REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1534 (CTA CASE No. 8713)
-versus-	*Present*: DEL ROSARIO, *P.J,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
SONY MOBILE COMMUNICATIONS INTERNATIONAL AB (formerly known as SONY ERICSSON MOBILE COMMUNICATIONS INTERNATIONAL AB), *Respondent.*	Promulgated: JUN 19 2018 3:52 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is a Motion for Reconsideration[1] filed on March 6, 2018, by the Commissioner of Internal Revenue (CIR) seeking to set aside this Court's Decision[2] promulgated on February 1, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and Resolution dated July 13, 2016 and September 28, 2016 respectively are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

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[1] *En Banc* Docket, pp. 96-102.
[2] *En Banc* Docket, pp. 84-95.

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In his motion, the CIR raised for the first time Sony Mobile Communications International AB (SMCIAB)'s supposed non-compliance with Revenue Memorandum Circular (RMC) No. 29-2009, which requires observance of the conditions stated therein upon audit of its claim, as well as the argument that SMCIAB must prove that the input valued-added taxes (VAT) were indeed attributable to such zero-rated sales.

It must be noted that these issues were never raised by the CIR in his Answer, Memorandum, or other pleadings filed before the Division, nor in his pleadings filed before this Court *En Banc*. These issues were never raised in the administrative level, neither in the Petition for Review, nor in the Joint Stipulation of Facts and Issues (JSFI) as part of the issues for the consideration of the Court. In short, it was a mere after thought on the part of CIR to raise these as issues. An issue not raised before the lower court could not be raised for the first time on appeal.[3]

Even so, this Court has already stressed that the submission of complete documents cannot be at the mercy of the CIR.[4] As stated by the Supreme Court,[5] the BIR can only inform the taxpayer to submit additional documents; it cannot dictate what type of supporting documents should be submitted. Moreover, in the case of *Team Sual v. Commissioner of Internal Revenue*,[6] this Court ruled that should the taxpayer decide to submit only certain documents, or should the taxpayer fail or opt not to submit any document at all in support of its application for refund or tax credit certificate under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, it is reasonable and logical to conclude that the 120-day period should be reckoned from the filing of the application.

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[3] *Commissioner of Internal Revenue v. Obayashi Philippines Corporation,* CTA EB No. 42 (CTA Case No. 6222), June 10, 2005, citing *Victorias Milling Co., Inc., vs. Court of Appeals*, 333 SCRA 663; *Jimenez v. Patricia*, Inc., 340 SCRA 525.
[4] Commissioner of Internal Revenue v. Chevron Holdings, Inc., CTA EB No. 1303, January 10, 2017.
[5] *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, G.R. No. 172045-46, June 16, 2009, cited in the case of *Commissioner of Internal Revenue v. Coral Bay Nickel Corporation*, CTA EB No. 1133 (CTA Case No. 8252), January 7, 2015.
[6] CTA EB Nos. 649 and 651, March 21, 2012.

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Even assuming *arguendo* that SMCIAB failed to comply with the invoicing requirements, such is already negated by the findings of the Court in Division and Court *En Banc* in their Decisions, when both ruled that input taxes were duly substantiated by valid VAT invoices or official receipts.

This Court in Division has already settled that respondent did in fact incur excess input VAT attributable to its zero-rated sales. In fact, after evaluating the pieces of evidence offered by SMCIAB, both Decisions of the Court in Division and Court *En Banc* have settled that its input VAT incurred were attributable to its zero-rated sales. As stated in the Decision of the Third Division:

> "Thus, petitioner was able to prove its entitlement to a tax refund or TCC of its unutilized input VAT attributable to its zero-rated sales for CY 2011, albeit in the reduced amount of Php3,416,658.65."

On the other hand, it is to be noted that the CIR did not specify which documents SMCIAB failed to submit, or which among the conditions stated in RMC No. 29-2009 was not complied by SMCIAB. Also the CIR, in his Motion for Reconsideration, did not elaborate as to how SMCIAB failed to prove that it incurred excess input VAT attributed to its zero-rated sales.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice