REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

CBK POWER COMPANY LIMITED,
Respondent.

CTA *EB* NO. 1624
(CTA Case Nos. 8043 & 8116)

Present:

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

Promulgated:

JAN 3 1 2018 10:24a.m.

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review* [1] filed by the Commissioner of Internal Revenue (CIR) on April 17, 2017 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended,[2] which seeks the setting aside of the October 28, 2016 *Decision*[3] and March 9, 2017 *Resolution*[4], enunciated by the Special Second Division of the Court of Tax Appeals (CTA) in CTA Case Nos. 8043 & 8116, entitled "*CBK Power Company Limited vs. Commissioner of Internal Revenue*". om

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[1] *Rollo*, CTA EB No. 1624, pp. 7-24.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of

The dispositive portions of the assailed Decision and Resolution read:

Decision[5] dated October 28, 2016:

> "**WHEREFORE**, premises considered, the Petitions for Review filed on March 29, 2010 and June 28, 2010, are **PARTIALLY GRANTED**. Accordingly, let a Tax Credit Certificate be issued in favor of CBK in the reduced amount of P51,955,454.12, representing its unutilized excess input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the first to fourth quarters of 2008."

Resolution[6] dated March 9, 2017:

> "**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 28 October 2016)** is **DENIED** for lack of merit.
>
> On the other hand, petitioner's **Manifestation and Motion** is **NOTED** and **GRANTED**. Accordingly, the first sentence of the paragraph immediately preceding the dispositive portion of the assailed decision is **AMENDED** as follows:
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> "Considering that CBK's reported sales for the first and second **to fourth quarters of 2008** were all zero-rated, the substantiated input VAT in the amount of P51,955,454.12 is entirely attributable thereto and was not applied against any output tax. Additionally, CBK's reported unutilized input taxes for the first and second to fourth quarters of 2008 were deducted as 'VAT Refund/TCC claimed' in the Quarterly VAT Returns filed for the same taxable quarters preventing the carry-over or application of such input taxes in the next taxable quarter/s."

The Facts

Petitioner is the Commissioner of Internal Revenue (CIR), duly appointed and vested with the authority to act as such, including inter alia, the power to decide, approve and grant refunds or tax credit of erroneously or illegally collected internal revenue taxes as provided by law, with office address

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.

at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman Quezon City.[7]

Respondent CBK Power Company Limited (CBK) is a partnership duly organized and existing under and by virtue of the laws of the Philippines with principal office at the NPC Compound, Kalayaan, Laguna. It is registered as a VAT entity with TIN/VAT No. 205-760-474-000.[8]

On November 27, 2009, respondent filed with the BIR Revenue District Office (RDO) No. 55 of Laguna, an administrative claim for the issuance of Tax Credit Certificate (TCC) in the amount of Php14,078,028.68, allegedly representing its unutilized input taxes on its local purchases and/or importation of goods and services, capital goods and payment for services rendered by non-residents, which were all attributable to its zero-rated sales for the period January 1, 2008 to March 31, 2008, pursuant to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.[9]

Another administrative claim for the issuance of TCC in the amount of Php47,425,306.79 was filed by the respondent on June 25, 2010, allegedly representing its unutilized input taxes on its local purchases and/or importation of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, local purchases of capital goods not exceeding P1 Million including unutilized amortized input taxes on capital goods exceeding P1Million, which were all attributable to its zero-rated sales for the period April 1, 2008 to December 31, 2008.[10]

Due to petitioner's inaction, respondent filed separately two (2) petitions for review. One was filed on March 29, 2010 docketed as CTA Case No. 8043 while the other was filed on June 28, 2010 docketed as CTA Case No. 8116.[11] The former was raffled to the CTA Special Second Division while the latter was raffled to the CTA Special First Division.[12]

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[7] *Rollo*, Decision dated October 28, 2016, p. 26.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.* at 27.

On September 7, 2010, the CTA Special First Division issued a resolution consolidating the two cases before the Special Second Division.[13]

On September 14, 2010, the CTA Special Second Division issued a resolution expressing no objection to the consolidation of said cases and set the initial presentation of evidence on October 18, 2010.[14]

On December 20, 2010, petitioner filed a motion seeking for the dismissal of CTA Case No. 8116 which was granted on March 3, 2011 by the CTA Special Second Division for lack of jurisdiction due to premature filing.[15]

Aggrieved, respondent moved for reconsideration of said ruling on March 16, 2011 but was denied under resolution dated April 11, 2011.[16] Respondent appealed the ruling of CTA Special Second Division by filing a petition for review to this Court *En Banc* docketed as CTA EB No. 759.[17]

On December 20, 2012, the Court *En Banc* dismissed respondent's petition, hence, it moved for the reconsideration of such decision which was granted under Resolution dated June 26, 2013. The latter resolution remanded the two cases to the CTA Special Second Division for further proceedings.[18]

On July 23, 2013, petitioner filed a petition for review on certiorari in the Supreme Court (SC) docketed as G.R. No. 210529 which was later on denied by the SC's Second Division.[19]

Meanwhile, the CTA Special Second Division, under resolution dated March 14, 2013, ordered the parties to proceed with the presentation of their respective evidence for CTA Case No. 8116 while the issues and matters submitted under CTA Case No. 8043 were held in abeyance.

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[13] *Rollo*, Decision dated October 28, 2016, p. 28.
[14] *Id.* at 29.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.* at 30-31.
[19] *Id.* at 31.

On June 3, 2014 petitioner moved for the reconsideration of said SC decision but was denied with finality in a resolution issued on July 18, 2014.[20]

After the trial, respondent submitted its memorandum but petitioner did not.[21] The case was then submitted for decision. On October 28, 2016, the assailed decision was promulgated which partially granted respondent's petition.

On December 5, 2016, petitioner moved for the reconsideration of said decision while respondent manifested that petitioner's motion does not raise any new argument nor any cogent reason to justify the reversal of said decision.[22]

However, the CTA Special Second Division denied said motion with some amendment on the assailed decision.[23] Hence, petitioner appealed said decision before the CTA *En Banc* on April 17, 2017.

On May 15, 2017, respondent was ordered to submit its comment on petitioner's appeal.[24] Respondent submitted its Comment[25] on May 31, 2017.

On June 21, 2017 after considering petitioner's argument as well as respondent's comment, this Court gave due course to the instant petition and required both parties to submit their respective memorandum.[26]

Respondent submitted its Memorandum[27] on July 31, 2017 while petitioner did not.[28] Thus, the case was deemed submitted for decision on September 11, 2017.[29]

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[20] *Rollo*, Decision dated October 28, 2016, p. 32.
[21] *Id.* at 41.
[22] *Rollo*, Resolution dated March 9, 2017, p. 70-71.
[23] *Supra*, Note 4.
[24] *Rollo*, Resolution dated May 15, 2017, pp. 82-83.
[25] *Rollo*, pp. 84-91.
[26] *Rollo*, Resolution dated June 21, 2017, pp. 93-94.
[27] *Rollo*, pp. 95-122.
[28] *Rollo*, Records Verification dated August 10, 2017, p. 123.
[29] *Rollo*, Resolution dated September 11, 2017, pp. 125-126.

The Issue/s

The following issues[30] or errors are raised by the petitioner, to wit:

1. The Honorable Court erred in ruling that the judicial claim covering the second, third, and fourth quarters of 2008 is not covered by the strict application of the 120+30-day mandatory period since it was filed within the period covered by BIR Ruling No. DA-489-03;

2. The Honorable Court erred in ruling that there was no violation of doctrine of exhaustion of administrative remedies despite respondent's failure to submit relevant documents in support of its claim;

3. The Honorable Court of Tax Appeals is without jurisdiction over the case for failure to exhaust all the remedies available in the administrative level prior to the filing of the instant case.

Arguments of Petitioner CIR[31]

Petitioner CIR argues that the 120-day period required under Section 112(C) of the 1997 National Internal Revenue Code (NIRC), as amended, will commence to run only upon the submission of complete documents in support of the application for refund, hence, this Court has no jurisdiction over the judicial claim filed by the respondent.

Petitioner also argues that respondent did not invoke BIR Ruling No. DA-489-03 which allowed taxpayers to file a judicial claim without waiting for the end of the 120-day period in its Petition for Review but the Court in Division relied on the said ruling which was upheld by the Supreme Court (SC) in the *San Roque case*. Said BIR ruling was cited in the said SC decision as an exception to the 120+30-day mandatory period. Petitioner argues that said ruling was already deemed repealed or revoked by Revenue Regulations (RR) No. 16-2005 which took effect on November 1, 2005.

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[30] Rollo, Petition for Review, p. 9.
[31] *Supra.*, Note 1.

Arguments of Respondent CBK[32]

On the other hand, respondent argues that the instant petition does not raise any new arguments nor any cogent reasons to justify a reversal of the just and fair decision and resolution of this Court's Special Second Division promulgated on October 28, 2016 and March 9, 2017, respectively.

Ruling of the Court *En Banc*

Considering that the errors assigned in the present Petition for Review are mere rehash of the earlier arguments of the petitioner which were already adequately discussed and substantially resolved by the CTA Special Second Division in its October 28, 2016 *Decision*[33] and March 9, 2017 *Resolution,*[34] we shall tackle the other arguments raised by the petitioner in the instant petition.

Supreme Court decisions form part of the legal system

Petitioner argues that BIR Ruling No. DA-489-03 was already deemed repealed by RR No. 16-2005 because the ruling therein is inconsistent with Section 4.112.1(d) of said regulation as its repealing clause mandates that "All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of these Regulations are deemed repealed, amended or modified."

Thus, petitioner insinuates that this Court's reliance on the Supreme Court ruling in the cases of "*Commissioner of Internal Revenue* v. *San Roque Power Corporation,*" "*Taganito Mining Corporation v. Commissioner of Internal Revenue,*" and "*Philex Mining Corporation v. Commissioner of Internal Revenue*"[35] which took cognizance of BIR Ruling No. DA-489-03 as an exception to the 120+30-day period, is erroneous.

Petitioner should be aware that this Court is mandated to take cognizance of the rulings which are promulgated by the

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[32] *Rollo*, Comment of Respondent, pp. 100-113.
[33] *Supra*, Note 3.
[34] *Supra*, Note 4.
[35] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

Supreme Court as ruled in the case of *The Heirs of Felicidad Canque v. Court of Appeals et al.*,[36] to wit:

> Clearly, the Court of Appeals committed a reversible error because it palpably failed to consider in its August 25, 1994 Decision the aforementioned ruling of the Supreme Court promulgated twenty months earlier on January 27, 1993. Unfortunately, this is not the first time for this Court to come upon such a slip. *Peltan Development vs. Court of Appeals* ruled that **every court must take cognizance of decisions this Court has rendered because they are proper subjects of mandatory judicial notice** xxx [and] **more importantly form part of the legal system**. We stress that **members of the bench have a responsibility to know and to apply the latest holdings of the Supreme Court**. The nature of their calling requires no less. (*Emphasis supplied*)

Such duty to follow the legal doctrine enunciated by the Supreme Court is not only pursuant to the doctrine of judicial notice but because it is the only institution which the courts should follow as pronounced in the case of *Manila Electric Company v. Philippine Consumers Foundation, Inc. et al.*,[37] to wit:

> A lower court cannot reverse or set aside decisions or orders of a superior court, especially of this Court, for to do so will negate the principle of hierarchy of courts and nullify the essence of review. A final judgment, albeit erroneous, is binding on the whole world. Thus, it is the duty of the lower courts to obey the Decisions of this Court and render obeisance to its status as the apex of the hierarchy of courts. "A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation." "**There is only one Supreme Court from whose decisions all other courts should take their bearings**," as eloquently declared by Justice J. B. L. Reyes. (*Emphasis supplied*)

Further, it is well-settled that courts must be cognizant of the decisions of the Supreme Court because of the doctrine of *stare decisis* as amply explained in the case of *Amelia D. De Mesa et al. v. Pepsi Cola Products, Inc. et al.*,[38] to wit:

[36] G.R. No. 119184, July 21, 1997.
[37] G.R. No. 101783, January 23, 2002.
[38] G.R. Nos. 153063-70, August 19, 2005.

The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:

> ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. **The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument**. (emphasis supplied)

Thus, petitioner's argument of erroneous reliance by this Court on the abovementioned cases is totally misplaced.

Further, the ruling on the exception to the 120+30-day mandatory period to be observed by the taxpayers before filing their judicial claim was not only enshrined in the abovementioned cases but also in the later case of *Commissioner of Internal Revenue* v. *Toledo Power Company,*[39] to wit:

> Pursuant to Section 112 (A) and (D) of the NIRC, a taxpayer has two (2) years from the close of the taxable quarter when the 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.
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> In *Commissioner of Internal Revenue v. San Roque Power Corporation*, we said that the 120+30-day period must be strictly observed **except from the date of issuance of BIR Ruling No. DA-489-03 on December 10, 2003, which allowed taxpayers to file a judicial claim without waiting for the end of the 120-day period, up to** the date of promulgation of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* on **October 6, 2010, where**

[39] G.R. Nos. 196415 & 196451, December 02, 2015.

> **we declared that compliance with the 120+30-day period is mandatory and jurisdictional.** (Emphasis supplied).

Hence, the exception shall apply to judicial claims filed from December 10, 2003 to October 6, 2010. Considering that respondent's judicial claims were filed on November 27, 2009 and June 25, 2010, such filings qualify under the exception to the 120+30-day mandatory period.

As to the argument that BIR Ruling No. DA-489-03 was already deemed repealed, based on the records of the instant case, neither in respondent's Answer nor in its Motion for Reconsideration was such argument ever raised. It is only in this instant appeal that respondent made this argument or allegation.

In the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon Inc.)*,[40] the Supreme Court ruled that such newly raised argument or issues on appeal cannot be allowed, to wit:

> It is already well-settled in this jurisdiction that a party may not change his theory of the case on appeal. Such a rule has been expressly adopted in Rule 44, Section 15 of the 1997 Rules of Civil Procedure, which provides -
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> > SEC. 15. Questions that may be raised on appeal. - Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.
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> Thus, in *Carantes v. Court of Appeals*, this Court emphasized that -
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> > The settled rule is that **defenses not pleaded in the answer may not be raised for the first time on appeal**. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.

[40] G.R. NO. 159593, October 16, 2006.

> In the more recent case of *Mon v. Court of Appeals*, this Court again pronounced that, in this jurisdiction, the settled rule is that a party cannot change his theory of the case or his cause of action on appeal. It affirms that "**courts of justice have no jurisdiction or power to decide a question not in issue**." Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. The rule rests on the fundamental tenets of fair play. (*Emphasis supplied*)

Hence, this Court has no jurisdiction to rule on the matter.

Further, petitioner's argument that said ruling was already deemed repealed or revoked by Revenue Regulations (RR) No. 16-2005 which took effect on November 1, 2005 is belied by Revenue Memorandum Circular (RMC) No. 54-2014 which was issued on June 11, 2014.

Item IV of RMC No. 54-2014 pertaining to the exception to the 120+30-day mandatory period provides that:

> **IV. Exception to the Mandatory and Jurisdictional Nature of the 120+30 day Period (BIR Ruling No. DA-489-03 dated 10 December 2003)**
>
> As an exception to the mandatory and jurisdictional 120+30 day period, it was emphasized that from the time of issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal by the Supreme Court in the Aichi case on October 6, 2010 (or a period of almost 7 years), taxpayers/claimant ***need not wait*** for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. This exception, however, is limited to cases of premature filing (filing of judicial claim prior to the lapse of the 120-day period) and *does not extend to late filing of judicial claim.*

Thus, it is not true that the ruling is already repealed or revoked.

Facts and issues are the bases in rendering a judgment

Petitioner argues that respondent did not invoke BIR Ruling No. DA-489-03 in its Petition for Review, hence, it should not benefit from said ruling.

Petitioner should be aware that when the courts, including this Court, resolve any case before them, the facts and issues raised by the parties in a particular case as supported by material and relevant evidence are the only bases in the preparation of any court's decision. Then on such bases, the courts apply the relevant law and jurisprudence to the case.

In the case of *Social Justice Society et al. v. Hon Jose L. Atienza, Jr. et al.*,[41] the Supreme Court ruled in such manner, to wit:

> In resolving controversies, **courts can only consider facts and issues pleaded by the parties**. Courts, as well as magistrates presiding over them are not omniscient. They can only act on the facts and issues presented before them in appropriate pleadings. They may not even substitute their own personal knowledge for evidence. Nor may they take notice of matters **except those** expressly provided as **subjects of mandatory judicial notice**.

As shown in the immediately preceding case, the only exception to considering facts and issues as bases for resolving case controversies are those subjects of mandatory judicial notice. Among the subjects of mandatory judicial notice, as ruled in the *Heirs of Felicidad Canque case*, are the Supreme Court decisions.

Thus, even without raising or invoking BIR Ruling No. DA-489-03, which was enshrined in *San Roque case* as adopted in the *Toledo Power case*, the same may be considered by the courts provided that the facts and issues of the case on hand are similar to the said precedent cases. In the instant case, this Court believes that said cases are applicable based on its facts and circumstances.

The completeness of documents submitted in support of claim for refund is determined by the taxpayer and not by the BIR

[41] G.R. No. 156052, February 13, 2008.

Petitioner insists that the 120-day period required under the 1997 NIRC, as amended, will commence only to run upon the submission of complete documents in support of the application for refund and since the respondent failed to submit the complete documents, it did not observe the exhaustion of administrative remedy. Thus, the failure of the respondent to observe such remedy renders this Court without jurisdiction over the judicial claim it filed.

Petitioner should be aware that the ruling of the Court in Division in the assailed resolution that non-submission of complete documents at the administrative level is not a bar in entertaining the appeal has support in law as well as in jurisprudence as discussed in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[42] to wit:

> Indeed, the 120-day period granted to the CIR to decide the administrative claim under the Section 112 is primarily intended to benefit the taxpayer, to ensure that his claim is decided judiciously and expeditiously. After all, the sooner the taxpayer successfully processes his refund, the sooner can such resources be further reinvested to the business translating to greater efficiencies and productivities that would ultimately uplift the general welfare. To allow the CIR to determine the completeness of the documents submitted and, thus, dictate the running of the 120-day period, would undermine these objectives, as it would provide the CIR the unbridled power to indefinitely delay the administrative claim, which would ultimately prevent the filing of a judicial claim with the CTA.
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> xxx xxx
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> Ideally, upon filing his administrative claim, a taxpayer should complete the necessary documents to support his claim for tax credit or refund or for excess utilized VAT. After all, should the taxpayer decide to submit additional documents and effectively extend the 120-period, it grants the CIR more time to decide the claim. Moreover, it would be prejudicial to the interest of a taxpayer to prolong the period of processing of his application before he may reap the benefits of his claim. Therefore, ideally, the CIR has a period of 120 days from the date an administrative claim is filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.
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> xxx xxx

[42] G.R. No. 207112, December 08, 2015.

> With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining **when** the supporting documents have been completed — *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period*. After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.
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> xxx xxx
>
> 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.
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> 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. (*Underline ours*)

Based on the abovementioned case, the taxpayer shall be the one to determine what are the documents it will submit in support of the claim for refund unless the BIR will require other documents from the taxpayer but it must notify said taxpayer. The BIR will then decide the claim for refund based on these submitted documents.

Thus, when the respondent did not submit other supporting papers in support of its claim, petitioner should have decided such claim based on the alleged incomplete documents. However, petitioner failed to do so.

The submission of the claim for refund together with its supporting documents though allegedly not complete is substantial compliance with the law. Such compliance renders the action of the respondent in observance of the exhaustion of administrative remedy requirement under the law and with such observance, the filing of the judicial claims in this Court due to inaction of the petitioner is proper under such circumstances. Thus, this Court has jurisdiction to hear the instant case.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The October 28, 2016 *Decision*[43] and March 9, 2017 *Resolution*[44], of the CTA Special Second Division in CTA Case Nos. 8043 & 8116, are hereby **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[43] *Supra*, Note 3.
[44] *Supra*, Note 4.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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