
[3] EB Docket, pp. 90 to 95; supra.

Commissioner of Internal Revenue, Respondent". The dispositive portions thereof respectively read as follows:
Amended Decision dated July 27, 2015:

> "**WHEREFORE,** premises considered, CIR is hereby **ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE** to CE Geothermal in the amount of Php11,319,226.01 representing unutilized input VAT for the 2nd, 3rd and 4th quarters of 2004.
>
> **SO ORDERED.**"

Resolution dated December 01, 2015:

> "**WHEREFORE,** from the foregoing, the 'Motion for Partial Reconsideration (Re: Amended Decision Promulgated On July 27, 2015),' is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the duly appointed Commissioner of Internal Revenue (or CIR) empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

Respondent CE Luzon Geothermal Power Company Inc. (or CE Luzon) is a corporation duly organized and existing under Philippine law, with principal office at 24th Floor, 6750 Building, Ayala Avenue, Makati City. It is principally engaged in the business of power generation and subsequent sale of generated power to the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC), pursuant to a Power Purchase Agreement (PPA). It was issued a Certificate of Accreditation by the Department of Energy (DOE) on June 15, 1994 and registered with the BIR as a value-added tax (VAT) taxpayer, with Tax Identification Number (TIN) 003-924-356-000.

CE Luzon filed its Quarterly VAT Returns for taxable year 2004, which reflected the following information:

Period Covered	Date of Filing	Zero-Rated Sales	Input VAT	Exhibit
1st Quarter	April 26, 2004	₱ 939,531,582.28	₱ 7,640,716.26	"D"
2nd Quarter	July 26, 2004	1,278,777,054.28	2,879,103.77	"F"
3rd Quarter	October 25, 2004	944,618,618.11	6,887,641.90	"H"
4th Quarter	January 25, 2005	1,523,421,116.17	4,383,880.15	"J"
	TOTAL	**₱ 4,686,348,370.84**	**₱ 21,791,342.08**	

CE Luzon later filed Amended Quarterly VAT Returns for the 1st, 2nd, and 3rd quarters of taxable year 2004, indicating the following details:

Period Covered (Quarter)	Date of Filing	Zero-Rated Sales	Excess/Unutilized Input VAT Credits				TOTAL	EXH-IBIT
			Domestic Purchases of Goods other than Capital Goods	Domestic Purchases of Services	Services Rendered by Non-residents	Importation other than Capital Goods		
First	November 24, 2004	P 939,531,582.28	P 705,793.72	P 7,290,564.59	P 19,747.32	P 395,147.00	P 8,411,252.63	"E"
Second	November 24, 2004	1,278,777,054.28	777,449.47	1,868,151.21	286,776.02	107,487.00	3,039,863.70	"G"
Third	November 24, 2004	944,618,618.11	1,685,621.25	2,862,388.27	147,737.40	2,233,851.00	6,929,597.92	"W"
Fourth	January 5, 2005	1,523,421,116.17	1,004,266.38	2,074,029.23	664,843.01	640,741.53	4,383,880.15	"J"
Total Excess/Unutilized VAT Credits for the 1st to 4th Quarters of CY 2004 (10% of Total Purchases)							P 22,764,594.40	

CE Luzon filed its administrative claims for refund of input VAT for the 1st quarter of taxable year 2004 in the amount of ₱8,411,252.63 on April 12, 2005, and for the 2nd, 3rd, 4th quarters of taxable year 2004 in the aggregate amount of ₱14,353,341.77 on December 14, 2005.

Due to the CIR's inaction, CE Luzon filed a *Petition for Review* on December 29, 2005 before the First Division of this Court entitled "***CE Luzon Geothermal Power Company, Inc., petitioner, v. Commissioner of Internal Revenue,*** respondent" docketed as CTA Case No. 7393, praying for the refund or issuance of tax credit certificate in the total amount of ₱22,764,594.40, allegedly representing unutilized input VAT from respondent's domestic purchases, services rendered by non-residents, and importation of goods for the four (4) quarters of taxable year 2004.

In the CIR's Answer filed on March 14, 2006 in CTA Case No. 7393, the CIR interposed Special and Affirmative defenses, alleging among others, that CE Luzon's alleged claim for refund is subject to administrative investigation/examination by petitioner CIR and that

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taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law. To support its claim for refund, it is allegedly imperative for respondent CE Luzon to prove certain facts and information, such as: the registration, invoicing and accounting requirements of a VAT-registered taxpayer; proof of compliance with the submission of complete documents in support of the administrative claim for refund; proof that the input taxes of ₱22,764,594.40 allegedly representing unutilized input VAT were paid by respondent and are attributable to its zero-rated or effectively zero-rated sales; that the same have not been applied against any output tax; and that CE Luzon's claim for tax credit or refund of the unutilized input tax was filed within the two (2) years after the close of the taxable quarter when the sales were made. In an action for refund the burden of proof is allegedly on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit.

On August 26, 2009, the First Division promulgated its Decision partially granting the Petition for Review in CTA Case No. 7393, and ordering the CIR to refund or issue a tax credit certificate to CE Luzon, in the reduced amount of ₱19,264,022.79, representing unutilized input VAT for the four quarters of taxable year 2004. The dispositive portion of the said Decision states:

> "**WHEREFORE**, petitioner's claim for refund or issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of Php19,264,022.79, representing its excess/unutilized input VAT for the period covering the four quarters of taxable year 2004.
>
> **SO ORDERED**."

CE Luzon filed its *Motion for Partial Reconsideration (Re: Decision Dated 26 August 2009)* on September 22, 2009 in CTA Case No. 7393, praying that the amount ₱3,500,571.61 be reconsidered as it complied with the substantiation requirements prescribed in Section 110(A), in relation to Section 113(A) of the of the National Internal Revenue Code (NIRC) of 1997, as implemented by Sections 4.104-5 and 4.108-1, Revenue Regulations (RR) No. 7-95. For his part, petitioner CIR likewise filed a *Motion for Reconsideration (Re: Decision promulgated 26 August 2009)* in said case on September 23, 2009, praying that the *Petition for Review* be denied for being filed beyond the prescriptive period provided under Section 112 of the NIRC of 1997.

On October 12, 2009, petitioner CIR filed his *Opposition (Re: Petitioner's Motion for Reconsideration)*, reiterating his position that CE Luzon's *Petition for Review* was filed out of time as provided under Section 112 of the NIRC of 1997.

Subsequently, on October 21, 2009, CE Luzon filed its *Comment/Opposition (Re: Respondent's Motion for Reconsideration dated 23 September 2009)*, praying that the refund or issuance of a Tax Credit Certificate be affirmed.

On October 30, 2009, CE Luzon filed a *Reply (Re: Respondent's Oppositon to Petitioner's Motion for Partial Reconsideration dated 12 October 2009)*, praying that an Amended Decision be promulgated granting its claim in full by taking into account the amount of ₱3,500,571.61 as it was allegedly properly supported by the required evidence under Section 110(A) in relation to Section 113(A) of the NIRC, and as implemented by Sections 4.104-5 and 4.108-1, RR No. 7-95.

In the *Amended Decision* dated March 2, 2010 in CTA Case No. 7393, the Court in Division, partially reconsidered its assailed Decision and partially granted CE Luzon's claim as the petitioner in said case. The dispositive portion thereof reads:

> "**WHEREFORE**, petitioner's Motion for Partial Reconsideration is hereby **PARTIALLY GRANTED**. The Decision dated August 26, 2009 is hereby **MODIFIED**. On the other hand, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.
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> Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of petitioner in the increased amount of Php19,302,698.48, representing its excess/unutilized input VAT for the period covering the four quarters of taxable year 2004.
>
> **SO ORDERED**."

Both unsatisfied with the said Amended Decision dated March 2, 2010, the parties filed their respective *Petitions for Review* with the Court *En Banc*. On April 12, 2010, CE Luzon filed its *Petition for Review*, which was docketed as CTA E.B. No. 606 and captioned as *"CE Luzon Geothermal Power Company, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent"*. On the other hand, the CIR also filed his *Petition for Review* on April 23, 2010 which was docketed as CTA E.B. No. 604 and entitled as *"Commissioner of Internal Revenue, Petitioner, versus CE Luzon Geothermal Power Company, Inc., Respondent"*.

As both parties' respective *Petitions for Review* were appeals from the Decision of the Court in Division dated August 26, 2009, the Court *En Banc* consolidated both cases on April 28, 2010, pursuant to Section 1, Rule 31 of the 1997 Rules of Civil Procedure.

On May 20, 2010, the Court *En Banc* ordered both parties to file their respective Comments to the consolidated *Petitions for Review*. Respondent filed its *Comment (Re: Commissioner of Internal Revenue's Petition for Review dated 24 April 2010 in CTA EB No. 604)* on June 15, 2010; while petitioner CIR did not file his Comment in CTA EB No. 606.

After considering the *Consolidated Memorandum* filed by CE Luzon on August 25, 2010, without the memorandum filed by petitioner CIR despite notice, CTA EB Nos. 604 and 606 were considered submitted for decision on September 15, 2010.

On June 27, 2011, the Court *En Banc* rendered a Decision in CTA EB Nos. 604 and 606, the dispositive portion of which states as follows:

> "**WHEREFORE**, premises considered, the Petition for Review docketed as CTA EB No. 604 is **GRANTED** while the Petition for Review docketed as CTA EB No. 606 is **DENIED**. Accordingly, the Decision of the former First Division of this Court in CTA Case No. 7393, dated August 26, 2009 and its Amended Decision, dated March 2, 2010, are hereby **REVERSED** and **SET ASIDE**. CTA Case No. 7393 is hereby **DISMISSED** for lack of jurisdiction. No pronouncement as to costs.
>
> **SO ORDERED.**"

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Unsatisfied with the Decision of the Court *En Banc*, CE Luzon filed a *Motion for Reconsideration* alleging that the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[4] ("*Aichi* case") should be applied prospectively and that Section 229 of the NIRC as well as the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[5] ("*Atlas* case") are the applicable law and jurisprudence.

However, in the Resolution dated December 1, 2011, the *Court En Banc* denied CE Luzon's *Motion for Reconsideration* applying the *Aichi* case and ruled that the 120-day period provided in Section 112 of the NIRC is crucial in filing its appeal, and that the *"Atlas case is inapplicable in the instant case on the ground that the factual milieu is clearly different".* The dispositive portion of the said Resolution states:

> "**WHEREFORE**, premises considered, petitioner's 'Motion for Reconsideration' is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

On January 20, 2012, CE Luzon filed a *Petition for Review* before the Supreme Court (Second Division) entitled *"CE Luzon Geothermal Power Company, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent"*, docketed as G.R. Nos. 199572-73 (CTA EB Case Nos. 604 and 606 [CTA Case No. 7393]), praying for the reversal of the CTA *En Banc*'s Decision dated June 7, 2011 and Resolution dated December 1, 2011, and the reinstatement of the Amended Decision dated March 2, 2010, which reimbursed CE Luzon the increased amount of ₱19,302,698.48, representing its unutilized input VAT for the year 2004.

On April 25, 2012, the Supreme Court (Second Division) issued a Resolution denying the *Petition for Review* for respondent's *failure to sufficiently show that the CTA En Banc committed any reversible error in the challenged Decision dated June 27, 2011 and Resolution dated December 1, 2011 that warrants the Supreme Court's exercise of its discretionary appellate jurisdiction.*

On July 12, 2012, CE Luzon filed a *Motion for Reconsideration*

[4] G.R. No. 184823, October 6, 2010.
[5] G.R. Nos. 141104 & 148763, June 8, 2007.

of the Supreme Court's Resolution dated April 25, 2012, praying that the said Resolution be reconsidered; that the *Petition for Review* dated January 20, 2012 be given due course; that petitioner CIR be ordered to file a Comment; that the CTA *En Banc's* Decision dated June 27, 2011 and Resolution dated December 1, 2011 be reversed and set aside; and that a refund or tax credit certificate be granted in its favor representing its unutilized input VAT for the taxable year 2004 in the increased amount of ₱19,302,698.48.

Subsequently, on August 30, 2012, CE Luzon filed an *Urgent Motion to Refer Motion for Reconsideration dated July 12, 2012 to the Supreme Court* En Banc, which prays for the transfer of the *Motion for Reconsideration* dated July 12, 2012 filed before the Supreme Court, Second Division, to the Supreme Court *En Banc.*

Momentarily, on December 10, 2012, petitioner CIR filed a *Comment (On Appellant's Motion for Reconsideration Dated July 12, 2012)* to the Supreme Court (First Division), praying that the CTA *En Banc's* Decision dated June 27, 2011 and Resolution dated December 1, 2011 be affirmed.

On July 12, 2013, CE Luzon filed a *Motion for Leave to File and to Admit Supplement to Motion for Reconsideration Dated July 12, 2012*, and alleges that the case of *Commissioner of Internal Revenue vs. San Roque Corporation* has clarified the Supreme Court's Decision of the *Aichi* case and ruled that the *Aichi* case will not apply to taxpayers relying on BIR Ruling DA-489-03, thus, the judicial claim it filed with the Court of Tax Appeals, when it relied with BIR Ruling DA-489-03, was validly filed. Therefore, it prays that it be granted leave to file its *Supplemental Motion for Reconsideration Dated July 12, 2012* and that the attached *Supplement to Motion for Reconsideration* be admitted.

After considering the *Supplement to Motion for Reconsideration Dated July 12, 2012*, the Supreme Court (Second Division) issued the Resolution dated June 18, 2014, partially granting the *Motion for Reconsideration*, the pertinent portions of which read:

> "In *San Roque*, we declared that 'strict compliance with the 120+30 day periods is necessary for [a judicial claim of refund or credit under the VAT System] to prosper, xxx, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted,

which again reinstated the 120+30 day periods as mandatory and jurisdictional.

In this case, petitioner filed its administrative claim for refund of unutilized input VAT for the 1st quarter of 2004 on April 12, 2005 and for the 2nd, 3rd and 4th quarters of the same year on December 14, 2005. Pursuant to Section 112 (D) of the 1997 NIRC, petitioner had until September 9, 2005 within which to file its judicial claim for the 1st quarter of 2004 and until May 13, 2006 within which to file its judicial claims for the 2nd, 3rd and 4th quarters of 2004. Petitioner, however, filed its judicial claim for the four quarters of 2004 on December 29, 2005.

Applying our ruling in *San Roque*, we find that, although prematurely filed, petitioner's judicial claims for refund for the 2nd, 3rd, and 4th quarters of 2004 must be allowed pursuant to BIR Ruling No. DA-489-03, which provides that 'taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.' However, petitioner's judicial claim for refund for the 1st quarter of 2004 must be denied since it was filed beyond the 120+30-day periods provided for in Section 112(D) of the 1997 NIRC.

Considering that the Supreme Court is not a trier of facts, we deem it proper to remand the case to the CTA for the proper determination and computation of the actual amount of refund, representing its excess/unutilized input VAT for the said period, which petitioner is entitled to claim for the 2nd, 3rd, and 4th quarters of 2004.

WHEREFORE, CE Luzon Geothermal Company, Inc.'s Motion for Reconsideration is hereby **PARTIALLY GRANTED**. The Court's Resolution dated April 25, 2012 is hereby **REVERSED** and **SET ASIDE**. Let the case be **REMANDED** to the Court of Tax Appeals for the proper determination of CE Luzon Geothermal Power Company, Inc.'s tax credit/refund.

SO ORDERED."[6]

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[6] Division Docket (CTA Case No. 7393) – Vol. II, pp. 1475 to 1476.

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Aggrieved, CE Luzon filed a *Motion for Partial Reconsideration of the Resolution dated June 18, 2014* on August 11, 2014, but the same was denied with finality in the Resolution dated September 10, 2014.[7]

On November 24, 2014, the said case has become final and executory pursuant to the Entry of Judgment issued and recorded in the Book of Entries of Judgment.[8]

Consequently, the case was remanded to the Court in Division for the proper determination of CE Luzon's refundable amount, representing its excess/unutilized input VAT for the 2nd, 3rd, and 4th quarters of 2004.

On July 27, 2015, the Court in Division promulgated the assailed Amended Decision dated July 27, 2015[9] directing petitioner CIR to refund or issue a tax credit certificate in favor of CE Luzon in the amount of ₱11,319,226.01, representing the latter's unutilized input VAT for the 2nd, 3rd, and 4th quarters of 2004.

Petitioner CIR filed his *Motion for Partial Reconsideration (Re: Amended Decision Promulgated On July 27, 2015)* on August 12, 2015.[10]

In the assailed Resolution dated December 1, 2015, the Court in Division denied petitioner's *Motion for Partial Reconsideration* for lack of merit.[11]

On January 4, 2016, petitioner CIR filed the instant *Petition for Review* before the Court *En Banc*.[12]

In the Resolution dated February 24, 2016,[13] the Court *En Banc* directed herein respondent CE Luzon to file its Comment, within ten (10) days from receipt of such Resolution. On March 10, 2016,

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[7] Division Docket (CTA Case No. 7393) – Vol. II, p. 1499.
[8] Entry of Judgment , CE Luzon Geothermal Power Company, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent, G.R. Nos. 199572-73, Second Division, Supreme Court, Division Docket (CTA Case No. 7393) – Vol. II, pp. 1504-1505
[9] EB Docket, pp. 20 to 89; Division Docket (CTA Case No. 7393) – Vol. II, pp. 1517 to 1586.
[10] Division Docket (CTA Case No. 7393) – Vol. II, pp. 1587 to 1594.
[11] EB Docket, pp. 90 to 95; Division Docket (CTA Case No. 7393) – Vol. II, pp. 1644 to 1649.
[12] EB Docket, pp. 8 to 17.
[13] EB Docket, pp. 109 to 110.

respondent filed a *Motion for Extension of Time to File Comment (Re: Petition for Review dated December 29, 2015)*[14] which was granted in the Resolution dated April 1, 2016[15]. Thus, CE Luzon was granted a final and non-extendible period of fifteen (15) days from March 10, 2016 or until March 25, 2016 within which to file its *Comment* on the *Petition for Review.* CE Luzon filed its *Comment* on March 28, 2016.[16]

Thereafter, the Court *En Banc*, gave due course to the instant *Petition for Review*, and required both parties to file their respective Memoranda in the Resolution dated April 18, 2016.[17] Respondent CE Luzon filed its *Memorandum* on June 10, 2016[18] while petitioner CIR failed to file his *Memorandum.*[19] Instead, he filed a *Manifestation* on June 23, 2016,[20] stating that he is adopting the arguments raised in his *Petition for Review* dated December 29, 2015 as his *Memorandum,* which was noted by the Court *En Banc* on June 27, 2016.[21]

In the Resolution dated July 1, 2016,[22] the Court *En Banc* deemed the instant case submitted for decision.

Hence, this Decision.

THE ISSUE

Petitioner CIR raises the following issues for the Court *En Banc*'s resolution, to wit:

> **"A. WHETHER OR NOT RESPONDENT'S FAILURE TO SUBMIT COMPLETE SUPPORTING DOCUMENTS WAS TANTAMOUNT TO A NON-EXHAUSTION OF ITS ADMINISTRATIVE REMEDIES, WHICH THEN PREVENTED THIS HONORABLE COURT FROM**

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[14] EB Docket, pp. 111 to 113.
[15] EB Docket, pp. 115.
[16] EB Docket, pp. 119 to 128.
[17] EB Docket, pp. 144 to 145.
[18] EB Docket, pp. 150 to 167.
[19] Records Verification dated June 20, 2016, EB Docket, p. 171.
[20] EB Docket, pp. 172 to 173.
[21] Minute Resolution dated June 27, 2016, EB Docket, p. 175.
[22] EB Docket, pp. 177 to 178

ASSUMING JURISDICTION OVER THE PETITION FOR REVIEW FILED BY RESPONDENT;

B. WHETHER RESPONDENT IS ENTITLED TO A REFUND OF, AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR ITS UNUTILIZED INPUT VAT IN THE REDUCED AMOUNT OF P11,319,226.01."[23]

Petitioner's arguments:

Petitioner CIR argues that this Court has no jurisdiction over CE Luzon's claim for refund, because the documents submitted by CE Luzon in support of its administrative claim for refund were grossly insufficient. Allegedly, such failure to thoroughly apply the administrative remedy available to it, led to the premature filing of its *Petition for Review*, and ultimately prevented this Court from acquiring jurisdiction over the claim for refund. Before this Court can assume jurisdiction over the substantive issue of whether or not respondent CE Luzon is entitled to its claim for tax refund, it should have allegedly first established that it has preliminarily complied with all the administrative requirements leading to the filing of this action.

According to petitioner CIR, this Court must first be persuaded that CE Luzon indeed thoroughly pursued an administrative claim for tax refund, before it could proceed to determine its entitlement to the same under substantive law.

Allegedly, the documents submitted must reasonably establish the validity and the extent of the administrative claim. Failing which, the administrative claim should be denied. Additionally, petitioner CIR argues that in view of CE Luzon's failure to submit the necessary documents supporting its administrative claim, the intendment of the law, in prescribing that the taxpayer comply with all the administrative requirements continuing up to judicial review, was not served. As such, CE Luzon allegedly failed to exhaust its administrative remedies considering that the requirement to exhaust administrative remedies is not satisfied with the mere filing of an administrative claim.

Consequently, the non-exhaustion of administrative remedies should bar CE Luzon from seeking judicial recourse because its failure to do so is fatal to its claim. Allegedly, non-exhaustion is not

[23] EB Docket, p. 11.

merely for purposes of practicality and formality, but it is also jurisdictional in nature.

Finally, the CIR claims that had CE Luzon submitted its complete documents, then he would have had the opportunity to determine the merits of CE Luzon's claim. However, the alleged failure of CE Luzon to submit its documents deprived petitioner CIR of the opportunity to properly exercise his function.

Respondent's counter-arguments:

Respondent CE Luzon counters that the supporting documents submitted together with its administrative claim for refund filed on December 14, 2005 were sufficient and complete.

Citing the case of *Commissioner of Internal Revenue vs. Team Sual Corporation*,[24] CE Luzon contends that the Supreme Court has ruled that there is nothing in Section 112 of the NIRC of 1997, as amended, Revenue Regulations (RR) 3-88, or Revenue Memorandum Order (RMO) 53-98 which requires for the submission of complete documents enumerated in RMO 53-98 in order to be granted a refund or credit of input VAT.

Furthermore, the phrase *"complete documents"* in Section 112 (C) of the Tax Code is allegedly determined by the taxpayer. According to respondent CE Luzon, the taxpayer has the prerogative to choose which documents to submit to petitioner CIR in support of its administrative claim for refund.

Lastly, it is stressed that the supporting documents submitted with its administrative claim for refund were sufficient and complete.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Evidently from the issues raised in the instant case, the crux of the controversy centers upon whether or not, respondent CE Luzon

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

has submitted complete supporting documents to its refund claim at the administrative level; and in the negative, whether or not such failure is tantamount to non-exhaustion of administrative remedies.

At the onset, We find that respondent CE Luzon submitted complete documents at the administrative level in relation to its refund claim of its alleged unutilized input VAT for the 2nd, 3rd, and 4th quarters of 2004. Thus, the First Division or Court in Division validly assumed jurisdiction over the *Petition for Review* filed by CE Luzon in CTA Case No. 7393.

Respondent submitted complete documents at the administrative level.

Section 112(C) of the NIRC of 1997[25], as amended by Republic Act (RA) No. 9337,[26] provides:

> "**SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** —
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> **(A)** ***Zero-Rated or Effectively Zero-Rated Sales.*** — Any VAT-registered person, whose sales are zero-dated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx
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> xxx xxx xxx
>
> **(C)** ***Period within which Refund or Tax Credit of Input Taxes shall be made.*** - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input <u>taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application</u> filed in accordance with Subsection (A) hereof.

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[25] As embodied in Republic Act No. 8424.

[26] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals." *(Underscoring supplied)*

The foregoing provision expressly grants the CIR 120 days within which to decide the taxpayer's claim for refund or tax credit. Such 120-day period commences to run *"from the date of submission of complete documents in support of the application"* for tax credit certificate or refund. Moreover, the taxpayer is granted a 30-day period to appeal to the CTA the decision or inaction of the CIR after the 120-day period.[27] Indeed, this 120+30 day period provided under Section 112(C) of the NIRC is mandatory and jurisdictional.[28]

It must be emphasized, however, that the submission of complete supporting documents by the taxpayer-claimant is presumed. This is in accordance with the Supreme Court's pronouncement in "*CBK Power Company Limited vs. Commissioner of Internal Revenue*"[29], wherein it was held that:

> "Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, **it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary.**"[30] *(Emphasis Ours)*

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[27] *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 184360 & 184361, and 184384, February 19, 2014.

[28] Refer to *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

[29] G.R. Nos. 198729-90, January 15, 2014.

[30] Read also *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 184266, November 11, 2013), wherein the Supreme Court ruled as follows:

> "...**absent any evidence to the contrary and bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund** in its application filed on 26 March 2002 and 28 June 2002. Therefore, the CIR's 120-day period to decide on petitioner's administrative claim commenced to run on 26 March 2002 and 28 June 2002, respectively." *(Emphasis supplied)*

In view of this presumption, the documents submitted with respondent's administrative claim for refund filed on December 14, 2005[31] are deemed complete documents.

But even assuming, for the sake of argument, that We can validly ignore the said presumption and find that CE Luzon indeed did not present or attach the *"complete supporting documents"* in its administrative claim, petitioner CIR can still proceed to act upon a refund claim, in view of the recognized principle that the **CIR ought to know the records of all taxpayers.**[32] Thus, there can be no merit in the contention of petitioner CIR that his office could not have properly acted upon the administrative claim because of respondent CE Luzon's alleged failure to submit the documentary evidence appurtenant thereto.

At any rate, the said presumption is even bolstered by the fairly recent case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* (hereinafter referred as "*Pilipinas Total Gas* case"),[33] wherein the Supreme Court ruled as follows:

> "Indeed, the 120-day period granted to the CIR to decide the administrative claim under the Section 112 is primarily intended to benefit the taxpayer, to ensure that his claim is decided judiciously and expeditiously. After all, the sooner the taxpayer successfully processes his refund, the sooner can such resources be further reinvested to the business translating to greater efficiencies and productivities that would ultimately uplift the general welfare. To allow the CIR to determine the completeness of the documents submitted and, thus, dictate the running of the 120-day period, would undermine these objectives, as it would provide the CIR the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with the CTA.
>
> A hypothetical situation illustrates the hazards of granting the CIR the authority to decide when complete documents have been submitted – A taxpayer files its administrative claim for VAT refund/credit with supporting

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[31] Exhibit "Z", Division Docket (CTA Case No. 7393) – Vol. I, pp. 314 to 315.
[32] *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*, G.R. No. 122480, April 12, 2000; and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.
[33] G.R. No. 207112, December 8, 2015.

documents. After 121 days, the CIR informs the taxpayer that it must submit additional documents. Considering that the CIR had determined that complete documents have not yet been submitted, the 120-day period to decide the administrative claim has not yet begun to run. In the meantime, more than 120 days have already passed since the application with the supporting documents was filed to the detriment of the taxpayer, who has no opportunity to file a judicial claim until the lapse of the 120+30 day period in Section 112(C). With no limitation to the period for the CIR to determine when complete documents have been submitted, the taxpayer may be left in a limbo and at the mercy of the CIR, with no adequate remedy available to hasten the processing of its administrative claim.

Thus, the question must be asked: In an administrative claim for tax credit or refund of creditable input VAT, from what point does the law allow the CIR to determine when it should decide an application for refund? Or stated differently: *Under present law, when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period?*

Ideally, upon filing his administrative claim, a taxpayer should complete the necessary documents to support his claim for tax credit or refund or for excess utilized VAT. After all, should the taxpayer decide to submit additional documents and effectively extend the 120-period, it grants the CIR more time to decide the claim. Moreover, it would be prejudicial to the interest of a taxpayer to prolong the period of processing of his application before he may reap the benefits of his claim. Therefore, *ideally*, the CIR has a period of 120 days from the date an administrative claim is filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.

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Aware that not all taxpayers were able to file the complete documents to allow the CIR to properly evaluate an administrative claim for tax credit or refund of creditable input taxes, the CIR issued RMC No. 49-2003, which provided:

> Q-18: *For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?*
>
> A-18: **For pending claims** which have not been acted upon by the investigating/processing office due to incomplete documentation, **the taxpayer-claimants are given thirty (30) days within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.**
>
> For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be **officially received** only upon submission of complete documents.
>
> For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty (120) days from receipt of the complete documents. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents **<u>within thirty (30) days from request</u> of the investigating/processing office, <u>which shall be construed as within the one hundred twenty (120) day period.</u>** [Emphases Supplied]

Consequently, upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of the processing unit. <u>If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/ processing office. Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential. It is only</u>

upon the submission of these documents that the 120-day period would begin to run.

Then, when R.A. No. 9337 was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112(B) of the NIRC, Section 112(D) was amended and renamed 112(C). Thus:

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With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, 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 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. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

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.

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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.

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty(30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**

Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the adminstrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, 'officially received' as provided under RMC No. 49-2003.

To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the

> documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition(al) documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.
>
> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected." *(Emphasis supplied)*

Based on the foregoing judicial pronouncements, the following principles, *inter alia*, in relation to the *"submission of complete documents in support of the application"* under Section 112 of the NIRC of 1997, as amended by RA No. 9337, become readily apparent, to wit:

1. For purposes of determining **when** the supporting documents have been completed, it is the taxpayer-claimant who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period;

2. From the date an administrative claim for excess unutilized VAT is filed, the taxpayer-claimant has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer-claimant of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund; and

3. Under Revenue Memorandum Circular (RMC) No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimant shall submit such documents within thirty (30) days from request of

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the investigating/processing office. In this connection, notice, by way of a request from the BIR to produce the complete documents, is essential.

In this case, while respondent had thirty (30) days within which to submit the documentary requirements sufficient to support its claim, it did not do so. This goes to show that respondent determined that it submitted the complete documents when it filed its refund claim. This determination becomes even manifest when respondent declared in its administrative claim addressed to the BIR that it will just *"await the issuance of the necessary authorization for... revenue officers to conduct the required audit to process our claim."*[34] Furthermore, there is no showing that the BIR requested, by way of a notice to respondent requiring the production of complete documents for the proper determination of the legitimacy of its claim. Thus, it is presumed that respondent submitted the complete documents in support of its administrative claim for the 2nd, 3rd, and 4th quarters of 2004 upon the filing thereof.

Clarification of the doctrine laid down in the* Atlas *case.

Petitioner CIR likewise invokes the ruling of the Supreme Court in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (hereinafter referred as "*Atlas* case")[35]. According to petitioner, the doctrine laid down in the said case clearly requires a tax refund claimant to submit all documents which may be relevant or important in substantiating its administrative claim; and absent compliance with this requisite, the recourse to judicial action merely becomes an attempt by the taxpayer to circumvent the administrative claim and bypass petitioner's office.

The reasoning of petitioner is misplaced.

The decision in the *Pilipinas Total Gas* case clarified the doctrine enunciated in the *Atlas* case in this wise, to wit:

> "At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated*

[34] Exhibit "Z", Division Docket (CTA Case No. 7393) – Vol. I, p. 315.
[35] G.R. No. 145526, March 16, 2007.

Mining and Development Corporation v. CIR, it was ruled —

> x x x First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. <u>In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.</u> Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim (Underscoring Supplied).

A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. **If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim.** It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by

> the BIR at the administrative level by filing the said document before the CTA.
>
> In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. **Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim." *(Emphases supplied)*

Based on these pronouncements vis-a-vis the aforequoted Section 112 of the NIRC of 1997, as amended by RA No. 9337, the administrative claim for refund of unutilized input VAT may either be granted, denied, or not acted upon by the CIR. In case of denial by the CIR upon the ground that the taxpayer-claimant failed to submit complete documents despite notice/request, this Court, upon appeal or filing of a petition for review of such denial and upon proof of such failure, must dismiss the same, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. This is the essence of the doctrine laid down in the *Atlas* case. Thus, it becomes imperative for the taxpayer-claimant to show this Court that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim.

Upon the other hand, in case the administrative claim was never acted upon by the CIR, this Court, upon appeal or filing of a petition for review of such inaction, may not dismiss the case on the ground that the taxpayer failed to submit all documentary and evidentiary requirements at the administrative level. The Court instead may give credence to all evidence presented by the taxpayer-claimant to prove his refund claim, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance, there being no decision for this Court to review on appeal *per se*.

In this case, the *Petition for Review* (CTA Case No. 7393) was filed by respondent with this Court due to the inaction of petitioner CIR on respondent's administrative claim,[36] and this inaction was never disproved by petitioner CIR. As such, there was no decision for the First Division or the Court in Division to review on appeal *per se*. Accordingly, the Special First Division or the Court in Division may give credence to all evidence presented by respondent, including those that may not have been submitted to petitioner CIR as the case is being essentially decided at the first instance. As a corollary, since there was inaction on his part, petitioner CIR cannot validly raise the argument that respondent did not submit complete documents in support of the latter's refund claim.

In fine, petitioner CIR may not rely on the *Atlas* case to justify its stand that respondent CE Luzon did not satisfy all the documentary and evidentiary requirements at the administrative level.

Petitioner CIR failed to rebut the factual findings of the Court in Division.

As can be gleaned from the assailed Amended Decision dated July 27, 2015, the Court in Division, after careful examination of the documents formally offered as evidence by respondent CE Luzon, together with the Report of the Court-commissioned Independent Certified Public Accountant, determined that the amount of ₱11,319,226.01, representing unutilized input VAT for the 2nd, 3rd and 4th quarters of 2004, has been fully substantiated pursuant to Sections 4.104-5 and 4.108-1 of Revenue Regulations No. 7-95.

For his part, petitioner CIR, failed to rebut or validly argue against the said findings of the Court in Division. Hence, the Court *En Banc* finds no justifiable reason to deviate therefrom.

WHEREFORE, all the foregoing considered, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Amended Decision dated July 27, 2015 and the Resolution dated December 1, 2015, both rendered by the Court in Division in CTA Case No. 7393, are hereby **AFFIRMED**.

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[36] Par. 12, Petition for Review, Division Docket (CTA Case No. 7393) – Vol. I, p. 6.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Concurring and Separate Opinion)
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE
Petitioner,

-*versus*-

CE LUZON GEOTHERMAL POWER COMPANY, INC.
Respondent.

CTA *EB* NO. 1397
(CTA Case No. 7393)

Present:

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

Promulgated:

JUN 07 2017 3:27 p.m.

x- x

CONCURRING AND SEPARATE OPINION

MANAHAN, J.:

I join my esteemed colleagues in their conclusion that the respondent is entitled to a partial grant of its claim for refund in the total amount of Php11,319,226.01 representing unutilized input VAT for the 2nd, 3rd and 4th quarters of 2004 thereby affirming the Amended Decision of this Court's Special First Division promulgated on July 27, 2015. My concurrence extends to the position enunciated in the ponencia that respondent CE Luzon Geothermal Power Company, Inc. submitted complete documents at the administrative level in relation to its refund claim of alleged input VAT for the said periods.

It is essential to point out that the issue of compliance with the documentary requirements outlined in Revenue

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Memorandum Order (RMO) 53-98 for claims for refund of alleged excess input VAT should be settled once and for all. The Supreme Court has succinctly but firmly declared that non-submission of the documents listed down in RMO 53-98 is not fatal to the claim for refund of input VAT at the judicial level[1] because there is nothing in said RMO nor in Section 112 of the Tax Code which imposes additional requirements such as those provided in the Checklist in RMO 53-98.

However, I would like to take this opportunity to express my misgivings over the statement mentioned in the ponencia, quoted as follows:

> "In case of denial by the CIR upon the ground that the taxpayer claimant failed to submit complete documents despite notice/request, *this Court upon appeal or filing of a petition for review of such denial and upon proof of such failure, must dismiss the same, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level.* This is the essence of the doctrine laid down in the Atlas case. Thus, it becomes imperative for the taxpayer-claimant to show this Court that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim." (italics ours)

The above position must apparently been influenced by the pronouncements of the Supreme Court in the case of *Pilipinas Total Gas, Inc. vs. CIR*[2] which in my humble opinion should be read and interpreted in the light of the other principles laid down in said case and other related Supreme Court decisions. More importantly, I believe that issues relating to substantiation requirements should be judged independently by this Court notwithstanding the allegations of the Commissioner of Internal Revenue (CIR) that taxpayers failed to sufficiently support its claim for refund in the administrative level.

Applied unqualifiedly, the aforequoted statements in the ponencia would seem to justify the dismissal of the Petition for Review if taxpayer failed to file the documents requested by the CIR in the administrative level or what he or his representatives believe to be documents sufficient to support the claim for refund. This would seem to run counter with this Court's appellate jurisdiction to "review" decisions of the

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[1] Commissioner of Internal Revenue vs. Team Sual, G.R. No. 205055, July 18, 2014.
[2] G.R. No. 207112, December 8, 2015.

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CIR in refunds of internal revenue taxes as provided in Section 7 (1) of the Republic Act (RA) 1125, as amended by RA 9503. To my mind, this Court's authority to review would encompass reviewing the CIR's "decision" on what supporting documents are indeed sufficient to justify the grant of a claim for refund according to our own analysis and conclusion based on the peculiar circumstances of each case brought before us.

We have held in many cases that the non-submission of documents in the administrative level should not be a bar to a taxpayer proving its claim anew in the judicial sphere.

In the case of *CIR vs. Philippine Bank of Communications*[3], the Court En Banc had the occasion to rule that 'failure to submit documents in support of the taxpayer's administrative claim is not fatal to his judicial claim." This was also the ruling of this Court En Banc in the case of *CIR vs. Philippine Airlines*[4] when it stressed that "judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents to support its administrative claim for refund."

The Court of Tax Appeals (CTA) being a court of record, the cases filed before it are litigated de novo and party litigants should prove every minute aspect of its case.[5].

Further, in the case of *CIR vs. Philippine National Bank*[6], the Supreme Court ruled in this wise:

> "More importantly, the CTA is not precluded from accepting respondent's evidence assuming these are not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated de novo."

We must distinguish between the documents required to be submitted at the administrative level and the evidence needed to be offered to this Court to justify the validity of the claim for refund. The Court may require more or it may require less than what the administrative body may need to decide the application for refund. This point was illustrated by the Supreme Court in the *Pilipinas Total* case [7] when it

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[3] CTA EB No. 933, October 7, 2013.
[4] CTA EB No. 775, July 24, 2012
[5] CIR vs. Manila Mining Corporation, G.R. No. 153204, August 31, 2005.
[6] G.R. No. 180290, September 29, 2014.
[7] Ibid.

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observed that some requirements are applicable only in the administrative level, thus:

> " As can be gleaned from the above, 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. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund of excess unutilized excess VAT."

WHEREFORE, in view of the foregoing, I concur with the ponencia partially granting the claim for refund but with express reservations against the majority opinion that the failure of the taxpayer to substantiate its administrative claim for refund shall be a ground for dismissal upon appeal to the Court of Tax Appeals.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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