REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

ABB, INC., *Petitioner,*

CTA CASE NO. 8563

- versus -

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

x---x

ABB, INC., *Petitioner,*

CTA CASE NO. 8594

- versus -

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

x---x

ABB, INC., *Petitioner,*

CTA CASE NO. 8674

Members:
Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

- versus -

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

Promulgated:
MAY 11 2016
10:40 a.m.

x---x

DECISION

BAUTISTA, J:

The Case

Before the Court are three (3) consolidated Petitions for Review[1] filed by petitioner ABB, Inc., ("ABB") on October 25, 2012, December

[1] *Records, CTA Case No. 8563, 8594 and 8674, Vol. 1, Petition for Review,* pp. 7-96, with annexes; *CTA Case No. 8594, Petition for Review,* pp. 8-186, with annexes; *CTA Case No. 8674, Petition for Review,* pp. 6-155, with annexes.

26, 2012, and July 15, 2013, for *CTA Case Nos. 8563, 8594,* and *8674,* respectively, pursuant to *Section 7(a)(2)*[2] *of Republic Act ("RA") No. 1125*[3], as amended by *RA No. 9282*[4] and *RA No. 9503*[5], which seeks for the Court to render judgment ordering respondent to refund to petitioner the total amount Php55,274,958.71 broken down as follows:

> 1. Php2,781,796.54, representing erroneously paid output Value Added Tax ("VAT") for the 3rd Quarter of taxable year ("TY") 2010;[6]
>
> 2. Php50,900,510.66, representing erroneously paid output VAT for the periods 4th Quarter of TY 2010 and 1st Quarter of TY 2011;[7] and
>
> 3. Php1,592,651.51 representing erroneously paid output VAT for the periods 3rd and 4th Quarters of the TY 2011 and 1st Quarter of TY 2012.[8]

The Parties

Petitioner ABB is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Km. 20 West Service Road, South Superhighway, Sucat, Parañaque; it is engaged in the business of providing automation and power products, systems, and services.[9]

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[2] Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.
xxx xxx xxx
(2)Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

[3] An Act Creating the Court of Tax Appeals, as Amended.

[4] 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.

[5] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

[6] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 1, Petition for Review,* p. 28.

[7] *Records, CTA Case No. 8594, Petition for Review,* p. 33.

[8] *Records, CTA Case No. 8674, Petition for Review,* p. 22.

[9] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 1,* pp. 7-8; *CTA Case No. 8594,* pp. 8-9; *CTA Case No. 8674,* p. 6.

Respondent Commissioner of Internal Revenue ("CIR"), is the chief of the Bureau of Internal Revenue ("BIR"), who under the law is empowered to perform the duties of said office including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith.[10]

The Facts

National Grid Corporation of the Philippines ("NGCP") is a domestic corporation engaged in the business of operating, maintaining, expanding and developing the transmission network of the Philippines, with principal address at NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City.[11]

Petitioner entered[12] into a Contract[13] with NGCP[14] for the Wright-Calbayog 138 kV Substation Project ("Wright-Calbayog Project") after winning the bid therefor.[15] The Contract provides that petitioner, as the contractor, shall pay all fees and similar expenses in consequence of its obligations under the contract except for import duties and import VAT; and that NGCP should be the consignee of the importation to be supplied by the petitioner.[16]

The Joint Venture ("JV") of ABB, Inc., and AER Construction & Development Co., Inc. ("JV ABB-AER") entered[17] into a Contract with NGCP for the New Naga 138 kV Substation Project ("New Naga Project").[18]

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[10] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Consolidated Joint Stipulation of Fact and Issues ("JSFI") for CTA Case Nos. 8563, 8594, and 8674,* par. 1, pp. 2621-2622.
[11] *Id.*, par. 1, p. 2622.
[12] Undated Contract but notarized on September 23, 2009; effective on the date specified in Notice to Proceed, see *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibit* "P-2," *Contract for the Wright - Calbayog 138kV Substation Project,* p. 2837.
[13] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibit* "P-2," *Contract for the Wright - Calbayog 138kV Substation Project,* pp. 2834-2843.
[14] *Id., Exhibit* "P-2," *Contract for the Wright - Calbayog 138kV Substation Project,* p. 2834; NGCP is a corporation duly organized and existing under the laws of the Philippines, it issued an Invitation to Bid for the Wright-Calbayog 138 kV Substation Project.
[15] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibit* "P-2," *Contract for the Wright - Calbayog 138kV Substation Project,* pp. 2834-2843.
[16] *Id.*, Article IX, Taxes and Clearances, p. 2839; the effectiveness of this contract was uncontested.
[17] Undated Contract but notarized on March 16, 2010; effective on the date specified in Notice to Proceed, see *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibit* "P-3," *Contract for the New Naga 138 kV Substation Project,* p. 2847.
[18] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibit* "P-3," *Contract for the New Naga 138 kV Substation Project* pp. 2844- 2853; the effectiveness of this contract was uncontested.

Both Contracts are on a turnkey basis, which is defined as a job or contract in which the contractor agrees to complete the work of building and installation to the point of readiness for operation or occupancy.[19] To fulfill its obligations under the Contracts, petitioner subcontracted specific segments of the Wright-Calbayog and New Naga Projects to both offshore and onshore subcontractors.

The offshore portion of the contracts consists of the complete design, manufacture, testing, supply and delivery, storage, construction, erection, installation, field testing and commissioning of substation, telecommunication, protection and substation control equipment and materials, which were sourced from foreign subcontractors coming from various countries including Taiwan, Sweden, Italy, Thailand, India, Korea, Malaysia, France, Finland, Switzerland, Vietnam, USA, Singapore, New Zealand, Japan, Canada, Indonesia, China and Germany.[20]

On the other hand, the onshore portion of the Contracts consist of the construction and installation of the materials, machinery and equipment and the performance of related civil works for the two projects and were subcontracted to various local subcontractors.[21]

On March 16, 2009, petitioner was registered as a large taxpayer and was issued BIR Certificate of Registration No. 8RC0000019299 by the BIR Large Taxpayers Division.[22]

Petitioner filed its Monthly VAT Declaration (BIR Form No. 2550-M) from July 2010 to February 2012, as well as its Quarterly VAT Return (BIR Form No. 2550-Q) for the 3rd and 4th Quarters of TY

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[19] Defined in the footnote of *CIR v. Marubeni Corporation*, G.R. No. 137377, December 18, 2001, 372 SCRA 576, citing Websters Third New International Dictionary of the English Language, Unabridged [1993].

[20] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibit* "P-196," New Naga 138kV Substation Project Annex "A", pp. 3365-3569; *Exhibit* "P-197," Wright-Calbayog 138kV Substation Project Annex "A", pp. 3355-3385.

[21] For the Wright-Calbayog Project: 88 Electronics Supply; AER Construction and Development Corp.; Alex Pastrana; Aboitiz Projects T.S. Corp.; Dynamic Geo-environmental Specialist; GIBMA Engineering Services; Hansei Corporation; International Elevator and Equipment; Monark Equipment Inc.; Ocean Coast Shipping Corp.; Rapid Line Tradg. And Installation Services; Sterling Fluid Systems Enterprises; TBS Industrial Services Inc.; and Westco Electrical & Equipment Corp. For the New Naga Project: Aboitiz Projects T.S. Corp.; GIBMA Engineering Services; Hansei Corporation; Rapid Line Tradg. And Installation Services; TBS Industrial Services Inc.; Westco Electrical & Equipment Corp.

[22] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibit* "P-30," Certificate of Registration, p. 3552.

2010; 1st, 3rd and 4th Quarters of TY 2011; and 1st Quarter of TY 2012 as follows:

Period	Date Filed Original	Exhibit	Date Filed Amended	Exhibit
July 2010	8/24/2010	"P-43"[23]	10/23/2012	"P-70"[24]
August 2010	9/27/2010	"P-44"[25]	10/23/2012	"P-71"[26]
3rd Q 2010	10/25/2010	"P-45"[27]	10/23/2012	"P-72"[28]
Oct 2010	11/22/2010	"P-46"[29]	11/8/2012	"P-73"[30]
Nov 2010	12/22/2010	"P-47"[31]	11/8/2012	"P-74"[32]
4th Q 2010	1/24/2011	"P-48"[33]	11/15/2012	"P-75"[34]
Jan 2011	2/23/2011	"P-49"[35]	11/20/2012	"P-76"[36]
Feb 2011	3/21/2011	"P-50"[37]	11/20/2012	"P-77"[38]
1st Q 2011	4/25/2011	"P-51"[39]	11/20/2012	"P-78"[40]
July 2011	8/24/2011	"P-52"[41]	11/21/2012	"P-79"[42]
August 2011	9/22/2011	"P-53"[43]	-	-
3rd Q 2011	10/24/2011	"P-54"[44]	11/28/2012	"P-80"[45]
Oct 2011	11/23/2011	"P-55"[46]	11/21/2012	"P-81"[47]
Nov 2011	12/26/2011	"P-56"[48]	-	-
4th Q 2011	1/25/2012	"P-57"[49]	1/25/2012	"P-82"[50]
Jan 2012	2/21/2012	"P-58"[51]	-	-
Feb 2012	3/26/2012	"P-59"[52]	-	-
1st Q 2012	4/25/2012	"P-60"[53]	11/22/2012	"P-83"[54]

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23 *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5,* pp. 2858-2862, with alphalists.
24 *Id.*, pp. 2960-2965, with alphalists.
25 *Id.*, pp. 2868-2865, with alphalists.
26 *Id.*, pp. 2966-2970, with alphalists.
27 *Id.*, pp. 2868-2872, with alphalists.
28 *Id.*, pp. 2971-2976.
29 *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5,* pp. 2873-2877, with alphalists.
30 *Id.*, pp. 2977-2982, with alphalists.
31 *Id.*, pp. 2878-2882, with alphalists.
32 *Id.*, pp. 2983-2988, with alphalists.
33 *Id.*, pp. 2883-2887, with alphalists.
34 *Id.*, pp. 2989-2994, with alphalists.
35 *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5,* pp. 2888-2892, with alphalists.
36 *Id.*, pp. 2995-3000, with alphalists.
37 *Id.*, pp. 2893-2897, with alphalists.
38 *Id.*, pp. 3001-3006, with alphalists.
39 *Id.*, pp. 2898-2902, with alphalists.
40 *Id.*, pp. 3007-3012, with alphalists.
41 *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5,* pp. 2903-2907, with alphalists.
42 *Id.*, pp. 3013-3018, with alphalists.
43 *Id.*, pp. 2908-2913, with alphalists and eFPS payment details.
44 *Id.*, pp. 2914-2918, with alphalists.
45 *Id.*, pp. 3019-3024, with alphalists.
46 *Id.*, pp. 2919-2924, with alphalists and eFPS payment details.
47 *Id., CTA Case Nos. 8563, 8594 and 8674,* pp. 3025-3030, with alphalists.
48 *Id.*, pp. 2925-2930, with alphalists.
49 *Id.*, pp. 2931-2935, with alphalists.
50 *Id.*, pp. 3031-3035, with alphalists.
51 *Id.*, pp. 2936-2940, with alphalists.
52 *Id.*, pp. 2941-2945, with alphalists.
53 *Id., CTA Case Nos. 8563, 8594 and 8674, Vol. 5,* pp. 2946-2950, with alphalists.
54 *Id.*, pp. 3036-3042, with alphalists.

CTA Case No. 8563 (3rd Quarter of 2010)

On October 24, 2012, the BIR- Large Taxpayers Service, received petitioner's letter application for a claim for tax refund[55], of 12% output VAT on gross receipts for services rendered outside the Philippines for July and September 2010, that was erroneously paid and remitted to the BIR, together with the Application for Tax Credits/Refunds (BIR Form No. 1914)[56], amounting to Two Million Seven Hundred Eighty One Thousand Seven Hundred Ninety Six and 54/100 Pesos (Php2,781,796.54).

On October 25, 2012, petitioner filed a Petition for Review[57], docketed as CTA Case No. 8563, which was raffled to the Court's 3rd Division.

On November 15, 2012, the 3rd Division issued a Summons[58], requiring respondent to file her Answer to the Petition for Review.

On January 15, 2013, respondent filed her Answer to the Petition for Review,[59] raising the following Special and Affirmative Defenses:[60]

SPECIAL AND AFFIRMATIVE DEFENSES

> Respondent incorporates and repleads all the foregoing averments and in further support of the Specific Denials herein set forth, respondent CIR respectfully alleges as her defense that:
>
> **The burden of proof is on the taxpayer to establish its right to a refund, and failure to sustain the burden is fatal to the claim for refund.**

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[55] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibit* "P-231," Administrative Claim for Refund dated October 24, 2012, pp. 3553-3559, with annex.
[56] *Id., Exhibit* "P-232," BIR Form No. 1914, p. 3560.
[57] *Id., CTA Case Nos. 8563, 8594 and 8674, Vol. 1,* pp. 7-96, with annexes.
[58] *Id.,* p. 97.
[59] *Id., Answer,* pp. 106-119.
[60] Emphases retained.

1. It must be stressed right off that taxes remitted to the [BIR] are presumed to have been made in the regular course of business and in accordance with provisions of law.

2. As a matter of course, a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the Government. Pending the closure of this investigation, no grant of refund may be given to petitioner based on the filed claim, it has been held by the Supreme Court that a claim for refund is not *ipso facto* granted because the [CIR] still has to investigate and ascertain the veracity of the claim.

3. The amount of Two Million Seven Hundred Eighty One Thousand Seven Hundred Ninety Six Pesos and 54/100 ([Php]2,781,796.54) being claimed by petitioner as alleged erroneously paid output taxes on VAT-exempt sale of services for the taxable period July 1, 2010 to September 30, 2010 is not properly documented.

4. Petitioner failed to submit compete documents to support its application for refund. In a case for refund, the taxpayer must prove compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order (RMO) No. 53-98, <u>otherwise there would be no sufficient compliance with the filing of an administrative claim for refund, the administrative claim thereof being merely pro-forma.</u>

5. **Revenue Memorandum Order ["RMO"] No. 53-98** was issued to identify the documents required from a taxpayer during audit of the application for refund.

xxx xxx xxx

6. In **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526 promulgated on March 26, 2007** the Honorable Supreme Court held:

> "Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceeding in that court. 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 quasi-judicial agency a quo did not have reason to deny its claim. **In this case, it is necessary for petitioner to show the CTA not only that it was entitled under substantive law to grant of its claim but also that it satisfied all the documentary evidence and evidentiary requirements for administrative claim for refund or tax credits.** Xxx" (Emphases Supplied)

7. It cannot be emphasized enough that mere filing of an administrative claim for refund without submitting the complete documents in support of the application thereof is not conclusive to sustain its contention that it has the right to claim for refund.

8. Basic as it is, claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and are therefore held against the claimant.

9. Here, petitioner failed to substantiate its claim for refund and failed to submit the required documents to prove its entitlement thereto. Hence, the petition must fail.

Petitioner's claim for refund is filed out of time[.]

10. Even assuming arguendo but without conceding that payments received by petitioner relating to services contemplated under the offshore portion is not subject to VAT, still, the petition must fail.

11. Section 112(A) of the NIRC explicitly reads:

> "(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: x x x." (Emphases Supplied)

12. In **CIR vs. MIRANT PAGBILAO CORPORATION (Formerly SOUTHERN ENERGY**

QUEZON, INC.), G.R. No. 172129, September 12, 2008, the Honorable Supreme Court held:

> "xxx As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112(A), "[p]rescriptive period commences from the close of the taxable quarter when the sales where made and not from the time the input VAT was paid nor from the time the official receipt was issued." Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardeless when the input VAT was paid.** Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996, or to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed." (Emphasis Supplied)

13. Here, the petition must have been filed on or before 30 September 2012. Unfortunately, it was filed only on 25 October 2012.

Claims for tax exemption must be justified by the clearest grant of law[.]

14. Exemptions are never presumed, the burden is upon the claimant to establish his right to exemption beyond reasonable doubt.

15. Petitioner, for all its harping upon the supposed fact that it is exempt from VAT had seemingly failed to justify its alleged exemption by the clearest grant of law. As stated by the Honorable Supreme Court:

> "Considering that it is a governing principle in taxation that tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and **one who claims an exemption must be able to justify the same by the clearest grant of organic or statute law.** An

exemption from the common burden cannot be permitted to exist upon vague implications[.]" (Emphasis Supplied)

16. Again, in **The City of Iloilo, Mr. Romeo V. Manikan, in his capacity as the treasurer of Iloilo City, GR No. 167260, February 27, 2009,** the Highest Tribunal reiterated:

> "The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and **he who claims an exemption from the common burden, must justify his claim by the clearest grant of organic or statute law xxx When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it.** A Well-founded doubt is fatal to the claim; it is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported." (Emphasis Supplied)

17. Well to consider that Section 109, Republic Act 8424 clearly enumerates the transactions exempted from VAT. The services claimed by petitioner as tax-exempt do not fall within the exemptions.

18. Further, the BIR Rulings cited by petitioner cannot and should not be made applicable in its case. Verily, BIR Rulings are based only on a set of facts represented by a taxpayer, and made exclusively applicable only to the facts and circumstances thereto.

19. It is said that taxes are essential to government's very existence hence, the dictum that "taxes are the lifeblood of the government." And because taxes are the lifeblood of the nation, the court always applied the doctrine of strict interpretation in construing tax exemptions. <u>A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.</u>

20. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

> 21. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.
>
> 22. Here, petitioner failed to discharge the burden that it is indeed VAT-exempt. Hence, its claim for refund must fail.

On April 23, 2013, petitioner filed its Motion to Consolidate and to Defer the Pre-trial Conference[61] ("Motion to Consolidate") praying that CTA Case No. 8594 be consolidated with CTA Case No. 8563, since the cases involve the same parties and affect closely related subject matters, which was granted by the Court in a Resolution[62] dated May 24, 2013.

CTA Case No. 8594 (4th Quarter of 2010; 1st Quarter of 2011)

On December 20, 2012, BIR Large Taxpayers Service received petitioner's letter-application for tax refund,[63] together with BIR Form No. 1914[64], for the refund of 12% output VAT on gross receipts for services rendered outside the Philippines erroneously paid and remitted to the BIR for the 4th Quarter of 2010, 1st, 3rd, and 4th Quarters of 2011, and 1st Quarter of 2012, amounting to Fifty Two Million Four Hundred Ninety Three Thousand One Hundred Sixty Two and 17/100 Pesos (Php52,493,162.17).

On December 26, 2012, petitioner filed a Petition for Review[65], docketed as CTA Case No. 8594, which was raffled to the Court's 1st Division.

On January 16, 2013, the Court issued a Summons[66] addressed to the CIR, ordering her to file her Answer, not a Motion to Dismiss within the time provided.

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[61] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 1,* pp. 460-469.
[62] *Id.,* pp. 475-476.
[63] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibit* "P-234," Administrative Claim for Refund dated December 20, 2012, pp. 3544-3550, with annex.
[64] *Id., Exhibit* "P-235," BIR Form No. 1914, p. 3550.
[65] *Records, CTA Case No. 8594,* pp. 8-186, with annexes.
[66] *Records, CTA Case No. 8594,* p. 187.

On April 5, 2013, respondent filed a Motion for Leave to File and Admit Attached Answer[67], which was granted by the Court through its Resolution[68] dated April 10, 2013. Thus, respondent's Answer contains the following special and affirmative defenses:[69]

SPECIAL AND AFFIRMATIVE DEFENSES

Respondent incorporates and repleads all the foregoing averments and in further support of the Specific Denials herein set forth, respondent CIR respectfully alleges as her defense that:

The burden of proof is on the taxpayer to establish its right to a refund, and failure to sustain the burden is fatal to the claim for refund.

4. It must be stressed right off that taxes remitted to the [BIR] are presumed to have been made in the regular course of business and in accordance with provisions of law.

5. As a matter of course, a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the Government. Pending the closure of this investigation, no grant of refund may be given to petitioner based on the field claim, it has been held by the Supreme Court that a claim for refund is not *ipso facto* granted because the [CIR] still has to investigate and ascertain the veracity of the claim.

6. The amount of Fifty Million Nine Hundred Thousand Five Hundred Ten Pesos and 66/100 ([Php]50,900,510.66) being claimed by petitioner as alleged erroneously paid output taxes on VAT-exempt sale of services for the taxable periods 4th Quarter of taxable year 2010 and 1st Quarter of taxable year 2011 is not properly documented.

7. Petitioner failed to submit compete documents to support its application for refund. In a case for refund, the taxpayer must prove compliance with the prescribed checklist of requirements to be submitted involving claims for VAT

[67] *Records, CTA Case No. 8594,* pp. 194-213, with annex.
[68] *Id.,* p. 214.
[69] Emphases retained.

refund pursuant to Revenue Memorandum Order (RMO) No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative claim for refund, the administrative claim thereof being merely pro-forma.

8. **[RMO] No. 53-98** was issued to identify the documents required from a taxpayer during audit of the application for refund. For [VAT], the specific documents that need to be submitted are as follows:

xxx xxx xxx

9. In **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526 promulgated on March 26, 2007** the Honorable Supreme Court held:

> "Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceeding in that court. 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 quasi-judicial agency a quo did not have reason to deny its claim. **In this case, it is necessary for petitioner to show the CTA not only that it was entitled under substantive law to grant of its claim but also that it satisfied all the documentary evidence and evidentiary requirements for administrative claim for refund or tax credits.** xxx" (Emphases Supplied)

10. It cannot be emphasized enough that mere filing of an administrative claim for refund without submitting the complete documents in support of the application thereof is not conclusive to sustain its contention that it has the right to claim for refund.

11. Basic as it is, claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and are therefore held against the claimant.

12. Here, petitioner failed to substantiate its claim for refund and failed to submit the required documents to prove its entitlement thereto. Hence, the petition must fail.

Claims for tax exemption must be justified by the clearest grant of law[.]

13. Exemptions are never presumed, the burden is upon the claimant to establish his right to exemption beyond reasonable doubt.

14. Petitioner, for all its harping upon the supposed fact that it is exempt from VAT had seemingly failed to justify its alleged exemption by the clearest grant of law. As stated by the Honorable Supreme Court:

> "Considering that it is a governing principle in taxation that tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and **one who claims an exemption must be able to justify the same by the clearest grant of organic or statute law.** An exemption from the common burden cannot be permitted to exist upon vague implications." (Emphasis Supplied)

15. Again, in **The City of Iloilo, Mr. Romeo V. Manikan, in his capacity as the treasurer of Iloilo City, GR No. 167260, February 27, 2009,** the Highest Tribunal reiterated:

> "The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and **he who claims an exemption from the common burden, must justify his claim by the clearest grant of organic or statute law xxx. When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it.** A well-founded doubt is fatal to the claim; it is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported." (Emphasis Supplied)

16. Well to consider that, Section 109, Republic Act 8424 clearly enumerates the transactions exempted from VAT. The services claimed by petitioner as tax-exempt do not fall within the exemptions.

17. Further, the BIR Rulings cited by petitioner cannot and should not be made applicable in its case. Verily, BIR Rulings are based only on a set of facts represented by a taxpayer, and made exclusively applicable only to the facts and circumstances thereto.

18. It is said that taxes are essential to government's very existence hence, the dictum that "taxes are the lifeblood of the government." And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.

19. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are construed as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

20. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

21. Here, petitioner failed to discharge the burden that it is indeed VAT-exempt. Hence, its claim for refund must fail.

On April 23, 2013, petitioner filed a Motion to Consolidate and to Defer the Pre-Trial Conference[70], stating that CTA Case Nos. 8563 and 8594 involve the same parties and affect closely related subject matters, hence, the two (2) cases must be consolidated and jointly tried in order to serve the best interests of the parties, and to expeditiously settle the issues involved. The Motion was granted by the Court in a Resolution[71] dated April 30, 2013.

[70] *Records, CTA Case No. 8594*, pp. 217-226.
[71] *Id.*, p. 228.

CTA Case No. 8674 (3rd and 4th Quarters of 2011; 1st Quarter of 2012)

On July 15, 2013, petitioner filed a Petition for Review[72] for claim for refund of erroneously paid output taxes on VAT-exempt sale/supply of equipment for the taxable periods 3rd Quarter (July) 2011, 4th Quarter (October) 2011, and 1st Quarter (March) 2012, docketed as CTA Case No. 8674, and was raffled to the Court's 2nd Division. The corresponding Summons[73] was issued on July 17, 2013.

On August 7, 2013, petitioner filed a Motion to Consolidate and to Defer the Presentation of Witnesses[74], praying that CTA Case No. 8674 be consolidated with the consolidated cases of CTA Case Nos. 8563 and 8594, since the cases involve the same parties and affect closely related subject matters.

On August 30, 2013, there being no objection on the part of the respondent for the consolidation of CTA Case No. 8674 with CTA Case Nos. 8563 and 8594, the Court issued a Resolution[75] granting petitioner's Motion to Consolidate.

On October 2, 2013, respondent filed her Answer[76] by registered mail in CTA Case No. 8674, which, except for the amount involved, contains the same arguments raised in her Answer in CTA Case No. 8594.

Consolidated CTA Case Nos. 8563, 8594 and 8674

On December 3, 2013 and December 4, 2013, petitioner and respondent filed their Consolidated Pre-trial Brief[77] and Pre-trial Brief attached to her Motion for Leave to Admit Attached[78], respectively.

On February 4, 2014, the parties filed their Consolidated Joint Stipulation of Facts and Issues.[79]

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[72] *Records, CTA Case No. 8674*, pp. 6-155, with annexes.
[73] *Id.*, p. 156.
[74] *Id.*, pp. 163-171.
[75] *Id.*, p. 183.
[76] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 2*, pp. 1128-1142.
[77] *Id., Vol. 3, Consolidated Pre-Trial Brief*, pp. 1628-1661.
[78] *Id., Vol. 5*, pp. 2568-2574-a.
[79] *Id.*, pp. 2621-2634.

On February 24, 2014, the Court issued a Pre-trial Order.[80]

On March 10, 2014, petitioner filed a Motion to Amend Pre-trial Order[81] and a Manifestation/Comment[82]. The former was granted by the Court in its May 2, 2014 Resolution[83], thereby making the necessary changes to the Pre-trial Order dated February 24, 2014.

On July 24, 2014 and August 1, 2014, petitioner filed its Formal Offer of Exhibits ("FOE") with Manifestation[84] and its Supplemental FOE[85], respectively; which were both resolved by the Court in its October 10, 2014 Resolution[86].

On October 30, 2014, petitioner filed a Motion for Reconsideration[87] of the October 10, 2014 Resolution, which was resolved by the Court in its Resolution[88] dated January 20, 2015.

During the hearing on March 24, 2015,[89] respondent manifested that she has no evidence to present, thereafter, the Court granted the parties thirty (30) days or until April 23, 2015 to simultaneously file their respective memoranda, and this was confirmed by the Court in its Resolution[90] dated April 1, 2015.

On April 23, 2015, petitioner filed its Memorandum[91], while respondent filed a Manifestation[92] on May 27, 2015, stating that she is adopting the arguments she raised in her Answers as her Memorandum.

On May 29, 2015, the Court resolved[93] to submit the case for decision, hence, this Decision.

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[80] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5,* pp. 2668-2675.
[81] *Id.,* pp. 2684-2687.
[82] *Id.,* pp. 2688-2691.
[83] *Id.,* pp. 2761-2763.
[84] *Id.,* pp. 2776-2831.
[85] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 6,* pp. 3687-3705.
[86] *Id.,* pp. 3798-3800.
[87] *Id.,* pp. 3801-3806.
[88] *Id.,* pp. 3810-3811.
[89] *Id., Minutes of Meeting,* March 24, 2015, p. 3819.
[90] *Id.,* p. 3821.
[91] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 6,* pp. 3822-3851.
[92] *Id.,* pp. 3854-3856.
[93] *Id.,* p. 3858.

The Issues[94]

For the Court's resolution are the following issues:

1. WHETHER THE PORTION OF THE WORKS RENDERED BY PETITIONER TO NGCP IS EXEMPT FROM VAT;

2. WHETHER THE 12% OUTPUT VAT ON SUCH PORTION OF THE WORKS RENDERED TO NGCP, CONSTITUTE ERRONEOUSLY PAID TAX UNDER SECTION 229 OF THE 1997 NIRC, AS AMENDED;

3. WHETHER PETITIONER IS ENTITLED TO A REFUND OF THE 12% OUTPUT VAT IN THE TOTAL AMOUNT OF FIFTY FIVE MILLION TWO HUNDRED SEVENTY FOUR THOUSAND NINE HUNDRED FIFTY EIGHT AND 71/100 PESOS (PHP55,274,958.71), WHICH CAN BE BROKEN DOWN AS TWO MILLION SEVEN HUNDRED EIGHTY ONE THOUSAND SEVEN HUNDRED NINETY SIX AND 54/100 PESOS (PHP2,781,796.54) FOR THE 3RD QUARTER OF TAXABLE YEAR 2010, FIFTY MILLION NINE HUNDRED THOUSAND FIVE HUNDRED TEN AND 66/100 PESOS (PHP50,900,510.66) FOR THE PERIODS 4TH QUARTER OF THE TAXABLE YEAR 2010 AND 1ST QUARTER OF TAXABLE YEAR 2011, AND ONE MILLION FIVE HUNDRED NINETY TWO THOUSAND SIX HUNDRED FIFTY ONE AND 51/100 (PHP1,592,651.51) FOR THE PERIODS 3RD AND 4TH QUARTERS OF TAXABLE YEAR 2011 AND 1ST QUARTER OF TAXABLE YEAR 2012; AND

4. WHETHER THE HONORABLE COURT HAS JURISDICTION OVER THE CASE.

Petitioner's Arguments

Petitioner alleges that the Court has jurisdiction over the instant consolidated cases, and that it has complied with all the administrative requirements for the filing of a claim for refund of erroneously paid taxes under *Section 229 of the 1997 National Internal Revenue Code ("NIRC")*, as amended.

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[94] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Pre-Trial Order*, p. 2669.

It argues that the offshore portion of the amount invoiced to NGCP in the Wright-Calbayog and New Naga Projects are VAT exempt pursuant to *Section 108(A) of the 1997 NIRC,* as amended; that VAT is not imposed on services performed outside the Philippines; that the BIR, in its previous rulings, has used the *Marubeni* case as basis in the exemption of offshore services in a turnkey contract from payment of VAT; that in the case of services, the rule is consumption takes place where the service is performed, following the "situs-of-service principle;" that the VAT attributed to the offshore portion of the contracts with NGCP were reported in the Monthly and Quarterly VAT returns of petitioner and that the same were remitted to the BIR *via* Electronic Filing and Payment System ("EFPS"); that it filed its amended monthly and quarterly VAT returns for the 3rd and 4th Quarters of 2010, 1st, 3rd, and 4th Quarters of 2011, and 1st Quarter of 2012, to establish that there was an overpayment of VAT; and that NGCP is a VAT exempt entity pursuant to *Section 9 of RA No. 9511*[95].

Respondent's Counter-Arguments

Respondent counter-argues that a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the Government; that petitioner failed to submit compete documents to support its application for refund; that it must prove compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to *RMO No. 53-98;* that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and are therefore held against the claimant; that CTA Case No. 8563 is filed out of time pursuant to *Section 112(A) of the 1997 NIRC,* as amended, it should have been filed by September 30, 2012; and that exemptions are never presumed, the burden is upon the claimant to establish his right to exemption beyond reasonable doubt.

Moreover, she argues that a claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken; that tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption; and that in an action for refund, the burden of proof is on the taxpayer who claims the exemption.

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[95] An Act Granting the National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-Bone System of Interconnected Transmission Lines, Substations and Related Facilities, and for Other Purposes.

The Ruling of the Court

The issues can be summarized as follows:

1. WHETHER THE CTA HAS JURISDICTION OVER THE INSTANT PETITION; AND

2. WHETHER PETITIONER IS ENTITLED TO A REFUND OF ERRONEOUSLY PAID VAT FOR THE OFFSHORE COMPONENT/S OF ITS CONTRACTS WITH NGCP.

The Court has jurisdiction over the instant consolidated cases.

Respondent maintains that petitioner's claim should be denied on the basis of *Section 112*[96] *of the 1997 NIRC*, as amended.

The Court does not agree. *Section 112 of the 1997 NIRC*, as amended, pertains to refunds or tax credits of input tax, which is not the issue in this case. Petitioner is seeking refund of erroneously paid VAT for the offshore component of its contract with NGCP. What applies in these cases, as petitioner claims, are *Sections 204(C) and 229 of the 1997 NIRC*, as amended, which provide as follows:

> *Sec. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. – The Commissioner may –*
>
> xxx xxx xxx

[96] *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 of 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. *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. xxx

> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided,* however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> xxx xxx xxx
>
> *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, until a claim for refund or credit has been duly filed with the Commissioner; 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, 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: 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.

It is clear, therefore, that a taxpayer who claims for refund under *Section 229 of the 1997 NIRC,* as amended, on the ground of erroneous payment must be able to prove that it has paid the tax and such payment was erroneous.[97] It is also clear that the taxpayer must prove that a written claim for the refund or credit thereof was duly filed with the CIR, and that the suit or proceeding was instituted within two (2) years from the date of payment of the tax or penalty.

[97] *Commissioner of Internal Revenue v. Ericsson Telecommunications, Inc.* CTA *EB* Case No. 947, September 12, 2013.

The Court will first discuss the timeliness of the administrative and judicial claims in order to settle the issue on jurisdiction.

For VAT-registered taxpayers, VAT is paid on a monthly basis per *Section 114(A) of the 1997 NIRC,* as amended:[98]

> SECTION 114. *Return and Payment of Value-added Tax.-*
>
> (A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of [his/her] gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

To emphasize, when the tax sought to be refunded is illegally or erroneously collected, the period of prescription starts from the date the tax was paid.[99] In this case, it is on a monthly basis. As culled from the records, the following are the pertinent dates:[100]

CTA Case No.	Period	Date of Payment	Exhibit	Date of filing Admin claim for refund	Date of filing judicial claim for refund	Last Day to File Claims
8563	Jul-10	8/24/2010	"P-61"[101]	10/24/2012[102]	10/25/2012[103]	8/24/2012
	Aug-10	9/27/2010	"P-62"[104]			9/27/2012
	3rd Q 2010	10/25/2010	"P-63"[105]			10/25/2012
8594	Oct-10	11/22/2010	"P-64"[106]	12/20/2012[107]	12/26/2012[108]	11/22/2012
	Nov-10	12/22/2010	"P-65"[109]			12/22/2012
	4th Q 2010	1/24/2011	"P-66"[110]			1/24/2013
	Jan-11	2/23/2011	"P-67"[111]			2/23/2013

[98] Underscoring ours.

[99] *Commissioner of Internal Revenue v. Insular Lumber Company and Court of Tax Appeals,* G.R. No. L-24221, December 11, 1967, 21 SCRA 1237. This case applied *Sections 306* (now *Section 229*) and *309* (now *Section 204*) of the old *National Internal Revenue Code.*

[100] In CTA Case No. 8674 covering the refunds relating to the Third and Fourth Quarters of 2011 and the First Quarter of 2012, petitioner specifically provided its claims on a monthly basis, hence, the table only includes the months covered by its claim, *i.e.* July 2011, October 2011 and March 2012, see *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibit* "P-234," p. 3545.

[101] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5,* p. 2951.

[102] *Id., Exhibit* "P-231," pp. 3553-3559 and *Exhibit* "P-232," p. 3560.

[103] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 1,* pp. 7-96, with annexes.

[104] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5,* p. 2952.

[105] *Id.,* p. 2953.

[106] *Id.,* p. 2954.

[107] *Id., Exhibit* "P-234," pp. 3544-3549.

[108] *Records, CTA Case No. 8594,* pp. 8-191, with annexes.

[109] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5,* p. 2955.

[110] *Id.,* p. 2956.

[111] *Id.,* p. 2957.

	Feb-11	3/21/2011	"P-68"[112]			3/21/2013
	1st Q 2011	4/25/2011	"P-69"[113]			4/25/2013
	Jul-11	N/A[114]	"P-52"[115]			N/A
	Oct-11	11/23/2011	"P-55"[116]			11/23/2013
8674	1st Q 2012	N/A[117]	"P-60"[118]	12/20/2012[119]	7/15/2013[120]	N/A

As shown on the table above, the claims relating to taxable months of July, August, October and November 2010 have prescribed for having been filed beyond the prescriptive period of two (2) years from their respective dates of payment.

A perusal of the Monthly and Quarterly VAT returns submitted by petitioner, reveal that for the months of July 2011 and March 2012, petitioner made no payments. Since petitioner is claiming refund for erroneously paid VAT, it must establish that it actually paid the VAT for the period. A basic principle is that when money is paid to another under the influence of a mistake of fact, it may be recovered in fact,[121] hence, if no payment was made, it follows that there is no right to seek refund. Thus, petitioner's claim for the aforementioned months must necessarily fail for being without basis.

From the foregoing, the administrative and judicial claims for refund relating to the following periods were filed on time, thus giving the Court jurisdiction over the case.

1. September 2010
2. December 2010
3. January 2011
4. February 2011
5. March 2011
6. October 2011

Having determined compliance with the second and third requisites of the remaining claims, the Court will now proceed to the first requisite.

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[112] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5,* p. 2958.
[113] *Id.,* p. 2959.
[114] VAT overpayment.
[115] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5,* pp. 2903-2907, with alphalists.
[116] *Id.,* p. 2924.
[117] VAT overpayment.
[118] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5,* pp. 2946-2950, with alphalists.
[119] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 6, Exhibit* "P-234," pp. 3653-3679.
[120] *Records, CTA Case No. 8674,* pp. 6-155, with annexes.
[121] *UST Cooperative Store v. City of Manila, et al.,* G.R. No. L-17133, December 31, 1965, 15 SCRA 656.

Petitioner is entitled to refund of erroneously paid VAT for the months of September and December 2010, January, February, March, and October 2011, having complied with the requisites for erroneously paid taxes under *Section 229 of the 1997 NIRC.*

Petitioner anchors its claims for the refund of erroneously paid VAT on the offshore component of its Contracts with NGCP. As previously discussed, *Section 229 of the 1997 NIRC,* as amended, provides that in order for a taxpayer to be entitled to a tax refund or tax credit, it must likewise establish that the taxes paid were illegally or erroneously collected.

To prove that part of the services it rendered to NGCP were subcontracted to foreign contractors, Mr. Ramos testified by way of Judicial Affidavit[122] that the Contracts[123] between petitioner and NGCP are both on a "turnkey basis;" that in order to comply with its obligation under the Contracts, petitioner subcontracted specific segments of the project to foreign subcontractors; the offshore portion of the contract consists of works related to the design, engineering, fabrication, manufacture and supply of imported equipment.

In order to support its claim that the contract has an offshore component that was subcontracted to foreign subcontractors that are not engaged in trade or business in the Philippines, petitioner presented the respective *Annex* "A"[124] of each Project[125] and the Certificates of Non-registration of Company[126] issued by the SEC.

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[122] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 6, Exhibit* "P-239," Judicial Affidavit in Lieu of Direct Testimony, pp. 3624-3650.

[123] The Wright-Calbayog Project, which was executed solely between petitioner and NGCP; and The New Naga Project, which was entered into by the unregistered JV of ABB-AER Construction and Development and NGCP.

[124] Contains the list of the equipment that will be sourced from outside the country together with the countries of origin.

[125] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 6, Exhibit* "P-196," Annex "A" of the New Naga Project, pp. 3336-3354.

[126] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 6, Exhibits* "P-198" to "P-224," Certification of Non-registration of Company, pp. 3386-3412.

Petitioner also submitted the Purchase Orders[127] provided to its foreign subcontractors with the corresponding specifications that will be needed for the New Naga Project and the Wright Calbayog Project.

It is worthwhile to note at this point, that what petitioner ordered from its foreign subcontractors is not the delivery of common goods that are readily available, but rather, the purchase orders are so specific that it has to be tailor-fitted for the projects, in other words, petitioner entered into "contract for a piece of work."

Under *Article 1467*[128] *of the Civil Code of the Philippines* there is contract for a piece of work if the goods are to be manufactured especially for the customer and upon his special order and not for the general market. Thus, as in the case at bar, petitioner subcontracted the design, engineering, fabrication, manufacture and supply of imported equipment to its foreign subcontractors, providing them with the exact specifications that will be needed for the two Projects. In other words, the materials and equipment were specially designed, built and manufactured for petitioner, thus, what the foreign subcontractors actually sold to petitioner are not merely goods, but rather, it undertook to perform services in order to meet the demands of petitioner.

Anent the question if the services rendered are subject to VAT, the case of *Commissioner of Internal Revenue v. Marubeni Corporation*[129] is instructive on the matter, wherein the Supreme Court held that:[130]

> Clearly, the service of design and engineering, supply and delivery, construction, erection and installation, supervision, direction and control of testing and commissioning, coordination of the two projects involved two taxing jurisdictions. These acts occurred in two countries Japan and the Philippines. While the construction and installation work were completed within the Philippines, the evidence is clear that some pieces of equipment and supplies were completely designed and engineered in Japan. The two

[127] *Id., Exhibits* "P-84" to "P-113," Purchase Order, pp. 3043-3162.
[128] *Article 1467.* A contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order and not for the general market, it is a contract for a piece of work. (underscoring ours)
[129] G.R. No.137377, December 18, 2001, 372 SCRA 576.
[130] Underscoring ours.

> sets of ship unloader and loader, the boats and mobile equipment for the NDC project and the ammonia storage tanks and refrigeration units were made and completed in Japan. They were already finished products when shipped to the Philippines. The other construction supplies listed under the Offshore Portion such as the steel sheets, pipes and structures, electrical and instrumental apparatus, these were not finished products when shipped to the Philippines. They, however, were likewise fabricated and manufactured by the sub-contractors in Japan. All services for the design, fabrication, engineering and manufacture of the materials and equipment under Japanese Yen Portion I were made and completed in Japan. These services were rendered outside the taxing jurisdiction of the Philippines and are therefore not subject to contractors tax.

While the afore-quoted case speaks of contractor's tax, the Court deems it applicable to the instant case. *Section 108*[131] *of the 1997 NIRC*, as amended, provides that the phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration.

The VAT is a tax on consumption expressed as a percentage of the value added to goods or services purchased by the producer or taxpayer.[132] Consumption is the use of a thing in a way that thereby exhausts it. Applied to services, the term means the performance or

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[131] SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —

(A) Rate and Base of Tax. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts, derived from the sale or exchange of services, including the use or lease of properties: *Provided*, That the president, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of VAT to twelve percent (12%), xxx

The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include: xxx

[132] *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005, 462 SCRA 197.

successful completion of a contractual duty, usually resulting in the performer's release from any past or future liability.[133]

As an indirect tax on services, its main object is the transaction itself or, more concretely, the performance of all kinds of services conducted in the course of trade or business in the Philippines. Hence, for an activity to be taxable, it is not the residence of the payor, or the place where the contract for service is entered into, or the place of payment, but the place where the services were actually rendered.[134]

Applying this to the instant case, the materials and equipment listed in the offshore component of the contracts for the New Naga and Wright Calbayog Projects were designed, built and fabricated abroad. Clearly then, the services were consummated abroad, hence, beyond the taxing jurisdiction of the BIR.

According to petitioner only the gross receipts for services performed in the Philippines should be subject to VAT and that services rendered and performed by petitioner to NGCP outside the Philippines is not subject to VAT. However, petitioner erroneously paid the VAT for the offshore component of the contract.

Ms. Bautista testified by Judicial Affidavit,[135] that petitioner billed NGCP and included in its billing are the 12% VAT, however, NGCP, being a tax-exempt entity, never paid the said VAT component of the billing, despite this, petitioner issued original invoices[136] and official receipts[137] to NGCP reflecting vatable sales for all its onshore and offshore services. After realizing its mistake, petitioner cancelled the said original invoices and official receipts and subsequently replaced it with amended invoices[138] and amended official receipts[139] reflecting the amount of offshore services as exempt sales. Petitioner also amended the affected Monthly VAT Declarations and Quarterly VAT Returns and paid to the BIR the 12%

[133] *Id.*

[134] *Commissioner of Internal Revenue v. Juliane Baier-Nickel, as represented by Marina Q. Guzman (Attorney-in-fact),* G.R. No. 153793, August 29, 2006, 500 SCRA 87.

[135] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 6, Exhibit* "P-238," Judicial Affidavit in Lieu of Direct Testimony pp. 3604-3623.

[136] *Id., Exhibits* "P-4" to "P-16," Invoice, pp. 3706-3780.

[137] *Records, CTA Case Nos. 8563, 8594 and 8674,* Vol. 5, *Exhibits* "P-17" to "P-18," Official Receipt, pp. 2854-2855.

[138] *Records, CTA Case Nos. 8563, 8594 and 8674,* Vol. 6, *Exhibits* "P-19" to "P-34," pp. 3731-3746.

[139] *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibits* "P-35" and "P-36," pp. 2856-2857; *Vol. 6, Exhibits* "P-37" to "P-42," pp. 3747-3752.

VAT erroneously imposed on the offshore portion of the transaction. To prove its payment, petitioner presented the eFPS Payment Details[140] for the periods subject of its claims.

On the other hand, respondent maintains that petitioner is not entitled to such refund for having failed to comply with the checklist of requirements under *RMO No. 53-98*.

The Court does not agree with respondent. A reading of the above-cited *Section 229 of the 1997 NIRC*, as amended, reveals that it does not require compliance with the invoicing requirements before a taxpayer can claim a refund of erroneously paid tax. Petitioner only needs to prove actual payment of the tax that is being claimed; that the claim for refund was filed before the BIR; and that both the administrative and judicial claims for refund must have been filed within the two (2)-year prescriptive period. Thus, it is of no moment that petitioner failed to comply with the invoicing requirement under *Section 113 of the NIRC of 1997*.[141]

Records show that petitioner filed through eFPS its Monthly VAT Declarations and Quarterly VAT Returns on the said periods and paid the same electronically as reflected in its original returns of the stated period, as follows:[142]

CTA Case No.	Period	Amount Paid	Status	eFPS Reference
8563	July 2010	2,072,219.21	Prescribed	*Exhibit* "P-61"
8563	August 2010	195,592.56	Prescribed	*Exhibit* "P-62"
8563	September 2010	2,099,345.50	Valid	*Exhibit* "P-63"
8594	October 2010	10,559,236.04	Prescribed	*Exhibit* "P-64"
8594	November 2010	11,371,840.25	Prescribed	*Exhibit* "P-65"
8594	December 2010	23,535,566.10	Valid	*Exhibit* "P-66"
8594	January 2011	15,159,447.11	Valid	*Exhibit* "P-67"
8594	February 2011	13,001,306.74	Valid	*Exhibit* "P-68"
8594	March 2011	3,019,922.24	Valid	*Exhibit* "P-69"
8674	July 2011	0	No Payment	N/A
8674	October 2011	961,707.19	Valid	*Exhibit* "P-55"
8674	March 2012	0	No Payment	N/A

140 *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibit* "P-52," p. 2905; *Exhibit* "P-55," p. 2921; *Exhibits* "P-61" to "P-69," pp. 2951-2959.

141 *Commissioner of Internal Revenue v. Ericsson Telecommunications, Inc.*, CTA *EB* Case No. 947, September 12, 2013.

142 *Records, CTA Case Nos. 8563, 8594 and 8674, Vol. 5, Exhibit* "P-55," eFPS Payment Details, p. 2921; *Exhibits* "P-61" to "P-69," eFPS Payment Details, pp. 2951-2959.

Records disclose that petitioner made an overpayment of Php719,290.02[143] for the month of September and Php19,887,922.74[144] for the month of December. These amounts were extracted from the 3rd and 4th Quarterly VAT Return for the year 2010, respectively.

Thus, after a careful examination and review of the evidence presented, petitioner was able to prove that it paid VAT in the aggregate amount of Php39,521,936.87, however, petitioner cannot claim this in full. Only VAT overpayment attributable to the offshore portion of the contract were erroneously paid. Thus, such overpayment shall be allocated accordingly:

Period	Vatable Sales	Zero-Rated Sales	Exempt Sales	Total Sales	Percentage	Overpayment	Allocable Portion	Reference
	(A)	(B)	(C)	(A+B+C=D)	(C/D=E)	(F)	(ExF)	
September 2010	68,661,191.50	33,683,092.22	7,859,586.17	110,203,869.89	7.1319%	(719,290.02)	(51,298.76)	See Footnote 143
December 2010	115,949,168.51	45,727,816.41	185,846,888.20	347,523,873.12	53.4774%	(19,887,922.74)	(10,635,552.95)	See Footnote 144
January 2011	53,316,203.10	19,905,183.43	146,419,590.06	219,640,976.59	66.6631%	(15,764,554.42)	(10,509,148.30)	*Exhibit* "P-76"
February 2011	172,604,454.16	46,461,153.99	13,634,118.54	232,699,726.69	5.8591%	(1,468,754.66)	(86,055.86)	*Exhibit* "P-77"
March 2011	332,822,696.36	133,302,430.44	167,171,342.44	633,296,469.24	26.3970%	(646,105.40)	(170,552.52)	*Exhibit* "P-78"
October 2011	100,840,772.41	24,183,024.28	10,236,419.07	135,260,215.76	7.5679%	(1,035,309.63)	(78,351.67)	*Exhibit* "P-81"
Grand Total	**844,194,486.04**	**303,262,700.77**	**531,167,944.48**	**1,678,625,131.29**		**(39,521,936.87)**	**(21,530,960.05)**	

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	3rd Qtr of 2010	July 2010	August 2010	September 2010
	(A)	(B)	(C)	D = A - (B +C)
	Exhibit "P-72"	*Exhibit* "P-70"	*Exhibit* "P-71"	
Vatable Sales	216,790,068.16	58,312,278.33	89,816,598.33	**68,661,191.50**
Zero-Rated Sales	112,488,943.06	36,584,670.77	42,221,180.07	**33,683,092.22**
Exempt Sales	27,130,636.76	19,271,050.59	-	**7,859,586.17**
Total Sales	356,409,647.98	114,167,999.69	132,037,778.40	**110,203,869.89**
Output VAT	26,014,808.23	6,997,473.43	10,777,991.80	**8,239,343.00**
Input VAT:				
Cap. Goods Exceeding 1M	1,319,178.44	-	1,319,178.44	-
Goods	1,440,795.15	270,556.09	907,876.25	**262,362.81**
Importation	17,947,349.00	4,689,941.00	7,680,350.00	**5,577,058.00**
Services	4,472,042.46	1,655,274.73	1,760,642.94	**1,056,124.79**
Services by Non Residents	731,702.44	524,049.08	111,713.58	**95,939.78**
Total Input Tax	25,911,067.49	7,139,820.90	11,779,761.21	**6,991,485.38**
Less: Input Tax Allocable to Exempt Sales	473,804.64	341,606.78	-	**132,197.86**
Total	25,437,262.85	6,798,214.12	11,779,761.21	**6,859,287.52**
VAT Payable (Output Tax Less Input Tax)				**1,380,055.48**
Less: VAT Payment (*Exhibit* "P-63")				**2,099,345.50**
Overpayment for September 2010				**(719,290.02)**

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	4th Qtr of 2010	October 2010	November 2010	December 2010
	(A)	(B)	(C)	D = A - (B +C)
	Exhibit "P-75"	*Exhibit* "P-73"	*Exhibit* "P-74"	
Vatable Sales	327,582,690.84	73,806,086.58	137,827,435.75	**115,949,168.51**
Zero-Rated Sales	116,842,025.52	37,800,466.45	33,313,742.66	**45,727,816.41**
Exempt Sales	303,426,119.61	84,607,867.33	32,971,364.08	**185,846,888.20**
Total Sales	747,850,835.97	196,214,420.36	204,112,542.49	**347,523,873.12**
Output VAT	39,309,922.91	8,856,730.40	16,539,292.29	**13,913,900.22**
Input VAT:				
Goods	1,824,719.27	195,606.16	613,699.31	**1,015,413.80**
Importation	21,470,829.00	6,828,285.00	6,445,574.00	**8,196,970.00**
Services	6,150,126.04	1,126,112.94	1,809,375.48	**3,214,637.62**
Services by Non Residents	379,754.21	58,662.94	154,109.74	**166,981.53**
Total Input Tax	29,825,428.52	8,208,667.04	9,022,758.53	**12,594,002.95**
Less: Input VAT Allocable to Exempt Sales	3,409,693.38	674,178.77	407,768.52	**2,327,746.09**
Total	26,415,735.14	7,534,488.27	8,614,990.01	**10,266,256.86**
VAT Payable (Output Tax Less Input Tax)				**3,647,643.36**
Less: VAT Payment (*Exhibit* "P-66")				**23,535,566.10**
Overpayment for December 2010				**(19,887,922.74)**

Basic is the rule in taxation that tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[145] In the case at bar, petitioner has sufficiently proven its entitlement to a refund of erroneously paid VAT, albeit in the reduced amount of **Php21,530,960.05**.

In the case of *Filinvest Development Corporation v. Commissioner of Internal Revenue*[146], the Supreme Court held in this wise:

> That no one shall unjustly enrich oneself at the expense of another is a long-standing principle prevailing in our legal system.This principle applies not only to individuals but to the State as well. In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*, the Government has to restore to petitioner the sums representing erroneous payments of taxes.

In the instant case, petitioner was able to prove that it paid the VAT for the services rendered by the offshore companies when it was not subject to VAT in the first place. Respondent did not even present any evidence that would disprove the fact of payment. Therefore, respondent has the obligation under the law to restore the tax erroneously paid by petitioner. This is also in accord with *Article 2154*[147] *of the New Civil Code of the Philippines*, which provides that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

WHEREFORE, premises considered, the consolidated Petitions for Review are hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner in the reduced amount of **TWENTY ONE MILLION FIVE HUNDRED THIRTY THOUSAND NINE HUNDRED SIXTY AND 5/100 PESOS (Php21,530,960.05).**

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[145] *Eastern Telecommunications Philippines, Inc. v. Commissioner of internal Revenue*, G.R. No. 183531, March 25, 2015.
[146] G.R. No. 146941, August 9, 2007, 529 SCRA 605.
[147] *Article 2154*. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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.

LOVELL R. BAUTISTA
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.

ROMAN G. DEL ROSARIO
Presiding Justice