REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

NATIONAL DEVELOPMENT COMPANY, *Petitioner,*	**CTA CASE NO. 9633** Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 2 6 2020 10:06 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition") filed by petitioner, **NATIONAL DEVELOPMENT COMPANY,** against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), praying that this Court render judgment ordering the refund of Php42,603,172.88, representing value added tax ("VAT") erroneously received from petitioner for the period from the 2nd Quarter of 2015 to the 3rd Quarter of 2016.[1]

The Parties

Petitioner is a VAT registered government-owned and controlled corporation ("GOCC") created under ***Presidential Decree No. 1648***. It has its principal office address at NDC Building, 116 Tordesillas St., Salcedo Village, Makati City.

Respondent is vested by law with the authority to carry out the functions, duties, and responsibilities of the Bureau of Internal Revenue ("BIR"), including, among others, the power to decide disputed assessments

[1] See Summary of the Case in the Pre-Trial Order, Records, Vol. 3, p. 1098.

and cancel and abate tax liabilities pursuant to the ***Tax Code*** and other tax laws, rules, and regulations.

The Facts

During the taxable period from the 2nd Quarter of 2015 to the 3rd Quarter of 2016, petitioner paid VAT in the aggregate amount of Php71,100,410.77,[2] as follows:

EXHIBIT	QUARTERLY VAT RETURN	DATE PAID	VAT Payable
"P-1"[3]	2nd Quarter 2015	24 July 2015[4]	Php66,427,825.23
"P-2"[5]	3rd Quarter 2015	23 October 2015[6]	Php582,948.26
"P-3"[7]	4th Quarter 2015	26 January 2016[8]	Php108,057.21
"P-4"[9]	1st Quarter 2016	22 April 2016[10]	Php748,106.15
"P-5"[11]	2nd Quarter 2016	22 July 2016[12]	Php2,189,285.25
"P-6"[13]	3rd Quarter 2016	24 October 2016[14]	Php1,044,188.67
Total			Php71,100,410.77

Petitioner then realized that it committed a mistake in utilizing the actual input VAT attributable to its sales to the government, instead of the 7% standard input VAT, as credit against its output VAT.[15]

Upon realizing this error, petitioner filed on 29 November 2016 its Amended VAT Returns for the period from the 2nd Quarter of 2015 to the 3rd Quarter of 2016 to correctly apply the provision on withholding of VAT on sales to the government.[16] This resulted to the present claim for refund, which is computed as follows:[17]

[2] See Petition, Records, Vol. 1, p. 12.
[3] Records, Vol. 3, p. 1296.
[4] Exhibit "P-14," Records, Vol. 4, p. 1664.
[5] Records, Vol. 3, p. 1309.
[6] Exhibit "P-15," Records, Vol. 4, p. 1670.
[7] Records, Vol. 3, p. 1365.
[8] Exhibit "P-16," Records, Vol. 4, p. 1684.
[9] Records, Vol. 3, p. 1419.
[10] Exhibit "P-17," Records, Vol. 4, p. 1706.
[11] Records, Vol. 3, p. 1465.
[12] Exhibit "P-18," Records, Vol. 4, p. 1723.
[13] *Id.*, at p. 1527.
[14] Exhibit "P-19," Records, Vol. 4, p. 1724.
[15] See Note 5.
[16] *Ibid.*
[17] See Memorandum, Records, Vol. 4, p. 1767.

Taxable Quarter	Amount Payable per Amended VAT Return	For Refund
2nd Quarter 2015	Php27,556,123.69	Php38,871,701.54
3rd Quarter 2015	Php(165,475.70)/No payment	Php582,948.26
4th Quarter 2015	Php(446,416.78)/No payment	Php108,057.21
1st Quarter 2016	Php(223,667.56)/No payment	Php748,106.15
2nd Quarter 2016	Php941,114.20	Php1,248,171.05
3rd Quarter 2016	Php(32,235,795.06)/No payment	Php1,044,188.67
Total	**Php28,497,237.89**	**Php42,603,172.88**

On 7 June 2017, petitioner filed with respondent an administrative claim for refund.[18] However, respondent failed to act on such administrative claim.[19] Thus, petitioner filed the present Petition on 24 July 2017.[20]

On 7 August 2017, Summons was issued to respondent ordering it to file an Answer to the Petition.[21] On 17 August 2017, respondent filed via registered mail a Motion for Extension of Time to File Answer and/or Other Responsive Pleadings,[22] which was granted in a Resolution, dated 30 August 2017.[23] On 25 September 2017, respondent filed his Answer via registered mail.[24]

On 5 October 2017, this Court issued a Notice of Pre-Trial Conference, setting the Pre-Trial Conference on 13 February 2018, at 9:00 a.m.[25]

This Court then ordered respondent to transmit the BIR Records of the case.[26] On 20 December 2017, respondent filed via registered mail a Motion for Extension of Time to Transmit the BIR Records, which was granted in a Resolution, dated 12 January 2018.[27] On 22 January 2018, respondent elevated the BIR Records pertinent to the Petition,[28] which was noted by this Court.[29]

[18] Exhibit "P-13", *id.*, at p. 1058.
[19] See Petition, Records, Vol. 1, p. 11.
[20] *Id.*, at p. 10.
[21] Records, Vol. 2, pp. 883-884.
[22] *Id.*, at pp. 885-887.
[23] *Id.*, at pp. 889-890.
[24] *Id.*, at pp. 891-894.
[25] *Id.*, at pp. 895-896.
[26] See Resolutions, dated 9 November 2017 and 12 December 2017, *id.* at pp. 898-900 and 902-904, respectively.
[27] *Id.*, at pp. 908-910.
[28] *Id.*, at p. 911.
[29] See Resolution, dated 24 January 2018, *id.*, at p. 912.

On 6 February 2018, respondent filed his Pre-Trial Brief via registered mail.[30] For its part, petitioner filed its Pre-Trial Brief on 8 February 2018,[31] and submitted the Judicial Affidavit of Mr. Denise Manalansan.[32]

On 13 February 2018, the Pre-Trial Conference ensued.[33] Following the submission of the parties' Joint Stipulation of Facts and Issues,[34]a Pre-Trial Order was issued on 3 April 2018.[35]

Two witnesses were presented by petitioner, Denise Manalansan[36] and Joyce Anne N. Alimon,[37] while respondent manifested that it was no longer presenting any witness for the case and requested that this Court already order the parties to file their respective memoranda,[38] which was noted by this Court.[39]

On 15 August 2019, petitioner filed its Memorandum,[40] which was noted by this Court.[41] Meanwhile, respondent failed to file his memoranda.[42]

On 5 November 2019, this Court issued a Resolution submitting the instant Petition for decision.[43]

Hence, this Decision.

The Issue[44]

WHETHER PETITIONER ERRONEOUSLY PAID AND MADE OVERPAYMENT OF VAT FOR THE PERIOD BEGINNING THE 2ND QUARTER OF 2015 UNTIL THE 3RD QUARTER OF 2016 IN THE AMOUNT OF PHP42,603,172.88; HENCE, ENTITLED TO REFUND.

[30] Records, Vol. 3, pp. 1074-1076.
[31] Records, Vol. 2, pp. 913-921.
[32] Records, Vols. 2-3, pp. 922-1073.
[33] Records, Vol. 3, pp. 1077-1084.
[34] *Id.*, at pp. 1089-1092.
[35] *Id.*, at pp. 1097-1102.
[36] *Id.*, at pp. 1103-1104.
[37] *Id.*, at pp. 1270-1271.
[38] *Id.*, at pp. 1283-1284.
[39] See Resolution, dated 8 November 2018, *id.*, at pp. 1286-1287.
[40] Records, Vol. 4, pp. 1763-1770.
[41] See Resolution, dated 16 August 2019, *id.*, at p. 1771.
[42] See Records Verification Report, *id.*, at p. 1772.
[43] *Id.*, at pp. 1773-1774.
[44] See Issues in the Pre-Trial Order; Records, Vol. 3, p. 1099.

Arguments of the Parties

Petitioner's Arguments[45]

Petitioner avers that it erroneously paid and made an overpayment of VAT for the period beginning the 2nd Quarter of 2015 until the 3rd Quarter of 2016 in the amount of Php42,603,172.88.

Petitioner relies upon ***Revenue Regulation No. 16-2005 ("RR 16-05")***, which provides that sales of goods and services subject to VAT to the government or any of its political subdivisions, instrumentalities, or agencies, including GOCCs, are subject to a final withholding VAT of 5%, with the remaining 7% constituting as the standard input VAT for such sales.

Petitioner claims that it erroneously used the actual input VAT on its sales to the government rather than the standard input VAT of 7%. As testified upon by Mr. Denise Manalansan and Ms. Joyce Anne N. Alimon, petitioner's failure to use the standard input VAT of 7% made it overpay its VAT during the period from the 2nd Quarter of 2015 to the 3rd Quarter of 2016 in the total amount of Php42,603,172.88.

Respondent's Counter-Arguments[46]

Respondent argues that the alleged claim for refund is still subject of an administrative routinary investigation/examination. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable. Petitioner's claim for refund is not properly substantiated by proper documents, such as sales invoices, official receipts, and others, pursuant to the regulations. In a tax refund case, the burden of proof is with petitioner to establish its right to the claimed refund. Failure to adduce sufficient proof is fatal to its claim for refund. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation, and as such, they are looked upon with disfavor.

The Ruling of the Court

The Petition lacks merit.

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[45] See Memorandum, Records, Vol. 4, pp. 1765-1769.
[46] See Answer, Records, Vol. 2, pp. 892-893.

<u>This Court has jurisdiction over the instant Petition.</u>

Section 229 of the Tax Code governs refunds of erroneously or illegally collected taxes. It mandates that a prior administrative claim for refund must be filed before respondent before a judicial claim can be instituted with the Courts. Both administrative claim and judicial claim must be filed within 2 years from the time of payment, *viz*:

> "***SEC. 229. Recovery of Tax Erroneously or Illegally Collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **<u>until a claim for refund or credit has been duly filed with the Commissioner;</u>** but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **<u>no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:</u>** Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."
> (Emphasis and underscoring, Ours)

Applying the above provision in the instant case, petitioner had the following mandatory periods with respect to its claim for refund:

QUARTERLY VAT RETURN	DATE PAID	DUE DATE FOR ADMINISTRATIVE CLAIM AND JUDICIAL CLAIM (2 years from date of payment)
2nd Quarter 2015	24 July 2015[47]	24 July 2017
3rd Quarter 2015	23 October 2015[48]	23 October 2017
4th Quarter 2015	26 January 2016[49]	26 January 2018
1st Quarter 2016	22 April 2016[50]	22 April 2018

[47] Exhibit "P-14," Records, Vol. 4, p. 1664.
[48] Exhibit "P-15," *id.*, at p. 1670.
[49] Exhibit "P-16," *id.*, at p. 1684.
[50] Exhibit "P-17," *id.*, at p. 1706.

2nd Quarter 2016	22 July 2016[51]	22 July 2018
3rd Quarter 2016	24 October 2016[52]	24 October 2018

Petitioner filed its administrative claim for refund of the alleged erroneous VAT payments made during the period from the 2nd Quarter of 2015 to the 3rd Quarter of 2016 on 7 June 2017. On the other hand, it filed the instant Petition on 24 July 2017. As such, the administrative claim preceded the judicial claim, and both administrative claim and judicial claim were made within the mandated 2 year period. Accordingly, this Court has jurisdiction over the present Petition.

Petitioner failed to present proof of its actual input VAT.

In the case of ***Unisys Philippines Limited – Philippine Branch v. Commissioner of Internal Revenue***,[53] the Court *En Banc* had the occasion to rule that proof of actual input VAT incurred is necessary in proving claims for refund of excessively paid VAT arising from the failure of a taxpayer to use the standard input VAT of 7%, vis-à-vis its VATable sales to the government, in computing its VAT payable. In said case, the Court *En Banc* declared that proof of actual input VAT is indispensable because it is part of the equation in determining the amount of overpaid VAT, *viz*:

> "The Court finds no reason to disturb the foregoing finding of facts.
>
> Having found that Sec. 229 of the Tax Code applies in this case, the quantum of proof necessary for UNISYS to establish its entitlement to a refund is that which merely shows that taxes were paid even if the same were not due. A cursory reading of Section 229 of the Tax Code also shows no mention of required compliance with invoicing requirements before a taxpayer could claim a refund for its erroneous payment of taxes.
>
> UNISYS takes issue with the assailed Decision and Resolution's disallowance of P4,475,053.81 input VAT from its entire claim due to noncompliance with VAT invoicing requirements, thereby reducing the allowable input VAT while neither specifically identifying whether the disallowed input VAT pertains to sales to government or non-government entities nor allocating the disallowed input VAT between the two types of sale transactions.
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> It is to be noted that the sales of UNISYS for the first three (3) quarters of CY 2010 were made to both government and non-government entities. As regards its sales to government entities, Section 114(c) of the Tax Code is relevant, to wit:

[51] Exhibit "P-18," *id.*, at p. 1723.
[52] Exhibit "P-19," *id.*, at p. 1724.
[53] CTA EB No. 1205 and 1209, CTA Case No. 8355, 14 March 2016.

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

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

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

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

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

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

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

However, as already ruled, in order to be entitled to the claimed refund or tax credit certificate, petitioner must be able to establish that it indeed incurred and has enough input tax credits and VAT payments. Thus, it is axiomatic that each and every component of petitioner's tax credits/payments, including the actual input VAT of P9,358,141.74 must be substantiated because, ultimately, the remaining balance of the total tax credits/payments, after deducting its output VAT liability, becomes its overpaid output VAT. Moreover, petitioner must be mindful that the claim for **input tax credits shall be allowed only upon compliance with the substantiation requirements** prescribed under Sections 110 (A) and 113 (A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 (A) and (B) of Revenue Regulations No. 16-2005.

This must be taken in conjunction with the mandate of Section 114 (C) of the NIRC of 1997, as amended, and Section 4.114-2 of RR No. 04-07, which states that the government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or of services taxed at twelve percent (12%) VAT pursuant to Sections 106 and 108 of the NIRC of 1997, as amended, deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof. The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales to the Government. Should actual input VAT exceed the standard input VAT of seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. In other words, the standard input VAT of 7% is compared with the actual substantiated input VAT and whatever the difference is shall be closed to petitioner's cost or expense."
(Emphasis, in the Original; Underscoring, Ours)

A perusal of the evidence offered by petitioner and copies of the documents merely attached to the records of the case shows that petitioner did not adduce proof on the actual input VAT declared in its VAT Returns. The evidence presented and offered include Original and Amended VAT Returns for the subject period; Certificates of Tax Withheld, showing the withholding by the government of 5% VAT; schedule of Input VAT; the 2 June 2017 Letter to the BIR (received on 7 June 2017), representing the administrative claim for refund; and proofs of payment of the VAT Returns.[54] While petitioner presented the schedule of Input VAT, the same does not constitute sufficient proof of the actual Input VAT incurred by petitioner. Rather, the necessary documents to prove the actual Input VAT incurred by petitioner are the VAT invoices and/or VAT receipts emanating from petitioner's purchases of goods,

[54] See Petitioner's Formal Offer of Evidence, Records, Vol. 3, pp. 1272-1282.

properties and services during the the 2nd Quarter of 2015 to the 3rd Quarter of 2016, in accordance with the substantiation requirements prescribed under ***Sections 110 (A) and 113 (A) and (B) of the NIRC of 1997, as amended***, and as implemented by ***Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 (A) and (B) of Revenue Regulations No. 16-2005***. Unfortunately, none can be found in the records of the case to support petitioner's cause.

Without proof on the actual input VAT incurred by petitioner, there is no way for this Court to determine if an actual overpayment of VAT occurred in the case at bar arising from petitioner's failure to utilize the standard input VAT of 7% on its sales to the government.

It is a hornbook principle that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[55] Considering this, the entitlement of a taxpayer to a tax exemption must be duly proven and *strictissimi* scrutinized.[56] An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[57]

Consequently, petitioner is duty bound to prove every minute aspect of its entitlement to the claimed VAT refund, including the actual input VAT it incurred during the period subject of this Petition. In the absence of such proof, this Court has no other recourse but to deny its claim for refund of erroneously paid taxes.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[55] Philippine Geothermal, Inc., vs. The Commissioner of Internal Revenue, G.R. No. 154028, 29 July 2005.
[56] Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 179961, 31 January 2011.
[57] Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 183531, 25 March 2015.

WE CONCUR:

ERLINDA P. UY
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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's Division.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice