REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

DUMEX PHILIPPINES, INC.,
Petitioner,

CTA EB NO. 917
(CTA Case No.7790)

- versus -

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
RINGPIS-LIBAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
JUN 2 5 2013 ~~9:00 a.m.~~

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DECISION

DEL ROSARIO, PJ:

THE CASE

This is a Petition for Review filed by Dumex Philippines, Inc. pursuant to Section 11 of Republic Act (RA) No. 9282[1], as amended, in relation to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) seeking the nullification of the Decision dated April 3, 2012 and the Resolution dated June 25, 2012, rendered by the Third

[1] An Act Expanding the Jurisdiction of the Court of Tax Appeals.

Division of this Court (CTA-Third Division) in CTA Case No. 7790, the respective dispositive portions of which read:

Decision dated April 3, 2012:

> "**WHEREFORE**, the Petition for Review is hereby **DENIED**.
>
> **SO ORDERED**."

Resolution dated June 25, 2012:

> "**WHEREFORE**, petitioner's "Motion for Reconsideration (of Petitioner Dumex Philippines, Inc., relative to the Decision of the Honorable Court dated 03 April 2012)" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE PARTIES

Petitioner Dumex Philippines, Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It is registered with the Securities and Exchange Commission (SEC) under SEC Registration No. A200003848 with its principal office previously located at E. Rodriguez Jr. Avenue, Ugong Norte, Quezon City.[2] It may be served with summons and other court processes through its counsel of record. Petitioner is registered under Tax Identification Number (TIN) 005-519-191-000 with Revenue District Office (RDO) No. 40 of the Bureau of Internal Revenue (BIR) in Cubao, Quezon City for Value-Added Tax (VAT) purposes.[3]

Respondent Commissioner of Internal Revenue is the public officer vested with the power to decide, approve and grant tax refunds. He may be served with summons and other court processes at the 2/F BIR Building, Quezon Avenue, cor. Scout Santiago, Quezon City.[4]

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[2] Para 5, II, The Parties, Petition for Review, En Banc Docket, p. 2.
[3] Para 6, *Id.*, p. 3.
[4] Para 7, *Id.*, p. 3.

THE ANTECEDENT FACTS

The antecedent facts, as found by the CTA-Third Division, are as follows:

> "On July 20, 2007, petitioner's Board of Directors approved the cessation of its operations effective July 31, 2007.
>
> On September 25, 2007, petitioner filed with BIR RDO No. 40 an Application for Tax Clearance, which was received by the BIR on September 26, 2007.
>
> On September 26, 2007, petitioner, likewise, filed an Application for Registration Information Update to cancel its VAT registration due to permanent closure of its business.
>
> On November 5, 2007, petitioner also filed with the BIR an administrative claim for issuance of a tax credit certificate in the amount of ₱59,970,799.48, representing its unused / excess input VAT credits as of August 31, 2007 from importation of goods and domestic purchases of goods and services.
>
> And on May 26, 2008, due to respondent's inaction thereto, petitioner filed the present Petition for Review.
>
> On June 16, 2008, respondent filed her Answer, interposing the following Special and Affirmative Defenses:
>
>> '5. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;
>>
>> 6. The [p]etitioner should prove its legal basis for claiming the amount being refunded;
>>
>> 7. The [p]etitioner should show proof that the *(sic)* it has unutilized input taxes; and
>>
>> 8. Failure on the part of the [p]etitioner to prove the same is fatal to its cause of action.'
>
> On July 21, 2008, the parties entered their Joint Stipulation of Facts and Issues, which was approved by the Court in a Resolution dated July 25, 2008.
>
> During trial, petitioner presented its evidence, while respondent was deemed to have waived her right to present evidence for failure to appear despite due notice.
>
> On January 5, 2010, the Court issued a Resolution transferring the case to the Third Division of the Court, pursuant to CTA Administrative Circular No. 01-2010, entitled *"Implementing the Fully*

> *Expanded Membership in the Court of Tax Appeals,"* dated January 5, 2010.
>
> On August 23, 2011, the Court resolving respondent's Motion to Dismiss, with petitioner's Opposition/Comment (to Respondent's Motion to Dismiss), dismissed the same for lack of merit.
>
> On September 26, 2011, the case was submitted for decision, considering petitioner's Memorandum (of Petitioner Dumex Philippines, Inc.) filed on June 25, 2011, *sans* respondent's Memorandum." (Citations omitted)

As aforestated, the CTA-Third Division rendered its Decision on April 3, 2012 denying the Petition for Review.

On April 26, 2012, a "Motion for Reconsideration (of Petitioner Dumex Philippines, Inc. relative to the Decision of the Honorable Court dated 03 April 2012)" was filed. Respondent failed to file any comment/opposition thereto despite due notice.

On June 25, 2012, the CTA-Third Division issued a Resolution denying petitioner's Motion for Reconsideration for lack of merit. Petitioner received the Resolution on June 27, 2012.

On July 12, 2012, petitioner filed the instant Petition for Review before this Court *En Banc*, assigning the following error allegedly committed by the CTA-Third Division:

ASSIGNMENT OF ERROR

> "Whether the Honorable Court – 3rd Division erred in denying Petitioner-Appellant's claim for refund in the amount of Pesos: Fifty Nine Million Nine Hundred Seventy Thousand Seven Hundred Ninety Nine and 48/100 Pesos (₱59,970,799.48) on the sole ground that Petitioner-Appellant failed to present proof which would attest that it has no pending internal revenue tax liabilities, thus failing to present sufficient evidence to support its claim for refund or the issuance of tax credit certificate."

On October 1, 2012, the Court *En Banc* ordered respondent to file her comment within ten (10) days from notice. cm

On December 13, 2012, the Court *En Banc* noted respondent's failure to file a comment within the period granted. The Court *En Banc* consequently ordered both parties to file their simultaneous Memoranda, within thirty (30) days from notice; afterwhich, the Petition for Review filed before the Court *En Banc* shall be deemed submitted for resolution.

On February 14, 2013, the "Memorandum (of Petitioner-Appellant Dumex Philippines, Inc.)" was filed. On the other hand, respondent failed to file her memorandum within the required period.

On April 3, 2013, the Court *En Banc* issued a Resolution submitting the case for decision.

PETITIONER'S ARGUMENTS

In requesting for a reconsideration of the denial of its claim for refund of accumulated and unutilized input VAT credits in the amount of ₱59,970,799.88, petitioner brings to the attention of the Court *En Banc* that petitioner was able to secure the Certificate of Tax Clearance (CTC) dated July 5, 2012 from the BIR on July 6, 2012. The original and a certified true copy of the CTC dated July 5, 2012 issued by the Division Chief of the Collection Division of BIR Revenue Region No. 7 were attached to the instant Petition for Review as Annexes "D" and "E". In addition thereto, petitioner also attached a copy of the Verification Slip issued by the Division Chief of the Collection Division of BIR Revenue Region No. 7, as Annex "F", as well as the letter instructing the cancellation of petitioner's Certificate of Registration No. 3RC0000075223 issued by the Regional Director of Revenue Region No. 7, Jonas DP Amora, as Annex "G".

In the interest of substantial justice, petitioner humbly requests the Court *En Banc* to admit as part of its evidence the foregoing documents attached to the Petition for Review filed before this Court *En Banc* for the purpose of proving the absence of internal revenue tax liabilities against which the tax credit certificate to be issued in favor of petitioner may be credited.

Furthermore, petitioner manifests that it has previously submitted, as attachments to its Motion for Reconsideration filed with the CTA-Third Division on April 26, 2012, copies of the Verification Slips issued by the Revenue District Officer of RDO No. 40 and the Collection Division of Revenue Region No. 7 certifying that petitioner had no record of delinquent accounts nor open cases as early as April 25, 2012. Petitioner avers that as early as September 2011, the BIR has already concluded its tax investigation and petitioner has already settled in full the deficiency tax assessment issued against it, the proof of which was submitted to the CTA-Third Division.

Petitioner also argues that following the rationale on the requirement to present CTC which is to ensure that "no corporation may escape payment of taxes and other liabilities to the government simply by opting to dissolve the corporation and retire from business or reorganize its business", the Verification Slips should have been considered as sufficient and in substantial compliance with the requirement of the CTA-Third Division. At any rate, the CTC is already submitted with the instant Petition for Review as corroborative evidence to prove and attest that petitioner has no pending internal revenue tax liabilities.

Finally, petitioner posits that a review of the evidence presented by petitioner would prove that the requisites for the entitlement to the refund and/or issuance of tax credit certificate for the accumulated and unutilized input VAT due to cessation of business operations have been fully satisfied by petitioner. Since petitioner was able to submit the additional requirement of the CTA-Third Division, that is, the submission of the CTC which proves that petitioner has been cleared of all its internal revenue tax liabilities, there is nothing that should prevent petitioner from being entitled to the claim for refund of excess and unutilized input VAT or issuance of a tax credit certificate.

THE COURT EN BANC'S RULING

The Court *En Banc* resolves to partially grant the petition.

In the assailed Decision, the CTA-Third Division found that the filing of the administrative claim for refund by petitioner on November 5, 2007, and the filing of the Petition for Review with the CTA-Third Division on May 26, 2008, were both made within the period prescribed under Section 112 (B) of the 1997 National Internal Revenue Code (NIRC), as amended,[5]

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[5] "Sec. 112. *Refunds or Tax Credits of Input Tax.* –

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(B) *Cancellation of VAT Registration.* – A person whose registration has been cancelled due to retirement from or cessation of business or due to changes of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes."

and as implemented by Section 4.112-1(b) of Revenue Regulations (RR) No. 16-05.[6]

The CTA-Third Division was, however, constrained to deny the claim for refund on the ground of petitioner's failure to submit the CTC. Citing the case of **SMI-ED Philippines Landholdings, Inc. vs. Commissioner of Internal Revenue**[7] (*SMI-ED case*) which was later on affirmed by this Court *En Banc*,[8] the CTA-Third Division held that "petitioner's assertion that nowhere in the law requires that the taxpayer must be cleared of all its tax in order to be entitled to a refund or issuance of tax credit certificate, and that in case any pending tax liabilities should be the subject of an assessment and be dealt with separately, deserves scant consideration." The CTA-Third Division further ruled that since respondent has yet to issue the required CTC, it has no option but to deny the claim for refund.

The Court *En Banc* notes that while petitioner filed an application for tax clearance way back on September 26, 2007, the corresponding CTC was issued only on July 5, 2012 by the Division Chief of the Collection Division of BIR Revenue Region No. 7, or after the promulgation of the CTA-Third Division's April 3, 2012 Decision and its June 25, 2012 Resolution. Evidently, it was not possible for petitioner to offer the CTC as evidence when the case was pending before the CTA-Third Division.

Petitioner is now introducing the CTC, as new evidence, before the Court *En Banc*. Petitioner urges the Court *En Banc* to admit and take judicial notice of the CTC, together with the Verification Slip issued by the Division Chief of the Collection Division of BIR Revenue Region No. 7, and the letter instructing the cancellation of petitioner's Certificate of Registration No. 3RC0000075223 issued by the Regional Director of Revenue Region No. 7, Jonas DP Amora, in the interest of substantial justice.

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[6] "Section 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.* –

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(b) *Cancellation of VAT registration*

A VAT-registered person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of the Tax Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which he may use in payment of his other internal revenue taxes; Provided, however, that he shall be entitled to a refund if he has no internal revenue tax liabilities against which the tax credit certificate may be utilized."

[7] CTA Case No. 6740, April 20, 2006.

[8] SMI-ED Philippines Landholdings, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 208 (CTA Case No. 6740), February 27, 2008.

Rule 129 of the Revised Rules on Evidence provides that:

> **"RULE 129**
> **What Need Not Be Proved**
>
> **Section 1.** *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.
>
> **Section 2.** *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions.
>
> **Section 3.** *Judicial notice, when hearing necessary.* — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.
>
> After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.
>
> **Section 4.** *Judicial admissions.* — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made."

The power of taking judicial notice is to be exercised by courts with caution. Care must be taken that the requisite notoriety exists and every reasonable doubt on the subject should be promptly resolved in the negative.[9]

In this case, the CTC dated July 5, 2012, the Verification Slip issued by the Division Chief of the Collection Division of BIR Revenue Region No. 7, and the letter instructing the cancellation of petitioner's Certificate of

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[9] *D.O. Plaza Management Corp. v. Co-Owners Heirs of Andres Atega*, G.R. No. 158526, 16 December 2004, 447 SCRA 171, citing *Catungal v. Hao*, G.R. No. 134972, 22 March 2001, 355 SCRA 29.

Registration No. 3RC0000075223 issued by the Regional Director of Revenue Region No. 7, Jonas DP Amora, are not among the documents which the law mandatorily requires the CTA *En Banc* to take judicial notice. Thus, in order for these documents to be properly considered, the CTA *En Banc* deems it proper that they should be presented during trial and formally offered as evidence.

Accordingly, the CTA *En Banc* finds that a hearing is necessary, so that both parties can be heard with regard to these documents. Respondent should be given the opportunity to scrutinize these documents and, if warranted object to them during the hearing of the case.

It is therefore in the highest interest of justice and equity that this case be remanded to the CTA-Third Division for further reception of evidence, consistent with the well-settled principle that rules of procedure are intended to promote not to defeat substantial justice and that they should not be applied in a very rigid and technical sense.

In the case of **BPI-Family Savings Bank, Inc. vs. Court of Appeals,**[10] the Supreme Court pronounced:

> "Xxx. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness."

WHEREFORE, premises considered, the Petition for Review is hereby partly **GRANTED**. The Decision dated April 3, 2012 and the Resolution dated June 25, 2012, both of the CTA-Third Division, are hereby **SET ASIDE.** The case is hereby **REMANDED** to the CTA-Third Division for the reception of the following documents as evidence: a) Certificate of Tax Clearance dated July 5, 2012 issued by the Division Chief of the Collection Division of BIR Revenue Region No. 7; b) Verification Slip dated July 5, 2012 issued by the Division Chief of the Collection Division of BIR Revenue Region No. 7; and, c) letter instructing the cancellation of petitioner's Certificate of Registration No. 3RC0000075223 issued by the Regional Director of Revenue Region No. 7, Jonas DP Amora. Thereafter, the CTA-Third Division is directed to make a proper and immediate determination of the propriety of the claim for refund or tax credit

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[10] G.R. No. 122480, April 12, 2000, 330 SCRA 507, 509-510.

certificate, and consequently, make a declaration of the specific amount of refund or tax credit certificate to which petitioner is entitled to, if any,

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate 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
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice