Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

SUTHERLAND GLOBAL SERVICES PHILIPPINES, INC., Petitioner,	**CTA Case No. 8558** For: Refund
	Members:
-versus-	**DEL ROSARIO, P.J., *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 21 2016, 9:30 a.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on October 17, 2012, by Sutherland Global Services Philippines, Inc. as petitioner, against Commissioner of Internal Revenue as respondent, before the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

[1] Sec. 7. *Jurisdiction*. – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
x x x x x x

[2] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner seeks the refund of the amount of SEVENTEEN MILLION FOUR HUNDRED FORTY-TWO THOUSAND TWO HUNDRED NINE PESOS and 50/100 (₱17,442,209.50), allegedly representing erroneously paid income tax for the period covering July 1, 2009 to June 30, 2010.

Petitioner Sutherland Global Services Philippines, Inc. is a non-pioneer Information Technology (IT) locator enterprise registered by virtue of the Philippine Economic Zone Authority (PEZA) Certificates of Registration Nos. 05-10-IT[3] and 06-90-IT[4]. Its principal address is at the 12th

> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> x x x x x x
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;
>
> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.
>
> x x x x x x

[3] Exhibit "P-27".

Floor, Philplans Corporate Center, Kalayaan Avenue and Triangle Drive, Fort Bonifacio, Taguig City.[5]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of her office, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously paid taxes, as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Prior to the proclamation of the Clark Economic Zone (CEZ) as a PEZA Special Economic Zone, petitioner was registered with the Clark Development Corporation (CDC). Petitioner started its commercial operations on August 9, 2006, under a Temporary Permit to Operate[6] issued by CDC. It was also issued Certificates of Registration and Tax Exemption[7] as a Clark Special Economic Zone (CSEZ) Enterprise by CDC, authorizing it to continue its operations within the CSEZ.

On December 20, 2006, petitioner and PEZA executed a Registration Agreement[8] dated November 22, 2006, entitling petitioner, as registrant, to conduct and operate its business inside the CSEZ. Among the provisions of the Registration Agreement was the grant to petitioner of tax incentives under Republic Act (RA) No. 7916, as amended, otherwise known as the Special Economic Zone Act of 1995 (PEZA Law), and the PEZA IT Guidelines, to wit:

> "ARTICLE XIII
> INCENTIVES
>
> 13. The REGISTRANT'S project shall be entitled to the following incentives under R.A.

[4] Exhibits "P-7"/"P-28".
[5] Exhibit "P-8".
[6] Exhibit "P-34".
[7] Exhibits "P-39" to "P-42".
[8] Exhibits "P-5"/"P-32".

7916, as amended, and the PEZA IT Guidelines, subject to the following terms and conditions:

13.1 The REGISTRANT shall pay 5% tax on gross income, in lieu of all national and local taxes, subject to PEZA and BIR rules and regulations.

13.2 Tax and duty exemption on importation of capital equipment, raw materials and supplies."

On January 18, 2007, the PEZA Board of Directors passed Resolution No. 07-037, approving the grant of full PEZA incentives to CSEZ export-oriented and IT locator enterprises, including petitioner; which had been registered with CDC after the proclamation of CSEZ as a PEZA Special Economic Zone, and which had been determined by PEZA as compliant with the requirements for entitlement to PEZA incentives.

Accordingly, petitioner and PEZA executed a Supplemental Agreement[9] on February 2, 2007, with the following terms:

"1. The REGISTRANT shall be entitled to four (4) years Income Tax Holiday (ITH) under non-pioneer status and upon the expiration of the ITH incentive, the REGISTRANT (Sutherland) shall be entitled to 5% gross income tax (GIT) incentive and to other incentives under the PEZA law.

2. The REGISTRANT shall automatically revert to the enjoyment of incentives for CSEZ once the pertinent law is enacted by Congress.

3. Nothing herein contained shall be construed as amending or modifying any of the

[9] Exhibits "P-6"/"P-33".

terms and conditions of the Original Contract except as herein expressly provided.

4. This Agreement shall form an integral part of the Original Contract."

Petitioner alleged that since the start of its commercial operations on August 9, 2006, petitioner had paid the five percent (5%) gross income tax (GIT). Specifically, during the fiscal year from July 1, 2009 to June 30, 2010, petitioner paid the amount of ₱17,442,209.50 to the BIR, as reflected in its Annual Income Tax Return (ITR), which was filed on October 20, 2010.[10]

On October 15, 2012, petitioner filed an administrative claim for refund, arguing that it erroneously paid the 5% GIT during the fiscal year ending June 30, 2010.[11]

In order to exercise and preserve its right to seek judicial relief within the two-year prescriptive period to file a refund claim, petitioner filed the instant Petition for Review before this Court on October 17, 2012.[12]

Instead of filing an Answer, respondent filed a Motion to Dismiss[13] on January 18, 2013, praying that after due hearing, the Petition for Review should be dismissed for lack of jurisdiction and for being barred by prescription. Petitioner filed its Opposition[14] on January 22, 2013. Thereafter, respondent filed a Reply[15] to the Opposition on February 11, 2013; while petitioner filed a Rejoinder[16] on February 18, 2013. ℓ

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[10] Par. 3, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 414.
[11] Par. 4, Joint Stipulation of Facts, JSFI, Docket, p. 415.
[12] Docket, pp. 5-15.
[13] Docket, pp. 104-108.
[14] Opposition (To Respondent's Motion to Dismiss dated 7 January 2013), Docket, pp. 110-115.
[15] Docket, pp. 124-125.
[16] Rejoinder (To Respondent's Reply Dated 11 February 2013), Docket, pp. 120-123.

In a Resolution[17] dated May 2, 2013, the Court denied respondent's Motion to Dismiss and ruled that the filing of the administrative and the judicial claims for refund on October 15, 2012 and on October 17, 2012, respectively, were made within the two-year reglementary period. Respondent then filed a Motion for Reconsideration[18] on May 15, 2013, which was also denied by the Court.[19]

Accordingly, respondent filed her Answer[20] on August 8, 2013, interposing the following Special and Affirmative Defenses:

> "5. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
>
> 6. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 8. Petitioner's claim for refund or issuance of tax credit certificate in the amount of 17,442,209.50, representing alleged erroneously paid income tax for the period from July 1, 2007 to June 30, 2008, were not fully substantiated by proper documents, such sales invoices, official receipts and others pursuant to Revenue

[17] Docket, pp. 130-136.
[18] Docket, pp. 137-142.
[19] Resolution dated July 22, 2013, Docket, pp. 162-164.
[20] Docket, pp. 165-168.

Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

9. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

10. Petitioner's sales of goods and services to various alleged clients do not qualify as effectively zero-rate VAT.

11. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund. In reiteration, it is stressed that the interpretation that the 2 year period should be reckoned from **'the actual date of filing of the Annual Income Tax Return and the payment of the tax was made'** would open floodgates to other violation of the tax code. Without, again, being offensive, any *Tom, Dick, and Harry* can easily extend the 2 year prescriptive period by arguing that the reckoning point should be **'the actual date of filing of the Annual Income Tax Return and the payment of the tax was made'** even if the same was filed 5 days after the last day of the filing of the income tax return, or 30 days after the last day of the filing of the income tax return, or 2 or 3 or 4 or 5 years from the last day of the filing of the income tax return.

12. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco***

Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

The case was set for a pre-trial conference on January 14, 2014.[21] Thus, respondent filed her Pre-Trial Brief[22] on September 16, 2013; while petitioner filed its Pre-Trial Brief[23] on January 10, 2014.

The parties filed their Joint Stipulation of Facts and Issues[24] on March 3, 2014, and a Supplemental Joint Stipulation of Facts and Issues[25] on April 8, 2014; which was approved by the Court in its Resolution[26] dated April 25, 2014. Accordingly, the Pre-Trial Order[27] was issued by the Court on April 29, 2014.

During trial, petitioner presented the following witnesses: (1) Glenn Ian D. Villanueva[28] – Independent Certified Public Accountant (CPA); and (2) Ms. Liana F. Lorenzo[29] – petitioner's Senior Tax Manager. It likewise formally offered its documentary evidence on November 12, 2014,[30] as follows:

Exhibit	Description
P-1 and P-1-a	Judicial Affidavit of Glenn Ian D. Villanueva, executed on 27 September 2013, and his signature on page 3 thereon
P-2	Partial ICPA Report dated 4 November 2013
P-3	Petition for Review dated 15 October 2012, as pre-marked by the ICPA

[21] Order dated November 11, 2013, Docket, p. 232.
[22] Pre-Trial Brief (for the Respondent), Docket, pp. 171-173.
[23] Pre-Trial Brief for Petitioner, Docket, pp. 377-381.
[24] Docket, pp. 414-416.
[25] Docket, pp. 425-429.
[26] Docket, p. 432.
[27] Docket, pp. 435-440.
[28] Minutes of the Hearing dated April 29, 2014, Docket, p. 433.
[29] Minutes of the Hearing dated June 3, 2014, July 8, 2014, and October 28, 2014, Docket, pp. 444-445 and 630-633.
[30] Formal Offer of Documentary Exhibits for Petitioner, Docket, pp. 670-688.

P-4	2010 Annual Income Tax Return, as pre-marked by the ICPA
P-5/P-32	Registration Agreement dated 20 December 2006
P-6/P-33	Supplemental Agreement dated 2 February 2007
P-7/P-28	Certificate of Registration No. 06-90-IT, issued by PEZA to the Company on 6 December 2006
P-8	2010 Audited Financial Statements, as pre-marked by the ICPA
P-9	Breakdown of Revenues per Site, as pre-marked by the ICPA
P-10	Schedule of Revenues for the Company's facility in the Clark Special Economic Zone (CSEZ)(PHL02) prepared by the Company, as pre-marked by the ICPA
P-11	Computer-generated billing invoices issued by the Company to non-resident customers for the period 1 July 2009 for services classified as part of the Company's PEZA-registered activities within the CSEZ, as pre-marked by the ICPA
P-12	Conversion rate used by the Company to convert income from USD to PHP, as pre-marked by the ICPA
P-13	Quarterly Income Tax Return for the 1st quarter of taxable year 2010, as pre-marked by the ICPA
P-14	Quarterly Income Tax Return for the 2nd quarter of taxable year 2010, as pre-marked by the ICPA
P-15	Quarterly Income Tax Return for the 3rd quarter of taxable year 2010, as pre-marked by the ICPA
P-16	Registration Agreement dated 31 May 2005 for the Company's facility in ExportBank

	Plaza Building, Makati City (PHL01), as pre-marked by the ICPA
P-17	Supplemental Agreement dated 12 March 2008 for the Company's facility in Camarines Sur Information Technology Park (PHL04), as pre-marked by the ICPA
P-18	Supplemental Agreement dated 1 September 2008 for the Company's facility in Luisa Avenue Square IT Park, Davao City (PHL06), as pre-marked by the ICPA
P-19	Supplemental Agreement dated 13 June 2008 for the Company's facility in Tarlac Provincial IT Park II, Tarlac City (PHL07), as pre-marked by the ICPA
P-20	Supplemental Agreement dated 15 October 2008 for the Company's facility in Total Corporate Center I, Taguig City (PHL08), as pre-marked by the ICPA
P-21	Supplemental Agreement dated 23 March 2010 for the Company's facility in Building 2, Camarines Sur IT Park (PHL11), as pre-marked by the ICPA
P-22	PEZA Certificate of Incentives issued by the PEZA to the Company, as pre-marked by the ICPA
P-23	Final Report, dated 3 December 2013, on the Results of the Procedures Performed for the Claim for Refund of Erroneously Paid Income Tax amounting to Php17,442,209.50 derived from Income Generated from PEZA Registered Activities within the CSEZ for the Period 1 July 2009 to 30 June 2010, as pre-marked by the ICPA
P-24	Computer-generated billing invoices issued by the Company to non-resident customers for services classified as part of the Company's PEZA-registered activities within the CSEZ, which are not dated within the period 1 July 2009 to 30 June 2010, as pre-marked by the ICPA

P-25 and P-25-a	Amended Judicial Affidavit of Liana F. Lorenzo dated 27 June 2014 and her signature of page 8 thereon
P-26	License to Transact Business in the Philippines, issued by the Securities and Exchange Commission (SEC) to Sutherland Global Services, Philippines, Inc. on 27 May 2005
P-27	Amended Certificate of Registration No. 05-10-IT issued by PEZA to Sutherland on 16 October 2008
P-29	Certificate of Registration with OCN 9RC0000153799 issued by the BIR
P-30	Certificate of Registration with OCN 4RC0000803246 issued by the BIR
P-31	Certificate of Registration with OCN 9RC0000269171
P-34	Temporary Permit to Operate No. TPTO2006-413 issued by the Clark Development Corporation (CDC) to Sutherland on 9 August 2006
P-35 and P-35-a	Sutherland's Annual Income Tax Return (for fiscal year 2009-2010), with attached manually filed BIR Form 1702; and the signature of Sutherland's Financial Controller, Lee Eduardo T. Llorca
P-36, P-36-a, and P-36-b	Administrative Claim for Refund of erroneously paid income tax in the amount of Php17,442,209.50 stamped received by the BIR on 15 October 2012; the Signature of Gonzalito Nicolo E. Duque on cover letter; and the signatures of Ferdinand M. Hidalgo, Raniel L. Dimayuga, Gonzalito Nicolo E. Duque of Siguion Reyna Montecillo & Ongsiako on the last page of the Administrative Claim for Refund
P-37	Permit to Use Computerized Accounting System and Components Thereof, with Permit No. 048-CAS-06062008-000108, issued by the BIR to Sutherland

P-38 and P-38-a	Judicial Affidavit of Glenn Ian D. Villanueva (identified on April 29, 2014), and his signature on page 19
P-39	Certificate of Registration and Tax Exemption as a Clark Special Economic Zone Enterprise, with Certificate No. 2006-177, issued by the CDC on 10 August 2006, valid until 30 June 2011
P-40	Certificate of Registration as a Clark Freeport Zone Enterprise, with Certificate No. 2007-125, issued by the CDC on 27 June 2007
P-41	Certificate of Registration as a Clerk Freeport Zone Enterprise, with Certificate No. 2008-116, issued by the CDC on 1 July 2008
P-42	Certificate of Registration as a Clark Freeport Zone Enterprise, with Certificate No. 2009-152, issued by the CDC on 1 July 2009
P-43 and P-43-a	Supplemental Judicial Affidavit of Liana F. Lorenzo dated 23 July 2014; and her signature on page 3 thereon.

The Court issued a Resolution[31] on April 15, 2015, admitting, as petitioner's evidence, Exhibits "P-1", "P-1-a", "P-2", "P-3", "P-4", "P-5"/"P-32", "P-6"/"P-33", "P-7"/"P-28", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-25-a", "P-26", "P-27", "P-29", "P-30", "P-31", "P-34", "P-35", "P-35-a", "P-36", "P-36-a", "P-36-b", "P-37", "P-38", "P-38-a", "P-39", "P-40", "P-41", "P-42", "P-43", and "P-43-a".

On the other hand, during the hearing held on October 28, 2014, respondent, through counsel, manifested that she has no evidence to present.[32]

As directed by the Court, petitioner filed its Memorandum[33] on May 27, 2015. Respondent, on the other

[31] Docket, pp. 702-703.
[32] Minutes of the Hearing dated October 28, 2014.
[33] Docket, pp. 706-730.

hand, failed to file her Memorandum, as per Records Verification Report[34] issued by this Court's Judicial Records Division on August 6, 2015.

Hence, the case was declared submitted for decision on August 18, 2015.[35]

The parties submitted the following issues[36] for this Court's disposition:

1. Whether petitioner is entitled to its claim for refund or issuance of tax credit certificate in the amount of ₱17,442,209.50 representing payment of income tax for the period from July 1, 2009 to June 30, 2010;

2. Whether the instant case is barred by prescription; and

3. Whether the two-year prescriptive period should be reckoned from October 15, 2010.

The above-enumerated issues can be summarized into one main issue:

> "Whether petitioner is entitled to a refund of the amount of ₱17,442,209.50, allegedly representing its erroneously paid income tax for the period covering July 1, 2009 to June 30, 2010."

Petitioner insists that it is entitled to its claim for refund in the amount of ₱17,442,209.50, purportedly representing its erroneous payment of income tax for the period from July 1, 2009 to June 30, 2010. It avers that it timely and validly filed its judicial claim for refund.[37] Moreover, it argues that

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[34] Docket, p. 737.
[35] Resolution dated August 18, 2015, Docket, p. 739.
[36] Statement of the Issues, JSFI, Docket, p. 415.
[37] Memorandum, Docket, p. 724.

it has a clear right to a four-year Income Tax Holiday under the law and by virtue of its contract with the PEZA, from the start of its commercial operations in 2006 until 2010.[38] Petitioner further contends that it has established with sufficient proof that its income for fiscal year ended June 30, 2010 was actually derived from its PEZA-registered business activities.[39]

Jurisdiction of the Court of Tax Appeals

The Court of Tax Appeals, which is a court of special or limited jurisdiction, can only take cognizance of such matters that are clearly within its jurisdiction.[40] The jurisdiction of the CTA is conferred by Section 7 of Republic Act No. 1125, as amended by RA No. 9282, to wit:

> "SEC. 7. *Jurisdiction*. - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases**

[38] Memorandum, Docket, p. 717.
[39] Memorandum, Docket, p. 720.
[40] *Allied Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 175097, February 5, 2010; *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue,* CTA EB No. 717 (CTA Case No. 7876), April 17, 2012; *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, Resolution dated April 24, 2007.

involving disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**;

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

(5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

(6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the

Government under Section 2315 of the Tariff and Customs Code;

(7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: *Provided, however*, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and

jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized.

(2) Exclusive appellate jurisdiction in criminal offenses:

(a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respected territorial jurisdiction.

(b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

(c) Jurisdiction over tax collection cases as herein provided:

(1) Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: *Provided, however*, That collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos

> (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.
>
> (2) Exclusive appellate jurisdiction in tax collection cases:
>
> > (a) Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.
> >
> > (b) Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, in their respective jurisdiction." *(Emphasis supplied)*

Based on the above-quoted provision, the CTA has the power to determine whether or not petitioner is entitled to its claim for refund of the amount of ₱17,442,209.50, allegedly representing its erroneous payment of income tax for the period covering July 1, 2009 to June 30, 2010.

Petition for Review timely filed

The issues on prescription have already been resolved by this Court via Resolution[41] dated May 2, 2013, wherein the Court ruled that the filing of the administrative claim[42]

[41] Docket, pp. 130-136.
[42] Exhibit "P-36".

and the judicial claim for refund on October 15, 2012 and on October 17, 2012, respectively, were made within the two-year reglementary period. The significant portion of this Court's Resolution reads as follows:

> "Again in the case of *Commissioner of Internal Revenue vs. Court of Appeals,* the Supreme Court agreed with therein petitioner that the two-year prescriptive period should be computed from April 2, 1984, when the final adjustment return was actually filed therein, because that is the time of payment of the tax, within the meaning of 229 of the NIRC of 1997.
>
> Thus, it had been settled by the Supreme Court that the two-year period of prescription counted 'from the date of payment of the tax' within the framework of Section 229 of the NIRC of 1997, actually pertains to the two-year period counted from the time of the actual filing of the corporate taxpayer's Annual Income Tax Return for it is at this point where it can already be determined whether there has been an overpayment by the taxpayer.
>
> In the same vein, the actual date of filing of the Annual Income Tax Return and the payment of tax was made by petitioner on October 20, 2010 and it was only this time that the amount to be refunded was ascertained. Considering so, October 20, 2010 is the reckoning date of the two year prescriptive period prescribed in Section 229 of the NIRC of 1997. Thus, the filing of the administrative and judicial claims for refund on October 15, 2010 and October 17, 2010, respectively, were made within the two-year reglementary period.
>
> **WHEREFORE**, premises considered, respondent's Motion to Dismiss is hereby **DENIED** for lack of merit."

Hence, the Court will now proceed to determine whether or not the income tax in the amount of ₱17,442,209.50 was erroneously paid.

Petitioner is entitled to a tax refund

Records show that on December 6, 2006, petitioner was registered with the PEZA as an Ecozone IT Enterprise at the Clark Special Economic Zone.[43] Subsequently, on December 20, 2006, petitioner and PEZA executed a Registration Agreement[44] entitling petitioner to conduct and operate its business inside the CSEZ. Among the provisions of the Registration Agreement is the grant to petitioner of tax incentives under Republic Act No. 7916, as amended, and the PEZA IT Guidelines, more particularly, that petitioner "shall pay 5% tax on gross income, in lieu of all national and local taxes, subject to PEZA and BIR rules and regulations", and "tax and duty exemption on importation of capital equipment, raw materials and supplies".[45]

However, as mentioned above, petitioner and PEZA executed a Supplemental Agreement[46] on February 2, 2007, which stated that:

> "1. The REGISTRANT shall be entitled to four (4) years Income Tax Holiday (ITH) under non-pioneer status and upon the expiration of the ITH incentive, the REGISTRANT shall be entitled to 5% gross income tax (GIT) incentive and to other incentives under the PEZA law.

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[43] Exhibits "P-7"/"P-28".
[44] Exhibits "P-5"/"P-32".
[45] Article XIII of the Registration Agreement.
[46] Exhibits "P-6"/"P-33".

2. The REGISTRANT shall automatically revert to the enjoyment of incentives for CSEZ once the pertinent law is enacted by Congress.

3. Nothing herein contained shall be construed as amending or modifying any of the terms and conditions of the Original Contract except as herein expressly provided.

4. This Agreement shall form an integral part of the Original Contract."

From the foregoing, it is crystal clear that petitioner is entitled to the ITH incentive for four (4) years under non-pioneer status and it will be subject to the 5% gross income tax incentive only upon the expiration of the ITH incentive.

Petitioner's entitlement to the aforesaid incentives finds legal basis on Section 23 of RA No. 7916[47] otherwise known as "The Special Economic Zone Act of 1995" (PEZA Law), as amended by RA No. 8748, which states:

> "SECTION 23. *Fiscal Incentives.* - Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under the Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987."

The fiscal incentives referred to under Presidential Decree (PD) No. 66, the law creating the Export Processing Zone Authority or EPZA (now PEZA) include the 5% preferential tax rate on gross income earned in lieu of

[47] An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for this Purpose, the Philippine Economic Zone Authority (PEZA), and for Other Purposes.

national and local taxes as provided for under Section 24 of RA No. 7916, as amended, to wit:

> "SECTION 24. *Exemption from National and Local Taxes*. - Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
>
> (a) Three percent (3%) to the National Government;
>
> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located."

On the other hand, the fiscal incentives granted under Book VI of Executive Order (EO) No. 226, otherwise known as the Omnibus Investments Code of 1987, include Income Tax Holiday for four (4) to six (6) years, depending on whether the enterprise is registered as pioneer or non-pioneer as stated in Title III, Article 39(a)(1) thereof, to wit:

> "TITLE III
> *Incentives to Registered Enterprises*
>
> ARTICLE 39. *Incentives to Registered Enterprises.* - All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment;
>
> (a) *Income Tax Holiday.* -
>
> (1) For six (6) years from commercial operation for pioneer firms and four (4) years for

> non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government. xxx"

It bears stressing that these two sets of fiscal incentives are in the alternative and cannot be availed of at the same time by a PEZA- registered enterprise.[48]

As earlier stated, petitioner was granted an ITH incentive for a period of four (4) years starting from its commercial operations on August 9, 2006 as stated in the Temporary Permit to Operate[49] issued by the Clark Development Corporation. Reckoned from the said date, petitioner had until August 9, 2010 within which to enjoy such incentive and thereafter shall be entitled to the 5% gross income tax incentive provided that it complies with the conditions as set forth by the PEZA Law.

However, even though the said ITH incentive allows petitioner exemption from the payment of income taxes, such is not absolute, as the exemption applies only to income derived from petitioner's registered activity as provided under Part VII, Rule XIII of the Rules and Regulations to Implement Republic Act No. 7916 (PEZA Rules). It states:

"Part VII
Incentives to ECOZONE Enterprises

RULE XIII
Application and Entitlement

xxx xxx xxx

SECTION 5. *Limitation of Entitlement to Incentives.* – Incentives granted by the PEZA shall

[48] *Hitachi Computer Products (Asia) Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 5943, August 6, 2001.
[49] Exhibit "P-34".

> apply **only to registered operations of the ECOZONE Enterprises** and only during the period of its registration with PEZA." *(Emphasis supplied)*

It must be noted that petitioner was registered with the PEZA as an Ecozone IT Enterprise at the CSEZ to engage in process consulting, technology support services, account management services, technical support/help desk services, customer care services and back office processing for operating call center and the importation of raw materials, machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations at CSEZ.[50] Hence, for petitioner to be entitled to a tax refund, it must establish that its income relating to the subject tax refund was actually earned or received by it in relation to the conduct of the said registered business activities within the CSEZ.

A scrutiny of petitioner's Annual ITR[51] for the fiscal year (FY) ending June 30, 2010 disclosed the following entries:

	EXEMPT	TAXABLE	
		Special Rate	**Regular Rate**
Sales/Revenues/Receipts/Fees	₱4,105,793,961.00	₱1,445,377,138.00	₱ 155,650,316.00
less: Cost of Sales/Services	2,277,239,563.00	863,970,167.00	141,699,007.00
Gross Income from Operation	1,828,554,398.00	581,406,971.00	13,951,309.00
Add: Non-Operating and Taxable Other Income	-	-	-
Total Gross Income	1,828,554,398.00	581,406,971.00	13,951,309.00
Less: Deductions	1,132,442,855.00	-	29,038,362.00
Taxable Income	-	**581,406,971.00**	**(15,087,053.00)**
Tax Rate		5%	30%
Income Tax		**29,070,348.50**	-
Less: Share of Other Agencies		11,628,139.00	
Tax Due		17,442,209.50	
Minimum Corporate Income Tax (MCIT)			₱ 279,026.18
Aggregate Income Tax Due		**17,721,235.68**	
Less: Tax Credits/Payments Tax Payments for the First Three Quarters[52]		14,675,824.00	

[50] Exhibit "P-32", Article II, Scope of Registrant's Registered Activity.
[51] Exhibits "P-4" and "P-35".

Tax Payable/(Overpayment)		₱ 3,045,411.68

Based on the Partial[53] and Final[54] Reports of the Court-commissioned Independent CPA, Mr. Glenn Ian D. Villanueva, the total amount of ₱5,706,821,415.00[55] revenues declared by petitioner in its FY 2010 Annual ITR were generated by its various facilities in different locations with the following assigned business unit codes:

BUSINESS UNIT CODE PER SITE	LOCATION
PHL01	Export Bank Plaza Building, Makati City
PHL02	CSEZ
PHL04	Camarines Sur Information Technology Park
PHL06	Luisa Avenue Square IT Park, Davao City
PHL07	Tarlac Provincial Information Technology Park II, Tibag, Tarlac City
PHL08	Total Corporate Center 1, Taguig City
PHL09	Finlandia IT Center, Davao City
PHL11	Building 2, Camarines Sur Information Technology Park, Pili, Camarines Sur

It must be noted that the assigned business unit code for petitioner's facility located at the CSEZ is PHL02.

According to the "Summary of Revenue per Business Unit",[56] petitioner's total revenues for FY 2010 are as follows:

ACCOUNT DESCRIPTION	EXEMPT (PHL01, PHL04, PHL06, PHL07, PHL08, PHL11)	SPECIAL (PHL02)	REGULAR (PHL09)	TOTAL
Revenue - Services	₱ 3,784,794,185.44	₱ 1,415,879,926.35	₱ 155,370,108.26	₱ 5,356,044,220.05
Revenue - Billbacks	72,066,795.69	7,880,549.81	112,206.00	80,059,551.50

[52] Exhibits "P-13", "P-14", and "P-15".
[53] Exhibit "P-2".
[54] Exhibit "P-23".
[55] The sum of ₱4,105,793,961.00, ₱1,445,377,138.00, and ₱155,650,316.00.
[56] Exhibit "P-9".

Revenue - Training	185,354,621.36	12,992,680.41	-	198,347,301.77
Revenue - Others	27,328,382.25	10,911,361.44	168,001.53	38,407,745.22
Revenue - Inter Unit	39,380,699.88	-	-	39,380,699.88
Total	4,108,924,684.62	1,447,664,518.01	155,650,315.79	5,712,239,518.42
Revenue Discounts	3,130,723.68	2,287,380.22	-	5,418,103.90
TOTAL REVENUES	**₱4,105,793,960.94**	**₱1,445,377,137.79**	**₱155,650,315.79**	**₱5,706,821,414.52**[57]

Based on the above table, petitioner's reported "EXEMPT" revenue in the amount of ₱4,105,793,960.94 was earned by its business facilities located in (a) Export Bank Plaza Building, Makati City, (b) Camarines Sur Information Technology Park, (c) Luisa Avenue Square IT Park, Davao City, (d) Tarlac Provincial Information Technology Park II, Tibag, Tarlac City, (e) Total Corporate Center 1, Taguig City, and (f) Building 2, Camarines Sur Information Technology Park, Pili, Camarines Sur with the corresponding business unit codes of PHL01, PHL04, PHL06, PHL07, PHL08, and PHL11, respectively. Petitioner submitted the related Registration Agreement[58] and Supplemental Agreements[59] it executed with PEZA[60] and Certification from PEZA to prove that these business facilities were granted ITH incentives for four (4) years.

However, the Court finds that the ITH incentive for PHL01 no longer covered the subject FY 2010. As stated in the PEZA Certification[61], the inclusive ITH incentive for the Original Project at the Export Bank Plaza Building, Makati City covers only the period from June 1, 2005 to May 31, 2009. Hence, the revenues generated thereafter should be subjected to 5% gross income tax pursuant to the Registration Agreement[62] with PEZA.

Pursuant to the Summary of Revenue per Business Unit, the revenues generated by petitioner at the Export

[57] ₱0.48 lower than the amount declared in the Annual Income Tax Return due to rounding-off.
[58] Exhibit "P-16".
[59] Exhibits "P-17" to "P-21".
[60] Exhibit "P-22".
[61] *Id.*
[62] Exhibit "P-16".

Bank Plaza Building, Makati City (PHL01) amount to ₱263,822,514.79. Using the gross profit rate of 44.53595128%, petitioner's gross income subject to 5% income tax amounts to ₱117,495,866.65. Accordingly, the amount of ₱5,874,793.33, representing 5% gross income tax, shall be deducted from petitioner's total claim, computed as follows:

Revenues generated from PHL01 Multiply by Gross Profit Rate		₱263,822,514.79
Total Gross Income (Exempt)	₱1,828,554,398.00	
Divided by Total Revenues per Return (Exempt)	4,105,793,961.00	
Gross Profit Rate		44.53595128%
Gross Income subject to 5% income tax x Tax Rate		₱117,495,866.65 5%
Income Tax Due		**₱5,874,793.33**

On the other hand, petitioner's reported revenue in the amount of ₱155,650,316.00, which was subjected to the minimum corporate income tax rate of 2%, pertained to its business facility located in Finlandia IT Center, Davao City (PHL09), which was not covered by a PEZA registration.

As regards petitioner's reported revenue in the amount of ₱1,445,377,138.00, which was generated by its CSEZ facility (PHL02) and on which a 5% GIT was paid, petitioner submitted various computer-generated billing invoices[63], the conversion rates used by petitioner to convert income from US Dollar (USD) to Philippine Peso[64], and Schedule of Revenues[65] to prove that the said revenue was actually derived from its PEZA-registered business activities within the CSEZ. Upon examination of these documents, the Court-commissioned Independent CPA noted the following exceptions:[66]

NATURE	REFERENCE TO ICPA REPORT	AMOUNT

[63] Exhibits "P-11" and "P-24".
[64] Exhibit "P-12".
[65] Exhibit "P-10".
[66] Exhibit "P-23", p. 8.

	(EXHIBIT "P-23")	
Revenues generated from the Company's registered activities within the CSEZ reported in the 2010 Audited Financial Statements *(Exhibit P-8)* and reported under the 5% Special Rate per 2010 Annual Income Tax Return *(Exhibit P-4)* which is supported by computer-generated billing invoices not dated within the period July 1, 2009 to June 2010, issued by the Company to non-resident customers *(Exhibit P-24)*	Annex B, Page 22	₱ 8,522,907.46
Discrepancies in the amount of revenue (i.e., generated from the Company's registered activities within the CSEZ) per invoice and per Schedule of Revenues due to the use of prior month's average monthly conversion rate published by Oanda in the conversion of revenue amounts from USD to PHP	Annex C, Page 23	7,654.72
Discrepancies in the amount of revenue (i.e. generated from the Company's registered activities within the CSEZ) per invoice and per Schedule of Revenues due to the use of foreign exchange rates other than the average monthly conversion rates published by Oanda in the conversion of revenue amounts from USD to PHP	Annex D, Page 24	743,355.18
TOTAL		**₱9,273,917.36**

Out of the ₱1,445,377,138.00 total revenues subjected to the 5% gross income tax, only the amount of ₱1,436,103,220.64 (₱1,445,377,138.00 less ₱9,273,917.36) was proven to have been earned by petitioner from its PEZA-registered activities within the CSEZ for the FY ending June 30, 2010. Since petitioner is exempt from income tax for the FY ending June 30, 2010 on income earned from its PEZA-registered activities within the CSEZ, the 5% income tax on its FY 2010 CSEZ revenues constitutes erroneously paid tax, which is the proper subject for a tax refund pursuant to Sections 204(C) and 229 of the National Internal Revenue Code of 1997, as amended.

However, considering the findings of this Court that petitioner has an income tax due from its facility located at

Export Bank Plaza Building, Makati City (PHL01) in the amount of ₱5,874,793.33, petitioner's entitlement to a refund of its erroneously paid income tax is adjusted to ₱11,493,196.61, computed as follows:

Income Tax Claimed For Refund		₱ 17,442,209.50
Less: Income Tax Due from PHL01		5,874,793.33
Total		₱ 11,567,416.17
Multiplied by: Allocation Factor		
Validly Substantiated CSEZ Revenues	₱1,436,103,220.64	
Divided by Total Revenues Subjected to 5% Special Rate	₱1,445,377,138.00	
Allocation Factor		0.9935837387
Refundable Erroneously Paid Income Tax		**₱11,493,196.61**

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** the amount of ₱11,493,196.61 to petitioner, representing its erroneously paid income tax for the fiscal year ending June 30, 2010.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division