REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

UNISYS PHILIPPINES LIMITED - PHILIPPINE BRANCH,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1205
(CTA Case No. 8355)

x- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

UNISYS PHILIPPINES LIMITED - PHILIPPINE BRANCH,
Respondent.

CTA EB No. 1209
(CTA Case No. 8355)

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

Promulgated:

MAR 14 2016 2:05 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court En Banc are consolidated Petitions for Review separately filed by Unisys Philippines Limited - Philippine Branch (UNISYS), petitioner in CTA Case No. 8355 (*Unisys Philippines Limited - Philippine Branch vs. Commissioner of Internal Revenue*), docketed as CTA EB No. 1205, and by the Commissioner of Internal Revenue (CIR), respondent in the same case, docketed as CTA EB No. 1209.

In CTA EB No. 1205, petitioner UNISYS is seeking the partial reversal of the Decision dated March 28, 2014, rendered by the Second Division of this Court in CTA Case No. 8355, and the grant of its claim for refund in its entirety in the total amount of Eight Million Six Hundred Thousand Eight Hundred Ninety-Two and 14/100 (₱8,600,892.14) representing its erroneous and overpaid output VAT payments for the first three (3) quarters of CY 2010.

In CTA EB No. 1209, on the other hand, petitioner CIR seeks the reversal and nullification of the same Decision dated March 28, 2014 and the Resolution dated July 31, 2014 which denied her Motion for Reconsideration thereof.

THE PARTIES

Unisys Philippines Limited-Philippine Branch (UNISYS) is a branch office of Unisys Philippines Limited (formerly Unisys Australia Limited), which is a corporation organized and registered under the laws of Michigan, U.S.A. It is licensed to transact business in the Philippines by the Philippine Securities and Exchange Commission. It holds office at Level 9, One Cyberpod, Eton Centris Station, EDSA cor. Quezon Avenue, Quezon City. Petitioner is also a VAT-registered taxpayer as evidenced by its Certificate of Registration No. OCN8RC0000019521.

The respondent is the duly-appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to, *inter alia*, decide refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) and other laws administered by the BIR, and holding office at the BIR National Office Building, Diliman, Quezon City.

THE COURT'S JURISDICTION

On August 4, 2014, UNISYS received a copy of the Second Division's Resolution dated July 31, 2014. Under Section 3(b), Rule 8 of the Revised Rules of the CTA (A.M. No. 05-11-07-CTA),[1] UNISYS had fifteen (15) days from receipt of the said Resolution, or until August 19, 2014, within which to appeal to the Court En Banc by way of a petition for review.

On August 13, 2014, UNISYS filed an "Urgent Motion for Time to File an Appeal to the Court of Tax Appeals *En Banc*" asking for an additional period of fifteen (15) days from August 19, 2014, or until September 3, 2014

[1] Dated November 22, 2005, and which took effect starting December 15, 2005.

within which to file its Petition for Review. This was granted by the Court *En Banc* in a Minute Resolution on August 18, 2014.

On September 3, 2014, UNISYS filed its Petition for Review asking the Court that it be allowed five days or until September 8, 2014 within which to submit its Certificate of Non-Forum Shopping as it was then still being routed for signature.

On September 8, 2014, UNISYS submitted the required Certificate of Non-Forum Shopping which the Court noted in a Minute Resolution on September 17, 2014. Hence, the Petition of UNISYS is timely filed.

The CIR likewise received a copy of the Second Division's Resolution that denied her Motion for Reconsideration on August 4, 2014, and had until August 19, 2014 to file an appeal.

On August 28, 2014, the Court received the CIR's "Motion for Extension of Time to File Petition for Review", posted on August 19, 2014, asking for an additional period of fifteen (15) days or until September 3, 2014 to file her Petition. This was granted by the Court in a Minute Resolution dated September 3, 2014.

As the Court received the CIR's Petition for Review posted September 3, 2014 on September 10, 2014, her Petition is likewise timely filed.

THE FACTS[2]

UNISYS entered into several agreements with different government agencies, to wit: (1) Contract for MIS Computerization Project Implementation Phase[3] with the Philippine Ports Authority (PPA) on August 26, 2002; (2) Systems Integration Services Agreement[4] with the Bureau of Customs (BOC) on December 29, 2004; and (3) Master Agreement for Products and Services[5] with the Armed Forces of the Philippines (AFP) on July 24, 2007.

UNISYS filed its Quarterly VAT Returns for the first, second, and third quarters of taxable year 2010 on April 26, 2010, July 26, 2010, and October 22, 2010, respectively.[6] It amended all the aforesaid returns on February 7, 2011.[7]

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[2] As found by the Second Division, *Rollo*, CTA Case No. 1205, pp. 29-31.
[3] Exhibit "F", *docket*, pp. 294-335.
[4] Exhibit "M", *id.*, pp. 369-391.
[5] Exhibit "E", *id.*, pp. 284-293.
[6] Exhibits "G" to "G-4", "H" to "H-4", and "I" to "I-4", *id.*, pp. 336 to 350.
[7] Exhibits "J" to "J-2", "K" to "K-2", and "L" to "L-2", *id.*, pp. 351 to 368.

UNISYS filed its Letter[8] and Application for Tax Credits/Refunds[9] for an alleged overpayment of VAT on May 17, 2011.

Due to the inaction of the CIR on UNISYS' administrative claim for refund,[10] the latter filed its Petition for Review with the Court of Tax Appeals (CTA) on October 17, 2011, docketed as CTA Case No. 8355.

On November 28, 2011, the CIR filed a Motion to Dismiss[11] on the ground that UNISYS' right to appeal from failure of the former to act on the latter's administrative claim had already prescribed. After considering UNISYS' Opposition/Comment (To Respondent's Motion to Dismiss)[12], the Court denied the said motion on February 14, 2012; and declared that the administrative claim of UNISYS and the Petition for Review were filed within the two-year prescriptive period.[13]

The CIR then filed her Answer[14] on March 30, 2012, interposing the following special and affirmative defenses:

> "7. [CIR] reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
>
> 8. [UNISYS'] alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the [CIR's] Bureau;
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> 9. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
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> 10. [UNISYS'] claim for refund or issuance of tax credit certificate in the amount of ₱8,600,892.14, representing alleged erroneous VAT payments for the first three (3) quarters of CY 2010, were not fully substantiated by proper documents, such sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

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[8] Exhibits "C" and "C-1", *id.*, p. 277.
[9] Exhibits "D", "D-1", and "D-2", *id.*, p. 282.
[10] Par. I(3), Joint Stipulation of Facts and Issues (JSFI), *id.*, p. 139.
[11] *Id.*, pp. 69-74.
[12] *Id.*, pp. 78-83.
[13] Resolution, *id.*, pp. 85-91.
[14] *Id.*, pp. 97-100.

11 . In an action for refund/credit, the burden of proof is on [UNISYS] to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

12. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

13. Claims for refund are construed strictly against herein [UNISYS] since the same partakes 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)**."

UNISYS filed its Pre-Trial Brief[15] on May 7, 2012; while the CIR submitted her Pre-Trial Brief[16] through registered mail on May 7, 2012, which was received by the Court on May 15, 2012.

The parties submitted their Joint Stipulation of Facts and Issues[17] to this Court on July 9, 2012. Subsequently, the Pre-Trial Order[18] was issued on July 19, 2012.

On September 3, 2012, the Court commissioned Ms. Annalyn B. Artuz as the Independent Certified Public Accountant (CPA) for the case.

During trial, UNISYS presented Jennifer G. Glinoga, Annalyn B. Artuz, and Veronica Joy R. Catajoy as its witnesses; while the CIR's counsel manifested during the hearing on May 27, 2013 that he has no witness to present. Thus, the CIR was given thirty (30) days from May 27, 2013 within which to submit her Memorandum and UNISYS was granted twenty (20) days from receipt of notice to file its Memorandum.[19]

On May 29, 2013, UNISYS urgently moved for partial reconsideration of the Resolution dated May 7, 2013, which admitted its documentary evidence except Exhibits "E", "M-1", "O-1", "O-2", "III", and "JJJ" with motion for

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[15] *Id.*, pp. 105-112.
[16] *Id.*, pp. 116-118.
[17] *Id.*, pp. 138-140.
[18] *Id.*, pp. 142-146.
[19] Resolution dated May 27, 2013, *id.*, p. 519.

leave to admit additional evidence.[20] The Court partially granted the same on July 19, 2013, admitting Exhibit "E" and including the purposes of Exhibits "O-1" and "O-2" as part of the purposes of Exhibit "O".[21] The Court likewise allowed petitioner to present additional evidence.

On August 14, 2013, the Court granted UNISYS' oral offer of evidence, admitting Exhibit "MM"; and the CIR's counsel manifested anew that he would no longer present evidence and would be submitting this case for decision based on the pleadings.[22]

The case was submitted for decision on November 7, 2013, considering petitioner's Memorandum[23] filed on September 13, 2013 and the Report[24] dated November 6, 2013 of this Court's Records Division stating that respondent failed to file a Memorandum.[25]

On March 28, 2014, the CTA Second Division issued its Decision, which stated in part:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent (CIR) is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner in the reduced amount of ₱4,125,838.32 representing erroneous VAT payments for the first three quarters of CY 2010.
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> **SO ORDERED**."

On April 14, 2014, the CIR filed its "Motion for Reconsideration" through registered mail which the Court received on April 23, 2014. UNISYS filed its "Motion for Partial Reconsideration (RE: 28 March 2014 Decision of the Honorable Court)" through registered mail as well on April 15, 2014 which the Court received on April 25, 2014.

On July 31, 2014, this Court's Second Division denied both Motions for Reconsideration for lack of merit.

After both parties were granted by the Court *En Banc* extensions of time to file their respective Petitions for Review, UNISYS timely filed its Petition for

[20] *Id.*, pp. 521-527.
[21] Resolution, *id.*, pp. 542-544.
[22] Resolution, *id.*, p. 547.
[23] *Id.*, pp. 548-571.
[24] *Id.*, p. 572. 25 Resolution, *id.*, p. 573.
[25] Resolution, *id.*, p. 573.

Review on September 3, 2014 which was docketed as CTA EB No. 1205, while the Court also timely received the CIR's Petition for Review posted September 3, 2014 on September 10, 2014, docketed as CTA EB No. 1209.

On September 17, 2014, CTA EB No. 1209 was consolidated with CTA EB No. 1205 via Minute Resolution.

In a Resolution dated October 21, 2014, both parties were ordered to file Comment to the Petitions for Review.

UNISYS filed its "Comment/Opposition (to Respondent Commissioner of Internal Revenue's Petition for Review dated 03 September 2014)" on November 24, 2014, while the CIR failed to file her Comment.

On January 6, 2015, the Petitions for Review were given due course and the parties were ordered to file their respective memoranda within thirty (30) days from notice.

UNISYS filed its "Memorandum (of Petitioner Unisys Philippines Limited)" on February 20, 2015, while the CIR failed to file hers. Hence, in a Resolution dated March 26, 2015, the consolidated cases were deemed submitted for decision.

THE ISSUE

The sole issue to be resolved is whether or not the Court's Second Division erred in partially granting UNISYS' Petition for Review and in ordering the refund and/or issuance of a tax credit certificate to UNISYS in the reduced amount of ₱4,125,838.32 representing erroneous VAT payments for the first three quarters of CY 2010.

The CIR argues that the Court ought to have denied the Petition for Review all together.

UNISYS, on the other hand, believes that the Court erred in denying the remainder of its claim for non-compliance with the substantiation requirements of the "actual input VAT" under Sections 110(A) and 113(A) of the Tax Code, as amended, and as implemented by Sections 4.110-1, 4.110-3, 4.110-8, and 4.113.1 of Revenue Regulations (RR) No. 16-2005.

THE RULING OF THE COURT

The Court agrees with the finding of the Second Division that, indeed, Section 229 of the NIRC of 1997, as amended, is applicable in this case. The said section provides:

> "**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. x x x"

The Court in Division also found that the net amount of VAT overpayment by UNISYS was due to the net effect of the following:

> 1. The use of Actual Input VAT as deduction against output VAT in computing for the Net VAT Payable in the originally filed VAT Returns instead of the 7% Standard Input VAT. Thus, the amount of overpayment is significantly attributable to the excess (difference) of Standard Input VAT over Actual Input VAT which amounted to ₱8,397,846.77;
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> 2. A lower amount of the total Actual Input VAT reported in the originally filed VAT Return for the third quarter of CY 2010 due to the non-reporting of the input VAT on services rendered by non-resident service provider which amounted to ₱1,010,796.08. The lower amount of Actual Input VAT increased the Net VAT Payable in the originally filed VAT Returns; and
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> 3. The exclusion in the amended VAT Returns of the input VAT carry-over from previous period in the amount of ₱807,754.40 33 for the first quarter of CY 2010."

The Court finds no reason to disturb the foregoing finding of facts.

Having found that Sec. 229 of the Tax Code applies in this case, the quantum of proof necessary for UNISYS to establish its entitlement to a refund is that which merely shows that taxes were paid even if the same were not due. A cursory reading of Section 229 of the Tax Code also shows no mention of required compliance with invoicing requirements before a taxpayer could claim a refund for its erroneous payment of taxes.

UNISYS takes issue with the assailed Decision and Resolution's disallowance of ₱4,475,053.81 input VAT from its entire claim due to non-compliance with VAT invoicing requirements, thereby reducing the allowable input VAT while neither specifically identifying whether the disallowed input VAT pertains to sales to government or non-government entities nor allocating the disallowed input VAT between the two types of sale transactions.

It is to be noted that the sales of UNISYS for the first three (3) quarters of CY 2010 were made to both government and non-government entities. As regards its sales to government entities, Section 114(c) of the Tax Code is relevant, to wit:

> **"SEC. 114. Return and Payment of Value-added Tax. —**
>
> xxx xxx xxx
>
> *(C) Withholding of Creditable Value-Added Tax.* — The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of five percent (5%) of the gross payment thereof: Provided, That the payment for lease or use of properties or property rights to non-resident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent."

Taken together with Section 4.114-2 of Revenue Regulations (RR) No. 16-2005[26] which was crafted to implement the said section, the following VAT treatment as regards Government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, can be inferred:

1. GOCCs are required to withhold and deduct a five percent (5%) final VAT from its income payments to the seller of goods and/or services;

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[26] Consolidated Value-Added Tax Regulations of 2005.

2. The five percent (5%) VAT, as withheld by the GOCCs from their payments to the seller, is considered final and represents the net VAT payable of the seller of goods and/or services;

3. The remaining seven percent (7%) shall effectively account for the standard input VAT for the sales of goods and/or services to the GOCCs in lieu of the actual input VAT directly attributable or ratably apportioned to such sales; and

4. Should the actual input VAT of the seller of goods/services exceed seven percent (7%) of gross payment, the excess shall form part of the expense or cost of the seller's goods and/or services; *i.e.*, it shall be recognized as a deductible expense, and not an income tax credit. However, if the actual input VAT is less than seven percent (7%) of gross payment, the difference shall be closed to expense or cost which effectively becomes an income of the seller of goods and/or services.

The VAT treatment as regards sales to Government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, is therefore distinct from the VAT treatment of non-governmental sales.

However, as already ruled, in order to be entitled to the claimed refund or tax credit certificate, petitioner must be able to establish that it indeed incurred and has enough input tax credits and VAT payments. Thus, it is axiomatic that each and every component of petitioner's tax credits/payments, including the actual input VAT of ₱9,358,141.74 must be substantiated because, ultimately, the remaining balance of the total tax credits/payments, after deducting its output VAT liability, becomes its overpaid output VAT. Moreover, petitioner must be mindful that the claim for **input tax credits shall be allowed only upon compliance with the substantiation requirements** prescribed under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1(A) and (B) of Revenue Regulations No. 16-2005.

This must be taken in conjunction with the mandate of Section 114(C) of the NIRC of 1997, as amended, and Section 4.114-2 of RR No. 04-07, which states that the government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or of services taxed at twelve percent (12%) VAT pursuant to Sections 106 and 108 of the NIRC of 1997, as amended, deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof. The five percent (5%)

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final VAT withholding rate shall represent the net VAT payable of the seller. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales to the Government. Should actual input VAT exceed the standard input VAT of seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. In other words, the standard input VAT of 7% is compared with the actual substantiated input VAT and whatever the difference is shall be closed to petitioner's cost or expense.

In this case, inasmuch as the 7% standard input VAT is greater than the substantiated actual input VAT attributable to sales to government, the difference, as will be provided below, shall be closed to petitioner's cost or expense or must be treated as taxable income.

As already found by the Court *a quo*, out of petitioner's actual input VAT of ₱9,358,141.74, only the amount of ₱4,883,087.93 was duly substantiated. Considering that petitioner's sales for the first three (3) quarters of CY 2010 were made to both government and non-government entities which were subject to VAT at 12% and 0% rates, the substantiated input VAT of ₱4,883,087.93 must be allocated accordingly, thus:

Allocation of Substantiated Actual Input VAT to Total Sales

2010	Sales to Non-Government *(a)*	Zero-Rated Sales *(b)*	Sales to Government *(c)*	Total Sales *(d)=(a)+(b)+(c)*
1st Qtr	₱ 58,997,060.54	₱ 582,374.87	₱ 122,333,570.72	₱ 181,913,006.13
2nd Qtr	10,314,660.46	287,126.56	36,176,246.64	46,778,033.66
3rd Qtr	11,835,692.89	933,795.90	62,385,095.38	75,154,584.17
Total	**₱ 81,147,413.89**	**₱ 1,803,297.33**	**₱220,894,912.74**	**₱ 303,845,623.96**

2010	Total Input VAT *(e)*	Actual Input VAT attributable to Sales to Non-Government *(f)=(a)/(d)x(e)*	Actual Input VAT attributable to Zero-Rated Sales *(h)=(b)/(d)x(e)*	Actual Input VAT attributable to Sales to Government *(g)=(c)/(d)x(e)*
1st Qtr	₱ 2,313,660.92	₱ 750,354.23	₱ 7,406.93	₱ 1,555,899.76
2nd Qtr	906,323.39	199,846.32	5,563.07	700,914.00
3rd Qtr	1,663,103.62	261,913.28	20,664.07	1,380,526.27
Total	**₱ 4,883,087.93**	**₱ 1,212,113.83**	**₱ 33,634.07**	**₱ 3,637,340.03**

As mentioned earlier, petitioner's 7% standard input VAT may be credited against petitioner's output VAT in lieu of the actual input VAT directly attributable to such sales to the government. However, since petitioner's 7% standard input VAT is greater than the substantiated actual input VAT attributable to sales to the government, the difference of ₱11,825,303.86, as determined below, shall be closed to petitioner's cost or expense or must be treated as taxable income:

	Sale to Government	**Standard Input VAT (7%)**	**Actual Input VAT attributable to Sales to Government**	**Excess of Standard over Actual Input VAT on Sales to Government**
1st Qtr	₱ 122,333,570.72	₱ 8,563,349.95	₱ 1,555,899.76	₱ 7,007,450.19
2nd Qtr	36,176,246.64	2,532,337.26	700,914.00	1,831,423.26
3rd Qtr	62,385,095.38	4,366,956.68	1,380,526.27	2,986,430.41
Total	**₱ 220,894,912.74**	**₱ 15,462,643.89**	**₱ 3,637,340.03**	**₱ 11,825,303.86**

Moreover, based on the foregoing computation, the ratable portion of the input VAT not directly attributable to sale to government amounts to ₱1,245,747.90 (₱1,212,113.83 plus ₱33,634.07), which is likewise creditable against petitioner's output VAT. In sum, the amount that may be credited against petitioner's output VAT from its sales/receipts to private and government entities for the first three quarters of 2010 is ₱16,708,391.79, detailed as follows:

	Allowable Actual Input VAT attributable to Sales to Non-Government	**Allowable Actual Input VAT attributable to Zero-Rated Sales**	**Allowable input VAT on Sale to Government (7% Standard Input VAT)**	**Total Allowable Input VAT**
1st Qtr	₱ 750,354.23	₱ 7,406.93	₱ 8,563,349.95	₱ 9,321,111.11
2nd Qtr	199,846.32	5,563.07	2,532,337.26	2,737,746.65
3rd Qtr	261,913.28	20,664.07	4,366,956.68	4,649,534.03
Total	**₱ 1,212,113.83**	**₱ 33,634.07**	**₱ 15,462,643.89**	**₱ 16,708,391.79**

Meanwhile, petitioner had actual VAT payments of ₱17,598,927.46 and VAT withheld on sales to government of ₱9,491,055.37.

Considering the foregoing, petitioner's erroneous VAT payments for the first three quarters of 2010 amounts to **₱7,553,295.41**, as herein computed:

Output VAT		₱ 36,245,079.21
Less: Standard Input VAT	₱ 15,462,643.89	
Ratable portion of input VAT attributable to non-government entities	1,245,747.90	16,708,391.79
Net VAT Payable		₱ 19,536,687.42
Less: Tax Credits/Payments		
Actual VAT Payments	₱ 17,598,927.46	

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VAT Withheld on Sales to Governments	9,491,055.37	27,089,982.83
VAT Overpayment		**₱ (7,553,295.41)**

In view of the foregoing, it becomes imperative for the government to restore to UNISYS its erroneously overpaid output VAT liabilities under the principle of *solutio indebiti.*[27] The *raison d'etre* for such has been elaborated on by the Supreme Court in ***Commissioner of Internal Revenue vs. Fortune Tobacco Corporation***[28], thus:

> "Tax refunds (or tax credits) x x x are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law.
>
> The Government is not exempt from the application of *solutio indebiti.* Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case.
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> Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following : (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without authority; and (c) any sum alleged to have been excessive or in any manner wrongfully collected."

WHEREFORE, the assailed Decision dated March 28, 2014 and the Resolution dated July 31, 2014 of the Court's Second Division in CTA Case No. 8355 are hereby **MODIFIED** as follows:

[27] *National Development Company v. Cebu City*, G.R. No. 51593, 5 November 1992, 215 SCRA 382, 396 citing *Ramie Textiles, Inc. v. Mathay, Sr.*, No. L-32364, 30 April 1979, 89 SCRA 586, 592.
[28] G.R. Nos. 167274-75, July 21,2008.

The Petition for Review of UNISYS Philippines Limited-Philippine Branch in CTA EB No. 1205 is **PARTIALLY GRANTED.** Accordingly, the Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of UNISYS Philippines Limited-Philippine Branch in the reduced amount of **₱7,553,295.42** representing erroneous VAT payments for the first three quarters of CY 2010.

Corollarily, the Petition for Review of the Commissioner of Internal Revenue in CTA EB No. 1209 is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice
(With Separate Concurring Opinion)

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

UNISYS PHILIPPINES LIMITED – PHILIPPINE BRANCH,
Petitioner,

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- versus -

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Respondent.

x- -x

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Present:

DEL ROSARIO, *PJ,*
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FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

-versus -

UNISYS PHILIPPINES LIMITED – PHILIPPINE BRANCH ,
Respondent.

Promulgated:

MAR 14 2016 2:05 p.m.

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SEPARATE CONCURRING OPINION

CASANOVA, *J.*:

I agree with the conclusion reached in the *ponencia* of the Honorable Associate Justice Ma. Belen M. Ringpis-Liban. With all due respect, however, I would like to focus on and briefly discuss the inapplicability of the ***Ericsson Telecommunications, Inc. vs. Commissioner of Internal Revenue***[1] ("Ericsson case") in the instant cases since the main contention of petitioner Unisys Philippines Limited – Philippine Branch ("Unisys" for brevity) in its Petition for Review was chiefly based on the doctrinal pronouncements in the said case.

As discussed in the Decision, Unisys's claim for refund was predicated on its erroneous payment of value-added tax (VAT) liabilities under Section 229 of National Internal Revenue Code (NIRC) of 1997, as amended. As such, Unisys cited the Ericsson case wherein the CTA Second Division held that a cursory reading of the said Section shows no mention of required compliance with invoicing requirements before a taxpayer could claim a refund for its erroneous payment of taxes. Unisys insists that the same treatment should be applied on its claim for refund considering that, just like in the Ericsson case, it misapplied the standard input VAT of 7% in its VAT Returns.

Unisys's assertion must fall.

The factual milieu in the Ericsson case is not on all fours with the present consolidated cases. In the Ericsson case, petitioner Ericsson Telecommunications, Inc. reported in its Quarterly VAT Return (BIR Form 2550Q) the amount of ₱41,965,071.76 as output VAT due for the 4th quarter of 2007 and the amount of ₱50,057,254.70 as input VAT which therefore resulted to an excess input VAT of ₱8,092,182.94. Thereafter, despite the excess net input VAT, petitioner erroneously paid the said amount of ₱8,092,182.94 believing that it is an excess output tax over input tax which is to be paid as tax due. After trial thereof, the court found that there was indeed an erroneous payment made to the government, the VAT Return itself coupled with the actual proof of payment was already deemed sufficient by the court to warrant refund of the said amount. In the instant cases, Unisys's claim of erroneous payment cannot be accurately ascertained by simply looking at the face of the VAT Return upon which payment was made since there were changes in Unisys's actual input tax from its original VAT return to its subsequent amended return. For that reason, further need for substantiation is required so as to clearly differentiate the standard

[1] CTA Case No. 8027, August 2, 2012

input VAT on sales made to government, allowable input VAT attributable to sales to non-government and input VAT from zero-rated sales.

Accordingly, taking into account the foregoing, I agree with the conclusion reached in the *ponencia*.

CAESAR A. CASANOVA
Associate Justice