REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 589
(CTA Case No. 7471)

-versus-

Present:
Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

TOLEDO POWER COMPANY,
Respondent.

PROMULGATED:

SEP 1 5 2010 ... 3:30 p.m.

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D E C I S I O N

CASTAÑEDA, JR., J.:

This is a Petition for Review filed before the Court of Tax Appeals (CTA) *En Banc* assailing the Decision[1] of CTA First Division promulgated on October 23, 2009 and the Resolution[2] of CTA Special First Division promulgated on January 21,

[1] *Rollo,* pp. 23-44. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta, concurring and dissenting and Associate Justice Lovell R. Bautista, concurring.
[2] *Rollo*, pp. 45-48.

2010 in the case entitled, "*Toledo Power Company vs. Commissioner of Internal Revenue,*" docketed as CTA Case No. 7471.

The assailed Decision PARTIALLY GRANTED the petition seeking the refund or issuance of tax credit certificate in the amount of P8,617,425.41 representing unutilized input Value Added Tax (VAT) for the four quarters of taxable year 2004 arising from its domestic purchases of goods and services and importation of goods attributable to zero-rated sales.

THE FACTS

The facts of the case as found by the CTA First Division are as follows:

> Petitioner Toledo Power Company (herein respondent) is a general partnership duly organized and existing under Philippine Laws, with principal office at Sangui, Toledo City, Cebu.
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> Respondent (herein petitioner) is a duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, with office address at BIR National Office Building, Agham Road, Diliman, Quezon City.
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> Petitioner is principally engaged in the business of power generation. It is registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997 with Tax Identification No. 003-883-626 and BIR Certificate of Registration bearing RDO Control No. 94-083-000300.
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> Effective June 26, 2001, pursuant to Republic Act (RA) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), sales of generated power by generation companies became Value Added Tax (VAT) zero-rated. This is bolstered in Rule 5, Section 6 of the Implementing Rules and Regulations to Implement EPIRA (IRR) by the Department of Energy.

Petitioner is registered with and authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity.

Pursuant to EPIRA, an ERC-registered generation company's sale of generated power became VAT zero-rated beginning on June 26, 2001.

On 26 April 2004, petitioner filed its quarterly VAT return for the first quarter of taxable year 2004 which reflected an alleged excess or unutilized input VAT credits of P1,906,965.78.

On 26 July 2004, petitioner filed its quarterly VAT return for the second quarter of taxable year 2004, which reflected an alleged excess or unutilized input VAT credits of P2,602,997.00.

On 25 October 2004, petitioner filed its quarterly VAT return for the third quarter of taxable year 2004, which reflected an alleged excess or unutilized input VAT credits of P4,446,652.54.

On 25 January 2005, petitioner filed its quarterly VAT return for the fourth quarter of taxable year 2004, which reflected an excess or unutilized input VAT credits of P8,487,239.90.

For the four quarters of 2004, petitioner's VAT returns reflect an alleged incurred and accumulated input VAT in the total amount of P17,443,855.22 on its domestic purchases of taxable goods and services and importation of goods, which purchases and importations are all allegedly attributed to its zero-rated sale of power generation services.

Believing that its input taxes are refundable, and pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed on December 23, 2004 with the BIR RDO No. 83 its administrative claim for refund on unutilized input VAT for the four (4) quarters of 2004 in the total amount of P17,443,855.22.

As its basis for the instant claim for refund or issuance of tax credit certificate, petitioner invoked Section 112(A) of the 1997 NIRC, as amended.

To date, the application for refund by herein petitioner remains unacted by respondent.

Hence, this Petition for Review filed on April 24, 2006.

Respondent, in his Answer interposed the following defenses, to wit: *gl*

5. Petitioner alleged claim for refund is subject to administrative investigation by the Bureau;

6. Petitioner must prove that it paid the alleged VAT input taxes for the periods stated;

7. Petitioner must prove that its sales of electricity is subject to VAT at zero percent (0%) rate;

8. Petitioner must prove that the alleged input VAT is directly attributable to such zero-rated sales;

9. Petitioner must prove that its alleged unutilized input VAT has not been applied against any output tax liabilities;

10. Petitioner must prove that the alleged claim was filed within the two (2) year period prescribed in Section 112 of the NIRC of 1997;

11. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

12. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.

After trial on the merits, this case was submitted for decision on April 15, 2009 considering petitioner's Memorandum filed on April 7, 2009; without respondent Memorandum.

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Acting on the Petition, the CTA First Division issued a Decision on October 23, 2009. The dispositive portion of the said Decision reads, as follows:

> In view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED to REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in the amount of **EIGHT MILLION SIX HUNDRED SEVENTEEN THOUSAND FOUR HUNDRED TWENTY FIVE PESOS AND 41/100 (P8,617,425.41)** representing unutilized input VAT arising from petitioner's domestic purchases of goods and services and importations of goods which are attributable to zero-rated sales for the taxable year 2004.
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> **SO ORDERED.**

The Commissioner of Internal Revenue filed a Motion for Partial Reconsideration of the Decision dated October 23, 2009. In a Resolution promulgated on January 21, 2010, the CTA Special First Division denied the said motion for lack of merit.

Hence, this Petition for Review *En Banc.*

THE ISSUE

Petitioner submits this sole issue for the Court's consideration:

The Special First Division of the Honorable Court erred in ruling that respondent is entitled to a refund or tax credit certificate in the amount of P8,617,425.41 because respondent failed to submit the legally required documents in its administrative application for refund.

COURT'S RULING

The petition is without merit.

Judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the Bureau of Internal Revenue (BIR) the complete documents in support of its administrative claim for refund. This has already been settled in several CTA *En Banc* cases [3] one of which is *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*,[4] where We passed upon the issue on the non-submission of supporting documents in the

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[3] Consolidated cases of *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 553 and *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 554, July 20, 2010, *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 523, April 15, 2010.

[4] CTA EB No. 474, September 1, 2009.

administrative level as NOT fatal to a claim for refund. The pertinent portion of the decision provides:

> ***Non-submission of supporting documents in the administrative level is not fatal to a claim for refund***
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> Section 112 (D) of the NIRC provides:
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> ***SEC. 112. Refunds of Tax Credits of Input Tax. —***
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> xxx xxx xxx
>
> ***(D) Period within which Refund or Tax Credit of Input of Taxes shall be Made.*** — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim the Court of Tax Appeals.
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> xxx xxx xxx
>
> <u>A careful reading of the above-quoted provision reveals that although the submission of the complete supporting documents is necessary for the granting of refund or tax credit certificate, the non-submission of the same with the petitioner does not make the administrative claim for refund or tax credit certificate invalid or pro forma</u>, the effect of which makes the judicial appeal dismissible for lack of jurisdiction. What is clearly required is that the taxpayer must elevate its claim before the Court within 30 days from receipt of the denial of its claim for refund/tax credit or after the expiration of the 120-day period granted to respondent to decide on the taxpayer's, which must all be done within two years from payment of the tax or penalty.
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> <u>In the same light, respondent's non-compliance with the requirements listed under RMO No. 53-98 is not fatal. The</u>

> requirements listed under RMO No. 53-98 refer mainly to the requirements for refund of tax credit in the administrative level for purposes of establishing the authenticity of a taxpayer's claim for refund or tax credit. However, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. In this connection, it may not be amiss to mention that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court. (underlining ours)

The alleged non-submission of complete documents at the administrative level will not bar this Court from receiving, evaluating and appreciating evidence. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court.[5] The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.[6] Moreover, CTA being a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.[7] Otherwise stated, judicial claims are being decided based on what has been presented and formally offered by party litigants during the trial of the case before the Court and not on the mere allegation of non-submission of complete documents before the BIR.

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[5] *Commissioner of Internal Revenue vs. Visayas Geothermal Power Company, Inc.*, CTA EB Case No. 282 (CTA Case Nos. 6790 & 6838), November 20, 2007, citing *Jideco Manufacturing Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6552, September 16, 2004.
[6] *Supra*, note 3.
[7] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, 468 SCRA 571.

Meanwhile, petitioner argued that before trial *de novo* proceeds and disposes of the issue of refund entitlement under substantive law, it must first be proved that there was procedural compliance in pursuing the administrative claim leading to the appellate proceedings. Petitioner anchored the said argument in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* [8] ("*Atlas*" case) where the Supreme Court denied the claim for refund.

Upon examination of the *Atlas* case, We found petitioner's argument misplaced. In the said case, what the Supreme Court found fatal to the taxpayer's cause was its failure to submit sufficient evidence such as invoices and receipts in support of its claim before the CTA. In contrast with the present case, petitioner's allegation was the failure of respondent to submit complete documents before the BIR and not before the CTA.

A perusal of the records and as found by the CTA First Division, herein respondent was able to present and formally offer before the Court various suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC and bank official receipts in support of its unutilized input taxes in the amount of P8,617,425.41.[9] Hence, even if these documents were allegedly not presented before the BIR, the Court found the documents admissible, sufficient and proper to fully substantiate the judicial claim for refund.

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[8] G.R. No. 145526, March 16, 2007, 518 SCRA 425.
[9] Docket, CTA Case No. 7471, pp. 322, 323 & 324. See Exhibits "UU-1" to "UU-345-a", "VV-1" to "VV-448-a"; "WW-1" to "WW-530", "XX-1" to "XX-173-a" and "BBB".

In addition, the issue of non-submission of complete documents was only brought out by petitioner in its Motion for Partial Reconsideration in CTA Case No. 7471. The rule is well settled that no question will be considered by the appellate court which has not been raised in the court below. When a party deliberately adopts a certain theory, and the case is tried and decided upon the theory in the court below, he will not be permitted to change his theory on appeal, because to permit him to do so would be unfair to the adverse party. [10] Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. [11]

WHEREFORE, premises considered, the Petition for Review *En Banc* is **DENIED** for lack of merit. Accordingly, the Decision dated October 23, 2009 and Resolution dated January 21, 2010 are **AFFIRMED.**

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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[10] *Ferrer vs. Commissioner of Internal Revenue*, No. G.R. No. L-16021, August 31, 1962, 5 SCRA 1022 citing the cases of *Northern Motors, Inc. vs. Prince Line, et al.*, G.R. No. L-13884, February 29, 1960 citing *Toribio v. Decasa*, 55 Phil. 461; *San Agustin v. Barrios*, 68 Phil. 475; *Molina v. Somes*, 24 Phil. 49; and *Agoncillo and Mariño v. Javier*, 38 Phil. 424.
[11] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*, G.R. No. 159593, October 16, 2006, 504 SCRA 484.

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice