REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CARMEN COPPER CORPORATION,
Petitioner,

CTA EB NO. 2779
(CTA Case No. 10074)

Present:

RINGPIS-LIBAN, *Acting P.J.*,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 27 2025 4:10 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Carmen Copper Corporation (**petitioner/CCC**) *via* accredited courier service provider on 24 July 2023, pursuant to Rule 43[2] of the Rules of Court, as amended[3], in accordance with Rule 8[4], Sections

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1 *Rollo*, pp. 5-80, with annexes.
2 *Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.*
3 A.M. No. 19-10-20-SC, otherwise known as the 2019 Amendments to the 1997 Rules of Civil Procedure.
4 *Procedure in Civil Cases.*

3(b)[5] and 4(b)[6] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the reversal and setting aside of the Decision dated 29 November 2022[7] (**assailed Decision**) and Resolution dated 06 June 2023[8] (**assailed Resolution**) of the Court's First Division and Special First Division, respectively, in CTA Case No. 10074, entitled *Carmen Copper Corporation v. Commissioner of Internal Revenue*. The First Division ruled that the judicial claim for refund lacked merit because the administratively approved refund in petitioner's favor exceeded the excess input Value-Added Tax (**VAT**) attributable to valid zero-rated sales for the fourth (4th) quarter of taxable year (**TY**) 2016. Hence, petitioner is not entitled to any additional refund.

PARTIES TO THE CASE

Petitioner is a domestic corporation duly organized and existing under Philippine laws[9], with registered address at Unit 502-P & 503-P, 5/F, Five E-Com Center, Palm Coast Avenue corner Pacific Drive, Mall of Asia Complex, Barangay 76, Pasay City. It is also registered with the Bureau of Internal Revenue (**BIR**) as VAT taxpayer with Certificate of Registration (**COR**) No. OCN 8RC0000791446E[10] issued by the Large Taxpayers (**LT**) Service, Revenue District Office (**RDO**) No. 121 – Excise LT Division I. Petitioner likewise maintains a branch located at Atlas Mining Complex, Bo. Don Andres Soriano, Toledo City, Cebu 6038, under its COR No. OCN 8RC0000068157.[11]

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5 **SEC. 3.** *Who may appeal; period to file petition.* —

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a **petition for review** within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Emphasis supplied)

6 **SEC. 4.** *Where to appeal; mode of appeal.* —

...

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by **petition for review as provided in Rule 43 of the Rules of Court**. The Court *en banc* shall act on the appeal. (Emphasis supplied)

7 Division Docket, Volume III, pp. 836-876. Penned by Associate Justice Marian Ivy F. Reyes-Fajardo, with Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan, concurring.

8 Id., pp. 899-902.

9 Securities and Exchange Commission (**SEC**) Certificate of Incorporation with Certificate of Filing of Amended Articles of Incorporation (**AOI**) issued to Petitioner, Exhibit "P-1", id., Volume I, pp. 151-165.

10 Bureau of Internal Revenue (**BIR**) Certificate of Registration (**COR**) for Petitioner's Head Office, Exhibit "P-2", id., pp. 166-167.

11 BIR COR for Petitioner's Branch Office, Exhibit "P-3", id., p. 168.

Respondent is the duly-appointed Commissioner of Internal Revenue (**respondent/CIR**) empowered to perform the duties of said office including, among others, the power to decide, approve, and grant tax refunds or tax credits as provided for by law, with office address at BIR National Office Building, Agham Road (now, Senator Miriam P. Defensor-Santiago Avenue), Diliman, Quezon City.[12]

FACTS OF THE CASE

On 19 December 2018, petitioner filed with the BIR VAT Credit Audit Division (**VCAD**) its "Application for Tax Credits/Refunds (BIR Form No. 1914)"[13] (**administrative claim**) for refund of excess and unutilized input VAT in the amount of ₱38,521,488.12 for the period covering 01 October 2016 to 31 December 2016 or 4th quarter of TY 2016.

On 20 March 2019, petitioner received a Letter dated 14 March 2019[14] (**VAT Refund Letter**), issued by respondent through Officer-In-Charge Assistant Commissioner for Assessment Service Ma. Luisa I. Belen (**OIC-Assistant Commissioner Belen**), partially granting petitioner's administrative claim. Of petitioner's total refund claim of ₱38,521,488.12, respondent disallowed ₱6,265,173.25, leaving ₱32,256,314.87 as the refundable amount, computed as follows:

	Local	Importation	Total
Amount of Claim	**₱959,846.65**	**₱37,561,641.47**	**₱38,521,488.12**
Disallowances *per* VCAD Verification			
Not in compliance with the invoicing requirements	(₱345,432.00)	-	(₱345,432.00)
Disallowance *per* ITS verification	(1,713.19)	-	(1,713.19)
Big-ticket disallowances	(551,754.72)	-	(551,754.72)
Total Disallowances *per* Verification	**(₱898,899.91)**	-	**(₱898,899.91)**
Disallowances *per* TARD Review			
Additional deferred input tax for CG	(₱60,946.74)	(₱53,572.90)	(₱114,519.64)
Input VAT allocated to exempt and unremitted sales		(4,769,261.09)	(4,769,261.09)
Output VAT assessed on undeclared sales		(400,376.65)	(400,376.65)
Compromise penalty		(6,250.00)	(6,250.00)
Output VAT assessed on other income		(70,554.91)	(70,554.91)

12 Paragraph 1, I. Admitted Fact, Joint Stipulation of Facts and Issues (**JSFI**), id., p. 296.
13 Exhibit "P-9", id., p. 184.
14 Exhibit "P-12", id., pp. 187-188; Exhibit "R-3", BIR Records, pp. 453-454.

	Local	Importation	Total
Output VAT assessed on incorrectly withheld VAT		(5,311.05)	(5,311.05)
Total Disallowances *per* Review	(60,946.74)	(₱5,305,326.60)	(₱5,366,273.34)
Total Disallowances	(₱959,846.65)	(₱5,305,326.60)	(₱6,265,173.25)
AMOUNT APPROVED FOR VAT REFUND	₱-	₱32,256,314.87	₱32,256,314.87

PROCEEDINGS BEFORE THE FIRST DIVISION

On 22 April 2019 and within thirty (30) days from receipt of the VAT Refund Letter[15], petitioner filed its prior Petition for Review[16] before the Court in Division to appeal the denied portion of its administrative claim. The same was raffled to the First Division[17] and docketed as CTA Case No. 10074. Petitioner challenged the disallowance amounting to ₱4,769,261.09 under the item "[i]nput VAT allocated to allocated to exempt and unremitted sales."

On 04 June 2019, the First Division issued Summons[18] ordering respondent to file an Answer within fifteen (15) days from service. The CIR received the said Summons on 06 June 2019.[19]

After the First Division granted an extension of time[20], the CIR filed an Answer[21] on 04 July 2019. There, the CIR raised the following special and affirmative defenses: (1) the Court must dismiss the case due to petitioner's failure to substantiate its administrative claim for refund; (2) petitioner is not entitled to a refund in the amount of ₱4,769,261.09; (3) taxes paid and collected by the BIR are presumed to have been made in accordance with law, rules and regulations, and petitioner bears the burden of proving otherwise; and (4) claims for refund, being in the nature of tax exemptions, must be strictly construed against the claimant and are, therefore, viewed with disfavor.

[15] Exhibit "P-12" / Exhibit "R-3", supra at note 14.
[16] Division Docket, Volume I, pp. 10-59, with annexes.
[17] The First Division was then composed of Presiding Justice Roman G. Del Rosario, as Chairperson, Associate Justice Esperanza R. Fabon-Victorino (Ret.) and Associate Justice Catherine T. Manahan, as Members.
[18] Division Docket, Volume I, p. 60.
[19] Id.
[20] See Order dated 28 June 2019, id., p. 67.
[21] Id., pp. 69-75.

On even date, respondent transmitted to the First Division the entire BIR Records.[22] The First Division noted the filing of the same in a Minute Resolution dated 05 July 2019.[23]

On 09 July 2019, the First Division set the case for Pre-Trial Conference on 29 August 2019.[24] In compliance with the Court's directive, respondent filed a Pre-Trial Brief[25] on 31 July 2019, while petitioner submitted its Pre-Trial Brief[26] on 23 August 2019.

At the scheduled Pre-Trial Conference on 29 August 2019, the First Division granted the parties a twenty (20)-day period to file their Joint Stipulation of Facts and Issues (**JSFI**).[27] Accordingly, on 18 September 2019, the parties filed their JSFI.[28] The First Division approved and adopted in its Resolution dated 01 October 2019[29] and, subsequently, in its Pre-Trial Order[30] of 23 October 2019. The pre-trial was then declared terminated.

Earlier, on 09 September 2019, petitioner filed a "Motion for Commissioning of Independent Certified Public Accountant [(**ICPA**)]"[31], requesting the appointment of Joel C. Romano (**Romano**) as the ICPA for this case. During the 24 October 2019 hearing[32], the First Division commissioned Romano and directed him to submit his report by 25 November 2019.

On 22 November 2019, ICPA Romano filed his Report.[33] In a Minute Resolution dated 28 November 2019[34], the First Division noted the said ICPA Report.

In the trial that ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following

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22 See Compliance dated 04 July 2019, id., pp. 78-80.
23 Id., p. 82.
24 See Notice of Pre-Trial Conference dated 09 July 2019, id., pp. 84-85.
25 Id., pp. 88-91.
26 Id., pp. 204-218.
27 See Minutes of the Hearing and Order, both dated 29 August 2019, id., pp. 189-191 and 193-195, respectively.
28 Id., pp. 296-306.
29 Id., p. 309.
30 Id., pp. 322-328.
31 Id., pp. 276-293, with annexes.
32 See Order dated 24 October 2019, id., pp. 331-332.
33 Exhibit "P-18", id., Volume II, pp. 336-581.
34 Id., p. 583.

witnesses: (1) Fernando A. Rimando (**Rimando**), petitioner's Chief Finance Officer (**CFO**); and (2) ICPA Romano.

During the hearing on 24 October 2019, Rimando identified his Judicial Affidavit dated 23 August 2019[35], where he testified to the following: (1) petitioner's corporate existence and status as a VAT-registered taxpayer; (2) the instant case arose from respondent's partial denial of petitioner's claim for refund; (3) petitioner's main activities are direct export sale of mineral products like copper concentrate, and direct export sales to a Philippine Economic Zone Authority (**PEZA**)-registered enterprise, *i.e.*, Philippine Associated Smelting and Refining Corporation (**PASAR**); (4) petitioner's VATable sales are minimal because these are largely made to local entities, such as telecommunication companies, cooperatives and other domestic corporations; (5) petitioner's exempt sales (which are not really exempt sales in strict sense) are likewise minimal, as these pertain to Philippine Health Insurance Corporation (**PhilHealth**) reimbursements; (6) the excess and unutilized input taxes for the 4[th] quarter of TY 2016 are all directly attributable and allocable to petitioner's zero-rated sales; (7) petitioner opted to file a claim for input tax refund for the whole amount of ₱38,521,488.12 instead of carrying it over and using it in the subsequent quarters, as shown in the first (1[st]) quarter VAT return[36] for TY 2017; (8) petitioner filed its administrative claim[37] with VCAD on 19 December 2018, together with the required supporting documents; (9) when petitioner filed its administrative claim, the BIR verified the completeness of the documents through a checklist[38] which was provided to petitioner showing that it has completed the requirements; (10) respondent partially granted petitioner's claim in the amount of ₱32,256,314.87 and denied the amount of ₱6,265,173.25 as communicated in a one-page VAT Refund Letter and one annex (Annex "A")[39] on 14 March 2019; (11) the said VAT Refund Letter provided little information as to the factual and legal bases of the partial denial; (12) with respect to the denied amount of ₱4,769,261.09, his understanding from Annex "A" is that the denial arose because the amount pertains to the alleged "[i]nput VAT allocated to allocated to exempt and unremitted sales"; (13) petitioner is appealing only this denied amount, asserting that it has no exempt and unremitted sales;

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35 Exhibit "P-14", id., Volume I, pp. 220-274, with attached exhibits.
36 Exhibit "P-10", id., Volume II, p. 650.
37 Exhibit "9", supra at note 13.
38 Exhibit "P-11", BIR Records, p. 295.
39 Exhibit "P-12" / Exhibit "R-3", supra at note 14.

and (14) the VAT Refund Letter failed to state exactly how the denied amount was computed.

On cross-examination, Rimando confirmed that petitioner submitted all the required documents for refund and acknowledged the significance of this attestation. He testified that for direct zero-rated sales, petitioner submitted export documents such as bills of lading, invoices, and other related papers. For effectively zero-rated sales, he specified that petitioner submitted invoices together with the pertinent documents of PASAR, a PEZA-registered company. To justify petitioner's sales to PASAR as export sales or effectively zero-rated sales, he explained that at the time of the transactions, the BIR required sellers to secure a certification for zero-rated sales to PEZA-registered entities like PASAR. He clarified that petitioner applied for this certification, but at the time of filing the administrative claim, the BIR had not yet released it. When asked if he had a copy of the application with the BIR, he answered in the affirmative and confirmed his ability to submit a copy.[40]

On redirect examination, Rimando shared that petitioner has been filing for VAT refund since the company's inception in 2007. There were several instances in those periods where petitioner sold or made shipments or made sales to PASAR. When asked if it has always been the case where the BIR requires the submission of a prior approval for zero-rating or ruling for zero-rating on petitioner's sales to PASAR, he replied that this is the first time where, during the examination, petitioner was asked about this certification. He also stated that, since sales to PASAR are deemed exports and thus effectively zero-rated, petitioner is not required to submit a BIR Ruling to prove that such sales are zero-rated.[41]

In response to the Court's clarificatory questions, Rimando attested that the BIR accepted petitioner's filing of its administrative claim and verified the completeness of the supporting documents, as indicated on the checklist. He explained that during the BIR's examination, the issue on item 2.13 of the checklist (documents for effectively zero-rated transactions), marked as "N/A," was raised. Rimando also noted that, based on petitioner's previous filings, prior approval for VAT zero-rating was not required. Petitioner only began

40 TSN dated 24 October 2019, pp. 15-23.
41 Id., pp. 23-25.

applying for such approval when the BIR started requesting it during the review of this refund claim. Rimando regrettably stated that, up to the hearing date, no such approval or certification had been issued to petitioner. When asked about the status, Rimando confirmed that petitioner had been advised to refile its application or submit another request for certification. Despite the pendency of petitioner's application and the non-submission of this requirement, Rimando noted that petitioner had still received refunds at the administrative level in similar cases for other taxable periods.[42]

On re-cross examination, Rimando clarified that to establish the effectively zero-rated nature of petitioner's sales to PASAR, petitioner is required only to submit proof of sales made to PASAR and documents proving that PASAR is a PEZA-registered entity. Rimando confirmed that petitioner submitted the necessary documents establishing PASAR's PEZA registration, specifically PASAR's PEZA Certification.[43]

On 30 January 2020[44], petitioner presented ICPA Romano who identified his Judicial Affidavit dated 24 January 2019.[45] He testified essentially that: (1) he was commissioned to make a verification of petitioner's voluminous supporting documents; (2) he prepared a report and made his recommendation as contained in the ICPA Report dated 21 November 2019[46]; (3) in performing the procedures, they familiarized themselves with the case background, issues involved, position taken by petitioner and actions of respondent; and (4) based on the results of their verification, an additional amount of ₱4,987,111.55 of input taxes that petitioner claimed represents valid input taxes attributable to its zero-rated sales.

Respondent did not conduct any cross-examination.[47]

After completing the presentation of evidence, on 19 February 2020, petitioner filed its "Formal Offer of Evidence"[48] (**FOE**), consisting

[42] Id., pp. 25-31.
[43] Id., pp. 32-35.
[44] See Minutes of the Hearing and Order, both dated 30 January 2020, Division Docket, Volume II, pp. 596-599 and 600-601, respectively.
[45] Exhibit "P-17", id., pp. 590-595.
[46] Exhibit "P-18", supra at note 33.
[47] TSN dated 30 January 2020, p. 7.
[48] Division Docket, Volume II, pp. 603-614.

of Exhibits "P-1" to "P-95", inclusive of sub-markings. On 20 February 2020, respondent filed a Comment[49] thereto.

In the Resolution dated 03 June 2020[50] (**FOE Resolution**), the First Division acted upon petitioner's FOE, admitting some of its offered exhibits and denying several exhibits, namely: (1) Exhibits "P-33-a" to "P-33-my", "P-46-a" to "P-46-ab" and "P-50-a"[51], for failure to present originals for comparison; (2) Exhibits "P-30-ae", "P-30-gm", "P-30-ly", "P-34-z" and "P-34-aa"[52], being completely unreadable or blurred; and (3) Exhibits "P-34" and "P-90"[53], not being found in the case records.

On 27 July 2020, petitioner filed a "Motion for Partial Reconsideration"[54] (**MPR**), requesting the First Division to: (1) admit Exhibits "P-33-a" to "P-33-my", "P-46-a" to "P-46-ab" and "P-50-a", as duplicates under the new Revised Rules on Evidence; (2) allow the testimony of ICPA Romano to supplement the unreadable information in the documents as extracted by the ICPA from the originals of Exhibits "P-30-ae", "P-30-gm", "P-30-ly", "P-34-z" and "P-34-aa"; (3) allow petitioner to submit a clearer scanned copy of the exhibits noted to be partly unreadable or blurred and admit the attached clear copy of these documents as replacements for the copies already in the Court's possession; and (4) admit the attached complete set of Exhibit "P-75" as

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49 Id., pp. 653-655.

50 Id., pp. 662-664.

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Exhibit No.	Description
"P-33-a" to "P-33-my"	Various Supporting Documents for Domestic Purchases of Goods (VAT ORs without original copy presented).
"P-46-a" to "P-46-ab"	Various Supporting Documents for Importation of Capital Goods from Previous Quarters or Years.
"P-50-a"	Supporting Document for Domestic Purchase of Capital Goods from Previous Quarters or Years.

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Exhibit No.	Description
"P-30-ae"	Various Supporting Documents for Domestic Purchases of Goods (VAT ORs not dated within the quarter but within the same TY).
"P-30-gm"	
"P-30-ly"	
"P-34-z"	Various Supporting Documents for Domestic Purchases of Goods (undated VAT ORs).
"P-34-aa"	

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Exhibit No.	Description
"P-34"	Supporting Document for Domestic Purchases of Goods (undated VAT OR).
"P-90"	First Quarter of 2016 Authority to Issue VAT Refund/TCC.

54 Division Docket, Volume II, pp. 670-677.

replacement for the copy in the Court's possession. Respondent failed to file a comment thereto despite due notice.[55]

In the Resolution dated 02 December 2020[56], the First Division partially granted petitioner's MPR, admitting Exhibits "P-34-y" and "P-90". Still, it denied Exhibits "P-33-a" to "P-33-my", "P-46-a" to "P-46-ab" and "P-50-a" for failure to present the originals for comparison, as well as Exhibits "P-30-ae", "P-30-gm", "P-30-ly", "P-34-z" and "P-34-aa"[57] for being completely unreadable or blurred. In the same Resolution, the First Division scheduled the presentation of respondent's evidence, particularly the testimony of Revenue Officer (**RO**) Junelle Aira C. Salamanca (**Salamanca**), for 11 March 2021. However, on 08 March 2021, the First Division reset the hearing to 20 May 2021 due to lack of quorum.[58] Later, the First Division notified the parties that the 20 May 2021 hearing will be conducted *via* videoconference.[59]

During the 20 May 2021 videoconference hearing[60], respondent presented his or her sole witness, RO Salamanca, who identified her Judicial Affidavit dated 06 July 2019.[61] In her affidavit, RO Salamanca testified that: (1) she was then an RO I at the BIR assigned to the Tax Audit Review Division (**TARD**); (2) petitioner was informed of the audit through a Tax Verification Notice (**TVN**) dated 19 December 2018[62]; (3) pursuant to Revenue Administrative Order (**RAO**) No. 6-2017[63], the findings of VCAD examiners were automatically subject to review, and the entire docket was forwarded to TARD on 22 February 2019; (4) she recorded the results of her examination in her Memorandum Report dated 14 March 2019[64]; and (5) a VAT Refund Letter[65] was sent to Rimando, informing petitioner that only ₱32,256,314.87 was recommended for refund.

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55 See Records Verification dated 23 October 2020, id., p. 682.
56 Id., pp. 685-691.
57 Supra at note 52.
58 See Notice of Resetting dated 08 March 2021, Division Docket, Volume II, p. 692.
59 See Notice of Hearing *via* Videoconference, id., pp. 694-695.
60 See Minutes of the Videoconference Hearing and Order, both dated 20 May 2021, id., pp. 698-698-B and 699-699-A, respectively.
61 Exhibit "R-5", id., Volume I, pp. 99-116, with attached exhibits.
62 Exhibit "R-1", BIR Records, p. 297.
63 AMENDMENT OF REVENUE ADMINISTRATIVE ORDER (RAO) NO. 2-2014 DATED AUGUST 7, 2014 RELATIVE TO THE ORGANIZATION AND FUNCTIONS OF THE OPERATIONS GROUP, INCLUDING THE SERVICES, DIVISIONS AND SECTIONS UNDER IT.
64 Exhibit "R-2", BIR Records, pp. 447-450.
65 Exhibit "P-12" / Exhibit "R-3", supra at note 14.

On cross-examination, RO Salamanca confirmed that she did not furnish petitioner with her Memorandum Report and that only the VAT Refund Letter was sent. She admitted that no other document provided to petitioner explained the reasons or justifications for the partial denial of the refund claim. She also confirmed that Annex "A" to the VAT Refund Letter[66] contained the findings on the disallowed input taxes, but admitted that Annex "A" did not provide details of the disallowances. She further acknowledged that the schedule of the computation of allowable zero-rated sales was not sent to petitioner, although she noted that petitioner could have requested these details through a letter.[67]

With respect to the amount of ₱343,667,008.36 reclassified from zero-rated sales to exempt sales, RO Salamanca testified that this amount pertained to effectively zero-rated sales without a BIR-approved application for zero-rating. She agreed that the only reason for the disallowance of this amount was petitioner's lack of prior BIR-approved application for VAT zero-rating. When asked if she was aware of Supreme Court decisions dispensing with the requirement of prior approval for sales to PEZA-registered customers, she answered in the affirmative but clarified that she became aware of such jurisprudence only after issuing her Memorandum Report[68] for the subject refund claim.[69]

RO Salamanca also confirmed that she examined the other requirements for VAT zero-rating, such as proof of payment of export proceeds, and that she found no deficiencies regarding the requirement for the proper disposition of export sales proceeds. Finally, she stated that at the time of petitioner's refund claim, BIR was not yet required to include the details of disallowances.[70]

Respondent did not conduct any redirect examination.[71]

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66 Exhibit "P-12" / Exhibit "R-3", supra at note 14.
67 TSN dated 20 May 2021, pp. 9-13.
68 Exhibit "R-2", supra at note 64.
69 TSN dated 20 May 2021, pp. 13-15.
70 Id., pp. 15-17.
71 Id., p. 17.

On 02 June 2021, respondent emailed his or her FOE[72], consisting of Exhibits "R-1" to "R-4". Petitioner filed its Comment[73] thereto on 06 July 2021. Subsequently, in a Resolution dated 22 September 2021[74], the First Division resolved to admit all of respondent's offered exhibits.

In compliance with the Court's directive, on 30 July 2021, petitioner filed *via* licensed courier its Memorandum[75], while respondent filed his or her Memorandum[76] on 26 October 2021. In consideration thereof, the First Division submitted the case for decision through its Resolution dated 13 December 2021.[77]

In the now assailed Decision of 29 November 2022[78], the First Division denied petitioner's original Petition for Review. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, the Petition for Review dated April 17, 2019, filed by Carmen Copper Corporation, is **DENIED**, for lack of merit.
>
> **SO ORDERED.**
>
> ...

In granting petitioner's original Petition for Review, the First Division concluded that respondent had already approved in petitioner's favor the amount of ₱32,256,314.87 as Net Allowable VAT Refund for the 4th quarter of TY 2016. Since the refund approved exceeded petitioner's excess input VAT attributable to valid zero-rated sales for the same period, amounting to ₱27,398,926.18, no additional refund could be allowed.

On 04 January 2023, petitioner filed a "Motion for Reconsideration"[79] (**MR**). Respondent failed to file a comment thereto despite due notice.[80] In the similarly assailed Resolution of 06 June

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72 Division Docket, Volume II, pp. 706-709; Received by the Court on 07 June 2021.
73 Id., pp. 731-745, with annexes.
74 Id., Volume III, pp. 753-754.
75 Id., pp. 755-781; Received on 23 September 2021.
76 Id., pp. 784-790.
77 Id., p. 833.
78 Supra at note 7.
79 Division Docket, Volume III, pp. 877-887.
80 See Records Verification dated 21 February 2023, id., p. 892.

2023[81], the Special First Division[82] denied petitioner's MR for lack of merit.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Following petitioner's receipt of a copy of the assailed Resolution on 23 June 2023[83], it filed a "Motion for Extension of Time to File Petition for Review"[84] with the Court *En Banc* on 10 July 2023. On 24 July 2023 or within the extended period granted[85], petitioner filed the present Petition for Review[86] seeking the reversal of the First Division and Special First Division's assailed Decision[87] and Resolution[88], respectively.

Respondent failed to file a comment on the present petition despite due notice.[89]

Accordingly, in a Minute Resolution dated 30 November 2023[90], the Court *En Banc* submitted the case for decision.

ISSUES

In the present Petition for Review before the Court *En Banc*, petitioner assigns the following errors[91] to the First Division's actions:

I.
THE FIRST DIVISION EXCEEDED ITS JURISDICTION WHEN IT RULED ON ISSUES NOT DISPUTED BY THE PARTIES;

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81 Supra at note 8.
82 The Special First Division was then composed of Presiding Justice Roman G. Del Rosario, as Chairperson, Associate Justice Catherine T. Manahan and Associate Justice Marian Ivy F. Reyes-Fajardo, as Members.
83 See Annex "A" to Petitioner's Compliance dated 30 August 2023, *rollo*, pp. 86-87.
84 Id., pp. 1-3.
85 See Minute Resolution dated 11 July 2023, id., p. 4; The last day, 23 July 2023, fell on a Sunday.
86 Supra at note 1.
87 Supra at note 7.
88 Supra at note 8.
89 See Records Verification dated 08 November 2023, *rollo*, p. 94.
90 Id., p. 95.
91 V. ASSIGNMENT OF ERRORS, Petition for Review, supra at note 1, pp. 10-11.

II.
THE FIRST DIVISION ERRED IN RULING THAT DUE PROCESS VIOLATIONS IN CLAIMS FOR REFUND OF INPUT TAX PRODUCE NO LEGAL CONSEQUENCES; AND

III.
ASSUMING *ARGUENDO* THAT THE FIRST DIVISION CORRECTLY ASSERTED POWER TO REVIEW THE ENTIRETY OF THE CLAIM, ITS FINDINGS OF INVALID ZERO-RATED SALES CANNOT JUSTIFY THE DISALLOWANCE OF VALID INPUT TAXES.

ARGUMENTS

Petitioner argues that original jurisdiction to resolve tax refund claims lies with the CIR, subject only to the CTA's exclusive appellate jurisdiction. A taxpayer may file an appeal with the CTA only when adversely affected by a decision of respondent. Without an adverse action or inaction, a taxpayer has no cause of action.[92] Since petitioner only contests the validity of the denial of ₱4,769,261.09, this portion alone of respondent's decision was adverse to its interest and gave rise to a cause of action.[93]

Petitioner also argues that since the parties, during pre-trial and in their JSFI[94], had already stipulated that the sole issue in this case is petitioner's entitlement to ₱4,769,261.09, the scope of the assailed Decision[95] and Resolution[96] should have been confined to that issue alone. It maintains that once the First Division found that respondent erred in his or her decision, it should have granted the Petition for Review[97] for the refund of ₱4,769,261.09.[98] Petitioner further contends that the First Division should have been bound by respondent's decision on matters not placed in controversy since, with respect to those matters, no justiciable issue existed. Accordingly, it was improper for the First Division, on appeal, to rule on the validity of petitioner's zero-rated sales, because respondent had already admitted them as valid and they were never brought before the CTA for review.[99]

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92 Par. 26, VI. Discussion, Petition for Review, supra at note 1, p. 12.
93 Par. 28, id.
94 Supra at note 28.
95 Supra at note 7.
96 Supra at note 8.
97 Supra at note 1.
98 Par. 31, VI. Discussion, Petition for Review, supra at note 1, p. 12.
99 Pars. 32-34, id., p. 13.

Petitioner further argues that the rule allowing courts to decide issues not raised by the parties, when necessary to resolve the case, does not apply here, as the First Division was able to resolve the issue surrounding respondent's denial of ₱4,769,261.09 without resorting to extrinsic issues, or without a review of the entire claim.[100]

Petitioner likewise asserts that the ruling in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[101] (**Total Gas**) is inapplicable, since it pertains only to questions on the timeliness of a petition.[102] Petitioner also clarifies that the principle that litigation before the CTA is by trial *de novo*, and that petitioner must prove every aspect of its case, refers only to issues properly brought before the CTA on appeal.[103]

Moreover, petitioner contends that the due process requirements governing tax assessments must apply equally to claims for refund. Petitioner points out that respondent's VAT Refund Letter[104] failed to provide any explanation or computation of how the amount of ₱4,769,261.09 was determined. During administrative proceedings, petitioner merely learned that the denial stemmed from the absence of a prior approved application for VAT zero-rating for its sales to PASAR. Petitioner emphasizes that trial proceedings later revealed that the disallowed amount of ₱4,769,261.09 was based on three (3) issues identified in Annex "B" of respondent's Memorandum Report dated 14 March 2019[105] — a document never furnished to petitioner.[106]

Lastly, petitioner maintains that zero-rated sales are defined by law and cannot be made contingent upon compliance with invoicing or other administrative requirements.[107]

As earlier noted, respondent failed to file a comment on the present petition.[108]

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100 Pars. 39-41, id., pp. 14-15.
101 G.R. No. 207112, 08 December 2015 [Per J. Mendoza, *En Banc*].
102 Par. 42, VI. Discussion, Petition for Review, supra at note 1, p. 15.
103 Par. 49, id., p. 16.
104 Exhibit "P-12"/Exhibit "R-3", supra at note 14.
105 Exhibit "R-2", supra at note 64.
106 Pars. 51-53, VI. Discussion, Petition for Review, supra at note 1, p. 17.
107 Pars. 69-77, id., pp. 20-22.
108 See Records Verification dated 08 November 2023, supra at note 89.

RULING OF THE COURT *EN BANC*

Before going into the merits of the case, We shall first determine the timeliness of the present petition.

THE PETITION FOR REVIEW WAS FILED OUT OF TIME.

The Special First Division issued the assailed Resolution[109] denying petitioner's MR[110] on 06 June 2023. Petitioner received the assailed Resolution on 23 June 2023.[111]

Under Section 2(a)(1)[112], Rule 4 in relation to Section 3(b)[113], Rule 8 of the RRCTA, petitioner had 15 days within which to file an appeal before this Court. Thus, counted from 23 June 2023, petitioner had until 10 July 2023 to do so, since 08 July 2023 fell on a Saturday and the next working day was 10 July 2023.

On 10 July 2023, petitioner filed a "Motion for Extension of Time to File Petition for Review"[114], seeking an additional period of 15 days from 10 July 2023, or until 25 July 2023, within which to file its Petition for Review. The Court *En Banc* granted the same in its Minute Resolution dated 11 July 2023[115] but reckoned the 15-day extension from 08 July 2023. Consequently, the deadline for filing the Petition for Review was extended only **until 24 July 2023**, since 23 July 2023 fell on a Sunday and the next working day was 24 July 2023.

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109 Supra at note 8.

110 Supra at note 79.

111 See Annex "A" to Petitioner's Compliance dated 30 August 2023, supra at note 83.

112 **SEC 2.** *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied.)

113 Supra at note 5.

114 Supra at note 84.

115 Supra at note 85.

On 24 July 2023, petitioner filed the present Petition for Review[116] through an accredited courier service provider (*i.e.*, LBC Express, Inc.[117]). At the time of filing, Section 14, Rule 13 of the Rules of Court (**ROC**), as amended[118], governed the mode of filing. Under this provision, initiatory pleadings could only be filed personally, by registered mail, or through electronic transmittal with the Court's express permission. The rule states:

> ...
>
> Sec. 14. *Conventional service or filing of orders, pleadings and other documents.* — Notwithstanding the foregoing, **the following** orders, **pleadings**, and other documents **must be** served or **filed personally** or **by registered mail** when allowed, and shall not be served or **filed electronically**, unless **express permission is granted by the court**:
>
> (a) **Initiatory pleadings** and initial responsive pleadings, such as an answer;
> (b) Subpoena, protection orders, and writs;
> (c) Appendices and exhibits to motions, or other documents that are not readily amenable to electronic scanning may, at the option of the party filing such, be filed and served conventionally; and
> (d) Sealed and confidential documents or records.[119]
>
> ...

Notably, this Court adopted the foregoing provision through *En Banc* Resolution No. 9-2020 issued on 07 August 2020.

As expressly provided in Section 14, Rule 13 of the ROC, as amended, initiatory pleadings such as the present petition must be filed either personally or by registered mail. The rule does not permit filing through a courier service provider, regardless of its accreditation. In such circumstances, the petition must be deemed filed through ordinary mail.[120]

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[116] Supra at note 1.

[117] Office of the Court Administrator (OCA) Circular No. 54-2023; SUBJECT: Accreditation of LBC Express, Inc. as a Courier Service Provider nationwide for a period of one (1) year, from 01 February 2023 to 31 January 2024.

[118] A.M. No. 19-10-20-SC, otherwise known as the 2019 Amendments to the 1997 Rules of Civil Procedure.

[119] Emphasis supplied and italics in the original text.

[120] *Victor M. Barroso v. Commission on Audit*, G.R. No. 253253, 27 April 2021 [Per J. Lazaro-Javier, *En Banc*], citing *Philippine Savings Bank v. Josephine L. Papa*, G.R. No. 200469, 15 January 2018 [Per J. Martires, Third Division].

Consequently, the date when this Court actually received the present Petition for Review[121], *i.e.*, on **26 July 2023**, shall be deemed the date of filing, rather than the date of mailing on 24 July 2023. Accordingly, the present petition was filed **two (2) days late**.

To recap, petitioner had only until 24 July 2023 to file its Petition for Review. Instead, it chose to file the petition on the very deadline through an accredited courier service (LBC) — a mode of filing not yet authorized under Section 14, Rule 13 of the ROC, as amended. Since the Court *En Banc* received the petition only on 26 July 2023, it must be deemed filed through ordinary mail and, therefore, out of time — specifically, **two (2) days late**.

Consequently, the assailed Decision[122] of the Court's First Division and assailed Resolution[123] of its Special First Division, respectively, have become final, executory and unappealable. The Court *En Banc* is bereft of jurisdiction to review them and has no recourse but to dismiss the present Petition for Review outright.

THERE IS NO COMPELLING REASON TO RELAX THE RULES OF PROCEDURE IN ORDER FOR THIS COURT TO TAKE COGNIZANCE OF THE PRESENT PETITION.

At the outset, it is worth emphasizing that the right to appeal is neither a natural nor a constitutional right, but is a mere statutory right. The party seeking to avail of the right to appeal must comply with the procedures and rules governing appeals set by law; otherwise, the right may be lost or squandered. In other words, **the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional, and the failure to perfect the same renders the judgment final and executory**. Execution of the judgment then follows, for just as a losing party has the privilege to appeal within the prescribed period, so does the winner have the correlative right to enjoy the finality of the decision.[124]

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121 Supra at note 1.
122 Supra at note 7.
123 Supra at note 8.
124 *Marcelino E. Lopez, et al. v. The Hon. Court of Appeals and Primex Corporation*, G.R. Nos. 163959 & 177855 (Resolution), 01 August 2018 [Per J. Bersamin, Third Division], citing *Spouses Elbe Lebin and Erlinda Lebin v. Vilma S. Mirasol and Regional Trial Court of Iloilo, Branch XXVII*, G.R.

In *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation*[125], the Supreme Court affirmed that the failure to timely perfect an appeal cannot simply be regarded as a mere technicality, for it is, in truth, jurisdictional, *viz*:

> ...
>
> It has been ruled that **perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.** At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.
>
> Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite time fixed by law. Such rules are necessary incidents to the proper, efficient and orderly discharge of judicial functions. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the fruits of his victory. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal. Undeniably, there are exceptions to this rule. Petitioner, however, did not present any circumstances that would justify the relaxation of said rule.
>
> It need not be overemphasized that it is the responsibility of the counsel to check and keep track of the period of time left to file an appeal. He cannot escape from the inflexible observance of this rule which is jurisdictional. **The rules, particularly on the statutory requirement for perfecting an appeal within the reglementary period provided, must be strictly followed. If an appeal is not taken within the period prescribed therefor, the judgment becomes final and the court loses all jurisdiction over the case.**
>
> ...

While it is true that courts have the prerogative to relax procedural rules of even the most mandatory character and that the Supreme Court has in many cases allowed liberal construction of the

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No. 164255, 07 September 2011 [Per J. Bersamin, First Division], *Marcos V. Prieto v. The Hon. Court of Appeals (Formerly Ninth Division), et al.*, G.R. No. 158597, 18 June 2012 [Per J. Bersamin, First Division] and Accessories Specialist, Inc., a.k.a. ARTS 21 Corporation, and Tadahiko Hashimoto v. Erlinda B. Alabanza, for And in behalf of her deceased husband, Jones B. Alabanza, G.R. No. 168985, 23 July 2008 [Per J. Nachura, Third Division].

[125] G.R. No. 167606, 11 August 2010 [Per J. Mendoza, Second Division]; Citation omitted, emphasis in the original text and supplied.

rules when to do so would serve the demands of substantial justice and equity[126], this Court finds no compelling reason to do so in this case. Notably, the First Division correctly denied petitioner's refund claim for lack of merit, rendering relaxation of the rules unnecessary.

It should be noted that although the CTA is not bound by the technical rules of procedure[127], observance thereof remains paramount and its liberal application may only be warranted for the weightiest of reasons. The Supreme Court in *Juanito Magsino v. Elena De Ocampo and Ramon Guico*[128] held:

> ...
> [A]ny "**resort to a liberal application or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice.**" It cannot be otherwise for him, for, as the Court aptly put it in *Republic v. Kenrick Development Corporation*:
>
> > Procedural requirements which have often been disparagingly labeled as mere technicalities have their own valid *d' etre* in the orderly administration of justice. To summarily brush them aside may result in arbitrariness and injustice.
> >
> > The Court's pronouncement in *Garbo v. Court of Appeals* is relevant:
> >
> > > Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was

126 *Helen L. Say, et al. v. Gabriel Dizon*, G.R. No. 227457, 22 June 2020 [Per J. Perlas-Bernabe, Second Division], citing *Vicente Ong Lim Sing, Jr. v. FEB Leasing & Finance Corporation*, G.R. No. 168115, 08 June 2007 [Per J. Nachura, Third Division].

127 Revised Rules of the Court of Tax Appeals (**RRCTA**), Rule I.
...
SEC. 2. *Liberal construction.* — The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court.

128 G.R. No. 166944, 18 August 2014 [Per J. Bersamin, First Division], citing *Social Security System v. Hon. Nazar U. Chaves, RTC, Br. 18, Misamis Oriental, Cagayan de Oro City, et al.*, G.R. No. 151259, 13 October 2004 [Per J. Quisumbing, First Division]; *Cynthia S. Bolos v. Danilo T. Bolos*, G.R. No. 186400, 20 October 2010 [Per J. Mendoza, Second Division]; *Iloilo La Filipina Uygongco Corporation v. Hon. Court of Appeals, et al.*, G.R. No. 170244, 28 November 2007 [Per J. Nachura, Third Division]; and *Mediserv, Inc. v. Court of Appeals (Special Former 13th Division) and Landheights Development Corporation*, G.R. No. 161368, 05 April 2010 [Per J. Villarama, First Division].

> never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.
>
> **Like all rules, procedural rules should be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure.**
>
> The rules were instituted to be faithfully complied with, and allowing them to be ignored or lightly dismissed to suit the convenience of a party like the petitioner was impermissible. **Such rules, often derided as merely technical, are to be relaxed only in the furtherance of justice and to benefit the deserving.** Their liberal construction in exceptional situations should then rest on a showing of justifiable reasons and of at least a reasonable attempt at compliance with them.[129]
>
> ...

In this case, the First Division and Special First Division correctly held that, since respondent had already granted to petitioner a refund of **₱32,256,314.87** at the administrative level — an amount exceeding the **₱27,642,328.79**[130] established at the judicial level — no additional refund may be granted to petitioner.

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[129] Citations omitted, italics in the original text and emphasis supplied.

[130] Using the formula provided in the case of *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue* (G.R. No. 215159, 05 July 2022), the Special First Division found that petitioner is entitled to the refund of unused input VAT attributable to zero-rated sales for the 4th Quarter of the TY 2016 amounting to ₱27,642,328.79, computed as follows:

Valid zero-rated sales	₱2,493,848,201.69
Divided by total reported sales	3,333,874,450.90
Multiplied by valid input tax not directly attributable to any activity	36,953,353.33
Refundable input tax attributable to zero-rated sales	**₱27,642,328.79**

As a "court of record" pursuant to Section 8 of Republic Act (**RA**) No. 1125[131], as amended by RA 9282[132], the CTA is authorized to conduct trial *de novo*, and consistent with this principle, parties who come to court are required to prove every aspect of their case if they want the Court to take such evidence into consideration.[133] Accordingly, the First Division properly considered the pieces of evidence formally offered by petitioner.

Since petitioner formally offered pieces of evidence to establish that it had VAT zero-rated export sales for the period 01 October 2016 to 31 December 2016 or the 4th quarter of TY 2016, it was incumbent upon the First Division, acting within its authority as a court of record, to verify the existence and validity of such VAT zero-rated sales. Absent such verification, petitioner would not be entitled to any additional refund arising from the disallowed input VAT that is the subject of the appeal.

Contrary to petitioner's contention, the First Division's review is not confined to the validity of the disallowed ₱4,769,261.09 input VAT. As a court of record, it possesses the authority to rule on any issue relevant to the disposition of the case, even if not explicitly raised by the parties — such as the existence and validity of petitioner's declared zero-rated sales.

Given these circumstances, the present petition does not appear to rest on sufficiently meritorious grounds that would justify a relaxation of procedural rules to relieve petitioner from an injustice not commensurate to its failure to comply with the prescribed procedure. Thus, it is not warranted for the Court *En Banc* to take cognizance of this appeal in the higher interest of substantial justice.

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131 AN ACT CREATING THE COURT OF TAX APPEALS.

132 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

133 See *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, G.R. Nos. 206079-80 & 206309, 17 January 2018; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, 29 September 2014; *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, 31 August 2005.

WHEREFORE, premises considered, petitioner Carmen Copper Corporation's Petition for Review, filed *via* accredited courier service provider on 24 July 2023 and received by the Court *En Banc* on 26 July 2023, is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

x - x

CORAZON G. FERRER-FLORES
Associate Justice

Kindly see my Dissenting Opinion
HENRY S. ANGELES
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 cases were assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CARMEN COPPER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2779
(CTA Case No. 10074)

Present:

RINGPIS-LIBAN, *Acting P.J.,*
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

OCT 27 2025 4:10 p.m.

x - x

DISSENTING OPINION

ANGELES, *J.*:

With all due respect to the majority opinion that the case must be dismissed for lack of jurisdiction, I forthwith express my dissent.

The instant Petition for Review should not have been outrightly dismissed

At the outset, the *ponencia* ruled that the instant *Petition for Review* was filed out of time.

It was held that since the instant *Petition* was filed through accredited courier service provider on **July 24, 2023**, or at a time when initiatory pleadings could only be filed personally, by registered mail, or through electronic transmittal per Section 14, Rule 13 of the Rules of Court, as amended, the same must be deemed as filed through ordinary mail. Consequently, the date this Court actually received the instant *Petition* (*i.e.*, **July 26, 2023**) was considered as the date of filing, warranting the outright dismissal of the present appeal on the ground that the same was filed two (2) days late.

While I concede that the instant *Petition* was filed two (2) days late based on the applicable rules at the time of its filing, I am of the opinion that **petitioner's two (2)-day delay in filing does not, by itself, justify the outright dismissal of the present appeal.**

The Supreme Court has proclaimed that where a rigid application of the rules will result in a manifest failure or miscarriage of justice, technicalities should be disregarded in order to resolve the case.[1] The High Court likewise declared that courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. Thus, in numerous cases, it has allowed a liberal construction of the rules when to do so would serve the demands of substantial justice and equity.[2]

In the oft-cited case of *Aguam v. Court of Appeals*,[3] the Supreme Court found that the Court of Appeals gravely abused its discretion when it denied petitioner's motion for extension of time to file appellant's brief, and dismissed the appeal filed before it, due to a nine (9)-day delay in the filing of the said motion. It ratiocinated, to wit:

> Technically, the Court of Appeals may dismiss an appeal for failure to file appellant's brief on time. However, the dismissal is *directory* not *mandatory*. It is not the ministerial duty of the court to dismiss the appeal. "The failure of an appellant to file his brief within the time prescribed does not have the effect of dismissing the appeal automatically." The court has discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. **The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice** xxx xxx xxx Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. **Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought**

[1] *Acaylar, Jr. v. Harayo*, G.R. No. 176995, July 30, 2008.
[2] *Ong Lim Sing, Jr. v. FEB Leasing & Finance Corp.*, G.R. No. 168115, June 8, 2007.
[3] G.R. No. 137672, May 31, 2000.

> **not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.**
>
> xxx xxx xxx
>
> **In the higher interest of justice, considering that the delay in filing a motion for extension to file appellant's brief was only for nine (9) days**, and normally, the Court of Appeals would routinely grant such extension, and the appellant's brief was actually filed within the period sought, the better course of action for the Court of Appeals was to admit appellant's brief.
>
> Lapses in the literal observance of a rule of procedure will be overlooked when they arose from an honest mistake, when they have not prejudiced the adverse party. **The Court can overlook the late filing of the motion for extension, if strict compliance with the rules would mean sacrificing justice to technicality.**
>
> **Consequently, we find that the Court of Appeals gravely abused its discretion in denying petitioner's motion for extension of time to file appellant's brief, and in dismissing the appeal.** *(Emphases supplied)*

More on point, in *Barroso v. Commission on Audit,*[4] petitioner therein had until September 11, 2020 to file a petition for *certiorari* under Rule 64 of the Rules of Court. However, petitioner mailed its petition via private courier on September 11, 2020, and the Supreme Court received the same only on September 21, 2020, or ten (10) days late. **Despite this procedural lapse, however, the Supreme Court resolved to give due course to the petition in the higher interest of substantial justice.**

In this case, I find petitioner's procedural lapse in the filing of the instant *Petition* as **excusable**, considering the timing of approval of accreditation of LBC Express, Inc. as a courier service provider on **February 13, 2023**,[5] and the subsequent issuance of A.M. Nos. 10-3-7-SC and 11-9-4-SC or the *Guidelines on Submission of Electronic Copies of Pleadings and Other Court Submissions Being Filed Before the Lower Courts Pursuant to the Efficient Use of Paper*[6] on **April 11, 2023**, which piloted several new rules on the filing of pleadings and

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[4] G.R. No. 253253, April 27, 2021.
[5] OCA Circular No. 54-2023, February 13, 2023.
[6] A.M. Nos. 10-3-7-SC & 11-9-4-SC, April 11, 2023.

other court submissions by personal filing, registered mail, accredited courier, and electronic transmittal. In view of the foregoing issuances, among several other issuances covering the filing of pleadings, motions, or other court submissions after the COVID-19 pandemic, petitioner's erroneous interpretation and implementation of the said Guidelines at the time of its filing of the instant *Petition* on **July 24, 2023**, is insufficient reason to warrant the outright dismissal of the entire appeal.

Moreover, as the instant *Petition* appears to stand on meritorious grounds, so as to relieve petitioner from an injustice not commensurate with its failure to comply with the prescribed procedure, this Court should have taken cognizance of the present appeal in the higher interest of substantial justice.

The assailed Decision should have been limited to the issue raised, stipulated upon and tried by both parties

Petitioner argues that since the parties during pre-trial and in their Joint Stipulation of Facts and Issues (JSFI) had already stipulated that the only issue for resolution in this case is petitioner's entitlement to the refund of ₱4,769,261.09, the scope of the assailed Decision and Resolution should have been confined to such issue.[7] Citing *Chinatrust (Phils.) Commercial Bank v. Turner*[8] and applying the same to the case at bar, petitioner posits that it was not proper for Court in Division, on appeal, to rule on the validity of petitioner's zero-rated sales because the same was already admitted as valid by respondent and was not brought to the CTA for review.[9]

Petitioner likewise argues that issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication. Here, as the Court in Division had found that respondent in fact erred in his decision with respect to the ₱4,769,261.09, the former should have granted the Petition for Review.[10]

Petitioner maintains that the rule that "the court may decide on issues not raised by the parties if such is necessary for the court to resolve the issues of the case", is not applicable in the instant case as the Court in Division was able to resolve the issue surrounding

[7] EB Docket, pp. 12-13.
[8] G.R. No. 191458, July 3, 2017.
[9] EB Docket, pp. 13-14.
[10] *Id.*

respondent's decision to deny the ₱4,769,261.09 in input taxes without resorting to extrinsic issues.[11]

I agree with petitioner.

While it is true that the CTA has jurisdiction over the entire decision of the Commissioner of Internal Revenue (CIR) on petitioner's claim for tax refund, the Court in Division was not at liberty to rule on issues that were neither raised nor ventilated on by the parties during the proceedings, considering due process rights, and considering further that such issues were not necessary to dispose of the case.

Well-entrenched in jurisprudence is the general rule of *allegata et probata*, which means, a judgment must conform to the pleadings and the theory of the action under which the case was tried. A court may rule and render judgment on the basis of the evidence before it, even though the relevant pleading has not been previously amended, so long as no surprise or prejudice to the adverse party is thereby caused.[12] The Supreme Court has likewise ruled in a catena of cases, that a judgment going outside the issues and purporting to adjudicate something on which the parties were not heard, is invalid.[13]

In the leading case of *Lazo v. Republic Surety & Insurance Co., Inc.*,[14] the plaintiffs therein filed a complaint before the Court of First Instance, principally praying for the defendant to render an accounting of the payments already made by them on the mortgage loan. The defendant answered *inter alia* that all the payments made by the plaintiffs after the foreclosure sale were made in the concept of rents, for which the defendant was under no obligation to render an accounting. The issue made out by the pleadings was whether the plaintiffs were entitled to the accounting sought by them, and whether the right of redemption with respect to the foreclosed property was still available. However, the trial court went entirely out of the issues submitted to it and decided the case on a point which was not at all litigated, *i.e.*, the validity or invalidity of the extrajudicial foreclosure over the real estate mortgage. The Supreme Court reversed the decision of the lower court and held, to wit:

> The actuation of the trial court was **not legally permissible**, especially because the theory on which it proceeded involved factual considerations **neither touched upon the pleadings nor made the subject of evidence at the trial.** Rule 6, Section 1, is quite

[11] *Id.*, p. 14.
[12] *Vlason Enterprises Corp. v. Court of Appeals*, G.R. Nos. 121662-64, July 6, 1999.
[13] *Lazo v. Republic Surety & Insurance Co., Inc.*, G.R. No. L-27365, January 30, 1970.
[14] *Id.*

explicit in providing that "pleadings are the written allegations of the parties of their respective *claims and defenses submitted to the court for trial and judgment."* This rule has been consistently applied and adhered to by the courts.

xxx xxx xxx

"It is a fundamental principle that judgments must conform to both the pleadings and the proof, and must be in accordance with the theory of the action upon which the pleadings were framed and the case was tried; that a party can no more succeed upon a case proved, but not alleged, than upon one alleged but not proved." (Ramon v. Ortuzar, 89 Phil. 730, 742)

"It is a well-known principle in procedure that courts of justice have no jurisdiction or power to decide a question not in issue." (Lim Toco vs. Go Fay, 80 Phil. 166)

"**A judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard, is not merely irregular, but extrajudicial and invalid.**" (Salvante v. Cruz, 88 Phil. 236, 244.)

The parties here went to court and presented their respective sides on the premise, admitted by both, that the mortgage was valid and subsisting. Evidence, therefore, to establish such premise was unnecessary and uncalled for.[15] *(Emphasis supplied)*

In *Pe v. Intermediate Appellate Court*,[16] the Supreme Court found as meritorious the plaintiffs' argument that the lower court erred in giving the defendants the benefit of novation as a defense notwithstanding that no such special or affirmative defense was ever interposed in their answer, thus, deemed waived. The Supreme Court held that the lower court erred in discussing novation, an issue which was neither raised in the pleadings nor material to the controversy. The lower court was thus admonished in dealing and discussing issues that were neither raised in the pleadings.

In *Rivera v. Del Rosario*,[17] the Supreme Court noted that during the oral arguments before the Court of Appeals, both petitioners and respondents admitted that Lot No. 1083-A had been expropriated by the government long before the Deed of Absolute Sale was entered into. It also noted that the case before it involves only Lot No. 1083-C. It never involved Lot 1083-A. Thus, it ruled that the Court of Appeals had no jurisdiction to adjudicate on Lot 1083-A, as it was never touched upon in the pleadings or made the subject of evidence at trial.

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[15] *Supra*, note 13.
[16] G.R. No. 74781, March 13, 1991.
[17] G.R. No. 144934, January 15, 2004.

In the more recent case of *Development Bank of the Philippines v. Teston*,[18] the respondent therein filed before the Department of Agrarian Reform Adjudication Board (DARAB) Regional Office a Petition against DBP and Land Bank, praying *inter alia* that the right of DBP to rescind the Deed of Conditional Sale be extinguished. The DARAB Regional Adjudicator dismissed the petition, which dismissal was affirmed by the DARAB. However, the Court of Appeals modified the decision by ordering DBP to return to respondent the ₱1,000,000 which the latter paid as downpayment. In ruling in favor of the petitioner, the Supreme Court ratiocinated, as follows:

> The Court of Appeals erred in ordering DBP to return to respondent "the P1,000,000.00" alleged down payment, **a matter not raised in respondent's Petition for Review before it.** In *Jose Clavano, Inc. v. Housing and Land Use Regulatory Board,* this Court held:
>
> > ...It is elementary that a judgment must conform to, and be supported by, both the pleadings and the evidence, and must be in accordance with the theory of the action on which the pleadings are framed and the case was tried. The judgment must be *secudum allegata et probata.*
>
> **Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.**
>
> Respondent invokes this Court's pronouncement in *Heirs of Ramon Durano, Sr. v. Uy* that "[t]he Court of Appeals is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case." He argues that the return of "the P1,000,000 downpayment" is a necessary consequence of the rescission of the sale.
>
> That rescission of a sale creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interests is undisputed. **However, to require DBP to return the alleged P1,000,000 without first giving it an opportunity to present evidence would violate the Constitutional provision that "[n]o person shall be deprived of life, liberty, or property without due process of law . . .." The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.**

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[18] G.R. No. 174966, February 14, 2008.

> In the case at bar, DBP had no opportunity to present evidence on its behalf. xxx xxx xxx[19] *(Emphasis supplied)*

With respect to the discussion on due process considerations, the Supreme Court declared in *Bucal v. Bucal*[20] that the protection against surprises granted to defendants should also be available to petitioners. Verily, both parties to a suit are entitled to due process against unforeseen and arbitrary judgments. The very essence of due process is "the sporting idea of fair play" which forbids the grant of relief on matters where a party to the suit was not given an opportunity to be heard.

While the above-cited cases did not involve a refund of input taxes, the principles proclaimed therein on due process considerations in trial proceedings, should apply. After all, the CTA is not only an appellate court; it is also a trial court. As such, it must likewise be bound by the same rules on fair play governing all trial courts.

In its *Petition for Review* filed before the Court in Division, petitioner clearly stated that it is specifically appealing the denial of the amount of ₱4,769,261.09, pertaining to the disallowance of "Input VAT allocated to exempt and unremitted sales" as shown in Annex "A" of the letter dated March 14, 2019 and attached to the said *Petition* as Annex "F", and only with respect to questions of law. Petitioner prayed for the Court to declare that it is entitled to a refund in cash in the amount of ₱4,769,261.09, pertaining to input taxes on its sales to Philippine Associated Smelting and Refining Corporation (PASAR).

In his *Answer* to the said *Petition*, respondent submitted the following defenses: **(1)** the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund, specifically arguing that applying the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[21] (Total Gas), since respondent rendered a decision at the administrative level, the Court should confine itself to whether the findings of respondent are consistent with law; and **(2)** petitioner is not entitled to refund in the amount of ₱4,769,261.09. Respondent also reproduced its computation showing how it computed the total amount approved for VAT refund (*i.e.*, ₱32,256,314.87), and argued that taxes paid and collected by the BIR are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner.

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[19] *Supra*, note 18.
[20] G.R. No. 206957, June 17, 2015.
[21] G.R. No. 207112, December 8, 2015.

In their JSFI and Pre-Trial Order, the parties submitted the following issue for the Court's resolution:

> WHETHER OR NOT PETITIONER IS ENTITLED TO THE CLAIM FOR REFUND OF EXCESS AND UNUTILIZED INPUT TAXES IN THE AMOUNT OF ₱4,769,261.09

During trial, the testimony of petitioner's witness, Mr. Fernando A. Rimando, was offered to prove, basically, petitioner's entitlement to ₱4,769,261.09.[22] The testimony of the ICPA was also offered to prove *inter alia* that petitioner is entitled to the cash refund of the amount claimed in the subject *Petition*.[23] Even the testimony of respondent's sole witness, Revenue Officer (RO) Junelle Aira C. Salamanca, was offered to prove that petitioner is not entitled to refund in the amount of ₱4,769,261.09, representing alleged unutilized input VAT for the period October 1, 2016 to December 31, 2016.[24] It is noted that the testimonies of the aforementioned witnesses also revolved around the denied amount of ₱4,769,261.09. As for petitioner's *Formal Offer of Evidence*,[25] it is noted that the VAT Return for the 4th quarter of TY 2016 and ICPA Report, inclusive of Annexes, were offered for the purpose of proving the amount alleged in the subject *Petition*.[26]

It can thus be seen from the records of this case that both parties agreed to litigate only on respondent's disallowance of the amount of ₱4,769,261.09. It can also be seen from the trial proceedings that the same was limited to such amount. Despite this, the Court *a quo*, in the assailed Decision and Resolution, still ruled on petitioner's entire refund claim, including the amount already granted and undisputed by respondent.

In the assailed Decision and Resolution, the Court *a quo* found that respondent was incorrect in denying a portion of petitioner's input VAT claim in the amount of ₱4,769,261.09, but nonetheless denied the subject *Petition* for the following reason:

> Respondent had already approved in favor of petitioner, the amount of P32,256,314.87, as its Net Allowable VAT Refund for the 4th quarter of TY 2016. **<u>The refund approved in petitioner's favor is higher than its excess input VAT attributable to valid zero-rated sales for the 4th Quarter of TY 2016</u>**

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[22] *Submission and Offer of Testimony Judicial Affidavit In Lieu of Direct Examination of Mr. Fernando A. Rimando* dated August 23, 2019, Division Docket, pp. 135-136.
[23] *Submission Judicial Affidavit of Mr. Joel C. Romano* dated January 24, 2020, Division Docket, pp. 588-589.
[24] *Offer of Testimonial Evidence* dated July 6, 2019, Division Docket, pp. 95-96.
[25] Division Docket, pp. 603-14, with annexes.
[26] *Formal Offer of Evidence* dated February 19, 2020, Division Docket, pp. 603-614, with annexes.

> **amounting to P27,398,926.18.102.** Hence, no further refund shall be allowed in favor of petitioner. *(Emphasis supplied)*

To arrive at the foregoing conclusion, the Court *a quo*, instead of considering only the correctness of respondent's disallowance of the amount of ₱4,769,261.09 as agreed upon and tried by the parties, considered the validity and sufficiency of **all** of petitioner's zero-rated sales and input VAT paid during the subject period, including their compliance with the pertinent invoicing and substantiation requirements, for purposes of determining the refundable input VAT.

Applying the principle that judgment must conform to the pleadings and the theory of the action under which the case was tried, and the related jurisprudential precepts discussed above, the Court *a quo* erred when it ruled on petitioner's entitlement to the entire refund claim of ₱38,521,488.12, despite the fact that a portion thereof in the amount of ₱33,752,227.03, representing the total amount approved by respondent for VAT refund plus the amount disallowed but not appealed, was neither raised as an issue nor tried by both parties.

By ruling on petitioner's entitlement to its entire refund claim, the Court *a quo* violated petitioner's due process rights, particularly its right against unforeseen and arbitrary judgments, because for the duration of the trial proceedings, both parties had been presenting evidence with respect only to the denied portion of ₱4,769,261.09, under a mutual understanding that this is the only issue between them; yet, at the very last stage of judgment, petitioner was handed out a decision denying its claim for reasons it was not able to ventilate on. Had the Court *a quo* intended to rule upon other matters, petitioner should have been given an opportunity to be heard on such matters during the trial proceedings.

Other issues discussed by the Court a quo were not necessary to determine petitioner's entitlement to the refund of ₱4,769,261.09

It is true that under Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals, the Court, in deciding the case, may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

However, as correctly argued by petitioner, the above rule is inapplicable to the case at bar because the issue stipulated upon by the parties, *i.e.*, whether petitioner is entitled to the refund of its excess and unutilized input taxes in the amount of ₱4,769,261.09, can be disposed of **without** resolving the other issues ruled upon by the Court *a quo*.

Under the *Total Gas*[27] case, the Supreme Court laid down the requirements a taxpayer must satisfy in cases involving an appeal from an **unsuccessful administrative refund claim**, *viz.*:

> 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 —
>
> > ...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 tax credit.</u> 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 its 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. <u>**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 had 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.**</u> *(Emphasis supplied)*

[27] *Supra*, note 21.

Based on the foregoing, for a judicial claim for tax refund or credit arising from an unsuccessful administrative claim to prosper, the petitioner-claimant must prove to the CTA that: **(1)** it is entitled to its refund claim under substantive law; and **(2)** it satisfied all the documentary and evidentiary requirements for such refund claim at the administrative level.

The *first* matter to be proved entails a determination by the Court of petitioner's entitlement to refund or credit of input tax under the law, while the *second* matter to be proved entails a review by the Court of the basis of the CIR's denial of the administrative claim based on the documents presented at the administrative level. The phrase "*but also that he satisfied all the documentary and evidentiary requirements* ***for an administrative claim***" could only mean that the sufficiency of petitioner's documents and evidence shall be measured in relation to the administrative claim.

In the present case, what is involved is an appeal from an unsuccessful administrative claim, considering that respondent acted on petitioner's refund claim through the letter[28] dated March 14, 2019. As such, the aforementioned standards per the *Total Gas* case applies.

Anent the *first* requirement, petitioner sufficiently proved its entitlement under the law to the allowance and consequent refund of the amount of ₱4,769,261.09.

Under the letter[29] dated March 14, 2019, respondent granted in favor of petitioner a Net Allowable VAT Refund in the amount of ₱32,256,314.87, out of petitioner's total input VAT refund claim in the amount of ₱38,521,488.12. Attached and referred to in the said letter is Annex "A" which shows respondent's computation of petitioner's Net Allowable VAT Refund. An examination of the said computation shows that an amount of ₱4,769,261.09, under "Importation" and pertaining to "Input VAT allocated to exempt and unremitted sales", was disallowed.

Relative thereto, a perusal of Annex "B" of the Memorandum[30] dated March 14, 2019 submitted by RO Salamanca, reveals the breakdown of the subject ₱4,769,261.09, as reproduced hereunder:

Summary of exempt sales	917,300.00
Add/ (Deduct): Adjustments	

[28] Exhibit "R-3", BIR Records, pp. 453-454.
[29] Exhibit "R-3", BIR Records, pp. 453-454.
[30] Exhibit "R-2", BIR Records, pp. 445-450.

Reimbursements to Philippine Health Insurance Corporation	(917,300.00)
Effectively zero-rated sales with no BIR-approved application for zero-rating	343,667,008.36
Sales without Final Sales Invoice treated as exempt	12,239,277.12
Underdeclared sales to PASAR treated as exempt	69,748,443.64
Adjusted Total Sales	**425,654,729.12**
Ratio of exempt sales to total sales	12.54%
Total allowable input VAT allocated based on sales ratio	**4,769,261.09**

On this matter, I agree with the Court *a quo* that respondent was incorrect in disallowing the amount of ₱4,769,261.09. Reproduced hereunder are the Court *a quo*'s findings, to wit:

> Such input VAT disallowance of ₱4,769,261.09 originated from the following findings of respondent on petitioner's sales:
>
> | | |
> |---|---|
> | Effectively zero-rated sales with no BIR-approved application for zero-rating | 343,667,008.36 |
> | Sales without Final Sales Invoice treated as exempt | 12,239,277.12 |
> | Underdeclared sales to PASAR treated as exempt | 69,748,443.64 |
>
> 1. *Effectively zero-rated sales with no BIR-approved application for zero-rating amounting to ₱343,667,008.36.*
>
> Respondent admitted that petitioner reported effectively zero-rated sales of ₱343,667,008.36, corresponding to its sales of goods to PASAR, a PEZA-Registered entity. However, said sales was treated as VAT-exempt solely because there was no approved application for zero-rating issued by the appropriate BIR office for the subject claimant's effectively zero-rated sales.
>
> Respondent is in error.
>
> True, Sections 4.106.6 and 4.108.6 of Revenue Regulations (RR) No. 16-200537 respectively require that an approved application for effective zero-rating must be obtained before a particular transaction may be subject to the 0% VAT rate:
>
> > SEC. 4.106.6. Meaning of the Term "Effectively Zero-rated Sale of Goods and Properties
> >
> > Except for Export Sale under Sec. 4.106-5(a) and Foreign Currency Denominated Sale under Sec. 4.106-5(b), other cases of zero-rated sales shall require prior application with the appropriate BIR office for effective zero-rating. Without an

> approved application for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt. The foregoing rule notwithstanding, the Commissioner may prescribe such rules to effectively implement the processing of applications for effective zero-rating
>
> SEC. 4.108.6. Effectively Zero-rated Sale of Services - ... The concerned taxpayer must seek prior approval or prior confirmation from the appropriate offices of the BIR so that a transaction is qualified for effective zero-rating. Without an approved application for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt. The foregoing rule notwithstanding, the Commissioner may prescribe such rules to effectively implement the processing of applications for effective zero-rating.

Yet, petitioner need not observe Sections 4.106.6 and 4.108.6 of RR No.16-2005. Consider:

One, Commissioner of Internal Revenue vs. Seagate Technology (Philippines) declared that BIR regulations additionally requiring an approved prior application for effective zero rating, are not within the statutory authority granted by the legislature, ratiocinating in this wise:

> The BIR regulations additionally requiring an approved prior application for effective zero rating cannot prevail over the clear VAT nature of respondent's transactions. The scope of such regulations is not 'within the statutory authority x x x granted by the legislature.
>
> *First*, a mere administrative issuance, like a BIR regulation, cannot amend the law; the former cannot purport to do any more than interpret the latter. The courts will not countenance one that overrides the statute it seeks to apply and implement.
>
> Other than the general registration of a taxpayer the VAT status of which is aptly determined, no provision under our VAT law requires an additional application to be made for such taxpayer's transactions to be considered effectively zero-rated. An effectively zero-rated transaction does not and cannot become exempt simply because an application therefor was not made or, if made, was denied. To allow the additional requirement is to give unfettered discretion to those officials or agents who, without fluid consideration, are bent on denying a valid application. Moreover, the State can never be estopped by the omissions, mistakes or errors of its officials or agents.
>
> *Second, grantia argumenti* that such an application is required by law, there is still the presumption of regularity in the performance of official duty. Respondent's registration carries with it the presumption that, in the absence of contradictory evidence, an application for effective zero rating was also filed and approval thereof given. Besides, it is also presumed that the law has been obeyed by both the administrative officials and the applicant.
>
> *Third,* even though such an application was not made, all the special laws we have tackled exempt respondent not only from internal revenue laws but also from the regulations issued pursuant thereto. Leniency in the implementation of the VAT in ecozones is an imperative, precisely to spur economic growth in the country and attain global competitiveness as envisioned in those laws.

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> A VAT-registered status, as well as compliance with the invoicing requirements, is sufficient for the effective zero rating of the transactions of a taxpayer. The nature of its business and transactions can easily be perused from, as already clearly indicated in, its VAT registration papers and photocopied documents attached thereto. Hence, its transactions cannot be exempted by its mere failure to apply for their effective zero rating. Otherwise, their VAT exemption would be determined, not by their nature, but by the taxpayer's negligence - a result not at all contemplated. Administrative convenience cannot thwart legislative mandate.

Two, Sections 4.106.6 and 4.108.6 of RR No. 16-2005 were rendered inoperative through the Secretary of Finance's issuance of RR No. 4-2007.

Therefore, respondent erred in considering petitioner's sales to PASAR amounting to ₱343,667,008.36 as VAT-exempt, based on failure to obtain prior approved application for zero-rating from the BIR.

2. *Sales without final sales invoice treated as VAT-Exempt sales amounting to ₱12,239,277,12.*

Respondent treated the export sales adjustment amounting to ₱12,239,277.12, or US$274,943.13 as VAT-exempt, because it was not supported with a final sales invoice (SI). Said export sales adjustment referred to SI No. 1810000077 dated "10/17/ 2016."

SI No. 1810000077 was presented by petitioner before the Court as Exhibit " P-53-0." However, said document is not found in the BIR Records. Neither was there any indication that petitioner submitted to the BIR, in support of said export sales for its administrative claim the very same document it submitted before the Court. Thus, it cannot be determined with certainty whether the documentary and evidentiary requirement on said export sales adjustment were satisfied at the administrative level.

Yet, the lack of said SI pertaining to export sales adjustment amounting to ₱12,239,277.12 does not translate to unsupported zero-rated sales. To be precise, petitioner's Schedule of Zero-Rated Sale of Goods per BIR Records shows that said figure was deducted on its zero-rated sales, to arrive at the net amount of zero-rated sales of ₱3,304,206,325.86. As there was no substantiation of said export sales adjustment at BIR level, the amount of ₱12,239,277.12 shall be added back to its zero-rated sales of ₱3,304,206,325.86, which would then amount to ₱3,316,445,602.98. Considering that only the alleged zero-rated sales amounting to ₱12,239,277.12 was disallowed by respondent for being unsupported, all other zero-rated sales comprising the amount of ₱3,316,445,602.98 are considered duly substantiated at administrative level.

For this reason, respondent erred in treating petitioner's zero-rated sales amounting to ₱12,239,277.12 as VAT-Exempt, and disallowing the input VAT attributable thereto.

> 3. *Underdeclared sales to PASAR treated as exempt amounting to ₱69,748,443,64.*
>
> Respondent treated as VAT-Exempt, the discrepancy between sales to PASAR per Summary Alphalist of Withholding Taxes (SAWT), vis-à-vis sales to PASAR per Schedule, amounting to ₱69,748,443.64, computed as follows:
>
> | | |
> |---|---|
> | Sales to PASAR per SAWT | 413,415,452.00 |
> | Sales to PASAR per Schedule | 343,667,008.36 |
> | **Discrepancy** | **69,748,443.64** |
>
> Again, petitioner's sales to PASAR, a PEZA-registered entity, may qualify as VAT zero-rated sales without the need for prior approved application for VAT zero-rating from BIR. Hence, the denial of VAT zero-rating to underdeclared sales to PASAR of ₱69,748,443.64 is erroneous.
>
> In fine, respondent erred in disallowing the amount of ₱4,769,261.09, representing "Input VAT allocated to exempt and unremitted sales."[31]

To recap, the input VAT disallowance of ₱4,769,261.09 originated from the following findings of respondent on petitioner's sales, which he erroneously treated as VAT-exempt sales:

Effectively zero-rated sales with no BIR-approved application for zero-rating	343,667,008.36
Sales without Final Sales Invoice treated as exempt	12,239,277.12
Underdeclared sales to PASAR treated as exempt	69,748,443.64

As discussed above, these amounts should be considered as VAT zero-rated sales of petitioner.

Applying the foregoing findings, the adjusted Total Allowable Input VAT for Refund must now be computed, as follows:

1. Re-computing the Sales Ratio per Sales Category

	Zero-Rated	Taxable	Exempt	Total
Sales Ratio per BIR	87.22%	0.24%	12.54%	100.00%
Amount of Sales per BIR	2,960,539,317.50	8,293,733.91	425,654,729.12	3,394,487,780.53

[31] EB Docket, pp. 38-43.

Adjustments:				
Effectively zero-rated sales with no BIR-approved application for zero-rating	343,667,008.36	0.00	-343,667,008.36	0.00
Sales without Final Sales Invoice treated as exempt	12,239,277.12	0.00	-12,239,277.12	0.00
Underdeclared sales to PASAR treated as exempt	69,748,443.64	0.00	-69,748,443.64	0.00
Adjusted Sales	**3,386,194,046.62**	**8,293,733.91**	**0.00**	**3,394,487,780.53**
Adjusted Sales Ratio	**99.76%**	**0.24%**	**0.00%**	**100.00%**

Adjustments to the following sales were made in view of the Court's findings that these should be treated as VAT zero-rated sales: (1) Effectively zero-rated sales with no BIR-approved application for zero-rating; (2) Sales without Final Sales Invoice treated as exempt; and (3) Underdeclared sales to PASAR treated as exempt. As for the Amount of Sales per BIR, I adopted the same, there being no issue raised by the parties on this matter.

2. Allocating the Total Allowable Input VAT to Zero-Rated Sales

Total Allowable Input VAT per BIR procedure	**38,032,385.05**

	Zero-Rated	**Taxable**	**Exempt**
Total Allowable Input VAT	38,032,385.05	38,032,385.05	38,032,385.05
Multiplied by: Adjusted Sales Ratio	99.76%	0.24%	0.00%
Allocated Input VAT	37,939,460.73	92,924.32	0.00

3. Computing for the Total Allowable Input VAT Allocated to Zero-Rated Sales by applying the adjustments/deductions made by respondent during the administrative claim

	Zero-Rated
Total Allowable Input VAT	38,032,385.05
Multiplied by: Adjusted Sales Ratio	99.76%
Allocated Input VAT	37,939,460.73
Less adjustments made by the BIR in the TVN:	
Output VAT allocated on undeclared sales	-400,376.65

Compromise penalty	-6,250.00
Output VAT assessed on other income	-70,554.91
Output VAT assessed on incorrectly withheld VAT	-5,311.05
Outstanding Output VAT	-431,392.16
Total Allowable Input VAT allocated to zero-rated sales	**37,025,575.96**

The deductions from the Allocated Input VAT, to arrive at the Total Allowable Input VAT allocated to zero-rated sales, are derived from the Memorandum[32] dated March 14, 2019, in relation to the letter[33] dated March 14, 2019. I adopted such adjustments, as the correctness of the same were never questioned by the parties.

4. Computing the input VAT that may still be refunded by petitioner

Total Allowable Input VAT allocated to zero-rated sales (or Input VAT that may be refunded)	37,025,575.96
Less: Input VAT already refunded by the BIR	-32,256,314.87
Input VAT to be refunded	**4,769,261.09**

As illustrated, therefore, by the above computations, applying the findings that the amount of ₱4,769,261.09 should be treated and allowed as VAT zero-rated sales of petitioner, petitioner's entitlement to input VAT refund in the said amount becomes clear.

Anent the *second* requirement in the *Total Gas* case, it is crucial to note that the invoicing and substantiation issues raised by respondent at the BIR level, as detailed in the Memorandum[34] dated on March 14, 2019, in relation to the letter[35] dated March 14, 2019, relate only to the disallowed items amounting to ₱6,265,173.25. For sure, petitioner no longer appealed a portion of this amount (₱1,495,912.16). With respect to the appealed portion (₱4,769,261.09), the invoicing and substantiation issues related thereto were already sufficiently addressed by the Court *a quo* in the above-quoted and portion of the assailed Decision.

As for the invoicing and substantiation issues relating to the amount already allowed by respondent as refund in favor of petitioner (₱32,256,314.87), the *ponencia* should have no longer reviewed the

[32] Exhibit "R-2", BIR Records, pp. 445-450.
[33] Exhibit "R-3", BIR Records, pp. 453-454.
[34] Exhibit "R-2", BIR Records, pp. 445-450.
[35] *Id.*

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same for being a non-issue between the parties. Respondent himself argued before the Court *a quo* that since he already rendered a decision on petitioner's administrative refund claim, this Court is confined to a more limited issue of whether the denial of the amount of ₱4,769,261.09 was proper given the evidence submitted at the administrative level.[36]

With the foregoing findings, the requirements for an appeal from an unsuccessful administrative claim, pursuant to the *Total Gas* case, were adequately satisfied.

Verily, the invoicing and substantiation issues relating to the appealed portion (₱4,769,261.09) could be resolved, as it was indeed resolved by the Court *a quo*, without looking into any other issue.

Upon scrutiny of the breakdown[37] of the total disallowances considered by respondent, it appears that none of the bases for such disallowances pertain to the grounds found and used by the Court *a quo* to deny certain sales of petitioner VAT zero-rating. It bears stressing that such findings of the Court *a quo* effectively reduced the allowable input VAT refund attributable to zero-rated sales, as computed by respondent.

As the correctness of such grounds were neither an issue in this case, nor necessary to dispose of the issue stipulated upon by the parties, the Court *a quo* should have no longer determined the same. Moreso, the Court *a quo* should not have denied the *Petition for Review* for the refund of ₱4,769,261.09, on the ground that the amount of refund granted by respondent at the administrative level was more than the adjusted amount of refund computed by the Court *a quo*, based on other disallowances.

In *Commissioner of Internal Revenue v. Toledo Power Company,*[38] the Supreme Court clarified that the offsetting of taxes may be allowed only when the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund under Section 229 of the Tax Code. The High Court held, thus:

> But while TPC's sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, we cannot hold it liable for deficiency VAT by imposing 10% VAT on said sales of electricity as what the CIR wants us to do.

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[36] *Answer* dated July 4, 2019, Docket – Vol. I, p. 72.
[37] Refer to Exhibits "R-3" and "R-2", BIR Records, pp. 453-454 and pp. 445-450, respectively.
[38] G.R. Nos. 196415 & 196451, December 2, 2015.

As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes.

In *Commissioner of Internal Revenue v. Court of Tax Appeals,* we allowed offsetting of taxes in a tax refund case because there was an existing deficiency income and business tax assessment against the taxpayer. We said that "[t]o award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects" and that "to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits."

Similarly, in *South African Airways v. Commissioner of Internal Revenue,* we permitted offsetting of taxes because the correctness of the return filed by the taxpayer was put in issue.

In the recent case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue,* we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order to determine whether there should be a refund. However, we clarified that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.

But in all these cases, we allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC. A situation that is not present in the instant case.

In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. And **since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC's VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.**

Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period. *(Emphasis supplied)*

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Applying the principle proclaimed in the above jurisprudence, petitioner's entitlement to its claim for refund of input taxes under Section 112 of the Tax Code, in the amount of ₱4,769,261.09, should not be cancelled out by its liability for other taxes, or other grounds, when the determination of such other taxes or other grounds is not necessary for, or inextricably intertwined with the determination of the subject amount.

Indeed, claims for the tax refund, like tax exemptions, are construed *strictissimi juris* against the taxpayer. However, when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, the Court shall not hesitate to grant the same.[39]

As a final note, while I agree with the *ponencia* that the CTA conducts *trial de novo*, and that parties who come before Us are required to prove every aspect of their case, I diverge from its finding that based on such principle, the Court in Division properly considered all the pieces of evidence formally offered by petitioner in rendering the assailed judgement.

In my humble opinion, the principle of litigation *de novo* is rooted in Section 8 of Republic Act No. 1125,[40] as amended, where the CTA is described as a court of record. Being a court of record, no evidentiary value can be given to documents priorly submitted to the BIR, as the rules on documentary evidence require that such documents be formally offered before the CTA.[41] In this regard, party litigants should prove every minute aspect of their cases. This principle, however, does not give the CTA unbridled authority in considering all the offered pieces of evidence in rendering judgement, where such pieces of evidence are unnecessary for, or otherwise inappropriate to the resolution of the issue presented before the Court.

For all these reasons, I vote to **grant** the instant *Petition*, and refund in favor of petitioner the total amount of **₱4,769,261.09**, representing excess and unutilized input tax attributable to zero-rates sales for the 4th quarter of taxable year 2016.

HENRY S. ANGELES
Associate Justice

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[39] *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*, G.R. No. 215159, July 5, 2022.
[40] *Creation of Court of Tax Appeals*, June 16, 1954.
[41] Commissioner of Internal Revenue v. Manila Mining Corp., G.R. No. 153204, August 31, 2005.