REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CARMEN COPPER CORPORATION, Petitioner,	**CTA CASE NOS. 8902 & 8958**
	Members: **Castañeda, Jr.,** *Chairperson,* **Mindaro-Grulla,** and, **Bacorro-Villena,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 16 2020 2:50 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

These consolidated cases involve Petitions for Review docketed as CTA Case No. 8902 and CTA Case No. 8958, filed by petitioner Carmen Copper Corporation on October 7, 2014 and December 22, 2014, respectively, seek for the refund or issuance of tax credit certificates (TCCs), as follows:

1. Forty-Four Million Four Hundred Sixty-Eight Thousand Nine Hundred Two and 28/100 Pesos (₱44,468,902.28), representing excess and unutilized input value-added tax (VAT) for the 1st and 2nd Quarters of Calendar Year (CY) 2012, for CTA Case No. 8902; and

2. Forty-Four Million Four Hundred One Thousand Six Hundred Seventy-Nine and 77/100 Pesos (₱44,401,679.77), representing excess and unutilized input

VAT for the 3rd and 4th Quarters of CY 2012, for CTA Case No. 8958.[1]

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Philippine, with business address at the 7th Floor, Quad Alpha Centrum Building, 125 Pioneer Street, Mandaluyong City.[2] It is a duly registered taxpayer with the Bureau of Internal Revenue (BIR) under Certificate of Registration No. 8RC0000048993 dated October 5, 2004.[3] It is likewise registered with the Board of Investment (BOI) as a new producer of copper concentrate with non-pioneer status.[4]

On the other hand, respondent is a public officer duly appointed by the President of the Philippines and is the head of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all national and internal revenue taxes,[5] with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.[6] He is vested with the power and authority to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected or of input value-added tax (VAT) attributable to zero-rated sales.[7]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

For CYs 2012, 2013, and 2014, petitioner filed its Quarterly VAT Returns, as follows:

Period	VAT Return	Date of Filing
1st Quarter – CY 2012 (January 1, 2012 to March 31, 2012)	Quarterly VAT Return[8]	April 25, 2012

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[1] Par. I, Pre-Trial Order dated October 13, 2015, CTA Case No. 8902 Docket – Vol. II, p. 539.
[2] Exhibit "P-2", CTA Case No. 8902 Docket – Vol. II, pp. 744 to 760.
[3] Exhibit "P-1", CTA Case No. 8902 Docket – Vol. II, p. 743.
[4] Exhibits "P-3" and "P-4", CTA Case No. 8902 Docket – Vol. II, pp. 761 to 774 and 775 to 776.
[5] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 8902 Docket – Vol. I, p. 426.
[6] Par. 3, Admitted Facts, JSFI, CTA Case No. 8902 Docket – Vol. I, p. 426.
[7] Par. 2, Admitted Facts, JSFI, CTA Case No. 8902 Docket – Vol. I, p. 426.
[8] Exhibit "P-6", CTA Case No. 8902 Docket – Vol. II, p. 784.

2nd Quarter – CY 2012 (April 1, 2012 to June 30, 2012)	Quarterly VAT Return[9]	July 25, 2012
3rd Quarter – CY 2012 (July 1, 2012 to September 30, 2012)	Quarterly VAT Return[10]	October 25, 2012
3rd Quarter – CY 2012 (July 1, 2012 to September 30, 2012)	Amended Quarterly VAT Return[11]	January 25, 2013
3rd Quarter – CY 2012 (July 1, 2012 to September 30, 2012)	2nd Amended Quarterly VAT Return[12]	April 13, 2013
4th Quarter – CY 2012 (October 1, 2012 to December 31, 2012)	Quarterly VAT Return[13]	January 24, 2013
1st Quarter – CY 2013 (January 1, 2013 to March 31, 2013)	Quarterly VAT Return[14]	April 25, 2013
2nd Quarter – CY 2013 (April 1, 2013 to June 30, 2013)	Quarterly VAT Return[15]	July 25, 2013
3rd Quarter – CY 2013 (July 1, 2013 to September 30, 2013)	Quarterly VAT Return[16]	October 25, 2013
4th Quarter – CY 2013 (October 1, 2013 to December 31, 2013)	Quarterly VAT Return[17]	January 24, 2014
1st Quarter – CY 2014 (January 1, 2014 to March 31, 2014)	Quarterly VAT Return[18]	April 25, 2014
2nd Quarter – CY 2014 (April 1, 2014 to June 30, 2014)	Quarterly VAT Return[19]	July 25, 2014
3rd Quarter – CY 2014 (July 1, 2014 to September 30, 2014)	Quarterly VAT Return[20]	October 25, 2014
4th Quarter – CY 2014 (October 1, 2014 to December 31, 2014)	Quarterly VAT Return[21]	January 24, 2015

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[9] Exhibit "P-7", CTA Case No. 8902 Docket – Vol. II, p. 785.
[10] Exhibit "P-8", CTA Case No. 8902 Docket – Vol. II, pp. 786 to 787.
[11] Exhibit "P-9", CTA Case No. 8902 Docket – Vol. II, pp. 788 to 789.
[12] Exhibit "P-10", CTA Case No. 8902 Docket – Vol. II, pp. 790 to 791.
[13] Exhibit "P-11", CTA Case No. 8902 Docket – Vol. II, pp. 792 to 793.
[14] Exhibit "P-16", CTA Case No. 8902 Docket – Vol. II, pp. 976 to 977.
[15] Exhibit "P-17", CTA Case No. 8902 Docket – Vol. II, pp. 978 to 979.
[16] Exhibit "P-18", CTA Case No. 8902 Docket – Vol. II, pp. 980 to 981.
[17] Exhibit "P-19", CTA Case No. 8902 Docket – Vol. II, p. 982.
[18] Exhibit "P-20", CTA Case No. 8902 Docket – Vol. II, p. 983.
[19] Exhibit "P-21", CTA Case No. 8902 Docket – Vol. II, p. 984.
[20] Exhibit "P-22", CTA Case No. 8902 Docket – Vol. II, p. 985.
[21] Exhibit "P-23", CTA Case No. 8902 Docket – Vol. II, p. 986.

As regards the CY 2015, petitioner filed its 1st Quarterly VAT Return on April 15, 2015,[22] and Monthly VAT Declaration for April and May of CY 2015 on May 23, 2015 and June 24, 2015, respectively.[23]

Subsequently, petitioner filed its administrative claims for refund for the 1st and 2nd quarters of CY 2012 on August 12, 2013 and December 17, 2013,[24] respectively; while 3rd and 4th quarters of CY 2012 were filed both on March 19, 2014.[25] Consequently, respondent issued a Letter of Authority (LOA) No. LOA-121-2013-00000109[26] on August 29, 2013 and a Memorandum of Assignment No. R-12-13-042[27] on December 18, 2013.

Respondent partially denied petitioner's administrative claim for refund for the 1st and 2nd quarters of CY 2012 on September 2, 2014 and for the 3rd and 4th quarters of CY 2012 on October 29, 2014.[28]

PROCEEDINGS BEFORE THIS COURT

Considering the partial denial of its claim for refund covering the period of 1st and 2nd quarters of TY 2012, petitioner filed the *Petition for Review* on October 7, 2014 which was docketed as CTA Case No. 8902.[29] With respect to the 3rd and 4th quarters of TY 2012, petitioner appealed the partial denial of its claim for refund by filing the Petition for Review on December 22, 2014.[30] These were initially raffled to this Court's First Division.

On December 19, 2014, respondent transmitted the *BIR records* with respect to the tax case involving petitioner's 1st and 2nd quarters of TY 2012,[31] and the Court noted the same.[32]

On January 7, 2015, the Court received the *Answer* for CTA Case No. 8902 which was filed thru registered mail on December 15, 2014.[33]

[22] Exhibit "P-24", CTA Case No. 8902 Docket – Vol. II, p. 987.
[23] Exhibits "P-25" and "P-26", CTA Case No. 8902 Docket – Vol. II, pp. 988 and 989.
[24] Exhibits "P-12" and "P-13", CTA Case No. 8902 Docket – Vol. II, pp. 794 and 870.
[25] Exhibits "P-14" and "P-15", CTA Case No. 8902 Docket – Vol. II, pp. 910 to 912 and 944 to 946.
[26] Exhibit "R-1", BIR Records, p. 539.
[27] Exhibit "R-2", BIR Records, p. 540.
[28] Exhibits "P-27" and "P-28", CTA Case No. 8902 Docket – Vol. II, pp. 990 and 991; Exhibit "R-5", BIR Records, p. 599.
[29] CTA Case No. 8902 Docket – Vol. I, pp. 6 to 14.
[30] CTA Case No. 8958 Docket, pp. 14 to 22.
[31] *Letter* dated December 16, 2014, CTA Case No. 8902 Docket – Vol. I, p. 96.
[32] Minute Resolution dated December 23, 2014, CTA Case No. 8902 Docket – Vol. I, p. 97.
[33] CTA Case No. 8902 Docket – Vol. I, pp. 98 to 107.

Respondent raised in the said Answer the following special and affirmative defenses:[34]

"4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

5. The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered.

6. Since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority.

7. Tax refunds partake the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State such that he who claims a refund or exemption must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

8. Thus, 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.

9. Further, taxes paid and collected are presumed to have been made in accordance with the laws and regulations.

10. To support petitioner's claim, it is imperative for it to prove the following, *viz*:

a. The registration requirements of a value-added taxpayer in compliance with section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue

[34] *Id.*

> *Memorandum Order No. 53-98,* ***otherwise there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim*** *in accordance with Section 112 Of the Tax Code, as amended. This requires the* ***submission of complete documents in support of the application filed*** *with the Bureau of Internal Revenue before the 120-day audit period shall apply, and* ***before the taxpayer could avail of the judicial remedies as provided for in the law.*** *Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of petitioner's petition for review;*
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> *d. That the input taxes of Php44,468,902.28 allegedly paid by petitioner on its purchases of goods and services for the 1st and 2nd quarters of calendar year 2012 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;*
>
> *e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) were filed within the periods provided in Sections 112 (A) and (D) of the Tax Code, as amended;*
>
> *f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);*
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> *g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits).*

11. Petitioner must prove that the aggregate amount of *Php44,468,902.28* allegedly representing excess and unutilized input VAT for the 1st to 4th quarters of calendar year 2012 is properly documented.

12. As petitioner states in its petition before this Honorable Court, the subject of its claim for refund are <u>*zero-rated sales to PEZA and BOI registered entities*</u> covering the 1st to 4th quarters of taxable year 2012. *fr*

13. Corollary thereto, Section 112 (D) [now Section 112(c) of the Tax Code of 1997] provides as follows, *to wit*:

> ***'SEC. 112. Refunds or Tax Credits of Input Tax. –***
>
> *X X X*
>
> ***(D) 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 Subsections (A) and (B) 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.****' (Emphasis supplied)*

14. The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

> ***VALUE-ADDED TAX***
>
> *(For audit involving Claim for Refund / TCC)*
>
> *A.) Requirements from Taxpayer*
>
> *I. Requirements mention in Annex B*
>
> *II. Additional General Requirements*
>
> *1) 3 copies of 'Application for VAT Credit / Refund'*
>
> *2) Summary List of Local Purchases specifying the following:*
>
> *xxx*
>
> *3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)*

4) Summary of importations made during the period with the following details:

xxx xxx xxx

5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo)

6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter

7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of the transaction, where the applicant's zero-rated transactions are regulated by certain government agency.

9) Articles of Incorporation - for first time filers

10) Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

13) Certification from BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.

14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter.

15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter.

16) Copy of the ITR and Certified Financial Statements, if applicable.

17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials.

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc)

a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.

b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and account remitted in pesos.

c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

15. As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

VALUE-ADDED TAX

A) Requirements from Taxpayers

1) Proof of claimed tax credits

2) Proof of Tax Compliance Certificates applied

3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable

4) Proof of payment of deficiency tax, if any

a) current year / period
b) previous year/ period

5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives. if applicable

6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable

7) Proof of exemption under special law, if applicable

8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable Jr

9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable

10)Proof of 'Approval for Effective Zero-Rating of Sales', if applicable

11)Sample invoice / s for 'Export/Exempt Sales', if applicable

12)Proof that the acceptable foreign currency exchange proceeds on export sales/ foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

16. This is not a claim for refund of erroneously or illegally collected taxes where petitioner may choose the evidence it wishes to submit to prove its case. This is merely a claim for excess input taxes where the prescribed documentation is needed by the BIR.

17. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

18. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications.

19. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Hence, a 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. Failure to comply therewith warrants a dismissal of the taxpayers claim for refund.

20. It can never be emphasized enough that in this jurisdiction tax refunds/ credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant. As held by the Honorable Supreme Court:

> *'Tax refunds are in the nature of tax exemptions, and are to be construed strictissimi juris against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.'* 9e

21. Taxes collected are presumed to be in accordance with laws and regulations.

22. Following the premise above, petitioner has the burden of proving that the right to such tax credit indubitably exist and a well-founded doubt is fatal to its claim."

Likewise, respondent filed the *Answer* on January 22, 2015 for CTA Case No. 8958, interposing the following special and affirmative defenses:[35]

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amount of P44,401,679.77 representing alleged excess and unapplied input VAT directly attributable to its zero-rated sales for the third and fourth quarters of taxable year 2012 was not properly documented.

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. Petitioner must show that it has complied with the provisions of Section 112 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.

8. Petitioner must prove that it paid the alleged VAT input taxes for the periods stated.

9. Petitioner must prove that its sale of services is subject to VAT at zero percent (0%).

10. Petitioner must prove that its alleged unutilized input VAT has not been applied against any output tax liabilities both in the current or succeeding year.

11. Section 113 of the Tax Code provides:

> 'SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. ---
>
> (A) Invoicing Requirements. --- A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> 1. A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN).
>
> xxx'

[35] CTA Case No. 8958 Docket, pp. 150 to 154.

Likewise, Section 4.108-1 of Revenue Regulations No. 7-95 provides:

> 'SEC.4.108-1. Invoicing Requirements. - All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN, and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the word" zero-rated" imprinted on the invoice covering zero-rated sales, and;
> 6. the invoice value or consideration.
>
> xxx'

While it is true that Section 112(A) of the NIRC of 1997, as amended, allows tax refund or credit on input tax of zero-rated or effectively zero-rated sale, nonetheless, compliance with certain invoicing requirement must be met before such claim for refund or credit can be granted.

12. The input taxes claimed on the amortized input tax attributable to purchases/importations of capital goods exceeding P1,000,000.00 in the total amount of P44,401,679.77 was disallowed in accordance with the provisions of Section 112 of the NIRC of 1997 which provides, thus:

> 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-rate or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *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.

13. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer (**Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998**).

14. Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language (**Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R. SP No. 16432, March 30, 1999**). Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377)**.

15. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

The CTA Case No. 8902 was set for pre-trial conference on March 26, 2015.[36] However, petitioner filed an *Omnibus Motion to Consolidate with Urgent Motion to Reset Pre-Trial Conference* on March 12, 2015.[37] Consequently, the Court reset the pre-trial conference on June 4, 2015 and directed respondent to comment on the motion to consolidate.[38]

[36] Notice of Pre-trial Conference, CTA Case No. 8902 Docket – Vol. I, p. 110.
[37] CTA Case No. 8902 Docket – Vol. I, pp. 111 to 116.
[38] Resolution dated March 16, 2015, CTA Case No. 8902 Docket – Vol. I, p. 118.

On the other hand, the pre-trial conference for CTA Case No. 8958 was scheduled on February 15, 2015.[39] Then, *Respondent's Pre-Trial Brief* was filed on February 4, 2015,[40] which the Court noted.[41] Afterwards, petitioner submitted an *Urgent Motion to Reset Pre-Trial Conference* on February 5, 2015;[42] and the Court granted the same, thus, reset the pre-trial conference on April 23, 2015.[43] Notwithstanding, the pre-trial conference was reset again and held on July 2, 2015.[44]

On March 11, 2015, petitioner filed a *Manifestation with Motion to Suspend Proceedings* for CTA Case No. 8958.[45] Respondent failed to file a comment on the aforesaid motion to suspend proceedings.[46] Petitioner likewise submitted its *Pre-Trial Brief* for CTA Case No. 8958 on April 20, 2015.[47]

On April 7, 2015, respondent filed his *Comment (Re: Omnibus Motion to Consolidate with Urgent Motion to Reset Pre-Trial Conference dated 12 March 2015)*.[48]

In the Resolution dated May 28, 2015,[49] the Court granted the Motion to Consolidate the CTA Case No. 8958 with CTA Case No. 8902; and the previously scheduled pre-trial conference on June 4, 2015 was reset to and held on July 2, 2015.[50] Due to the failure of respondent's counsel to submit the Judicial Affidavit of his witness before the pre-trial conference, the Court imposed on him a fine of ₱1,000.00.[51]

The Court noted petitioner's Manifestation and deemed Motion to Suspend Proceedings of CTA Case No. 8958 moot.[52] The Court likewise reiterated the order of consolidation of CTA Case Nos. 8902

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[39] Notice of Pre-Trial Conference, CTA Case No. 8958 Docket, p. 156.
[40] CTA Case No. 8958 Docket, pp. 157 to 160.
[41] Order dated February 6, 2015, CTA Case No. 8958 Docket, p. 166.
[42] CTA Case No. 8958 Docket, pp. 162 to 165.
[43] Order dated February 6, 2015, *Id.*
[44] Order dated April 22, 2015, CTA Case No. 8958 Docket, p. 485; Minutes of the hearing held on, and Resolution dated, July 2, 2015, CTA Case No. 8902 Docket – Vol. I, pp. 405 to 407 and 409 to 410.
[45] CTA Case No. 8958 Docket, pp. 167 to 172.
[46] Records Verification dated April 27, 2015, CTA Case No. 8958 Docket, p. 486.
[47] CTA Case No. 8958 Docket, pp. 305 to 330.
[48] CTA Case No. 8902 Docket – Vol. I, pp. 119 to 121.
[49] CTA Case No. 8902 Docket – Vol. I, pp. 213 to 215.
[50] Minutes of the hearing held on, and Resolution dated, July 2, 2015, CTA Case No. 8902 Docket – Vol. I, pp. 405 to 407 and 409 to 410.
[51] *Id.*
[52] Resolution dated June 11, 2015, CTA Case No. 8958 Docket, pp. 488 to 489.

and 8958;[53] thus, the said cases were set for pre-trial conference on July 2, 2015.

On June 23, 2015, *Respondent's Consolidated Pre Trial Brief* [sic] was filed,[54] which the Court noted.[55] Petitioner, on the other hand, submitted its *Consolidated Pre-Trial Brief* on June 29, 2015.[56]

Then, petitioner filed a *Motion to Admit Amended Judicial Affidavits* on June 26, 2015.[57] Petitioner also filed a *Motion to Commission Independent Certified Public Accountant* (ICPA) on July 13, 2015.[58]

On July 20, 2015, the parties submitted their *Joint Stipulation of Facts and Issues*.[59] On even date, respondent filed a *Motion for Reconsideration (Re: Order dated 2 July 2015)*,[60] which the Court granted.[61]

In the Resolution dated August 10, 2015, the Court directed the parties to supplement their Joint Stipulation of Facts and Issues by indicating their list of documentary exhibits, names of witnesses to be presented and the agreed trial dates.[62] Hence, the parties submitted their *Supplemental Joint Stipulation of Facts and Issues* on August 24, 2015.[63]

On September 9, 2015, the Court approved the Joint Stipulation of Facts and Issues and Supplemental Joint Stipulation of Facts and Issues, and terminated the pre-trial.[64]

During the hearing on the motion to commission ICPA, it was observed that the said motion pertained only to CTA Case No. 8902. Thus, petitioner's counsel was given a period to file the appropriate motion.[65]

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[53] *Id.*
[54] CTA Case No. 8902 Docket – Vol. I, pp. 216 to 219.
[55] Minute Resolution dated June 29, 2015, CTA Case No. 8902 Docket – Vol. I, p. 339.
[56] CTA Case No. 8902 Docket – Vol. I, pp. 340 to 369.
[57] CTA Case No. 8902 Docket – Vol. I, pp. 221 to 225.
[58] CTA Case No. 8902 Docket – Vol. I, pp. 411 to 416.
[59] CTA Case No. 8902 Docket – Vol. I, pp. 426 to 428.
[60] CTA Case No. 8902 Docket – Vol. I, PP. 429 to 432.
[61] Resolution dated November 5, 2015, CTA Case No. 8902 Docket – Vol. II, pp. 561 to 563.
[62] CTA Case No. 8902 Docket – Vol. I, p. 438.
[63] CTA Case No. 8902 Docket – Vol. I, pp. 450 to 472.
[64] CTA Case No. 8902 Docket – Vol. I, p. 492.
[65] Minutes of the hearing held on, and Resolution dated, September 17, 2015, CTA Case No. 8902 Docket – Vol. I, pp. 494 to 496 and 498.

On September 22, 2015, petitioner filed an *Urgent Motion for Additional Time to File Motion to Commission an Independent Certified Public Accountant*.[66] The Court granted the said motion and gave petitioner until September 28, 2015 to file the same.[67] Consequently, the Court received petitioner's *Motion to Commission Independent Certified Public Accountant* on September 28, 2015.[68]

On October 8, 2015, the Court commissioned Mr. Neil U. Sison as an ICPA.[69]

On October 13, 2015, the Pre-Trial Order was issued.[70]

A trial ensued.

During the proceedings, petitioner presented testimonial as well as documentary evidence. As regards the testimonial evidence, petitioner offered the testimony of Atty. Carmen-Rose A. Basallo-Estampador,[71] petitioner's Assistant Corporate Secretary; Mr. Neil U. Sison,[72] the Court-commissioned ICPA; and Mr. Francisco D. Nuez,[73] petitioner's Superintendent – Treasury Department.

The ICPA submitted his *Final Report* on November 23, 2015,[74] and the Court noted the same.[75] The ICPA also forwarded to this Court on December 2, 2015 one *USB* in support to the submitted Final Report,[76] which the latter noted.[77]

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[66] CTA Case No. 8902 Docket – Vol. II, pp. 508 to 511.
[67] Order dated October 2, 2015, CTA Case No. 8902 Docket – Vol. II, p. 530.
[68] CTA Case No. 8902 Docket – Vol. II, pp. 513 to 519.
[69] Oath of Commission, CTA Case No. 8902 Docket – Vol. II, p. 533; Minutes of the hearing held on, and Resolution dated, October 8, 2015, CTA Case No. 8902 Docket – Vol. II, pp. 531 to 532 and 536.
[70] CTA Case No. 8902 Docket – Vol. II, pp. 539 to 550.
[71] Exhibit "P-30", CTA Case No. 8902 Docket – Vol. I, pp. 227 to 235; Minutes of the hearing held on, and Resolution dated, September 22, 2015, CTA Case No. 8902 Docket – Vol. I, pp. 501 to 504 and 507.
[72] Exhibit "P-31", CTA Case No. 8902 Docket – Vol. II, pp. 520 to 525; Minutes of the hearing held on, and Resolution dated, October 8, 2015, CTA Case No. 8902 Docket – Vol. II, pp. 531 to 532 and 536; Exhibit "P-41", CTA Case No. 8902 Docket – Vol. II, pp. 681 to 698; Minutes of the hearing held on, and Order dated, November 15, 2016, CTA Case No. 8902 Docket – Vol. II, pp. 702 to 707.
[73] Exhibit "P-32", CTA Case No. 8902 Docket – Vol. II, pp. 586 to 592; Minutes of the hearing held on, and Order dated, August 2, 2016, CTA Case No. 8902 Docket – Vol. II, pp. 665 to 668.
[74] CTA Case No. 8902 Docket – Vol. II, pp. 572 to 583.
[75] Minute Resolution dated November 25, 2015, CTA Case No. 8902 Docket – Vol. II, p. 551.
[76] CTA Case No. 8902 Docket – Vol. II, p. 584.
[77] Minute Resolution dated December 11, 2015; CTA Case No. 8902 Docket – Vol. II, p. 585.

On January 14, 2016, petitioner moved for the substitution of Mr. Francisco D. Nuez in lieu of Mr. Jesus B. Caparida who passed away on November 29, 2015.[78] Respondent did not file any comment thereon.[79]

In the Resolution dated March 15, 2016,[80] petitioner was directed to submit a certified true copy of the Death Certificate of Mr. Caparida. Petitioner then complied with the said Resolution by filing its *Compliance and Submission* through registered mail on March 28, 2016 and received by the Court on April 8, 2016.[81]

On May 17, 2016, the Court allowed the substitution of Mr. Nuez in lieu of Mr. Caparida.[82]

After the Court granted petitioner's *Motion for Additional Time to File Judicial Affidavit of the Independent Certified Public Accountant*[83],[84] the latter filed a *Submission* on October 27, 2016.[85] The Court noted such submission.[86]

On December 15, 2016, petitioner sent through registered mail its Formal Offer of Evidence and received by the Court on December 27, 2016.[87] Respondent filed his *Comment to Petitioner's Formal Offer of Evidence (Dated 15 December 2016)* on January 9, 2017.[88]

The Court issued Resolution dated July 3, 2017, admitting petitioner's exhibits, except Exhibits "P-40-B-1" to "P-40-B-38", "P-40-H-1" to "P-40-H-50", "P-40-I-1" to "P-40-I-62", "P-40-J-1" to "P-40-64", "P-40-K-1" to "P-40-55", "P-40-L-1" to "P-40-L-24", "P-40-M-1" to "P-40-M-62", "P-40-N-1" to "P-40-N-50", "P-40-O-1" to "P-40-O-20", "P-40-P-1" to "P-40-P-43", "P-40-Q-1" to "P-40-Q-25", "P-40-R-1" to "P-40-R-23", "P-40-S-1" to "P-40-S-26", "P-40-T-1" to "P-40-T-12", "P-40-U-1" to "P-40-U-2", "P-40-V-1" to "P-40-V-2", "P-40-W-1" to "P-40-W-43", "P-40-X-1" to "P-40-X-22", "P-40-Y-1" to "P-40-Y-232", "P-40-Z-1" to "P-40-Z-186", "P-40-AA-1" to "P-40-AA-38", "P-40-AB-1" to "P-40-AB-118", "P-40-AC-1" to "P-40-AC-37", "P-40-AD-1" to "P-40-AD-

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[78] *Urgent Motion for Leave to Substitute Witness*, CTA Case No. 8902 Docket – Vol. II, pp. 628 to 632.
[79] Records Verification dated February 3, 2016, CTA Case No. 8902 Docket – Vol. II, p. 635.
[80] CTA Case No. 8902 Docket – Vol. II, pp. 641 to 642.
[81] CTA Case No. 8902 Docket – Vol. II, pp. 654 to 656.
[82] Resolution dated May 17, 2016, CTA Case No. 8902 Docket – Vol. II, pp. 662 to 664.
[83] CTA Case No. 8902 Docket – Vol. II, pp. 670 to 673.
[84] Resolution dated October 11, 2016, CTA Case No. 8902 Docket – Vol. II, p. 675.
[85] CTA Case No. 8902 Docket – Vol. II, pp. 677 to 680.
[86] Minute Resolution dated November 3, 2016, CTA Case No. 8902 Docket – Vol. II, p. 700.
[87] CTA Case No. 8902 Docket – Vol. II, pp. 709 to 741.
[88] CTA Case No. 8902 Docket – Vol. II, pp. 1073 to 1075.

4", "P-40-AE-1" to "P-40-11", "P-40-AF-1" to "P-40-19", "P-40-AG-1" to "P-40-203", "P-40-AH-1" to "P-40-81", "P-40-AI-1" to "P-40-137", "P-40-AJ-1" to "P-40-55", "P-40-AK-1" to "P-40-99", "P-40-AL-1" to "P-40-248", "P-40-AM-1" to "P-40-236", "P-40-AN-1" to "P-40-237", "P-40-AO-1" to "P-40-142", "P-40-AP-1" to "P-40-54", "P-40-AQ-1" to "P-40-106", "P-40-AR-1" to "P-40-58", "P-40-AS-1" to "P-40-222", "P-40-AT-1" to "P-40-204", "P-40-AU-1" to "P-40-134", "P-40-AV-1" to "P-40-194", "P-40-AW-1" to "P-40-161", "P-40-AX-1" to "P-40-171", "P-40-AZ-1" to "P-40-AZ-37", for failure to properly mark the exhibits.[89]

Due to such denial, petitioner filed a *Motion for Reconsideration (of the Resolution dated 3 July 2017)* on July 21, 2017.[90] Respondent failed to comment on the aforesaid motion for reconsideration.[91]

On November 6, 2017, the Court allowed petitioner to have a Commissioner's Hearing on January 16, 2018 in relation to its motion for reconsideration.[92] Nevertheless, the parties agreed during the Commissioner's Hearing that no marking would be concluded; and instead, the ICPA would mark the denied exhibits.[93] As such, the ICPA submitted a flash drive containing the scanned copy of the exhibits on the Supplemental ICPA Report on March 28, 2018,[94] and the *Supplemental Independent Certified Public Accountant Report on Court of Tax Appeals Case Nos. 8902 and 8958* on April 6, 2018.[95]

Consequently, the Court admitted some of petitioner's previously denied exhibits, specifically: Exhibits "P-40-B-1" to "P-40-B-38", "P-40-K-5" to "P-40-K-9", "P-40-K-41" to "P-40-K-55", "P-40-M-1" to "P-40-M-62", "P-40-N-1" to "P-40-N-50", "P-40-O-1" to "P-40-O-20", "P-40-P-1" to "P-40-P-43", "P-40-R-1" to "P-40-R-23", "P-40-S-1" to "P-40-S-2", "P-40-S-4" to "P-40-S-26", "P-40-T-1" to "P-40-T-12", "P-40-U-1" to "P-40-U-2", "P-40-V-1" to "P-40-V-2", "P-40-W-1" to "P-40-W-4", "P-40-X-1" to "P-40-X-22", "P-40-Y-1", "P-40-Y-3" to "P-40-Y-8", "P-40-Y-8", "P-40-Y-10" to "P-40-Y-18", "P-40-Y-100" to "P-40-Y-180", "P-40-Y-207" to "P-40-Y-232", "P-40-AA-1" to "P-40-AA-38", "P-40-AB-1" to "P-40-AB-2", "P-40-AB-10" to "P-40-AB-21", "P-40-AB-88", "P-40-AB-100" to "P-40-AB-118", "P-40-AG-38", "P-40-AH-4", "P-40-AH-25", "P-

[89] CTA Case No. 8902 docket, Vol. II, pp. 1084 to 1087.
[90] CTA Case No. 8902 docket, Vol. III, pp. 1090 to 1095.
[91] Records Verification dated August 24, 2017, CTA Case No. 8902 docket, Vol. III, p. 1119.
[92] Resolution dated November 6, 2017, CTA Case No. 8902 docket, Vol. III, pp. 1135 to 1137.
[93] Commissioner's Report dated January 16, 2018, CTA Case No. 8902 docket, Vol. III, pp. 1138 to 1139; Resolution dated March 12, 2018, CTA Case No. 8902 docket, Vol. III, pp. 1146 to 1147.
[94] *Transmittal Letter* dated March 28, 2018, CTA Case No. 8902 docket, Vol. III, p. 1154.
[95] CTA Case No. 8902 docket, Vol. III, pp. 1157 to 1160.

40-AH-39", "P-40-AH-46", "P-40-AH-63", "P-40-AT-10", and "P-40-AU-111" to "P-40-AU-112".[96]

As a result, petitioner filed anew a *Motion for Partial Reconsideration (Re: Resolution dated 15 August 2018)* through registered mail on September 10, 2018 and received by the Court on September 14, 2018.[97] Respondent did not file any comment on the said motion.[98]

On September 25, 2018, these cases were transferred to this Court's Second Division.[99]

In the Resolution dated November 16, 2018,[100] the Court allowed the ICPA to mark the physical copies of Exhibits "P-40-AZ-1" to "P-40-AZ-37" and directed the latter to submit the marked exhibits.

Afterwards, the ICPA forwarded a *DVD* which comprised the PDF files of the marked Exhibits "P-40-AZ-1" to "P-40-AZ-37".[101]

The Court then admitted petitioner's Exhibits "P-40-H-1" to "P-40-H-50", "P-40-I-1" to "P-40-I-62", "P-40-J-1" to "P-40-J-64", "P-40-K-1" to "P-40-K-4", "P-40-K-10" to "P-40-K-40", "P-40-L-1" to "P-40-L-24", "P-40-Q-1" to "P-40-Q-25", "P-40-Y-2", "P-40-Y-9", "P-40-Y-19" to "P-40-Y-20", "P-40-Y-78", "P-40-Y-82" to "P-40-Y-99", "P-40-Y-181" to "P-40-Y-206", "P-40-Z-1" to "P-40-Z-65", "P-40-Z-67" to "P-40-Z-152", "P-40-Z-156" to "P-40-Z-186", "P-40-AB-3" to "P-40-AB-9", "P-40-AB-22" to "P-40-AB-87", "P-40-AB-89" to "P-40-AB-99", "P-40-AC-1" to "P-40-AC-37", "P-40-AD-1" to "P-40-AD-4", "P-40-AE-1" to "P-40-11", "P-40-AF-1" to "P-40-19", "P-40-AG-1" to "P-40-AG-37", "P-40-AG-39" to "P-40-AG-52", "P-40-AG-153" to "P-40-AG-203", "P-40-AH-1" to "P-40-AH-3", "P-40-AH-5" to "P-40-AH-24", "P-40-AH-26" to "P-40-AH-38", "P-40-AH-40" to "P-40-AH-45", "P-40-AH-47" to "P-40-AH-62", "P-40-AH-64" to "P-40-AH-81", "P-40-AI-1" to "P-40-AI-137", P-40-AJ-1" to "P-40-55", "P-40-AK-1" to "P-40-99", "P-40-AL-1" to "P-40-248", "P-40-AM-1" to "P-40-AM-216", "P-40-AM-218" to "P-40-AM-236", "P-40-AN-1" to "P-40-AN-237", "P-40-AO-1" to "P-40-AO-2", "P-40-AO-4" to "P-40-AO-44", "P-40-AO-46" to "P-40-AO-142", "P-40-AP-1" to "P-40-54", "P-40-AQ-1" to "P-40-106", "P-40-AR-1" to "P-40-58", "P-40-AS-

[96] Resolution dated August 15, 2018, CTA Case No. 8902 docket, Vol. III, pp. 1164 to 1169.
[97] CTA Case No. 8902 docket, Vol. III, pp. 1185 to 1190.
[98] Records Verification dated October 17, 2018, CTA Case No. 8902 docket, Vol. III, p. 1195.
[99] Order dated September 25, 2018, CTA Case No. 8902 docket, Vol. III, p. 1194.
[100] CTA Case No. 8902 docket, Vol. III, pp. 1197 to 1198.
[101] *Transmittal Letter* dated November 27, 2018, CTA Case No. 8902 Docket – Vol. III, p. 1199.

1" to "P-40-AS-55", "P-40-AS-57", "P-40-AS-60", "P-40-AS-62", "P-40-AS-65", "P-40-AS-67", "P-40-AS-69", "P-40-AS-71", "P-40-AS-73", "P-40-AS-75", "P-40-AS-77", "P-40-AS-79", "P-40-AS-81", "P-40-AS-82", "P-40-AS-84", "P-40-AS-86", "P-40-AS-88", "P-40-AS-90", "P-40-AS-92", "P-40-AS-94", "P-40-AS-96", "P-40-AS-98", "P-40-AS-100", "P-40-AS-101", "P-40-AS-103", "P-40-AS-105", "P-40-AS-107", "P-40-AS-109", "P-40-AS-111", "P-40-AS-113", "P-40-AS-115", "P-40-AS-117", "P-40-AS-119", "P-40-AS-121", "P-40-AS-124", "P-40-AS-125", "P-40-AS-127", "P-40-AS-130", "P-40-AS-133" to "P-40-AS-135", "P-40-AS-137", "P-40-AS-140" to "P-40-AS-146", "P-40-AS-148", "P-40-AS-150", "P-40-AS-151", "P-40-AS-153", "P-40-AS-155", "P-40-AS-157", "P-40-AS-159", "P-40-AS-161", "P-40-AS-163" to "P-40-AS-222", "P-40-AT-6", "P-40-AT-10", "P-40-AT-28", "P-40-AT-35", "P-40-AT-99", "P-40-AT-103", "P-40-AT-146", "P-40-AT-156", "P-40-AT-157", "P-40-AT-161", "P-40-AT-202" to "P-40-AT-204", "P-40-AU-1" to "P-40-AU-110", "P-40-AU-113" to "P-40-AU-114", "P-40-AU-116", "P-40-AU-118", "P-40-AU-120" to "P-40-AU-134", "P-40-AV-1" to "P-40-AV-9", "P-40-AV-11" to "P-40-AV-12", "P-40-AV-14" to "P-40-AV-41", "P-40-AV-43" to "P-40-AV-55", "P-40-AV-57" to "P-40-AV-102", "P-40-AV-104" to "P-40-AV-120", "P-40-AV-122" to "P-40-AV-132", "P-40-AV-134" to "P-40-AV-142", "P-40-AV-145" to "P-40-AV-194", "P-40-AW-1" to "P-40-AW-161", "P-40-AX-1" to "P-40-AX-20", "P-40-AX-26" to "P-40-AX-171", "P-40-AZ-1" to "P-40-AZ-7", "P-40-AZ-9" to "P-40-AZ-16", "P-40-AZ-18" to "P-40-AZ-22", and "P-40-AZ-24" to "P-40-AZ-37".[102]

Respondent set forth during hearing his testimonial and documentary evidence. The sole testimony of Ms. Ana Veronica Asis,[103] Revenue Officer II, formed part of respondent's testimonial evidence.

Respondent formally offered his documentary evidence in open court on February 18, 2019; and the Court admitted Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", and "R-6".[104]

Thereafter, respondent filed his *Memorandum* on March 14, 2019;[105] while the Court received petitioner's *Memorandum* on April 29, 2019.[106]

[102] Resolution dated January 28, 2019, CTA Case No. 8902 docket, Vol. III, pp. 1239 to 1242.
[103] Exhibit "R-7", CTA Case No. 8902 docket, Vol. III, pp. 1100 to 1103; Minutes of the hearing held on, and Order dated, February 18, 2019, CTA Case No. 8902 docket, Vol. III, pp. 1243 to 1244.
[104] Minutes of the hearing held on, and Order dated, February 18, 2019, CTA Case No. 8902 docket, Vol. III, pp. 1243 to 1244.
[105] CTA Case No. 8902 docket, Vol. III, pp. 1246 to 1259.
[106] CTA Case No. 8902 docket, Vol. III, pp. 1267 to 1320.

On May 14, 2019, these cases were deemed submitted for decision.[107]

THE ISSUE

For the Court's determination, the parties stipulated the sole issue of whether or not petitioner is entitled to a tax refund or issuance of a tax credit certificate in the amount of (1) Forty Four Million Four Hundred Sixty Eight Thousand Nine Hundred Two Pesos and 28/100 (₱44,468,902.28) representing excess and unutilized input VAT for the 1st and 2nd quarters of CY 2012; and (2) Forty Four Million Four Hundred One Thousand Six Hundred Seventy Nine Pesos and 77/100 (₱44,401,679.77) representing excess and unutilized input VAT for the 3rd and 4th quarters of CY 2012.[108]

Petitioner's arguments:

Petitioner contends that it is entitled to a claim for refund of input VAT on its excess and unutilized input VAT payments for TY 2012, because it sufficiently complied with all the requisites for a valid claim for refund. Allegedly, petitioner is a VAT registered taxpayer and engaged in zero-rated sales and the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with Bangko Sentral ng Pilipinas (BSP) Rules and Regulations. Petitioner claims that it timely filed its administrative and judicial claims for refund. According to petitioner, its excess and unutilized input VAT is attributable to its zero-rated sales, and the same has been duly substantiated by evidence. Petitioner likewise avers that the said excess and unutilized input VAT for CY 2012 has remained unutilized and unapplied against its output VAT.

Petitioner asserts that respondent had mistaken in interpreting that this Court's power of judicial review is limited to the documents submitted at the administrative level.

Respondent's counter-arguments:

[107] Resolution dated May 14, 2019, CTA Case No. 8902 docket, Vol. III, p. 1323.
[108] Par. II, Issue, JSFI, CTA Case No. 8902 Docket – Vol. I, p. 427.

Respondent posits that the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund. According to respondent, petitioner is not entitled to a refund in the amount of ₱44,468,902.28 due to the violation of the invoicing requirements as provided under Section 113 in relation to Section 110 and 237 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulation (RR) No. 16-2005. Respondent also insists that since a decision had been rendered denying petitioner's administrative claim for refund for failure to substantiate the same, petitioner cannot submit documents it did not submit at the administrative level. This Court is allegedly confined to a more limited issue of whether the denial was proper given the evidence submitted at the administrative level.

THE COURT'S RULING

The Court shall first determine whether it has jurisdiction over the Petitions for Review in relation to the claim for refund filed by the petitioner with the respondent.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy. It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[109]

Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended by RA No. 9282 and 9503, provides that the Court of Tax Appeals (CTA) has exclusive appellate jurisdiction to review by appeal the decisions or inaction by the CIR on claims for refund, *viz.*:

> "Sec. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of**

[109] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

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;" (*Emphasis supplied*)

In relation thereto, Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the period when to file an administrative claim for refund with the BIR and judicial claim for refund with the CTA, to wit:

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, <u>within two (2) years after the close of the taxable quarter</u> 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

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - **In proper cases, the Commissioner shall <u>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</u> 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, <u>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</u>. (*Emphasis and underscoring supplied*) 𝒿𝓅

Pursuant to the afore-quoted provision, a VAT registered taxpayer whose sales is 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 a refund or the issuance of tax credit certificate of its creditable input tax due or paid attributable to such sales.

The provision further states that upon filing of the administrative claim for refund, the BIR has one hundred twenty (120) days from the date of submission of the complete supporting documents in support of the application to either grant or deny the claim. However, should the BIR deny fully or partially the claim, the taxpayer has thirty (30) days from the receipt of the decision denying the claim or in case of inaction by the BIR, from the expiration of the 120 days, to file an appeal with the Court.

In the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership,*[110] the Supreme Court summarized the rules on the 120+30 day period for claiming refund or credit of input VAT:

> "SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT
>
> The lessons of this case may be summed up as follows:
>
> xxx xxx xxx
>
> *B. 120+30 Day Period*
>
> 1. The taxpayer can file an appeal in one of two ways: **(1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.**
>
> 2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
>
> 3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi and San Roque*)
>
> 4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5

[110] G.R. No. 191498, January 15, 2014.

October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*)

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (*San Roque*)" (*Emphasis supplied*)

Likewise, in *Rohm Apollo Semiconductor Phils. vs. Commissioner of Internal Revenue*[111], the Supreme Court emphasized that the taxpayer need not wait for the decision of the CIR to file an appeal, as the lapse of the 120-day period without action from the CIR is already considered a denial of the claim for refund, to wit:

"A final note, the taxpayers are reminded that **when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter**. The CIR's inaction is the decision itself. It is already a denial of the refund claim. **Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period**."

Based on the afore-quoted provisions and above Supreme Court rulings, it is undisputable that in order for the Court to acquire jurisdiction over an appeal on claims for refund or credit of excess input VAT, compliance with the 120-day plus 30-day period is mandatory.

A perusal of the facts and evidence presented, the Court finds that it has no jurisdiction to entertain the instant petitions.

In this case, the petitioner filed its quarterly VAT returns for TY 2012 on the following dates:

Quarter (TY 2012)	Date of Filing of Quarterly VAT Returns
First Quarter	April 25, 2012
Second Quarter	July 25, 2012
Third Quarter	April 13, 2013
Fourth Quarter	January 24, 2013

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[111] G.R. No. 168950, January 14, 2015.

Then it filed its administrative claims for refund of excess input VAT for the TY 2012, together with the complete supporting documents, with the BIR on the following dates:

Quarter (TY 2012)	Last day of the Two-Year Prescriptive Period	Date of Filing of Administrative Claim for Refund
First Quarter	April 25, 2014	August 12, 2013
Second Quarter	July 25, 2014	December 17, 2013
Third Quarter	April 13, 2015	March 19, 2014
Fourth Quarter	January 24, 2015	March 19, 2014

Indisputably, petitioner is able to file its administrative claims for refund for the TY 2012 within the two-year prescriptive period.

Based on the records, respondent failed to act on the said administrative claims within the 120-day period. Accordingly, petitioner should have filed its judicial claim before this Court within 30 days from the lapse of the 120-day period or on the following dates:

Quarter (TY 2012)	Date of Filing of Administrative Claim for Refund	Last day of the 120th day	Last Day to File a Judicial Claim	Actual Date of Filing of Judicial Claim
First Quarter	August 12, 2013	December 10, 2013	*January 9, 2014*	October 7, 2014
Second Quarter	December 17, 2013	April 16, 2014	*May 16, 2014*	October 7, 2014
Third Quarter	March 19, 2014	July 17, 2014	*August 18, 2014*[112]	December 22, 2014
Fourth Quarter	March 19, 2014	July 17, 2014	*August 18, 2014*	December 22, 2014

However, the judicial claim for refund of excess input VAT for the August 12, 2013 and December 17, 2013 administrative claims was only filed by the petitioner before this Court on October 7, 2014, while the judicial claim for March 19, 2014 administrative claim was only filed on December 22, 2014. Clearly, judicial claims filed on the said dates were filed beyond the 30 day-period prescribed by law.

Further, the Court observes that petitioner erroneously based the counting of the 30-day period from the issuance of the partial denial of the claim for refund issued by the respondent. An examination of the evidence shows that respondent issued two (2) Notices, received by the petitioner on September 5, 2014 for the First and Second Quarter TY 2012 claims and November 20, 2014 for the Third and Fourth Quarter TY 2012 claims, partially denying petitioner's claims for refund. Counting 30 days from the receipt of such notices, petitioner

[112] Considering August 16 and 17, 2014 were Saturday and Sunday, respectively.

filed its judicial claims with the Court on October 7 and December 22, 2014:

<table>
<tr><th>Quarter (TY 2012)</th><th>Notice</th><th>Date of Receipt of Notice of Denial</th><th>Date of Filing of Judicial Claim</th></tr>
<tr><td>First</td><td rowspan="2">First Notice</td><td rowspan="2">September 5, 2014</td><td rowspan="2">October 7, 2014[113]</td></tr>
<tr><td>Second</td></tr>
<tr><td>Third</td><td rowspan="2">Second Notice</td><td rowspan="2">November 20, 2014</td><td rowspan="2">December 22, 2014[114]</td></tr>
<tr><td>Fourth</td></tr>
</table>

It is worthy to stress that the 120+30 day periods are mandatory and jurisdictional. Hence, the petitioner should have filed its judicial claims upon the lapse of the 120-day period, as the inaction of the respondent is already considered a decision denying the claim for refund, and not from the receipt of the denial.

WHEREFORE, premises considered, the instant Petitions for Review are **DENIED** for lack of jurisdiction.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[113] Considering October 5, 2014 was a Sunday and October 6, 2014 is Monday which was declared as a regular holiday in observance of Eidul Adha, pursuant to Presidential Proclamation No. 875 dated September 12, 2014.
[114] Considering December 20 and 21, 2014 were Saturday and Sunday, respectively.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice