REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	C.T.A. EB No. 971 (C.T.A. Case Nos. 8041 & 8111)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS *and* RINGPIS-LIBAN, *JJ.*
CE CASECNAN WATER AND ENERGY COMPANY, INC., Respondent.	Promulgated: JAN 07 2014 8:25 a.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review dated January 2, 2013, petitioner Commissioner of Internal Revenue (CIR) assails the Decision promulgated by the Court in Division on September 11, 2012, which partially granted respondent CE CASECNAN WATER AND ENERGY COMPANY, INC.'s claim for refund or issuance of tax credit certificate of unutilized input Value-Added Tax (VAT) attributable to its zero-rated sales to the National Irrigation Administration (NIA) for the year 2008. Petitioner also assails the Resolution dated November 29, 2012 which denied its Motion for Reconsideration, for lack of merit.

First, the facts.

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with the authority to act on claims for refund or issuance of tax credit as provided by law, with office address at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent CE Casecnan Water and Energy Company, Inc. is a duly organized domestic corporation, with principal office at Pantabangan, Nueva Ecija. It was incorporated on September 21, 1994, with the primary purpose to design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydro-electric power project and related facilities in Central Luzon, for the conversion into electricity of water provided by and under contract with the National Irrigation Authority (NIA); however, in no event shall it engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility, or furnish electricity to end-users or consumers, or provide a public service or engage in industries or activities which by law and Constitution are reserved to corporations wholly or partially owned by Filipino citizens.

Respondent is a duly accredited and certified Private Sector Generation Facility by the Department of Energy (DOE) as evidenced by its DOE Certificate of Accreditation No. 95-07-12 issued on July 20, 1995. It has also been granted a Certificate of Compliance (COC) No. 05-07-GN8-10701 on July 27, 2005 by the Energy Regulation Commission (ERC). It is a BIR registered VAT taxpayer with Certificate of Registration No. 0000017028 dated July 1, 1998 and Tax Identification Number 004-500-931-000.

Respondent filed its Quarterly VAT Returns for taxable period January 2008 to December 2008, as well as their amendments through the BIR's Electronic Filing and Payment System (EFPS) on the following dates:

EXHIBIT	PERIOD COVERED	DATE OF FILING
H	January to March	April 25, 2008
I	January to March (Amended Return)	February 23, 2009
J	April to June	July 25, 2008
K	April to June (Amended Return)	February 11, 2010
L	July to September	October 24, 2008
M	July to September (Amended Return)	February 11, 2010
N	October to December	January 26, 2009
O	October to December (Amended Return)	February 11, 2010

On November 11, 2009, respondent filed an administrative claim for refund/tax credit with the Large Taxpayers Audit and Investigation Division I of the BIR (BIR LTAID I) for alleged unutilized input VAT payments in the amount of P6,264,758.82 attributable to its zero-rated sales covering the 1st Quarter of taxable year 2008. A similar claim for refund/tax credit was filed with the same office on February 16, 2010 in the aggregate amount of P13,917,771.50, covering the 2nd to the 4th Quarter of taxable year 2008. However, on March 5, 2010, petitioner amended the amount stated in the second application from P13,917,771.50 to P13,798,917.42, covering the 2nd to 4th Quarter of taxable year 2008.

On March 26, 2010 and June 24, 2010, respondent filed two separate Petitions for Review with the Court in Division docketed as CTA Case Nos. 8041 and 8111 alleging inaction on the part of petitioner.

At the instance of respondent, the two separate cases were consolidated by the CTA Third Division on November 12, 2010; which was confirmed by the CTA Second Division in a Resolution dated November 22, 2010.

In her separate Answers, petitioner basically invoked the burden on the part of respondent to prove its entitlement to the claim for refund/tax credit by presenting clear and convincing evidence that all the requirements for that purpose have been satisfied.

After trial, the Court in Division rendered the assailed Decision dated September 11, 2012, partially granting respondent's claim for refund in this wise:

> WHEREFORE, the instant consolidated case is hereby PARTIALLY GRANTED. Accordingly, respondent Commissioner of Internal Revenue is hereby ORDERED to REFUND or to ISSUE A TAX CREDIT CERTIFICATE in the amount of P19,219,165.31 to petitioner, representing unutilized input VAT attributable to its zero-rated sales to NIA for taxable year 2008.
>
> SO ORDERED.

Aggrieved, petitioner filed a Motion for Reconsideration which the Court denied for lack of merit in the assailed Resolution dated November 29, 2012.

Hence, the instant Petition for Review before the Court *En Banc*.

The sole issue raised by petitioner is whether respondent is entitled to refund/tax credit in the amount of P19,219,165.31, allegedly representing its unutilized input VAT attributable to its zero-rated sales for the year 2008.

Petitioner claims that the Court in Division has no jurisdiction as the Petition for Review in CTA Case No. 8111 was prematurely filed, that respondent failed to submit complete documents in the administrative level (within the prescribed period) and immediately sought judicial review in violation of the doctrine of exhaustion of administrative remedies, and that tax refunds are construed *strictissimi juris*.

In support of its argument, petitioner invokes the ruling of the Supreme Court in *Commissioner of Internal Revenue* *vs. Aichi Forging Company of Asia, Inc.*[1] which provides for the strict compliance with the provision of Section 112(C) of the NIRC of 1997, as amended.

Petitioner admits that respondent's first judicial claim for refund docketed as CTA Case No. 8041 was timely instituted on March 26, 2010 but not the second docketed as CTA Case No. 8111. Petitioner explains that respondent's second administrative claim for refund was filed on February 16, 2010 but it was amended on March 5, 2010. Barely 111 days from March 5, 2010 or June 24, 2010, respondent filed CTA Case No. 8111 depriving the Court in Division of the jurisdiction to determine the case involving respondent's claim covering the 2nd to the 4th Quarters of 2008 due to prematurity in flagrant violation of Section 112 of the NIRC of 1997, as amended.

Even assuming *arguendo* that the Court acquired jurisdiction over respondent's claims for refund, respondent's failure to submit complete documents in the administrative level as required under Section 112(C) is fatal to its case. Submission of complete documents in support of application for refund/tax credit within the period provided by law is jurisdictional. Since respondent, according to petitioner, failed to present complete evidence to substantiate its administrative claims, the 120-day period granted to her to decide the merit of the applications did not run. Thus, the Petitions for Review filed by respondent were prematurely filed with the Court in Division.

Petitioner insists that only after the submission of complete documents will the 120-day period starts to run pursuant to Section 112(C) of the NIRC of 1997, as amended. Only after compliance with this administrative requirement may the taxpayer avail of judicial remedies as provided under the rules. Thus, before judicial inquiry into the issue of whether a taxpayer is entitled to a refund/tax credit under substantive law, the taxpayer must prove that all the administrative requirements had been complied with.

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[1] G.R. No. 184823, October 6, 2010.

The hurried recourse of respondent to the Court deprived petitioner of the opportunity to fully exercise her function to correct, modify or affirm the findings of her subordinates. Well settled is the rule that exhaustion of available administrative remedies is a condition precedent before taking judicial action.

Finally, petitioner argues that respondent has the burden of proof to show entitlement to the relief sought. It must establish its claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications.[2] The taxpayer such as respondent is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.[3] In the instant case, respondent failed.

By way of *Comment,* respondent counter-argues that petitioner's theory that the 120-day period provided in Section 112(C) of the NIRC of 1997, as amended, commenced on March 5, 2010 and not on February 16, 2010, is seriously flawed as it glosses over significant facts of the case. Record reveals that respondent filed its administrative claim for refund on February 16, 2010 with petitioner, together with all the documents necessary to support its claim for refund. The subsequent letter it filed on Mach 5, 2010, is merely a Clarificatory Letter reducing the amount of its claim from P13,917,771.50 to P13,798,917.42, and did not result in a new claim for refund different from what was described in its letter dated February 15, 2010. Moreover, the supporting documents for its claim for refund for both amounts are the same.

Respondent also argues that since no additional supporting documents were attached to its March 5, 2010 Clarificatory Letter, there is no logic for counting the 120-day period from March 5, 2010. The 120-day period should commence from February 16, 2010, when it submitted all its

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[2] *BPI Leasing Corporation vs. Honorable Court of Appeals*, G.R. No. 127624, November 18, 2003.
[3] *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

supporting documents citing *Taganito Mining Corporation vs. Commissioner of Internal Revenue.*[4]

Moreover, respondent contends that even assuming that the Clarificatory Letter dated March 5, 2010 superseded its administrative claim filed on February 16, 2010, there is still no basis to dismiss its case based on lack of jurisdiction since it is a well-settled rule that jurisdiction over the subject matter of an action is conferred by law and does not depend on the consent or objection or the acts or omissions of the parties or any one of them.[5] Further, the premature filing of a judicial claim for refund of input VAT has, in a line of cases,[6] been categorized as a mere instance of non-exhaustion of administrative remedies and not as a ground to support lack of jurisdiction.

In addition, petitioner should be deemed to have waived the defense of prematurity as she failed to raise it in her Answer in CTA Case No. 8111 dated August 20, 2010 or in its Motion to Dismiss. On the contrary, petitioner even required respondent to comply with Section 229, as indicated in paragraph (9)(e) of her Answer, which bolsters the position that petitioner is indeed estopped and in effect, waived the defense of prematurity. Besides, petitioner submitted herself to the jurisdiction of the Court by actively participating in the proceedings.

Respondent also cites *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc*[7] saying that the mandatory nature of the 120-day period cannot be applied to all cases. The phrase "no jurisdiction" cannot be understood synonymously as "lack of jurisdiction". The violation of the principle of exhaustion of administrative remedies is never jurisdictional. As such, it can be waived in the context of estoppel or waiver by the party who failed to raise it as a defense.

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[4] CTA Case No. 8090, May 25, 2012.
[5] *Philippine National Bank vs. Florendo,* G.R. No. 62082, February 26, 1992 citing *Republic vs. Sangalang,* G.R. No. 58822, April 8, 1988.
[6] *UCPB Properties, Inc. vs. Commissioner of Internal Revenue*, CTA EB Case No. 568, April 20, 2011 and *Deutsche Knowledge Services Pte Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 7695, March 7, 2011.
[7] *Supra,* Note 2.

To counter petitioner's argument on its alleged failure to submit complete supporting documents, respondent states that the Court in a number of cases[8] ruled that in a VAT refund case, the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level.[9] Moreover, what constitutes "relevant supporting documents" in administrative claims for input VAT refund under Section 112(C) of NIRC of 1997, as amended, should be determined by the taxpayer alone.[10] In any case, the BIR can always inform the taxpayer to submit additional documents, although it cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer will be unable to submit. [11]

In the instant case, petitioner allegedly never required or requested respondent to submit additional documents to supplement the supporting documents already attached to its administrative claims for refund filed on November 11, 2009 and February 16, 2010. Furthermore, petitioner's reliance on RMO No. 53-98 is misplaced since the said BIR issuance does not impose a requirement on taxpayers to submit the documents listed therein for purposes of filing administrative claims for input VAT refund.[12] On the contrary, the said RMO is addressed to BIR examiners providing directives or instructions, prescribing guidelines and outlining processes, operations, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the BIR in all areas of operations, except auditing.

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[8] *Team Sual Corporation (formerly: Mirant Sual Corporation) vs. Commissioner of Internal Revenue*, CTA EB Case Nos. 649 and 651, March 21, 2012; *Commissioner of Internal Revenue vs. Toledo Power Company*, CTA EB Case No. 589, January 12, 2011; *CE Luzon Geothermal Power Company Inc. vs. Commissioner of Internal Revenue*, CTA EB Case No. 553 and *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB Case No. 554, July 20, 2010; *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB Case No. 523, April 15, 2010.

[9] *Commissioner of Internal Revenue vs. Toledo Power Company, Ibid.*

[10] *Commissioner of Internal Revenue vs. Team Energy Corporation*, CTA EB Case No. 652, October 4, 2011.

[11] *Team Sual Corporation (formerly: Mirant Sual Corporation) vs. Commissioner of Internal Revenue, Ibid.*

[12] *Ibid.*

In any case, respondent contends that such alleged non-submission of complete documents will not and does not bar the Court from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, sitting in division, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.[13]

Respondent emphasizes as well that petitioner never presented any controverting evidence to its entitlement to refund/tax credit. She did not even act on its administrative claims for refund. On the other hand, it substantially proved by preponderance of evidence its entitlement albeit partially to its claim for refund/tax credit of its unutilized input VAT attributable to its zero-rated sale for 2008.

Finally, when it is undisputed that a taxpayer is entitled to a refund, the State should not invoke the technicalities to keep money not belonging to it. No one, not even the State, should enrich oneself at the expense of another.[14]

THE RULING OF THE COURT *EN BANC*

The instant case involves a claim for refund or issuance of tax credit certificate, representing respondent's unutilized input Value-Added Tax (VAT) attributable to its zero-rated sales to the National Irrigation Administration (NIA) for the year 2008.

Section 112 of the NIRC of 1997, as amended, pertinently provides, thus:

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[13] *Commissioner of Internal Revenue vs. Toledo Power Company, Supra.*
[14] *Commissioner of Internal Revenue vs. Philippine National Bank*, CTA EB Case No. 499, November 26, 2009.

> SEC. 112. Refunds or Tax Credits of Input Tax. —
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> (A) Zero-rated or Effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax. xxx
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> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. xxx

In interpreting the foregoing provision, the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[15] (Aichi case), declared, thus:

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[15] *Supra,* note 2.

The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.

xxx xxx xxx

To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.

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Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

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Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial

> claims are filed within the two-year prescriptive period has no legal basis.
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> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years . . . apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.
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> In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

Plain from the cited case that a VAT-registered person, such as respondent, may, within two (2) years after the close of the taxable quarter when the sales were made, apply for issuance of tax credit certificate or refund of creditable input tax attributable to such sales. The language of the law is clear and explicit, there is no room for interpretation, only application.[16]

From the evidence adduced, it is clear that the respondent's administrative claims for refund for the year 2008 were filed within two (2) years after the close of the pertinent taxable quarters on February 16, 2010 for its unutilized input VAT attributable to its zero-rated sales to the NIA for the 1st Quarter of 2008 and for the 2nd to the 4th Quarters of 2008 on November 11, 2009.

Section 112 of the NIRC of 1997, as amended, also provides that within thirty (30) days from receipt of the decision denying the administrative claim for refund/tax credit, or after the lapse of the 120-day period for respondent to act on the claim, the aggrieved taxpayer may appeal with the CTA.

Thus, from the filing of the administrative claims for refund on November 11, 2009 and February 16, 2010, petitioner had 120 days to grant or deny the claim. Thereafter, respondent had 30 days to seek judicial review.

Since petitioner did not act on respondent's claims for refund/tax credit within the 120-day period provided by law, which lapsed on March 11, 2010 and June 16, 2010, respectively, respondent had 30 days therefrom to seek judicial review. Counting from March 11, 2010 and June 16, 2010, respectively, respondent had until April 10, 2010 and July 16, 2010, to challenge petitioner's inaction before the CTA. Hence, CTA Case No. 8041 covering respondent's unutilized input VAT for the 1st Quarter of 2008 and CTA Case No. 8111 covering respondent's unutilized input VAT for the 2nd to 4th Quarters of 2008, were both timely filed on March 26, 2010 and June 24, 2010, respectively.

Clearly, the Court has jurisdiction over the subsequently consolidated cases at bar.

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[16] *Joselito R. Mendoza vs. Commission on Elections and Roberto M. Pagdanganan*, G.R. No. 191084, March 25, 2010.

Anent the contention that the judicial claim for refund was prematurely filed in violation of the doctrine of exhaustion of administrative remedies, the Court finds the discussion of the Court in Division on the matter exhaustive and quote the same with approval, as follows:

> Nothing on record would reveal that respondent required petitioner to submit additional documents to support the application for refund. Even assuming that respondent required petitioner to submit additional documents, and petitioner failed to submit the said documents, the same would not be fatal to petitioner's case.
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> This Court finds it instructive the ruling in the consolidated cases of *Team Sual Corporation (formerly: Mirant Sual Corporation) vs. Commissioner of Internal Revenue, and Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*, where the Court En Banc held as follows:
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> > **The contention of the Commissioner that the law requires the submission of complete documents in support of the application filed with the BIR before the 120-day period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law, deserves scant consideration. This issue boils down to the proper interpretation of the term "complete documents" under Section 112 (D)** of the NIRC of 1997.
> >
> > In the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, the Supreme Court ruled:

> **'The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.'**

Although the foregoing ruling refers to the interpretation of the term 'relevant supporting documents' under Section 228 of the NIRC of 1997 pertaining to 'Protesting of Assessment', We find no reason why the same doctrine cannot be applied in the interpretation of 'complete documents' referred to under Section 112(D) of the same Code, for the following reasons:

1. If the determination of the completeness of the documents depends on the BIR, the concerned taxpayer will also be at the mercy thereof; and

2. It has been held that the Commissioner ought to know the tax records of all taxpayers, and thus, the Commissioner can easily decide whether or not to grant the concerned taxpayer's administrative claim for refund or tax credit certificate. In this connection,

> **nothing in RMO No. 53-98 mandates that the list of documents therein stated, insofar as the VAT is concerned, should be submitted in connection with an application for refund or tax credit certificate under the said Section 112, upon the filing thereof. Furthermore, said RMO is explicit, in its subject and objective, that it provides a checklist of documents to be submitted 'upon Audit', and that it was issued to '(i)dentify the documents to be required from a taxpayer during audit'**, respectively. In this case, **it was not shown that the audit was ever conducted by the BIR** in connection with Team Sual's application for refund or tax credit certificate. This is manifested by the lack of BIR Records transmitted to this Court, and by the absence of any 'report of investigation' concerning Team Sual's administrative claim for refund or tax credit certificate. **But even if We are to assume that an audit was made, it was never established that the Commissioner ever required Team Sual to submit the documents stated in the said RMO**.

Accordingly, **the term 'complete documents' under Section 112(D) of the NIRC of 1997 should be understood as those documents necessary to support the application for refund or tax credit certificate as determined by the taxpayer. Thus, should the taxpayer decide to submit only certain documents, or should the taxpayer fail, or opted not, to**

> **submit any document at all, in support of its application for refund or tax credit certificate under Section 112 of the NIRC of 1997, it is reasonable and logical to conclude that the reckoning date of the 120-day period thereunder, should be reckoned from the filing of the said application.**

Moreover, in *Commissioner of Internal Revenue vs. Toledo Power Company* (Toledo Power case), the Court En Banc ruled that:

> **In a VAT refund case such as the present case, the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level** as held in several CTA En Banc cases one of which is *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.* **It will not bar the CTA from receiving, evaluating, and appreciating evidence submitted before it. Once the claim for refund has been evaluated *(sic)* to the CTA, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.**

Clearly, in a refund case, the completeness of documents to support a claim is determined by a taxpayer. The duty of the BIR, under Section 112 (C), is to act on the claim within the 120-day period from the date of submission of complete documents. **As earlier emphasized, should the taxpayer decides to submit only certain documents, or should the taxpayer**

> **fail, or opted not, to submit any document at all, in support of its application for refund under Section 112, the 120-day period should be reckoned from the filing of the said application. In this case, the Court notes that petitioner already enclosed its supporting documents to its administrative claims, and absent any proof that petitioner submitted additional supporting documents as required by respondent after the filing of the claims, the 120-day period is reckoned from the filing of the said administrative claims.**
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> Moreover, **the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level. As emphasized in the Toledo Power case, the Court is not barred from receiving, evaluating, and appreciating evidence submitted before it. Once the claim is elevated to this Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.** Thus, in the assailed Decision, this Court finds, based on the evidence presented, that petitioner is entitled to a refund or issuance of tax credit certificate of its unutilized input VAT in the reduced amount of P19,219,165.31. *(Citations omitted and emphasis supplied)*

Furthermore, in *Commissioner of Internal Revenue vs. Manila Mining Corporation*,[17] it was held that documentary evidence presented in the administrative proceeding for refund have no evidentiary value unless presented and formally offered before the Court in Division where cases are litigated de novo, thus:

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[17] G.R. No. 153204, August 31, 2005.

> Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated de novo, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.

In fine, respondent must substantiate its claim for refund irrespective of the outcome of the proceeding before the administrative body, as it did before the Court in Division. The record reveals and as correctly observed by the Court in Division, respondent had sufficiently substantiated its claim to the satisfaction of the Court justifying the grant of refund, albeit partially.

Finally, while it is true that an action for a tax refund partakes of the nature of an exemption, which cannot be allowed unless granted in the most explicit and categorical language and it is strictly construed against the claimant who must discharge such burden,[18] however, in the instant cases, petitioner had convincingly discharged this burden as observed in the assailed Decision. Indeed, respondent's evidence sufficiently established that it is in the business of power generation, therefore, its sale of generated power to NIA qualified as VAT zero-rated sales. Further, it has unutilized input VAT in the amount of P19,219,165.31 as evidenced by its Quarterly VAT Returns for the relevant quarters and that both its administrative and judicial claims for refund/tax credit were seasonably lodged.

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[18] See Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al., G.R. No. 127105, June 25, 1999, 309 SCRA 87; Philex Mining Corporation v. Commissioner of Internal Revenue, et al., G.R. No. 120324, April 21, 1999, 306 SCRA 126; Commissioner of Internal Revenue v. Court of Appeals, et al., G.R. No. 122161, February 1, 1999, 302 SCRA 442; Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue, et al., G.R. No. 117359, July 23, 1998, 293 SCRA 76; Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd., G.R. No. 68252, May 26, 1995, 244 SCRA 332.

WHEREFORE, the Petition for Review posted on January 3, 2013 by the Commissioner of Internal Revenue is **DENIED,** for lack of merit.

Accordingly, the assailed Decision dated September 11, 2012 and the Resolution dated November 29, 2012 of the Court in Division in CTA Case Nos. 8041 and 8111 are hereby **AFFIRMED *in toto***.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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.

ROMAN G. DEL ROSARIO
Presiding Justice