Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

SILICON PHILIPPINES, INC., ***(formerly Intel Philippines Manufacturing, Inc.),*** Petitioner,	**C.T.A. E.B. NO. 441** **(C.T.A. CASE NO. 6369)**
- versus -	Members : **ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 30 2009 11:05 a.m.

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D E C I S I O N

UY, *J.*:

This Petition for Review was filed before the Court of Tax Appeals *En Banc* on December 23, 2008 pursuant to Republic Act No. 1125, as amended by Republic Act No. 9282, seeking a review of the denial of petitioner's claim for the issuance of tax credit certificate arising from its unutilized/excess input tax, in the Decision dated August 26, 2008, as well as the Resolution dated November 18, 2008, rendered by the First Division of this Court (Court in Division)[1] in CTA Case No. 6369 entitled "Silicon Philippines, Inc. (formerly

[1] Ponencia of Presiding Justice Ernesto D. Acosta, and concurred by Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova.

Intel Philippines Manufacturing, Inc.), petitioner, vs. Commissioner of Internal Revenue, respondent."

THE FACTS

The antecedent facts of the case as stated in the assailed Decision, are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at 1321 Apolinario Street, Bangkal, Makati City, Metro Manila. It is registered as a preferred pioneer enterprise for the production/manufacture and export of tested and untested integrated circuits such as large scale integrated circuits and microprocessor. It is a registered entity per Certificate of Registration No. 85-1010 given by the Board of Investments (BOI) on October 25, 1985, as well as a VAT registered entity pursuant to Certificate of Registration No. 32A-3-002649 issued by the Bureau of Internal Revenue (BIR).

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including *inter alia*, the power to refund any internal revenue tax 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, or of value-added tax (VAT) input taxes attributable to zero-rated revenue. He is holding office at the BIR National Office Building, Diliman, Quezon City, Metro Manila, where he may be served with summons and other legal processes.

As a VAT-registered entity, petitioner filed its Quarterly VAT Return for the Fourth quarter of taxable year 1999, declaring therein its zero-rated sales of P2,407,719,607.48 which was allegedly paid for in acceptable foreign currency and inwardly remitted to the Philippines in accordance with existing rules and regulations of the *Bangko Sentral ng Pilipinas,* pursuant to the provisions of Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997. In the same VAT Return, petitioner reported an output tax of P80,254.54 on its taxable sales and allegedly paid a total of P25,083,456.15 input taxes on its domestic purchases as well as on importation of goods, attributable to its zero-rated sales.

On March 16, 2000, petitioner filed before the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance an application for tax credit/refund of P25,003,201.61 representing unutilized input VAT covering the period from October 1, 1999 to December 31, 1999.

Despite the alleged presentation of documentary evidence in support of its application, respondent failed to grant the tax credit being applied for.

Thus, herein petitioner filed its subject claim for refund or issuance of tax credit before the former Court of Tax Appeals (Court in Division) on December 21, 2001 docketed at C.T.A. Case No. 6369. An Answer was filed by herein respondent on February 4, 2002 praying for the dismissal of the case. After trial, the case was submitted for decision on May 7, 2008 taking into consideration the respective Memorandum of the parties.

On August 26, 2008, the Court in Division rendered the assailed Decision denying petitioner's claim for the issuance of a tax credit certificate in its favor on the ground that petitioner was not able to prove that it had not utilized the alleged excess input VAT. The Court in Division ruled that to enable petitioner to prove non-utilization of its claimed input taxes against output tax for the succeeding quarters, it should have presented, marked, and offered as evidence, the originals or certified true copies of its Quarterly VAT Returns for the First quarter of taxable year 2000 up to the Fourth quarter of taxable year 2001, and its failure to do so was fatal to its claim.

On October 15, 2008, petitioner filed its Motion for Reconsideration seeking reconsideration of the aforesaid Decision. Notably, petitioner did not present the originals or certified true copies of its required Quarterly VAT Returns. This readily explains why the Court in Division denied the said motion in its Resolution dated November 18, 2008, emphasizing therein that petitioner's photocopied Quarterly VAT Returns were denied admission because it violated the Best Evidence Rule under Rule 130 of the Revised Rules of Court.

Hence, this recourse before the Court *En Banc* praying that the Decision and Resolution dated August 26, 2008 and November 18, 2008, respectively, be reconsidered and set aside, and a new one be issued granting petitioner's claim for refund or issuance of a tax credit certificate in its favor in the amount of P25,004,201.61[2] (should be P25,003,201.61) representing its excess and unutilized input VAT paid during the Fourth Quarter of the taxable year 1999. A sole assignment of error was presented by petitioner, to wit:

"ASSIGNMENT OF ERROR"

> "THE COURT A QUO ERRED IN RULING THAT PETITIONER FAILED TO SUBSTANTIATE ITS ALLEGATION THAT THE EXCESS INPUT TAXES WERE NOT UTILIZED AGAINST ITS OUTPUT TAX IN THE SUCCEEDING QUARTER"

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[2] The amount is contained in petitioner's prayer; Docket, p. 123.

On January 22, 2009, this Court issued a Resolution requiring respondent to file Comment to the instant Petition For Review. In compliance thereto, respondent filed his "Comment" on February 3, 2009[3] praying for the dismissal of the instant petition for utter lack of merit. Subsequently, in the Resolution dated February 12, 2009, this petition was given due course and both parties were ordered to submit their respective Memorandum. As both parties having filed their respective Memorandum on March 18, 2009,[4] this case was deemed submitted for decision in the Resolution dated April 3, 2009.[5] Hence, this decision.

THE ISSUE

Based on the assignment of error raised by petitioner, this is the lone issue submitted for the resolution of the Court *En Banc*: Whether or not the Court in Division erred in ruling that petitioner failed to substantiate its non-utilization of its excess VAT input against its output taxes in the succeeding quarter. An affirmative finding of error would entitle petitioner to its claim for the refund or issuance of tax credit certificate in the amount of P25,003,201.61 representing its alleged excess and unutilized creditable input VAT on domestic purchases of goods and services, as well as, on importation attributable to its zero-rated sales for the Fourth Quarter of taxable year 1999.

Petitioner's arguments

Petitioner asserts that it was able to prove with reasonable certainty its non-utilization of its excess VAT input taxes against output taxes for the

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[3] Docket, pp. 167-173.
[4] Respondent's Memorandum, Docket, pp. 177-185; Petitioner's Memorandum, Docket, pp. 186-214.
[5] Docket, p. 216.

succeeding years before the Court in Division considering that proof thereof is not limited to the presentation of its subsequent quarterly VAT returns[6] and mere failure to submit the subsequent years' Quarterly VAT Returns should not result in the outright denial of its claim as substantiation may still be done through the presentation of other evidence, documentary or testimonial, as allowed under the applicable Rules. Petitioner believes that it met the quantum of evidence – preponderance of evidence – required by law in its claim for refund. Petitioner further argues that relaxation of the rules on offer of evidence,[7] should apply in this case; that although mere photocopies of the Quarterly VAT Returns for the First quarter of taxable year 2000 up to the Fourth quarter of taxable year 2001 were submitted before the Court in Division, these provisionally marked exhibits were in fact properly identified during trial and incorporated into the records of the case before the Court in Division.

Moreover, petitioner attached to the present petition the certified true copies of its Quarterly VAT Returns for the four taxable quarters of 2000 and the four taxable quarters of 2001,[8] and now prays that it be admitted and considered as confirmation of the fact that petitioner did not utilize the excess input VAT claimed in the said subsequent quarters.[9]

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[6] Citing the case of BPI-Family Savings Bank, Inc. vs. Court of Appeals, Court of Tax Appeals and the Commissioner of Internal Revenue, G.R. No. 122480, April 12, 2000.
[7] Citing the case of Vda. De Oñate vs. Court of Appeals, 250 SCRA 283.
[8] Docket, pp. 144, 146, 148, 150, 152, 154, 156, and 158.
[9] Citing the cases of BPI-Family Savings Bank, Inc. vs. Court of Appeals, Court of Tax Appeals and the Commissioner of Internal Revenue, G.R. No. 122480, April 12, 2000; Paseo Realty & Development Corporation vs. Court of Appeals, G.R. No. 119286, October 13, 2004; Philippine Phosphate Fertilizer Corp. vs. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005; and Marubeni Philippines Corp. vs. Commissioner of Internal Revenue, CTA EB Case No. 240, November 28, 2007.

Respondent's Counter-arguments

Respondent, on the other hand, avers that the Rules of Evidence cannot be relaxed where the case involves a claim for refund considering that claim for refunds shall be strictly construed against the claimant and in favor of the State. He argues that party-litigants should prove every minute detail of their cases because trial before the Court of Tax Appeals is litigated *de novo*.[10] Furthermore, he concludes that a claim for tax refund is unlike an ordinary civil case in the sense that appreciation of evidence requires a stricter approach as opposed to the standard applied to the latter.

The principal issue raised before the Court in Division pertains to whether or not petitioner is entitled to the issuance of a tax credit certificate allegedly arising from its unutilized/excess input tax of P25,003,201.61 attributable to its zero-rated sales for the Fourth Quarter of taxable year 1999.

Respondent asserts that the Court in Division's denial of petitioner's subject claim for refund or the issuance of a tax credit certificate was due to the failure of petitioner to present the originals or certified true copies of its Quarterly VAT Returns for the First quarter of taxable year 2000 up to the Fourth quarter of taxable year 2001; and that this inadmissibility was reiterated by the Court in Division in its Resolution dated November 18, 2008.

THE COURT EN BANC'S RULING

The instant petition must fail.

To begin with, in the assailed Decision of the Court in Division, petitioner's claim for the issuance of a tax credit certificate in its favor was

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[10] Citing the case of Rafael Arsenio S. Dizon vs. Court of Tax Appeals, G.R. No. 140944, April 30, 2008.

denied because petitioner failed to present the originals or certified true copies of its Quarterly VAT Returns for the First Quarter of taxable year 2000 up to the Fourth Quarter of taxable year 2001, in order to establish that petitioner's claimed VAT input taxes were not utilized against any VAT output tax. Thus, it was the finding of the Court in Division that petitioner was not able to sufficiently prove its claim in accordance with the requirements set forth under Section 112 (A) of the NIRC of 1997.

The Court in Division ruled in this wise:

> "Although, it would appear that petitioner's alleged unutilized input tax correspondingly attributable to the duly substantiated zero-rated sales, may be a proper subject of a claim for tax credit, the same amount cannot be granted. Petitioner was not able to prove that it had not utilized the alleged excess input VAT. Bear in mind that in order to prove that the claimed input taxes had not been utilized against output tax for the succeeding quarters, petitioner offered as evidence Quarterly VAT Returns for the 1st quarter of taxable year 2000 up to the 4th quarter of taxable year 2001. **However, said pieces of evidence were denied admissions by this Court in a Resolution dated July 9, 2007 for petitioner's failure to present the originals thereof for comparison, as well as, submit the duly marked exhibits. Moreover, the inadmissibility of those exhibits was reiterated in another Resolution dated January 10, 2008 after finding that petitioner still failed to have the same exhibits compared with their originals, or submitted the certified true copies thereof during the subsequent hearings.** Hence, those documentary evidence which admissions were denied cannot be considered by this Court in disposing of the case. Therefore, for failure of the Petitioner to properly substantiate its allegation that the excess input taxes were not utilized against its output tax in the succeeding quarters proves fatal to its claim for refund/tax credit."[11] *(Emphasis Ours)*

In denying petitioner's Motion for Reconsideration of the assailed Decision of the Court in Division, the Court *a quo* said thus, and We quote:

[11] Assailed Decision dated August 26, 2008, pp. 8-9; Docket, pp. 36-37.

> "In the case at bar, petitioner has failed to present the certified true copy of the returns and presented only the photocopies thereof. Indeed, the said photocopied returns were incorporated in the records of the case and identified by testimony duly recorded; **however, what is objectionable is petitioner's non-presentation of either the original or the certified true copies of the returns, in violation of the Best Evidence Rule provided under Rule 130 of the Rules of Court.** The photocopied returns, being a secondary evidence, are inadmissible in this Court, because petitioner had not invoked any of the exceptions under Section 3, Rule 130 of the Rules of Court and that it had not shown proof of its execution or existence and the cause of its unavailability without bad faith on its part as required under Section 5, Rule 130 of the Rules of Court."[12] *(Emphasis Ours)*

Clearly from the foregoing pronouncements of the Court *a quo,* it is puzzling why petitioner's counsel continually failed to submit the required originals or certified true copies of the Quarterly VAT Returns for the First quarter of taxable year 2000 up to the Fourth quarter of taxable year 2001 of petitioner, when it had emphatically been stated by the Court in Division that this was the very reason for the denial of petitioner's claim for refund in the instant case. And when counsel finally decided to submit the said documents on appeal before the Court *En Banc*, no explanation was presented to explain or convince this Court why it should admit the denied exhibits found by the Court in Division to be derogatory to the "best evidence rule," which is the elementary guideline on the admissibility and inadmissibility of non-original documentary evidence.

The more vital question that We are confronted with, is whether or not the Court *En Banc* can grant discretion to petitioner's counsel to determine at which level of the proceedings will the submission of originals or certified true

[12] Assailed Resolution dated November 18, 2008, p. 3; Docket, p. 68.

copies of vital documentary evidence be done, thereby making it appear that the Court *En Banc* is at the counsel's beck and call on this matter. Would it now mean that the procedures outlined in the Revised Rules of the Court of Tax Appeals, strictly adhered to by other counsel appearing before this Court, is a mere formality, exceptions of which may be readily invoked to favor a party-litigant, simply because its counsel decided to apply its own rules of procedure?

It must be noted that in the jurisprudential exceptions cited by petitioner,[13] allowing the admission of returns that facilitated the grant of claims for refund in the cited cases, **there were specific and valid explanations offered for the failure to attach or present vital documentary evidence, and the claimant, upon knowledge of such requirement, immediately complied by presenting said vital documentary evidence and attached them to their respective motions for reconsiderations before the division level of this Court**.

As a matter of fact, in one of the cases cited by petitioner, the Court *En Banc* clarified the rationale of relaxing the applicable Rules by giving petitioner the opportunity to present and offer the pieces of evidence deemed lacking to prove its claim for refund, to wit:

> "xxx We adopt the Supreme Court's ruling in the case of ***Phil. Phosphate Fertilizer Corp. vs. Commissioner of Internal Revenue***,[14] enunciating that: '[s]ince it is not disputed that petitioner is entitled to tax exemption, it should not be precluded from presenting evidence to substantiate the amount of refund it

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[13] Citing the cases of BPI-Family Savings Bank, Inc. vs. Court of Appeals, Court of Tax Appeals and the Commissioner of Internal Revenue, G.R. No. 122480, April 12, 2000; Paseo Realty & Development Corporation vs. Court of Appeals, G.R. No. 119286, October 13, 2004; and Philippine Phosphate Fertilizer Corp. vs. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005.
[14] G.R. No. 141973, June 28, 2005.

is claiming on mere technicality especially in this case, **where the failure to present invoices at the first instance was adequately explained by petitioner**'.

Likewise, in ***Filinvest Development Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals***,[15] where petitioner failed to present its 1997 Income Tax Return during trial to prove that it did not carry over any excess income tax paid from 1996, the Supreme Court held, **that since the 1997 Income Tax Return was duly attached to the Motion for Reconsideration**, then it has become part of the records of the case. Thus, the court cannot simply ignore such document.

Applying the principles of the afore-cited jurisprudence, since petitioner's entitlement to its claim for refund or issuance of tax credit certificate in its favor is not disputed, in fact, the amount of which has been ascertained to be P1,121,851.03 by the Court in Division in the assailed Decision, petitioner cannot be precluded from presenting evidence that it has not carried over such amount to the succeeding quarters on mere technicalities **when it has explained reasonably why the subject VAT returns were not presented in court as evidence during the trial despite its availability**. xxx"[16] *(Emphasis and underscoring Ours)*

Clearly therefore, the Supreme Court, as well as this Court, recognize the importance of observing the applicable procedural rules in the admission of documentary evidence, and allow certain exceptions thereto, provided that there is a reasonable and timely explanation for such failure to present said documents, and that the party seeking relief immediately cures the defect and submits the same in proper form.

In the case at bench, petitioner, during the proceedings before the Court in Division, was well informed of the reasons of the denial of its

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[15] G.R. No. 146941, August 9, 2007.
[16] Marubeni Philippines Corp. vs. Commissioner of Internal Revenue, CTA EB Case No. 240, November 28, 2007.

photocopied Quarterly VAT Returns for the first quarter of taxable year 2000 up to the fourth quarter of taxable year 2001, as contained on the following:

(1) Resolution dated July 9, 2007 – The Court in Division denied the admission of Exhibits "J", "J-1", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", and "U", for failure to present the originals thereof for comparison, as well as submit to this Court the duly marked exhibits;[17]

(2) Resolution dated January 10, 2008 – The Court in Division denied petitioner's Motion for Partial Reconsideration of the Resolution dated July 9, 2007, and ruled that Exhibits "J", "J-1", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", and "U" remain inadmissible, considering that petitioner still failed to have the same exhibits compared with their originals, or submitted the certified true copies thereof during the subsequent hearings held on August 7, 2007, September 14, 2007, October 19, 2007, and October 22, 2007;[18]

(3) Decision dated August 26, 2008 – The Court in Division denied the Petition for Review for insufficiency of material evidence considering that petitioner failed to prove that the claimed input taxes had not been utilized against output tax for the succeeding quarters. Petitioner was informed that it should have presented, marked and offered as evidence, the originals or certified true copies of its Quarterly VAT Returns for the 1st quarter of taxable year 2000 up to the 4th quarter of taxable year 2001. Failure to do so was ruled fatal to its claim;[19] and

(4) Resolution dated November 18, 2008 – The Court in Division denied petitioner's Motion for Reconsideration of the Decision dated August 26, 2008 for lack of merit emphasizing that the legal basis for the inadmissibility of petitioner's photocopied Quarterly VAT Returns for the 1st quarter of taxable year 2000 up to the 4th quarter of taxable year 2001, is the violation of the Best Evidence Rule provided under Rule 130 of the Rules of Court.[20]

In spite of the Resolutions issued by the Court in Division informing petitioner about the importance of presenting the originals or certified true

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[17] Records, pp. 870-872, CTA Case No. 6369.
[18] Records, pp. 883-884, CTA Case No. 6369.
[19] Docket, pp. 29-38.
[20] Docket, pp. 66-68.

copies of the subject Quarterly VAT Returns, petitioner's counsel continually disregarded the Court *a quo's* ruling. While petitioner failed to present the required originals or certified true copies of the denied documentary evidence at the division level of this Court, it now failed to offer an acceptable explanation why, for the first time on appeal, the originals or certified true copies of said subject returns, must be admitted and considered by the Court *En Banc,* when it had all the opportunity to do so at the division level. This is one instance when the Court *En Banc* must affirm the action of the Court in Division to prevent an undesirable precedent wherein parties' counsel will be granted license to present denied documentary evidence at the appellate level of proceedings before this Court, thereby throwing the Revised Rules of this Court into the trash can. This is also to prevent the Justices of this Court, acting as members of the Court *En Banc*, from performing adjudicatory functions that are to be performed only at the division level, such as the reception and in depth evaluation of documentary evidence presented before it.

In the light of the foregoing discussions, the prevailing circumstances in this case, cited jurisprudence and applicable laws, the Court *En Banc* finds no sufficient legal basis to relax our rules of procedure on the admission of denied documentary evidence, considering that proof of authenticity and veracity of petitioner's documentary evidence, is not only vital to its cause of action, but also best threshed out and determined at the trial level of C.T.A. Case No. 6369.

It bears stressing that substantiation of input VAT is indispensable in ensuring that the amount to be refunded to petitioner pertains only to those taxes that have actually been remitted and paid to the coffers of the government, as well as in determining whether or not the same have not been utilized by the petitioner in the succeeding quarters. In this regard, We adhere to the well-established principle that tax refunds are in the nature of a tax exemption, and should be construed *strictissimi juris* against the taxpayer.[21] We must also emphasize that procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[22]

Correspondingly, the Court *En Banc* finds no reversible error committed by the Court in Division that would merit a reversal of its assailed Decision dated August 26, 2008 and Resolution dated November 18, 2008.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[21] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, 309 SCRA 87(1999); Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332 (1995); Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation and the Court of Tax Appeals, 204 SCRA 377 (1991).
[22] Spouses Galang vs. Court of Appeals, G.R. No. 76221, July 29, 1991.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice