REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

AT&T COMMUNICATIONS SERVICES PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 6907

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

AUG 09 2011 ; 4:00 pm

X- X

AMENDED DECISION

Casanova, J.:

This resolves petitioner- AT&T Communications Services Philippines, Inc.'s Motion for Reconsideration[1] filed on May 13, 2011 seeking reconsideration of this Court's Decision (Assailed Decision)[2] promulgated on April 20, 2011. The Assailed Decision denied petitioner's claim for refund or issuance of tax credit certificate in the amount of P1,801,826.82 allegedly representing excess and/or unutilized input VAT of petitioner attributable to zero-rated sales of services for the taxable year 2002 for lack of substantiation, the dispositive portion of which reads:

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[1] Motion for Reconsideration, Docket, pp. 961-1001.
[2] CTA Special First Division Decision, Docket, pp. 950-958.

> "**WHEREFORE**, the instant Petition is hereby **DENIED** for lack of substantiation.
>
> **SO ORDERED.**"[3]

In our Decision[4] dated February 23, 2007, the CTA Former First Division, while conceding that petitioner's transactions fall under the classification of zero-rated sales, nevertheless denied petitioner's claim 'for lack of substantiation,' holding that valid VAT official receipts and not mere sales invoices should have been submitted by petitioner in support of its claim for refund of excess VAT input payments.

On petition for review, the CTA *En Banc*, by Decision[5] of February 18, 2008, *affirmed* that of the CTA First Division. Petitioner's motion for reconsideration was likewise denied.

Thus, petitioner appealed the denial of its claim to the Supreme Court where, in its Decision[6] dated August 3, 2010, the Supreme Court reversed the ruling of the CTA *En Banc* and granted petitioner's claim for refund or tax credit of unutilized input VAT attributable or allocable to zero-rated sales, on the basis that Section 113 of the Tax Code does not create a distinction between a sales invoice and an official receipt. The dispositive portion of the said decision reads:

> **WHEREFORE**, the petition is **GRANTED**. The Decision of February 18, 2008 of the Court of Tax Appeals *En Banc* is **REVERSED** and **SET ASIDE**. Let the case be **REMANDED** to the Court of Tax Appeals First Division for the determination of petitioner's tax credit/refund."[7]

In compliance with the order of the Supreme Court, the CTA Special First Division, in a Resolution[8] dated October 1, 2010, set the case for hearing on November 4, 2010 to clarify other matters. Upon motion of the parties, the Court granted them thirty (30) days from the date of the hearing within which to file their

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[3] *Id.* p. 951.
[4] CTA Former First Division Decision, Docket, pp. 391-405.
[5] Docket, pp. 809-824.
[6] *Id.*, pp. 883-890.
[7] *Id.*, p. 889.
[8] *Id.*, pp. 893-894.

respective Memorandum. Petitioner filed its Memorandum[9] on December 6, 2010 while respondent failed to file her Memorandum[10].

On April 20, 2011, the CTA Special First Division promulgated the Assailed Decision denying petitioner's claim for tax refund for lack of substantiation pursuant to the recent ruling of the Supreme Court in the case of *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[11] (Kepco Case).

Hence, petitioner filed the instant Motion for Reconsideration.

In its Motion, petitioner alleged that this Court erred in denying its claim for refund of excess/unutilized input VAT and raised the following grounds[12]:

> This Honorable Court must compute the amount of the refund due petitioner based on the VAT Invoices presented during trial, pursuant to the doctrine of the "law of the case";
>
> The Supreme Court's Decision in this case, *i.e.,* G.R. No. 182365 (AT&T) is based on the correct application of law and jurisprudence and should be upheld;
>
> By mandate of Article VIII, Section 4(3) of the Constitution, the doctrine laid down by the Supreme Court in the AT&T case was not overturned by the Kepco case;
>
> Even assuming for the sake of argument that the AT&T decision validly overturned the doctrine laid down in the Kepco case, the Kepco decision should only be applied prospectively; and
>
> The evidence presented by petitioner clearly shows that it is entitled to its claim for refund in the amount of Php1,801,826.82.

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[9] *Id.*, pp. 914-945.
[10] Verification of Records, *Id.* p. 946.
[11] G.R. No. 181858, November 24, 2010.
[12] Motion for Reconsideration, Docket, p. 964.

Respondent failed to file her Comment[13] on petitioner's Motion for Reconsideration.

After a careful and thorough evaluation and consideration of the arguments proffered by the petitioner in its Motion for Reconsideration, this Court finds the same meritorious.

In its Motion, petitioner argued that this Court, in the Assailed Decision, erred in denying its claim for refund/credit on the basis that it lacked substantiation relying on the recent ruling of the Supreme Court in the Kepco case. Petitioner further argued that the Supreme Court Decision dated August 3, 2010 holding that there is no distinction between a VAT receipt and a VAT invoice, in relation to the mandatory substantiation requirements for the claims of VAT refund and remanding the case to this Court for the computation of the amount to be refunded, became final and executory on August 26, 2010[14]. Petitioner further argued that this Court's application of the recent ruling of Kepco is misplaced since the Supreme Court Decision dated August 3, 2010 is the law of the case and its pronouncement regarding the evidentiary value of the VAT invoices should be applied notwithstanding any contradictory ruling in other cases. It is the petitioner's position that, as this Honorable Court may not pass upon the issue that has already been settled with finality by the Supreme Court, the ruling in the Supreme Court Decision dated August 3, 2010 should be upheld and the amount of excess input VAT should be computed accordingly.

The principle of the law of the case is an established rule in this jurisdiction.[15] The Supreme Court, in the consolidated cases of *Marcelino Lopez, Felisa Lopez, Leonardo Lopez and Zoilo Lopez vs. Jose Esquivel, Jr. and Carlito Talens*[16]*, and Noel Rubber & Development Corp. doing business under the name of "Nordec Phil." and Dr. Potenciano Malvar vs. Jose Esquivel, Jr., Carlito Talens, Marcelino Lopez, Felisa*

[13] Verification of Records, Docket, p. 1003.
[14] Docket, p. 899.
[15] Lynn Paz T. Dela Cruz, Fernando Serrano, Nathaniel Lugtu and Janet Pineda vs. Sandiganbayan, the Special Prosecutor and the People of the Philippines, G.R. No. 161929, December 8, 2009.
[16] G.R. No. 168734, April 24, 2009.

Lopez, Leonardo Lopez, Zoilo Lopez, Atty. Sergio Angeles, Atty. George A. Ang Cheng and the Register of Deeds of Marikina[17] defined "law of the case", to wit:

> "Law of the case has been defined as the opinion delivered on a former appeal. It is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court."[18]

In the case of *Lynn Paz T. Dela Cruz, Fernando Serrano, Nathaniel Lugtu and Janet Pineda vs. Sandiganbayan, the Special Prosecutor and the People of the Philippines*[19], the Supreme Court provided the rationale for the application of the aforementioned doctrine where it stated that:

> "The court reviewing the succeeding appeal will not re-litigate the case but instead apply the ruling in the previous appeal. This enables the appellate court to perform its duties satisfactorily and efficiently which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case and upon any and subsequent appeal.[20]"

In case of remanded cases such as the instant petition, the case of *Harris vs. Brady*[21] provides that the lower court shall not relitigate on the case, rather it shall conform to the opinion of the higher court and continue with the proceedings, to wit;

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[17] G.R. No. 170621, April 24, 2009.
[18] See Note Nos. 16 & 17 *citing* Clement L. Cucueco vs. Court of Appeals, Golden "L" International, Orlando Lapid, Francisco Lapid, Diosdado Lapid, Lea Productions, Inc. and Emilia S. Blas, G.R. No. 139278, October 25, 2004.
[19] See Note 15.
[20] *Id., citing* Ariola v. Philex Mining Corporation, G.R. No. 147756, August 9, 2005.
[21] 277 p. 579, 581, 136 Okl. 274 as *cited* in Words and Phrases Permanent Edition Vol. 24, St. Paul Minn. West Publishing Co. (1940).

> "It is the general rule that, where the merits of an appeal have been adjudicated and the cause remanded with directions to proceed in conformity with the opinion handed down in the case, the lower court is without authority of law to enter upon a readjudication of such merits, as the appellate judgment thereon constitutes the law of the case in all subsequent proceedings both in the trial court upon remandment and in the appellate court in the event of another appeal. And in such other appeal, appellate consideration will be limited to alleged errors of the trial court upon questions arising in the proceedings had subsequent to the mandate of the prior appeal."

Based on the foregoing, the doctrine of law of the case provides that once a rule has been irrevocably established as the decision between the same parties in the same case, such rule shall remain to be the law of the case, as long as the facts on which such decision was based continues to be the facts of the case before the court, regardless of whether the decision was correct or not. Moreover, in cases remanded to the lower court for further proceedings, lower court shall not relitigate the case but adhere to the ruling of the higher court and proceed as directed by the latter.

In the present petition, the Supreme Court decision dated August 3, 2010 is already final and executory. It held, with finality, that petitioner was able to duly substantiate its claim for refund of its excess input VAT for the taxable year 2002, as there is no distinction between a VAT invoice and a VAT receipt in relation to the mandatory requirements for the claim of a VAT refund. The instant petition was remanded to this Court for the sole purpose of determining the amount of VAT refund to be granted to petitioner. Clearly, the Supreme Court decision dated August 3, 2010 constitutes the law of the case in the present petition and will not be disturbed notwithstanding the recent ruling in the Kepco case[22] which provided that there is a distinction between VAT official receipts and VAT invoice.

In compliance with the order of the Supreme Court remanding the present petition to this Court for the determination of the amount of petitioner's tax credit/refund, this Court made the following verification of the petitioner's refundable unutilized excess input taxes based on the independent CPA's report.

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[22] See Note 11.

Records show that petitioner reported input taxes amounting to P2,836,770.71[23] for the four quarters of the calendar year 2002. Details of the same are as follows:

Quarter	Input VAT
1st	P 1,182,877.71
2nd	504,278.14
3rd	432,561.67
4th	717,053.19
Total	**P 2,836,770.71**

Pursuant to Rule 13[24] of the Revised Rules of the Court of Tax Appeals, this Court commissioned Mr. Ruben R. Rubio of Sycip, Gorres, Velayo & Co., an

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[23] Exhibits "BB-1" to "BB-19", "E", "F", "H", "I", and "M".

[24] RULE 13
TRIAL BY COMMISSIONER

SECTION 1. *Appointment of independent Certified Public Accountant (CPA).* --- A party desiring to present voluminous documents in evidence before the Court may secure the services of an independent Certified Public Accountant (CPA) at its own expense. The Court shall commission the latter as an officer of the Court solely for the purpose of performing such audit functions as the Court may direct. *(n)*

SEC. 2. *Duties of independent CPA.* --- The independent CPA shall perform audit functions in accordance with the generally accepted accounting principles, rules and regulations, which shall include:

(a) Examination and verification or receipts, invoices, vouchers and other long accounts;
(b) Reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of the original documents, and pre-marking of documentary exhibits consisting of voluminous documents;
(c) Preparation of schedules or summaries containing a chronological listing of the numbers, dates and amounts covered by receipts or invoices or other relevant documents and the amount(s) of taxes paid;
(d) Making findings as to compliance with substantiation requirements under pertinent tax laws, regulations and jurisprudence;
(e) Submission of a formal report with certification of authenticity and veracity of findings and conclusions in the performance of the audit;
(f) Testifying on such formal report; and
(g) Performing such other functions as the Court may direct. *(n)*

SEC. 3. *Findings of independent CPA.* --- The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents, and secondarily, by the independent CPA. The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification. *(n)*

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independent Certified Public Accountant (ICPA), to determine if petitioner has duly substantiated its claim for refund by verifying the documents supporting the same. Upon this Court's review of the ICPA's report[25] dated July 14, 2005, the following input taxes in the amount of P16,583.95 should be disallowed for the following reasons:

SUPPLIER/PAYEE	REFERENCE	INPUT TAX
1. Input taxes claimed on Insurance Premium supported by Broker's ORs (Annex F)[26]		
First Quarter		
Marsh Phils., Inc.	21968	P3,667.30
Marsh Phils., Inc.	21969	203.81
Marsh Phils., Inc.	21969	282.50
Marsh Phils., Inc.	21967	12,194.11
	Subtotal	**P16,347.72**
2. Input taxes claimed on purchase of services supported by non-VAT OR (Annex G)[27]		
Third Quarter		
Marsh Phil., Inc.	01126	P236.23
	Subtotal	**P 236.23**
	TOTAL	**P 16,583.95**

From the foregoing disallowances, this Court determined that petitioner was able to substantiate P2,820,186.76 of its input VAT for the four quarters of 2002, computed as follows:

Total Input VAT	P2,836,770.71
Less: Disallowances	16,583.95
Substantiated Input VAT	**P2,820,186.76**

[25] Exhibit "AA-1".
[26] Exhibit "AA-17".
[27] Exhibit "AA-18".

Records show that petitioner reported an output VAT liability of P786,034.02[28] for the four quarters of 2002. Deducting the said amount from the substantiated input VAT of petitioner will result to an excess input VAT of P2,034,152.74 which can be attributed to petitioner's zero-rated sales, as computed below:

Substantiated Input VAT	P2,820,186.76
Less: Output VAT	786,034.02
Excess Input VAT attributable to zero-rated sales	**P2,034,152.74**

A scrutiny of the records of the instant petition reveals that petitioner sought a refund or issuance of a tax credit certificate in the amount of P1,801,826.82 for its excess input VAT attributable to its zero-rated sales, in its administrative claim for refund filed with the Bureau of Internal Revenue (BIR) on March 26, 2004 and its Petition for Review filed before this Court on March 31, 2004. Petitioner determined the amount of its claim by allocating the excess input VAT of P2,050,736.69 between its zero-rated and taxable sales in the following manner[29]:

Taxable Quarters	Total Domestic Purchases	Input VAT Payments	Zero-rated Sales	Domestic Sales of Taxable Services	VAT Output Tax Due
1st	P11,828,776.24	P1,182,877.71	P19,613,455.23	P3,351,504.85	P335,153.29
Exhs. "E" & "F"					
2nd	5,042,780.90	504,278.14	9,120,971.54	1,030,147.98	103,025.36
Exhs. "H" & "I"					
3rd	4,325,645.55	432,561.67	12,351,060.35	1,406,553.58	140,656.23
Exh. "K"					
4th	7,170,509.82	717,053.19	15,813,256.93	2,071,960.22	207,199.14
Exh. "M"					
	P28,367,712.51	**P2,836,770.71**	**P56,898,744.05**	**P7,860,166.63**	**P786,034.02**

[28] Exhibit "AA-4".
[29] CTA First Division Decision, Docket, p. 394.

Total Input VAT Tax Payments	P 2,836,770.71
Total Output VAT Due	(786,034.02)
Excess and unutilized VAT Input Tax	**P2,050,736.69**

$$\frac{\text{Domestic Sales}}{\text{Total Sales}} \times \text{Total unutilized VAT input taxes} = \text{VAT input taxes allocated to domestic sales}$$

$$\frac{P7{,}860{,}166.62}{P64{,}758{,}910.67} \times P2{,}050{,}736.69 = \mathbf{P248{,}909.87}$$

Total unutilized VAT input taxes	P2,050,736.69
Less: VAT input taxes allocated to domestic sales	248,909.87
Allowable VAT input taxes attributable to zero-rated sales	**P1,801,826.82**

Noteworthy is the fact that it was only in its Petition for Review filed before the Court *En Banc* on July 23, 2007 that petitioner prayed for a refund of the higher amount of P2,050,736.69. This Court reiterates that a review of the records of this case shows that petitioner's administrative claim for refund before the BIR, as well as its Petition for Review filed before the CTA First Division stated the amount of P1,801,826.82 only. This Court cannot allow such claim notwithstanding the fact that petitioner prayed for a refund or the issuance of a tax credit certificate for its excess input VAT in the amount of P2,034,152.74 in its Motion for Reconsideration[30] dated March 21, 2007. Well-settled is the rule that a taxpayer cannot claim an amount in the judicial level that is more than what was prayed for in the administrative level, pursuant to the provisions of Section 229 of the 1997 National Internal Revenue Code (NIRC), which states in part:

[30] Docket, pp. 413-438.

> **SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected**, until a claim for refund or credit has been duly filed with the Commissioner;** but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> xxx xxx xxx

(*Emphasis supplied*)

Thus, it is clear that the amount claimed by petitioner in the administrative level is still the reference point to be used as basis in determining the amount of refund to be granted to petitioner. [31] This is the amount submitted to the Commissioner of Internal Revenue for consideration at the administrative level. Allowing petitioner to pray for a different claim at a later stage in the proceedings will not be consistent with the principles of fair play and justice.

In view of the foregoing, this Court finds that petitioner has a refundable input VAT in the reduced amount of P1,785,242.87, computed as follows:

Amount of claimed input VAT	P1,801,826.82
Less: Disallowances	16,583.95
Refundable Input VAT	**P1,785,242.87**

WHEREFORE, the instant Motion for Reconsideration is hereby **GRANTED**. Accordingly, respondent is hereby ordered to refund or, in the alternative, to issue a tax credit certificate in favor of petitioner in the reduced amount of **ONE MILLION SEVEN HUNDRED EIGHTY FIVE THOUSAND TWO HUNDRED FORTY-TWO**

[31] CTA Case No. 5605, May 30, 2000.

PESOS AND 87/100 (P1,785,242.87) representing unutilized input VAT attributable to zero-rated sales of services for the first to fourth quarters of taxable year 2002.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice