REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2108** *(CTA Case No. 9211)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
KURIMOTO (PHILIPPINES) CORPORATION, *Respondent.*	Promulgated: FEB 03 2021 3:40 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[2] asking the Court to reverse and set aside the Decision, promulgated on 6 February 2019, and Resolution, dated 19 June 2019, rendered by the Court of Tax Appeals ("CTA") Special Second Division ("Court in Division") only insofar as it partially granted respondent's claim for refund/tax credit in the reduced amount of ₱1,977,907.07 representing its unutilized input value-added tax ("VAT") attributable to its zero-rated sales of services for the 1st and 2nd quarters of taxable year 2013.

[1] Petition for Review; Records, pp. 9-23, with annexes.
[2] A.M. No. 05-11-07-CTA, 22 November 2005.

The Parties

Petitioner Commissioner of Internal Revenue ("CIR") is vested, under appropriate laws, the authority to act on and approve claims for refund or tax credit as provided for by law. He holds office at the 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City.

Respondent Kurimoto (Philippines) Corporation is registered with the BIR as a VAT taxpayer with Tax Identification Number 007-889-234-000. It may be served with summons, pleadings, notices and other process through its counsel at 1005, 88 Corporate Center, Sedeño corner Valero Streets, Salcedo Village, Makati City.

The Facts

On 30 June 2015, respondent filed an application for tax credit/refund with BIR Revenue District Office No. 49 amounting to ₱9,390,402.45 representing its input VAT for the 1st and 2nd quarters of taxable year 2013.[3]

Subsequently, petitioner issued Letter of Authority ("LOA") No. eLA201200034426 dated 15 August 2015. Respondent received the said LOA on 20 August 2015.[4]

On 12 November 2015, the BIR, through a letter, denied respondent's claim for refund.[5]

This prompted respondent to file the original Petition for Review on 27 November 2015.[6]

On 6 February 2019, the Court in Division rendered the assailed Decision,[7] partially granting the original Petition for Review. The dispositive portion is hereby quoted, to wit:

> "**WHEREFORE,** the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **ONE MILLION NINE HUNDRED SEVENTY-SEVEN THOUSAND NINE HUNDRED SEVEN PESOS AND SEVEN CENTAVOS (Php1,977,907.07)** representing unutilized

[3] Decision, Annex "A" of the Petition for Review; Records, pp. 24-46.
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*
[7] *Ibid.*

excess input VAT attributable to its zero-rated sales for the second quarter of calendar year 2013.

SO ORDERED."

Aggrieved, petitioner filed his Motion for Partial Reconsideration on 21 February 2019 assailing the aforementioned Decision. Likewise, respondent filed its Comment (to Respondent's Motion for Partial Reconsideration) on 16 April 2019.[8]

On 19 June 2019, the Court in Division promulgated the assailed Resolution denying petitioner's Motion for Partial Reconsideration for lack of merit.[9] Petitioner received his copy of the assailed Resolution on 25 June 2019.[10]

Thereafter, petitioner posted a Motion for Extension of Time to File Petition for Review on 9 July 2019, asking the Court *En Banc* to grant him an additional period of fifteen (15) days to file his Petition for Review.[11] The Court *En Banc* granted the said Motion and gave petitioner until 25 July 2019 to file the same.[12]

Petitioner posted his Petition for Review on 24 July 2019.[13]

Subsequently, the Court *En Banc* issued a Resolution on 27 August 2019 requiring petitioner to submit Regional Director Glen A. Geraldino's proof of authority to sign the Verification and Certification of Non-Forum Shopping on behalf of petitioner.[14]

On 12 September 2019, petitioner posted his Compliance submitting the certified true copies of Revenue Delegation Authority Order Nos. 3-2006 and 2-2007 which signify the authority granted by petitioner to Regional Director Glen A. Geraldino to sign the abovementioned documents.[15]

Meanwhile, on 24 September 2019, the Court *En Banc* issued a Resolution ordering the termination of the instant case for failure of petitioner to file his Petition for Review within the extended period granted by this Court.[16]

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[8] Resolution, Annex "B" of the Petition for Review; Records, pp. 47-51.
[9] *Ibid.*
[10] Resolution; Division Records, Vol. 2, p. 84.
[11] Motion for Extension of Time to File Petition for Review; Records, pp. 1-3.
[12] Minute Resolution dated 5 August 2019; Records, p. 4.
[13] Petition for Review; Records, pp. 9-23, with annexes.
[14] Resolution; Records, pp. 54-55.
[15] Compliance; Records, pp. 56-64.
[16] Resolution; Records, pp. 7-8.

Petitioner then filed his Manifestation and Motion on 17 October 2019. Petitioner explained that it was able to timely file the instant Petition for Review via registered mail on 24 July 2019. On this basis, petitioner asked the Court *En Banc* to recall its Resolution dated 24 September 2019.[17]

Subsequently, the Court *En Banc* issued a Resolution dated 28 October 2019. The Court clarified that when petitioner filed the instant Petition for Review, it was assigned as CTA *EB* No. 2119, instead of its original docket number which is CTA *EB* No. 2108. This confusion caused the issuance of the Resolution dated 24 September 2019.[18]

In order to rectify the situation, the Court *En Banc* ruled the cancellation of docket number CTA *EB* No. 2119 and the transfer of all court records therein to CTA *EB* No. 2108.[19]

Thereafter, the Court *En Banc* issued a Resolution, dated 6 November 2019, which granted petitioner's Manifestation and Motion and ordered the recall of its Resolution dated 24 September 2019. The Court also directed respondent to file its comment on the instant Petition.[20] However, per the Court's Verification Report, respondent did not file its comment.[21]

On 4 February 2020, the Court *En Banc* issued a Resolution submitting the case for decision.[22] Hence, this Decision.

The Issues[23]

Petitioner raises the sole issue below for the Court *En Banc*'s resolution, to wit:

> WHETHER THE COURT IN DIVISION ERRED IN HOLDING THAT RESPONDENT IS PARTIALLY ENTITILED TO ITS CLAIM FOR TAX REFUND/CREDIT IN THE REDUCED AMOUNT OF ₱1,977,907.07, REPRESENTING RESPONDENT'S UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE FIRST AND SECOND QUARTERS OF TAXABLE YEAR 2013.

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[17] Manifestation and Motion; Records, pp. 67-70.
[18] Resolution; Records, pp. 71-74.
[19] *Ibid.*
[20] Resolution; Records, pp. 76-78.
[21] Resolution; Records, pp. 81-82.
[22] *Ibid.*
[23] See Assignment of Error, Petition for Review, p. 4; Records, p. 12.

Petitioner's Arguments[24]

Petitioner argues that the Court in Division erred in ruling that the respondent was able to prove that it has VAT zero-rated sales of services in the amount of ₱16,892,000.00. He insists that the official receipts presented by respondent, specifically, Exhibits "P-20-1", "P-20-2", "P-21-1", "P-22-1", "P-22-2", "P-22-3", and "P-22-4" failed to comply with the invoicing requirements under the National Internal Revenue Code of 1997, as amended (hereinafter referred to as the "Tax Code").

Likewise, petitioner points out that respondent's documentary exhibits, specifically, the PEZA Certification dated 19 February 2013; the Service Agreement it executed with Taganito HPAL Nickel Corporation ("THPAL"), and the official receipts issued by respondent should be denied and not relied upon by the Court for being hearsay evidence.[25]

He explains that the aforementioned pieces of evidence were identified by witnesses, namely, respondent's Head of Accounting Department Ms. Miel O. Golla and Independent Certified Public Accountant ("ICPA") Ma. Cecilla C. Katigbak who both have no personal knowledge as to the fact of issuance and contents of the said documentary exhibits.

Finally, petitioner argues that a claim for refund should be strictly construed against the taxpayer since it partakes the nature of a tax exemption. Hence, the burden of proof is with the respondent to convince the Court that it is entitled to the VAT refund/credit being claimed.

The Ruling of the Court

After going through the arguments raised by petitioner, the Court *En Banc* finds no cogent reason to warrant the reversal of the assailed Decision and Resolution.

Petitioner failed to prove that respondent did not comply with the invoicing requirements under the Tax Code.

Petitioner asserts that respondent failed to comply with the invoicing requirements under the Tax Code and asks the Court *En Banc* to deny the latter's VAT refund/credit claim.

The argument of petitioner is without merit. q

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[24] *Ibid.*

[25] Currently referred to as "Lack of Firsthand Knowledge" under the New Rules on Evidence.

Section 113 of the Tax Code provides for the invoicing requirements for VAT registered persons, to wit:

"SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. -

(A) Invoicing Requirements. - A VAT-registered person shall issue:

xxx xxx xxx

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A **statement that the seller is a <u>VAT-registered person</u>**, followed by his **<u>Taxpayer's Identification Number (TIN)</u>**; and

(2) The total amount which the purchaser pays or is obligated **to pay** to the seller with the indication that such amount includes the value-added tax. Provided, That:

xxx xxx xxx

(c) If the **sale is subject to zero percent (0%) value-added tax, the term <u>"zero-rated sale"</u> shall be written or printed prominently on the invoice or receipt.**

(3) The **<u>date of transaction, quantity, unit cost and description of the goods or properties or nature of the service</u>**; and

(4) **In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the <u>name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client</u>**."[26]

Implementing the aforementioned provision is ***Section 4.113 of Revenue Regulation ("RR") No. 16-05***,[27] to wit:

"Sec. 4.113-1. Invoicing Requirements.-

(A) A Vat-registered person shall issue: -

xxx xxx xxx

(2) **A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.**

[26] Emphasis supplied.
[27] Subject: Consolidated Value-Added Tax Regulations of 2005, 1 September 2005.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoice/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. -The following information shall be indicated in VAT invoice or VAT official receipt:

(1) **A statement that the seller is a VAT-registered person, followed by his TIN;**

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

xxx xxx xxx

(c) **If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;**

(3) In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."[28]

The importance of complying with the aforementioned provisions was explained in ***Revenue Memorandum Circular ("RMC") No. 42-03***,[29] to wit:

"Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?

A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), <u>its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does</u>

[28] Emphasis supplied.
[29] Subject: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters, 15 July 2013.

> **not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales.** Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer."[30]

Clearly, it is vital for a taxpayer claiming VAT refund/credit to prove that it had followed the invoicing requirements. Failure to comply with the same will cause the denial of the said claim.

Here, petitioner asks the Court *En Banc* to take a second look at the official receipts submitted by respondent, specifically "P-20-1", "P-20-2", "P-21-1", "P-22-1", "P-22-2", "P-22-3", and "P-22-4". He alleges that the same were issued in violation of the invoicing requirements.

The Court *En Banc* is not convinced.

To begin with, petitioner failed to cite the specific invoicing requirement respondent allegedly violated. In fact, the allegations in the instant Petition for Review are couched in the nature of a general assignment of error which are not allowed under the Rules of Court and jurisprudence. The case of ***De Liano et. al. v. Hon. Court of Appeals (hereinafter referred to as "De Liano Case")***[31] emphasizes this point, to wit:

> "An assignment of errors in appellate procedure is an enumeration by appellant or plaintiff in error of the errors alleged to have been committed by the court below in the trial of the case upon which he seeks to obtain a reversal of the judgment or decree; it is in the nature of a pleading, and performs in the appellate court the same office as a declaration or complaint in a court of original jurisdiction. Such an assignment is appellant's complaint, or pleading, in the appellate court, and takes the place of a declaration or bill; an appeal without an assignment of errors would be similar to a suit without a complaint, bill, or declaration. The assignment is appellant's declaration or complaint against the trial judge, charging harmful error, and proof vel non of assignment is within the record on appeal.
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> xxx xxx xxx
>
> **The object of such pleadings is to point out the specific errors claimed to have been committed by the court below, in order to enable the reviewing court and the opposing party to see on what points appellant or plaintiff in error intends to ask a reversal of the judgment or decree, and to limit discussion to those points.** The office of an assignment of errors is not to point out legal contentions, but only to inform the appellate court that appellant assigns as erroneous certain named rulings; the function of the assignment is to group and bring forward such

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[30] Emphasis supplied.
[31] G.R. No. 142316, 22 November 2001.

> of the exceptions previously noted in the case on appeal as appellant desires to preserve and present to the appellant.
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> **It has been held that a general assignment of errors is unacceptable under the rules. Thus, a statement of the following tenor: that "the Court of First Instance of this City incurred error in rendering the judgment appealed from, for it is contrary to law and the weight of the evidence," was deemed insufficient. The appellant has to specify in what aspect of the law or the facts that the trial court erred.** The conclusion, therefore, is that the appellant must carefully formulate his assignment of errors. xxx"[32]

Here, petitioner merely alleged that the official receipts submitted by respondent do not contain the required information under the Tax Code and RR No. 16-05. Therefore, without identifying the specific errors in the said documents, the Court *En Banc* is not duty bound to rule on the same.

Moreover, notwithstanding the ruling in the ***De Liano Case***, the Court *En Banc* did inspect the official receipts submitted by petitioner. This Court found that some of the exhibits questioned by petitioner, specifically "P-22-1", "P-22-3", and "P-22-4" have already been disallowed by the Court in Division for respondent's failure to prove that the reported sales were paid for in acceptable foreign currency and/or were duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

As for the remaining exhibits, the Court *En Banc* did not find any defect or irregularity as to their issuance. In fact, the official receipts were all issued in compliance with the invoicing requirements.

On the basis of the foregoing, the Court *En Banc* affirms the findings of the Court in Division ruling that the respondent was able to sufficiently prove to having received VAT zero-rated receipts in the amount of ₱16,892,000.00.

Respondent's documentary exhibits are admissible evidence

Petitioner net argues that the documentary exhibits presented by respondent, specifically, the PEZA Certification, dated 19 February 2013; the Service Agreement allegedly issued by respondent between THPAL; and official receipts, should be declared inadmissible since the witnesses who identified the same have no firsthand knowledge with regard to the authenticity and due execution of the said pieces of evidence.

Again, the contention of the petitioner lacks merit.

[32] Emphasis supplied.

First, it is too late in the day for petitioner to raise the issue as to the competence of respondent's witnesses to identify its pieces of documentary evidence.

As ruled in the case of ***Mendoza, et al. vs. Bautista,***[33] issues not duly raised before the proceedings in the Court below may not be ventilated for the first time in a motion for reconsideration or on appeal, thus:

> "Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal."

In this case, petitioner did not assail the competence of respondent's witness during trial. In fact, he did not even file his Comment to respondent's Formal Offer of Evidence. It was only in his Motion for Reconsideration where he raised the same.

Therefore, consistent with the ruling in ***Mendoza, et al. v. Bautista,*** petitioner is now precluded to question the competence of respondent's witness to identify the said documents.

Second, the Service Agreement referred to by petitioner was not even offered by respondent during trial.[34] After a thorough review of the case records, including the respondent's Formal Offer of Evidence, documentary exhibits, the ICPA report, among others, the Court *En Banc* did not find the said documentary evidence questioned by petitioner. In fact a perusal of the assailed Decision proves that the Court in Division did not even mention such document. At this juncture, the Court *En Banc* cannot be made to rule on an evidence that was not even formally offered by any of the parties.

Third, as to the remaining documents mentioned by petitioner, the Court *En Banc* finds no merit in petitioner's contention that these have no probative value. Contrary to petitioner's allegations, these pieces of evidence are recognized as vital proof of commercial transactions as ruled in the case of ***Seaoil Petroleum Corporation vs. Autocorp Group and Rodriguez,***[35] to wit:

> ". . . A sales invoice is a commercial document. Commercial documents or papers are those used by merchants or businessmen to promote or facilitate trade or credit transactions. Business forms, e.g., order slip, delivery charge invoice and the like, are commonly recognized in ordinary commercial transactions as valid between the parties and, at the very least they serve as an acknowledgment that a business transaction has

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[33] G.R. No. 143666, 18 March 2005.
[34] See Formal Offer of Evidence, Division Records, Vol. 1, 393-522.
[35] G.R. No. 164326, 17 October 2008.

> in fact transpired. **These documents are not mere scrap of paper bereft of probative value, but vital pieces of evidence of commercial transactions. They are written memorials of the details of the consummation of contracts.**"[36]

Based on the foregoing, it is erroneous for petitioner to ask the Court *En Banc* to merely set aside the pieces of evidence submitted by respondent. As mentioned, the same are considered vital in proving the transactions entered into by respondent. Moreover, these documents were all meticulously examined and verified by the Court-commissioned ICPA pursuant to ***Section 5, Rule 12 and Rule 13 of the RRCTA***.

Considering the ICPA's thorough examination of the documents and her testimony as to the circumstances of the said pieces of evidence, the subject documents cannot be considered hearsay.

As for the final argument raised by respondent, the Court *En Banc* is well aware that tax refunds are in the nature of a claim for exemption and, therefore, the law is construed in *strictissimi juris* against the taxpayer. Accordingly, the pieces of evidence presented entitling a taxpayer to an exemption must also be *strictissimi* scrutinized and must be duly proven.[37] In this case, respondent was able to prove with competent evidence its entitlement to the refund/credit claimed.

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

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[36] Emphasis supplied.
[37] Atlas Consolidated Mining and Development Corporation v. CIR, G.R. No. 159490, 18 February 2008.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice