Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PHIL. GOLD PROCESSING & REFINING CORPORATION, Petitioner,	**CTA EB Case No. 1121** (CTA Case Nos. 8327 and 8328)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 31 2015 4:15 p.m.

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DECISION

CASANOVA, J.:

This is a Petition for Review[1] under Section 4(b), Rule 8 of the Revised Rules of Court of Tax Appeals (CTA),[2] in relation to Rule 43 of the Rules of Court, seeking to reverse and set aside the Resolution[3] dated January 14, 2014 (Assailed Resolution) rendered by the CTA Special Third Division in CTA Case Nos. 8327 and 8328, denying petitioner's Omnibus Motion for Reconsideration[4] dated November 21, 2013.

The said Omnibus Motion for Reconsideration sought the reversal and setting aside of the Special Third Division's Resolution dated October 14, 2013[5], which denied petitioner's Motion to Re-Open[6] the division cases, and the Decision[7] dated October 22, 2013, which in

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[1] En Banc Rollo, pp. 6-31.
[2] SC A.M. No. 05-11-07-CTA
[3] Division Docket (CTA Case No. 8327, Vol. III), pp. 1257-1265.
[4] Ibid, pp. 1215-1228.
[5] Id., p. 1193-1199.
[6] Id., pp. 1098-1103.
[7] Id., pp. 1201-1213.

turn, denied petitioner's claim for refund of unutilized input VAT amounting to P417,437,165.27.

The factual antecedents of the cases at bench, as found by the Special Third Division, are as follows:

> "Petitioner Phil. Gold Processing and Refining Corporation is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with registered address at 3/F Corinthian Plaza, Paseo de Roxas, Makati City. Petitioner is a VAT-registered taxpayer, with Tax Identification No. 004-498-686-000. It is registered as a 'non-pioneer with pioneer incentives' enterprise with the Board of Investments (BOI) as evidenced by BOI Certificate of Registration No. 2008-042.'
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> Petitioner's primary purpose is to 'engage in the business of processing, milling, crushing, refining, smelting, concentrating, amalgamating and beneficiating mineral resources, and the products or by-products thereof, of every kind and description and by whatever process, method or mode in which such activities can be carried out; and in conjunction with the foregoing to build, construct, operate, purchase, lease or otherwise acquire such processing, milling, refining, and beneficiating plants, machinery, tools and other equipment whatsoever which are necessary and incidental in carrying out the foregoing purposes, and to carry on the business of preparing for market, buying, selling, at wholesale, and exchanging mineral resources and the products or by-products thereof.'
>
> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with authority to act as such, including, among others, the power to decide, approve, and grant refunds or tax credit of overpaid internal revenue taxes as provided by law. She holds office at the BIR National Office Building, Diliman, Quezon City.
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> Petitioner filed with the BIR its Quarterly VAT Returns for the 4th quarter of FY ending June 30, 2009 to the 2nd quarter of FY ending June 30, 2010 on the following dates:

PERIOD COVERED	ORIGINAL RETURN	AMENDED RETURN
4TH Qtr—FY June 2009(April – June 2009)	July 27, 2009	April 13, 2011
1st Qtr—FY June 2010 (July-Sept. 2009)	September 30, 2009	April 13, 2011
2nd Qtr - FY June 2010 (Oct. – Dec. 2009)	January 25, 2010	April 13, 2011

Subsequently, petitioner filed with the BIR an administrative claim for refund of its alleged unutilized input VAT attributable to its zero-rated sales for the 4th quarter of FY ending June 30, 2009 to the 2nd quarter of FY ending June 30, 2010, detailed as follows:

PERIOD COVERED	DATE FILED	AMOUNT
4TH Qtr—FY June 2009 (April – June 2009)	March 25, 2011	P82,007,340.43
1st Qtr - FY June 2010 (July-Sept. 2009)	April 1, 2011	P166,571,571.04
2nd Qtr - FY June 2010 (Oct. – Dec. 2009)	April 1, 2011	P168,858,253.80

On August 25, 2011, petitioner filed before this Court a judicial claim for refund of its purported unutilized input VAT attributable to its zero-rated sales for the 4th quarter of FY ending June 30, 2009. It was docketed as CTA Case No. 8327.

On August 26, 2011, petitioner filed before this Court a judicial claim for refund of its alleged unutilized input VAT attributable to its zero-rated sales for the 1st and 2nd quarters of FY ending June 30, 2010. It was docketed as CTA Case No. 8328.

Respondent filed her Answers to CTA Case Nos. 8327 and 8328 on October 7, 2011, and October 12, 2011, respectively.

In CTA Case No. 8327, respondent, raised, among others, the following defenses: that the amount allegedly representing unutilized or unapplied creditable input tax was not properly documented; that petitioner has not complied with Section 112 with respect to the periods for claiming tax refund/credit; and, that petitioner has not submitted complete documents for its administrative claim.

In CTA Case No. 8328, respondent argued: that petitioner failed to file a timely and appropriate written claim for refund; that petitioner failed to exhaust all administrative remedies thus the judicial claim is premature; and, that petitioner failed to submit complete supporting documents.

On November 25, 2011, petitioner filed a Motion for Consolidation of CTA Case No. 8327 and CTA Case No. 8328, arguing that the two cases involved the same parties and common questions of law and facts. The motion was granted by this Court in its Resolution dated December 14, 2011.

During trial, petitioner presented and formally offered its pieces of testimonial and documentary evidence. On the other hand, respondent, through counsel, manifested that there is no Report of Investigation with regard to petitioner's administrative claim and that she is submitting the case for decision. As a consequence, counsels for the parties were given thirty (30) days within which to file their respective Memorandum.

The case was submitted for decision on March 26, 2013, considering petitioner's Memorandum filed on March 25, 2013 and respondent's Memorandum filed on March 5, 2013."

Thereafter, petitioner filed its Motion to Re-open[8] the Division cases dated July 31, 2013, on August 1, 2013, with respondent's Opposition (Re: Motion to Re-Open)[9] filed on August 30, 2013 and petitioner's Reply[10] dated September 11, 2013, praying therein that the proceedings of the cases be re-opened and that it be allowed to submit the following documents: sales invoices for the period July 1, 2009 to December 31, 2009; original copies of its airway bills, bar lists and packing lists; and, its Purchase /Import Transaction Reconciliation of Listing for Enforcement for the period October 1 to December 1, 2009.

However, the foregoing Motion to Re-Open was denied for lack of merit in a Resolution[11] promulgated on October 14, 2013, based on the following grounds: (i) that petitioner did not allege that the afore-mentioned documents were not available during trial; (ii) neither did it

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[8] See Footnote No. 6.
[9] Division Docket (CTA Case No. 8327, Vol. III), pp. 1182-1186.
[10] Ibid, pp. 1187-1191.
[11] Id, pp. 1193-1199.

claim any mistake/inadvertence to its omission to present the said documents, nor alleged any intention to correct evidence previously offered; and, (iv) that the Court refused to give credence to petitioner's allegation that the original copies of the airway bills, bar lists and packing lists were not available at the time of the trial as petitioner found it extremely difficult to locate the said documents due to the resignation of its senior accountant and general accountant.

In the Assailed Decision[12] promulgated on October 22, 2013, the Special Third Division dismissed CTA Case No. 8327 on the ground of prescription and denied petitioner's claim covered in CTA Case No. 8328 for failure to meet the invoicing requirements for zero-rated export sales.

By reason of such denial, petitioner filed, on November 21, 2013, its Omnibus Motion for Reconsideration[13], with respondent's Comment/Opposition (Re: Omnibus Motion for Reconsideration),[14] filed on December 9, 2013, seeking reconsideration of the Assailed Resolution and Decision. Petitioner filed its Reply[15] thereto on December 26, 2013. However, said Omnibus Motion was denied by the Court for lack of merit in a Resolution[16] dated January 14, 2014.

Hence, this Petition for Review.

In a Resolution[17] dated July 9, 2014, the Court ordered respondent to file her Comment to petitioner's Petition for Review. However, per Records Verification[18] dated August 26, 2014, respondent failed to file her Comment thereto.

Thus, in a Resolution[19] promulgated on October 1, 2014, the Court En Banc gave due course to the instant Petition and required both parties to submit their simultaneous Memoranda.

On December 4, 2014, the case was submitted[20] for decision taking into consideration respondent's Memorandum[21] filed on

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[12] Id, pp. 1201-1213.
[13] See Footnote No. 4.
[14] Division Docket (CTA Case No. 8327, Vol. III), pp. 1231-1240.
[15] Ibid., pp. 1242-1254.
[16] See Footnote No. 3.
[17] En Banc Rollo (Vol. III), pp. 1148-1149.
[18] Ibid, p. 1150.
[19] Id, pp. 1152-1153.
[20] Resolution dated December 4, 2014, Id, pp. 1189-1190
[21] Id, pp. 1154-1164.

November 4, 2014 and petitioner's Memorandum[22] filed on November 20, 2014.

Here, petitioner raised the following issues for the resolution of this Court:

Issues

I.

WHETHER OR NOT THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN REFUSING TO REOPEN THE CASES FOR FURTHER PRESENTATION OF SUPPORTING EVIDENCE.

II.

WHETHER THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT PETITIONER FAILED TO PROVE ITS CLAIMS FOR REFUND/TAX CREDIT THROUGH PROPER DOCUMENTATION.

III.

WHETHER THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT CTA CASE NO. 8237 WAS FILED OUT OF TIME.

In support of the foregoing issues, petitioner argues that justice and fairness dictate that the cases be re-opened; that the invoicing requirements relative to export sales cannot be given too much importance as petitioner has fully substantiated its input tax; that sales invoices are not statutory requirements in claims for refund; compliance with invoicing requirements can be dispensed with as petitioner's customer is a non-resident foreign corporation who will not be claiming input VAT arising from petitioner's transactions; that VAT zero-rating has been approved by respondent CIR; that petitioner's export sales were duly accounted for; that evidence was presented to prove the difference between sales per provisional invoices and total collections per official receipts; and, that there is no law which provides outright denial of the claim for refund for failure to comply with invoicing requirements.

With regard to petitioner's prayer for the re-opening of the case, respondent insists in her Memorandum that petitioner should not be allowed to belatedly submit documentary evidence which could have been timely offered and admitted had it exercised ordinary prudence and diligence; that litigation must end at one point; that compliance

[22] Id, pp. 1165-1187.

with the Rules is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business; that petitioner's failure to present the same was due to the negligence of its counsel and such negligence should not be countenanced by the Court; that petitioner should not be allowed, in the guise of equity, to benefit from its own negligence; that evidence not formally offered is inadmissible and has no probative value; and, that the Court cannot consider evidence that is not in the record.

As regards petitioner's Motion for Reconsideration of the Decision promulgated on October 22, 2013, respondent agrees with the findings of the Special Third Division that petitioner's judicial claim for the 4th quarter of fiscal year ending June 30, 2009 had already prescribed for having been filed beyond August 22, 2011, the end of the thirty (30) day period to appeal before this Court. Accordingly, since petitioner did not submit complete documents in support of its administrative claim for refund as indicated under Section 112 (D) of the NIRC of 1997, the 120-day period started to run on March 25, 2011 (for CTA Case No. 8327), the date when it filed its administrative claim for refund. The said period expired on July 23, 2011. Hence, the 30-day period within which to file Petition for Review expired on August 22, 2011. However, petitioner filed its Petition only on August 25, 2011 (CTA Case No. 8327). This being so, the Court in Division had no jurisdiction to act on the instant Petition for Review docketed as CTA Case NO. 8327 for having been belatedly filed.

The Court in Division did not err in refusing to reopen the cases for further presentation of supporting documents

The reopening of a case for further presentation of evidence is governed by Section 5, Rule 30 of the 1997 Rules of Civil Procedure which provides:

> "Sec. 5. Order of trial.— Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
>
> (a) x x x x
>
> x x x x
>
> (f) The parties may then respectively adduce rebutting evidence only, unless the court, for good

> reasons and in the furtherance of justice, permits them to adduce evidence upon their original case.

It can be inferred from the foregoing provision that a Motion to Reopen the Case is rooted on the paramount interest of justice and the granting thereof rests within the sound discretion of the court.

Thus, in the case of *Ramon J. Alegre vs. Hon. Manuel T. Reyes, etc., and the People of the Philippines,*[23] the Supreme Court ruled:

> "A motion for new trial in civil or criminal actions may be applied for and granted only upon specific, well-defined grounds, set forth respectively in rules 37 (Section 1) and 121 (Section 2). On the other hand, **the reopening of a case for the reception of additional evidence after a case has been submitted for decision but before judgment is actually rendered is, it has been said, controlled by no other rule than that of the paramount interest of justice, resting entirely in the sound judicial discretion of the Trial Court;** and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown." (Emphasis supplied.)

Under the factual milieu of the cases at bench, *We* find that the Court in Division correctly ruled in denying petitioner's Motion to Re-Open on the ground that it failed to show reasons or facts that will convince this Court to apply the rule on paramount interest of justice in its favor. We quote, hereunder, the pertinent portion of the Assailed Resolution to which *We* fully agree, to wit:

> "x x x petitioner declared that it 'believes in good faith, that the submitted documents were sufficient proofs of its export sales.' Petitioner admitted that the sales invoices were not submitted, 'owing to the sufficiency of the official receipts and related documents'; and that the original printouts of Purchase/Import Transaction Reconciliation of Listing for Enforcement were no longer produced during trial as the corresponding VAT return (BIR Form 2550 Q) attaching the said document had already been authenticated.
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> Despite its strong belief as to the sufficiency of the documents submitted during trial, petitioner now comes to this Court asking for re-opening of proceedings to present

[23] G.R. No. L-56923, May 9, 1988.

additional evidence, armed with the following vindication: 'if only to settle all questions on the completeness of its claim for refund.' Such vindication/justification is one which this Court cannot countenance. Clearly in this case, a judgment call was made by petitioner as to which evidence to present in support of its claim during trial; if such vindication was to be admitted as a valid reason for re-opening cases, there would never be an end to litigation. Besides, litigation is not a 'trial and error' proceeding.

Second, the Court refuse to give credence to petitioner's allegation that the original copies of the airway bills, bar lists and packing lists were not available at the time of the trial as petitioner found it extremely difficult to locate the said documents due to the resignation of its senior accountant and general accountant, who had exclusively handled export transactions, last **February 18, 2012** and **June 23, 2012**, respectively.

Records show that:

- petitioner's judicial claim was filed on August 25, 2011 and pre-trial was set on November 3, 2011;
- the initial presentation of evidence for the petitioner commenced on March 12, 2012;
- presentation of evidence for the petitioner was continued on May 17, 2012;
- direct examination of petitioner's last witness was completed on **June 21, 2012.**

As can be gleaned from the foregoing, petitioner had sufficient time to collate all possible evidence before the alleged resignation of the officers handling export transactions. Direct examination of petitioner's last witness was completed on June 21, 2012, two days **before** the resignation of its general accountant on June 23, 2012. Verily, the factual antecedents cast a cloud of doubt over petitioner's excuse/declaration and constrain this Court to deny giving full faith and credence to the same."[24]

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[24] Pages 5 to 6 of the Resolution promulgated on October 14, 2013, Division Docket (CTA Case No. 8327, Vol. III), pp. 1197-1198.

The Court in Division did not, likewise, err in ruling that petitioner failed to prove its claims for refund/tax credit through proper documentation

Petitioner consistently insists that the invoicing requirements relative to export sales cannot be given too much importance as it has fully substantiated its input tax and that compliance thereto can be dispensed with as its customer is a non-resident foreign corporation who will not be claiming input VAT arising from petitioner's transactions. It further argues that its VAT zero-rating has been approved by respondent CIR.

The foregoing arguments deserve scant consideration.

Even if the taxpayer's application for zero-rating has been approved by the Commissioner of Internal Revenue, it must still comply with the invoicing and accounting requirements mandated by the National Internal Revenue Code (NIRC), as well as its implementing revenue regulations.[25]

Further, the strict adherence in the invoicing and accounting requirements was emphasized by the High Tribunal in the recent case of *Miramar Fish Company, Inc., vs. Commissioner of Internal Revenue*[26], in this wise:

> "It bears stressing that the law and regulations are explicit in emphasizing strict compliance with the invoicing requirements because for the same transactions the output VAT of the seller becomes the input VAT of the purchaser. Pursuant to Sections 106(D)(1) and 108(C) of the NIRC of 1997, as amended, in relation to Section 110 of the same Code, the output or input tax on the sale or purchase of goods is determined by the total amount indicated in the invoice, while the output or input tax on the sale or purchases of services is determined by the total amount indicated in the official receipt. x x x x Thus, as required by Section 113 of the NIRC of 1997, as amended, petitioner's sales invoices must indicate that it is a VAT-registered person, which in this case was not complied with by petitioner.

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[25] Western Mindanao Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 181136, June 13, 2012.
[26] G.R. No. 185432, June 4, 2014.

At this juncture, and to settle strictness in compliance, we go to the textbook lesson that if the language of the law is clear, explicit and unequivocal, it admits no room for interpretation but merely application. A statute clear and unambiguous on its face need not be interpreted; stated otherwise, the rule is that only statutes with an ambiguous or doubtful meaning may be the subject of statutory construction. The provisions of Sections 113 and 237 of the NIRC of 1997, as amended, and Section 4.108-1 of RR No. 7-95, are clear in enumerating the invoicing requirements necessary to be shown in order to qualify as duly registered receipts or sales or commercial invoices issued by VAT-registered entities, such as petitioner herein, for the purpose of claiming for refund of creditable input tax due or paid attributable to any zero-rated or effectively zero-rated sales. Absent compliance, the unavoidable result is immediate denial of the claim."

Adhering to the foregoing jurisprudence, *We* adopt the following factual and legal findings of the Special Third Division, to wit:

"While these documents show that petitioner's products were actually sold and shipped abroad and in consideration thereof, petitioner received foreign currency payments inwardly remitted in accordance with the BSP rules and regulations; the Court noted that petitioner failed to meet the invoicing requirements for zero-rated export sales.

The invoices submitted by petitioner were mere provisional invoices which do not bear petitioner's TIN-VAT number and the word 'zero-rated' was not written or imprinted thereon in violation of Sections 113 (A) (1) and (B) (1) and (2) (c) of the NIRC of 1997, as amended. It is well-settled that petitioner's failure to comply with the invoicing requirements such as the imprinting of the word 'zero-rated' on its invoices is fatal to its claim for refund of input VAT on zero-rated sales.

Petitioner also failed to show that the provisional invoices it submitted were duly registered with the BIR as mandated under Sections 237 and 238 of the NIRC of 1997, as amended. Without duly registered VAT sales invoices containing the required information, particularly, petitioner's TIN-VAT number and the imprinted word 'zero-rated', petitioner's reported export sales for the 1st and 2nd

> quarters of FY ending June 30, 2010 in the amount of P3,252,883,799.44 cannot qualify for VAT zero-rating under Section 106 (A) (2) (a) (1) of the NIRC of 1997, as amended. Consequently, petitioner's claimed input VAT allegedly attributable thereto in the amount of P335,429,824.84 cannot be granted.
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> Accordingly, petitioner's compliance with the other requisites for refund of unutilized input VAT will no longer be discussed."

The Court in Division did not err in ruling that CTA Case No. 8327 was filed out of time

Petitioner claims that the Court in Division should have reckoned the 120+30-day period from the filing of its Amended Quarterly VAT Return on April 13, 2011 instead of March 25, 2011, the date of filing of its administrative claim for refund, since it was only from April 13, 2011 that it completed its submission of necessary documents to support its claim for refund.

However, the Court *En Banc* agrees with the findings of the Court in Division that the records are bereft of any showing that petitioner's Amended Quarterly VAT Returns[27] for the quarter of April to June 2009 were being filed or submitted as additional documents in support of its application for refund as there was no covering or transmittal letter to that effect attached to the said submitted documents. Thus, at the risk of being repetitive, *We* reiterate pertinent portions of the Assailed Resolution to which *We* fully agree:

> "This Court has consistently ruled that the term 'complete documents' under Section 112 (C) of the NIRC of 1997, as amended, should be understood as those documents necessary to support the application for refund or tax credit certificate as determined by the taxpayer.
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> However, after reviewing the evidence on record, the Court cannot give credence to petitioner's claim that the Amended Quarterly VAT Return for the quarter April to June 2009 was submitted as additional document in support of its administrative claim for refund and thus the counting of the

[27] Annex "L" to the Amended Petition for Review, Division Docket (CTA Case No. 8327, Vol. I), pp. 312-313.

120-day period should be reckoned from the filing of said amended return.

An examination of the Amended Quarterly VAT Return for the quarter April to June 2009 (Exhibit 'K') shows that the same was stamped received by the BIR on April 13, 2011. However, there was no covering or transmittal letter stating that the same is being submitted as additional document in support of petitioner's claim for refund. Consequently, the Court cannot determine, by merely looking at the amended return, if it was petitioner's intention to submit the same as additional document in support of its claim for refund.

Moreover, by petitioner's own allegation and declaration in its pleadings, it reckoned the counting of the 120+30 day period on March 25, 2011, the date when it filed its administrative claim.

First, in its Petition for Review, petitioner alleged that '[c]onsidering the filing of the petitioner of its administrative case with respondent on 25 March 2011, and the filing of this Petition, petitioner has claimed its established certificate of credit within the reglementary period as provided by law.' Second, in its Offer of Exhibits, the purpose of the Amended Quarterly VAT Return for the 4th Quarter of FY ending June 30, 2009 (Exhibit 'K') did not state that it was likewise being presented to prove that it was submitted as additional supporting documents to the administrative claim for refund. Finally, in the Judicial Affidavit of petitioner's witness, Ms. Juanita Lilet Dato-Abuel, the reason stated for petitioner's filing of an Amended Quarterly VAT Return was to reflect the adjustment on its unapplied creditable input taxes for the same quarter, there was no mention that it was also being submitted as additional supporting document on its administrative claim for refund.

The foregoing belies petitioner allegation that it submitted the Amended Quarterly VAT Return as additional supporting documents in support of its administrative claim for refund, hence, the 120+30 day period should be reckoned from the filing of the said administrative claim."[28]

Furthermore, the rationale for not counting the 120-day period from the filing of the last supporting documents was

[28] Page 7 to 8 of January 14, 2014 Resolution of the Special Third Division, Division Docket (CTA Case No. 8327, Vol. III), pp. 1263-1264.

adequately explained by this Court in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,*[29] in this wise:

> "x x x the Court cannot subscribe to petitioner's contention that the 120-day should commence on August 28, 2008, or the date when it filed its last supporting document with respondent. Section 112 of the Tax Code is very explicit without any provision for suspension or extension of the 120-day prescriptive period. When the language of the law is clear and explicit, there is no room for interpretation, only application. To give way to this interpretation of petitioner is to render the prescriptive periods under Section 112 toothless. Obviously this gives any taxpayer unlimited discretion to indefinitely extend the 120-day period by simply filing additional documents on the pretext that they are additional substantiation to its administrative claim for refund."

It must be stressed that tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, thus, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[30] The taxpayer has the burden to present convincing evidence to substantiate a claim for refund.

In view of the foregoing considerations, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion of the Special Third Division as it is supported by the evidence on record and is consistent with prevailing law and jurisprudence.

WHEREFORE, premises considered, the Court hereby **AFFIRMS** the Resolution promulgated on January 14, 2014 and the Decision promulgated on October 22, 2013. The Petition for Review filed by Phil. Gold Processing and Refining Corporation is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[29] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 776 (CTA Case No. 7863), October 11, 2012.
[30] Commissioner of Internal Revenue vs. Far East Bank & Trust Company (Now Bank of the Philippines Islands), G.R. No. 173854, March 15, 2010.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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