REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TOTAL (PHILIPPINES) CORPORATION,
Petitioner,

CTA EB No. 1264
(CTA Case Nos. 8056 & 8163)

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1295
(CTA Case Nos. 8056 & 8163)

- versus –

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

TOTAL (PHILIPPINES) CORPORATION,
Respondent.

Promulgated:

APR 20 2016
1:15 p.m.

x---x

DECISION

CASTAÑEDA, JR., _J.:_

THE CASE

Before this Court are consolidated Petitions for Review[1] separately filed by Total (Philippines) Corporation, docketed as CTA EB No. 1264, and by the Commissioner of Internal Revenue (CIR), docketed as CTA EB No. 1295. Both petitions seek the reversal and setting aside of the Amended Decision dated December 19, 2014 promulgated by the Third Division of this Court ("Court in Division") in CTA Case Nos. 8056 and 8163. CIR's petition likewise assails the Resolution dated March 27, 2015 of the Court in Division which denied CIR's Motion for Partial Consideration of the assailed Amended Decision.

The respective dispositive portions of the assailed Amended Decision and Resolution are quoted hereunder:

<u>Assailed Amended Decision</u>:

> "**WHEREFORE**, finding merit, petitioner's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED**. The Decision dated January 28, 2014 is **MODIFIED** ordering respondent to refund or issue a tax credit certificate in favor of petitioner Total (Philippines) Corporation in the reduced amount of **SIXTEEN MILLION ONE HUNDRED SEVENTEEN THOUSAND SEVEN HUNDRED TWENTY SEVEN AND 89/100 PESOS (₱16,117,727.89)**, representing the latter's excess unutilized input VAT attributable to its zero-rated sales for the year 2008."
>
> **SO ORDERED.**"

<u>Assailed Resolution</u>:

> "**WHEREFORE**, respondent's *Motion for Partial Reconsideration (Re: Amended Decision)* is hereby **DENIED**, for lack of merit."
>
> **SO ORDERED.**" *gc*

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[1] Petition for Review, CTA EB No. 1264 Docket, pp. 1-28; Petition for Review, CTA EB No. 1295 Docket, pp. 1-7.

THE FACTS

The factual antecedents of the present case, as narrated by the Court in Division in its Decision dated January 28, 2014, are as follows:

> "Petitioner (Total) is a Philippine corporation with principal office address at Penthouse, Total Corporate Center 1012 Triangle Drive, North Bonifacio, Bonifacio Global City, Taguig City. Its primary purpose is to 'acquire, assemble, install, construct, equip, repair, remodel, maintain, develop, operate, hold, own, lease and otherwise deal with oil terminals and service station networks; to develop and operate a wholesale distribution network and carry out the purchase, acquisition, including importation, if appropriate, storage, marketing, distribution, transport, use, wholesale, exportation, refinement, treatment, distillation and manufacture of, and generally deal in, Fuel Oils, Gas Oils, Gasolines, Lubricants and, subject to market conditions, Bitumens, Solvents and Kerosenes and, subject to the written agreement of the stockholders, any and all kinds of oil and oil products, such as Jet Fuel and liquefied petroleum gas.' It is a VAT-registered entity as evidenced by Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 8RC0000019580 with Taxpayer's Identification Number (TIN) 005-145-964-000.
>
> Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) with the authority to grant claims for refund or tax credit of taxes erroneously or illegally collected. She holds office at the BIR National Office Building, Diliman, Quezon City.
>
> Petitioner alleges that during the four quarters of taxable year 2008, it sold and exported products to companies located in foreign countries and to companies in special economic and Freeport zones. During the same period, it incurred/paid input taxes on its purchases and/or importations of VATable goods and services.
>
> Petitioner filed with the BIR its original and amended Quarterly VAT Returns for the four quarters of taxable year 2008 on the following dates:

PERIOD COVERED (2008)		**DATE FILED**	**EXHIBIT**
First Quarter	Original return	April 22, 2008	"EE"
	First amendment	July 24, 2009	"FF"
	Second amendment	February 5, 2010	"GG"
	Final amendment	March 30, 2010	"HH"
Second Quarter	Original return	July 23, 2008	"II"
	First amendment	July 24, 2009	"JJ"
	Second amendment	February 5, 2010	"KK"
	Final amendment	March 30, 2010	"LL"
Third Quarter	Original return	October 22, 2008	"MM"
	First amendment	July 24, 2009	"NN"
	Second amendment	February 5, 2010	"OO"
	Third amendment	February 5, 2010	"PP"
	Final amendment	March 30, 2010	"QQ"
Fourth Quarter	Original return	January 26, 2009	"RR"
	First amendment	July 24, 2009	"SS"
	Second amendment	February 5, 2010	"TT"
	Final amendment	March 30, 2010	"UU"

On account that its VAT returns showed excess input taxes, petitioner filed with respondent administrative claims for refund/tax credit of its unutilized input taxes pertaining to zero-rated sales for taxable year 2008 on the following dates:

PERIOD COVERED	**DATE FILED**	**AMOUNT**
First Quarter	November 27, 2009	₱41,205,066.62
Second Quarter	November 27, 2009	₱57,555,921.06
Third Quarter	May 24, 2010	₱45,406,194.01
Fourth Quarter	May 24, 2010	₱43,387,589.00

On March 30, 2010 and September 29, 2010, petitioner filed separate Petitions for Review respectively docketed as CTA Case Nos. 8056 and 8163, alleging respondent's inaction in her level.

On May 31, 2010, respondent in her Answer in CTA Case No. 8056 moved to dismiss the case citing the following special and affirmative defenses, viz, petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱98,760,987.68, allegedly representing unutilized input VAT on purchase/importations of VATable goods and services attributable to its zero-rated sales for the 1st and 2nd quarters of taxable year 2008 were not properly and fully substantiated; the sales of goods and services to various alleged clients/affiliates do not qualify for VAT zero-rating; the amount subject of the claim for refund do not pertain in full to its input VAT attributable to its zero-rated sales for the 1st and 2nd quarters of taxable year 2008; petitioner failed to exhaust administrative remedies for failure to comply with the legal requirements under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997; and a claim for refund being in the nature of tax exemption is strictly construed against the claimant, hence, looked upon with disfavor.

On November 19, 2010, respondent filed her Answer in CTA Case No. 8163 invoking Section 23 of Republic Act (RA) No. 7916 which states that an enterprise registered with Philippine Economic Zone Authority (PEZA) has the option to choose between two sets of fiscal incentives. The first, provided for under Presidential Decree (PD) No. 66, as amended, and Section 24 of RA 7916 which include the 5% preferential tax on gross income earned in lieu of national and local taxes, and the second, those under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if the option chosen is the income tax holiday, the ecozone enterprise is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the VAT. Thus, if petitioner's PEZA-registered enterprises clients availed of the income tax holiday under Executive Order No. 226, petitioner's sales of goods, property and services to them shall be subject to 12% VAT.

Further, in an action for tax refund/credit, petitioner has the burden of establishing by sufficient evidence his entitlement to refund and failure to discharge this burden is fatal to his cause. Petitioner must prove that compliance with the requirements under Section 112 (A) and (C) of the NIRC of 1997, as amended, as well as Revenue Regulations (RR) No. 5-87, as amended by RR Nos. 3-88 and 7-95.

Lastly, claims for refund are strictly construed against the claimant for it partake the nature of exemption from taxation, thus, looked upon with disfavor.

On July 20, 2010, the parties filed their *Joint Stipulation of Facts and Issues* which was approved on July 26, 2010.

On January 4, 2011, at the instance of petitioner, CTA Case Nos. 8056 and 8163 were consolidated.

On April 6, 2011, the parties submitted their *Consolidated Joint Stipulation of Facts and Issues* which was approved on April 19, 2011.

To substantiate its allegations, petitioner presented (1) its Accounting Manager Irma V. Leong, (2) its Tax Specialist Dennis M. Odra, and (3) the Court Commissioned Independent Certified Public Accountant (ICPA) Enrico T. Pizarro.

Witness Irma V. Leong testified, by way of Judicial Affidavit, that as petitioner's Accounting Manager, she reviews petitioner's financial position and compliance with the generally accepted accounting standards. She also reviews and is in custody of petitioner's tax returns filed with the BIR.

Petitioner, according to her, is principally engaged in the business of acquiring, assembling, installing, constructing, equipping, repairing, remodeling, maintaining, developing, operating, holding, owning, leasing, and otherwise dealing with oil terminals and service station networks; to develop and operate a wholesale distribution network and carry out the purchase, acquisition, including importation, if appropriate, storage, marketing, distribution, transport, use, wholesale, exportation, refinement, treatment, distillation and manufacture of, and generally deal in, Fuel Oils, Gas Oils, Gasolines, Lubricants and, subject to market conditions, Bitumens, Solvents and Kerosenes and, subject to the written agreement of the stockholders, any and all kinds of oil and oil products, such as Jet Fuel and liquefied petroleum gas. It is also a VAT-registered entity as evidenced by BIR Certificate of Registration No. OCN 8RC0000019580 and was assigned with Taxpayer's Identification Number (TIN) 005-145-964-000.

On November 27, 2009, petitioner filed an administrative claim for refund of unutilized input taxes for the 1st and 2nd quarters of taxable year 2008 in the amounts of ₱41,205,066.62 and ₱57,555,921.06, respectively, with the Large Tax Audit and Investigation Division II of the BIR. ge

Witness **Dennis M. Odra** elaborated the foregoing testimony in his Judicial Affidavit. He declared that as petitioner's Tax Specialist, he prepared and reviewed petitioner's compliance with the tax rules and regulations. However, he had no participation in the preparation of documents and VAT returns pertaining to petitioner's administrative claims for refund as he was not yet under its employ when the taxable event for 2008 occurred. He added that as a custodian [of] petitioner's tax returns filed with the BIR, he had access to the Filing Payment Step. In view thereof, he was able to ascertain, after comparison, that the documents supporting petitioner's claim for refund were accurate print-outs of the documents already posted.

On November 27, 2009, petitioner filed its administrative claims for refund of unutilized input taxes for the 1st and 2nd quarters of taxable year 2008 in the respective amounts of ₱41,205,066.62 and ₱57,555,921.06. On May 24, 2010, similar claims for refund for the 3rd and 4th quarters of the same year were filed in the amounts of ₱45,406,194.01 and ₱43,287,589.00, respectively, or a total claim of ₱187,554,770.69.

