Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COCA-COLA BOTTLERS PHILIPPINES, INC., Petitioner,	**CTA EB Case No. 1100** (CTA Case No. 7951)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 10 2015 4:05 p.m.

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of a Petition for Review,[1] filed by petitioner Coca-Cola Bottlers Philippines, Inc., from the Decision[2] dated July 5, 2013 and Resolution[3] dated November 20, 2013 of the Court of Tax Appeal's (CTA) Special First Division in CTA Case No. 7951, which denied petitioner's claim for refund of output value added tax (VAT) for the quarter ended June 30, 2007 in the total amount of ₱45,142,592.91.

The facts of the case, as found by the CTA Special First Division, are as follows:

[1] CTA *En Banc* Rollo, pp. 42- 61
[2] Annex "C", Petition for Review, CTA *En Banc* Rollo, pp. 103-120
[3] Annex "A", *Ibid.,* pp. 68-82

"Petitioner is a corporation duly organized and existing under, and by virtue, of Philippines laws, with principal office located at No. 1980 Paz Guazon Street, Paco, Manila, and is primarily engaged in the business of manufacturing and selling at wholesale, beverages such as Coca-Cola, Sprite, Royal True Orange, Minute Maid, etc. It is a VAT-registered taxpayer with Tax Identification Number 000-112-104-000.

In the conduct of its business, petitioner purchases goods from VAT-registered suppliers and VAT-registered service providers.

On the other hand, respondent is an official of the Republic of the Philippines authorized to, among others, refund or credit taxes, pursuant to Section 204 of the National Internal Revenue Code (NIRC) of 1997. She holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

Petitioner filed its Monthly VAT Declarations for the months of April 2007 and May 2007 on May 24, 2007 and June 25, 2007, respectively.

On July 25, 2007, petitioner filed its Quarterly VAT Return for the quarter ended June 30, 2007. As reflected in the said Return and the Monthly VAT Declarations for the same quarter, petitioner paid/remitted to the Bureau of Internal Revenue (BIR), output VAT in the total amount of ₱255,581,011.92.

Subsequently, on August 29, 2008, BIR Regional Director Alfredo V. Misajon issued a Letter of Authority No. 00046179, authorizing certain Revenue Officers to examine the books of accounts and other accounting records of petitioner for the period January 1 to December 31, 2007. Said Letter of Authority was received by petitioner on September 2, 2008.

According to petitioner, sometime in July 2009, it was determined that it had inadvertently failed to upload certain official receipts, evidencing payment of services, to its computerized books of accounts thereby resulting in a supposed overpayment of VAT in the amount of ₱45,142,592.91 for the second quarter ending June 30, 2007.

However, despite such discovery, petitioner could no longer amend its Quarterly VAT Return for the quarter ended June 30, 2007, in view of the said Letter of Authority issued by the BIR against petitioner.

On July 22, 2009, petitioner filed an application and letter request with the LT-Audit & Investigation Division I of the BIR for the refund or issuance of tax credit certificate of the supposed erroneously paid output VAT for the quarter ending June 30, 2007.

Two (2) days after, or on July 24, 2009, petitioner filed its judicial claim with this Court by way of the present Petition for Review.

In her Answer filed on August 28, 2009, respondent raises the following special and affirmative defenses:

> '9. The petition is premature considering that petitioner's claim for tax refund/credit of the alleged erroneously paid Value-Added Tax for the second quarter ending June 30, 2007 in the amount of P45,142,592.91 is still pending investigation with LT-Audit and Investigation Division I, BIR National Office, Diliman, Quezon City.
>
> 10. The VAT Returns themselves (BIR Form 2550M and 2550Q) filed by the petitioner for the second quarter ending June 30, 2009 did not show any erroneously paid tax whatsoever.
>
> 11. Claim for refund is construed strictly against the claimant and should not be allowed unless proven explicitly and categorically.
>
> 12. The allegations regarding tax refundability do not ipso facto merit the refund claimed.'

The issues having been joined, the Court set the case for pre-trial conference on September 24, 2009, and by agreement of the parties' counsel, they filed their Joint Stipulation of Facts and Issues on October 13, 2009, which was approved by the Court in the Resolution dated October 16, 2009.

Thereafter, both parties were given sufficient opportunity to present their documentary and testimonial evidence, including the commissioning of an Independent Certified Public Accountant (ICPA) in the person of Katherine O. Constantino, upon petitioner's motion pursuant to Section 5 of Rule 12, in relation to Sections 1 and 2 of Rule 13 of the Revised Rules of the Court of Tax Appeals.

Petitioner filed its Formal Offer of Evidence on September 12, 2011. On October 27, 2011, the Court resolved to admit most of petitioner's exhibits. Thereafter, on November 21, 2011, petitioner filed a Motion for Partial Reconsideration of the pieces of evidence denied by the Court, with respondent's Comment/Opposition with Manifestation (To Petitioner's Motion for Partial Reconsideration), filed on December 6, 2011, opposing petitioner's motion for partial reconsideration, with the manifestation that she is waiving her right to present her evidence in the instant case.

In the Resolution dated January 31, 2012, the Court partially granted petitioner's motion and admitted some of petitioner's evidence for reconsideration and noted respondent's manifestation.

On February 16, 2012, petitioner filed an Urgent Omnibus Motion (1) To Defer Submission of the Parties' Memoranda; (2) To Allow Petitioner to Present Additional Evidence; and (3) To Recall the Independent CPA to Examine Petitioner's Additional Evidence and Testify Thereon. On February 24, 2012, respondent filed her Comment/Opposition (To Petitioner's Urgent Omnibus Motion dated February 15, 2012); while petitioner filed a Reply (Re: Respondent's Comment/Opposition) on March 5,

2012. The Court granted petitioner's Urgent Omnibus Motion in the Resolution dated April 3, 2012.

Thus, petitioner recalled to the witness stand, ICPA Katherine Constantino for her additional testimony and upon completion thereof, petitioner filed, on May 30, 2012, a Supplemental Formal Offer of Evidence (For the Petitioner) for its additional pieces of evidence; with Comment/Opposition thereto filed by respondent on June 14, 2012.

In the Resolution dated July 4, 2012, the Court admitted some of petitioner's supplemental evidence, deemed petitioner to have rested its case, and ordered both parties to submit their respective Memorandum.

After the filing of respondent's Memorandum on August 10, 2012, and petitioner's Memorandum on September 4, 2012, this case was submitted for decision on September 11, 2012." *(Citations Omitted)*

In their Joint Stipulation of Facts and Issues,[4] the parties limited their issues as to whether or not the Petition for Review is premature considering that petitioner's claim for tax refund/credit is still pending investigation with the LT-Audit and Investigation Division of the BIR; and, whether or not petitioner is entitled to a tax refund/tax credit in the amount of ₱45,142,592.91 allegedly representing erroneously paid VAT for the second quarter ending June 30, 2007.

After trial on the merits, the CTA Special First Division rendered, in its Decision dated July 5, 2013, denying the Petition for Review for lack of merit.

On August 12, 2013, petitioner filed a Motion for Reconsideration[5] which was subsequently denied by the CTA Special First Division in its Resolution[6] dated November 20, 2013.

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[4] Division Docket, p. 65
[5] Annex "B", Petition for Review, CTA *En Banc* Rollo, pp. 83-101
[6] *Supra* No. 3

Petitioner then elevated the matter on December 27, 2013 with the Court *En Banc, via* a Petition for Review[7], praying that the instant petition be given due course and that the assailed Decision and Resolution both rendered by the CTA Special First Division be reversed and set aside, and the case be remanded to the same for determination of petitioner's claim for refund or issuance of tax credit certificate.

In a Resolution[8] dated February 19, 2014, the Court *En Banc* directed respondent to file her Comment to the instant petition within ten (10) days from receipt thereof. Accordingly, respondent filed her Comment/Opposition[9] on March 7, 2014.

On March 26, 2014, the Court *En Banc* issued a Resolution[10] which gave due course to the instant petition and granted the parties a period of thirty (30) days within which to file their respective memorandum.

In compliance, respondent's Memorandum[11] was filed on April 30, 2014, while petitioner filed its Memorandum[12] on May 12, 2014. Thus, considering that both parties have filed their respective memorandum, the Court *En Banc* in its June 4, 2014 Resolution[13] deemed the case submitted for decision.

Petitioner raised the following issues in its petition[14]:

1. Whether the amount of VAT being refunded by petitioner is "input VAT" or "output VAT";

2. Whether the Court of Tax Appeals has jurisdiction to entertain petitioner's judicial claim (Petition for Review);

3. Whether petitioner can still amend its Quarterly VAT Return for the quarter ended June 30, 2007 to include the input tax a

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[7] *Supra* No. 1
[8] *Ibid.*, pp. 146-147
[9] *Id.*, pp. 148-152
[10] *Id.*, pp. 154-155
[11] *Id.*, pp. 156-166
[12] *Id.*, pp. 167-183
[13] *Id.*, pp. 187-188
[14] Issues Involved and Grounds Relied Upon for Review, Petition for Review, CTA *En Banc* Rollo, p. 48

inadvertently omitted in the said VAT Return despite the Letter of Authority issued by the Bureau of Internal Revenue;

4. Whether petitioner is entitled to tax refund or issuance of tax credit certificate in the amount of ₱45,142,592.91 representing over/erroneous payment of output VAT for the quarter ended June 30, 2007;

5. Whether the instant claim for refund shall be construed in *"strictissimi juris"* against the petitioner;

6. Whether Section 112 of the NIRC of 1997 is applicable to petitioner's claim for refund/tax credit.

As to the first issue, petitioner argues that contrary to the finding of the CTA Special First Division, it was able to prove its entitlement to its claim for refund. Petitioner clarified that what it seeks to refund is output VAT, not input VAT. Petitioner claims to have erroneously paid its output VAT for the second quarter ended June 30, 2007 in the total amount of ₱255,581,011.92, which supposedly should only be ₱210,438,419.01, had it correctly applied its input tax in the computation of its output tax. Thus, it is entitled to refund the excess amount paid as held by the Supreme Court in the case of *Fort Bonifacio Development Corporation vs. CIR.*[15] Anent the second issue, petitioner rationalizes that the CTA has jurisdiction to entertain its claim for refund because, while it is true that respondent has not yet rendered a decision on its administrative claim, it still timely filed its claim for refund with this Court considering that the two-year prescriptive period within which to file a judicial claim under Section 229[16] of the NIRC of 1997, as amended, was about to lapse. With regard to the third issue, petitioner asserts that it discovered the erroneous payment it made sometime only in July of 2009. Unfortunately, however, it was not able to amend its VAT return because the BIR had already issued a Letter of Authority dated August 29, 2008. Hence, pursuant to Section 6[17] of the

[15] G.R. No. 173425, September 4, 2012
[16] "**SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected.*** **-** *xxx xxx*
In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."
[17] "**SEC.6.** ***Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*** **-** *xxx xxx*

NIRC of 1997, as amended, petitioner can no longer modify, change, or amend its Quarterly VAT return for the quarter ended June 30, 2007.

As to the fourth and fifth issues, petitioner claims that it is entitled to a tax refund or issuance of tax credit certificate in the amount of ₱45,142,592.91 because under the principle of *solutio indebiti,* respondent should return the amount erroneously paid or delivered to her. Petitioner further argues that a claim for tax refund should not be strictly construed because it necessitates only a preponderance of evidence for its approbation like in any other ordinary civil case.[18] Lastly, petitioner avers that the CTA Special First Division mistakenly used as basis Section 112 of the NIRC of 1997, as amended, in arriving at its conclusion. Bearing in mind that petitioner's claim for refund is in the nature of its erroneous/overpayment of output VAT because it failed to apply a certain amount of input taxes in computing its output VAT, Section 229 of the same code should apply.

On the other hand, respondent maintains its position that the CTA Special First Division correctly ruled that petitioner is not entitled to a refund or issuance of tax credit certificate in the amount of ₱45,142,592.91 for the second quarter of 2007. She asserts that as mandated under Section 4.110-8 of Revenue Regulations (RR) No. 16-2005, as amended, input VAT must be substantiated and reported in the VAT returns for it to be available as tax credits. Also, petitioner's Quarterly VAT Return (2550Q) for the second quarter ending June 30, 2007 did not show any erroneous payment of VAT for it to fall within the ambit of Section 229 of the NIRC of 1997, as amended. All told, respondent asserts that the Court *En Banc* has no jurisdiction to entertain the instant petition since petitioner failed to await respondent's decision in its administrative protest which is an essential requisite in a claim for refund.

After a thorough evaluation of the arguments presented by the parties, the Court *En Banc* finds no merit in the instant petition. a

Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer."

[18] *Citing* CIR vs. Fortune Tobacco Corp, G.R. Nos. 167274-75, July 21, 2008

We shall discuss each of the issues raised separately but in the order of discussion appropriate for their continuity.

Whether the Court of Tax Appeals has jurisdiction to entertain petitioner's judicial claim

The CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[19] Section 7 (a) of Republic Act (R.A.) No. 9282,[20] amending R.A. No. 1125, otherwise known as the "An Act Creating the Court of Tax Appeals", provides:

> "**Sec. 7. Jurisdiction.** — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) <u>Decisions of the Commissioner of Internal Revenue in cases</u> involving disputed assessments, <u>refunds of internal revenue taxes</u>, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) <u>Inaction by the Commissioner of Internal Revenue in cases</u> involving disputed assessments, <u>refunds of internal revenue taxes</u>, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" *(Underscoring Ours)*

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[19] Allied Banking Corporation vs. CIR, G.R. No. 175097, February 5, 2010
[20] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES

Clearly, it is the decision or inaction of the Commissioner of Internal Revenue on refunds of internal revenue taxes that can be appealed to this Court.[21]

However, petitioner argues that, while it is true that respondent has not yet rendered a decision on its administrative claim, it still fittingly filed its judicial claim with the CTA considering that the two (2) year prescriptive period within which to file the judicial claim under Section 229[22] of the NIRC of 1997, as amended, is about to expire. Petitioner cites the case of *COMMISSIONER OF INTERNAL REVENUE vs. VICTORIAS MILLING CO., INC., et al,*[23] where the Supreme Court held that a claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. It ruled that "(I)f, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector."

We do not agree.

As correctly held by the Court *a quo*, petitioner's position, as well as that in the case of *Victorias Milling*, is not applicable in the instant controversy because the argument therein was based on the premise that the tax paid was erroneously or illegally collected, which necessarily allowed the recovery of said tax payment under Section 229 of the NIRC of 1997, as amended. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which was some other similar respect is illegal.[24] In the instant case, respondent has the legal authority to levy the tax, and since petitioner sells, barters, exchanges, leases goods or properties, renders services,

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[21] *See* CIR vs. Leonardo S. Villa and CA, G.R. No. L-23988, January 2, 1968

[22] "**SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected.*** -

xxx xxx xxx

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

[23] G.R. No. L-24108, January 3, 1968; *citing* Gibbs vs. Collector, L-13453, Feb. 29, 1960 and Collector vs. Court of Tax Appeals, L-11494, Jan. 28, 1961

[24] BLACK'S LAW DICTIONARY, Fifth Edition, p. 486

and imports goods in the course of its trade or business,[25] it is the proper subject of said tax.

To bolster its claim, petitioner further cites the case of *FORT BONIFACIO DEVELOPMENT CORPORATION VS. CIR*[26] arguing that in said case the Supreme Court refunded the taxpayer-claimant's "erroneously paid output Vat" when it failed to apply input VAT in the computation of its output VAT. Unfortunately, however, petitioner's reliance in the *Fort Bonifacio Development* case is misplaced considering that it is not on all fours with the present case. What was involved in that said case was the crediting of transitional input VAT, not ordinary input VAT as in the instant case. The Supreme Court in the *Fort Bonifacio Development* case qualified that "when petitioner realized that its transitional input tax credit was not applied in computing its output VAT for the 1st quarter of 1997, it filed a claim for refund to recover the output VAT it erroneously or excessively paid for the 1st quarter of 1997. In filing a claim for tax refund, petitioner is simply applying its transitional input tax credit against the output VAT it has paid. Hence, it is merely availing of the tax credit incentive given by law to first time VAT taxpayers. **As we have said in the earlier case of Fort Bonifacio, the provision on transitional input tax credit was enacted to benefit first time VAT taxpayers by mitigating the impact of VAT on the taxpayer.**"

It must be stressed that, and as will be discussed later, claims for tax refund/credit of input VAT are governed by Section 112 of the NIRC of 1997, as amended, not by section 229 of the same Code. In the instant case, petitioner filed its judicial claim for the second quarter of 2007 on July 24, 2009 *via* Petition for Review with this Court, which is merely two (2) days after filing its administrative claim with respondent.[27] Clearly, petitioner's judicial claim was prematurely filed since it failed to fully exhaust its administrative remedies.

Whether the amount of VAT being refunded by petitioner is "input VAT" or "output VAT"

Petitioner has been asserting since the onset of this case that due to the inadvertence of its employees, only the official receipts

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[25] Section 105 of the NIRC of 1997, as amended
[26] G.R. No. 173425, September 4, 2012
[27] Annex "C", Petition for Review, CTA *En Banc* Rollo, p. 105

evidencing payment of the services with input tax *(domestic purchases of services)* in the amount of ₱118,735,786.38 were uploaded in their system. Thus only said amount was reclassified from the account "Input Tax-Services-Clearing" into the account "Input Tax-Services". Consequently, only the said amount of ₱118,735,786.38 was credited against the output tax for the quarter ended June 30, 2007, as computed below:

	Per Return	Should Be
Output Tax	₱ 1,229,075,851.39	₱ 1,229,075,851.39
Less: Allowable Input Tax		
Input Tax Carried from previous quarter	33,007,485.22	33,007,485.22
Input Tax Deferred on Capital Goods from previous quarter	16,929,541.59	16,929,541.59
Purchase of Capital Goods Exceeding P1Million	37,828,284.80	37,828,284.80
Domestic Purchases of Goods other than Capital Goods	791,348,204.44	791,348,204.44
Importation of Goods Other than Capital Goods	21,539,318.72	21,539,318.72
Domestic Purchases of Services:		
1. Paid upon presentation of the invoice	6,292,637.34	6,292,637.34
2. Purchased on credit and paid during the quarter	**118,735,786.38**	**163,878,379.29**
Total available Input Tax	₱ 1,025,681,258.49	₱ 1,070,823,851.40
Less: Deductions from Input Tax	52,186,419.02	52,186,419.02
Total allowable Input Tax	₱ 973,494,839.47	₱ 1,018,637,432.38
Net VAT paid	₱ 255,581,011.92	₱ 210,438,419.01

As shown above, the amount of ₱45,142,592.91[28] claimed by petitioner for refund, is in reality, the difference between the amounts shown in the return and what petitioner alleges it should be if all its input taxes were properly credited to its "Domestic Purchases of Services-Purchased on credit and paid during the quarter". Obviously, by not considering certain input taxes in its computation of output taxes, will definitely result in higher payment of output tax. Nonetheless, by imploring that the Court *En Banc* admit the input taxes

[28] ₱163,878,379.29 less ₱118,735,786.38

that petitioner inadvertently failed to declare, by simply applying its input tax credit against the output VAT, petitioner is availing of the creditable input tax mechanism provided for under Section 110 of the NIRC of 1997, as amended. Thus, as correctly held by the Special First Division, the amount being claimed for refund is merely part of petitioner's input tax for the second quarter of 2007. It was incorrect for petitioner to treat said amount as output tax because an unreported or unclaimed input tax does not automatically become output tax.

Under Section 110 of the NIRC of 1997, as amended, output and input taxes are defined as follows:

> "The term '**input tax**' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.
>
> The term '**output tax**' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code."

From the foregoing definitions, output tax refers to those liable for payment of VAT under Section 105[29] of the NIRC of 1997, as amended; while input VAT, on the other hand, refers to amount creditable against the output tax under Section 110 (A)[30] of the same code. Stated otherwise, input taxes from certain transactions that are evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, shall be creditable against the output tax. If at the end of any taxable quarter, the output tax exceeds the input tax, the excess shall be paid by the VAT-registered a

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[29] "**SEC. 105. *Persons Liable.*** - Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code. *xxx*"

[30] "**SEC.110. *Tax Credits.* –**

(A) Creditable Input Tax. –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: *xxx*"

person. On the other hand, if the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarters or quarters.

Based thereon, it is clear that what petitioner really claims for refund as erroneous/over payment are its undeclared input taxes.

Whether Section 112 of the NIRC of 1997 is applicable to petitioner's claim for refund/tax credit

In its petition for refund, petitioner's claim is primarily anchored on its alleged erroneous payment of output VAT. As stated earlier, it relies on Section 204 (C) in relation to Section 229 of the NIRC of 1997, as amended, as support for its claim. The said sections provide:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may -
>
> *xxx* *xxx* *xxx*
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. *xxx*"

> "**SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit

> or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

However, *We* hold otherwise.

As discussed earlier, what petitioner really is claiming for tax refund/credit is its undeclared input VAT. Therefore, Section 112 of the NIRC of 1997, as amended, should be the proper basis for its claim since it deals with refunds/credits of input taxes. The said section reads:

> "**SEC. 112. *Refunds or Tax Credits of Input Tax. –***
>
> (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: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> (B) *Cancellation of VAT Registration.* - A 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 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.
>
> (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 Subsection (A) hereof.
>
> 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* *xxx* *xxx*"

As gleaned in the above-cited provision, there are only two (2) instances when excess input taxes may be claimed for refund and/or issuance of tax credit certificate:

1. Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate or refund of creditable input tax; and

2. A 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 this Code may apply for the issuance of a tax credit certificate for any unused input tax.

However, *We*, and as correctly held by the Court *a quo*, find that none of the above-mentioned instances are applicable in the instant case. In its claim, petitioner did not attribute any of its input taxes as zero-rated or effectively zero-rated, neither did it make any statement that its VAT registration had been cancelled due to retirement from or cessation of business as stated above. Thus, petitioner does not qualify under Section 112 for a tax refund/credit.

Whether petitioner can still amend its Quarterly VAT Return for the quarter ended June 30, 2007 to include the input tax inadvertently omitted in the said VAT Return despite the Letter of Authority issued by the Bureau of Internal Revenue

As can be recalled, petitioner discovered its inadvertent failure to include certain input taxes in its 2007 second quarter VAT return sometime in July of 2009. Normally, petitioner may still correct or amend its tax returns since it discovered such inadvertence within the three (3) year period provided under Section 6 (A) of the NIRC of 1997, as amended. Unfortunately, however, petitioner may not do so anymore because on August 29, 2008, a Letter of Authority No. 00046179 was already issued by respondent authorizing her revenue officers to conduct an investigation of petitioner's books of accounts. Stated differently, a tax return may only be modified, changed or amended within three (3) years from the date of its filing provided that no notice for investigation has, in the meantime, been actually received by the taxpayer. Section 6 (A) of the NIRC of 1997, as amended, provides:

> "**SEC. 6.** ***Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*** -
>
> (A) *Examination of Returns and Determination of Tax Due* - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however;* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his dult authorized representative.
>
> Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided, That* within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further,* That

no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer." *(Underscoring Ours)*

Thus, in view of the fact that at the time that petitioner discovered the said inadvertence, it had already long been in receipt of the aforesaid Letter of Authority, any amendment to the Quarterly VAT Return ending June 30, 2007 would no longer be permissible.

Whether petitioner is entitled to tax refund or issuance of tax credit certificate in the amount of ₱45,142,592.91 representing over/erroneous payment of output VAT for the quarter ended June 30, 2007

We answer in the negative.

Section 110 (A) (2) (a)(b) and (B) of the NIRC of 1997, as amended, provides for the proper time and payment of input and output taxes. Thus:

> "**SEC.110.** ***Tax Credits. -***
> (A) *Creditable Input Tax. -*
>
> *xxx xxx xxx*
>
> (2) The input tax on domestic purchase or importation of goods or properties shall be creditable:
>
> (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the

> fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): Provided, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: Provided, finally, that in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.
>
> *xxx xxx xxx*
>
> (B) *Excess Output or Input Tax.* - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112." *(Underscoring Ours)*

In connection with this, Section 4.110-8 of Revenue Regulations No. 16-2005 further requires that the input taxes must be substantiated and reported in the taxpayer's VAT Return, thus:

> "**SEC. 4.110-8. Substantiation of Input Tax Credits.-**
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, **and** must be reported in the information returns required to be submitted to the Bureau: *xxx" (Emphasis and Underscoring Ours)*

As garnered above, input taxes must be substantiated and reported in the VAT returns of the taxpayer to be available as tax credits under Section 110. The use of conjunction "and" under Section 4.110-8 of Revenue Regulations No. 16-2005 requires that the two requirements of substantiation and reporting must be complied with. Thus, petitioner should not only substantiate its input taxes with proper documents; it must also report the same by including the amount of input tax it credited against the output tax in its VAT Return for the second quarter of 2007.

In the instant case, the Court-commissioned Independent Certified Public Accountant (ICPA), Ms. Katherine O. Constantino, revealed in her Supplemental Report[31] and Amended Final and Consolidated Independent CPA Report[32] that out of the ₱45,142,592.91 being claimed by petitioner as tax refund/credit, only ₱19,245,971.95 was properly supported by official receipts. Furthermore, out of the ₱694,082,233.34 that petitioner declared as input tax in its previous Quarterly VAT Return (first quarter ending March 31, 2007),[33] only the amount of ₱20,832,510.32 was found by the ICPA in her report[34] to be duly substantiated by receipts and invoices. Likewise, out of the ₱975,744,231.68 that petitioner declared as input tax in the Quarterly VAT Return for the second quarter ending June 30, 2007,[35] only the amount of ₱367,240,498.85 was substantiated by receipts and invoices.

The figures for the Input Tax are shown in the table below:

	1st Quarter	2nd Quarter
Input Taxes from:		
Domestic purchases and importation of goods other than capital goods and purchases of services	₱20,823,938.89	₱367,112,561.88
Less: Input tax on purchases of goods supported by VAT invoice dated 1st Quarter of 2007 but with delivery receipts/gate pass dated 2nd quarter of 2007.	-	(61,191.60)
Purchase of capital goods	8,571.43	189,128.57
TOTAL	**₱20,832,510.32**	**₱367,240,498.85**

[31] Exhibit "P7"
[32] Exhibit "J7"
[33] Exhibit "SSS"
[34] Exhibit "J7"
[35] Exhibit "E"

As for the Output Tax, the figures are shown in the table below:

Exhibit	Period Covered	Output Tax
"SSS"	1st Quarter	₱ 757,872,102.18
"E" to "E-1"	2nd Quarter	₱ 1,229,075,851.39
TOTAL		**₱1,986,947,953.57**

Thus, *assuming arguendo*, that petitioner was able to include the amount of ₱19,245,971.95 in the said second quarter VAT Return for 2007, records still show that **it would not have had enough input tax to offset against its output tax** for the same taxable period. In fact, if that were the case, petitioner would still have VAT payable in the amount of ₱861,835,352.54 as shown below:

	1st Quarter	2nd Quarter
Output Tax[36]	₱ 757,872,102.18	₱1,229,075,851.39
Less: Substantiated Input Taxes	20,832,510.32	367,240,498.85
VAT Payable	**₱ 737,039,591.86**	**₱ 861,835,352.54**

Whether the instant claim for refund shall be construed in *"strictissimi juris"* against the petitioner

Since petitioner is already barred by law from amending its return, it now pleads that the Court *En Banc* allow its undeclared input tax to be credited in its VAT return for the second quarter ending June 30, 2007.

Unfortunate as it may seem, the Court *En Banc* cannot acquiesce to such request. The law is clear as to the manner of amending a return in case of any under declaration or overpayment, and, as to the requirement for substantiation and reporting of input VAT for it to be credited. To allow the unutilized input tax now would be in a way allowing an amended return. It is an elementary rule of reason that what may not be done directly, may not also be done indirectly.[37] The

[36] Exhibits "SSS" and "E to E-1"
[37] *See* Cariday Investment Corp. vs. CA & Forbes Park Association, Inc., G.R. No. 83358, August 2, 1989

maxim that a party may not indirectly do what the court has directly prohibited such party from doing, applies in this case. "[W]hatever is prohibited by law to be done directly cannot legally be effected by an indirect and circuitous contrivance" (*see* Booth vs. Bank of England, 6 Bing. N.C. 415). Where the provision of the law or rule is clear and unequivocal, its meaning must be determined from the language employed. It must be given its literal meaning and applied without interpretation.[38] Thus, following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to the tax laws and provisions of a taxing act are not to be extended by implication.[39]

Parties praying for the liberal interpretation of the rules must be able to hurdle that heavy burden of proving that they deserve an exceptional treatment,[40] especially since well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.[41]

Accordingly, finding no reversible error, the Court *En Banc* finds no cogent reason or justification to disturb the conclusions reached by the CTA Special First Division.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision dated July 5, 2013 and Resolution dated November 20, 2013 of the CTA Special First Division in CTA Case No. 7951 are hereby both **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[38] Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, G.R. No. 159610, 12 June 2008
[39] Commissioner of Internal Revenue vs. Julieta Ariete, G.R. No. 164152, January 21, 2010
[40] Rhodora Prieto vs. Alpadi Development Corporation, G.R. No. 191025, July 31, 2013
[41] Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 178490, July 7, 2009; Commissioner of Internal Revenue vs. Solidbank Corporation, G.R. No. 148191, November 25, 2003; Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corp., G.R. Nos. 83583-84, March 25, 1992

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I join PJ Del Rosario's Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(I join PJ Del Rosario's Concurring and Dissenting Opinion)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(I join PJ Del Rosario's Concurring and Dissenting Opinion)
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 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COCA-COLA BOTTLERS PHILIPPINES, INC,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 1100
(CTA Case No. 7951)

Present:

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

Promulgated:
MAR 1 0 2015
4:05 p.m.

x --- x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Caesar A. Casanova, which affirms the denial of petitioner's claim for refund of alleged erroneously paid Value Added Tax (VAT) solely on the ground that based on evidence presented, output VAT exceeds input VAT.

On the other hand, with utmost respect, I dissent in the affirmance that the Court of Tax Appeals has no jurisdiction to entertain the instant Petition for Review. The *ponencia* states that claims for tax refund/credit of input VAT are governed by Section 112 of the NIRC of 1997, as amended, and not by Section 229 of the same Code. Noting that petitioner filed its judicial claim merely two (2) days after filing its administrative claim for refund, the *ponente* concludes that petitioner's judicial claim was prematurely filed.

In this regard, Section 229 of the NIRC of 1997, as amended, gives a taxpayer a period of two (2) years from date of payment to file an administrative and judicial claim for refund of erroneously collected tax, to wit:

> "**SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected.* –** No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or **of any sum alleged to have been excessively or in any manner wrongfully collected**, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

In the instant case, records show that petitioner's input VAT amounting to ₱45,142,592.91 incurred in the 2nd quarter of 2007 was inadvertently not reported in the tax return and consequently was not deducted against the output tax. Pursuant to Section 110(A)(1) of the NIRC of 1997, as amended, input taxes from certain transactions that are evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, shall be creditable against the output tax. When the output tax exceeds input tax, the excess shall be paid by the taxpayer as VAT due/VAT liability, as follows:

Output tax	₱xxx,xxx.xx
Less: Input tax	xxx,xxx.xx
VAT Due	₱xxx,xxx.xx

Considering that the input tax amounting to ₱45,142,592.91 was not deducted against the output tax, petitioner paid a higher VAT. **It is the alleged overpayment of VAT amounting to ₱45,142,592.91 arising from the taxpayer's inadvertent failure to declare its input taxes which is the subject matter of the present claim for refund**. The erroneous and excessive payment of higher VAT provides a justifiable claim for refund under Section 229 of the NIRC of 1997, as amended.

To be sure, the additional VAT paid to the government (arising from the taxpayer's inadvertent failure to declare its input taxes) represents erroneously and excessively collected taxes. In applying Section 229 of the NIRC of 1997, as amended, the taxpayer is merely using the clear, plain and unconditional provision of Section 229 of the NIRC of 1997, as amended, which is the available remedy to pursue its claim for refund or tax credit of its alleged erroneously and excessively collected VAT.

It must also be stressed that **the claim for refund pertains to the erroneous and excessive payment of VAT due to the non-deduction of input tax and not to unutilized input tax attributable to zero-rated sales**. Thus, petitioner's claim for refund does not fall under Section 112 of the NIRC of 1997, as amended, which is confined to: (a) refund of input taxes attributable to zero-rated sales or effectively zero-rated sales; and, (b) refund of taxpayer's unused input taxes after the cancellation of its VAT registration due to retirement or cessation of business, or due to changes in or cessation of status under Section 106(C) of the NIRC of 1997, as amended.

As a general rule, input taxes must be substantiated and reported in the VAT returns of a taxpayer in order for said taxes to be available as tax credits.[1] But the rule is not inflexible. In *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*,[2] **the transitional input VAT was likewise not shown in the VAT return, yet the Supreme Court granted the refund of the corresponding overpayment of output VAT**, *viz:*

> "In this case, when petitioner realized that its transitional input tax credit was not applied in computing its output VAT for the 1st quarter of 1997, it filed a claim for refund to recover the output VAT it erroneously or excessively paid for the 1st quarter of 1997. In filing a claim for tax refund, petitioner is simply applying its transitional input tax credit against the output tax it has paid. Hence, it is merely availing of the tax credit incentive given by law to first time VAT taxpayers."

It is at this juncture that I quote the enlightening disquisition of the Honorable Associate Justice Amelia R. Cotangco-Manalastas as the *ponente* in **Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue**,[3] *viz.*:

> Clearly then, any increase in the input tax shall lead to a decrease in the output tax, while a decrease in input tax leads to an

[1] Section 4.110.8 of Revenue Regulations No. 16-2005, as amended, October 19, 2005.
[2] G.R. No. 173425, September 4, 2012.
[3] CTA Case No. 8183, January 17, 2014; penned by Honorable Associate Justice Amelia R. Cotangco-Manalastas and concurred by Honorable Associate Justice Lovell R. Bautista.

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> increase in output tax. If there is an error in the computation of input taxes, such that less input tax is recognized, there is a higher output tax liability. Such error when corrected, i.e., a higher input tax is recognized, results to a lower output tax than that already paid and thus provides a justifiable claim for refund of erroneously paid output tax.
>
> By analogy, the ruling of the Supreme Court in Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, et al., is instructive:
>
> Xxx xxx xxx.
>
> In the instant case, petitioner failed to consider in its computation of output tax liability certain input taxes on some of its purchases of services on credit, thus leading to a payment of higher output taxes than it otherwise should have paid. When petitioner realized this and could no longer amend its VAT returns due to the issuance of the Letter of Authority, petitioner applied for refund of erroneously/excessively paid output tax. In filing for tax refund, petitioner is simply applying its input tax credit against the output VAT, hence, petitioner is merely availing of the creditable input tax mechanism provided for in Section 110.

Thus, considering that records show that petitioner paid its VAT liability on July 25, 2007, petitioner timely filed its administrative claim on July 22, 2009 and the present Petition for Review on July 24, 2009, within the two year prescriptive period. The CTA, therefore, has jurisdiction to entertain the claim for refund, pursuant to Section 7(a)(2) of Republic Act No. 9282, as amended, in relation to Section 229 of the NIRC of 1997, as amended.

Lastly, Section 6(A) of the NIRC of 1997, as amended, which prohibits a taxpayer from amending his tax return after the issuance of a Letter of Authority (LOA) is insignificant in pursuing the remedy under Section 229 of the NIRC of 1997, as amended. Besides, the amendment of the return is prohibited under Section 6(A) of the NIRC of 1997, as amended, to prevent a taxpayer from curing any fraud he has committed if a letter of authority for the examination of his return has already been served on him or such amendment has been made in the course of an investigation of his tax liability.[4] The prohibition is relevant in connection with the Commissioner of Internal Revenue's (CIR) power to make an assessment of a taxpayer's liability. **In contrast, Section 229 of the NIRC of 1997, as amended, is confined to a determination of whether or not there was an erroneous payment of tax, irrespective of the entries in tax returns.** Significantly, there is nothing in Section 229 of the NIRC of 1997, as amended, which expressly requires that the erroneously paid tax be reflected

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[4] De Leon Hector S. and De Leon, Jr. Hector M., The National Internal Revenue Code Annotated, Eight Edition 2003, p.34.

in the tax return. Said requirement is explicit only in cases where the CIR *motu proprio* gives a refund or tax credit, even without a written claim, that is - - "where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Although petitioner can file a claim for refund pursuant to Section 229 of the NIRC of 1997, as amended, the claim for refund must still be denied. As found by the Independent CPA and the Court in Division, petitioner's substantiated input VAT is not enough to offset its output VAT liability, as follows:

Output Tax	₱1,229,075,851.39
Less: substantiated input taxes	367,240,498.85
VAT Payable	₱861,835,352.54

Considering that petitioner's VAT payments for the 2nd quarter of 2007 only amounted to P255,581,011.92, petitioner did not overpay its taxes due in the 2nd quarter of 2007. Thus, there is no basis for petitioner to ask for refund of erroneously paid output VAT.

All told, I **VOTE** to **DENY** the Petition for Review filed by Coca-Cola Bottlers Philippines, Inc. in CTA EB Case No. 1100 but solely on the afore-stated reasons.

ROMAN G. DEL ROSARIO
Presiding Justice