REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1553** (CTA Case No. 8797)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
UNIVATION MOTOR PHILIPPINES, INC., Respondent.	***Promulgated:*** APR 02 2018 2:26 p.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue on December 2, 2016 against Univation Motor Philippines, Inc.,[1] assailing the Decision dated July 21, 2016[2] and the Resolution dated October 26, 2016[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8797, entitled *"Univation Motor Philippines, Inc., Petitioner, versus*

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[1] EB Docket, pp. 6 to 20.

[2] EB Docket, pp. 22 to 42; Penned by Associate Justice Lovell R. Bautista, and concurred by Associate Justices Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban.

[3] EB Docket, pp. 43 to 47; Penned by Associate Justice Lovell R. Bautista, and concurred by Associate Justice Esperanza R. Fabon-Victorino. Associate Justice Ma. Belen M. Ringpis-Liban was on leave.

Commissioner of Internal Revenue, Respondent", the dispositive portions of which read:

Decision dated July 21, 2016:

> "**WHEREFORE,** premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Univation Motor Philippines, Inc. in the reduced amount of **TWELVE MILLION NINE HUNDRED THIRTY-EIGHT THOUSAND SIX HUNDRED ONE AND 20/100 PESOS (Php12,938,601.20)** representing petitioner's excess and unutilized creditable withholding tax for calendar year 2011.
>
> **SO ORDERED.**"

Resolution dated October 26, 2016:

> "**WHEREFORE,** premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated on 21 July 2016) is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the duly appointed Commissioner of Internal Revenue, vested with authority to carry out all the functions, duties, and responsibilities of said office, including, *inter alia*, the power to act upon, decide, and approve claims for refund and/or tax credits overpaid or erroneously paid or collected internal revenue taxes. He holds office at the 5th Floor, Bureau of Internal Revenue (BIR), National Office Building, Agham Road, Diliman, Quezon City.

Respondent Univation Motor Philippines, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at the Nissan Technopark, Barangay Pulong Sta. Cruz, Sta. Rosa, Laguna. It was incorporated for the primary purpose of carrying out the business of buying, acquiring, manufacturing, assembling, producing, importing, holding, selling, disposing, distributing, dealing in motor trucks, cars, engines and

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other kinds of automobiles and mechanically propelled vehicles, means of transportation and industrial machinery, their bodies, spare parts, accessories; and to repair, maintain, service, condition and/or recondition said products. Respondent is a registered taxpayer of the BIR, Large Taxpayers Service, with Taxpayer Identification No. 000-389-353-000.

For calendar year (CY) 2011, respondent manually filed with the BIR its Annual Income Tax Return (ITR) on April 26, 2012, and electronically filed the same with the BIR through the electronic Filing and Payment System (eFPS) on July 25, 2012, marked as belatedly filed.

Under its 2011 Annual ITR, respondent was liable for Minimum Corporate Income Tax (MCIT) in the amount of ₱1,344,538.02, considering that the MCIT was higher than the normal income tax due of ₱0.00. Nevertheless, respondent had an overpayment of ₱25,055,787.65, computed as follows:

Income Tax Due (MCIT)		₱ 1,344,538.02
Less: Tax Credits/Payments		
Prior Year's Excess Credits Other Than MCIT	₱ 13,235,154.00	
Creditable Tax Withheld from Previous Quarter/s	10,132,336.00	
Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	3,032,835.67	26,400,325.67
Total Tax Credits/Payments		₱ (25,055,787.65)
Net Tax Payable/(Overpayment)		(25,055,787.65)
Total Penalties		0.01
Total Amount Payable/(Overpayment)		**₱ (25,055,787.64)**

Accordingly, respondent indicated on the face of its 2011 Annual ITR its option to be issued a tax credit certificate (TCC) for its excess and unutilized creditable withholding tax (CWT) for CY 2011.

Thereafter, on December 21, 2012, respondent filed with the Large Taxpayers Excise Audit Division II of the BIR, an administrative claim for refund or issuance of TCC for its excess and unutilized CWT for CY 2011 in the amount of ₱13,165,171.00.

On April 10, 2014, respondent filed a *Petition for Review*, following Sections 58(D), 76, 204(C), and 229 of the National Internal Revenue Code (NIRC) of 1997. The case was docketed as CTA

Case No. 8797 and was assigned to the Third Division of this Court.

Petitioner filed his *Answer* on June 24, 2014, interposing certain Special and Affirmative Defenses, *viz*: that the claim for tax refund is tainted with procedural infirmity due to respondent's failure to submit complete documents in support of its administrative claim for refund; that respondent miserably failed to exhaust administrative remedies before elevating the case to the Court in Division; and that claims for refund are construed strictly against the taxpayer and in favor of the Government.

Petitioner filed his *Pre-Trial Brief* on August 8, 2014, while respondent filed its *Pre-Trial Brief* on August 11, 2014. Subsequently, on October 1, 2014, the parties filed their *Joint Stipulation of Facts and Issues*, which was adopted by the Court in Division in its Pre-Trial Order dated October 16, 2014.

During trial, respondent presented as witnesses, its Senior Manager and Head of General Accounting Department, Jennely Barrera and the court-commissioned Independent Certified Public Accountant (ICPA), Albert G. Alba.

Thereafter, on April 23, 2015, respondent filed its *Formal Offer of Evidence*, which was resolved by the Court in Division in the Resolution dated May 25, 2015. Subsequently, on July 20, 2015, respondent filed its *Supplemental Formal Offer of Evidence*, which was resolved by the same Court in the Resolution dated September 8, 2015.

Meanwhile, during the hearing held on May 25, 2015, petitioner manifested that he will not be presenting any witnesses.

In compliance with the Court in Division's Resolution dated September 8, 2015, which ordered the parties to file their respective memorandum within thirty (30) days from receipt thereof, petitioner filed his *Memorandum* on October 15, 2015, while respondent filed its *Memorandum* on October 29, 2015. Thereafter, CTA Case No. 8797 was submitted for decision on November 11, 2015.

On July 21, 2016, the Court in Division promulgated the assailed Decision,[4] partially granting respondent's *Petition for Review*

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[4] EB Docket, pp. 22 to 42; Division Docket – Vol. 2 (CTA Case No. 8797), pp. 857 to 877.

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in CTA Case No. 8797, and ordering petitioner to issue a TCC in the reduced amount of ₱12,938,601.20, representing respondent's excess and unutilized CWT for CY 2011.

Petitioner filed its *Motion for Reconsideration (Re: Decision promulgated on 21 July 2016)* on August 9, 2016;[5] while respondent filed his *Comment (Re: Motion for Partial Reconsideration)* thereto on September 14, 2016.[6]

On October 26, 2016, the Court in Division issued the assailed Resolution,[7] denying petitioner's *Motion for Reconsideration* for lack of merit.

Petitioner then filed, on November 15, 2016, before the Court *En Banc* a *Motion for Extension of Time To File Petition for Review,*[8] which was granted, giving petitioner fifteen (15) days or until December 2, 2016, to file his *Petition for Review.*[9]

Subsequently, petitioner filed before the Court *En Banc* the instant *Petition for Review* on December 2, 2016.[10]

In the Resolution dated January 4, 2017,[11] the Court *En Banc* ordered respondent to file its *Comment* to the instant *Petition for Review* within ten (10) days from receipt thereof. On January 26, 2017, respondent filed its *Comment (Re: Petition For Review).*[12]

The Court *En Banc* gave due course to the instant *Petition for Review*, and directed the parties to submit their respective memorandum, pursuant to the Resolution dated February 20, 2017.[13]

Petitioner, however, filed a *Manifestation* on March 31, 2017,[14] manifesting that he is adopting the arguments he raised in the instant

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[5] Division Docket – Vol. 2 (CTA Case No. 8797), pp. 879 to 889.
[6] Division Docket – Vol. 2 (CTA Case No. 8797), pp. 898 to 909.
[7] EB Docket, pp. 43 to 47; Division Docket – Vol. 2 (CTA Case No. 8797), pp. 911 to 915.
[8] EB Docket, pp. 1 to 3.
[9] Minute Resolution dated November 16, 2016, EB Docket, p. 5.
[10] EB Docket, pp. 6 to 20.
[11] EB Docket, pp. 52 to 53.
[12] EB Docket, pp. 54 to 65.
[13] EB Docket, pp. 73 to 74.
[14] EB Docket, pp. 80 to 82.

Petition for Review as his *Memorandum*, since he already fully discussed all his arguments therein. For its part, respondent filed its *Memorandum* on April 21, 2017.[15] On May 15, 2017, the instant case was deemed submitted for decision.[16]

Hence, this Decision.

THE ISSUES

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

"-I-

RESPONDENT FAILED TO SUBSTANTIATE ITS CLAIM FOR REFUND BEFORE THE ADMINISTRATIVE BODY.

-II-

RESPONDENT IS NOT ENTITLED TO CLAIM FOR REFUND IN THE AMOUNT OF P 13,165,171.67."

Petitioner's arguments:

Petitioner argues that the instant claim for tax refund is tainted with procedural infirmity due to respondent's failure to submit complete documents in support of its administrative claim for refund; that respondent miserably failed to exhaust administrative remedies before elevating the case to the Court; and that claims for refund are construed strictly against the taxpayer and in favor of the Government.

Respondent's counter-arguments:

Respondent counter-argues that the arguments in the instant *Petition* are rehashed points raised in previous pleadings that have been fully and exhaustively resolved in the assailed Decision and Resolution; that the submission of complete supporting documents in the administrative level is not a pre-requisite to the grant of the judicial claim for refund; and that the rule that "claims for refund of

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[15] EB Docket, pp. 85 to 102.
[16] Resolution dated May 15, 2017, EB Docket, pp. 104 to 105.

overpaid taxes are construed *strictissimi juris* against the taxpayer" does not apply to claims for refund of overpaid or erroneously paid taxes.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Respondent did not fail to substantiate its claim for refund before the BIR.

According to petitioner, respondent miserably failed to substantiate its administrative claim for refund filed with petitioner, since it failed to submit complete supporting documents pursuant to Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006.

We disagree.

For easy reference, quoted hereunder are the pertinent provisions of RMO No. 53-98, viz:

> "SUBJECT: *Checklist of Documents to be Submitted by a Taxpayer **upon Audit** of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket*
>
> xxx xxx xxx
>
> I. BACKGROUND
>
> It has been observed that for the same kind of tax audit case, Revenue Officers differ in their request for requirements from taxpayers as well as in the attachments to the dockets resulting to tremendous complaints from taxpayers and confusion among tax auditors and reviewers.
>
> For equity and uniformity, this Bureau comes up with a prescribed list of requirements from taxpayers, per kind of tax, as well as of the

internally prepared reporting requirements, all of which comprise a complete tax docket.

II. OBJECTIVE

This order is issued to:

a. Identify the documents to be required from a taxpayer **during audit**, according to particular kind of tax; and

b. Identify the different audit reporting requirements to be prepared, submitted and attached to a tax audit docket.

xxx xxx xxx." *(Emphases supplied)*

Upon a cursory reading of RMO No. 53-98, the Court *En Banc* finds that nothing in the said issuance which mandates that the list of documents therein stated should be submitted in connection with an administrative claim for refund. Furthermore, said RMO is explicit, as to its subject and objective, that it provides a checklist of documents to be submitted *"upon Audit"*, and that it was issued to "(i)*dentify the documents* ***to be required from a taxpayer during audit***"[17], respectively.

In the same vein, RR No. 2-2206 provides, in part, as follows, viz:

"SUBJECT: *Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments*

BACKGROUND

Under the creditable withholding tax system, taxes must be withheld on certain income payments the amount of which should at least approximate the tax due of the

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[17] Emphasis supplied.

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> payee on the said income. The Withholding Agent/Payor is required to withhold and remit taxes withheld the details of which are declared in the appropriate tax return within the time prescribed by law. On the other hand, the payee/income recipient, upon declaration of income received or earned shall claim the corresponding creditable tax withheld in the filed return within the time prescribed by law for taxpayers to file return and claim tax credits. However, reports have been received by the Bureau of Internal Revenue that observance of these responsibilities is not yet in its desired stage, hence **these Regulations are issued to help promote a better business environment <u>by limiting BIR audits of returns with corresponding tax withheld at source to those without substantiation</u>, and to secure government revenue by observance of the withholding tax system.**" *(Emphasis and underscoring supplied)*

Based on the foregoing, one of the two-tiered reasons for the issuance of RR No. 2-2006 is *"to help promote a better business environment by limiting **BIR audits**[18] of returns with corresponding tax withheld at source to those without substantiation".*[19]

In this case, however, it was never established that an audit was ever conducted by the BIR in connection with respondent's administrative claim. In fact, petitioner never presented any evidence in the case *a quo.*[20] Thus, petitioner cannot validly invoke RMO No. 53-98 and RR No. 2-2006 to show that respondent failed to present complete documents at the administrative level.

As a corollary, the submission of complete supporting documents by the taxpayer-claimant is presumed, in the absence of contrary evidence. This is in accordance with the Supreme Court's pronouncement in *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[21] wherein it was held that:

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[18] Emphasis supplied.

[19] The other reason being *"to secure government revenue by observance of the withholding tax system".*

[20] Minutes of the hearing held on May 25, 2015, Division Docket (CTA Case No. 8797) – Vol. 2, p. 778; and Resolution dated June 15, 2015, Division Docket (CTA Case No. 8797) – Vol. 2, pp. 786.

[21] G.R. Nos. 198729-30, January 15, 2014.

> "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.**"

In view of this presumption and there being no evidence to the contrary, the documents attached to respondent's administrative claim for refund filed on December 21, 2012[22] are deemed complete documents.

But even granting that We can validly ignore the said presumption and find that respondent indeed did not present or attach the complete supporting documents in its administrative claims, petitioner can always immediately decide a refund claim, in view of the recognized principle that petitioner **ought to know the records of all taxpayers.**[23]

More importantly, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, 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.[24]

A taxpayer-claimant need not wait for the decision of petitioner before filing a judicial claim with this Court, when the 2-year prescriptive period is about to expire.

Petitioner further contends that respondent miserably failed to exhaust administrative remedies before elevating the case to the Court in Division.

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[22] Exhibit "P-16", Division Docket (CTA Case No. 8797) – Vol. 2, pp. 758 to 759.

[23] *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.

[24] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015, citing *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation),* G.R. No. 205055, July 18, 2014.

Again, We disagree with petitioner.

Section 229 of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Based on the foregoing provisions, the judicial claim for tax refund must be made within two (2) years from the date of payment of the tax or penalty, regardless of any supervening cause that may arise after such payment.

In *Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals,*[25] the Supreme Court held:

> "Under the above ruling, it is clear that Section 306[26] of the National Internal Revenue Code should be construed together with Section 11 of Republic Act No. 1125. In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, he must file a claim for refund with the

[25] G.R. No. L-13453, February 29, 1960.
[26] Now Section 229 of the NIRC of 1997.

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> Collector of Internal Revenue within two (2) years from the date of his payment of the tax, as required by said Section 306[27] of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. **If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, <u>the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector.</u>** This is so because of the positive requirement of Section 306[28] and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute." *(Emphasis Supplied)*

Based on the foregoing jurisprudential pronouncements, when the two-year prescriptive period is about to end, a taxpayer-claimant need not wait for the decision of petitioner before filing a case with this Court.

Moreover, in no wise does Section 229 of the NIRC of 1997 imply that petitioner first act upon the taxpayer's claim, and that the taxpayer shall not go to court before such taxpayer is notified of petitioner's action.[29] It must be emphasized that the claim with petitioner was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow.[30]

In this case, there is no showing that petitioner ever acted on the administrative claim for refund of respondent from the time it was filed on December 21, 2012[31] up to the filing of its judicial claim on April 10, 2014,[32] when the two-year prescriptive period is about to end. Thus, it was correct on the part of respondent to have elevated its judicial claims before the expiration of the said two-year prescriptive period under Section 229 of the NIRC of 1997.

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[27] *Ibid.*
[28] *Ibid.*
[29] Refer to *CBK Power Company Limited vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 193383-84 and 193407-08, January 14, 2015, citing *P.J. Kiener Co., Ltd. vs. David*, 92 Phil. 945 (1953).
[30] *Ibid.*
[31] Exhibit "P-16", Division Docket (CTA Case No. 8797) – Vol. 2, pp. 758 to 759.
[32] Division Docket (CTA Case No. 8797) – Vol. 1, pp. 14 to 23.

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Indeed, a tax refund, which is in the nature of a tax exemption, should be construed *strictissimi juris* against the taxpayer. However, when the claim for refund has clear legal basis and is sufficiently supported by evidence, then the Court shall not hesitate to grant the same.[33]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated July 21, 2016 and Resolution dated October 26, 2016, both rendered by the Court in Division in CTA Case No. 8797 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
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

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[33] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180043, July 14, 2009.

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