REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

GST PHILIPPINES, INC.,
Respondent.

EB No. 361
(CTA Case No. 7016)

Present:
ACOSTA, *PJ.*
CASTAÑEDA JR.,
BAUTISTA
UY,
CASANOVA, and
PALANCE-ENRIQUEZ, JJ.

Promulgated:
OCT 0 7 2008 Apolinario 1:30 p.m.

x - x

DECISION

CASANOVA, J:

This is an appeal, by way of a Petition for Review[1], filed by the Petitioner-Commissioner of Internal Revenue (CIR) from the Decision[2] (Assailed Decision) of the Court of Tax Appeals, Second Division (CTA Second Division) dated September 7, 2007 in CTA Case No. 7016 entitled, GST Philippines, Inc. vs. Commissioner of Internal Revenue, ordering petitioner to refund or issue a tax credit certificate in the reduced amount of P6,509,440.53 representing unutilized excess input VAT attributable to its zero-rated sales to BOI and PEZA entities for

[1] CTA En Banc Rollo, pp. 6-20
[2] CTA En Banc Rollo, pp. 22-47

the first to the third quarters of the taxable year 2003 and from the Resolution[3] (Assailed Resolution) dated January 23, 2008, denying petitioner's Motion for Reconsideration.

The facts of the case, as culled from the records, are as follows:

> "Petitioner[4] is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office located at the 2/F, ALPAPI Bldg., 140 L. P. Leviste Street, Salcedo Village, Makati City[5]. It is organized to principally engage in the business of manufacturing, processing, selling and dealing in all kings of iron, steel or other metals, and all or any products or articles consisting or partly consisting of iron, steel or other metals, such as but not limited to grinding balls, rods, structural steel, any and all kinds of industrial machineries and equipment and any and all processes and products and any and all other analogous or related objects[6].
>
> Respondent[7], on the other hand, is empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credit of overpaid internal revenue taxes as provided by law, with office at the Bureau of Internal Revenue (BIR), National Office Bldg., Diliman, Quezon City[8].
>
> Petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer in accordance with the requirements of Section 107 of the 1985 Tax Code [now Section 236 of the National Internal Revenue Code of 1997, as amended], with BIR Certificate of Registration bearing RDO Control No. 94-500-000023-V and Taxpayer Identification No. (TIN) 000-155-645-000[9].
>
> Petitioner's Amended Quarterly VAT Return for the second quarter of 2002 and its Quarterly VAT Returns for the third and fourth quarter of 2002 were filed through Electronic Filing and Payment System ("EFPS") on February 12, 2003, October 24, 2002 and January 21, 2003, respectively, showing, among others the following:

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[3] CTA En Banc Rollo, pp. 48-52
[4] Respondent herein
[5] Par. 1, Joint Stipulation of Facts an d Issues (JSFI), docket, p. 164
[6] Par. 8, JSFI, docket, pp. 164 and 165
[7] Petitioner herein
[8] Par. 2, JSFI, *Ibid.*
[9] Par. 9, JSFI, *Ibid.*

	2nd Quarter-Amended (Exhibit D)	3rd Quarter (Exhibit E)	4th Quarter (Exhibit F)
Taxable Sales	P 4,423,424.20	P 4,058,466.51	P 562,398.50
Zero Rated Sales	30,409,953.69	33,675,372.68	40,753,398.56
Total Sales	P34,833,377.89	P 37,733,839.19	P 41,315,797.06
Output Tax	P 442,342.42	P 405,846.65	P 56,239.85
Less: Input Tax			
Carried Over from Previous Quarter	P 7,192,026.29		
Domestic Purchases-Goods/Services	4,140,039.61	P 1,106,914.43	P 285,459.89
Total Available Input Tax	P11,332,065.90	P 1,106,914.43	P 285,459.89
Less: Any VAT Refund/TCC Claimed	7,192,026.29	-	-
Net Creditable Input Tax	P 4,140,039.61	P 1,106,914.43	P 285,459.89
Excess Input Tax	P 3,697,697.19	P 701,067.78	P 229,220.04
Excess payment in previous return		3,697,697.19	4,398,764.97
Tax Overpayment	P 3,697,697.19	P 4,398,764.97	P 4,627,985.01

Petitioner, likewise, filed through EPFS its Quarterly VAT Returns for the four (4) quarters of taxable year 2003 on April 23, 2003, July 11, 2003, October 20, 2003 and January 29, 2004, respectively, declaring among others the following:

	1st Quarter (Exh. G)	2nd Quarter (Exh. H)	3rd Quarter (Exh. I)	4th Quarter (Exh. J)
Taxable Sales	P 3,947,529.60	P 112,278.12	P 3,904,524.26	P 86,013.60
Zero Rated Sales	17,053,028.11	35,803,955.04	68,727,735.32	37,506,616.64
Total Sales	P21,000,557.71	P35,916,233.16	P 72,632,259.58	P 37,592,630.24
Output Tax	P 394,752.96	P 11,227.81	P 390,452.43	P 8,601.36
Less: Input Tax				
Carried Over from Previous Qtr	P 4,627,985.01	P 3,375,911.07	P 2,300,699.98	P 2,654,730.10
On Domestic Purchases-Goods/Services	3,770,664.03	2,311,927.79	3,045,182.53	6,615,250.89
Total Available Input Tax	P 8,398,649.04	P 5,687,838.86	P 5,345,882.51	P 9,269,980.99
Less: Any VAT Refund/TCC Claimed	4,627,985.01	3,375,911.07	2,300,699.98	2,654,730.10
Net Creditable Input Tax	P 3,770,664.03	P 2,311,927.79	P 3,045,182.53	P 6,615,250.89
Excess Input Tax	3,375,911.07	2,300,699.98	P 2,654,730.10	6,606,649.53
Excess payment in previous return	-	-	-	-
Tax Overpayment	P 3,375,911.07	P 2,300,699.98	P 2,654,730.10	P 6,606,649.53

On February 14, 2003, petitioner filed an administrative claim for refund of unutilized VAT input taxes for the period covering April 1, 2002 to December 31, 2002 in the amount of P4,627, 985.01 with the Large Taxpayers Assessment Division of the BIR.[10]

On May 20, 2003, petitioner again filed an administrative claim for refund of unutilized VAT input taxes for the period covering January 1, 2003 to March 31, 2003 in the amount of P3,375,911.07 with the Large Taxpayers Assessment Division of the BIR.[11]

On July 25, 2003, petitioner filed an administrative claim for refund of unutilized input taxes for the period covering April 1, 2003 to June 30, 2003 in the amount of P2,300,699.98 with the Large Taxpayers Assessment Division of the BIR.[12]

On October 27, 2003 petitioner filed an administrative claim for refund of unutilized VAT input taxes for the period covering July 1, 2003 to September 30, 2003 in the amount of P2,654,730.10 with the Large Taxpayers Assessment Division of the BIR.[13]

On February 12, 2004, petitioner filed an administrative claim for refund of unutilized VAT input taxes for the period covering October 1, 2003 to December 31, 2003 in the amount of P6,606,649.53 with the Large Taxpayers Assessment Division of the BIR.[14]

On June 29, 2004, petitioner filed with this Court a Petition for Review for the refund or issuance of a tax credit certificate in the amount of P19,565,975.69 representing unutilized input taxes on its domestic purchases and importation attributable to zero-rated sales for the second quarter of 2002 to the fourth quarter of 2003."

In his Answer filed on August 23, 2004, respondent interposed the following Special and Affirmative Defenses:

"7. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.

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[10] Par. 11, JSFI, docket, p. 165.
[11] Par. 12, JSFI, *Ibid.*
[12] Par. 13, JSFI, *Ibid.*
[13] Par. 14, JSFI, *Ibid.*
[14] Par. 15, JSFI, *Ibid.*

8. Petitioner's claim for refund is subject to administrative investigation/ examination by the respondent.

9. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

10. To support its claim, it is imperative for petitioner to prove the following, viz:

a. The registration requirement of a value-added taxpayer in compliance with Section 6(a) and (b) of the Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of the Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112(D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

d. That the input taxes of P19,565,975.69 allegedly paid by the petitioner on its domestic purchases and importation of goods for the period covering April 1, 2002 to December 31, 2003 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters.

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112(A) and (D) and Section 229 of the Tax Code, as amended.

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f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts an other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the Tax Code, as amended, and in pursuance to Section 4. 104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of the Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credit)

11. Furthermore, 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/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted exist upon vague implications (Asiatic Petroleum Co. {P.I.} v. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670);

12. Finally, claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation"

On March 28, 2006, petitioner manifested that respondent has issued Tax Credit Certificate No. SN 024318 dated August 25, 2005 in its favor in the amount of P3,135,619.26 representing unutilized input taxes for April 1, 2002 to December 31, 2002.

On October 10, 2006, petitioner again filed a manifestation informing this Court that respondent has issued Tax Credit Certificate No. SN 024351 dated July 17, 2006 in the amount of P6,540,460.41 representing unutilized input taxes for the 4th quarter of 2003.

After petitioner filed its Memorandum, sans respondent's Memorandum, the case was submitted for decision on December 11, 2006."

The parties stipulated on the following issues for this Court's resolution[15]:

[15] JSFI, docket, p. 166

1. Whether or not the sales made by petitioner to Philex Mining Corporation, Philex Gold Philippines, and Lepanto Consolidated Mining Company are subject to zero percent (0%) VAT pursuant to Revenue Memorandum Order No. 9-00;

2. Whether or not the export sales made by petitioner to Malex Industrial Products SDN BHD, CSR Building Material SDN BHD, Hume Cemboard Berhad, and UAC Berhad, all located in Malaysia, Padaeng Industry Public Co., Ltd. in Thailand, Preminco Ltd. in South Africa, Boroo Gold Co., Ltd. in Mongolia, and JNJ Company, Pte., Ltd. in Singapore are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(1) of the Tax Code of 1997;

3. Whether or not the sales made by petitioner to PASAR are subject to zero percent (0%) VAT pursuant to Revenue Memorandum Circular No. 74-99;

4. Whether or not petitioner has unapplied or unutilized creditable input VAT for the 2nd, 3rd, and 4th quarters of taxable year 2002, 1st, 2nd, 3rd and 4th quarters of 2003, arising from its domestic purchases of goods and services during the period covering April 1, 2002 to December 31, 2003 in the total amount of ₱19,565,975.69 that can be the proper subject of a claim for refund pursuant to Section 110(B) and Section 112(A) of the Tax Code, as amended;

5. Whether or not the unutilized creditable input taxes for the 2nd, 3rd and 4th quarters of taxable year 2002 and the four (4) quarters of 2003 are substantiated by proper invoices and official receipts;

6. Whether or not the said unutilized creditable input VAT for the 2nd, 3rd and 4th quarters of taxable year 2002 and the four (4) quarters of 2003 were carried over to the succeeding taxable quarter(s) and applied against any of the output VAT liability of the petitioner for the said period; and

7. Whether or not petitioner's administrative claims for refund/tax credit were filed within the two-year prescriptive period to file said claims as provided under Section 4.106-1 of RR No. 7-95, as amended.

After trial on the merits, the CTA Second Division promulgated a Decision on September 7, 2007, the dispositive portion of which reads as follows:

"**WHEREFORE**, based on the above findings, this Court **GRANTS** petitioner's Petition for Review. Respondent is ordered to refund or issue

> a tax credit certificate in the reduced amount of ₱6,509,440.53 representing unutilized excess input VAT attributable to its zero-rated sales to BOI and PEZA entities for the first to the third quarters of the taxable year 2003.
>
> **SO ORDERED."**

Not satisfied with the above decision, both parties filed their respective motions, as follows: CIR filed his Motion for Reconsideration[16] on September 25, 2007, while GST Philippines, Inc. filed its Motion for Partial Reconsideration[17] on October 1, 2007. On November 7, 2007, GST Philippines, Inc. filed its "Comment (to Respondent's Motion for Reconsideration[18] dated September 17, 2007)".

In a Resolution[19] dated January 23, 2008, the CTA Second Division denied both parties' respective Motions for lack of merit.

On February 14, 2008, CIR filed a Motion for Extension of Time to File Petition for Review[20] with the CTA En Banc. In a Resolution[21] dated February 19, 2008, the Court En Banc granted the said Motion thereby giving petitioner a final and non-extendible period of fifteen (15) days from February 16, 2008 or until March 2, 2008 within which to file a Petition for Review. On February 29, 2008, CIR filed the instant Petition for Review[22] with the CTA En Banc, praying that the Decision dated September 7, 2007 and the Resolution dated January 23, 2008 in CTA Case No. 7016 entitled *"GST Philippines, Inc. vs. Commissioner of Internal Revenue,"* be reversed and set aside and a new one be rendered dismissing and denying respondent's Petition for Review for lack of merit.

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[16] Docket, pp. 514-521
[17] Docket, pp. 523-544
[18] Docket, pp. 551-560
[19] CTA En Banc Rollo, pp. 48-52
[20] CTA En Banc Rollo, pp. 1-3
[21] CTA En Banc Rollo, p. 5
[22] CTA En Banc Rollo, pp. 6-20

On March 28, 2008, the CTA En Banc promulgated a Resolution[23] ordering the respondent to file its Comment to petitioner's Petition for Review. On April 14, 2008, respondent filed a "Motion for Additional Time to File Comment"[24] which was granted by the Court in its Resolution[25] dated April 17, 2008. Accordingly, respondent was given a final and non-extendible period of ten (10) days from April 12, 2008 or up to April 22, 2008, within which to file its Comment. On April 22, 2008, respondent filed, thru registered mail, its "Comment[26] (To Petitioner's Petition for Review dated 27 February 2008)" praying that petitioner's Petition for Review be denied for utter lack of merit.

The petitioner, in the instant Petition for Review, raised the following sole issue:

> "Whether or not respondent is entitled to a refund or tax credit in the reduced amount of P6,509,440.53 representing its unutilized excess input VAT attributable to zero-rated sales to BOI and PEZA entities for the first to the third quarters of the taxable year 2003."

In support of the Petition, petitioner presented the following grounds/arguments, to wit:

> "1. Respondent failed to fully substantiate its claim for refund/tax credit certificate in its unutilized excess input VAT attributable to zero-rated sales.
>
> 2. The Honorable Court's Second Division erred in finding that respondent complied with substantiation requirements in proving its claim for refund when applying for administrative claim for tax refund or credit."

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[23] CTA En Banc Rollo, pp. 57-58
[24] CTA En Banc Rollo, pp. 59-61
[25] CTA En Banc Rollo, p. 62
[26] CTA En Banc Rollo, pp. 63-74

After a careful and thorough evaluation and consideration of the records of the case, the CTA En Banc finds no merit in the Petition.

The records of the case indubitably show that the CTA Second Division had already fully and exhaustively resolved the issue in relation to the arguments/grounds raised in the Petition.

With regard to the first ground that "respondent failed to fully substantiate its claim for refund/tax credit certificate in its unutilized excess input tax attributable to zero-rated sales," the following excerpts in the Assailed Decision clearly negate petitioner's contention, and We quote:

> "To substantiate its export sales of P158,871,267.11 and the foreign currency proceeds therefrom, petitioner presented various sales invoices, official receipts, export declarations, bills of lading and credit advices/memos."[27] (Underscoring supplied)

Also,

> "As to the domestic sales of P218,318,932.29, records show that the same pertained to sales made by petitioner to Philex Mining Corporation, Philex Gold Philippines, Inc., and Lepanto Consolidated Mining Co., all VAT taxpayers and BOI registered entities whose products are 100% exported and to Philippines Associated Smelting and Refining Corp. (PASAR), a PEZA registered entity."[28]

Moreover, the independent CPA commissioned by the Court precisely to examine respondent's supporting documents validated, in his Amended Report

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[27] Exhibits "KK-1" to "KK-129"
[28] Exhibits "K" to "Q", "R", "V", "W" and "X"

dated November 25, 2005, which report was admitted in evidence as Exhibit "AA-4", thus:

I. SUMMARY OF TAXABLE SALES

"1. The details of sales invoices are reflected in the Summary of Taxable and Zero-rated Sales (Schedule 1);

2. The amounts of sales invoices reconciled with related official receipts or credit memos;

3. x x x x x x;

4. The relevant documents on file are the original duplicate copies;"[29]

x x x x x x x x x

I also noted that the sales invoices and official receipts submitted to this Honorable Court as evidence were faithful reproductions of the documents I examined.[30]

x x x x x x x x x.

II. SUMMARY OF ZERO-RATED DOMESTIC SALES

x x x x x x x x x

1. x x x x x x x x x

2. The amounts of the VAT Invoices reconciled with the related official receipts or bank memos;

3. The zero-rated sales <u>are covered by stamped "zero-rated" VAT invoices and VAT official receipts</u>; (Underscoring supplied)

x x x x x x x x x

I also noted that the zero-rated domestic sales invoices and official receipts submitted to this Honorable Court were faithful reproductions of the documents I examined.[31]

III. SUMMARY OF ZERO-RATED EXPORT SALES AND INWARD REMITTANCES OF EXPORT SALES PROCEEDS

x x x x x x x x x

[29] Docket; pp. 414 & 415
[30] Docket; pp. 415 & 416
[31] Docket; pp. 416 & 417

> 1. The details of each export sale are reflected in the Schedule of Export Sales and Collections (Schedule 3) and supported by export documents such as purchase order, bill of lading, packing list, export declaration/permits. (Underscoring supplied)
>
> x x x x x x x x x
>
> I also noted that export sales invoices, bank credit advices and supporting export documents submitted to this Honorable Court were faithful reproductions of the documents I examined.[32]
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> **IV. SUMMARY LIST OF PURCHASES**
>
> x x x x x x x x x
>
> 2. Domestic purchases of goods are supported by VAT invoices. (Underscoring supplied)
>
> 3. Domestic purchases of services are supported by VAT official receipts;[33] (Underscoring supplied)

Petitioner further contends that:

> "Respondent failed to formally offer as evidence the VAT official receipts of its taxable sales amounting to P17,094,634.79 and the input VAT attributable thereto amounting to P1,709,463.48 during trial," and that "this failure is fatal to respondent's claim for refund/tax credit."

We do not agree.

Petitioner's contention is anchored on Section 34, Rule 132 of the Rules of Court which provides that:

> "**Sec. 34. Offer of evidence**. – The Court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

While the records of the case show that the respondent had failed to formally offer as evidence Exhibits "JJ" to "JJ-75" which, more specifically, are

[32] Docket, p. 417
[33] *Ibid*

the Summary of taxable sales including official receipts for the 2nd quarter of 2002 to the 4th quarter of 2003, the same may still be admitted in evidence pursuant to several Supreme Court rulings on the matter.

In the case of Vda. De Oñate vs. Court of Appeals[34], the Supreme Court, reiterating its previous rulings in People vs. Napat-a[35] and People vs. Mate[36], declared thus –

> *"From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document to be identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In Interpacific Transit, Inc. v. Aviles [186 SCRA 385], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit, We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.*
>
> *However, in "People v. Napat-a [179 SCRA 403 (1989)]" citing People vs. Mate [103 SCRA 484 (1981)], We relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case."*

This same ruling was reiterated by the Supreme Court in the most recent case of Ramos vs. Dizon.[37]

[34] GR No. 116149, November 23, 1995
[35] GR No. 84951, November 14, 1989
[36] GR No. L-34754, March 27, 1981
[37] GR No. 137247, August 7, 2006

In the case before Us, We find that the requirements laid down in the above-cited Supreme Court decisions have been satisfied, that:

"a) The same must have been duly identified by testimony duly recorded; and

b) The same must have been incorporated in the records of the case."

Exhibits "JJ" to "JJ-75" had been pre-marked by the independent CPA, Mr. Roque Fado, pursuant to CTA Circular No. 1-95, who attested to such fact in his Sworn Statement[38] dated September 26, 2006. Said Sworn Statement was attached as Annex "A" to respondent's Motion for Reconsideration[39] dated September 27, 2006 of the CTA Resolution[40] dated August 30, 2006.

Mr. Fado himself identified the said exhibits and explained the contents thereof in his testimony duly recorded as follows:

> "Q. Mr. Fado, during the last hearing of this case, you identified the Report you submitted by (sic) this Honorable Court dated April 12, 2005, in compliance with your commissioned (sic) as the independent CPA in this case and this Report has already marked (sic) as Exhibit "AA". You likewise stated that you are able to compare all the documents supporting your report with their originals. If I show you the remainder of the documents which is the basis of your report, will you be able to identify them? (sic)
>
> A. Yes.
>
> Q. I am showing to you Mr. Fado, documents which have been captioned "Summary of Taxable Sales" including Official Receipts for the Second Quarter of 2002 to the Fourth Quarter of 2003 marked as Exhibits "JJ" to "JJ-75", what relation do these documents have to the once (sic) mentioned in your Report?

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38 Docket, pp. 441 and 442

39 Docket, pp. 437-440

40 Docket, pp. 435 and 436

A. Yes, this is the Summary of Taxable Sales and Official Receipts which we examined for the period April 1, 2002 to December 31, 2004. These official receipts are covered by Exhibits "JJ" to "JJ-75".[41]

On the second ground/argument of petitioner that "the Honorable Court's Second Division erred in finding that respondent complied with substantiation requirements in proving its claim for refund when applying for administrative claim for tax refund on credit," the same had already been squarely settled by the Court when it aptly stated in the Assailed Resolution, thus:

"x x x x x x, this Court agrees with petitioner that respondent in effect admitted in the "Joint Stipulation of Facts and Issues" that petitioner submitted all documentary and other relevant evidence when it filed its administrative claim. Equally noteworthy is the fact that respondent did not present any evidence to prove his allegation that petitioner failed to present all the documentary and relevant evidence before the Bureau of Internal Revenue (BIR). Such allegation without any supporting evidence cannot be accepted by this Court."[42]

In view of the foregoing discussions, the Court En Banc finds no cogent reason to reverse the assailed Decision and Resolution dated September 7, 2007 and January 23, 2008, respectively, of the CTA Second Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[41] TSN, July 4, 2005, pp. 6 and 7
[42] CTA En Banc Rollo, pp. 50 and 51

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice