REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1584** (CTA Case No. 8855)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** JJ.
LEPANTO CONSOLIDATED MINING CORPORATION, Respondent.	***Promulgated:*** JUN 04 2018 3:37 p.m.

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DECISION

UY, *J*.:

The instant *Petition for Review*[1], filed on February 10, 2017 by the Commissioner of Internal Revenue, prays for the recall of the Decision dated September 7, 2016[2] and Resolution dated January 12, 2017[3], both promulgated by the Second Division of this Court (Court in Division) in CTA Case No. 8855, entitled, *"Lepanto Consolidated Mining Company, Petitioner, versus Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read as follows:

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[1] EB Docket, pp. 7 to 15.
[2] EB Docket, pp. 16 to 39.
[3] EB Docket, pp. 40 to 46.

Decision dated September 7, 2016:

"**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of ₱12,611,698.60, representing its unutilized input VAT in the first and second quarters of taxable year 2012.

SO ORDERED."

Resolution dated January 12, 2017:

"**WHEREFORE,** finding no cogent reason to reverse the ruling in the assailed Decision, respondent's **Motion for Partial Reconsideration (Re: Decision Promulgated 7 September 2016)** is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who has the authority to grant claims for refund or tax credit under the law. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Lepanto Consolidated Mining Company is a duly organized and existing domestic corporation engaged in mining of gold and other precious metals, with principal place of business at 21/F Lepanto Bldg., 8747 Paseo de Roxas St., Makati City.

Respondent filed its Quarterly Value-Added Tax (VAT) Returns (BIR Form No. 2550-Q) for the first and second quarters of taxable year 2012 on the following dates:

Period Covered (2012)	VAT Return	Date Filed
First Quarter	Original	April 25, 2012
	Amended	May 24, 2012
		September 12, 2012
Second Quarter	Original	July 23, 2012

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	Amended	September 12, 2012
		October 3, 2012
		April 10, 2013

On February 27, 2014, respondent filed before the BIR its administrative claim for tax credit covering the first and second quarters of taxable year 2012. On March 3, 2014, respondent submitted additional supporting documents.

Subsequently on July 31, 2014, respondent filed a *Petition for Review* before the Court in Division docketed as CTA Case No. 8855.

In his *Answer* in CTA Case No. 8855, petitioner raised in summary, among others, the following special and affirmative defenses:

(1) respondent's alleged claim for tax credit is subject to administrative routinary investigation/ examination by the Bureau of Internal Revenue;

(2) a claim for tax credit is not ipso facto granted because petitioner still has to investigate and ascertain the validity of the claim;

(3) not only should respondent establish that it is entitled to the tax credit; it is also imperative for respondent to prove its compliance with the following:

> a. The registration requirements of a VAT taxpayer in compliance with Revenue Regulations 7-2012 in relation to Section 236 (A), (B), (C) and (D) of the National Internal Revenue Code (NIRC);
>
> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the NIRC;
>
> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT credit pursuant to Revenue Memorandum Order No. 53-1998 and Revenue Memorandum Circular No. 54-2014, otherwise there would be no sufficient compliance with the filing of an administrative application for tax credit which is a condition sine qua non prior to the filing of a

judicial claim in accordance with Section 112 of the NIRC. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, respondent's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner for review;

d. That the input taxes in the amount of Sixteen Million Seven Hundred Eighty Two Thousand Five Hundred Eighty Six Pesos and 10/100 (₱16,782,586.10) allegedly incurred by respondent for the taxable year 2012 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That respondent's administrative and judicial claims for tax credit of the unutilized input VAT was filed within the periods provided in Sections 112 (A) and (C) of the NIRC;

f. That respondent's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the NIRC and pursuant to Section 4.110-7 of Revenue Regulations No. 14-2005; and

g. The requirements as enumerated under Section 4.110-7 of Revenue Regulations No. 14-2005.

(4) The amount of Sixteen Million Seven Hundred Eighty Two Thousand Five Hundred Eighty Six Pesos and 10/100 (₱16,782,586.10) being claimed by [respondent] arising from excess and unutilized input VAT paid and incurred for the taxable year 2012 is not properly documented.

After the pre-trial conference held on November 6, 2014 in CTA Case No. 8855, the parties submitted their *Joint Stipulation of Facts* *and Issues* on November 26, 2014. The same was approved by the Court in Division in the Pre-Trial Order promulgated on December 3, 2014.

During trial in said case, respondent presented Glenn Ian D. Villanueva, Teofilo Sacpa, and Cherry H. Tan as witnesses. Thereafter, respondent filed its *Formal Offer of Evidence*.

On the other hand, during the hearing held on August 26, 2015, counsel for petitioner manifested that he has no witness to present. As directed by the Court in DIvision, respondent filed its *Memorandum* on October 15, 2015. On the other hand, petitioner filed a *Manifestation* on September 28, 2015 alleging that he is adopting his *Answer* filed on September 22, 2014 as his *Memorandum*. Hence, on October 28, 2015, CTA Case No. 8855 was submitted for decision.

In the assailed Decision dated September 7, 2016,[4] the Court in Division partially granted respondent's *Petition for Review* and ordered petitioner to refund in its favor the amount of ₱12,611,698.60, representing respondent's unutilized input VAT in the first and second quarters of taxable year 2012.

Petitioner then filed a *Motion for Partial Reconsideration (Re: Decision Promulgated 7 September 2016)* on September 26, 2016,[5] to which respondent filed its *Comment [On respondent's Motion for Partial Reconsideration dated 26 September 2016]* on October 14, 2016.[6]

In the assailed Resolution dated January 12, 2017,[7] the Court in Division denied herein petitioner's *Motion for Partial Reconsideration (Re: Decision Promulgated 7 September 2016)* for lack of merit.

Undaunted, petitioner filed a *Motion for Extension of Time to File Petition for Review* on January 31, 2017.[8] The Court *En Banc*

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[4] Division Docket – Vol. II (CTA Case No. 8855), pp. 440 to 463; EB Docket, pp. 16 to 39.
[5] Division Docket – Vol. II (CTA Case No. 8855), pp. 464 to 469.
[6] Division Docket – Vol. II (CTA Case No. 8855), pp. 473 to 475.
[7] Division Docket – Vol. II (CTA Case No. 8855), pp. 479 to 485; EB Docket, pp. 40 to 46.
[8] EB Docket, pp. 1 to 4.

granted petitioner a final and non-extendible period of fifteen (15) days from February 2, 2017, or until February 17, 2017, within which to file his *Petition for Review.*[9] Subsequently on February 10, 2017, petitioner filed the instant *Petition for Review.*[10]

On March 6, 2017, respondent was ordered by the Court *En Banc* to file its *Comment* to the instant *Petition for Review*, within ten (10) days from notice.[11] Subsequently, respondent filed its *Comment/Opposition [To the Petition for Review dated 9 February 2017]* on April 7, 2017.[12]

In the Resolution dated May 24, 2017,[13] the parties were directed to submit their respective memorandum. Thus, respondent filed its *Memorandum* on July 10, 2017.[14] Petitioner, however, failed to file his *Memorandum.*[15] Thereafter, the instant *Petition for Review* was submitted for decision on August 1, 2017.[16]

Hence, this Decision.

THE ISSUE

Petitioner raises a sole issue for the resolution of the Court *En Banc*, to wit:

> "Whether the Second Division of the CTA erred in partially granting respondent's Petition for Review and ordering petitioner to issue a Tax Credit Certificate in favor of respondent in the reduced amount of Twelve Million Six Hundred Eleven Thousand Six Hundred Ninety Eight Pesos and 60/100 (₱12,611,698.60)."[17]

Petitioner's arguments:

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[9] Minute Resolution dated February 6, 2017, EB Docket, p. 6.
[10] EB Docket, pp. 7 to 14.
[11] Resolution dated March 6, 2017, EB Docket, pp. 51 to 52.
[12] EB Docket, pp. 60 to 67.
[13] EB Docket, pp. 75 to 76.
[14] EB Docket, pp. 82 to 111.
[15] Per Records Verification dated July 18, 2017 issued by the Judicial Records Division of this Court, EB Docket, p. 113.
[16] EB Docket, pp. 115 to 116.
[17] EB Docket, p. 9.

Petitioner contends that as part of taxpayers' duty to exhaust administrative remedies, the law requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law.

According to petitioner, even if respondent was able to submit documents, it has miserably failed to substantiate its administrative claim with documents that will prove its entitlement to the refund/credit, hence, the denial by inaction.

Such failure on the part of respondent to discharge the burden of proving that it is entitled to a refund or credit effectively deprived petitioner of the opportunity to fully exercise his function to decide claims for refund, correct, modify or affirm the findings of his subordinates; thus, effectively failing to exhaust the administrative remedies available to it, rendering its judicial claim premature.

Allegedly, a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place, before seeking judicial intervention in order to give the administrative body an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

Finally, petitioner stresses that claims for refund are construed strictly against the claimant, for the same partakes the nature of an exemption and are looked upon with disfavor. Thus, when respondent failed to present competent documents to substantiate its claim at the administrative level, it failed to discharge the burden of proving its entitlement to such claim. For this, respondent's judicial claim for refund must fail.

Respondent's counter-arguments:

Respondent counter-argues that the *Petition for Review* is based on general and motherhood arguments and failed to specify and discuss in detail, the alleged errors in the assailed Decision dated September 7, 2016 and Resolution dated January 12, 2017. Allegedly, the "argument/discussion" portion of the *Petition* consists only of two (2) pages, and contains a mere general citation of doctrines without discussing how they are applicable to the case.

According to respondent, it is elementary doctrine that findings of fact of a trial court, are accorded the highest degree of respect and absent a clear disregard of the evidence that can otherwise affect the results of the case, such findings should not be ignored. Petitioner allegedly failed to discuss clearly and exhaustively how the Court in Division erred in rendering its assailed Decision and Resolution.

The motherhood arguments raised in the *Petition*, even if considered, are allegedly without merit. Petitioner conveniently invokes the rule on exhaustion of administrative remedies without specifying how such rule was violated by the respondent. Petitioner also recycles the argument raised in its *Motion for Reconsideration*, which was already duly passed upon by the Court in Division, that respondent did not submit the complete documents.

Respondent further contends that its compliance with the rule on exhaustion of administrative remedies has been duly established; and as shown by the records, respondent first filed with the BIR applications for tax refund or tax credit and exhausted the proceedings in the same, prior to filing a *Petition for Review* with the Court in Division.

Relative thereto, respondent points out that it submitted the complete documents required by the BIR; that it even filed additional documents requested by the BIR, as shown by the Letter of Undertaking dated February 27, 2014, which was admitted in evidence by the Second Division of this Court as Exhibit "P-29". Clearly, its compliance with the rule on exhaustion of administrative remedies and its submission of the complete documents before it filed the *Petition for Review* with the Court in Division had been duly established.

Finally, respondent argues that it is entitled to the tax credit/refund of its input VAT paid in the first half of 2012, as it satisfied all the legal requirements for the granting of such tax credit/refund, to wit:

a) Respondent is VAT registered;
b) Respondent is engaged in zero-rated or effectively zero-rated sales;
c) The input taxes are due or paid by respondent;
d) The input taxes are not transitional input taxes;

e) The input taxes have not been applied against output taxes during and in the succeeding quarters;
f) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
g) The acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP Rules and Regulations;
h) Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of the sales volume; and
i) The claim was filed within two (2) years after the close of the taxable quarter when such sales were made.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

Petitioner is presumed to have attached complete documents in support of its application for refund or tax credit certificate, in the absence of evidence to the contrary.

In the instant *Petition for Review*, petitioner invokes the necessity to comply with the rule on exhaustion of administrative remedies. Implicitly, petitioner submits that respondent failed to observe the said rule because it did not submit complete documents in support of its applications filed with the BIR. According to petitioner, the submission of complete documents is required before the 120-day audit period shall apply, and before respondent could avail of judicial remedies provided for by law.

We do not agree with petitioner.

It must be emphasized that the submission of complete supporting documents by the taxpayer-claimant at the administrative level is presumed, pursuant to the ruling in the case of *CBK Power*

Company Limited vs. Commissioner of Internal Revenue,[18] to wit:

> "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.**"[19]

Thus, petitioner is presumed to have attached complete supporting documents necessary to prove its entitlement to a refund in its applications[20] on February 27, 2014, absent any evidence to the contrary.

In addition, it is noteworthy that respondent submitted additional supporting documents on March 3, 2014.[21] If the same were still incomplete from petitioner's point of view, he could have easily required respondent to submit the supposed lacking documents for the BIR's evaluation and verification, but apparently, petitioner did not do so. Thus, respondent cannot be faulted, if in its point of view, it has submitted complete documents in support of its refund claim.

There is therefore no merit in the contention of petitioner that because of respondent's failure to discharge the burden of proving that it is entitled to refund or credit, he was effectively deprived of the opportunity to fully exercise his function to decide claims for refund, or correct, modify or affirm the findings of his subordinates.

Petitioner failed to specifically rebut the ruling and findings of the Court in Division.

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[18] G.R. Nos. 198729-90, January 15, 2014.

[19] Read also *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 184266, November 11, 2013), wherein the Supreme Court ruled as follows:

> "...**absent any evidence to the contrary and 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 filed on 26 March 2002 and 28 June 2002. Therefore, the CIR's 120-day period to decide on petitioner's administrative claim commenced to run on 26 March 2002 and 28 June 2002, respectively." *(Emphasis supplied)*

[20] Exhibits "P-27" and "P-28", Division Docket (CTA Case No. 8855) – Vol. I, pp. 360 to 361.

[21] Refer to Exhibit "P-29", Division Docket (CTA Case No. 8855) – Vol. I, p. 362.

Petitioner further argues that respondent was not able to fully substantiate its claim for refund.

We are not swayed.

A perusal of the subject *Petition for Review* reveals that petitioner failed to specifically rebut any of the factual findings of the Court in Division in support of its ruling that respondent was able to substantiate its claim for refund.

Considering that the Court in Division made specific factual findings upon the evidence presented in CTA Case No. 8855, and which became the basis of the Court in Division's ruling to partially grant respondent's *Petition for Review* in said case, it behooves petitioner, in the instant *Petition for Review* before the Court *En Banc,* to specifically pinpoint any error on, or sufficiently argue against, the said findings and consequent ruling. The mere general averment of petitioner that respondent failed to fully substantiate its claim for refund, standing alone, without specifically pinpointing the supposed reversible error/s allegedly committed by the Court in Division, will not warrant a reversal of the assailed Decision for being too vague, highly speculative, and uncertain. As between the specific findings of, and ruling rendered by the Court in Division, and the general averments of petitioner, the former must perforce prevail.

Consequently, the findings of the Court in Division, that respondent was able to substantiate its claim for the issuance of tax credit certificate for its unutilized input VAT for the first and second quarters of taxable year 2012, albeit in the reduced amount of ₱12,611,698.60, must be sustained.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The assailed Decision dated September 7, 2016 and Resolution dated January 12, 2017 are hereby **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

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
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