

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

MD EXPRESS MANILA, INC.

Petitioner,

CTA EB No. 1469

(CTA Case Nos. 8388, 8389 and
8390)

-versus-

Present:

DEL ROSARIO, P.J.,

CASTAÑEDA, JR.,

BAUTISTA,

UY,

CASANOVA,

FABON-VICTORINO,

MINDARO-GRULLA,

RINGPIS-LIBAN, and

MANAHAN, J.J.

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

NOV 22 2017 1:29 p.m.



X- - - - -X

DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review¹, filed on June 29, 2016, by petitioner-MD Express Manila, Inc., seeking the reversal of the April 17, 2015 Decision² and May 13, 2016 Resolution³, both rendered by the Court of Tax Appeals Third Division in CTA Case Nos. 8388, 8389 and 8390.

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder, for ready reference: 

¹ En Banc Rollo, pp. 7-57.

² Annex "A" to the Petition for Review, *Ibid.*, pp. 59-72.

³ Annex "B" to the Petition for Review, *Id.*, pp. 73-104.

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Decision dated April 17, 2015:

“WHEREFORE, premises considered, the Petitions for Review are hereby **DENIED** for lack of merit.

SO ORDERED.”

Resolution dated May 13, 2016:

“WHEREFORE, premises considered, petitioner’s ‘Motion for Reconsideration’ is **DENIED** for lack of merit.

SO ORDERED.”

Petitioner MD Express Manila, Inc. is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at 11th Floor MRC Tower, 1973 Taft Avenue corner San Andres Street, Malate, Manila. It may be served with summons, pleadings, notices, and other processes of the Court through its counsel, Aranas Law Offices, with office address at Unit 203, Le Metropole Building, 236 H.V. dela Costa corner Tordesillas Streets, Salcedo Village, Makati City.⁴

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who is designated to collect taxes, grant refunds, issue and abate tax assessments, and examine books of accounts and returns filed with it to determine the correctness of taxes paid under the 1997 National Internal Revenue Code (1997 NIRC), as amended. He is being represented by the officers of the Legal Division, Revenue Region No. 6, Manila, with office address at BIR Building, Solana corner Beaterio Streets, Intramuros, Manila.⁵

The facts⁶ of the case, as narrated by the CTA Third Division in the assailed Decision, are as follows:

“Petitioner filed its Monthly and Quarterly VAT Returns for the periods covering October 2008 to December 2009 with the BIR.

Petitioner likewise filed with respondent, through Revenue District Office No. 33, the administrative claims for refund or issuance *a*

⁴ Par. 7, The Parties, Petition for Review, Id., p. 9.

⁵ Par. 8, The Parties, Petition for Review, Id., p. 10.

⁶ Pages 2-6 of April 17, 2015 Decision, Id., pp. 60-64.

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of tax credit certificate in the amounts of ₱1,381,903.02 for the fourth quarter of taxable year 2008, ₱921,015.02 for the first quarter of taxable year 2009, and ₱2,302,692.23 for the second to fourth quarters of taxable year 2009 on December 23, 2010, March 30, 2011, and June 30, 2011, respectively. It submitted the pertinent supporting documents simultaneously for all the administrative claims for refund for the fourth quarter of taxable year 2008 to the fourth quarter of taxable year 2009 on June 30, 2011.

On November 28, 2011, petitioner filed all three Petitions for Review due to the inaction of respondent on its administrative claims for refund.

On January 13, 2012, petitioner filed the Motion for Consolidation of Cases in CTA Case No. 8390, while the two separate Manifestations with Motions for Consolidation of Cases were filed in CTA Case Nos. 8388 and 8389, both on January 31, 2012.

On January 18, 2012, respondent filed two (2) separate Answers, one each for CTA Case Nos. 8389 and 8390, while the Answer for CTA Case No. 8388 was filed on February 16, 2012. The special and affirmative defenses for each of the three Answers are as follows:

CTA Case No. 8389

1. The petition is premature considering that petitioner's administrative claim for tax refund or application for issuance of tax credit certificate of its alleged unutilized input value-added tax (VAT) on purchases of services attributable to its zero-rated sales for the second to fourth quarters of taxable year 2009 amounting to ₱2,302,692.23 is still pending investigation with Revenue District Office No. 33, Revenue Region No. 6, BIR-Manila.

2. Petitioner has the *burden of proof* to show that it is entitled to the refund of the amounts claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations.

3. Claims for refund are to be construed strictly against the petitioner, the same being in the nature of an exemption from taxation. Failure on the part of the petitioner to prove the same is fatal to its claim for tax refund.

4. Petitioner must prove that the alleged refundable taxes were not automatically applied against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared or applied to the succeeding years.

5. Petitioner is barred from claiming a tax refund because the said amount was already carried over by the petitioner in its quarterly VAT returns for taxable year 2010 following the 'irrevocability rule' under Section 76 of the 1997 National Internal

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Revenue Code, stating that 'once the carry-over option is taken, actually or constructively, it becomes irrevocable.'

CTA Case No. 8390

1. The judicial claim for tax refund or issuance of tax credit certificate for allegedly erroneously paid VAT for the fourth quarter ending December 31, 2008 for the amount of ₱1,381,903.20 was filed outside the two (2)-year prescriptive period prescribed by law. In this case, the two (2)-year period counted from December 31, 2008, ended on December 31, 2010. Although the administrative claim for refund was filed on December 23, 2010, the petition for review was filed only on November 28, 2011 or around eleven (11) months after its expiration; hence, the claim has prescribed;

2. After investigation or audit of its VAT case, petitioner still has a VAT deficiency for taxable year 2008 in the amount of ₱3,107,686.88, inclusive of compromise penalty and interest from January 26, 2009 to December 31, 2011, and, therefore, its claim for refund is not only misplaced, but also premature;

3. Petitioner has the *burden of proof* to show that it is entitled to the refund of the amounts claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations and claims for refund are to be construed strictly against the petitioner, the same being in the nature of an exemption from taxation. Failure on the part of the petitioner to prove the same is fatal to its claim for tax refund;

CTA Case No. 8388

1. In its claim for unutilized input value-added tax attributable to its zero-rated sales for the first quarter of taxable year 2009, petitioner had until March 31, 2011 within which to file its petition for review as the law gives petitioner an option to claim for refund, or apply for the issuance in its favor of a Tax Credit Certificate for such excess input Value-Added Tax within two (2) years after the close of the taxable quarter when the sale or purchase was made. However, petitioner filed the above-entitled case only on November 28, 2011 which makes the petition prescribed for being filed after the two (2) years prescribed by law.

2. The petition has prescribed for being filed beyond thirty (30) days after the lapse of one hundred twenty days (120) as prescribed by law. Petitioner filed its administrative claim for Tax Credit Certificate on March 30, 2011, and submitted documents to support its claim only on June 30, 2011. However, it filed its petition only on November 28, 2011.

3. Jurisprudence is replete with cases that tax refunds or tax credits are construed strictly against the claimants and petitioner must prove its right to claim for tax credit. ↵

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4. The amount being claimed for refund by petitioner was already carried over by the petitioner in its original monthly and quarterly VAT returns. Hence, the carrying over bars petitioner from applying for tax refund or issuance of tax credit following the irrevocability rule under Section 76 of the 1997 NIRC.

Petitioner filed its respective Pre-Trial Briefs for CTA Case Nos. 8389 and 8390 both on February 20, 2012, while respondent filed its Pre-Trial Brief for CTA Case No. 8390 on February 21, 2012.

On February 23, 2012, the Court granted the motion for consolidation both in CTA Case Nos. 8389 and 8390. In CTA Case No. 8388, the Court likewise granted the Motion for Consolidation of Cases on March 20, 2012. Afterwards, the parties were ordered to file their respective consolidated Pre-Trial Briefs.

The Consolidated Pre-Trial Brief (For the Respondent) was submitted on March 26, 2012; while petitioner's Pre-Trial Brief was filed on March 27, 2012.

On April 30, 2012, the parties submitted their Joint Stipulation of Facts and Issues. Subsequently, the Court issued the Pre-Trial Order on May 8, 2012, and terminated the pre-trial.

Upon motion of petitioner, the Court commissioned Ms. Myra Celeste O. Dabalos as the Independent Certified Public Accountant (ICPA) on August 6, 2012.

During trial, petitioner presented Ms. Glenda S. Embile and Ms. Myra Celeste O. Dabalos as its witnesses.

On the other hand, respondent presented Revenue Officers Petronila DL. Palabrica, Cesar P. Pulhin, Ma. Paz Arcilla, and Francisco A. Ramos IV as its witnesses.

Both parties also presented and formally offered their respective documentary and testimonial evidence.

Petitioner's Memorandum was filed on August 1, 2014 while respondent's Memorandum was filed on August 15, 2014. The consolidated case was then submitted for decision on August 20, 2014."

On April 17, 2015, the CTA Third Division rendered the assailed Decision denying petitioner's Petitions for Review for lack of merit.

Aggrieved, petitioner filed on May 7, 2015, its Omnibus Motion (Motion for Reconsideration and Motion to Admit Attached Document and to Recall Petitioner's Witnesses⁷. On May 15, 2015, it, likewise, filed

⁷ CTA Case No. 8388, Division Docket (Vol. II), pp. 921-926.

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a Supplemental Motion to Admit Attached Documents⁸. Both Motions were granted by the Court in a Resolution⁹ promulgated on August 7, 2015.

In the October 26, 2015 hearing¹⁰, petitioner presented two (2) subpoenaed witnesses, namely, Mary Harriet O. Abordo, Deputy Director General for Operations of Philippine Economic Zone Authority, and Rodem R. Perez, Manager of Clark Development Corporation.

On November 10, 2015, petitioner filed its Second Supplemental Offer of Evidence¹¹ offering therein Exhibits "RR", "RR-1", "YYY", "ZZZ", "ZZZ-1", "AAAA", "AAAA-1", "BBBB", "BBBB-1", "CCCC", "CCCC-1", "DDDD", "DDDD-1", "EEEE", "EEEE-1", "FFFF", "FFFF-1", "GGGG", "HHHH", "IIII", "IIII-1", "JJJJ" and "JJJJ-1." Except for Exhibits "IIII" and "IIII-1", the Court in Division admitted the foregoing exhibits in a Resolution¹² promulgated on January 22, 2016.

Undeterred, petitioner filed an Urgent Omnibus Motion [Re: Resolution dated 22 January 2016]¹³ on February 3, 2016, praying that Exhibits "IIII" and "IIII-1" be admitted and Exhibit "RR-17" be corrected as Exhibit "RR-1".

In a Resolution¹⁴ promulgated on May 13, 2016, the Court in Division granted petitioner's Urgent Omnibus Motion [Re: Resolution dated 22 January 2016] and denied its Motion for Reconsideration for lack of merit.

Within the extension of time it requested¹⁵, petitioner filed the instant Petition on June 29, 2016.

In a Resolution¹⁶ dated July 26, 2016, the Court En Banc directed respondent to file his comment to the subject Petition, not a motion to dismiss, within ten (10) days from receipt thereof. 

⁸ CTA Case No. 8388, *Ibid.*, 933-936.

⁹ CTA Case No. 8388, *Id.*, 960-963.

¹⁰ Minutes of the Hearing, CTA Case No. 8388, Division Docket (Vol. III), p. 1011.

¹¹ CTA Case No. 8388, *Ibid.*, pp. 1012-1027.

¹² *Id.*, pp. 1064-1065.

¹³ *Id.*, pp. 1067-1077.

¹⁴ See Footnote No. 3.

¹⁵ From June 14, 2016 to June 29, 2016, per Motion for Extension of Time to File Petition for Review, En Banc Rollo, pp. 1-4.

¹⁶ *Ibid.*, pp. 112-113.

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On August 22, 2016, respondent filed his Comment/Opposition to Petitioner's Petition for Review.¹⁷

On September 8, 2016, the Court En Banc gave due course to the instant Petition and directed the parties to submit their Memoranda within thirty (30) days from receipt thereof.¹⁸

On October 26, 2016, respondent filed an Urgent Motion for Extension of Time to File Respondent's Memorandum¹⁹, which was granted in a Minute Resolution²⁰ dated November 2, 2016.

Thereafter, the case was submitted²¹ for decision on November 29, 2016, taking into consideration petitioner's Memorandum²² and respondent's Memorandum²³ filed on October 27, 2016 and November 14, 2016, respectively.

Hence, this Decision.

Petitioner raised this sole issue for the consideration of the Court:

Whether or not petitioner is entitled to its claim for refund or issuance of tax credit certificate in the amount of ₱3,218,409.15, representing input VAT attributable to zero-rated sales for the fourth quarter of taxable year 2008 and four quarters of taxable year 2009.²⁴

Petitioner points out that, contrary to the findings of the Court in Division, its sales of service to Hiblow Phil., Inc. in the amount of ₱62,500.00 covered by Invoice Nos. 30194, 30195, 30257, and 30275 were duly supported by VAT Zero-Rated Official Receipt No. 4905, marked as Exhibit "EEE-288". Thus, the same should have been included in computing petitioner's zero-rated sales.²⁵ 

¹⁷ Id., pp. 118-127.

¹⁸ Resolution, Id., pp. 129-130.

¹⁹ Id., pp. 131-133.

²⁰ Id., p. 236.

²¹ Resolution, Id., pp. 248-249.

²² Id., pp. 136-184.

²³ Id., pp. 237-246.

²⁴ Par. 39, Issue, Petition for Review, Id., pp. 37-38.

²⁵ Par. 45, Petitioner's Memorandum, Id., pp. 218-220.

Upon close scrutiny of the records, the Court En Banc agrees with the position of petitioner that the said amount should not have been disallowed by the Court in Division in computing petitioner’s zero-rated sales as the same was, indeed, supported by VAT Zero-Rated Official Receipt No. 4905.

Nonetheless, while the inclusion of the said amount increases petitioner’s zero-rated sales, the same would still have no bearing since petitioner has no refundable input VAT that can be attributed to the entire zero-rated sales declared and substantiated by petitioner, as pointed out by the Court in Division in its assailed Resolution, to which we fully subscribe, viz:

“In sum, petitioner failed to properly substantiate its input VAT claim in the amount of ₱4,605,610.45, as shown below:

Total Input Vat Claimed		₱4,605,601.45
Less: Disallowances		
Per ICPA report	₱1,387,201.30	
Per this Court’s further verification	3,218,409.15	4,605,610.45
Refundable Input VAT		₱ 0.00

Petitioner also contends that the issuance of sales invoice, in lieu of official receipts, with respect to its sales of service to Hiblow Phils., Inc., Nikko Metals Philippines, Inc., STT Philippines, Inc., and Yokohama Tire Phil., cannot be considered fatal to its claim for VAT refund since the words “invoice” and “receipt” under Section 113 of the 1997 NIRC, as amended, may be used in the alternative.²⁶

Petitioner’s contention has no leg to stand on.

Section 113 of the 1997 NIRC, as amended, explicitly provides that a VAT registered person shall issue a VAT invoice for every sale, barter or exchange of goods or properties; and, shall issue VAT official receipt for every lease of goods or properties as well as for every sale, barter or exchange of services.

Moreover, in *Takenaka Corporation-Philippine Branch vs. Commissioner of Internal Revenue*²⁷, the Supreme Court, citing the cases,

²⁶ Par. 46, Petitioner’s Memorandum, Id., p. 220.
²⁷ G.R. No. 193321, October 19, 2016.

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of *Northern Mindanao Power Corporation vs. Commissioner of Internal Revenue*²⁸ and the *Commissioner of Internal Revenue vs. Manila Mining Corporation*²⁹, emphasized the distinction between a receipt and an invoice in this wise:

“A ‘sales or commercial invoice’ is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.

A ‘receipt’ on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.

A VAT invoice is the seller’s best proof of the sale of goods or services to the buyer, while a VAT receipt is the buyer’s best evidence of the payment of goods or services received from the seller. **A VAT invoice and a VAT receipt should not be confused and made to refer to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.**” (Emphases supplied)

Petitioner further refuses to agree that it failed to meet the substantiation requirements under the 1997 NIRC, as amended, resulting in the disallowance of its input tax in the amount of ₱3,216,319.86, which although covered by official receipts but the amounts of input VAT therein were not separately indicated. Accordingly, the said amount is still determinable from the subject official receipts and ICPA’s report.³⁰

Furthermore, as to the disallowance of input tax in the amount of ₱2,089.29, petitioner avers that the same should still be considered even if the word “VAT” after the supplier’s TIN was not indicated in the official receipts, marked as Exhibits “WW-3-133” and “WW-3-143”, since the phrase “NOT TO BE ISSUED FOR NON-VAT/EXEMPT SALE OF GOODS, PROPERTIES OR SERVICES. IF ISSUED, SALES SHALL BE SUBJECTED TO VAT.” (PURSUANT TO RMC NO. 61-2003)” printed on the official receipts, would already indicate that the issuer of the official receipt is expected to,

²⁸ G.R. No. 185115, February 18, 2015.

²⁹ G.R. No. 153204, August 31, 2005.

³⁰ Par. 53, Petitioner’s Memorandum, En Banc Rollo, p. 230.

remit VAT on collections covered by the said receipts. Accordingly, "[i]f the issuer is required to pay VAT on the transaction covered by the subject receipt, then, the recipient of the said receipts should also be entitled to claim VAT credit thereon. To the mind of Petitioner, this is tantamount to issuance of official receipts with the word 'VAT'."³¹

We are not persuaded.

Section 113 (B) (2) (a) of the 1997 NIRC, as amended, enumerates the information that must be stated in the VAT invoice or official receipt, thus:

"SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –

(A) Invoicing Requirements. – A VAT-registered person shall issue:

x x x x

(B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided, That:*

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

³¹ Par. 55, Petitioner's Memorandum, Ibid., p. 231.

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(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: 'Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client." (Emphases supplied)

The use of the word "shall" in the aforementioned legal provision indicates the mandatory nature of the requirements laid down therein. The case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*³² is instructive:

"Although it is true that the CTA is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of Kepco's claims. Verily, the CTA En Banc correctly disallowed the input VAT that did not meet the required standard of substantiation."

The Court En Banc also enjoins the strict compliance with the said invoicing requirements in the following cases: *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*³³; *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*³⁴; *Procter & Gamble Asia Pte. Ltd., vs. Commissioner of Internal Revenue*³⁵;

³² G.R. No. 181858, November 24, 2010.

³³ CTA EB Case Nos. 1297 and 1302 (CTA Case No. 8165), May 18, 2017.

³⁴ CTA EB Case No. 1262 and 1263 (CTA Case No. 8342), July 15, 2016.

³⁵ CTA EB Case No. 1140 (CTA Case No. 8192), August 24, 2015.

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*Commissioner of Internal Revenue vs. Philex Mining Corporation*³⁶; *Commissioner of Internal Revenue vs. Philex Mining Corporation*³⁷; *Commissioner of Internal Revenue vs. Northwind Power Development Corporation*³⁸; and, *Chevron Holdings, Inc. [formerly Caltex (Asia) Limited] vs. Commissioner of Internal Revenue*³⁹.

Thus, for failing to comply with the foregoing statutory requirements, petitioner, therefore, has no factual and legal bases to support its prayer for the reversal of the Court in Division's ruling on the said matters.

Lastly, petitioner argues that the official receipt in the amount of ₱17,764.20, marked as Exhibit "W-3-384" (sic)⁴⁰ should not have been denied on the mere ground that the same was not properly identified by the ICPA, after all, the same was used and made part of the ICPA's report. It also alleges that, due to voluminous documents reviewed and identified by the ICPA, petitioner's counsel inadvertently failed to let the ICPA identify the said exhibit.⁴¹

The Court En Banc cannot accept the foregoing lame excuse of petitioner since the latter was given an ample opportunity to correct its error but still failed to do so as shown below:

Records reveal that as early as March 20, 2013, the Court in Division denied petitioner's Exhibit "WW-3-384", among others, on account of its failure to identify the same.⁴² Thus, a Motion for Reconsideration (Re: Resolution dated 20 March 2013) with Motion to Recall Witnesses was filed by petitioner on April 5, 2013, praying, among others, to recall the ICPA, Ms. Myra Celeste O. Dabalos, to "correct the identification of Exhibits 'WW-2-1' to 'WW-2-260', 'WW-3-375' to '**WW-3-384**', 'ZZ-2', 'ZZ-8' and 'ZZ-10'.⁴³" The said Motion was granted by the Court in Division in its Resolution dated June 3, 2013. This notwithstanding, petitioner still failed to let the ICPA identify exhibit "WW-3-384" when the latter was recalled in the hearing⁴⁴ held on July 15, 2015. This situation could have been avoided had petitioner exercised

³⁶ CTA EB Case No. 1097 (CTA Case No. 8517), February 17, 2015.

³⁷ CTA EB Case No. 1116 (CTA Case No. 8424), January 7, 2015.

³⁸ CTA EB Case Nos. 1037 and 1042 (CTA Case No. 8119), December 16, 2014.

³⁹ CTA EB Case No. 940 (CTA Case Nos. 7776 and 7813), May 6, 2014.

⁴⁰ Should be "WW-3-384", per Resolution dated May 13, 2016, En Banc Rollo, p. 103.

⁴¹ Par. 54, Petitioner's Memorandum, *Ibid.*, pp. 230-231.

⁴² Per Resolution, CTA Case No. 8388 (Vol. I), p. 452.

⁴³ Par. 9 of the Motion for Reconsideration (Re: Resolution dated 20 March 2013) with Motion to Recall Witnesses, *Ibid.*, p. 461.

⁴⁴ Per Minutes of the Hearing, Division Docket (Vol. II), p. 516.

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ordinary prudence and diligence in prosecuting its case. Thus, petitioner has no one to blame but itself for the said predicament.

In view of the circumstances elucidated above, we hold that the Court in Division did not err in denying petitioner's claim for refund or issuance of tax credit certificate.

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

SO ORDERED.


CAESAR A. CASANOVA
Associate Justice

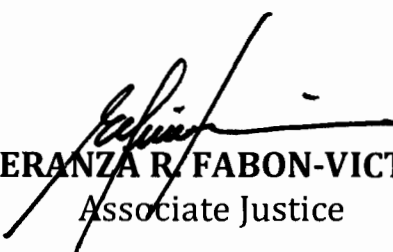
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice