REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1778
(CTA Case No. 8671)

-versus-

TOLEDO POWER CO.,
Respondent.

x---x

TOLEDO POWER CO.,
Petitioner

CTA EB No. 1780
(CTA Case No. 8671)

Present:
Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 15 2019
3:45 p.m.

x---x

DECISION

CASTAÑEDA, JR., *J.* :

For review before this Court are the Petitions for Review filed by petitioner Commissioner of Internal Revenue (CIR) on February 2, 2018 docketed as CTA EB No. 1778 and by petitioner Toledo Power Company (TPC) on February 21, 2018 docketed as CTA EB No.1780, assailing the

September 25, 2017 Amended Decision[1] and the January 12, 2018 Resolution[2] rendered by the then CTA Third Division (CTA Division) in the case entitled *"Toledo Power Co. v. Commissioner of Internal Revenue"* docketed as CTA Case No. 8671. These cases involve TPC's refund in the amount of Php44,391,193.47 allegedly representing TPC's unutilized input value-added tax (VAT) related to zero-rated sales/receipts for the 2nd, 3rd, and 4th quarters of 2011. Initially, the CTA Division denied the petition in the Decision dated June 28, 2017.[3] In the assailed Amended Decision, the CTA Division partially granted the refund in the amount of Php6,241,966.20, representing petitioner's unutilized input value-added tax arising from its zero-rated sales/receipts for the fourth quarter of calendar year 2011.

These petitions were consolidated by the Court *En Banc* on March 22, 2018, thus, CTA EB No. 1780 was consolidated with CTA EB No. 1778, the case bearing the lower docket number.

The dispositive portion of the assailed Amended Decision promulgated on September 25, 2017 states that:

> **WHEREFORE,** premises considered, petitioner's Motion to Reopen Proceedings is hereby **DENIED** for lack of merit, while its Motion for Reconsideration is hereby **PARTIALLY GRANTED.**
>
> Accordingly, the Decision promulgated on June 28, 2017 is **REVERSED** and **SET ASIDE**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund in favor of petitioner Toledo Power Co. the amount of **Six Million Two Hundred Forty-One Thousand Nine Hundred Sixty-Six Pesos and 20/100 (Php6,241,966.20),** representing petitioner's unutilized input value-added tax arising from its zero-rated sales/receipts for the fourth quarter of calendar year 2011.
>
> **SO ORDERED.**

The dispositive portion of the assailed January 12, 2018 Resolution states that: *gr*

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[1] *Rollo* (CTA EB No. 1778), pp. 13-19; *Rollo* (CTA EB No. 1780), pp. 43-49; Penned by Associate Justice (now retired) Lovell R. Bautista and concurred in by Associate Justice Esperanza R. Fabon-Victorino. Associate Justice Ma. Belen M. Ringpis-Liban was on leave.
[2] *Rollo* (CTA EB No. 1778), pp. 20-24; *Rollo* (CTA EB No. 1780), pp 37-41; Penned by Associate Justice (now retired) Lovell R. Bautista and concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban.
[3] Division Docket, pp. 4065-4085, with Annexes A and B.

> **WHEREFORE**, premises considered, petitioner's Motion for Partial Reconsideration (with Motion to Reopen Proceedings) and respondent's Motion for Partial Reconsideration (Re: Amended Decision promulgated 25 September 2017) are hereby **DENIED** for lack of merit. The Amended Decision promulgated on September 25, 2017 is **AFFIRMED.**
>
> **SO ORDERED.**

In CTA EB No. 1778 [filed by CIR]:

CIR prays that the Amended Decision promulgated 25 September 2017 and the Resolution dated 12 January 2018 be reconsidered and set aside and another one be rendered denying the entire claim for refund. Other relief just and equitable were likewise prayed.

In CTA EB No.1780 [filed by TPC]:

TPC prays that the assailed Resolution of the Third Division dated January 12, 2018 be set aside and that a refund in the amount of PhP44,391,193.47 be granted in favor of Petitioner. Alternatively, TPC also prays that the case be remanded to the Third Division of this Honorable Court for the presentation of the SSDT's (Statement of Settlement of Duties and Taxes) issued by the Bureau of Customs, as additional pieces of evidence to further prove its claim for input VAT refund. Other reliefs just and equitable were also prayed for.

THE FACTS

The facts of the case as stated in the June 28, 2017 Decision[4]:

> Petitioner Toledo Power Co. ("TPC") is a partnership duly registered with the Securities and Exchange Commission with principal office address at Brgy. Daanlungsod, Toledo City, Cebu. It is a VAT-registered entity with Tax Identification Number 003-883-626-999 VAT and a generation company granted by the Energy Regulatory Commission ("ERC") with the authority to operate its generation facilities.

xxx xxx xxx

[4] *Rollo* (CTA Case No. 1780), pp. 51-66.

TPC filed with the BIR its Quarterly VAT Returns (BIR Form No. 2550-Q) for the second to fourth quarters of CY 2011 xxx xxx xxx.

On February 28, 2013, TPC filed its administrative claim for refund of the unutilized input VAT for the second to fourth quarters of CY 2011.

Due to the CIR's inaction on TPC's administrative claim for refund, the latter filed the present Petition for Review on July 12, 2013.

On September 6, 2013, the CIR filed his Answer, raising, in essence, as its Special and Affirmative Defense the defense that the claim for refund should not be given due course for lack of jurisdiction as TPC failed to exhaust all administrative remedies before elevating the case to the Court.

The CIR filed his Pre-Trial Brief on October 1, 2013, while TPC filed its Pre-Trial Brief on October 4, 2013. Thereafter, a pre-trial conference was held on October 10, 2013. Together, the parties filed the Joint Stipulation of Facts and Issues on October 30, 2013, which was approved by the Court in a Pre-Trial Order dated January 24, 2014.

During trial, TPC presented the following witnesses: (1) Ms. Edita C. Encarnacion, the Assistant Vice-President – Accounting of Global Business Power Corporation ("Global Power"), the holding company of TPC; (2) Ms. Raymonda Aida B. Obrero, the Assistant Vice-President – Accounting of petitioner; (3) Mr. Rolando L. Vicente, Finance Manager of Cebu Electric Cooperative, Inc. III (the purchaser of electric power from TPC); (4) Mr. Joseph Cedric V. Calica, the Court-commissioned Independent Certified Public Accountant ("ICPA") for the case; (5) Mr. Isidito Camota Decina, Head of TPC's Dispatch Group; and (6) Atty. Bernadette Ann V. Policarpio, legal counsel of Global Power.

TPC filed its Formal Offer of Evidence on December 7, 2015, xxx xxx xxx. The CIR filed his Comment (Re: Petitioner's Formal Offer of Evidence) on December 8, 2015. In Resolutions dated January 22, 2016 and June 14, 2016, the Court admitted all of TPC's evidence.

> Meanwhile, the CIR manifested that he would not be presenting evidence. Accordingly, the CIR filed his Memorandum on February 10, 2016 while TPC filed its Memorandum on July 15, 2016.
>
> xxx xxx xxx

On June 28, 2017, the CTA Division denied the petition for review for lack of merit.

On July 20, 2017, TPC filed a Motion to Reopen Proceedings (with Motion for Reconsideration). On August 23, 2017, CIR filed its Opposition (Re: Motion to Reopen Proceedings with Motion for Reconsideration).

On September 25, 2017, the CTA Division reversed and set aside the June 28, 2017 Decision and issued an Amended Decision. The CTA Division denied TPC's Motion to Reopen Proceedings for lack of merit, while its Motion for Reconsideration was partially granted. The CTA Division ordered CIR to refund TPC the amount of Php6,241,966.20, representing petitioner's unutilized input value-added tax arising from its zero-rated sales/receipts for the fourth quarter of calendar year 2011.

In a Resolution dated January 12, 2018, the CTA Division denied, for lack of merit, TPC's Motion for Partial Reconsideration (with Motion to Reopen Proceedings) and CIR's Motion for Partial Reconsideration (Re: Amended Decision promulgated 25 September 2017). The CTA Division affirmed the Amended Decision.

Both parties timely filed their respective appeal to the CTA *En Banc*. Thereafter, the above-captioned cases were consolidated.

On March 27, 2018, in CTA EB No. 1778, TPC filed its Comment (To the Petition for Review dated February 1, 2018 filed by the Commissioner of Internal Revenue). On April 13, 2018, in CTA EB No. 1780, CIR filed his Comment (Re: Petition for Review). The CTA *En Banc* noted the Manifestation of CIR stating that he is adopting the arguments in the Petition for Review filed on February 2, 2018 in CTA EB No. 1778 and the Comment to the Petition for Review filed on April 13, 2018 in CTA EB No. 1780 as his Memorandum in the above-entitled cases. On July 23, 2018, TPC filed its Memorandum.

On August 16, 2018, the above-captioned consolidated cases were submitted for decision. Hence, this Decision.

ISSUE

In **CTA EB 1778,** CIR's Assignment of Error[5] states that:

> THE THIRD DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT SINCE RESPONDENT'S INPUT TAX CANNOT BE DIRECTLY OR ENTIRELY ATTRIBUTED TO ANY OF THE TRANSACTIONS, THE COURT SHALL ALLOCATE THE VALID INPUT VAT PROPORTIONATELY ON THE BASIS OF THE VOLUME OF ITS SALES PURSUANT TO SECTION 112(A) OF THE NIRC OF 1997.

In **CTA EB 1780**, TCP's Assignment of Errors are as follows[6]:

> A. The court-commissioned independent CPA (ICPA) is an officer of the Court whose audit function is beyond petitioner's scrutiny. The ICPA is completely independent, objective and impartial to conduct the audit function.
>
> B. The CTA's outright non-reliance on the report of the court-commissioned independent CPA and the denial of Petitioner's right to present additional documents amount to denial of Petitioner's right to due process.
>
> C. There was a mistake on the representation of the commissioned Independent Certified Public Accountant (ICPA) that all the necessary documents had been photocopied and submitted to the Honorable Court.
>
> D. Petitioner is entitled to a claim for refund in the total amount of PhP44,391,193.47, representing its unutilized input taxes related to zero-rated sales/receipts for the 2nd, 3rd, and 4th quarters of 2011.

Based on the foregoing, the issue in this case is **whether the CTA Division erred in the partial grant of refund representing TPC's unutilized input value-added tax arising from its zero-rated sales/receipts for the fourth quarter of calendar year 2011.**

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[5] *Rollo*, CTA EB No. 1778, p. 3.
[6] *Rollo*, CTA EB No. 1780, p. 15.

THIS COURT'S RULING

The petitions are denied.

Section 112 of the NIRC allows allocation of input tax proportionately on the basis of the volume sales

CIR alleges that the ruling of the CTA Division is erroneous. According to CIR, Section 112 of the National Internal Revenue Code of 1997 uses the word "directly attributable" and not the word "entirely attributable". CIR concludes that the fact of "direct attributability" must be established, thus, it is erroneous to immediately assume that all the input tax is directly attributable to TPC's zero-rated sales without establishing how it factored in the production chain. CIR states that the phrase directly attributable means arising from a particular source or cause. CIR states that the CTA Division erred in ruling that TPC has proven this crucial element of a claim for unutilized input tax.

The allegation lacks merit.

Section 112 of the 1997 NIRC, as amended, states that:

SEC. 112. *Refunds or Tax Credits of Input Tax.* —

> "(A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, **to the extent that such input tax has not been applied against output tax**: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): ***Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales:** ge

> *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

It is elementary that the word "shall" underscores the mandatory character of the rule. It is a word of command, one which always has or must be given a compulsory meaning, and is generally imperative or mandatory.[7] It is also basic that "if the language of the law is clear, explicit and unequivocal, it admits no room for interpretation but merely application."[8]

Section 112(A) of the NIRC, as amended, explicitly states that, "That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Based on Section 112(A) of the NIRC, as amended, creditable input tax shall be allocated proportionately on the basis of the volume of sales subject to the following requirements:

1. where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and

2. the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions.

The above requirements were present in this case. Thus, input tax shall be allocated proportionately on the basis of the volume of sales, which was aptly done by the CTA Division in the assailed Amended Decision.

We reiterate with approval the discussion of the CTA Division in the assailed Amended Decision, as follows:

> Considering that petitioner is engaged in both taxable sales subject to the zero percent (0%) and twelve percent (12%) rates, as well as sales to government and exempt sales, and its input VAT cannot be directly or entirely attributed to any of the transactions, the Court shall allocate the valid input VAT proportionately on the basis of the volume of its sales pursuant

[7] *SM Land, Inc. v. Bases Conversion and Development Authority et al.*, G.R. No. 203655, August 13, 2014 citing Regalado v. Go, G.R. No. 167988, February 6, 2007, 514 SCRA 616.
[8] *Miramar Fish Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 185432, June 4, 2014.

to *Section 112(A) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*, as follows:

	2nd QUARTER	3rd QUARTER	4th QUARTER
Total Input Tax	Php 31,473,072.04	Php 31,051,473.14	Php 44,889,915.83
Less: Disallowances			
Per ICPA	2,568,956.18	1,073,250.94	2,358,511.30
Per Court's Exception			
On Goods and Services	18,261,090.42	1,334,851.84	1,646,687.73
On Importation	2,151,345.00	14,873,459.17	14,696,649.00
Total Disallowances	22,981,391.60	17,281,561.95	18,701,848.03
Substantiated Input VAT	8,491,680.44	13,769,911.19	26,188,067.80
Add: Exhibit P-102-2137 per MR	-	-	214,883.04
Valid Input VAT (**A**)	Php 8,491,680.44	Php 13,769,911.19	Php 26,402,950.84
SALES:	**Exhibit "P-19"**	**Exhibit "P-21"**	**Exhibit "P-23"**
Vatable Sales (**B**)	Php 151,295,589.10	Php 198,715,030.05	Php 156,066,571.00
Sale to Government (**C**)	18,122,816.40	15,172,409.20	9,520,185.00
Zero-rated Sales (**D**)	499,588,510.69	494,449,324.81	532,424,341.40
Exempt Sales (**E**)	1,064,950.87	1,031,462.04	1,124,380.78
TOTAL (**F**)	Php 670,071,867.06	Php 709,368,226.01	Php 699,135,478.18
ALLOCATION:			
Input VAT Attributable to			
Vatable Sales [**(B/F) x A**]	Php 1,917,337.32	Php 3,857,359.57	Php 5,893,876.27
Sales to Government [**(C/F) x A**]	229,666.66	294,519.43	359,531.14
Zero-rated Sales [**(D/F) x A**]	6,331,180.57	9,598,009.95	20,107,081.03
Exempt Sales [**(E/F) x A**]	13,495.90	20,022.24	42,462.40
TOTAL	**Php 8,491,680.44**	**Php 13,769,911.19**	**Php 26,402,950.84**

Meanwhile, petitioner's valid input VAT allocated to non zero-rated sales in the respective amounts of Php2,160,499.88, Php4,171,901.24, and Php6,295,869.81 for the second, third, and fourth quarters of CY 2011 is not enough to cover its output VAT liability in the amounts of Php20,330,208.66,[9] Php25,666,492.71,[10] and Php19,870,410.72,[11] respectively. Thus, the substantiated input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT of Php18,169,708.78, Php21,494,591.47, and Php13,574,540.91 for the second, third, and fourth quarters of CY 2011, as follows:

	2nd QUARTER	3rd QUARTER	4th QUARTER
Total Output VAT	Php 20,330,208.66	25,666,492.71	Php 19,870,410.72
Less: Input VAT Allocated to Non Zero-rated Sales			
Vatable Sales	1,917,337.32	3,857,359.57	5,893,876.27
Sales to Government	229,666.66	294,519.43	359,531.14

[9] Records, Vol. 6, Exhibit "P-19," line 19B, p. 3050.
[10] *Id.*, Exhibit "P-21," line 19B, p. 3054.
[11] *Id.*, Exhibit "P-23," line 19B, p. 3058.

Exempt Sales	13,495.90	20,022.24	42,462.40
Total	2,160,499.88	4,171,901.24	6,295,869.81
Remaining Output VAT	18,169,708.78	21,494,591.47	13,574,540.91
Less: Input VAT Allocated to Zero-rated Sales	6,331,180.57	9,598,009.95	20,107,081.03
Output Tax Still Due	**Php 11,838,528.21**	**Php 11,896,581.52**	
(EXCESS INPUT VAT)			**(Php 6,532,540.12)**

Based on the foregoing, petitioner has no excess input VAT for the second and third quarters of CY 2011. Meanwhile, for the fourth quarter of CY 2011, petitioner has excess input VAT of Php6,532,540.12, which can be attributed to the entire amount of Php532,424,341.40 zero-rated sales declared by petitioner in its Quarterly VAT Return for the fourth quarter of the same year. However, only the input VAT of Php6,241,966.20 is attributable to the valid zero-rated sales of Php508,741,364.66, as computed below:

Excess Input VAT attributable to zero-rated sales		Php	6,532,540.12
Multiplied by Percentage of Valid zero-rated sales			
Valid Zero-rated sales	508,741,364.66		
Total Zero-rated Sales	532,424,341.40		95.5519%
UNUTILIZED EXCESS INPUT VAT		**PHP**	**6,241,966.20**

Refund is proper for the 4th quarter

TPC's contention that it is entitled to a claim for refund in the total amount of Php44,391,193.47, representing its unutilized input taxes related to zero-rated sales/receipts for the 2nd, 3rd and 4th quarters of 2011 is bereft of merit. As correctly determined by the CTA Division, TPC is entitled only to the refund in the amount of Php6,241,966.20, representing TPC's unutilized input value-added tax arising from its zero-rated sales/receipts for the fourth quarter of calendar year 2011. Based on the findings of the CTA Division, only the 4th quarter has excess input VAT. On the other hand, the 2nd and 3rd quarters have excess output tax due and not excess input VAT. It is worthy to mention that Section 110(B)[12] of the 1997 NIRC, as amended, is clear that for input tax attributable to zero-rated sales, it is only when input tax

[12] SEC. 110. *Tax Credits.* —

xxx xxx xxx

(B) Excess Output or Input Tax. — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: [Provided, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT:] *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

Note: Bracketed proviso was deleted by RA 9361, which took effect on 13 December 2006.

exceeds the output tax that a refund or credit is proper, subject to the provisions of Section 112.

No violation of due process

TPC states that the ICPA is commissioned as an officer of the court to examine voluminous documents in claims for refund, and that he reports solely to the court and is bound by his oath to the same. According to TPC, it relied heavily on the findings of the ICPA that TPC satisfied all the requisites and is entitled to the refund. TPC states that the utter disregard by the CTA Division of the ICPA findings without giving it the chance to add, supplant or clarify whatever may be missing or lacking in the ICPA report before the promulgation of the decision amounts to a violation of TPC's right to due process. TPC alleges that there was a mistake on the representation of the ICPA that all the necessary documents had been photocopied and submitted to the CTA Division.

Anent the allegation of violation of due process, We find it bereft of merit. "It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process."[13] In this case, TPC was given several opportunities to prove its refund case during the trial and even during the filing of the motion for reconsideration in compliance with the due process requirement.

It is worthy to note that the burden is on the taxpayer to prove its entitlement to the refund.[14] Although ICPA is a commissioned officer of the court to examine voluminous documents in claims for refund, it is the responsibility of the taxpayer to coordinate with ICPA and ensure that ICPA's report comply with the Court's requirements. In this case, TPC formally offered its evidence and rested its case. We emphasize that the Court considers the ICPA report when the case was already submitted for decision. The Court cannot prematurely check the veracity of the ICPA report.

We reiterate the discussion of the CTA Division in the assailed Amended Decision as follows:

> Court maintains that it was petitioner's duty to ensure the sufficiency of the evidence it presented during the trial of the case, especially when it filed its formal offer of evidence and

[13] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,* G. R. No. 168498, June 16, 2006, citing *Estares v. Court of Appeals,* G.R. No. 144755, June 8, 2005, 459 SCRA 604, 623.
[14] *Commissioner of Internal Revenue v. Far East Bank & Trust Company, G.R. No. 173854,* March 15, 2010, 615 SCRA 430-431.

> rested its case. As duly noted by respondent, **petitioner was given several opportunities to present evidence in support of its claim for refund.** Precisely, it was the ICPA's duty as an officer of the Court to properly substantiate petitioner's claim, where warranted. *(Emphasis Supplied).*

We also agree with the discussion of the CTA Division in the assailed Resolution, as follows:

> *Section 2, Rule 13 of the Revised Rules of the Court of Tax Appeals ("RRCTA")* provides, among others, that it is the ICPA's duty to examine and verify receipts, reproduce and pre-mark exhibits, and make findings as to compliance of the evidence with tax laws.
>
> In the present case, petitioner cannot be faulted for relying on the ICPA's representation as to the completeness of the evidence the ICPA submitted to the Court. However, as the Court noted in the Amended Decision, petitioner has already been given several opportunities to support its claim for refund. Litigation must end at some point.

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[15] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

Based on the foregoing discussions, We find no reversible error to disturb the assailed Amended Decision and Resolution of the then CTA Third Division.

WHEREFORE, premises considered, the Petition for Review filed by Toledo Power Company in CTA EB No. 1780, and the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1778 are **DENIED** for lack of merit. Accordingly, We **AFFIRM** the Amended Decision and the Resolution of the then CTA Third Division dated September 25, 2017 and the January 12, 2018, respectively.

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[15] G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice