REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2151** *(CTA Case No. 9887)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
NORTHWIND POWER DEVELOPMENT CORPORATION, *Respondent.*	Promulgated: JAN 2 1 2021 2:29 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition")[1] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals***[2] ("RRCTA"), seeking the reversal and setting aside of the Resolution, dated 10 June 2019, issued by this Court's First Division ("Court in Division"), which declared that the Value Added Tax ("VAT") Refund/Credit Notice dated 11 May 2018 is final and executory;[3] and the Resolution, dated 13 September 2019, which affirmed the Resolution, dated 10 June 2019.[4]

[1] Records, Vol. 1, pp. 38-67.
[2] A.M. No. 05-11-07-CTA, November 22, 2005.
[3] See Annex "A" of the Petition, Records, Vol. 1, pp. 57-59.
[4] See Annex "B" of the Petition, Records, Vol. 1, pp. 60-66.

The Parties

Petitioner, **COMMISSIONER OF INTERNAL REVENUE,** is the Commissioner of the Bureau of Internal Revenue ("BIR"), the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent, **NORTHWIND POWER DEVELOPMENT CORPORATION,** is a corporation duly organized and existing under and by virtue of the laws of the Philippines.

The Facts

The following are the undisputed facts as found by the Court in Division in its Resolution, dated 10 June 2019:[5]

> "On March 12, 2019, petitioner filed its Motion to Withdraw stating the following:
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> 1. On July 25, 2018, Petitioner filed the instant Petition for Review of Respondent's partial denial of the former's claim for refund of excess and unapplied input Value Added Tax (VAT) directly attributable to its zero-rated sales for the taxable year 2016 in the total amount of Three Million Six Hundred Nine Thousand Five Hundred Ten Pesos and Eighty-Five Centavos (Php3,609,510.85).
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> 2. During the pre-trial conference before this Honorable Court on February 28, 2019, Respondent, through counsel, reiterated their claim that Petitioner's claim for refund should have been denied in its entirety, instead of being only partially denied at the administrative level. As such, the issues were joined such that the amount in question was increased from Three Million Six Hundred Nine Thousand Five Hundred Ten Pesos and Eighty-Five Centavos (Php3,609,510.85) to Twenty Million Eighty Three Thousand Nine Hundred Fifty Three Pesos and Fifty Five Centavos (Php20,083,953.55).
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> 3. The reversion of the issue to the original amount of Petitioner's refund claim is inequitable. It would result to additional costs to Petitioner which far outweigh the value of the original amount of the denial.

[5] See Annex "A" of the Petition, *id.*, at pp. 57-58.

> 4. In particular, presentation of evidence for the original amount of Twenty Million Eighty Three Thousand Nine Hundred Fifty Three Pesos and Fifty Five Centavos (Php20,083,953.55) would significantly increase the fees of an independent certified public accountant (ICPA), as opposed to what the cost would have been had the issue been restricted to the partial denial in the amount of Three Million Six Hundred Nine Thousand Five Hundred Ten Pesos and Eighty-Five Centavos (Php3,609,510.85).
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> 5. In view of the foregoing, while we are of the opinion that Respondent should not be allowed to question his own decision on appeal, a conscientious examination of the financial and legal costs versus the potential benefits of pursuing the case has forced Petitioner to file the instant Motion to Withdraw.
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> In his Comment, filed on April 5, 2019, respondent Commissioner of Internal Revenue (CIR) manifests that he has no objection to petitioner's Motion to Withdraw."

In the Resolution, dated 10 June 2019, the Court in Division granted respondent's Motion to Withdraw and, in the dispositive portion, declared that the VAT Refund/Credit Notice, dated 11 May 2018, which reflected respondent's decision on respondent's administrative claim for VAT refund, is final and executory, to wit:[6]

> "**WHEREFORE,** petitioner's Motion to Withdraw is hereby **GRANTED.** Accordingly, the Petition for Review filed on July 25, 2018 is **DISMISSED,** and the case is considered **CLOSED** and **TERMINATED.** The VAT Refund/Credit Notice dated May 11, 2018 is **DECLARED** final and executory. No further pleadings or motions shall be entertained herein."

On 2 July 2019, petitioner filed a Motion for Reconsideration Re: Resolution dated 10 July 2019 alleging that while he did not have any opposition to respondent's Motion to Withdraw, the Court in Division should have resolved the merits of his counterclaim (*i.e.,* that petitioner's claim for refund in the total amount of Php20,083,953.55 should be denied in its entirety, which the BIR's Excise Large Taxpayer Audit Division mistakenly partially granted in the amount of Php16,472,943.38). Subsequently, on 1 August 2019, respondent filed a Comment/Opposition [Re: Motion for Reconsideration dated July 2, 2019].

In the Resolution, dated 13 September 2019, the Court in Division denied petitioner's Motion for Reconsideration Re: Resolution dated 10 July 2019, *viz.*:[7]

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[6] *Id.*, at p. 59.
[7] See Annex "B" of the Petition, *id.*, at p. 65.

"**WHEREFORE,** respondent's **Motion for Reconsideration Re: Resolution dated 10 June 2019** is **DENIED** for lack of merit."

Due to these pronouncements by the Court in Division, petitioner filed before this Court *En Banc* a Motion for Extension of Time to File Petition for Review on 2 October 2019,[8] which was granted in a Resolution, dated 7 October 2019.[9]

On 18 October 2019, petitioner filed the Petition through registered mail.[10]

In a Resolution, dated 27 November 2019, this Court *En Banc* ordered respondent to file a Comment on the Petition,[11] which was complied with by respondent when it filed a Comment/Opposition [Re: Resolution dated November 28, 2019] on 12 December 2019.[12]

Accordingly, in a Resolution, dated 10 January 2020, this case was submitted for Decision.[13]

Hence, this Decision.

<u>The Assigned Errors</u>[14]

I.

The Honorable Court in Division erred in dismissing the counterclaim for lack of jurisdiction; and

II.

The Honorable Court in Division erred in ruling that petitioner's counterclaim must be dismissed for failure to exhaust administrative remedies. *4r*

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[8] Records, Vol. 1, pp. 1-5.
[9] *Id.*, at p. 6.
[10] *Id.*, at pp. 7-67.
[11] *Id.*, at pp. 68-70.
[12] *Id.*, at pp. 71-84.
[13] *Id.*, at pp. 85-87.
[14] See Grounds for the Petition, *id.*, at pp. 39-40.

Arguments of the Parties

Petitioner's Arguments[15]

In insisting that the Court in Division had jurisdiction to rule on its counterclaim, petitioner argues that the Petition for Review filed by respondent pertains to the entire decision issued by the BIR on its input VAT refund claim such that the granted portion of said claim may also be adjudicated upon. Citing jurisprudence, petitioner contends that outright dismissal of a counterclaim by reason of the dismissal of the main case is frowned upon.

On the second issue, petitioner maintains that exhaustion of administrative remedies is not needed in the case at bar since the taxpayer is claiming for refund and the BIR has already issued its decision thereon which is subject to the review of the CTA.

Respondent's Arguments[16]

For its part, respondent underscores that petitioner had enough opportunity to review its input VAT claim and that to allow petitioner to question its own action through the filing of a counterclaim while at the same time revoking what he had already previously granted goes against the rules set forth by law. Indeed, the filing of such a counterclaim would allow petitioner to do away with the requirement of a written notice of the factual and legal basis of his denial, or issuance of a Letter of Authority for possible tax audit with respect to the VAT refund already previously awarded by petitioner's own office.

Respondent further argues that petitioner's immediate act of filing a counterclaim to contest the BIR's partial grant of respondent's input VAT refund violated the doctrine of exhaustion of administrative remedies as he did not give respondent the right to protest his findings that it has a tax liability by reason of the erroneous grant of VAT refund. Respondent charges these actuations as not only violating its right to due process but also rendered this Court without any jurisdiction to try the said counterclaim for being premature.

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[15] See petitioner's Arguments in the Petition, *id.*, at pp. 40-49.
[16] See respondent's Arguments in the Comment, Records, Vol. 1 pp. 72-81.

The Ruling of the Court En Banc

The instant Petition lacks merit.

What is allowed to be appealed before the CTA is a denial or partial denial of a claim for VAT refund.

Section 112 (C) of the Tax Code expressly provides that what is appealable before this Court is a full denial or partial **denial** of a VAT refund claim, *viz.*:

> "***SEC. 112. Refunds or Tax Credits of Input Tax. -***
>
> xxx xxx xxx
>
> ***(C) Period within which Refund or Tax Credit of Input Taxes shall be Made***. - In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
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> **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code."
> (Emphasis and Underscoring, Ours)

That only full denials or partial denials of a VAT refund claim can be appealed before this Court was confirmed by the Supreme Court in the case of ***Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue***,[17] when it declared that: "[i]t is the denial or inaction 'deemed a denial' which the taxpayer-claimant takes to the CTA for review." ℓ

[17] G.R. Nos. 201225-26, 201132 & 201133, 18 April 2018.

Given the foregoing, petitioner cannot raise any issue on the granted portion of the VAT refund claim. Otherwise, the rule that only full denials or partial denials of VAT refund claims can be appealed before this Court will be subverted.

Elementary is the rule that the right to appeal is a statutory right. "The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law."[18] Hence, matters and issues that can be appealed are limited to those provided under the law. Considering that a **granted** VAT refund claim is not one of those specifically mentioned under ***Section 112 (C) of the Tax Code*** which can be appealed before the CTA, this Court cannot entertain any issue or question raised thereon.

This Court has no jurisdiction to entertain petitioner's counterclaim.

This Court has no jurisdiction to entertain questions on the propriety of a granted VAT refund claim. The CTA is a court of special jurisdiction. It can only take cognizance of matters that are clearly within its jurisdiction.[19] As provided, ***Section 112 (C) of the Tax Code*** expressly limits appeals of VAT refund claims to the CTA to full denials or partial denials thereof by petitioner. Consequently, this Court cannot take cognizance of and decide on issues and questions pertaining to the validity of VAT refund claims already granted by petitioner as these are clearly not included among the subject matters which the CTA can assume jurisdiction of.

More particularly, this Court has no jurisdiction entertaining a counterclaim questioning the validity of a granted VAT refund claim. Elementary is the rule that a counterclaim, to be adjudicated upon by a court, should fall within said court's jurisdiction both as to the amount and nature thereof.[20] As this Court can only take cognizance of denied VAT refund claims, it has no jurisdiction over the nature of petitioner's counterclaim which seeks to review a VAT refund claim which he has granted. Thus, petitioner's counterclaim cannot be decided upon by this Court.

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[18] Boardwalk Business Ventures, Inc. v. Elvira A. Villareal, et al. G.R. No. 181182, 10 April 2013.
[19] Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.), G.R. No. 169778, 12 March 2014.
[20] Section 7, Rule 6, Rules of Court.

<u>Petitioner failed to exhaust administrative remedies and denied respondent its right to due process.</u>

By immediately resorting to a counterclaim to question a grant of a VAT refund, petitioner failed to exhaust the administrative remedies provided under the Tax Code and its implementing rules and regulations for deficiency tax assessments.

After finding that the grant and payment of a VAT refund is improper on the basis that respondent, as an RE Developer, is not entitled to any input VAT refund as its local purchases are VAT zero-rated, petitioner should have issued an assessment against respondent (and complied with the legal requirements for the issuance of deficiency tax assessments) for the VAT refund granted and paid, rather than claiming said amount as a compulsory counterclaim in a VAT refund case filed by respondent before this Court for the denied portion of its VAT refund claim.

Revenue Memorandum Circular ("RMC") No. 17-18, the administrative issuance that governs the processing of VAT refund claims following the amendments introduced by ***Republic Act No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion ("TRAIN Law")***, to the Tax Code, provides that if there is a finding of VAT liability on the part of the taxpayer-claimant, the proper recourse would be to subject said taxpayer-claimant to an audit/investigation, beginning with the issuance of a Letter of Authority ("LOA") and thereafter, the issuance of an assessment notice, *viz:*

"xxx xxx xxx

> 6. Cases where the results would be an assessment on VAT instead of a refund/TCC should be referred to the VATAS, for Regional Offices where the VATAS is already in place, Revenue District Office, Large Taxpayers Audit Division or Large Taxpayers VAT Audit Unit (LTVAU), as the case may be. A copy of the Revenue Officer's memorandum report and documents relevant to the findings shall be furnished to the aforesaid offices. The concerned Revenue District Officer/Chief of LT Audit Division/Head of VATAS/Head of LTVAU shall evaluate the report/findings referred to them and shall **request for the issuance of an electronic Letter of Authority (eLA), if warranted.**
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> **However, if there is already an existing eLA covering the same period, the concerned office shall consolidate the findings referred to them with their findings and recommend the**

> **issuance of a Notice for Informal Conference/Preliminary Assessment Notice (PAN)/Final Assessment Notice (FAN) for the collection of the deficiency tax.** Subsequently, a feedback on the action taken shall be sent to the VAT claim processing office within fifteen (15) days from receipt of the findings."[21]
> (Emphasis, Ours)

This administrative issuance is in consonance with ***Section 228 of the Tax Code,*** which require that a written assessment be issued informing a taxpayer of the factual and legal bases for his deficiency tax liabilities prior to tax collection, to wit:

> "SEC. 228. ***Protesting of Assessment.*** - **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings...**
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."
> (Emphasis, Ours)

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[21] Revenue Memorandum Circular No. 17-18, 27 February 2018, Part I, A, 6, Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN).

Petitioner's act of immediately seeking relief from this Court denied the administrative machinery (*i.e.,* BIR) a chance to resolve this tax dispute before recourse is had with the courts. Moreover, this deprived respondent of rights and remedies available before the administrative proceedings, which include among others: the right to have an LOA issued prior to an audit/investigation, the right to receive a preliminary assessment notice ("PAN"), the right to file a reply to said PAN, the right to a final assessment notice ("FAN") (which provides a final demand to pay deficiency taxes due, and the factual and legal bases for an assessment), and the right protest said FAN.

In effect, by setting up the subject counterclaim in a VAT refund case, petitioner is collecting a tax liability without a prior assessment. This manner of tax collection deprives respondent of its due process rights guaranteed under the Constitution, Tax Code and corresponding revenue issuances. In ***Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.,***[22] the Supreme Court had the occasion to rule on the importance of a tax assessment vis-à-vis tax collection, *viz.*:

> "An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. **To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle inadministrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.** In the instant case, respondent has not properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made."
> (Emphasis, Ours)

Considering the foregoing, petitioner's act of filing a counterclaim to collect on an erroneously granted and paid VAT refund claim cannot prosper as it violates respondent's right to due process.

WHEREFORE, the instant Petition for Review filed by petitioner, **COMMISSIONER OF INTERNAL REVENUE**, is hereby **DENIED** for lack of merit. Accordingly, the Resolutions, dated 10 June 2019 and 13 September 2019, are hereby **AFFIRMED.**

[22] G.R. No. 198677, 26 November 2014.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice