REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Second Division

NIPPON EXPRESS PHILIPPINES CORPORATION, *Petitioner,*	**CTA CASE NO. 10574**
	Members:
- versus -	**RINGPIS-LIBAN**, *PJ, Chairperson* **MODESTO-SAN PEDRO**, *and* **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: 4:20 pm

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RESOLUTION

***MODESTO-SAN PEDRO, J.*:**

For the Court's resolution are the following, against this Court's *Decision* dated May 29, 2025 ("Assailed Decision") partially granting petitioner's claim for refund of its unutilized excess input value-added tax ("VAT") for the period October 1, 2018 to December 31, 2018 in the amount of ₱700,729.66:

1.) Respondent's *Motion for Partial Reconsideration (Re: Decision dated 29 May 2025)*, filed on June 19, 2025, with petitioner's *Comment/Opposition* filed on July 15, 2025; and

2.) Petitioner's *Motion for Partial Reconsideration*, filed on June 19, 2025, with respondent's *Comment/Opposition* filed on July 16, 2025.

Respondent's Motion for Partial Reconsideration

Respondent seeks the Court's reconsideration on the Assailed Decision, raising the following arguments:

1.) The ruling in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[1] ("*Pilipinas Total Gas*") should apply in this case considering that respondent rendered a decision on petitioner's VAT refund claim, hence, the Court of Tax Appeals' ("CTA") jurisdiction shifts from a trial court to an appellate tribunal and should confine itself to whether the findings of respondent are consistent with law. Accordingly, the CTA's review should be confined only on the documents which were submitted at the administrative level and the issue be limited to whether the denial was proper given the evidence submitted at the administrative level;

2.) Petitioner is not entitled to a refund for failure to submit all the documents to warrant a grant of refund;

3.) Petitioner failed to comply with invoicing requirements under *Section 113 of the National Internal Revenue Code, as amended,* ("the *Tax Code*") in the amount of ₱1,755,936.55;

4.) Petitioner is liable with output VAT on taxable sale not subjected to VAT, gain on disposal of PPE, and interest income amounting to ₱16,033,566.80, ₱13,839.24, and ₱2,245.56, respectively. Respondent asserts that it has the authority to deduct these amounts from the amount claimed for refund for failure of petitioner to report them in its VAT returns, in accordance with the ruling in *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue*[2] (*SMI-ED Philippines*);

5.) Administrative decisions often deserve credence before the Court due to the expertise & authority vested in the administrative bodies that make them; and

6.) Tax refunds are strictly construed against the taxpayer and in favor of the government.

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[1] G.R. No. 207112, December 8, 2015.
[2] G.R. No. 175410, November 10, 2014.

In its Comment/Opposition, petitioner points out that the arguments raised in respondent's Motion for Partial Reconsideration were already ruled upon by the Court and it may present new and additional evidence to the Court to support its claim for refund.

Respondent's Motion is bereft of merit.

Pilipinas Total Gas contemplates two scenarios:

1.) The administrative claim was *dismissed* by the respondent due to the taxpayer's failure to submit complete documents despite notice/request; and

2.) There is *inaction* by the Bureau of Internal Revenue ("BIR") within the period to act on the administrative claim.

The present case does not fall under both scenarios. *First*, the administrative claim was not dismissed by the respondent and there was no request for submission of complete documents. *Second*, the administrative claim was denied, negating inaction.

Notably, however, *Pilipinas Total Gas* did not contemplate a scenario where there is full or partial denial of the claim based on the already submitted documents of a taxpayer. On the other hand, *Section 112(C) of the Tax Code*[3] is categorical on this matter wherein it states that in case of full or partial denial of the claim for tax refund, the taxpayer affected may, within 30 days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals ("CTA").

Nevertheless, when an appeal of the full or partial denial of a refund is brought forth before the CTA, it shall be litigated *de novo*. As held in *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.) ("Univation")*:[4]

> The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.

[3] As amended by R.A. No. 10963.
[4] G.R. No. 231581, April 10, 2019.

> Cases filed in the CTA are litigated *de novo* as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim." Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.
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> The issue of whether or not respondent was able to prove by preponderance of evidence its entitlement to the issuance of a Tax Credit certificate, the same is a factual matter. . . .

After all, in the judicial level or when the case is elevated to the Court, the *Rules of Court* govern. The question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[5]

As such, more than being merely appellate in nature, the CTA has the authority to determine whether or not a taxpayer is ultimately entitled to its claim for refund. In order to do so, the Court must strictly test the taxpayer's claim against *all* the requisites for the grant of a refund and ensure that the taxpayer is indeed entitled thereto, free from any error by the BIR.

Accordingly, the Court correctly ruled on petitioner's judicial claim on the basis of all the evidence submitted during trial. Besides, had there been documents alleged to not have been submitted in petitioner's administrative claim, it is the burden of respondent to object or raise its comments as to those documents offered in evidence by petitioner before the Court in order to apprise Us on the circumstance. However, as ruled in *Univation*, the Court is not precluded from considering evidence not submitted in the administrative level as the Court's duty to determine a taxpayer's entitlement to refund is far more primary than merely reviewing respondent's decision on the matter.

Given that the Court made its own finding on the documents supporting petitioner's input taxes, renders respondent's argument on petitioner's non-compliance with *Section 113 of the Tax Code* is rendered moot.

However, We cannot allow respondent to assess petitioner with output VAT on sales which were allegedly not subjected to VAT without undergoing the proper due process in making assessments as prescribed in *Section 228 of the Tax Code* and *Revenue Regulations ("RR") No. 12-99, as amended by RR No. 18-13.*

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[5] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, supra.

Respondent misunderstood the ruling in *SMI-ED Philippines*. The High Court's ruling therein does not give authority to respondent to assess taxpayers in the course of verifying the latter's claim for tax refund.

> *The determination of the **proper category** of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to a refund.*
>
> The issue of petitioner's claim for tax refund is intertwined with the issue of the proper taxes that are due from petitioner. A claim for tax refund carries the assumption that the tax returns filed were correct. If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund become questionable. In that case, *the court must determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid.*
> (Italics and boldfacing, Ours.)

Ruling in that wise, what the High Court meant was *determining the "proper category" of the tax* allegedly erroneously paid in order to determine if there is indeed a refundable tax. Based on the fact setting in *SMI-ED Philippines*, taxpayer SMI-ED was claiming a refund of an alleged erroneously paid tax. It was denied as there was no erroneous payment but only an error in the categorization of the tax paid. The High Court found it proper to correct said error in categorization of the tax paid as it is necessarily intertwined in ruling whether SMI-ED was entitled to a tax refund. Nevertheless, nothing in said Decision pronounces that the BIR can *determine new tax liabilities* allegedly not paid in the course of its verification of a claim for tax refund.

Further, and more compellingly so, respondent cannot circumvent the requirements of due process in making tax assessments under the guise of determining whether a claim for tax refund is proper, and in the course of verification, finds an alleged unpaid tax. Respondent cannot charge outright any alleged unpaid tax against a taxpayer's tax credits without giving the latter the proper course of notice and reply/protest. This matter was clarified also in *SMI-ED Philippines*, which respondent seemed to conveniently miss out in his arguments:

> ***Any liability in excess of the refundable amount**, however, **may not be collected in a case involving solely the issue of the taxpayer's entitlement to refund**. The question of tax deficiency is distinct and unrelated to the question of petitioner's entitlement to refund. Tax deficiencies should be subject to assessment procedures and the rules of prescription.* The court cannot be expected to perform the BIR's duties whenever it fails to do so either through neglect or oversight. ***Neither can court processes be used as a tool to circumvent laws protecting the rights of taxpayers.***
> (Italics and boldfacing, Ours.)

This was, in fact, what respondent did in this case in his decision on petitioner's administrative claim, as can be observed in the computation below. He, allegedly, was able to determine output tax liabilities in excess of the refundable amount, which led to the denial of said claim:

VAT refund claimed	**₱10,872,529.10**
Deductions from claim	
Violations of invoicing requirements under Sec. 112 of the NIRC of 1997, as amended	(1,755,936.55)
Additional output VAT on taxable sales	(16,033,566.80)
Output VAT on gain on disposal of property, plant and equipment	(13,839.24)
Output VAT on interest income	(2,245.56)
Total Deductions	**(17,805,588.15)**
Excess deductions over claim	**₱(6,933,059.05)**

This scenario is exactly what *SMI-ED Philippines* differentiated in ruling in that wise and the Court shall not turn a blind eye on such attempt to circumvent the due process requirements of the law.

With the foregoing considered, respondent's Motion for Partial Reconsideration fails to convince Us to modify Our ruling in this case.

Petitioner's Motion for Partial Reconsideration

Petitioner raised the following arguments for the Court's reconsideration of the Assailed Decision:

1.) Petitioner has complied with the minimum statutory requirements of *Section 112(A) of the Tax Code*;

2.) Charging a portion of input taxes attributable to zero-rated sales to the output taxes is not a requirement for entitlement to a refund of unused or unutilized input VAT from zero-rated sales; and

3.) The Independent Certified Public Accountant ("ICPA") recommended the partial granting of petitioner's claim for refund amounting to ₱3,954,019.81.

On the other hand, respondent, in his Comment/Opposition, asserts the same arguments he raised in his Motion for Partial Reconsideration.

Petitioner's Motion is, likewise, bereft of merit.

It is no longer necessary for Us to tackle petitioner's assertion that it has complied with the minimum requirements for the entitlement to excess input VAT refund as the Court already indeed found it entitled thereto, albeit partially, as discussed in the Assailed Decision and effectively set aside respondent's decision on its administrative claim.

However, We find petitioner's argument that charging input VAT attributable to zero-rated sales against its output VAT for the period of claim is not a requirement for entitlement to refund as baseless.

Petitioner must have missed that *Section 112(A) of the Tax Code* authorizes refund only of the *excess* input VAT attributable to zero-rated sales, that is to the extent not applied against the output VAT, to wit:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated 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*: . . .
>
> (Italics, Ours.)

As clarified in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[6] ("*Chevron*"), the taxpayer-claimant has two options in claiming refund of input VAT attributable to zero-rated sales:

> *Thus, the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.* It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. *Furthermore, the option is vested with the taxpayer-claimant.* It goes without saying that the CTA, and even the Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund. The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence.
> (Italics, Ours.)

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[6] G.R. No. 215159, July 5, 2022.

Based on the foregoing, if Option 1 is chosen by the taxpayer-claimant, the input tax attributable to zero-rated sales may be charged against output tax from the regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate.

In this case, petitioner, as the taxpayer-claimant, chose Option 1 when it filed its claim for refund of input tax attributable to zero-rated sales before the BIR in the amount of ₱10,872,529.10, computed as follows:

Current input taxes for the period October to December 2018:		
Domestic purchases of goods other than capital goods		₱2,856,147.56
Domestic purchases of services		97,984,808.86
Amortized input tax on capital goods exceeding ₱1million:		
Input tax deferred on capital goods exceeding ₱1million from previous quarter	₱3,339,236.18	
Purchase of capital goods exceeding ₱1million	1,585,430.54	
Input tax deferred on capital goods exceeding ₱1million deferred for the succeeding period	(3,946,638.63)	978,028.09
Total current input tax		***101,818,984.51***
Less: Output VAT		*90,946,455.42*
Excess input tax for the period October to December 2018 claimed for refund		**₱10,872,529.09**

Thus, contrary to petitioner's assertion, the Court is indeed authorized to charge its input VAT attributable to zero-rated sales against the output VAT for the period of claim since it chose to refund only the excess input tax pursuant to Option 1 in *Chevron*.

Lastly, petitioner cannot insist that the Court abide by the ICPA's findings on its claim for refund since the latter's findings are not conclusive to this Court and is still subject to Our verification.[7]

In summary, respondent and petitioner failed to impress the Court with cogent arguments to justify the reversal, amendment, or modification of the Assailed Decision. The same shall therefore not be disturbed.

[7] SEC. 3. *Findings of independent CPA.*— The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. *The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.* (*Rule 13 of the Revised Rules of the CTA*) (Italics, Ours.)

FOR THESE REASONS, both respondent's *Motion for Partial Reconsideration (Re: Decision dated 29 May 2025)* and petitioner's *Motion for Partial Reconsideration* are **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

ON OFFICIAL BUSINESS
CORAZON G. FERRER-FLORES
Associate Justice