REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

***EN BANC***

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| **COMMISSIONER OF INTERNAL REVENUE,** *Petitioner,* | **CTA EB NO. 3047** (CTA CASE NO. 10474) |
| | Present: |
| -*versus*- | **RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.* |
| **MSCI HONG KONG LIMITED,** *Respondent.* | Promulgated: FEB 19 2026 4:30 p |

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# DECISION

**ANGELES, *J.*:**

Before the Court *En Banc* is a *Petition for Review*[1] filed by the Commissioner of Internal Revenue (petitioner), praying for the reversal of the Decision[2] dated July 17, 2024 (assailed Decision) and Resolution[3] dated November 26, 2024 (assailed Resolution), both promulgated by the Second Division (Court in Division) in CTA Case No. 10474, entitled *MSCI Hong Kong Limited v. Commissioner of Internal Revenue.*

In the assailed Decision, the Court in Division ordered petitioner to refund in favor of MSCI Hong Kong Limited (respondent) the amount of ₱4,046,018.97, representing respondent's unutilized creditable input Value-Added Tax (VAT) attributable to its zero-rated sales for the period from April 1, 2018 to December 31, 2018.

[1] *En Banc* (EB) Docket, pp. 1-26, with attachments.
[2] EB Docket, pp. 34-61.
[3] EB Docket, pp. 63-66.

## FACTS

Petitioner is vested by law to enforce and implement the provisions of the National Internal Revenue Code (Tax Code), as amended, as well as related statutes and their implementing rules and regulations.[4]

Respondent is the Philippine Branch of MSCI Hong Kong Limited, with office address at 29/F Zuellig Building, Makati Avenue cor. Paseo De Roxas, Makati City, and registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Tax Identification No. (TIN) 008-724-942.[5]

The Court in Division narrated the facts of the case, to wit:[6]

> On August 13, 2020, [respondent] filed with the BIR an *Application for Tax Credits/Refunds* (BIR Form No. 1914) of input taxes for the period from April 1, 2018 to December 31, 2018, amounting to ₱10,813,448.05. The same was accompanied by the *Revised Checklist of Mandatory Requirements on Claims for VAT Refund.*
>
> [Respondent] then received a Tax Verification Notice (TVN) from the VAT Credit Audit Division (VCAD) authorizing Revenue Officers Marjorie C. Dioso and Michele J. Alonzo-Bucayu to verify the supporting documents and/or pertinent records relative to its VAT refund filed.
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> On January 29, 2021, [respondent] received the *VAT Refund Notice* dated December 16, 2020 from the Office of the Assistant Commissioner, Assessment Service, BIR, partially granting its administrative claim for refund in the amount of ₱5,523,776.22, computed as follows:

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| VAT Refund Claimed | ₱ 10,813,448.05 |
| Deductions from Claim | (5,289,571.33) |
| **Net Allowable VAT Refund** | **₱ 5,523,776.22** |

## PROCEEDINGS BEFORE THE COURT

The proceedings before the Court in Division took place, as follows:[7]

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[4] *Joint Stipulation of Facts and Issues* dated June 30, 2022, Division Docket - Vol. I, pp. 452.
[5] *Id.*
[6] EB Docket, p. 35.
[7] EB Docket, p. 36-37.

On February 26, 2021, [respondent] filed the present *Petition for Review* seeking the disallowed portion of its administrative claim for refund in the amount of ₱5,289,571.33 for the period April 1, 2018 to December 31. 2018.

[Petitioner] submitted his *Answer* on October 25, 2021.

On February 15. 2022, [petitioner] transmitted to this Court the *BIR Records* of this case.

The Pre-trial Conference was initially set on March 8, 2022 but was eventually reset to and held on May 31, 2022. Prior thereto, *Respondent's Pre-Trial Brief* was filed on February 18, 2022 while *Petitioner's Pre-Trial Brief* was submitted on May 27, 2022.

On June 30, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*, which was admitted and approved by the Court in its Resolution dated July 7, 2022; thereby, deeming the termination of the Pre-Trial. Subsequently, the Pre-Trial Order dated July 18, 2022 was issued.

Trial then ensued, with the parties presenting their respective documentary and testimonial evidence.

[Respondent] offered the testimonies of the following individuals, namely: (1) Ms. Nerissa Tolentino, [respondent's] Vice President for Finance; and, (2) Mr. Glenn Ian D. Villanueva, the Court-commissioned Independent Certified Public Accountant (ICPA). The *Report* of the ICPA was submitted on August 25, 2022.

On October 10, 2022, [respondent] filed its *Formal Offer of Evidence* to which [petitioner] filed his *Comment Re: Petitioner's Formal Offer of Evidence* on October 24, 2022.

In the Resolution dated December 7, 2022, the Court admitted [respondent's] offered exhibits.

On the other hand, [petitioner] offered the testimony of Revenue Officer Marjorie C. Dioso. Thereafter, on March 24, 2023, [petitioner] filed his *Formal Offer of Evidence*, to which [respondent] filed its *Comment (Re. Formal Offer of Evidence dated March 23, 2023)* on April 4, 2023.

In the Resolution dated May 16, 2023, the Court admitted [petitioner's] offered exhibits.

[Respondent] submitted its *Memorandum* on June 16, 2023, while [petitioner's] *Memorandum* was filed on June 26, 2023.

On July 17, 2023, the case was considered submitted for decision.

On July 17, 2024, the assailed Decision was promulgated, and the dispositive portion read:[8]

> **WHEREFORE**, in light of the foregoing, the present *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, [petitioner] is **ORDERED TO REFUND** in favor of [respondent] the amount of **₱4,046,018.97**, representing unutilized creditable input VAT attributable to its zero-rated sales for the period from April 1, 2018 to December 31, 2018.

Petitioner filed a *Motion for Reconsideration (Re: Decision dated 17 July 2024)*[9] on August 8, 2024, while respondent filed its *Comment (Re: Motion for Reconsideration dated August 7, 2024)*[10] on September 9, 2024.

The Court in Division denied the said *Motion* in the assailed Resolution promulgated on November 26, 2024.

Unrelenting, petitioner filed the instant *Petition for Review* on December 19, 2024. Respondent posted its *Comment*[11] thereto on January 31, 2025.

Thus, on February 19, 2025, the case was submitted for decision.[12]

## ISSUE

Petitioner assigns the following error allegedly committed by the Court in Division:[13]

> WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN PARTIALLY GRANTING THE PETITION FOR REVIEW AND ORDERED PETITIONER TO REFUND THE TOTAL AMOUNT OF ₱4,046,018.97.

## ARGUMENTS OF THE PARTIES

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[8] EB Docket, p. 61.
[9] Division Docket - Vol. III, pp. 985-1008.
[10] Division Docket - Vol. III, pp. 1015-1029.
[11] EB Docket, p. 87.
[12] EB Docket, p. 72.
[13] EB Docket, p. 4.

## ***Petitioner's arguments***

Petitioner generally argues that respondent is not entitled to the full refund of its alleged excess input tax for the period April 1, 2018 to December 31, 2018 in the total amount of ₱5,289,571.33. He points out that actions for refund are in the nature of tax exemptions and should be construed against the taxpayer claiming such refund. Further, it is incumbent upon the claimant to prove that it is entitled to the refund. Thus, it is the claimant who should present evidence to prove its entitlement to the claim.

Here, petitioner maintains that respondent's claim for refund was not fully substantiated by proper documents. Out of the total amount claimed by respondent for refund, ₱5,289,571.33 is unsubstantiated by supporting documents.

*First*, petitioner notes that respondent failed to comply with the submission of all documentary requirements for refund as prescribed in Revenue Memorandum Circular (RMC) No. 47-2019.

*Second*, petitioner avers that several pieces of evidence, including related Official Receipts (ORs), sales invoices, and other documents, which were submitted to the Court in Division and reviewed by the ICPA, were not the very same documents presented before the BIR during the administrative proceedings. Without the submission of these documents before the BIR, respondent could not have substantiated its claim for refund under RMC No. 47-2019 and Section 112(a) of the Tax Code, as amended.

Further, petitioner, citing several jurisprudence, posits that since a decision denying petitioner's refund claim has been rendered at the administrative level, the Court in Division is confined to a limited issue of whether such denial was proper given the evidence submitted at the administrative level.

*Third*, petitioner submits that respondent is not entitled to the refund under Section 112(a) of the Tax Code, as amended, for failure to prove that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales, and a portion of the allocation of input tax is disallowed for failure to provide supporting documents of the alleged zero-rated sales.

***Respondent's counter-arguments***

Respondent contends that the grounds relied upon by petitioner have already been sufficiently passed upon and resolved by the Court in Division. It points out that there is no new or substantial matter, nor any compelling reason, to warrant the modification or reversal of the assailed Decision and assailed Resolution.

Nonetheless, respondent argues that it has sufficiently complied with the submission of all documentary requirements in filing its administrative claim for refund. Respondent claims that as shown in the Revised Checklist of Mandatory Requirements on Claims for VAT Refund, which was attached to respondent's Application for Tax Credits/Refunds (BIR Form No. 1914), together with a notarized certification of completeness of supporting documents, all of the documents required to be submitted were duly submitted and certified as complete by respondent.

Respondent, citing several jurisprudence, emphasizes that the term "complete documents" means documents that are necessary to support the application for refund or tax credit, as determined by the taxpayer. Thus, respondent argues that it was able to sufficiently present all the documents necessary to support its claim for refund.

Respondent further asserts that the CTA may take into consideration evidence not presented at the administrative level and may conduct its own fact finding and trial pursuant to the principle of trial *de novo*.

Furthermore, respondent argues that it is not legally required to prove that its input VAT subject of the refund is directly attributable to its zero-rated or effectively zero-rated sales.

**RULING OF THE COURT *EN BANC***

The instant *Petition for Review* must be dismissed.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA)[14] provides, to wit:

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[14] A.M. No. 05-11-07-CTA, as amended, November 22, 2005.

RULE 8
PROCEDURE IN CIVIL CASES

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SEC. 3. *Who may appeal; period to file petition.* —

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, **the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.** *(Emphasis supplied)*

Based on the foregoing, a party adversely affected by a decision or resolution of the Court in Division on a motion for reconsideration or new trial, may file an appeal before the Court *En Banc* within fifteen (15) days from its receipt of the assailed decision or resolution.

As early as in the case of *Commissioner of Internal Revenue v. La Suerte Cigar & Cigarette Factory,*[15] the Supreme Court recognized the long established procedure of requiring the Office of the Solicitor General (OSG) to represent the interest of the government in appellate proceedings, the OSG having the primary responsibility to appear for the government in appellate proceedings.

The above case was upheld in *LG Electronics Philippines, Inc v. Commissioner of Internal Revenue,*[16] where the Supreme Court proclaimed that **the BIR Legal Division is not the proper representative of the Commissioner of Internal Revenue in appellate proceedings, as it is the OSG who is the proper party to represent the interest of the government.**

Such interpretation is in line with Section 35 of the Administrative Code of 1987,[17] which vests in the OSG the power and duty to represent the government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals, including the CTA, in all civil actions and special proceedings in which the

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[15] G.R. No. 144942, July 4, 2002.
[16] G.R. No. 165451, December 3, 2014.
[17] Executive Order No. 292, July 25, 1987.

government or any officer thereof in his official capacity is a party. While the said provision authorizes the OSG to deputize legal officers of government departments, bureaus, and agencies to represent the government in cases involving their respective offices brought before the courts, **such deputized legal officers remain under the supervision and control of the OSG.**[18]

Thus, the Supreme Court in *Republic v. Viaje*[19] declared that the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and that the OSG remains as the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.

Moreover, in *National Power Corp. v. National Labor Relations Commission*,[20] the Supreme Court elucidated that copies of orders, notices, and decisions served on the deputized counsel, acting as agent or representative of the OSG, are insufficient and not binding until they are actually received by the latter. The deputized special attorney has no legal authority to decide whether or not an appeal should be made.[21]

The High Court further stated that **the proper basis for computing the reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG, and not service on the deputized lawyer.**[22]

In this case, records show that the BIR received a copy of the assailed Resolution on **December 4, 2024**,[23] while the OSG received a copy of the same on **January 7, 2025**.[24] However, the instant *Petition for Review* was filed on **December 19, 2024**,[25] or before the OSG had received a copy of the assailed Resolution.

It is therefore reasonable to conclude that **at the time the BIR filed the instant *Petition*, it had no authority to do so**, not only because of the high possibility that the OSG was unaware of the assailed Resolution considering that it did not yet receive the same at the time of the filing of the said *Petition*, but also because there is no evidence on record to prove that the BIR was duly authorized by the

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[18] *Supra*, note 17.
[19] G.R. No. 180993, January 27, 2016.
[20] G.R. Nos. 90933-61, May 29, 1997.
[21] *Id.*
[22] *Id.*
[23] Division Docket - Vol. III, p. 1030.
[24] Division Docket - Vol. III, p. 1031.
[25] EB Docket, p. 1.

OSG to file the said *Petition.* It must be emphasized that the BIR acting through its special counsels have no legal authority to decide on their own whether or not an appeal to the Court *En Banc* should be made.

To be sure, the fifteen (15)-day period to appeal the assailed Resolution cannot be reckoned from the date of receipt by the BIR on December 4, 2024, as it is notice to the OSG that is binding, the OSG being the principal counsel of the government who is entitled to the service of all court orders, notices, and decisions.[26] Furthermore, when the petition suffers from the basic infirmity of lack of the requisite imprimatur from the OSG, it is dismissible on that ground.[27]

Here, petitioner's failure to file the instant *Petition for Review* in accordance with prevailing rules and jurisprudence, particularly with proper authority from the OSG, has caused the assailed Resolution to attain finality.

This Court has reminded petitioner time and again that the right to appeal is merely a statutory privilege and may be exercised only in accordance with the provisions of law.[28] The perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well, and failure to perfect an appeal in such manner renders the judgment appealed from final and executory.[29] If the court has no jurisdiction over the action, its only jurisdiction is to dismiss the case.[30]

In view thereof, and in light of the finality of the assailed Resolution, this Court has no other recourse but to dismiss the present appeal for lack of jurisdiction.

**WHEREFORE,** premises considered, the instant *Petition for Review* is **DISMISSED.**

**SO ORDERED.**

**HENRY S. ANGELES**
Associate Justice

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[26] *Supra*, note 19.
[27] Republic v. "G" Holdings Inc., G.R. No. 141241, November 22, 2005.
[28] *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005.
[29] *Mitsubishi Motors Phils. Corp. v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.
[30] *AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014.

**WE CONCUR:**

**(ON OFFICIAL BUSINESS)**

**MA. BELEN M. RINGPIS-LIBAN**
Presiding Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

Marian Ivy F. Reyes - Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**LANEE S. CUI-DAVID**
Associate Justice

**CORAZON G. FERRER-FLORES**
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.

**MARIA ROWENA MODESTO-SAN PEDRO**
Acting Presiding Justice