REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

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CE LUZON GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7180

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CE LUZON GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7279

Members:

CASTAÑEDA, JR., Chairperson, and
UY, JJ.

Promulgated:

AUG 2 8 2019 2:00 pm

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RESOLUTION

UY, J.:

For resolution of this Court is respondent's **"MOTION FOR RECONSIDERATION Re: Amended Decision dated 16 May 2019"** filed on May 31, 2019, with petitioner's **"COMMENT (Re: Respondent's Motion for Reconsideration dated May 31, 2019)"** filed on July 8, 2019, praying for the reversal and setting aside of this Court's Amended Decision dated May 16, 2019, the dispositive portion of which reads:

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"**WHEREFORE**, in light of the foregoing considerations, petitioner's claim for refund is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** the amount of **TWENTY-THREE MILLION FOUR HUNDRED EIGHTY-NINE THOUSAND FIVE HUNDRED FOURTEEN PESOS AND 64/100 (₱23,489,514.64)** to petitioner, representing its unutilized input VAT for the four quarters of taxable year 2003.

SO ORDERED."

In the instant *Motion*, respondent avers that petitioner is not entitled to a refund of its alleged unutilized excess input value-added tax (VAT) for taxable year 2003 amounting to ₱23,489,514.64.

Furthermore, respondent argues that documents not presented by petitioner before the administrative level must not be considered by this Court; and that a judicial claim for refund is not an original action but an appeal from unsuccessful administrative remedy, hence, documents not presented at the administrative level should not be considered by the Court.

On the other hand, in its *Comment*, petitioner submits that the arguments put forward by respondent are mere reiterations which have already been passed upon by this Court.

Moreover, petitioner counters that its non-submission of documents during the pendency of the administrative claim, assuming such was established, is not fatal to a claim for refund at a judicial level. According to petitioner, the Court can receive, evaluate and appreciate the evidence submitted before it notwithstanding the non-submission of complete documents at the administrative level.

Petitioner also pointed out that respondent neither presented evidence during the trial to prove his allegation nor showed that he questioned the completeness of its documents supporting the administrative claims for refund.

As regards respondent's allegation that petitioner failed to prove that it has complied with invoicing requirements mentioned in Section 110 and 113 of the Tax Code, petitioner rebuts the same by arguing that the Court had already made a thorough examination of the supporting documents it presented to prove its entitlement to refund of unutilized input VAT.

THE COURT'S RULING

After a careful review of the arguments raised by the parties, the Court finds respondent's *Motion for Reconsideration* bereft of merit.

Failure to comply with RMO No. 53-98 and RR No. 3-88 is not fatal.

Respondent contends that petitioner failed to comply with: (i) the prescribed checklist of requirements to be submitted involving claims for VAT refund, pursuant to Revenue Memorandum Order (RMO) No. 53-98; and (ii) the submission of certain documents in accordance with Revenue Regulations (RR) No. 3-88.

We are not convinced.

In *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation),*[1] the Supreme Court ruled as follows:

> "The CIR's reliance on RMO 53-98 is misplaced. **There is nothing in Section 112 of the NIRC, <u>RR 3-88 or RMO 53-98 itself</u> that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT.** xxx." *(Emphasis and underscoring supplied)*

On the basis thereof, compliance with RR No. 3-88 and RMO No. 53-98 is not essential in the determination whether a taxpayer is entitled to the refund of excess and unutilized input VAT.

Moreover, in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* ("*Pilipinas Total Gas* case"),[2] the Supreme Court ruled as follows:

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[1] G.R. No. 205055, July 18, 2014.
[2] G.R. No. 207112, December 8, 2015.

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> "Indeed, **a taxpayer's failure with the requirements listed under RMO No. 53-98 is <u>not fatal</u> to its claim for tax credit or refund of excess unutilized excess VAT.** This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, **the question of whether 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.**" *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, petitioner's failure to comply with the requirements listed under RMO No. 53-98 is not fatal to a claim for input VAT refund. Thus, it is not necessary for this Court to determine whether taxpayer complied with the said administrative issuance. What is essential is that taxpayer was able to submit sufficient evidence to prove its judicial claim. In this case, We find that petitioner was able to submit sufficient evidence in proving the refundable amount of ₱23,489,514.64, representing its unutilized input VAT for taxable year 2003.

The findings of this Court prevail over the general averment of error by respondent.

Respondent likewise argues that petitioner failed to prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended in relation to the provisions of RR No. 7-95.

We disagree.

In Our Decision dated April 21, 2009,[3] We already held the following:

> "After careful examination of the pieces of documentary evidence presented and the Report of the Court-commissioned Independent Certified Public Accountant (ICPA), this Court finds that only the amount of P22,647,638.47 represents valid and duly

[3] Docket – Vol. 1, pp. 466 to 485.

substantiated claim of petitioner in accordance with the provisions of Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4-104-5, and 4.108-1 of Revenue Regulations No. 7-95.

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WHEREFORE, petitioner's claim for refund or issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-TWO MILLION SIX HUNDRED FORTY SEVEN THOUSAND SIX HUNDRED THIRTY EIGHT PESOS AND 47/100 (P22,647,638.47)** to petitioner, representing its unutilized its input VAT for the four (4) four quarters of taxable year 2003.

SO ORDERED."

Moreover, the foregoing findings/ruling of this Court were even subjected to the scrutiny of this Court *En Banc*, in its Decision dated July 20, 2010 in CTA EB Nos. 553 and 554,[4] thereby increasing the amount to be refunded by petitioner, in this wise:

"After a second hard look on the records of both cases, this Court finds that there is in fact no discrepancy between the amount of input VAT claimed in CE Luzon's administrative and judicial claims. A careful perusal of CE Luzon's administrative claim for refund shows that the total unutilized input VAT claimed for refund amounts to P26,574,388.99 *(Annexes 'E', 'F' and 'G' of C.T.A. EB No. 553)*. On the other hand, the Petition for Review, docketed as C.T.A. Case No. 7180, reveals that CE Luzon is claiming the amount of P4,785,234.70 *(C.T.A. Case No. 7180, Orig. Docket, p. 6)*, while the Petition for Review, docketed as C.T.A. Case No. 7279, shows a claimed amount of P21,789,154.29 *(C.T.A. Case No. 7279, Orig. Docket, p. 5)*. Hence, CE Luzon's total claim in the consolidated cases amounts to P26,574,388.99. Clearly, both its administrative and judicial claims for refund amounts to P26,574,388.99. Considering that the disallowance of the amount of P841,876.17 has no basis, we hereby reconsider and grant the same to CE Luzon.

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[4] Docket (CTA Case No. 7180) – Vol. 1, pp. 1015 to 1041.

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...the Former Second Division committed no reversible error when it disallowed the amount of P563,245.20, corresponding to the amount of ORs and invoices with pre-printed 'TIN-V' only, instead of 'TIN-VAT', for failure to comply with the mandatory invoicing requirements.

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WHEREFORE, premises considered:

1) as regards CE Luzon's Petition for Review, docketed as C.T.A. EB No. 553, the petition is hereby **PARTLY GRANTED**. Accordingly, the assailed Decision dated April 21, 2009 is hereby **AMENDED**, to read as follows:

'**WHEREFORE**, petitioner's claim for refund or issuance of tax credit certificate is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-THREE MILLION FOUR HUNDRED EIGHTY NINE THOUSAND FIVE HUNDRED FOURTEEN PESOS AND 64/100 (P23,489,514.64)** to petitioner, representing its unutilized input VAT for the four (4) quarters of taxable year 2003.

SO ORDERED.

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SO ORDERED."

Considering that this Court in Division and *En Banc* arrived at the said findings after a careful evaluation of the evidence presented, it behooves respondent to specifically pinpoint any error thereon. The general averment of respondent that petitioner failed to prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the National Internal Revenue Code (NIRC), as amended, in relation to the provisions of RR No. 7-95, cannot constitute a reversible error on the part of this Court for being unsubstantiated, too vague, highly speculative, and uncertain. As

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between the above-stated findings of this Court, and the general averment of respondent, the former must perforce prevail.

Due to respondent's inaction on the administrative claim of petitioner for the 1st, 3rd, and 4th quarters of 2003, this Court may give credence to all evidence presented by petitioner, even those which have not been submitted to the BIR. As for the claim for the 2nd quarter of the same year, the sufficiency of evidence therefor lies within the sound discretion and judgment of this Court.

Respondent further contends that documents not presented by petitioner before the administrative level must not be considered by this Court. In support of this contention, respondent invokes the ruling of the Supreme Court in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* ("*Atlas* case")[5] and in the *Pilipinas Total Gas* case.

We are not convinced.

In the *Pilipinas Total Gas* case, the Supreme Court, considering the *Atlas* case, also made the following ruling:

> "At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*, it was ruled –
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> > x x x First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. <u>In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or</u>

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[5] G.R. No. 145526, March 16, 2007, 547 Phil. 332.

> tax credit. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.

A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR has no reason to deny its claim. **It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim.** It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, **a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.**

In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. **Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include

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whatever is required for the successful prosecution of an administrative claim."

Based on the foregoing, in the proceedings before this Court, a distinction must be made between: (1) administrative cases appealed due to inaction of respondent; and (2) administrative cases dismissed due to the failure of the taxpayer to submit supporting documents. In case of the former, this Court may consider all evidence presented and offered by the taxpayer, including those that which may not have been submitted to the BIR; while in the latter case, the taxpayer must show this Court not only his entitlement under substantive law, but also that he submitted complete documents as requested by the BIR.

In this case, the administrative claims for refund of respondent on input VAT for the *first*, *third*, and *fourth* quarters of 2003, were appealed to this Court due to the inaction of respondent.[6] Correspondingly, this Court may consider all of petitioner's evidence regarding the said periods, even those that which has not been submitted at the administrative level.

With regard to the administrative claim for the *second* quarter of 2003, while it may be true that the BIR acted on the said claim, the same was never dismissed due to the failure of petitioner to submit supporting documents. This is shown in the BIR's letter dated April 28, 2005,[7] addressed to petitioner, providing in part, as follows:

> "This refers to your request for refund/issuance of tax credit certificate filed with this Office on January 20, 2005 of unutilized input tax for the second (2nd) quarter of 2003, amounting to Php4,568,458.49 pursuant to LA No. 00012996 dated April 7, 2005.
>
> Pursuant to the provision of Section 110(B) of the Tax Code, a VAT-registered person has the option either to carry-over the excess input tax to the next quarter(s) or to refund or apply for Tax Credit Certificate (TCC) any excess input tax attributed to capital goods or to zero-rated sales. **In this case, the excess input tax in 2003 second (2nd) quarter of <u>Php4,568,458.49</u> were carried over to your respective succeeding VAT returns. This indicated that you have opted to carry-over the excess tax instead of applying for its refund.**
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[6] Refer to *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 197526, and 199676-77, July 26, 2017; Par. 12, *Petition for Review*, Docket (CTA Case No. 7180) – Vol. 1, p. 5, and Par. 12, *Petition for Review*, Docket (CTA Case No. 7279), p. 5.

[7] BIR Records, p. 47.

> In view of the foregoing, with references to Sections 6 (A), 110(B) and 110 (C) of the National Internal Revenue Code, **your request for refund/issuance of Tax Credit Certificate (TCC) for the excess input taxes for 2003** first (1st) *(sic)*[8] **quarter, amounting to Php4,568,458.49, is hereby denied since you have presumptively opted to carry-over the alleged excess input tax, to your succeeding quarters.**" *(Emphases and underscoring supplied)*

It is clear from the foregoing that the said administrative claim was denied because the amount of the claim, *i.e.*, ₱4,568,458.49, was carried over to the succeeding quarters. In other words, it was not denied because petitioner failed to submit complete documents as requested by the BIR.

Consequently, the rule regarding administrative cases which were dismissed due to the failure to submit supporting documents to the effect that the taxpayer should establish that there was submission of complete documents at the administrative level, cannot be applied to petitioner's administrative claim for the *second* quarter of 2003. Such being the case, the question of whether the evidence submitted by petitioner is sufficient to warrant the granting of its prayer anent the refund of the input VAT for the *second* quarter of 2003 lies within the sound discretion and judgment of the Court, as stated in the earlier quoted portion of the *Pilipinas Total Gas* case (*supra*).

To reiterate, We find that petitioner was able to submit sufficient evidence in proving the refundable amount of ₱23,489,514.64, representing its unutilized input VAT for taxable year 2003.

WHEREFORE, in light of the foregoing considerations, respondent's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[8] This should be "second (2nd)".