REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TOTAL (PHILIPPINES) CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1603
(CTA Case No. 7855)

Present:

DEL ROSARIO, *PJ*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

OCT 25 2018
11:29a.m.

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DECISION

Fabon-Victorino, J.:

Assailed in this *Petition for Review*[1] filed by petitioner Total (Philippines) Corporation on February 28, 2017 are the Decision[2] dated September 15, 2016 and the Resolution[3] dated February 9, 2017, both rendered by the Court in Division in CTA Case No. 7855 entitled *Total (Philippines) Corporation vs. Commissioner of Internal Revenue*. The dispositive portion of the assailed Decision and Resolution read as follows:

Assailed Decision dated September 15, 2016:

[1] En Banc docket, pp. 1-31.
[2] En Banc docket, pp. 45-74.
[3] En Banc docket, pp. 36-44.

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

<u>*Assailed Resolution dated February 9, 2017:*</u>

> **WHEREFORE,** finding no cogent reason to reverse the ruling in the assailed Decision, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED.**

In this appeal, petitioner prays that the adverse Decision and Resolution be reversed and set aside and that judgment be rendered ordering respondent to refund its alleged unutilized input value-added tax (VAT) for the period October 1, 2006 to December 31, 2006 in the amount of ₱8,843,288.30.

First, the facts.

Petitioner is a domestic corporation registered with and licensed by the Securities and Exchange Commission (SEC) to do business in the Philippines, with principal office at Penthouse, Total Corporate Center, 1012 Triangle Drive, North Bonifacio, Bonifacio Global City.[4] It is a VAT-registered entity with Certificate of Registration No. OCN 8RC0000019580 and Taxpayer's Identification Number (TIN) 005-145-964-000.[5]

Petitioner's primary purpose is to "acquire, assemble, install, construct, equip, repair, remodel, maintain, develop, operate, hold, own, lease and otherwise deal with oil terminals and service station networks; to develop and operate a wholesale distribution network and carry out the purchase, acquisition, including importation, if appropriate, storage, marketing, distribution, transport, use, wholesale,

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[4] Par. 1.1, Joint Stipulation of Facts and Issues (JSFI), docket, pp. 111-112.
[5] Exhibit C, docket, p. 315.

exportation, refinement, treatment, distillation and manufacture of, and generally deal in, Fuel Oils, Gas Oils, Gasolines, Lubricants and, subject to market conditions, Bitumens, Solvents and Kerosenes and, subject to the written agreement of the stockholders any and all kinds of oil products, such as Jet Fuel and liquefied petroleum gas".[6]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) with authority, among others, to act on and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

During the fourth quarter of taxable year (TY) 2006, petitioner exported goods to companies located in foreign countries and to companies located in Special Economic Zones and Freeport Zones. In the same period, petitioner purportedly incurred or paid input taxes on its purchases of VATable goods and services. As declared in its Quarterly VAT Return,[7] the sales and purchases for the fourth quarter of 2006 are as follows:

Zero-rated Sales	Exempt Sales	Sales Subject to 12% VAT	Output Tax	Purchases	Input Tax
₱75,273,816.73	₱150,618.31	₱6,024,195,649.40	₱722,903,477.93	₱5,971,569,508.60	₱716,588,254.94

On December 18, 2008, petitioner filed with the Large Taxpayers Service-Large Taxpayer Audit and Investigation Division II an administrative claim[8] for refund/issuance of tax credit certificate (TCC) of its alleged unutilized VAT input taxes in the amount of ₱8,843,228.30.

On December 22, 2008, petitioner filed a Petition for Review with the Court in Division claiming inaction on its claim for refund on the part of respondent.[9]

In his *Answer*[10] filed on February 6, 2009, respondent mainly invokes the principle that in an action for tax credit/refund, the burden of proof rests upon the taxpayer,

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[6] Exhibit B, Articles of Incorporation, docket, p. 294.
[7] Exhibits F and G, docket, pp. 320-323.
[8] Exhibit D, docket, pp. 316-318; Par. 1.6, JSFI, docket, p. 114.
[9] Par. 1.7, JSFI, docket, p. 114.
[10] Docket, pp. 57-63.

such as petitioner, to establish by sufficient and competent evidence its entitlement to the refund sought.

During the trial, only petitioner presented evidence in support of its case. Respondent did not present any.

On June 30, 2011, the Court in Division dismissed the *Petition for Review* on jurisdictional ground following the ruling in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* (*Aichi* case)[11] that the 120-day period provided in Section 112(C) is mandatory and jurisdictional, and that resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies. The Court in Division explained that petitioner's filing of its Petition for Review on December 22, 2008 without waiting for the lapse of the 120-day period for respondent to act on its administrative claim for refund/TCC effectively deprived the Court of competence to hear and determine its case.

Unconvinced, petitioner moved for reconsideration but the same was denied in the Resolution[12] dated September 14, 2011.

On appeal, the Court *En Banc* sustained the dismissal of petitioner's case in the Decision[13] dated February 21, 2013. On reconsideration however, the Court *En Banc* reversed itself and issued the Amended Decision[14] of August 27, 2013 remanding of the case to the Court in Division to determine whether petitioner complied with the other legal requirements for refund or issuance of a tax credit certificate of its alleged unutilized input VAT incurred from its domestic purchases of taxable goods and services attributable to its zero-rated sales for TY 2006.

In the said Amended Decision of August 27, 2013, the Court *En Banc* found merit in petitioner's argument that the doctrine enunciated in the *Aichi case* is not applicable in the instant case anchored on the principles laid down by the

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[11] G.R. No. 184823, October 6, 2010.
[12] Docket, pp. 686-690.
[13] Docket, pp. 833-845.
[14] Docket, pp. 897-916.

Supreme Court in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196113 and *Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 197156 (*San Roque* case). The Final Arbiter clarified that judicial claims filed from January 1, 1998 until the present should strictly adhere to the 120+30-day period referred to in Section 112 of the NIRC. The ruling however provided a window from December 10, 2003 until October 6, 2010, during which, judicial claims may be filed even before the expiration of the 120-day period granted to the CIR to decide on the claim for refund.

Respondent assailed the said Decision in a Motion for Reconsideration but it was denied in the Resolution dated December 18, 2013.

Unrelenting, respondent elevated his case to the Supreme Court by way of a *Petition for Review*[15] on February 24, 2014, but it was denied in the Resolution[16] dated March 19, 2014. His motion for reconsideration suffered the same fate per Resolution[17] dated July 14, 2014. On September 5, 2014, the Supreme Court issued Entry of Judgment, hence, the remand of the case to the Court in Division for further proceeding.

During the scheduled hearing before the Court in Division on July 29, 2015, petitioner manifested that it would no longer present further evidence in support of its case. As a consequence, the parties were granted thirty (30) days to file their respective memoranda.[18]

On September 15, 2016, the Court in Division promulgated the assailed Decision which denied petitioner's *Petition for Review* for lack of merit. The Court in Division ratiocinated that petitioner's properly substantiated input VAT for the fourth quarter of TY 2006 was not enough to cover its output VAT for the same period. And since petitioner's output VAT liability was a lot higher than the

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[15] Docket, pp. 952-981.
[16] Notice issued by the Second Division of the Supreme Court, docket, pp. 1033-1034.
[17] Notice issued by the Second Division of the Supreme Court, docket, pp. 1048-1049.
[18] Minutes of the Hearing, docket, p. 1072.

valid input VAT, there could be no excess input VAT which could properly be a subject of a claim for refund/TCC under Section 112(A) of the NIRC of 1997, as amended.

The Court in Division added that while petitioner reported an input VAT carried over from previous quarter in the amount of ₱411,598,506.73, the same could not be validly applied against its output VAT for its failure to present VAT invoices or official receipts to prove that such amount exists.

Petitioner's plea for reconsideration was denied in the equally assailed Resolution of February 9, 2017.

Hence, the instant *Petition for Review* filed on February 28, 2017, raising the following arguments for the consideration of the Court *En Banc*, to wit:

I. There is no law or regulation requiring that input VAT must first be proven to exceed output VAT for a claim for refund to prosper.

II. There is likewise no requirement to substantiate input VAT carried over from previous periods in claims for VAT refund.

III. Petitioner is entitled to a refund and/or issuance of tax credit certificate for the unutilized creditable input taxes for the fourth quarter of 2006 that are allocated to its zero-rated sales and sales to companies located in special economic zones/Freeport zones.

Petitioner postulates that there is no law, rules and regulations, and jurisprudence, which require taxpayers in claims for refund of input taxes to first prove that its input taxes exceed its output taxes. Quoting Section 112(A) of the NIRC of 1997, as amended, petitioner contends that what is significant is that a taxpayer has VAT zero-rated sales and has input taxes attributable to zero-rated sales, either directly or through allocation and that the same has not been applied against output tax. It also added that what the law requires is for the taxpayer to validate only the input taxes out of which the claim is being made.

Petitioner also theorizes that Section 112(A) of the NIRC of 1997, as amended, does not require the taxpayer in claims for VAT refund to first substantiate input VAT carried over from previous periods. According to petitioner, if there are any issues or imperfections in the input taxes generated in previous periods, it should be addressed in those periods and should not affect the amount that was carried over to the subsequent period. Further, requiring validation of the carry-over from the previous quarter will lead to incessant validation of all the input taxes carried-over from every VAT return previously filed by a taxpayer.

Assuming that substantiation of input VAT carried-over from previous periods is required in a claim for refund of unutilized input VAT, petitioner believes that it has properly substantiated its input VAT carried-over from the previous periods. Allegedly, the total amount of ₱411,598,506.73 carried over to the fourth quarter of 2006 is evidenced by its originally filed Third Quarter VAT Return and Amended Fourth Quarter VAT Return for TY 2006.

Lastly, petitioner contends that it is entitled to a refund and/or issuance of tax credit certificate in the amount of ₱8,843,228.30 arising from its domestic purchases of goods and services and importation of goods attributable to its zero-rated sales for the fourth quarter of 2006, saying that it was able to prove all the requirements to be entitled thereto.

The Court *En Banc's* Ruling

The instant Petition for Review deserves scant consideration. A judicious review of petitioner's arguments and the record of the case, the Court *En Banc* finds no reason to modify much more reverse the assailed Decision and Resolution of the Court in Division.

A revisit of the arguments raised by petitioner shows that they have been amply discussed by the Court in Division in the assailed Decision of September 15, 2016 and Resolution of February 9, 2017. But if only to fortify the *raison d'etre* in the denial of the Petition for Review, the Court *En Banc* will discuss anew the issues raised by petitioner.

Refund of input VAT attributable to zero-rated sales is proper when the input VAT exceeds the output VAT.

Petitioner argues that there is nothing in Section 112(A) of the NIRC, as amended, rules and regulations and even jurisprudence that requires a taxpayer in a claim for refund of input taxes to first prove that its input taxes exceed its output taxes.

We are not persuaded.

Petitioner obviously failed to consider that in cases for issuance of a tax credit certificate or refund, Section 112(A) of the NIRC, as amended may not be read or applied in isolation with the other provisions of the VAT law.

In *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al.,*[19] the Supreme Court held, thus:

> A law must not be read in truncated parts; its provisions must be read in relation to the whole law. It is the cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must be interpreted with reference

[19] G.R. Nos. 158885 and 170680, October 2, 2009.

> to the context, i.e., that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.
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> **In construing a statute, courts have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible**. (*Boldfacing supplied*)

In connection with the foregoing precept, Section 110(B) of the NIRC of 1997, as amended, states:

> SEC. 110. *Tax Credits.* —
>
> 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**. (*Boldfacing supplied*)

Plain from proviso of Section 110(B) that the refund or issuance of TCC of "*any input tax attributable to zero-rated sales by a VAT-registered person*" is "*subject to the provisions of Section 112*." Thus, the grant or denial of such claim for refund/TCC is not solely dependent on paragraph

(A) of Section 112, but on the whole provision of Section 112, which reads as follows:

> 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: xxx
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> 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 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. Xxx (*Emphases supplied*)

The phrase "*in proper cases*" under Section 112(C) qualifies the granting of refund under Section 112(A). Thus, it is not only when the input VAT is attributable to zero-rated sales and that the subject amount has not been applied against the output VAT that the claim for refund/TCC may be granted, it must likewise be "proper" or appropriate under the obtaining circumstances.

On the basis of the evidence presented, the Court in Division found that the output VAT liability of petitioner is more than its input VAT credits for the fourth quarter of taxable year 2006, as shown below:

Total Allowable Input VAT per return	₱ 715,898,545.59

Less: Disallowances	121,387,705.84
Properly Substantiated Input VAT	₱ 594,510,839.75
Less: Output VAT	722,903,477.94
Output VAT Still Due	**₱ 128,392,638.19**

The first sentence of Section 110(B) is plain that "*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*." Thus, it is "improper" or inappropriate, if not highly irregular, to grant the claim for refund/tax credit for input VAT in favor of petitioner when it has still unpaid output VAT for TY 2006.

Input VAT carried over from the previous quarter must be duly established or validated.

Petitioner further posits, that there is no requirement in Section 112 of the NIRC of 1997, as amended, mandating that it first substantiate the input VAT carried over from previous periods in its claim for VAT refund. It is sufficient that the taxpayer validates the input VAT out of which the claim is being made.

Again, the Court cannot subscribe to petitioner's view.

Section 110 of the NIRC of 1997, as amended, provides that any **input tax shall be creditable against the output tax <u>only if it is evidenced by a VAT invoice or official receipt</u>.** The relevant portion of the provision reads:

> 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 (*Boldfacing supplied*)

In this case, petitioner failed to adduce any VAT invoice or official receipt to support the "Input Tax Carried Over from Previous Quarter" which petitioner seeks to be credited or charged against its output VAT liability for the fourth quarter of TY 2006.

The Court *En Banc* is one with the Court in Division in ruling that:

> *xxx* While petitioner reported an input VAT carried over from previous quarter in the amount of ₱411,598,506.73, the Court found that petitioner failed to present VAT invoices or official receipts to prove the existence of such amount. Hence, the input VAT carry-over of ₱411,598,506.73 cannot be validly applied against petitioner's output VAT pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended, which states: xxx

Established is the rule that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim.[20]

WHEREFORE, the instant *Petition for Review* filed by Total (Philippines) Corporation is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision dated September 15, 2016 and Resolution dated February 9, 2017, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[20] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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