REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

TEAM SUAL CORPORATION (formerly MIRANT SUAL CORPORATION and SOUTHERN ENERGY PANGASINAN, INC.),
Respondent.

CTA *EB* NO. 2353
(CTA Case No. 7620)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
FEB 10 2022 11:25 am

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue (CIR) filed on October 19, 2020, pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended[2], which prays for the reversal and setting aside of the *Decision* dated March 2, 2020[3] (Assailed Decision) and the *Resolution* dated September 29, 2020[4] (Assailed Resolution) promulgated by the Special Second Division of the Court of Tax Appeals (CTA) in CTA Case

[1] *Rollo*, CTA EB No. 2353, pp. 1-10.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, pp. 19-46.
[4] *Id.*, pp. 47-53.

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No. 7260 entitled "*Team Sual Corporation (formerly Mirant Sual Corporation and Southern Energy Pangasinan, Inc.) vs. Commissioner of Internal Revenue*", and the rendition instead of a new judgment denying respondent's claim for refund.

The Facts

Petitioner CIR is the duly appointed head of the Bureau of Internal Revenue (BIR), vested with authority to act on and approve claims for refund or issuance of tax credit certificate of overpaid internal revenue taxes as provided by law, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

Respondent Team Sual Corporation (TSC), on the other hand, is a domestic corporation duly organized and existing under and by virtue of Philippine laws with principal office at Bo. Pangascasan, Sual, Pangasinan. Petitioner was originally registered with the Securities and Exchange Commission under the name of Pangasinan Electric Corporation, which was changed to Southern Energy Pangasinan, Inc., then to Mirant Sual Corporation. During the pendency of this case in the Court in Division, it again changed its - corporate name to Team Sual Corporation on July 23, 2007.[6]

Respondent TSC is principally engaged in the business of power generation and subsequent sale thereof to National Power Corporation (NPC) under a Build, Operate, Transfer (BOT) scheme. As such, it is principally registered with the BIR as a value-added tax (VAT) taxpayer, in accordance with Section 107 of the 1997 National Internal Revenue Code (NIRC), as amended, with Tax Identification No. 003-841-103.[7]

On December 17, 2004, respondent filed with the BIR Audit Information Tax Exemption and Incentives Division an Application for Effective Zero-Rate VAT of its supply of electricity to the NPC for the period January 1, 2005 to October 31, 2005, which was subsequently approved.[8]

On December 21, 2006, respondent filed an administrative claim for refund of unutilized input VAT with

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[5] Docket, CTA Case No. 7620, Vol. II, Decision dated April 23, 2010, p. 561.
[6] *Id.*, p. 560.
[7] *Id.*, p. 561.
[8] *Id.*

the Revenue District Office No.5, at Alaminos City in the total amount of ₱103,588,530.59 for the period January 1, 2005 to October 31, 2005.[9]

In order to preserve its right and to toll the running of the prescriptive period for its judicial claim, respondent filed the instant Petition for Review on April 18, 2007.[10]

After trial, the CTA Former Second Division rendered a Decision dated April 23, 2010, the dispositive portion of which reads as follows:

> "**WHEREFORE,** premises considered, the present Petition for Review is **PARTLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SEVENTY SEVEN MILLION FIVE HUNDRED NINETEEN THOUSAND SIX HUNDRED EIGHTY FOUR and 39/100 PESOS (₱77,519,684.39),** representing unutilized input VAT attributable to zero-rated sales for the second and third quarters and the month of October of taxable year 2005."
>
> **SO ORDERED.**"

Both parties then moved for the reconsideration of the abovementioned Decision dated April 23, 2010 where the CTA's Former Second Division ruled in favor of the petitioner CIR in its Amended Decision dated September 16, 2010, the dispositive portion reads as follows:[11]

> "**WHEREFORE**, premises considered, respondent CIR's "Motion for Partial Reconsideration" is hereby **GRANTED**. Accordingly, our Decision dated April 23, 2010 is hereby **RECALLED** and **SET ASIDE**, and a new one is hereby entered dismissing the Petition for Review for failure to comply with a condition precedent.
>
> **SO ORDERED.**"

As a consequence, respondent TSC filed on September 7, 2010 a Petition for Review with the Court *En Banc,* which was docketed as CTA EB No. 691. On March 4, 2013, the Court

[9] Docket, CTA Case No. 7620, Vol. II, Decision dated April 23, 2010, pp. 561-562.
[10] *Id.*
[11] *Rollo,* pp. 21-22.

En Banc in CTA EB No. 691 rendered its Decision, the dispositive portion of which reads as follows:[12]

> "**WHEREFORE**, premises considered, the Amended Decision dated September 16, 2010, rendered by the Former Second Division of this Court is hereby AFFIRMED. Accordingly, the instant Petition for Review is **DISMISSED**.
>
> **SO ORDERED**."

Respondent TSC then moved for the reconsideration of said *En Banc* Decision. On August 13, 2013, the Court *En Banc* rendered an Amended Decision which ruled in favor of respondent TSC, the dispositive portion of which states:[13]

> "**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is hereby **GRANTED**. The Court En Banc's Decision promulgated on March 04, 2013 is hereby **REVERSED AND SET ASIDE**. Accordingly, CTA Case No. 7620 is hereby **REMANDED** to the Court of origin for further proceedings.
>
> **SO ORDERED**."

Petitioner CIR then moved for the reconsideration of said Amended Decision dated August 13, 2013 but was denied anew and the Court *En Banc* affirmed its amended decision to remand the case to the Court in Division under its Resolution dated March 5, 2014, the dispositive portion thereof states:[14]

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration is hereby **DENIED**. The Court En Banc's Amended Decision promulgated on August 13, 2013 is hereby **AFFIRMED**. Accordingly, CTA Case No. 7620 is hereby **REMANDED** to the Court of origin for further proceedings.
>
> **SO ORDERED**."

Thus, on May 2, 2014, petitioner CIR filed with the Supreme Court a *Petition for Review on Certiorari* entitled "*Commissioner of Internal Revenue, Petitioner, versus Team Sual Corporation (formerly Mirant Sual Corporation and*

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[12] *Id.*, CTA EB No. 2353, Decision dated March 2, 2020, p. 22.
[13] *Rollo*, p. 23.
[14] *Id.*, p. 23.

Southern Energy Pangasinan, Inc.), Respondent". The case was docketed as G.R. No 211667.[15]

On February 26, 2018, the Supreme Court rendered a Resolution, the dispositive portion of which reads:[16]

> "**WHEREFORE**, petition is **DENIED**. The August 13, 2013 Amended Decision and the March 5, 2014 Resolution of the Court of Tax Appeals En Banc in CTA EB No. 691 are AFFIRMED *in toto*. Accordingly, the case is **REMANDED** to the CTA Division for the proper determination of the refundable amount due to the respondent.
>
> **SO ORDERED**."

In the Resolution dated December 4, 2018, the Court *En Banc* remanded the present case pursuant to its Amended Decision dated August 13, 2013, considering the Entry of Judgment issued by the Supreme Court in G.R. No. 211667, certifying that the Resolution dated February 26, 2018 had become final and executory on June 18, 2018.[17]

After trial, the Court in Division rendered the Assailed Decision in favor of respondent TSC where the dispositive portion reads as follow:[18]

> "**WHEREFORE**, in light of the foregoing discussions, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to refund or issue a tax credit certificate in favor of petitioner in the amount of **₱97,846,457.61**, representing the latter's unutilized excess input VAT attributable to its zero-rated sales/receipts for the 1st, 2nd and 3rd quarters, and the month of October, of taxable year 2005.
>
> **SO ORDERED**."

Petitioner CIR then moved for the reconsideration of the Assailed Decision but was denied anew under the Assailed Resolution where the dispositive portion reads as follows:[19]

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[15] *Rollo*, CTA EB No. 2353, Decision dated March 2, 2020, p. 23.
[16] *Rollo*, p. 24.
[17] *Id.*
[18] *Id.*, pp. 44-45.
[19] *Id.*, p. 52.

> "**WHEREFORE**, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 2 March 2020) is **DENIED** for lack of merit.
>
> **SO ORDERED**."

Hence, the instant Petition for Review was filed by petitioner CIR on October 19, 2020.

On January 7, 2021, respondent TSC filed its **Comment/Opposition (Re: Petition for Review dated 13 October 2020)**[20]. Thus, the case was submitted for decision.[21]

The Issue

The sole issue that can be derived from the cited grounds in the instant petition is:

> Whether respondent TSC is partially entitled to its claim for refund of its unutilized excess input VAT attributable to its zero-rated sales/receipts for the 1st, 2nd and 3rd quarters, and the month of October, of taxable year 2005 in the amount of ₱97,846,457.61.

Arguments of Petitioner

Petitioner CIR argues that only creditable input taxes that are directly attributable to zero-rated sales may be refunded and that since the case is a claim for refund, respondent must establish its claim by quantum of evidence and not by assumption.

Argument of Respondent

On the other hand, respondent TSC counter-argues that petitioner's arguments are mere rehash of his arguments stated in his Motion for Partial Reconsideration, hence, instant petition must be denied.

Respondent insists that it complied with all the requisites of claim for refund of its input VAT that were attributable to its

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[20] *Rollo*, pp. 71-81.
[21] *Id.*, Resolution dated January 19, 2021, pp. 85-86.

zero-rated or effectively zero-rated sales which had been discussed in the Assailed Decision and Resolution.

Respondent also argues that petitioner's assertion that direct attributability was necessary for such claim for refund or issuance of tax credit certificate to its unutilized excess input VAT is against the letter of the law and jurisprudence.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b) of the RRCTA provide that:

> "SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
>
> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review." (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the assailed *Resolution* dated September 29, 2020. The latter was allegedly received by petitioner CIR on October 8, 2020. In accordance with the abovementioned provisions of the RRCTA, petitioner CIR had until October 23, 2020 within which to file its petition. Thus, the filing of the instant Petition for Review on October 19, 2020 was on time.

Now, we resolve the substantive aspect of the case.

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Although we agree with respondent that the arguments posited by petitioner in this case is similar to his arguments in his Motion for Partial Reconsideration which was the subject of the Assailed Resolution, this Court would like to re-emphasize and highlight the discussion made by the Court in Division therein.

Section 112(A) of the 1997 NIRC, as amended, provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): <u>Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, **and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.**</u> Provided, finally, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales." (*Emphasis and underscoring supplied*)

As shown in the above-cited provision, input taxes that are directly attributable to VAT zero-rated or effectively zero-rated sale may be refunded. However, the abovementioned provision also provides for a scenario that the input VAT to be refunded may involve both zero-rated or effectively zero-rated sales and taxable or exempt sales, thus, such requires for proportional allocation on the basis of the volume of sales to "ratably allocate" input VAT payments between the claimant's zero-rated and non-zero-rated sales, taxable or exempt sales, to arrive at the exact amount of input VAT to be refunded that is directly attributable to zero-rated sales. Thus, respondent is mistaken that the input VAT subject of refund must entirely be from zero-rated or effectively zero-rated transactions only.

In *San Roque Power Corporation v. Commissioner of Internal Revenue*[22], the Supreme Court ruled that among the requisites for the refund of input VAT where such involves both zero-rated or effectively zero-rated sales and taxable or exempt sales, the input taxes shall be proportionately allocated on the basis of sales volume, to wit:

> "To claim refund or tax credit under Section 112(A), petitioner must comply with the following criteria: (1) the taxpayer is VAT registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the input taxes are due or paid; (4) the input taxes are not transitional input taxes; (5) the input taxes have not been applied against output taxes during and in the succeeding quarters; (6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (7) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (8) **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 sales volume**; and (9) the claim is filed within two years after the close of the taxable quarter when such sales were made." (*Emphasis supplied*)

In the instant case, the Assailed Decision found that respondent's sales came from both zero-rated and taxable transactions and that the input VAT related thereto cannot be directly identified or attributed to specific sales. Hence, the input VAT was subjected to proportional allocation.

As to petitioner's argument that respondent must establish its claim by quantum of evidence and not by assumption, such is directly assailing the factual findings of the Court in Division.

It should be noted that the Court in Division, as stated in the Assailed Decision, found that respondent TSC was able to comply with the requisites for such claim for refund although entitled only to the amount of ₱97,846,457.61. Hence, those are factual findings which, in the absence of any clear showing of abuse, arbitrariness, or capriciousness committed by the Court in Division, are binding and conclusive upon this Court

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[22] G.R. No. 180345, November 25, 2009.

as held in *Heirs of Teresita Villanueva, et al., v. Heirs of Petronila Syquia Mendoza, et al.*[23], to wit:

> "Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight."

Further, in *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (Formerly Mirant (Phils.) Energy Corporation)*[24], the Supreme Court ruled as to factual findings of CTA Court in Division:

> "With regard to the second requirement, it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[19] Consequently, we adopt the findings of the CTA in Division, which the CTA *En Banc* cited, as follows."

In the instant case, however, petitioner failed to provide evidence that the factual findings of the Court in Division were attended by any abuse, arbitrariness, or capriciousness. Hence, the instant petition must fall for lack of merit.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the *Decision* dated March 2, 2020 and *Resolution* dated September 29, 2020 are hereby **AFFIRMED.**

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[23] G.R. No. 209132, June 5, 2017.
[24] G.R. No. 188016, January 14, 2015.

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SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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