REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1491** (CTA Case Nos. 7771 & 7814)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
CBK POWER COMPANY LIMITED, *Respondent.*	Promulgated: MAY 05 2017 11:50 a.m.

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D E C I S I O N

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review, pursuant to Rule 8, Section 3(b)[1] of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking the nullification of the Amended Decision and Resolution, dated May 16, 2016 and July 13, 2016, respectively, of the Court's Special Third Division (Court in Division). The assailed Decision and

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[1] Rule 8. Procedure in Civil Cases
Section 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.

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Resolution granted respondent's claim for refund/issuance of tax credit certificate (TCC) in the reduced amount of Php31,479,619.94, representing respondent's unutilized input Value-added Tax (VAT) attributable to its zero-rated sales for the period January 1 to December 31, 2006.

The Facts

Petitioner is the Commissioner of Internal Revenue (CIR), tasked with the assessment and collection of all national internal revenue taxes, fees, and charges.[2]

Respondent CBK Power Company Limited (CBK) is a VAT-registered partnership organized and existing under Philippine law, whose sole purpose is to engage in all aspects of (a) design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, and other assets located in the Province of Laguna, and (b) rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan and Kalayaan I hydroelectric power plants and their related facilities, located in the Province of Laguna.[3]

CBK filed its quarterly VAT returns for calendar year 2006 on April 25, 2006, July 25, 2006, October 20, 2006, and January 24, 2007.[4] Subsequently, CBK filed its amended quarterly VAT returns on December 28, 2007, March 31, 2008, April 18, 2008, May 7, 2008, and July 21, 2008.[5]

On March 31, 2008, CBK filed an administrative claim for refund/issuance of TCC of its unutilized input taxes for the period January 1, 2006 to March 31, 2006. The claim amounted to Php7,559,943.44.[6]

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[2] *Rollo*, CTA EB No. 1491, Petition for Review, p. 8.
[3] *Rollo*, Amended Decision, p. 31.
[4] *Id.*
[5] *Id.*
[6] *Rollo*, Amended Decision, p. 32.

On April 23, 2008, CBK filed a petition for review with the CTA, docketed as CTA Case No. 7771, alleging the inaction of the CIR.[7]

On July 23, 2008, CBK filed another administrative claim for refund/issuance of TCC of its unutilized input taxes, this time covering the period April 1, 2006 to December 31, 2006. The following day, CBK filed a petition for review with the CTA, docketed as CTA Case No. 7814. The claim amounted to Php36,246,606.28.[8]

The cases were consolidated before the Court in Division. On December 10, 2010, the Court in Division dismissed the consolidated petitions for having been prematurely filed.[9] CBK's motion for reconsideration was likewise denied on April 7, 2011.[10] CBK's appeal to the CTA *En Banc* was also denied on October 4, 2012, and its motion for reconsideration on January 15, 2013.[11]

CBK challenged the denial of its claim before the Supreme Court. On September 30, 2014, the Supreme Court issued a decision reversing the CTA decisions and resolutions, and remanding the case to the CTA.[12] The Supreme Court ruled that the petitions for review filed by CBK were not prematurely filed as the same were filed within the window period of December 10, 2003 to October 6, 2010. Entry of Judgment was received by the Court in Division on March 24, 2015, stating that the Supreme Court Decision had become final and executory on November 14, 2014.[13]

On January 22, 2016, the Court in Division required the parties to file their manifestations of any supervening event which may have transpired that would affect the disposition of the consolidated cases; and whether there is a need to conduct further proceedings.[14]

On February 23, 2016, the consolidated cases docketed as CTA Case Nos. 7771 and 7814 were submitted anew for

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[7] *Rollo*, Amended Decision, p. 33.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Rollo*, Amended Decision, pp. 33-34.
[12] *Rollo*, Amended Decision, pp. 34-35.
[13] *Rollo*, Amended Decision, p. 35.
[14] *Id.*

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decision, for the determination and computation of the amounts valid for refund/issuance of TCC.[15]

On May 6, 2016, the Court in Division promulgated its Amended Decision[16], partially granting CBK's claim in the reduced amount of Php31,479,619.94, which reads:

> WHEREFORE, premises considered, the instant Petition for Review is PARTIALLY GRANTED. Accordingly, respondent Commissioner of Internal Revenue is ORDERED TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner CBK Power Company Limited in the amount of ₱31,479,619.94 representing petitioner's unutilized input VAT attributable to its zero-rated sales for the period January 1, 2006 to December 31, 2006.
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> SO ORDERED.[17]

The CIR filed its Motion for Reconsideration on May 25, 2016, which was denied in the Resolution[18] dated July 13, 2016.

Aggrieved, the CIR filed the instant petition for review before the Court *En Banc* on August 12, 2016[19], which was within the extended period granted[20]. On September 19, 2016, the Court *En Banc* ordered CBK to file its comment[21], to which CBK complied on October 6, 2016.

After receipt of CBK's comment, the parties were ordered to submit their respective memoranda.[22] CBK filed its Memorandum[23] on November 28, 2016, while the CIR filed his Memorandum[24] on December 22, 2016. Considering the foregoing, the case was submitted for decision on January 23, 2017.[25]

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[15] *Rollo*, Amended Decision, p. 35.
[16] *Rollo*, Amended Decision, pp. 30-51.
[17] *Rollo*, Amended Decision, p. 48.
[18] *Rollo*, Resolution dated July 13, 2016, pp. 52-55.
[19] *Rollo*, Petition for Review, p. 7.
[20] *Rollo*, p. 6.
[21] *Rollo*, Comment (on Petition for Review dated August 8, 2016), pp. 62-69.
[22] *Rollo*, Resolution dated November 15, 2016, pp. 71-72.
[23] *Rollo*, pp. 73-77.
[24] *Rollo*, pp. 87-107.
[25] *Rollo*, Resolution dated January 23, 2017, pp. 109-110.

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Issue

The CIR raises the sole issue of:

> Whether the Honorable Court Special Third Division erred in partially granting respondent's claim for refund in the amount of Php31,479,619.94 allegedly representing unutilized input VAT attributable to zero-rated sales for the period January 1, 2006 to December 31, 2006.[26]

CIR's Arguments[27]

The CIR argues that CBK failed to substantiate its entitlement to the refund. The CIR alleges that CBK failed to comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the 1997 National Internal Revenue Code, as amended (NIRC), and its implementing regulations under Revenue Regulations No. (RR) 16-2005. Further, the CIR alleges that CBK failed to comply with the submission of all supporting and relevant documents provided under Revenue Memorandum Order No. (RMO) 53-98.

Finally, the CIR argues that the Court in Division erred in ruling that the claimed input VAT were not carried over to the succeeding taxable quarters, considering that the Court in Division's ruling was based on CBK's 2006 returns only, and that the returns for the taxable quarters of 2007 were no longer included.

CBK's Counter-Arguments[28]

Respondent argues that the CIR does not raise any new argument nor cogent reason to justify the reversal of the assailed decision and resolution, considering that the arguments raised have been previously articulated and resolved in the assailed decision and resolution.

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[26] *Rollo*, Petition for Review, p. 13.
[27] *Rollo*, Petition for Review, pp. 13-24; Petitioner's Memorandum, pp. 93-104.
[28] *Rollo*, Comment, pp. 62-66; Respondent's Memorandum, pp. 73-74.

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Ruling of the Court

The petition lacks merit.

The Court *En Banc* has jurisdiction over the present petition.

The Court in Division issued the assailed Resolution, denying CIR's Motion for Reconsideration, on July 13, 2016, which was received by the CIR on July 14, 2016.[29] Pursuant to Rule 4, Section 2(a)(1)[30], in relation to Rule 8, Section 3(b) of the RRCTA, the CIR had fifteen (15) days or until July 29, 2016 within which to file his petition for review.

On July 29, 2016, the CIR filed a motion for extension of time to file petition for review, praying for an additional fifteen (15) days from said date, or until August 13, 2016.[31] The Court *En Banc* granted the extension[32], and on August 12, 2016, the instant petition was timely filed. Hence, the Court *En Banc* has jurisdiction.

There is no compelling reason to reverse or modify the Court in Division's Amended Decision and Resolution.

The CIR claims that CBK failed to comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the NIRC. However, the CIR fails to refer to any specific exhibit or document to support its claim. Neither did the CIR show that the Court in Division considered and relied on exhibits/documents which were not compliant with the invoicing requirement.

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[29] *Rollo*, Motion for Extension of Time to File Petition for Review, pp. 1-5.

[30] Rule 4 Jurisdiction of the Court
Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, xxx

[31] *Rollo*, Motion for Extension of Time to File Petition for Review, p. 1-5.

[32] *Rollo*, p. 6.

As clearly illustrated in tabular form in the Amended Decision[33], the Court in Division made a thorough analysis of CBK's submitted suppliers' invoices, official receipts, and other related documents and disallowed the total amount of Php12,525,481.89 from the reported input VAT, for failing to comply with the substantiation and invoicing rules and regulations.

The CIR also claims that CBK failed to comply with the submission of the complete documentary requirements in support of its claim for refund. Anent this issue, We affirm the Court in Division ruling that there was no showing that the CIR sent notices requiring CBK to submit additional documents, and that by such failure, CIR cannot now argue that CBK failed to submit complete documents.[34] In reasoning, the Court in Division relied on the cases of Commissioner of Internal Revenue v. Team Sual Corporation (Team Sual)[35] and Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue (Pilipinas Total)[36].

In Team Sual, the Supreme Court held that the submission of complete documents enumerated in RMO 53-98 is not a requirement for a grant of tax refund or credit of input VAT. In the more recent Pilipinas Total case, the Supreme Court elucidated on the meaning and determination of "complete documents", as quoted below:

> ...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 necessary documents. In such cases, the 120-day period is computed from the date the

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[33] *Rollo*, pp. 39-47.
[34] *Rollo*, p. 54.
[35] G.R. No. 205055, July 18, 2014.
[36] G.R. No. 207112, December 8, 2015.

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> taxpayer is able to submit the complete documents in support of his application.
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> 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 [of] ***what*** additional document must be presented in support of a claim for tax credit or refund – it is the taxpayer who has the 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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> xxx xxx xxx
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> 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**. (Emphasis and italics in the original)

As found by the Court in Division, there was no showing that the CIR or his representatives requested or ordered the submission of additional documents. Absent such request for submission of additional documents, it is the taxpayer who determines what and when complete documents have been submitted. Hence, the CIR cannot argue that the judicial claim should be dismissed because of respondent's failure to submit complete documents.

Indeed, the Court *En Banc* notes that the counting of the 120-day period for inaction is irrelevant, since the instant case falls within the window period (December 10, 2003 to October 6, 2010) established in Commissioner of Internal Revenue v. San Roque Power Corporation[37]. Under such window period, judicial claims that did not comply with the mandatory 120-

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[37] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

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day period, but still within the 2-year prescriptive period, shall be entertained.

Finally, the CIR argues that CBK failed to prove that the subject input VAT being claimed remained unutilized or have not been applied against any output tax for the current and succeeding quarters of the following taxable year 2007. Again, this issue was already addressed by the Court in Division in its Amended Decision. As found by the Court in Division, the claimed unutilized input VAT was not carried over to the succeeding taxable quarters since the same was deducted as "VAT Refund/TCC claimed" in the First and Fourth Quarterly VAT Returns of 2006.[38] Further, CBK only had zero-rated sales for taxable year 2006, as such, there was no output VAT liability against which the claimed input VAT may be applied or credited.

In view of the foregoing, the Court *En Banc* finds no cogent reason to reverse or modify the findings of the Court in Division.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[38] *Rollo*, Amended Decision dated May 6, 2016, p. 47.

ERLINDA P. UY
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

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