REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

CBK POWER COMPANY LIMITED, *Petitioner,*	**CTA CASE NOS. 7771 & 7814**
	Members: **BAUTISTA,** *Chairperson,* and **COTANGCO-MANALASTAS,***JJ.*
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	JUL 13 2016 10:48 a.m.

x- x

R E S O L U T I O N

COTANGCO-MANALASTAS, *J.*:

For resolution is respondent's *Motion for Partial Reconsideration* filed on May 25, 2016. Respondent moves for the partial reconsideration of this Court's Amended Decision, promulgated on May 6, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner CBK Power Company Limited in the amount of ₱31,479,619.94 representing petitioner's unutilized input VAT attributable to its zero-rated sales for the period January 1, 2006 to December 31, 2006.
>
> **SO ORDERED.**"

Respondent's motion is based on the following grounds:

(1) It is incumbent upon petitioner to prove that it is entitled to the refund sought because a

claim for refund is not *ipso facto* granted upon filing of the claim; and

(2) The Court erred in partially granting petitioner's claim for refund in the amount of ₱31,479,619.94 allegedly representing unutilized input VAT attributable to its zero-rated sales for the period January 1, 2006 to December 31, 2006.

In its *Comment on Respondent's Motion for Partial Reconsideration* filed on July 4, 2016, petitioner stresses that respondent's motion does not raise any new argument and cogent reason to justify a reversal of the just and fair decision of this Court. All the arguments raised in the present motion are the same arguments which have been duly considered in the assailed Amended Decision. The Court correctly ruled that petitioner has sufficiently proven compliance with the requisites for the refund of unutilized input VAT attributable to its zero-rated sales for the period January 1, 2006 to December 31, 2006 but only to the extent of ₱31,479,619.94 out of the total claimed input VAT of ₱43,806,549.72.

After weighing the parties' arguments, this Court finds no compelling reason to reverse or modify the assailed Decision.

A perusal of respondent's motion for partial reconsideration reveals that the grounds relied upon are matters that were already considered, thoroughly discussed and passed upon in the assailed Decision, thus, the Court will no longer address the same.

Anent the issue that petitioner miserably failed to comply with the submission of the complete documentary requirements enumerated in Revenue Memorandum Order (RMO) No. 53-98, thus, this Court has no jurisdiction to entertain the instant petition for review, suffice it to say that the Supreme Court already settled this issue in *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*[1], where it held that submission of complete documents enumerated in RMO No. 53-98 is not a requirement for a grant of tax refund or credit of input VAT.

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[1] G.R. No. 205055, July 18, 2014.

The recent Supreme Court case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[2] is instructive on the issue of complete documents, pertinent portions of which read:

> "... Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining ***when*** the supporting documents have been completed — *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period...*
>
> xxx xxx xxx
>
> Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.**
>
> xxx xxx xxx
>
> Second, the CIR sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents. As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents."

In this case, there was no showing that respondent sent a written notice requiring petitioner to submit additional documents. Thus, by failing to inform petitioner of the need to submit any additional document, respondent cannot now argue that the judicial claim should be dismissed because petitioner failed to submit complete documents.

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[2] G.R. No. 207112, December 8, 2015.

WHEREFORE, premises considered, the instant Motion for Partial Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

I CONCUR:

LOVELL R. BAUTISTA
Associate Justice