REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AIR LIQUIDE PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1307
(CTA Case No. 8114)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas,
Ringpis-Liban, *JJ.*

Promulgated:

SEP 01 2016 1:45p.m.

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner Air Liquide Philippines, Inc. (Air Liquide) under Sec. 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking nullification of the Decision[1] dated December 10, 2014, the dispositive portion of which reads:

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

[1] Rollo, CTA EB Case No. 1307 pp. 34-176.

SO ORDERED."

and the Resolution[2] dated April 21, 2015 of the same First Division of the Court (Court in Division) denying Air Liquide's Motion for Reconsideration.

THE FACTS

The facts as stated in the Court in Division's Decision are as follows:

"Petitioner filed its Quarterly VAT return for the second, third and fourth quarters of 2008 on July 23, 2008, October 24, 2008, and January 26, 2009, respectively, declaring the following:

	2nd Quarter	3rd Quarter	4th Quarter
	Exhibit "EE"	Exhibit "FF"	Exhibit "GG"
Vatable Sales/Receipts	71,679,327.92	83,843,269.33	75,110,620.42
Zero-Rated Sales/Receipts	168,753,161.67	170,320,537.90	151,455,855.42
Exempt Sales	1,146,526.86	1,062,045.89	1,340,504.77
Total Sales/Receipts	241,579,016.45	255,225,853.12	227,906,980.61
Output Tax Due	8,601,519.35	10,061,192.32	9,013,274.45
Less: Allowable Input Tax			
Input Tax Carried Over from previous quarter	145,964,824.92	159,985,661.69	172,148,493.67
Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter	1,302,163.97	1,694,991.26	2,222,432.15
Total	147,266,988.89	161,680,652.95	174,370,925.82
Input Tax from Current Transactions			
Purchase of Capital Goods not exceeding P1Million	57,231.18	51,669.16	114,349.78
Purchase of Capital Goods exceeding P1Million	482,959.62	641,519.26	967,628.23
Domestic Purchase of Goods Other Than Capital Goods	6,452,201.70	7,011,608.39	4,170,454.89
Importation of Goods Other Than Capital Goods	3,063,240.00	4,380,383.00	2,771,218.00
Domestic Purchase of Services	12,252,162.87	10,206,839.67	10,399,209.43
Total Available Input Tax	169,847,784.26	183,972,672.43	192,793,786.15
Less: Deductions from Input Tax			
Input Tax on Purchase of Capital Goods exceeding P1Million deferred for the			

[2] Rollo pp. 178-186.

succeeding period	1,694,991.26	2,222,432.15	3,019,297.38
Total Allowable Input Tax	168,152,793.00	181,750,240.28	189,774,448.77
Net VAT Payable	(159,551,273.65)	(171,689,047.96)	(180,761,214.32)
Less: Tax Credits/Payments Creditable VAT withheld	434,388.73	459,444.22	410,238.33
Tax Overpayment	(159,985,662.38)	(172,148,492.18)	(181,171,452.65)

On 18 February 2010, petitioner filed with respondent, through the BIR-Revenue District Office No. 121, an application for refund or issuance of tax credit certificate for its alleged unutilized input VAT attributable to its zero-rated sales for the second to fourth quarters of 2008 in the amount of P42,842,406.08, out of the total input tax payment of P63,295,675.18 for the same period.

Alleging inaction by respondent on its administrative claim, petitioner filed the Petition for Review before this Court on 28 June 2010."

On August 18, 2010, the CIR filed her Answer[3] raising the following Special and Affirmative Defenses, viz:

"5. Taxes paid and collected by the Bureau of Internal Revenue (BIR) are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner.

6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue.

7. Petitioner must prove that it has complied with the provisions of Section 112(A) and (C) of the NIRC, as amended, on the prescriptive period for filing claims for refund/credit.

8. Petitioner must prove compliance with the prescribed checklist of requirements to be submitted involving applications for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative application for refund, such being mere pro-forma, which is a condition sine qua non prior to the filing of a judicial claim in accordance with the provision of Section 112 of the NIRC of 1997, as amended. Further, Section 112 (C) of the

[3] Docket, CTA Case No. 8114, pp. 161-167.

> NIRC of 1997, as amended, requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the Petition for Review.
>
> 9. Petitioner must likewise prove compliance with the substantiation requirements mandated in Section 110 and 113 of the NIRC of 1997, as amended, in relation to the provisions of Revenue Regulations No. 7-95. Under Revenue Memorandum Circular No. 42-2003, failure to comply with the invoicing requirement on the documents supporting the sale of goods and services will result in the disallowance of the claim for input VAT on the purchaser-claimant.
>
> 10. The amount of P42,842,406.08 being claimed by Petitioner as alleged unutilized input VAT paid for the 2nd to 4th quarters of 2008 is not properly documented.
>
> 11. It is well-established in this jurisdiction that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and are therefore held against the claimant. The taxpayer must present clear and convincing evidence to merit a tax refund. The taxpayer has the burden of establishing the factual basis of its claim for refund."

During the trial, only petitioner presented evidence to support its case. Respondent waived her right to present evidence. In the Resolution[4] dated November 26, 2013, the parties were ordered to file their respective memoranda. On January 28, 2014, respondent filed a "Manifestation" stating that she will adopt the arguments raised in her Answer as her memorandum. On the other hand, petitioner filed on February 7, 2014 its "Motion to Admit Petitioner's Memorandum," which the Court admitted on February 13, 2014.

The case was submitted for decision on February 13, 2014.[5]

On December 10, 2014, the Court in Division issued the assailed Decision. On April 21, 2015, the Court in Division issued the assailed Resolution.

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[4] Docket, CTA Case No. 8114, p. 1427.
[5] Ibid. p.1506.

Aggrieved, petitioner Air Liquide filed before the Court *En Banc* this Petition for Review[6].

In the Resolution[7] dated June 22, 2015, the CIR was directed by the Court *En Banc* to file her Comment in this case. In the Records Verification Report of the Judicial Records Division of this Court,[8] it was stated that respondent CIR failed to file Comment.

In the Resolution[9] dated August 10, 2015, the Court *En Banc* ordered the parties to file their respective memoranda within thirty (30) days from notice. On September 15, 2015, petitioner filed its "Memorandum."[10] The Records Verification Report dated October 8, 2015[11] states that the CIR failed to file her Memorandum.

In the Resolution[12] dated November 5, 2015, this case was deemed submitted for decision.

ISSUE

The issue in this case is whether the Court in Division committed reversible error when it denied the input VAT carried over from previous quarter in the amount of P145,684,824.92, and subsequently denied petitioner's application for VAT refund.

ARGUMENTS

Petitioner argues that the Court in Division's Decision did not conform with the principle on prospectivity of Court decisions and statutes; that when the appealed decision was on trial, there was no Court decision yet requiring input VAT carried over previous quarter to be covered by the substantiation requirement on VAT refunds; petitioner should not be prejudiced with a new decision; that it relied on existing CTA decision at the time it presented its evidence; and that the Court is not bound by technical rules on evidence.

RULINGS OF THE COURT EN BANC

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[6] Rollo, CTA EB CASE No. 1307, pp. 12-27, with Annexes.
[7]Ibid pp. 197-198.
[8]Ibid. p. 199.
[9] Ibid. pp.202-203.
[10] Ibid. pp.204- 222.
[11] Ibid. p. 223.
[12] Ibid pp. 225-226.

The instant case arose from the Court in Division's denial of Air Liquide's petition for refund for failure of petitioner to substantiate its input VAT carried over from previous quarter.

Timeliness of the Petition

Section 112 of the NIRC of 1997, as amended provides:

> **"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 or 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) 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.
>
> 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**

p

> **hundred twenty day- period, appeal the decision or the unacted claim with the Court of Tax Appeals."** *(Emphasis supplied)*

The instant case involves a claim for refund for the second to fourth quarters of 2008. The close of the taxable quarter and the last day for filing the administrative claim are illustrated below:

PERIOD COVERED	CLOSE OF THE TAXABLE PERIOD	LAST DAY OF THE TWO-YEAR PERIOD
April to June 2008	June 30, 2008	June 30, 2010
July to September 2008	September 30, 2008	September 30, 2010
October to December 2008	December 31, 2008	December 31, 2010

Records show that petitioner Air Liquide filed its administrative claim with the BIR on February 18, 2010.[13] Hence, Air Liquide's administrative claim for refund or TCC was seasonably filed with the respondent.

In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, Philex Mining Corporation vs. Commissioner of Internal Revenue*[14], the Supreme Court clarified the rule with regard to the application of prescriptive periods under Section 112(A) and (C). Thus:

> "This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period."

In the instant case, respondent has a period of one hundred twenty (120) days from February 18, 2010 or up to June 18, 2010, within which to act on Air Liquide's claim. After the lapse thereof, Air Liquide has thirty (30) days or up to July 18, 2010 within which to file a judicial claim before this Court.

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[13] Exhibit "P-C".
[14] G.R. No. 187485, February 12, 2013. Citation omitted.

Petitioner Air Liquide filed before this Court its Petition for Review on June 28, 2010, also within the period required by the rules. Hence, both the administrative and judicial claims were filed on time.

Whether the Court in Division erred in denying Air Liquide's application for VAT refund

After a careful review of Air Liquide's arguments and the records of the case, the Court *En Banc* finds that the Court in Division did not err in denying Air Liquide's petition for refund.

The pertinent portions of the Decision[15] are quoted below:

> "In its Quarterly VAT Returns for the second, third and fourth quarters of taxable year 2008, petitioner reflected the amount of P490,529,554.99 as zero-rated sales/receipts, xxx
>
> To substantiate the aforestated zero-rated sales/receipts, petitioner presented sales invoices issued to its clients for the subject period of claim, Certification from PEZA dated April 28, 2010 attesting that the enterprises listed therein are registered with PEZA, Certificates of Registration and Tax Exemption issued by SBMA on December 4, 2008 and September 2, 2008 to NIDEC Subic Philippines Corporation and HHIC-PHIL INC., respectively, letter dated November 30, 2010 from PEZA to petitioner confirming that it has issued VAT zero-rating certifications to the PEZA-registered enterprises enumerated therein, and Certification issued by BOI on November 17, 2010 confirming that Shinkozan Corporation and Mindanao Silicon Metal Corp. were endorsed to the BIR for VAT zero-rated transactions within the validity periods indicated therein.
>
> The Court notes, however, that only the reported zero-rated sales of goods in the amount of P282,022,343.16 is duly covered by PEZA and SBMA certifications and VAT zero-rated sales invoices issued in accordance with Section 113(A)(1) and (B) in relation to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended. xxx
>
> Consequently, only the portion of the input VAT claim attributable to the substantiated zero-rated sales of

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[15] Decision, pp. 16-26, citations omitted.

P282,022,343.16 will be considered for refund. The rate to be applied is based on the substantiated zero-rated sales over the total amount of reported zero-rated sales/receipts, xxx

Petitioner paid/incurred input VAT in connection with its zero-rated sales

Petitioner submitted various suppliers' invoices, official receipts and Import Entry Internal Revenue Declarations (IEIRDs) in support of the input taxes reflected in its Quarterly VAT returns for the second to fourth quarters of 2008 in the aggregate sum of P63,295,675.18, xxx

xxx xxx xxx

The Court finds the disallowance of input taxes of P61,263.11 *(Exhibit LLL-9-2),* P1,252,728.85 *(Exhibit LLL-9-3)* and P7,899,660.42 *(Exhibit LLL-9-4)* proper for not being properly substantiated by VAT invoices or official receipts in accordance with Sections 110(A)and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-2005, as amended.

As regards the P8,153,991.93 input VAT found by the ICPA to be outside the period of claim, the Court has determined that the amount of P59,011.95, broken down below, represents petitioner's allowable input taxes for the subject period of claim:

xxx xxx xxx

Thus, only the remaining input taxes in the amount of P8,094,979.98 (P8,153,991.93 less 59,011.95) shall be disallowed from petitioner's claim.

With reference to the amount of P95,080.49 found by the ICPA to be erroneous VAT computation, the Court notes that input taxes in the amount of P17,300.60 represents petitioner's valid claim while the remaining amount of P77,779.89 should be denied, xxx

In sum, input VAT disallowances per the ICPA report shall be adjusted to P17,386,412.25, xxx

In addition to the foregoing disallowances, petitioner's claimed input taxes should further be decreased by P27,194,573.31 xxx

Proceeding from the aforesaid disallowances, out of petitioner's reported input tax of P63,295,675.18, only the amount of P18,714,689.62, as computed below, represents petitioner's valid input tax:

	2nd Quarter	3rd Quarter	4th Quarter	Total
Input VAT Per Returns	P22,580,795.37	P22,292,019.48	P18,422,860.33	P63,295,675.18
Less: Disallowances				
Per ICPA Report, as adjusted	P6,445,718.72	P1,842,727.96	P9,097,965.57	P17,386,412.25
Per this Court's further verification	11,058,984.85	9,203,743.43	6,931,845.03	27,194,573.31
Total Disallowances	P17,504,703.57	P11,046,471.39	P16,029,810.60	P44,580,985.56
Valid Input VAT	**P5,075,091.80**	**P11,245,548.09**	**P2,393,049.73**	**P18,714,689.62**

Substantiated input tax is not sufficient to cover output tax. The amount of input tax carried-over from previous quarter cannot be applied against output tax for lack of supporting documents

Considering that creditable/substantiated input taxes attributable to zero-rated sales may be refunded if the same has not been applied against output tax, comparison of the amounts of creditable input taxes and that of output taxes for the period is necessary. The following table reflects the output taxes reported by petitioner in its Quarterly VAT Returns for the second to fourth quarters of taxable year 2008 and the afore-discussed substantiated input taxes for the same period, to wit:

	2nd Quarter	3rd Quarter	4th Quarter	Total
Output Tax	P8,601,519.35	P10,061,192.31	P9,013,274.45	P27,675,986.12
Less: Valid Input Tax	5,076,091.80	11,245,548.09	2,393,049.73	18,714,689.62
Output Tax Still Due/ (Excess Input Tax)	**P3,525,427.55**	**P(1,184,355.77)**	**P6,620,224.72**	**P8,961,296.50**

As shown above, petitioner's substantiated input taxes for the second to fourth quarters of 2008 are not enough to cover its input taxes for the same period. While petitioner reflected in its Quarterly VAT Return for the second quarter of 2008, the amount of P145,964,824.92 as "Input Tax Carried Over from

Previous Quarter", the Court found that petitioner failed to present VAT invoices or receipts to prove the existence of such amount. Hence, the input tax carry-over of P145,964,824.92 cannot be validly applied against petitioner's output tax pursuant to Section 110(A)(1) in relation to Section 110(B) of the NIRC of 1997, as amended, which states:

> "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 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."

Considering that there is no excess input VAT which may be the subject of a claim for refund/tax credit certificate under Section 112(A) of the NIRC of 1997, as amended, petitioner's claim must be denied."

Petitioner Air Liquide avers that the paramount interest of justice will be served if the trial will be reopened since petitioner's input VAT was disallowed based on a new requirement not yet required when petitioner was presenting its evidentiary documents.

The Court *En Banc* finds Air Liquide's argument unmeritorious. Air Liquide should not blame the July 24, 2013 Court Decision (Total (Philippines) Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 7898, 7980 and 8008) as the reason why its petition was denied was because of the pronouncement in that case that input VAT claim carried over from the previous quarter should be substantiated to be allowed refund. Air Liquide should be aware that even prior to the promulgation of the said case (Total Philippines), it is already required that input VAT claim carried over from previous quarter should be substantiated or proven. Said requirement was provided in Section 110(A)(1) and (B) in relation to Section 112, of the NIRC of 1997, as amended.

As correctly ruled by the Court in Division, in its Resolution:[16]

> "The alleged absence of Court decisions requiring the substantiation of carried over input VAT during the period it presented and offered its evidence is not a valid justification for petitioner's failure to substantiate its carried over input VAT as the substantiation requirement itself is clearly stated in the law.
>
> xxx xxx xxx
>
> Pursuant to Section 110 (A) (1) and (B) of the NIRC of 1997, as amended, the input taxes (including the input taxes carried-over from the previous quarter shall be credited against the output taxes only if the same are supported by VAT invoices (in cases of purchases of goods or properties) or VAT official receipts (in cases of purchases of services, use or lease of properties) issued in accordance with Section 113 of the same Code.
>
> As petitioner failed to present its VAT invoices or receipts to prove the existence of its declared input tax carried-over from previous quarter in the amount of P145,964,824.92, said amount of input tax carried-over cannot validly be credited against petitioner's output tax for the year."

Contrary to the position of Air Liquide, the Court *En Banc* finds that the re-opening of the case based on petitioner's plea to introduce additional documents to substantiate its input VAT claim carried over from previous quarter is unjustified.

Petitioner failed to state in its petition circumstances that may constitute grounds for a new trial of the case as provided in Sections 5 and 6, Rule 15 of the Revised Rules of the Court of Tax Appeals.

Hence, we reiterate the Court in Division's ruling in the Resolution[17] on Air Liquide's Motion for Reconsideration that:

> "Finally, petitioner's prayer for the reopening of the case to allow the ICPA to validate the amount of input VAT carried over from previous quarter is likewise bereft of merit as the case is already in the post-judgment stage.

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[16] Resolution, pp. 7-8, citations omitted.
[17] Resolution, page 8, citations omitted.

xxx xxx xxx

Even if the Court treats petitioner's prayer for the reopening of the case as a Motion for New Trial pursuant to Sec. 5, Rule 15 of the RRCTA in relation to Rule 37 of the Rules of Court, the grant of such relief is still unjustified. It is well-settled that motion for new trial may be granted only upon specific, well-defined grounds, set forth in the Rules. Since petitioner failed to specify facts and circumstances that may constitute grounds for motion for new trial and the required attachments thereto as provided under Sec. 5 and 6, Rule 15 of the RRCTA, such motion is thereby fatally infirm."

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[18] In this case, Air Liquide was not able to prove that it is entitled to a refund or issuance of a tax credit certificate for its unutilized input VAT paid in the second to fourth quarters of 2008.

There being no new matters or issues raised in the Petition for Review before the Court *En Banc* and there being no reversible error committed by the Court in Division, hence, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED for lack of merit.** Accordingly, the Decision dated December 10, 2014 and Resolution dated April 21, 2015 are hereby affirmed.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[18] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO – MANALASTAS
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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice