REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1510
(CTA CASE No. 8788)

- versus -

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

CE CASECNAN WATER AND ENERGY COMPANY, INC.,
Respondent.

Promulgated:

NOV 16 2017 9:06 a.m.

x- x

DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review, petitioner Commissioner of Internal Revenue (CIR), assails the (1): Decision dated May 4, 2016 which granted the claim for refund of respondent's unutilized input value-added tax (VAT) attributable to its zero-rated sales for the four quarters of the year 2012 in the amount of P23,833,961.10., and the (2) Resolution dated August 16, 2016, which denied his motion for reconsideration for lack of merit.

The following facts established during trial of the case and adopted by petitioner in the present Petition, are undisputed, thus:

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR) with authority to grant or deny claims for refund or tax credit of internal revenue taxes. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent CE Casecnan Water and Energy Company, Inc., on the other hand, is a domestic corporation, with principal office in Pantabangan, Nueva Ecija. It is a registered VAT taxpayer with Taxpayer's Identification No. (TIN) 004-500-931-000.

Respondent is primarily incorporated to design, develop, construct, erect, assemble, commission, finance, own, and operate a combined irrigation and hydro-electric project and related facilities in Central Luzon, Philippines for the conversion into electricity of water provided by and under contract with the National Irrigation Administration (NIA) and for the supply of water for agricultural purposes to the NIA; provided that, in no event shall the corporation itself engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility, or furnish electricity to end-users or consumers, or provide a public service or engage in industries or activities reserved by the Constitution or by law to corporations wholly or partially owned by Filipino citizens.

On June 26, 1995, respondent and NIA entered into an Amended and Restated Casecnan Project Agreement, which amended, restated, and continued in its entirety the original agreement they executed. Under the Agreement, respondent shall deliver electricity and water to NIA for a fee.

On April 25, 2012, July 25, 2012, October 25, 2012, and January 25, 2013, respondent filed its respective Quarterly VAT Returns for the four quarters of 2012 through the Electronic Filing and Payment System (EFPS). Respondent amended the said Quarterly VAT Returns on November 14, 2013.

On November 19, 2013, respondent filed with petitioner an administrative claim for refund/tax credit for its unutilized input VAT pertaining to the sale of power from its operations as a hydro-electric power plant during the four quarters of the year 2012.

Due to petitioner's inaction on the said administrative refund claim, respondent filed a Petition for Review before the Court in Division on March 27, 2014.

On May 4, 2016, the Court in Division rendered the assailed Decision, disposing the case as follows:

> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, (petitioner) is ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of (respondent) in the amount of P23,833,961.10, representing its unutilized excess input VAT attributable to its zero-rated sales for the four quarters of calendar year 2012.
>
> SO ORDERED.

In the Resolution dated August 16, 2016, the Court in Division denied petitioner's Motion for Reconsideration for lack of merit.

Hence, this appeal before the Court *En Banc,* claiming that the Court in Division erred when it ruled that respondent is entitled to the refund of its unutilized input VAT attributable to its zero-rated sales for the year 2012 in the amount of P23,833,961.10.

Petitioner argues that the Court in Division never acquired jurisdiction over the case on the ground that respondent failed to submit the documents required under Revenue Memorandum Order (RMO) No. 53-98 to substantiate its claim for refund at the administrative level.

Moreover, respondent failed to comply with the invoicing and accounting requirements mandated under Sections 113, 114, and 236 of the NIRC, as amended, and as required under pertinent regulations and existing jurisprudence.

Because respondent failed to submit complete supporting documents, petitioner was deprived of the opportunity to evaluate and decide respondent's claim for refund/tax credit. In view thereof, respondent's administrative claim should be deemed not perfected on the ground of respondent's failure to exhaust administrative remedies.

There being no valid administrative claim for refund/tax credit, the Court was deprived of jurisdiction to determine respondent's judicial claim for refund/tax credit.

In its Comment[1], respondent counters that it submitted complete supporting documents when it filed its administrative claim with petitioner. Respondent invokes Section 112 (C) of the NIRC, and jurisprudence to the effect that the completeness of the documents to be submitted in support of a claim for refund is to be determined by the taxpayer, and not by the BIR. The latter can only require additional documents, for otherwise, there is the danger that the BIR will require documents which a taxpayer cannot submit, which might render any claim for refund pointless and futile.

Respondent states that jurisprudence already rejected petitioner's position that a taxpayer is required to submit all the documents listed in RMO No. 53-98 to be deemed compliant with all the pertinent rules and regulations.

More importantly, it has been held that the failure of the BIR to demand from the taxpayer additional documents in addition to those already submitted means that what has been submitted is deemed sufficient, as in this case.

Further, judicial claims before the Court are litigated *de novo*. As such, a claim for refund shall be decided based on the evidence presented and formally offered, regardless of

---

[1] See Comment (Re: Petition For Review) dated October 24, 2016, docket pp. 94-107.

any alleged non-submission of documents at the administrative level, which is not fatal to the taxpayer's cause. Thus, even assuming that respondent did not submit complete documents at the administrative level, the evidence presented during the trial will determine the merits of the claim.

Finally, the principle that tax refunds are construed strictly against the claimant was quelled when respondent was able to establish that it has a legitimate claim for refund of overpaid taxes.

The instant Petition was submitted for decision on November 9, 2016.[2]

THE RULING OF THE COURT

There is no arguing that Section 112 applies to the present claim for refund or tax credit of unutilized creditable input VAT[3].

Under Section 112 (A) and (D)[4] of the NIRC[5], a taxpayer, such as respondent, has two (2) years from the close of the

---

[2] Resolution dated November 9, 2016, docket pp. 109-110.
[3] Visayas Geothermal Power Company vs. Commissioner of Internal Revenue, G.R. No. 197525, June 4, 2014.
[4] Now C.
[5] 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.

taxable quarter when the relevant zero-rated sales were made, within which to file with the CIR an administrative claim for refund or credit of unutilized input VAT attributable to such sales. The CIR, on the other hand, has 120 days from receipt of the complete documents within which to act on the administrative claim. Upon receipt of the decision, a taxpayer has 30 days within which to appeal the decision to the CTA. However, if the 120-day period expires without any decision from the CIR, the taxpayer may appeal the inaction to the CTA within 30 days from the expiration of the 120-day period.[6]

The instant claim pertains to the four (4) quarters of the TY 2012. From the close of the taxable quarters of 2012 on March 31, June 30, September 30, and December 31, 2012, respondent had two years, or until March 31, June 30, September 30, and December 31, 2014, respectively, to file a claim for refund. Thus, respondent's administrative claim was timely filed on November 19, 2013.

From the filing of the administrative claim on November 19, 2013, petitioner had 120 days or until March 19, 2014 to act on the matter at his level. Petitioner failed to act on the administrative claim within the 120-day period giving respondent 30 days thereafter, or until April 18, 2014 to elevate the claim to the Court. Therefore, respondent's Petition for Review was also seasonably filed with the Court in Division on March 27, 2014. Clearly, the Court in Division has jurisdiction over the case.

---

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

[6] Commissioner of Internal Revenue vs. Toledo Power Company, G.R. No. 196415, and Toledo Power Company vs. Commissioner of Internal Revenue, G.R. No. 196451, December 02, 2015.

The above cited 120/30-day prescriptive periods are mandatory and jurisdictional, and jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[7]

Anent respondent's alleged failure to submit complete documents at the administrative level, suffice it to say that the documents submitted, or the lack thereof, at the administrative level of a claim for refund of unutilized input VAT is irrelevant when the claim has already reached the Court after inaction on the part of the CIR.

This issue has long been laid to rest in a number of cases. The Supreme Court thus held:

> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
>
> In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal per se. Consequently, the CTA may give credence to all evidence

---

[7] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 173241, March 25, 2015.

> presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim.[8]

Jurisprudentially, and considering that petitioner failed to act on the administrative claim filed by respondent, the Court may give credence to all evidence presented during trial on the merits, including those that may not have been submitted to petitioner as the case is being essentially decided in the first instance by the Court.

To be sure, this Court is not precluded from admitting evidence even assuming that they were not presented to petitioner at the administrative level. After all, cases filed in the Court of Tax Appeals are litigated *de novo*. Thus, respondent should prove every minute aspect of its case by presenting, formally offering and submitting to the Court of Tax Appeals all evidence required to justify the grant of its claim for refund.[9]

Notably, compliance with RMO No. 53-98, especially at the judicial level, is not required. The High Court has long declared that submission of documents enumerated in RMO 53-98 for a grant of refund of input VAT is not required, thus:

> The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. x x x Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."[10]

The above ruling has been expounded by the Supreme Court in this wise:

---

[8] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.
[9] Commissioner of Internal Revenue vs. Philippine National Bank, G.R. No. 180290, September 29, 2014.
[10] Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation), G.R. No. 205055, July 18, 2014.

> As explained earlier and underlined in *Team Sual* above, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.
>
> Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[11]

Significantly, the determination of what constitutes complete supporting documents in an administrative action depends on the taxpayer, and not on the CIR, who can only ask for additional documents if he is unsatisfied with what has actually been submitted to properly determine the merits of the claim.

The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[12]

---

[11] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.

[12] Commissioner of Internal Revenue vs. First Express Pawnshop, G.R. Nos. 172045-46, June 16, 2009.

Further, petitioner must notify the taxpayer, such as herein respondent, of the latter's need to submit additional supporting documents to substantiate the administrative claim. Otherwise, what has actually been submitted, at the discretion of the taxpayer, will be deemed complete.

Accordingly, the documents submitted by respondent is deemed complete, as there was no notification from petitioner requiring the submission of other or additional supporting documents.

Further, to impugn the completeness of the documents submitted by a taxpayer, the CIR must specify, or at the very least, describe with particularity what documents are further required, which petitioner evidently failed to do. On this regard, the Supreme Court held, thus:

> The Court cannot simply accept the allegation of the CIR that Metrobank failed to submit the relevant supporting documents within 60 days from the filing of its protest on 17 January 2003, when the CIR does not even identify what these documents are. If the Court does not know what particular documents Metrobank purportedly failed to submit in support of its protest, then the Court likewise cannot make a determination on the relevance of such documents. In addition, there appear to be sufficient documents submitted by Metrobank to the CIR to have enabled the latter to render on 2 March 2004 a Decision on the protest of the former.[13]

The record shows that the Court in Division made a very detailed determination of respondent's entitlement to the claim for refund as well as the substantiation of the precise amount to be refunded. In contrast, petitioner made a mere sweeping generalization that respondent submitted incomplete documents without stating the specific documents that respondent failed to provide for his determination of the merit of its claim for refund/tax credit.

---

[13] Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue, G.R. No. 178797, August 04, 2009.

WHEREFORE, the Petition for Review dated September 5, 2016 filed by the Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit.

Consequently, the assailed Decision dated May 4, 2016 and the Resolution dated August 16, 2016, both rendered by the Court in Division, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice