REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB NO. 425
(C.T.A. Case No. 7214)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

TEAM (PHILIPPINES) ENERGY CORPORATION,
Respondent.

Promulgated:
APR 15 2009 2:40 p.m.

x--x

DECISION

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed by the Commissioner of Internal Revenue pursuant to paragraph 2, Section 18 of Republic Act No. 1125, as amended

[1] *Rollo*, C.T.A. EB No. 425 (C.T.A. Case No. 7214) pp. 4 -33.

by Republic Act No. 9282 and Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals, praying for the reversal of:

1. the Decision[2] dated May 15, 2008 rendered by the Second Division of the Court ("Court in Division") in CTA Case No. 7214, which granted herein respondent's claim for tax refund or issuance of a tax credit certificate in the modified amount of ₱16,366,412.59, representing respondent's excess and unutilized creditable withholding taxes ("CWT") for calendar years 2002 and 2003; and

2. the Resolution of the Court in Division promulgated on September 5, 2008, which denied herein petitioner's Motion for Reconsideration.

The Antecedents

The facts of the case as summarized by the Court in Division are as follows:

> "Mirant (Philippines) Energy Corporation (petitioner)[3] is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Suite 501, CTC Building, 2232 Roxas Boulevard, Pasay City. Petitioner is registered with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification No. 002-243-275. It is primarily engaged in the business of developing, designing, constructing, erecting, assembling, commissioning, owning, operating, maintaining, rehabilitating, and managing gas turbine and other power generating plants and related facilities for the conversion into electricity, coal, distillate and other fuel provided by and under contract with the government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporations or any entity engaged in the development, supply or distribution of energy.
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> Respondent[4] is the duly appointed Commissioner of the Bureau of Internal Revenue, who is vested with the authority to act as such, including *inter alia*, the power to decide, approve and grant refunds or tax credits of overpaid

[2] Penned by *Associate Justice Juanito C. Castañeda, Jr.* with *Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez* concurring.
[3] Herein respondent which changed its corporate name to "Team (Philippines) Energy Corporation" on July 30, 2007 and moved to change the caption of the case accordingly which was approved by the Court *En Banc* in its Resolution dated March 3, 2009, *Rollo*, pp. 56 – 57.
[4] Herein petitioner.

internal revenue taxes as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On August 16, 2001, petitioner filed with the Securities and Exchange Commission (SEC) its Amended Articles of Incorporation stating its intent to change its corporate name from Mirant (Philippines) Mobile Corporation to Mirant (Philippines) Energy Corporation; and to include the business of supplying and delivering electricity and providing services necessary in connection with the supply or delivery of electricity. The SEC approved the same on October 22, 2001.

Petitioner filed its Annual Income Tax Return (ITR) for calendar years 2002 and 2003 on April 15, 2003 and April 15, 2004, respectively, reflecting overpaid income taxes or excess creditable withholding taxes, detailed as follows:

	2002	2003
Gross Income	P40,116,829.00	(44,470,276.00)
Add: Non-Operating & other Income	-	1,103,514.00
Total Gross Income	40,116,829.00	(43,366,762.00)
Less: Deductions	62,759,099.00	191,604,886.00
Taxable Income (Loss)	(22,642,270.00)	(234,971,648.00)
Tax Rate	32%	32%
Minimum Corporate Income Tax	802,337.00	0
Income Tax Due	802,337.00	0
Less: Creditable Tax Withheld for 1st 3 Quarters	4,303,356.00	0
Creditable Tax Withheld for 4th Quarters	2,730,984.00	5,788,032.00
Total Tax Credits/Payments	7,034,340.00	10,134,410.00
Tax Overpayment	**(P6,232,003.00)**	**(10,134,410.00)**

Petitioner indicated in the same ITRs its option to refund the tax overpayments for calendar years 2002 and 2003.

On March 22, 2005, petitioner filed an administrative claim for refund or issuance of tax credit certificate with the BIR in the total amount of P16,366,413.00, representing overpaid income tax or excess creditable withholding tax of petitioner for calendar years 2002 and 2003.

Due to the inaction of respondent and in order to toll the running of the two-year prescriptive period for claiming a refund under Section 229 of the National Internal Revenue Code (NIRC) of 1997, petitioner filed the instant Petition for Review on April 14, 2005.

Respondent in his Answer interposed the following Special and Affirmative Defenses:

'3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

4. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;

5. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.

6. Petitioner's claim for refund/issuance of tax credit in the amount of **P16,366,413.00**, as alleged overpaid income taxes or excess creditable withholding taxes for taxable year ended December 31, 2002 and December 31, 2003 were not fully substantiated by proper documentary evidence.

7. Petitioner failed to prove that the amount of **P16,366,413.00** as alleged overpaid income taxes or excess creditable withholding taxes for taxable year ended December 31, 2002 and December 31, 2003 were included as part of its gross income for the said taxable years 2002 and 2003, and did not carry-over to the succeeding taxable quarter/year the subject of its claim, and the same were not utilized in payment of its income tax liability for the succeeding taxable quarter/year.

8. The filing of the instant petition for review with this Honorable Court was premature since respondent was not given an ample opportunity to examine its claim for refund.

9. Assuming but without admitting that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it complied with the provisions of ***Sections 204*** in relation to ***Section 230 (now 229)*** of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***.'

After trial on the merits, the case was submitted for decision on November 29, 2007, without respondent's Memorandum."[5]

[5] *Rollo*, pp. 15 – 19, Decision, C.T.A. Case No. 7214, May 15, 2008.

The Ruling of the Court in Division

On May 15, 2008, the Court in Division rendered a decision in favor of herein respondent, with a *fallo* reading:

> "**WHEREFORE**, the instant "Petition for Review" is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the modified amount of **SIXTEEN MILLION THREE HUNDRED SIXTY-SIX THOUSAND FOUR HUNDRED TWELVE AND 59/100 (P16,366,412.59)**, representing petitioner's excess and unutilized creditable withholding taxes for calendar years 2002 and 2003.
>
> **SO ORDERED.**"

According to the Court in Division, respondent signified its intention to have its excess creditable tax withheld for calendar years 2002 and 2003 be refunded in its Annual Income Tax Returns (ITRs) for the same years.

The Court in Division also found that respondent's administrative and judicial claims for refund were timely filed within the two-year prescriptive period under Section 204 (C) in relation to Section 229 of the 1997 National Internal Revenue Code ("NIRC").

It likewise ruled that the fact of withholding was established by respondent since it submitted its Certificates of Creditable Tax Withheld at Source which showed that the aggregate amount of ₱17,168,749.60 constitutes the CWT withheld by respondent on its services to Republic Cement Corporation, Mirant (Philippines) Industrial Power Corporation and Solid Development Corporation for taxable years 2002 and 2003.

It further established that the income from which the CWT were withheld had been duly declared as part of respondent's income in its Annual ITRs for 2002 and 2003.

Thus, the Court in Division granted the Petition for Review.

Aggrieved, herein petitioner filed a Motion for Reconsideration on June 4, 2008 which was denied by the Court in Division for lack of merit in its Resolution promulgated on September 5, 2008.

The Issues

Petitioner has resorted to the present recourse and assigns to the Court in Division the following errors:

"i.

THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT IS ENTITILED TO ITS CLAIMED REFUND OF EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR CALENDAR YEARS 2002 AND 2003, SINCE THERE WAS A VIOLATION ON THE PART OF THE RESPONDENT TO FULLY COMPLY WITH THE REQUIREMENTS UNDER SECTION 76 OF THE 1997 TAX CODE.

ii.

THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN NOT APPLYING THE RULE THAT TAX REFUNDS BEING IN THE NATURE OF TAX EXEMPTION ARE CONSTRUED STRICTISSIMI JURIS AGAINST THE PERSON OR ENTITY CLAIMING THE EXEMPTION."[6]

Simply put, the issue is: Did the Court in Division err in granting respondent's claim for refund?

Petitioner contends that Section 76 of the 1997 NIRC speaks of quarterly income tax payments, hence it necessarily follows that what is required to be offered as evidence is the quarterly income tax return. Since respondent failed to present as evidence its quarterly income tax returns for taxable years 2002 and 2003, it cannot

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[6] *Rollo*, p. 8.

be determined with reasonable certainty whether respondent indeed exercised the option to refund or carry-over its alleged unutilized CWT for the said years.

Petitioner likewise avers that since the subject claim for refund or tax credit is by nature a tax exemption and is construed strictly against the claimant, the fact that respondent failed to present and offer as evidence its quarterly income tax returns for the years 2002 and 2003 should be sufficient basis to deny respondent's claim.

The Ruling of the Court En Banc

In Our view, the Court in Division made no error.

To recall, petitioner raised in his Answer[7] before the Court in Division the following special and affirmative defenses:

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 4. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.
>
> 6. Petitioner's claim for refund/issuance of tax credit in the amount of P16,366,413.00, as alleged overpaid income taxes or excess creditable withholding taxes for taxable year ended December 31, 2002 and December 31, 2003 were not fully substantiated by proper documentary evidence.
>
> 7. Petitioner failed to prove that the amount of P16,366,413.00 as alleged overpaid income taxes or excess creditable withholding taxes for taxable year ended December 31, 2002 and December 31, 2003 were included as part of its gross income for the said taxable years 2002 and 2003, and did not carry-over to the succeeding taxable quarter/year the subject of its claim, and the same were not utilized in payment of its income tax liability for the succeeding taxable quarter/year.

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[7] *Records*, pp. 249 – 251.

8. The filing of the instant petition for review with this Honorable Court was premature since respondent was not given an ample opportunity to examine its claim for refund.

9. Assuming but without admitting that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it complied with the provisions of Sections 204 in relation to Section 230 (now 229) of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

The foregoing are general and standard arguments used by the petitioner to oppose any claim by a taxpayer for refund. Trial proper ensued before the Court in Division, during which respondent presented evidence of its entitlement to the refund and in negation of the afore-cited defenses of the petitioner. It was only after the Court in Division promulgated its Resolution on September 5, 2008 which affirmed its Decision dated May 15, 2008 that was favorable to respondent, that petitioner filed his Petition for Review before the Court *En Banc* on October 17, 2008, averring, for the very first time, that respondent should have presented its quarterly income tax returns for 2002 and 2003 to prove its claim for refund.

This cannot be allowed. Petitioner had the opportunity to raise this issue either during the trial or at the latest, in his Motion for Reconsideration of the assailed Decision of the Court in Division but he cited only the following grounds in his Motion:

> "I. Petitioner fall short of the requirements under Revenue Regulations No. 6-85, as amended and the basic requirements in claiming for refund, as enunciated in the case of Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459.

> II. The Certificates of Creditable Tax Withheld at Source presented and offered by petitioner to prove its claim for refund/tax credit are not conclusive evidence of payment and remittance to the Bureau of Internal Revenue. As such, petitioner failed to prove that the tax withheld went into the coffers of the government."[8]

In its assailed Resolution, the Court in Division reiterated its finding that respondent had complied with the substantiation requirements for its entitlement to refund. It also ruled that the alleged under-declaration of respondent cannot be determined by the Court since it is the duty of the BIR to investigate and confirm the truthfulness of each and every item in the ITR. It finally declared that respondent, by presenting copies of CWT certificates of unutilized CWT, sufficiently complied with the requirements of the fact of withholding.

Thus, petitioner's averment that Section 76 of the NIRC speaks of quarterly income tax payments which consequently requires the offer in evidence of quarterly income tax returns is raised for the first time on appeal with the Court *En Banc*. It is a well-settled rule that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal.[9] The rationale for this rule was stated by the Supreme Court in the case of ***Philippine Ports Authority v. City of Iloilo***, to wit:

> "**Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.** To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent,

[8] *Records*, pp. 699 – 700.
[9] RCBC v. Commissioner of Internal Revenue, G.R. No. 168498, 522 SCRA 146,154, April 24, 2007 *citing Multi-Realty Development Corporation v. Makati Tuscany Condominium Corporation, G.R. No. 146726, June 16, 2006, 491 SCRA 9, 23.*

and offend the basic rules of fair play, justice and due process."[10] *(Emphasis supplied)*

We are aware that as in any general rule, there is always an exception and this was enunciated in the case of ***Lianga Lumber Co. v. Lianga Timber Co., Inc.***, where the Supreme Court said: "[I]n the interest of justice and within the sound discretion of the appellate court, a party may change his theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory."[11]

However, petitioner's new argument clearly does not fall under the afore-quoted exception, as the same involves a disputed evidentiary matter *i.e. the presentation of respondent's quarterly income tax returns.*

More importantly, in the case of ***Commissioner of Internal Revenue v. PERF Realty Corporation***,[12] the Supreme Court emphasized that the verification process is not incumbent on the claimant-taxpayer and that it is the duty of the Commissioner of Internal Revenue to verify whether or not said claimant-taxpayer had carried over its alleged excess income taxes.

In the present case, petitioner could have simply exercised his power to examine and verify respondent's claim for refund by presenting the latter's quarterly income tax returns. The BIR ought to have on file the originals or copies of respondent's quarterly income tax returns for the subject years, on the basis of which it could rebut respondent's claim that it did not carry-over its unutilized and excess

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[10] G.R. No. 109791, 406 SCRA 93, July 14, 2003.
[11] No. L-38685, 76 SCRA 197, March 31, 1977.
[12] G.R. No. 163345, 557 SCRA 177, July 4, 2008.

creditable withholding taxes for taxable years 2002 and 2003 to the succeeding taxable quarters of taxable years 2003 and 2004. Petitioner's failure to present these vital documents before the Court in Division to support his contention against the grant of a tax refund to respondent, is fatal.

At any rate, Section 76 of the 1997 NIRC speaks only of the filing of the Final Adjustment Return and as held by the Supreme Court, the Annual ITR or "(t)he Final Adjustment Return is the most reliable firsthand evidence of corporate acts pertaining to income taxes. In it are found the itemization and summary of additions to and deductions from income taxes due. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process."[13] And in this case, respondent offered in evidence its Annual ITRs for calendar years 2002, 2003 and 2004.[14]

Verily, the issue of whether respondent adduced sufficient evidence to prove its entitlement to a refund is a question of fact.[15] It bears noting that the Court in Division found respondent's claim for refund meritorious on the basis of testimonial and documentary evidence, *viz:*

> "Settled is the rule that a corporation must signify in its Annual ITR its intention whether to request refund of the overpaid income tax or claim the automatic tax credit to be applied against its income tax liabilities for the quarters of the succeeding taxable year by marking the appropriate box in the same ITR. In the present case, petitioner[16] signified its intention that the excess creditable tax withheld for calendar years 2002 and 2003 be refunded.
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> Under Line 30 of the 2002 Annual ITR, petitioner marked "x" the box "To be refunded". In order to prove that petitioner did not carry-over its 2002 excess

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[13] Philam Asset Management, Inc. v. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, 477 SCRA 778, December 14, 2005.

[14] *Records,* Exhibits "I-1", "J-4" and "Q-1" to "Q-7".

[15] Far East Bank and Trust Company v. Court of Appeals, G.R. No. 129130, 477 SCRA 49, 52, December 9, 2005.

[16] Herein respondent.

withholding tax, petitioner presented its 2003 Annual ITR which does not have any entry in Line 27A "Prior Year's Excess Credits". Under Line 31 of the same 2003 Annual ITR, petitioner marked "x" the box "To be refunded" and petitioner presented its 2004 Annual ITR, showing no entry in Line 27A "Prior Years Excess Credit" to prove that it did not carry-over its 2003 excess withholding tax.

However, petitioner's entitlement to refund is still subject to the satisfaction of the requirements laid down by the NIRC of 1997, as amended, namely:

1. That the claim for refund was filed within the two-year reglementary period pursuant to Section 230 of the Tax Code, as amended;

2. That the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount withheld therefrom; and

3. That the income upon which the taxes were withheld is included as part of the gross income declared in the income tax return of the recipient.

xxx xxx xxx

Petitioner complied with the first requisite. The subject claim involves calendar years 2002 and 2003. Petitioner filed its Annual Income Tax Returns on April 15, 2003 and April 15, 2004. Counting from these dates, petitioner had until April 15, 2005 and April 15, 2006 within which to file its administrative and judicial claims for refund. Petitioner filed with the BIR its administrative claim for refund on March 22, 2005. The instant petition was filed on April 14, 2005. Hence, both the administrative and judicial claims for refund were timely filed within the two-year prescriptive period.

Anent the second requirement, the Supreme Court enunciated in the case of **Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue** that the fact of withholding is established by a copy of the statement duly issued by the payor to the payee through the Certificates of Creditable Taxes Withheld at Source. In the present case, petitioner submitted to this Court as part of its documentary evidence ten (10) Certificates of Creditable Taxes Withheld at Source, which provide the following details:

Exhibit	Withholding Agent	Period Covered	Amount of Tax Withheld
K-1	Republic Cement Corporation	Jan. to Mar. 2002	P781,820.01
K-2	Republic Cement Corporation	Apr. to Jun. 2002	1,955,218.28
K-3	Republic Cement Corporation	Jul. to Sep. 2002	1,566,317.51
K-4	Republic Cement Corporation	Oct. to Dec. 2002	1,607,109.60
K-5	Mirant (Philippines) Industrial Power Corp.	Oct. to Dec. 2002	1,123,874.00
Total 2002 Tax Withheld			**P7,034,339.40**

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L-1	Republic Cement Corporation	Jan. to Mar. 2003	1,443,426.63
L-2	Republic Cement Corporation	Apr. to Jun. 2003	1,886,028.61
L-3	Republic Cement Corporation	Jul. to Sep. 2003	1,789,226.40
L-4	Republic Cement Corporation	Oct. to Dec. 2003	1,583,627.55
L-6	Solid Development Corporation	Oct. to Dec. 2003	3,432,101.01

Total 2003 Tax Withheld			**P10,134,410.20**
Total Taxes Withheld for 2002 & 2003			**P17,168,749.60**
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The aggregate amount of P17,168,749.60 constitutes the creditable withholding taxes withheld from the Certificates of Creditable Tax Withheld at Source on its services to Republic Cement Corporation, Mirant (Philippines) Industrial Power Corporation and Solid Development Corporation for taxable years 2002 and 2003.

Regarding the third requisite, *the income from which the creditable taxes were withheld were duly declared as part of petitioner's income in its Annual Income Tax Returns for 2002 and 2003,* showing the following:

	2002	2003
Gross Income	P40,116,829.00	(44,470,276.00)
Add: Non-Operating and other Income	-	1,103,514.00
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Total Gross Income	40,116,829.00	(43,366,762.00)
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The abovementioned declarations are further supported by the testimonies of Ms. Imelda Dela Cruz Tagama, petitioner's Accounting Manager and Mr. Ruben R. Rubio, the Independent Certified Public Accountant (ICPA) duly commissioned by the Court, proving that the total amount of Creditable Withholding Tax per petitioner's Annual ITRs for calendar years ended December 31, 2002 and December 31, 2003 agrees with the total amount of Creditable Withholding Tax presented on petitioner's Schedule of Creditable Withholding Tax Certificates for the calendar years ended December 31, 2002 and December 31, 2003. Moreover, the total amount of gross sales/revenue reported in the Annual ITRs for calendar years 2002 and 2003 is equal to the amounts recorded in the General Ledger Listing of the Creditable Withholding Tax on the Transfer of Real Property and Sale of Electricity, 2002 Reconciliation of Revenue per ITR and per General Ledger. *Hence, the third requirement is satisfied.*

To recapitulate, *since petitioner has complied with the requirements for tax refund claim provided in Section 204 of the NIRC of 1997 and applicable jurisprudence; thus, petitioner is entitled to the refund of its unutilized creditable withholding taxes* computed as follows:

Taxable Year 2002

Minimum Corporate Income Tax	P 802,337.00
Less: Creditable Withholding Tax	7,034,339.39

Excess Tax Credits		P (6,232,002.39)
Taxable Year 2003		
Tax Due	-	
Less: Creditable Withholding Tax	P10,134,410.20	
Excess Tax Credits		(10,134,410.20)
Total Excess Tax Credits		**P(16,366,412.59)"**[17]

(Underscoring and italics supplied)

We have often said that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[18] And in the absence of the Court's abuse or improvident exercise of authority, findings of facts made by the Court in Division must be accorded deference and respect.[19] Thus, considering that respondent's claim for refund is supported by substantial evidence and the law, the Court *En Banc* affirms the afore-quoted findings of the Court in Division.

In fine, We see no reason to reverse the Decision promulgated on May 15, 2008 and the Resolution dated September 5, 2008.

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[17] *Rollo*, pp. 21 – 25.
[18] El Greco Ship Manning and Management Corporation v. Commissioner of Customs, C.T.A. EB No. 172 (C.T.A. Case No. 6618), March 14, 2007.
[19] Union Refinery Corporation v. Commissioner of Customs, C.T.A. EB No. 149 (C.T.A. Case No. 5917), January 15, 2007.

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice