REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

TOTAL (PHILIPPINES) CORPORATION, Petitioner,	CTA Case Nos. 8056 and 8163
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 27 2015

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RESOLUTION

***Fabon-Victorino, J.*:**

This resolves respondent's *Motion for Partial Reconsideration (Re: Amended Decision)*[1], filed on January 22, 2015, with petitioner's *Comment/Opposition* thereto filed on February 20, 2015. The decretal portion of the assailed Amended Decision[2] dated December 19, 2014 reads as follows:

> **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)**,

[1] Docket, pp. 1657-1662.
[2] Docket, pp. 1640-1654.

> representing the latter's excess unutilized input VAT attributable to its zero-rated sales for the year 2008.
>
> **SO ORDERED.**

Respondent impugns the assailed ruling saying that: 1) petitioner failed to comply with the invoicing and accounting requirements laid down in Section 113, 114 and 236 of the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing regulations under Revenue Regulations No. (RR) 16-2005; 2) petitioner failed to comply with the documentary requirements prescribed under Revenue Memorandum Order (RMO) No. 53-98[3]; and finally 3) petitioner failed to prove that no other claim for refund has been filed with the Board of Investment, Department of Finance and Special Economic Zones/Freeport Zones, as no Certifications from said agencies were presented both in the administrative and judicial levels.

Further, the Court has no jurisdiction to entertain the instant case as there was no valid administrative claim filed owing to the petitioner's failure to submit documents in its administrative claim for tax refund/credit. In giving premium on this ground, respondent argues that such requirement will allow the administrative agency concerned the opportunity to ascertain the veracity and validity of the claim. In effect, petitioner failed to exhaust available administrative remedies.

Lastly, the Court should have denied petitioner's motion for new trial given that petitioner had all the chance to prove its case during the trial but failed.

In opposition, petitioner basically contends that the grounds relied upon by respondent in its *Motion for Partial Reconsideration* are not new. They are the very same issues passed upon by the Court in the assailed Amended Decision of December 19, 2014 and in the Decision of January 28, 2014. In any event, it was able to prove that it

[3] "Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket".

is entitled to a refund or issuance of a tax credit certificate in the total amount of ₱187,554,770.69, representing unutilized input VAT attributable to its zero-rated sales for the taxable year 2008.

Respondent's *motion* is bereft of merit.

Section 8 of Republic Act (R.A.) No. 1125, describes the Court of Tax Appeals (CTA) as a court of record.[4] As such, cases filed before it are litigated *de novo*, hence, party-litigants need to prove every minute aspect of their cases,[5] to merit the grant of the relief sought. Failure to do so is lethal to the party's respective positions.

With the evidence presented, it is beyond question that it is entitled to the subject claim for refund or tax credit, albeit partially.

Anent petitioner's alleged failure to strictly comply with RMO No. 53-98, this Court finds nothing in the said RMO mandating that the list of documents stated therein should be submitted in connection with an application for refund or tax credit certificate under Section 112. What is explicit in the said RMO is its objective to "(i)dentify the documents to be required from a taxpayer during audit".

In the present case, when the administrative claims for refund[6] of excess unutilized input VAT attributable to zero-rated sales for the four quarters of taxable year 2008 were filed on November 27, 2009 (covering the first two quarters of 2008) and May 24, 2010 (covering the last two quarters of 2008), petitioner simultaneously submitted all documents in support of the respective cases.

On the other hand, there is no showing that respondent required submission of additional documents neither was there any communication to that effect was sent the taxpayer concerned. Respondent cannot belatedly claim

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[4] *Dizon v. Court of Tax Appeals*, 576 Phil. 110, 128 (2008).
[5] *Id.*
[6] Exhibits "D" and "F".

lapses in the submission of document in the administrative level. Thus, the 120-day period provided in Section 112 of the NIRC of 1997, as amended, commenced on November 27, 2009 and on May 24, 2010, the dates when petitioner filed its two (2) administrative claims together with the supporting documents in accordance with Revenue Memorandum Circular (RMC) No. 029-99.[7]

On account of respondent's inaction on petitioner's administrative claims and given that the judicial claims were timely instituted as observed in the Decision dated January 28, 2014, this Court has the competence to entertain the instant consolidated Petitions for Review.

As to the Resolution dated May 26, 2014, which granted petitioner's *Motion for New Trail*, suffice it to say that respondent is already barred from questioning the same for failure to seek reconsideration thereof within the period prescribed by the Rules.

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[7] As cited in the case *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8090, May 25, 2012, Revenue Memorandum Circular No. 029-09 provides, thus:

> III. Period within which Refund a Tax Credit of Input Taxes shall be Made.
>
> Section 112 (C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides among others, that in proper cases, the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents. For the purpose of defining "proper cases" in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:
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> a. Submission of complete documents necessary to determine and/or ascertain the correctness of the return and the amount to be refunded;
> b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Office (RO) for audit/verification;
> c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and
> d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.
>
> In cases where taxpayer failed to comply with the above conditions/requirements, i.e., failure to present accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, the running of the 120-day period shall stop from the date of notification to the taxpayer. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request.

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

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

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MA. BELEN M. RINGPIS-LIBAN
Associate Justice