The excess and unutilized input VAT was incurred from petitioner's domestic purchases and importation of taxable goods and services which were attributable to its zero-rated sales and not utilized or applied against its output VAT liabilities.

He added that petitioner's amended 2006 fourth quarter VAT return showed a substantial 'Input Tax Carried Over from Previous Quarter/Excess Over 70% of Output VAT' in the amount of ₱411,598,506.73, which was the excess of the input tax over the output tax in the third quarter of 2006, including the 30% of the output VAT required to be paid based on the existing rules at that time.

He explained that the amount carried forward to the 2006 fourth quarter VAT return of ₱411,598,506.73 was composed of the actual excess of the creditable input tax of ₱973,424,046.57 over the output tax of ₱802,607,914.06, or ₱170,816,132.51, plus the VAT payable of ₱240,782,374.22, which was paid in installments in the total amount of ₱236,407,695.07 after deducting the VAT withheld on sales to government of ₱186,034.11 and other tax credit of

> ₱4,188,645.04. Further, the zero-rated transactions refer to petitioner's sale to PEZA registered enterprise in Subic.
>
> ICPA **Enrico T. Pizarro**, also executed a Judicial Affidavit, stating that based on his examination and validation of petitioner's pertinent documents, the allowable input tax refund attributable to zero-rated sales is ₱188,943,682.91.
>
> After petitioner rested its case, respondent moved to file a memorandum without presentation of any evidence. However, despite opportunity granted by the Court, respondent did not file any."[2]

On January 28, 2014, the Court in Division rendered its Decision denying Total's consolidated Petitions for Review for lack of merit.

On February 13, 2014, Total filed a Motion for Reconsideration/New Trial, followed by a Supplemental Motion for Reconsideration/New Trial filed on March 14, 2014, both praying for the reconsideration by the Court in Division of its Decision dated January 28, 2014 and granting of a new trial for the presentation of supporting documents. On March 6, 2014, CIR filed her Opposition.

On May 26, 2014, the Court in Division granted Total's motion to reopen the case for the presentation of additional documents and held in abeyance the resolution of its Motion for Reconsideration.

Thereafter, on December 19, 2014, the Court in Division promulgated the assailed Amended Decision partially granting Total's Motion for Reconsideration. In the assailed Amended Decision, the Court in Division ordered the CIR to refund or issue a tax credit certificate in favor of Total in the reduced amount of ₱16,117,727.89, representing the latter's excess unutilized input value-added tax (VAT) attributable to Total's zero-rated sales for the year 2008.

On January 22, 2015, CIR filed her Motion for Partial Reconsideration of the assailed Amended Decision which the Court in Division denied in the assailed Resolution.

On January 21, 2015, Total filed its Petition for Review before the Court *En Banc* while the CIR filed her Petition for Review on April 14, 2015.

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[2] CTA EB No. 1264 Docket, pp. 64-78. (Citations omitted.)

THE ISSUES

In CTA EB No. 1264, Total raised the following errors, to wit:

"A. The Third Division of the Honorable Court erred in ruling that the grant of refund or tax credit certificate representing input VAT attributable to zero-rated sales must be made only when the output tax does not exceed the input tax for the period in question.

B. The Third Division of the Honorable Court erred when it held that Petitioner did not present VAT invoices and official receipts to prove its input tax carry-over from previous years 2006 and 2007, and thus should not be credited against its output tax for the year 2008.

C. The Third Division of the Honorable Court erred in ruling that Petitioner's sales in 2008 to Nidec Subic Philippines Corporation in the amount of P566,328.00 and to Subic Shipyard and Engineering Inc. in the amount of P42,670.00 should be denied VAT zero-rating.

D. The Third Division of the Honorable Court erred when it ruled that Petitioner is only entitled to a refund or issuance of a tax credit certificate in the reduced amount of SIXTEEN MILLION ONE HUNDRED SEVENTEEN THOUSAND SEVEN HUNDRED TWENTY SEVEN AND 89/100 PESOS (P16,117,727.89) representing excess unutilized input VAT attributable to Petitioner's zero-rated sales for the year 2008."

On the other hand, in CTA EB No. 1295, the CIR assails the Amended Decision based on the sole issue, stated as follows:

"WHETHER OR NOT THE THIRD DIVISION ERRED IN PARTIALLY GRANTING RESPONDENT'S CLAIM FOR REFUND IN THE AMOUNT OF P16,117,727.89 ALLEGEDLY REPRESENTING ITS EXCESS UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE YEAR 2008."

THE COURT *EN BANC*'S RULING

CTA EB No. 1264

Refund of input VAT is only proper when the input VAT attributable to zero-rated sales exceeds output VAT.

Total maintains that it is entitled to refund of input taxes related to its VAT zero-rated sales to the extent that such input taxes have not been applied against output tax.[3] Total argues that Section 112 (A) of the National Internal Revenue Code of 1997, as amended (1997 NIRC) does not require a taxpayer to apply all of its input taxes, specially its input taxes attributable to zero-rated sales, against its output taxes.[4] According to Total, whether a taxpayer has output taxes, lesser or higher than the input taxes, all the input taxes related to zero-rated sales may be the subject of a refund.[5]

Total's argument deserves scant consideration.

As clearly explained in the assailed Amended Decision, Section 112 of the 1997 NIRC must be read and applied in conjunction with the other provisions of the VAT law, particularly Section 110 (B) thereof which provides:

> "SECTION 110. *Tax Credits.* —
>
> xxx xxx xxx
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

It is evident from the foregoing that when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter/s. But

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[3] *Ibid.*, p. 9.
[4] *Id.*, p. 10.
[5] *Id.*

when input tax attributable to zero-rated sales exceeds the output tax, the excess input tax may be refunded or credited against other internal revenue taxes. Hence, for input tax attributable to zero-rated sales, it is only when input tax exceeds the output tax that a refund or credit is proper.

We quote with approval the pertinent disquisition made by the Court in Division on the matter, to wit:

> "While it may be true that Section 112(A) suggests that input VAT, which is attributable to zero-rated sales and 'to the extent that such input tax has not been applied against the output tax', may be applied, without any further requirement, for the issuance of a tax credit certificate or refund, the said provision should be read or applied in conjunction with other provisions of the VAT law.
>
> Thus, the aforequoted Section 112 must be read with Section 110(B) of the same Code, which states, thus:
>
> > 'SECTION 110. *Tax Credits.* —
> >
> > xxx xxx xxx
> >
> > (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That **any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112**.' *(Boldfacing supplied)*
>
> Evident from the proviso of the foregoing Section 110 (B) that the refund or credit of 'any input tax attributable to zero-rated sales by a VAT-registered person' is 'subject to the provisions of Section 112.' In other words, the provision on such refund or credit is not confined to paragraph (A), but to the whole provision of Section 112.
>
> The term 'in proper cases' under Section 112(C) qualifies the granting of refund under Section 112(A). Thus, it is not only when the input VAT is attributable to zero-rated sales and the

> same has not been applied against the output VAT that the grant of refund or tax credit may be made; it must likewise be 'proper' or appropriate under the circumstances.
>
> The first sentence of the aforequoted Section 110(B) is plain that 'if at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person.' Thus, it would be improper or inappropriate, if not irregular, to grant a refund of, or issue a tax credit certificate for input VAT in favor of a taxpayer-claimant where there are still unpaid output VAT."

We are of the view that the foregoing interpretation, *i.e.*, that the input tax attributable to zero-rated sales must be proven to be "excess and unutilized" before it may be considered a proper subject of refund or credit, is fully in consonance with the "tax credit method", the method of computing VAT from which our present VAT law has been drawn. The Supreme Court in *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*,[6] aptly explained the tax credit method as follows:

> The law that originally imposed the VAT in the country, as well as the subsequent amendments of that law, has been drawn from the *tax credit method.* Such method adopted the mechanics and self-enforcement features of the VAT as first implemented and practiced in Europe and subsequently adopted in New Zealand and Canada. Under the present method that relies on invoices, an entity can credit against or subtract from the VAT charged on its sales or outputs the VAT paid on its purchases, inputs and imports.
>
> If at the end of a taxable quarter the output taxes charged by a seller are equal to the input taxes passed on by the suppliers, no payment is required. It is when the output taxes exceed the input taxes that the excess has to be paid. If, however, the input taxes exceed the output taxes, the excess shall be carried over to the succeeding quarter or quarters. **Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer or credited against other internal revenue taxes.** *(Emphasis supplied)*

Based on the foregoing, this Court reiterates that it is required under the law that the input tax attributable to zero-rated sales must be proven to

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[6] G.R. No. 153866, February 11, 2005, 451 SCRA 132.

be "excess and unutilized" before it may be considered a proper subject of refund or tax credit.

No input taxes can be carried over from previous years.

Total contends that the input tax carried over from the previous quarter had been validated by the independent certified public accountant (CPA) Enrico Pizarro as explained in his Judicial Affidavit dated February 21, 2012[7] as well as in his report.[8]

While it is true that Total submitted supporting documents in relation to its claim for refund of its input taxes for the year 2007, the Court, in its decision on the case of *Total (Philippines) Corporation v. Commissioner of Internal Revenue*,[9] found that of the total ₱2,794,093,313.26 input taxes incurred for the subject year, only ₱2,571,801,573.54 is properly substantiated, computed as follows:[10]

Total claimed input tax	₱ 2,794,093,313.26
Less: Disallowances	
Not examined by ICPA	₱ 1,554,406.72
Per ICPA's report	120,463,210.92
Per this Court's further verification	100,274,122.08
Total disallowances	₱ 222,291,739.72
Properly substantiated input tax	**₱ 2,571,801,573.54**

Further, the Court found that the total output tax for the year 2007 exceeds the total substantiated input tax, thus:[11]

Output tax	₱ 2,914,509,295.82
Properly substantiated input tax	2,571,801,573.54
Output tax still due	**₱ 342,707,722.28**

In fine, Total's claim for refund for the year 2007 was denied because its properly substantiated input taxes are not enough to cover its output taxes for the same year and there is no excess input VAT which may be the subject of a claim for refund. ൻ

[7] Exhibit "KKKK", CTA Case No. 8056 Docket Vol. II, pp. 615-641.
[8] Exhibit "LLLL".
[9] CTA Case Nos. 7898, 7980 & 8008, July 24, 2013.
[10] Exhibit "HHHHH", CTA Case Nos. 8056 Docket Vol. 3 p. 1599.
[11] *Ibid.*, p. 1600.

Consequently, there can be no excess input taxes to be carried over to the succeeding taxable period. Even though Total has reported input taxes carried over from the previous taxable period of ₱205,081,910.96 in its Quarterly VAT Returns, the same cannot be creditable against its output taxes for the taxable year 2008.

Total failed to prove that its sales were zero-rated sales.

Contrary to the Court in Division's findings, Total argues that the documents it submitted pertaining to its customers show that these entities were duly registered with Philippine Economic Zone Authority (PEZA)/ Clark Development Corporation (CDC)/ Board of Investments (BOI) for the period covered by the present claim.[12] Additionally, Total avers that there is no requirement that entities registered with PEZA, CDC, BOI or SBMA should secure from the said agencies certification of their entitlement to the benefits or incentives to cover a very specific period.[13] Accordingly, failure to present a certification for a specific period does not divest the locator of its entitlement to the incentives, such as the VAT zero-rating of its purchases.[14] According to Total, it is the registration and location in a Freeport or economic zone that entitles it to the VAT zero-rating of its purchases.[15]

We are not persuaded.

We agree with the Court in Division in finding that the audited financial statements submitted by Total failed to specifically state the effectivity period of registration of the said entities with SBMA. The determination of effectivity period of the registration is required since this will aid the court to ascertain whether or not the sales for taxable year 2008 were made to duly registered ecozone entities. Absent any proof of the required period of coverage, there is no way for the court to determine if the said registration covers the taxable year involved. This Court cannot simply presume that the sales to these entities subject of the present claim fall within the covered period of these entities' registration without any solid basis therefor.

Total is entitled to a refund or issuance of a tax credit certificate in ℋ

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[12] CTA EB No. 1264 Docket, p. 18.
[13] *Ibid.*, p. 19.
[14] *Id.*
[15] *Id.*

the adjusted amount of ₱18,403,837.32.

Total asserts that it is entitled to a refund or issuance of a tax credit certificate in the total amount of ₱187,554,770.69.[16] A review of the assailed Amended Decision granting Total the reduced amount reveals that the adjustment arose from the disallowances from its zero-rated sales and input taxes from importation.

However, Total simply rehashed its arguments and enumerated the input taxes on importation for the year 2008 that has been considered and found valid by the Court in the assailed Amended Decision.

With regard to the input taxes on importation, Total incurred the amount of ₱2,083,964,047.62 for the taxable year 2008; however, the Court found that only ₱2,046,807,613.04 was properly substantiated, detailed as follows:[17]

IEIRD	Exhibit No.	BOC/Bank Official Receipt	Exhibit No.	Input Tax
86050142	BBBBB-1			₱ 234,152.00
86050115	BBBBB-2			168,706.00
86050081	BBBBB-3			234,148.00
86050097	BBBBB-4			249,140.00
92947531	BBBBB-5			425,450.00
91697663	BBBBB-6			405,584.00
92402737	BBBBB-7			609,856.00
92402746	BBBBB-8			759,346.00
92402755	BBBBB-9			403,511.00
89776057	BBBBB-10			281,443.00
91330364	BBBBB-11			332,389.00
88424917	BBBBB-12			140,769.00
88424892	BBBBB-13			118,517.00
88458876	BBBBB-14			126,216.00
87873737	BBBBB-15			547,540.00
87873694	BBBBB-16			394,321.00
87873773	BBBBB-17			256,639.00
89323516	BBBBB-18			261,719.00
88458982	BBBBB-19			277,146.00
89323613	BBBBB-20			413,812.00
90826601	BBBBB-21.1 & 21.2			129,535.00
79484036	CCCCC-1, CCCCC-2	Security Bank Corp. 000321		46,402,092.00

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[16] *Id.*, p. 20.
[17] Annex B of the Petition for Review, CTA EB No. 1264 Docket, pp. 73-76.

88893892	DDDDD-1, DDDDD-2	Security Bank Corp. 0008170		6,644,628.20
90937996 & 90938005	FFFF-1.127 & FFFF-1.62	147231472	FFFF-1.134	46,327,531.30
90228241	FFFF-1.143	147229591	FFFF-1.136	19,590,671.85
88057252	FFFF-1.141	150475105	FFFF-1.139	21,970,139.54
88057252	FFFF-1.141	151798035	FFFF-1.140	10,352,870.00
86341446	FFFF-1.142	148894532	FFFF-1.144	6,176,415.93
86341446	FFFF-1.142	149755505	FFFF-1.145	2,945,617.00
86341534	FFFF-1.152	148886324	FFFF-1.149	4,532,217.00
85446444	FFFF-1.151	148862244	FFFF-1.150	13,836,905.00
86341525	FFFF-1.160	148886333	FFFF-1.158	13,334,985.00
90938023 & 90938084	FFFF-1.163 & FFFF-1.177	147229887	FFFF-1.161	34,083,313.08
90937953	FFFF-1.159	147232303	FFFF-1.162	10,049,940.00
87511706	FFFF-1.167	149768315	FFFF-1.164	7,028,987.00
87511706	FFFF-1.167	149757526	FFFF-1.165	14,332,061.59
90938093, 90938102, 90938084	FFFF-1.226, FFFF-1.221 & FFFF-1.177	147229424	FFFF-1.166	61,240,089.98
149757526	FFFF-1.143	149757526	FFFF-1.169	6,092,413.76
149768324	FFFF-1.143	149768324	FFFF-1.170	3,295,881.84
151787955	FFFF-1.143	151787955	FFFF-1.176	7,066,922.29
151800801	FFFF-1.143	151800801	FFFF-1.178	3,394,921.81
151800792	FFFF-1.143	151800792	FFFF-1.181	6,195,053.00
148862253	FFFF-1.143	148862253	FFFF-1.182	6,408,487.00
147229564	FFFF-1.143	147229564	FFFF-1.186	7,579,235.56
151787946	FFFF-1.143	151787946	FFFF-1.187	15,525,126.91
152364511	FFFF-1.143	152364511	FFFF-1.188	11,666,157.23
150454306	FFFF-1.143	150454306	FFFF-1.189	10,769,382.44
150456205	FFFF-1.143	150456205	FFFF-1.190	5,772,737.00
148886315	FFFF-1.143	148886315	FFFF-1.203	19,725,340.45
152371563	FFFF-1.143	152371563	FFFF-1.204	1,471,345.88
148898574	FFFF-1.143	148898574	FFFF-1.205	8,200,740.00
148867117	FFFF-1.143	148867117	FFFF-1.207	15,836,380.00
148894523	FFFF-1.143	148894523	FFFF-1.208	13,081,612.15
149755496	FFFF-1.143	149755496	FFFF-1.209	5,617,013.00
150454297	FFFF-1.143	150454297	FFFF-1.215	4,552,461.95
150456214	FFFF-1.143	150456214	FFFF-1.216	3,558,326.16
149768543	FFFF-1.143	149768543	FFFF-1.217	1,540,196.50
150443535	FFFF-1.143	150443535	FFFF-1.218	27,716,748.90
150443526	FFFF-1.143	150443526	FFFF-1.219	7,806,074.00
147628862	FFFF-1.143	147628862	FFFF-1.220	3,383,920.00
	EEEEE-1 EEEEE-2	147617312	FFFF-1.1	11,738,155.00
	EEEEE-1 EEEEE-2	85446295	FFFF-1.94	18,096,018.00
87511821	FFFF-1.63	149747543	FFFFF-1	48,950,434.50
88057304	FFFF-1.124	149776085	FFFFF-2	26,357,007.30
88893883	FFFF-1.126	151791403	FFFFF-3	28,149,045.41
88057295	FFFF-1.128	148774256	FFFFF-4	42,014,419.21
90228257	FFFF-1.137	153703085	FFFFF-5	36,507,642.89
88057252	FFFF-1.141	150452565	FFFFF-6	64,260,334.40

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90228241	FFFF-1.143	153703076	FFFFF-7	61,105,848.64
88893917	FFFF-1.53	151787937, 151908567	FFFFF-8.1 & FFFFF-8.2	105,041,313.79
90228205	FFFF-1.57	152392791, 153718686	FFFFF-9.1 & FFFFF-9.2	125,189,255.24
90938023	FFFF-1.163	147231147	FFFFF-10	16,752,167.61
86341525	FFFF-1.177	148886333	FFFFF-11	21,577,205.00
90938084	FFFF-1.177	147231131	FFFFF-12	26,486,261.63
88057207	FFFF-1.179	151303862	FFFFF-13	42,217,716.86
88057216	FFFF-1.214	151303871	FFFFF-14	6,416,935.95
90938102	FFFF-1.226	147230587	FFFFF-15	8,278,172.00
86341525	FFFF-1.160	147649871	FFFFF-16	32,630,390.48
90937996	FFFF-1.127	147231621	FFFFF-18	29,973,010.29
93003337	FFFF-1.49	147232321, 147232312, 147233597	FFFFF-20.1 to FFFFF-20.3	42,831,565.01
93682102	FFFF-1.54	147235121	FFFFF-21	31,355,991.96
93003346	FFFF-1.160	147232337, 147233606, 147232321	FFFFF-22.1, FFFFF-22.2	30,638,476.50
90938005	FFFF-1.162	147232312	FFFFF-20.2	16,310,941.00
88743916	FFFF-1.195	153137783, 152369332, 153137756	FFFFF-25.1 to FFFFF-25.3	43,[4]26,010.92[18]
88893777	FFFF-1.196	152357615, 153127747, 152379342	FFFFF-26.1 to FFFFF-26.3	115,137,919.63
88743907	FFFF-1.197	153137774, 152369341, 153137765	FFFFF-27.1 to FFFFF-27.3	77,766,312.20
85446356	FFFF-1.55	147190312, 148862262	FFFFF-28.1 to FFFFF-28.2	74,620,176.25
87511715	FFFF-1.171	148890271	FFFFF-29	23,838,085.91
86341613	FFFF-1.125	148156355	FFFFF-30	48,359,241.30
85446435	FFFF-1.183	148156373	FFFFF-31	24,535,523.35
86341534	FFFF-1.152	147649887	FFFFF-32	24,123,448.54
85446444	FFFF-1.151	148156364	FFFFF-33	33,279,441.66
87511706	FFFF-1.167	148890262	FFFFF-35	32,159,497.92
86341507	FFFF-1.206	149003093	FFFFF-36	47,873,828.40
86341437	FFFF-1.210	148882657	FFFFF-37	32,159,497.92
86341446	FFFF-1.142	148882632	FFFFF-38.1	23,838,085.91
		147235584, 147234525	GGGGG-1, GGGGG-2	18,497,873.25
		147234525, 147235575	GGGGG-2, GGGGG-3	32,439,479.91
	TOTAL			**₱ 2,046,[8]07,613.04**

[18] Breakdown is as follows:

Exhibit	BC Form No.	Input Tax
FFFFF-25.1	153137783	₱ 6,535,987.64
FFFFF-25.2	152369332	33,394,850.12
FFFFF-25.3	153137756	3,495,173.16
TOTAL		**₱ 43,426,010.92**

It is found that the properly substantiated input taxes on importation should be ₱2,046,807,613.04, instead of ₱2,046,707,613.04 per the assailed Amended Decision. The difference of ₱100,000.00 is due to a typographical error. Thus, the total disallowance amounts to ₱37,156,434.58 only.

The disallowed amount of ₱37,156,434.58 consists of the following input taxes on importation which are supported by Import Entry and Internal Revenue Declarations (IEIRD) without validation:

Exhibit	Supplier's Name	Input Tax	Disallowed
a) FFFF-1.47	TOTSA	₱ 19,545,093.25	
GGGGG-1 & GGGGG-2	Less: BOC Form 38-A (Supplemental FOE)	18,497,873.25	₱ 1,047,220.00
b) FFFF-1.159	TOTSA		36,109,214.58
TOTAL			**₱ 37,156,434.58**

Total explained that the amount of ₱19,545,093.25 for IEIRD No. 93682242[19] must only be ₱18,497,873.25, the difference of ₱1,047,220.00 being due to recording error. The input tax of ₱18,497,873.25 is supported by BC Form No. 38-A, as shown hereafter:

Exhibit	BC Form No.	Input Tax
GGGGG-1, *CTA Case No. 8056 Docket, Vol. II, p. 1095*	147235584	₱ 10,497,873.25
GGGGG-2, *CTA Case No. 8056 Docket, Vol. II, p. 1099*	147234525	8,000,000.00
	TOTAL	**₱ 18,497,873.25**

Hence, the Court is correct in disallowing the discrepancy as it is clear that the same is indeed unsupported. However, the disallowance is only for the lesser amount of ₱1,047,220.00 since, as shown above, the amount of ₱18,497,873.25 was duly substantiated.

[19] Exhibit FFFF-1.47, CTA Case No. 8056 Docket Vol. II, p. 1094.

Regarding the disallowed input tax in the amount of ₱36,109,214.58, Total failed to submit additional evidence to refute the disallowance.

It bears stressing that statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to VAT are in the nature of such exemptions.[20]

Total likewise admitted that it made another error in recording input tax on importation with IEIRD No. 93682233[21] amounting to ₱32,439,479.91 which should allegedly be ₱34,637,185.43, as shown below:

Exhibit	**BC Form No.**	**Input Tax**	
"FFFF-1.48"			₱ 32,439,479.91
GGGGG-3, *CTA Case No. 8056 Docket, Vol. II, p. 1098*	147235575	₱ 15,181,165.10	
GGGGG-2, *CTA Case No. 8056 Docket, Vol. II, p. 1099*	147234525	19,456,020.33	34,637,185.43
Difference			**₱(2,197,705.52)**

With respect to the examination of Total's input taxes paid or incurred, the Court-commissioned CPA reported that the claimed input taxes of ₱187,863,780.00 were shown in its amended VAT returns for the year 2008 as part of "Allowable Input Tax" amounting to ₱3,294,247,648.61, which excludes input taxes on purchase of capital goods.[22] The total allowable input tax is broken down as follows:

Period Covered/Purchases	**Available Input Tax**	**Exhibit Reference**
Goods	₱ 121,807,985.49	
Services	35,212,150.59	
Importation	657,456,546.49	
1st Quarter	**₱ 814,476,682.57**	QQQ
Goods	₱ 122,487,612.64	
Services	27,765,595.91	
Importation	1,003,128,462.84	
2nd Quarter	**₱ 1,153,381,671.39**	TTT
Goods	₱ 89,034,655.38	
Services	31,467,189.41	

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[20] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010, 612 SCRA 28.
[21] Exhibit "FFFF-1.48".
[22] Exhibit "J^4", p. 10.

Importation	691,574,534.81	
3rd Quarter	**₱ 812,076,379.60**	WWW
Goods	₱ 67,673,816.07	
Services	26,208,945.36	
Importation	420,430,153.62	
4th Quarter	**₱ 514,312,915.05**	ZZZ
Total for the taxable year	**₱ 3,294,247,648.61**	

A scrutiny of Total's summary lists of input taxes from local purchases and importation[23] supporting the foregoing VAT returns declaration, particularly the Summary List of Importation for the fourth quarter of taxable year 2008, [24] shows the following recorded input taxes for the pertinent IEIRDs:

IEIRD No.	Input Tax per Summary List[25]	Input Tax per List of Importation with no exception[26]	Input Tax per List of Importation with no exception
93682233	₱ 19,456,020.33		
	611,293.00		
	₱ 20,067,313.33	₱ 32,439,479.91	₱ 12,372,166.58
93682242	₱ 15,617,092.10		
	10,497,873.25		
	8,000,000.00		
	₱ 34,114,965.35	₱ 19,545,093.25	(14,569,872.10)
TOTAL	**₱ 54,182,278.68**	**₱ 51,984,573.16**	**₱ (2,197,705.52)**

As shown above, the input tax of ₱2,197,705.52 has been declared in Total's quarterly VAT returns and was included in the computation of its claim for refund. Considering that the same is properly supported by BC Form No. 38-A,[27] Total is entitled to a refund of the same.

CTA EB No. 1295

There is no need for Total to submit all of the supporting documents required under Revenue

[23] Exhibits "AAAA-2","AAAA-3","BBBB-2","BBBB-3","CCCC-2", "CCCC-3","DDDD-2" and "DDDD-3", inclusive of sub-markings.
[24] Exhibit "DDDD-3".
[25] *Ibid.*
[26] Exhibit "FFFF-1".
[27] Exhibits "GGGGG-2" and "GGGGG-3".

Memorandum Order (RMO) No. 53-98.

In her Petition, the CIR invokes RMO No. 53-98 which allegedly requires the submission of all supporting and relevant documents to warrant the grant of the application for refund. According to CIR, Total merely alleged in its petition for review that it attached to its administrative claim for refund the relevant documents required by laws and pertinent regulations, instead of submitting all the required documents under RMO No. 53-98.[28] The CIR also posits that this Court cannot exercise jurisdiction over the instant case because no valid administrative claim for refund was filed on account of Total's alleged failure to submit the required supporting documents.

CIR's position is devoid of merit.

There is no need for Total to submit all the supporting documents required under RMO No. 53-98. Any question as to the foregoing has been laid to rest by the Supreme Court in *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*,[29] wherein it instructively held that:

> "The CIR's reliance on RMO 53-98 is misplaced. **There is nothing in Section 112 of the NIRC**, RR 3-88 **or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT**. The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities xxx.' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'" *(Emphasis supplied)*

Furthermore, it is well-settled that in claims for VAT refund, the non-submission of complete supporting documents in the administrative level is not fatal to Total's judicial claim. This Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevance, probative value and weight of evidence presented therein become subject to the relevant provisions of the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the

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[28] CTA EB No. 1295 Docket, p. 4.
[29] G.R. No. 205055, July 18, 2014, 730 SCRA 242, 255.

granting of a claim for refund lies within the sound discretion and judgment of the Court.[30]

Total presented proof that it did not file any other claim for refund covering the same period.

CIR likewise avers that Total failed to prove that no other claim for refund [covering the same period] has been filed [by Total] with the BOI, Department of Finance (DOF), [or] Special Economic Zones/Freeport Zones since Total failed to present any certification to that effect from the aforesaid agencies, either at the administrative stage or during the presentation of its evidence.[31] Accordingly, the application for refund allegedly must be denied.

A careful examination of the case records reveals that Total, indeed, failed to submit any certification issued by the BOI, DOF, or Special Economic Zones/Freeport Zones to prove that no other claim for refund covering the same period has been filed by Total. Nevertheless, the Certification/Verification attached to Total's Petition for Review[32] before the Court in Division contains a pronouncement that it has not commenced any other action or proceeding involving the same issues in the Supreme Court, or in any other court, tribunal or agency other than the administrative claim for refund filed with the Bureau of Internal Revenue. This, to the Court's view, constitutes sufficient compliance with the above stated certification requirement.

WHEREFORE, premises considered, the Petition for Review filed by Total (Philippines) Corporation docketed as CTA EB No. 1264 is hereby **PARTIALLY GRANTED**. The Amended Decision dated December 19, 2014 promulgated by the Third Division of this Court in CTA Case Nos. 8056 and 8163 is hereby **MODIFIED** ordering the Commissioner of Internal Revenue to refund or issue a tax credit certificate in favor of Total (Philippines) Corporation in the adjusted amount of **EIGHTEEN MILLION FOUR HUNDRED THREE THOUSAND EIGHT HUNDRED THIRTY SEVEN AND 32/100 PESOS (₱18,403,837.32),** representing the latter's excess and unutilized input taxes attributable to its zero-rated sales for the year 2008, computed as follows:

Excess Input VAT:		
Per Assailed Amended Decision		₱16,199,483.63
Add: Discrepancy due to typographical error	₱ 100,000.00	

[30] *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 474, September 1, 2009; *Commissioner of Internal Revenue vs. Toledo Power Company*, CTA EB No. 589, September 15, 2010; *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 657, April 4, 2012.
[31] CTA EB No. 1295 Docket, p. 4.
[32] CTA Case No. 8056 Docket Vol. I, p. 11; CTA Case No. 8163 Docket, p. 11.

Discrepancy due to recording error	2,197,705.52	2,297,705.52
Total		₱18,497,189.15
% of Valid Zero-rated Sales to Total Declared Zero-rated Sales		x 99.4953188%
Refundable Excess Input VAT Attributable to Valid Zero-rated Sales		**₱18,403,837.32**

On the other hand, the Petition for Review filed by the Commissioner of Internal Revenue docketed as CTA EB No. 1295 is hereby **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice