REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

NOKIA (PHILIPPINES), INC., Petitioner,	**CTA Case No. 8405**
	Members:
- versus -	**DEL ROSARIO,** *P.J.*, **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 11 2015 ; 1:30 p.m.

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RESOLUTION

UY, *J.*:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed on November 28, 2014, with respondent's **"COMMENT (To Petitioner's Motion for Reconsideration dated 27 November 2014)"** filed on February 2, 2015, seeking the reconsideration and setting aside of this Court's Decision promulgated on November 7, 2014, the dispositive portion of which reads:

> "**WHEREFORE**, all the foregoing considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In the Motion, petitioner argues that the services it rendered are performed entirely in the Philippines as evidenced by its value-added tax (VAT) zero-rated invoices and VAT zero-rated official receipts; that Nokia Corporation (Finland) is a nonresident foreign corporation, doing business outside the Philippines; that the cases of *Accenture, Inc. vs. Commissioner of Internal Revenue*[1] and *Commissioner of*

[1] G.R. No. 190102, July 11, 2012.

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Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.[2] (collectively referred to herein as the "*Accenture* and *Burmeister* cases") are not applicable to the present case; and that the mantra that tax refund cases are construed *strictissimi juris* against the taxpayer and in favor of the taxing authority is not infallible.

On the other hand, respondent avers that while it is true that VAT invoices and VAT official receipts are proof of sales or lease of goods or services and payment thereof, the same do not *ipso facto* mean that the sales or lease of goods or services were made in the Philippines; that the services agreed upon by petitioner and Nokia Corporation can only be rendered if the latter is doing business within the Philippines; and that a taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim, and tax refunds, like tax exemptions, are construed strictly against the taxpayer.

THE COURT'S RULING

We deny the instant Motion for Reconsideration.

Petitioner's VAT invoices and VAT official receipts do not tend to show that the subject services were performed in the Philippines.

In support to the argument that the services rendered by petitioner are performed entirely in the Philippines, petitioner points to its VAT invoices and VAT official receipts. Citing Section 113(A), in relation to Section 108(A), both of the NIRC of 1997, as amended, petitioner opines that it is unmistakable that the phrase "sale of services", which is documented by VAT invoices and VAT official receipts, means all kinds of services performed or rendered in the Philippines. Thus, according to petitioner, its VAT zero-rated invoices and VAT zero-rated official receipts are themselves proof that the services were performed in the Philippines.

Petitioner's reasoning is specious.

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[2] G.R. No. 153205, January 22, 2007.

Whether a certain service is performed within or outside the Philippines is a question of fact. Thus, the same must be proved by clear and convincing evidence.

In this case, however, nowhere in the four corners of each official receipt[3] and invoice[4] of petitioner did this Court find any indication that the services it performed in favor of Nokia Corporation (Finland) were all done in the Philippines.

Moreover, being a question of fact, the issue of whether the subject services were performed in the Philippines, may not be proved by merely referring to Section 113(A), in relation to Section 108 of the NIRC of 1997, as amended. Said provisions read:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) *Rate and Base of Tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%)[5] of gross receipts **derived from the sale or exchange of services**, including the use or lease of properties: xxx
>
> xxx xxx xxx
>
> The phrase ***'sale or exchange of services'*** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, xxx
>
> xxx xxx xxx.
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.*- The following **services performed in the Philippines** by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign

[3] Exhibit "O".
[4] Exhibit "O-1".
[5] Now 12%. Refer to Revenue Memorandum Circular No. 7-2006 dated January 31, 2006.

currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph **rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines** when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);" (*Emphases and underscoring supplied)*

"SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* –

(A) *Invoicing Requirements.* – A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of sevices."

The aforequoted Section 108, being a tax provision or one which imposes the VAT on the sale of services, is merely a recognition or expression of the inherent limitation of taxation that such power *"may be exercised only within the territorial jurisdiction of the taxing authority."*[6]

Needless to state, the approved doctrine is that no state may tax anything not within its jurisdiction without violating the due process clause of the constitution. The taxing power of a state does not extend beyond its territorial limits, but within such limits it may tax persons, property, income, or business.[7]

Generally stated, **an excise tax is one that is imposed on the performance of an act**, the engaging in an occupation, or the

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[6] 51 Am. Jur. 88.

[7] *Manila Gas Corporation vs. Collector of Internal Revenue*, G.R. No. 42780, January 17, 1936.

enjoyment of a privilege.[8] On the basis of this definition, the VAT imposed on the sale of service is an excise tax.

Being an excise tax, the same can be levied by the State only when the acts, privileges or businesses are done or performed within the jurisdiction of the Philippines.[9]

The plain meaning of Section 108 is that VAT is imposed (whether at the rate of 10%[10] or 0%) on the sale of services, when the said services were performed or to be performed in the Philippines. In other words, when the services were *not* performed or are *not* to be performed in the Philippines, no VAT under the same provision is imposable on the gross receipts derived from the sale of such services, since it is already beyond the coverage of the said tax provision.

Finding that reference to the said provisions does not establish that the subject services were performed in the Philippines and since petitioner's official receipts[11] and invoices[12] fail to convince Us that the same were performed therein, We maintain that the same are not subject to zero percent (0%) VAT under the aforequoted Section 108(B)(2).

As cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[13]

There is no indication that Nokia Corporation (Finland) is a nonresident foreign corporation or a foreign corporation not engaged in trade or business within the Philippines.

In arguing that Nokia Corporation (Finland) is a nonresident

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[8] *Manila Electric Company vs. Vera*, G.R. No. L-29987, October 22, 1975.
[9] *Commissioner of Internal Revenue vs. British Overseas Airways Corporation, et al.*, G.R. Nos. L-65773-74, April 30, 1987.
[10] Now 12 %, *supra*.
[11] Exhibit "O".
[12] Exhibit "O-1".
[13] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

foreign corporation, doing business outside the Philippines, petitioner assails this Court's reliance on Note 1 of petitioner's 2009 Audited Financial Statements. Particularly, petitioner argues as follows:

> "10. The finding or conclusion that petitioner's evidence discloses that Nokia Corporation (Finland) is doing or engaging in business in the Philippines cannot simply be inferred from Note 1 of the Notes to Financial Statements. The determination of whether Nokia Corporation (Finland) is a nonresident foreign corporation, not doing business in the Philippines is a question of fact, the veracity of which would require introduction of competent and relevant evidence.
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> 11. The said Note 1 is merely a conclusion or a personal inference of the external auditor who prepared the Financial Statements. Reading carefully, it can be gleaned that the note is in turn based on an alleged 'xx existing agreement with Nokia which states that [sic] Company shall provide to Nokia in handling any specific or general business matter that may arise with respect to Nokia's business in the Philippines and other territories defined in the agreement.' The alleged 'existing agreement' does not form part of the Financial Statement. Nor were the exact contents of the alleged 'existing agreement' shown. One can only surmise the basis of the external auditor, Isla Lipana & Co.'s, in providing such a statement. Based on this alone, the Court cannot validly presume that whatever was mentioned by the external auditor in that Note 1 was accurate and true.
>
> 12. At any rate, Note 1 on its face does not categorically indicate that Nokia Corporation (Finland) was actually doing or engaging in business in the Philippines. It was merely opined by the external auditor that petitioner has an existing agreement with Nokia Corporation (Finland). From the words, 'any specific or general business matter that may arise with respect to Nokia's business in the Philippines...', cannot competently support the conclusion that Nokia Corporation (Finland) is doing or engaging business in the Philippines. At most, that the external auditor was merely expressing his personal interpretation of an alleged agreement between Petitioner and Nokia Corporation (Finland). The external auditor did not refer to a specific provision in the alleged agreement, which he is referring to about the alleged 'business' of Nokia that 'may' arise in

the Philippines and other territories as defined in the agreement.

13. As against the tenuous Note 1 of the Financial Statements, more weight should have been given to the categorical and positive testimony of Ms. Bridgette C. Redolfin that Nokia Corporation (Finland) is not engaged in business in the Philippines, considering that such testimony was substantiated by competent and relevant pieces of evidence such as the Authenticated Certification from the Tax Authority in Finland Certifying that Nokia OYJ was a resident of Finland for the whole year 2009; Extract from the Trade Register of Finland; and the SEC Certificate of Non-Registration of the Nokia Corporation (Finland)."[14]

Based on the foregoing, petitioner is of the view that:

1. Petitioner's external auditor (Isla Lipana & Co.) is merely expressing a conclusion or a personal inference or interpretation as to the existence of the agreement between petitioner and Nokia Corporation (Finland);

2. As between the said external auditor's statement and the supposed *"categorical and positive testimony of* [petitioner's witness,] *Ms. Bridgette C. Redolfin that Nokia Corporation (Finland) is not engaged in business in the Philippines, considering that such testimony was substantiated by competent and relevant pieces of evidence"*, the testimony of Ms. Redolfin must prevail; and

3. The Notes to the Financial Statements, in general, and the subject Note 1, in particular, may be ignored or totally disregarded.

We do not agree with petitioner.

Whatever the dialectics employed, no amount of sophistry can ignore the existence of the agreement between petitioner and Nokia Corporation (Finland).

For easy reference, the pertinent portions of Note 1 of the Notes to Financial Statements as of and for the years ended

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[14] Docket, pp. 446 to 447.

December 31, 2009 and 2008 of petitioner,[15] are reproduced anew, viz:

> "1.1 General information
>
> xxx xxx xxx
>
> The Company's parent company is Nokia Corporation (Nokia), incorporated in Finland and which shares of stock are listed in the Stock Exchanges of Helsinki, Frankfurt and New York.
>
> 1.2 Change of business structure
>
> xxx xxx xxx
>
> With the change of business structure, the Company's business operations are now focused in providing support services to Nokia and other affiliates. **The Company has an existing agreement with Nokia which states that Company shall provide services to Nokia in handling any specific or general business matter that may arise <u>with respect to Nokia's business in the Philippines</u> and other territories defined in the agreement.** These services include marketing support service related to Nokia products and solutions, market research in the Philippines and other support services as defined in the service agreement.
>
> xxx xxx xxx." *(Emphasis and underscoring supplied)*

Until the filing of the instant Motion for Reconsideration, petitioner has been consistent in alleging that it has a transaction with Nokia Corporation (Finland), as manifested in the following:

<u>Petition for Review</u>:

> "3. During the taxable year 2009, **Nokia entered into numerous transactions, <u>which included, among others, rendering marketing support and other services to its parent company Nokia Corporation (Finland)</u>**."[16] *(Emphasis and underscoring supplied)*

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[15] Exhibit "R-08".
[16] Docket, p. 9.

Petitioner's Pre-Trial Brief:

"7. During taxable year 2009, **Nokia entered into numerous transactions, which included, among others, rendering marketing support and other services to Nokia Corporation (Finland)**."[17] *(Emphasis and underscoring supplied)*

Petitioner's Memorandum:

"7. During taxable year 2009, **Nokia entered into numerous transactions, which included, among others, rendering marketing support and other services to Nokia Corporation (Finland)**."[18] *(Emphasis and underscoring supplied)*

In addition, petitioner's witness, Ms. Jocelyn L. Lapira, testified as follows:

"Q9: What were the transactions covered by the zero-rated sales of Petitioner?

A9: In the course of Petitioner's business as a marketing support and other services provider, Nokia purchases various goods and services and pays for the applicable Input VAT thereon. **During the 4th quarter of taxable year 2009, Nokia entered into numerous transactions which included, among others, rendering marketing support and other services to its parent company Nokia Corporation (Finland)**."[19] *(Emphasis and underscoring supplied)*

The allegations in petitioner's pleadings, coupled with the aforequoted Note 1 and the testimony of Ms. Lapira, are all indicative that petitioner has an existing agreement with Nokia Corporation (Finland). Thus, petitioner may not claim that its external auditor is merely expressing a conclusion or a personal inference or interpretation as to the existence of the agreement between petitioner and Nokia Corporation (Finland).

As a corollary, petitioner cannot deny the existence, nor feign

[17] Docket, p. 78.
[18] Docket, p. 78.
[19] Exhibit "I", Docket, p. 212.

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ignorance, of the said agreement.

Furthermore, petitioner's argument that this Court should put *"more weight"* to the testimony of Ms. Redolfin that Nokia Corporation (Finland) is not engaged in business in the Philippines than that indicated in the aforementioned portion of Note 1 is misleading. In fact, there is no conflict between Ms. Redolfin's testimony and the said Note 1.

Nowhere in the testimony of Ms. Redolfin was it ever intimated that Nokia Corporation (Finland) is not engaged in business in the Philippines. At the very least, Ms. Redolfin's testimony is to the effect that Nokia Corporation (Finland) is a foreign corporation—a fact which We already find as established in this case, to wit:

> "Q10: Can you tell us where is the principal place of business of Nokia Corporation (Finland)?
>
> A10: The registered principal place of business of Nokia Corporation (Finland) is located at Helsinki, Finland.
>
> Q11: How did you come to know this information?
>
> A11: Because we secured an 'Extract From the Trade Register' of Finland, which indicates that Nokia Corporation (Finland), is domiciled in Helsinki, Finland.
>
> Q12: If I were to show you a copy of this 'Extract From the Trade Register' would you be able to identify the same?
>
> A12: Yes sir.
>
> Q13: I am showing you an notarized, authenticated and consularized document consisting of twenty (20) pages, duly compared with its original, and pre-marked as Exhibit 'J', can you please tell us the relation of this document with your previous statement?
>
> A13: This is the notarized 'Extract From the Trade Register' which indicates that Nokia Corporation (Finland) is domiciled in Helsinki, Finland. This document is authenticated and consularized by the Philippine Embassy at Helsinki, Finland.

Q14: Ms. Witness, I noticed that the business name appearing on the first page of the 'Extract From the Trade Register', shows 'Nokia OYJ (Nokia Corporation), how is this related to the Nokia Corporation (Finland) that Petitioner renders marketing and support services to?

A14: It is one and the same corporation sir. Nokia OYJ is the Finnish vernacular while Nokia Corporation is the English name. In fact, in the Extract From the Trade Register, it clearly shows that Nokia Corporation is the auxiliary company name in English.

Q15: Ms. Witness, were the services rendered by Petitioner in favor of Nokia Corporation (Finland) paid?

A15: Yes sir.

Q16: In what currency?

A16: US Dollar, sir."[20]

Thus, We maintain Our finding that while Nokia Corporation (Finland) is a foreign corporation, it is engaged in trade or business within the Philippines, on the basis of the aforequoted portion of Note 1 of petitioner's Audited Financial Statements for taxable year 2009.

Moreover, We cannot simply ignore the subject Note 1 in deciding this case, since the Notes to Financial Statements is actually a part thereof.

It must be remembered that petitioner offered its Audited Financial Statements for 2009, in its entirety, as follows:[21]

Exhibit	Description	Purposes
"R"	Nokia's Audited Financial Statements for the taxable year 2009	**To prove the results of the business operations of**, as well as Input VAT paid for by **Petitioner during the taxable year 2009**. *(Emphasis supplied)*

[20] Exhibit "X", Docket, pp. 247 to 248.
[21] Docket, p. 165.

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Parenthetically, said Audited Financial Statements, *inter alia*, were admitted in evidence in the Resolution dated February 8, 2013.[22]

In this connection, Section 2 of Revenue Regulations (RR) No. 21-2002,[23] as amended by RR 7-2007, states the composition of Financial Statements, as to include the Notes thereto, viz:

> "SEC. 2. COVERAGE. — The Financial Statements shall be composed of the following:
>
> a) Balance Sheet;
> b) Income Statement/Profit and Loss Statement;
> c) Statement of Changes in Equity, showing either:
>   - All changes in equity
>   - Changes in equity, other than those arising from transactions with equity holders acting in their capacity as equity holders;
> d) Statement of Cash Flow;
> e) **Notes, comprising a summary of significant accounting policies and other explanatory notes;** and
> e) Schedules attached to the afore-cited statements." *(Emphasis supplied)*

Such being the case, every part of petitioner's Audited Financial Statements for taxable year 2009 must be considered. Thus, there can be no merit in petitioner's argument to the effect that the Notes to Financial Statements may be ignored or totally disregarded.

The* Accenture *and* Burmeister *cases are applicable to the present case.

Petitioner likewise argues that the *Accenture* and *Burmeister* cases are not applicable to the present case, to wit:

> "18. The reliance of this Honorable Court upon the the *Accenture* and *Burmeister* cases is misplaced. In

[22] Docket, pp. 265 to 266.

[23] SUBJECT: Implementing the Provisions of Section 6(H) of the Tax Code of 1997, Authorizing the Commissioner of Internal Revenue to Prescribe Additional Procedural and/or Documentary Requirements in Connection with the Preparation and Submission of Financial Statements Accompanying the Tax Returns.

> *Accenture*, the Court found that the documents submitted by Accenture taxpayer were incomplete to prove that recipient of the services was a nonresident foreign corporation because Accenture failed to present the Certificate/Articles of Foreign Incorporation/Association of the foreign corporation, among others. While in *Burmeister*, the presence of the foreign corporations through the consortium in the Philippines was established and proven with competent and direct evidence, thereby declaring that the foreign entities were 'doing business in the Philippines'. These cases do not fall on all fours with the case at hand. The circumstances prevalent in those cases are not present in the case on hand.
>
> 19. The present case is different from *Accenture* because petitioner duly submitted competent pieces of evidence establishing that Nokia Corporation (Finland) is a nonresident foreign corporation. Likewise, the present case is different from *Burmeister* because there is no evidence presented that would satisfy the substance and continuity tests, which would competently establish that Nokis Corporation (Finland) is actually doing business in the Philippines. In fact throughout the proceedings of this case, respondent never refuted nor controverted the fact that Nokia Corporation (Finland) is a nonresident foreign corporation."[24]

We do not agree.

The *Accenture* and *Burmeister* cases bears the interpretation and application of Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997. Since petitioner is claiming that its sales are subject to zero rating on the basis of the said provision, the interpretation made on the same provision by the High Court must likewise be applied to petitioner's case, pursuant to the doctrine of *stare decisis et non quieta movere*.

In *Ty vs. Banco Filipino Savings and Mortgage Bank*,[25] the Supreme Court said:

> "xxx. Under the doctrine, when this Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to

[24] Docket, pp. 450 and 451.
[25] G.R. No. 188302, June 27, 2012.

> all future cases, where facts are substantially the same; regardless of whether the parties and property are the same. **<u>The doctrine of *stare decisis* is based upon the legal principle or rule involved</u> and not upon the judgment, which results therefrom.** In this particular sense, *stare decisis* differs from *res judicata*, which is based upon the judgment.
>
> **The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions**, thus:
>
>> Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. ***Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different.** It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. **Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same [issue].** (italics supplied)" *(Emphases and underscoring supplied)*

Thus, there can be no merit in petitioner's argument that the *Accenture* and *Burmeister* cases are not applicable to the instant case.

VAT refunds are construed* strictissimi juris *against the taxpayer.

Petitioner argues that the mantra that tax refund cases are construed against the taxpayer and liberally in favor of the taxing authority is not infallible. In relation to such argument, petitioner invokes the cases of *Commissioner of Internal Revenue vs. Fortune* NM

Tobacco Corporation ("*Fortune* case"),[26] and *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue* ("*Southern Phils.* case").[27]

Specifically, petitioner points to the following pronouncements in the *Fortune* case, *viz:*

> "Tax exemption is a result of legislative grace. And he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken. The rule is that tax exemptions must be strictly construed such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention.
>
> xxx xxx xxx
>
> Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law."

Relative thereto, petitioner refers to the following ruling in the *Southern Phils.* case, to wit:

> "A claim for tax credit or refund, arising out of zero-rated transactions, is essentially based on excess payment. xxx
>
> The principle of *solutio indebiti* should govern this case since the BIR receive something that it was not entitled to. Thus, it has to return the same. The government should not use technicalities to hold on to money that does not belong to it. Only a preponderance of evidence is needed to grant a claim for tax refund based on excess payment."

While We do not dispute the foregoing rulings in the said cases, We find it hard to see that they are applicable to the instant case.

[26] G.R. Nos. 167274-75, July 21, 2008.
[27] G.R. No. 179632, October 19, 2011.

An examination of the *Fortune* case would reveal that what are being refunded therein are erroneously paid excise taxes. Unlike in the *Fortune* case, the subject of the refund involved in this case is alleged input VAT. In *Panasonic Communication Imaging Corporation vs. Commissioner of Internal Revenue*,[28] the Supreme Court has held that VAT refunds are in the nature of tax exemptions, to wit:

> "...statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. **Tax refunds <u>in relation to the VAT</u> are in the nature of such exemptions.** The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government." *(Emphasis and underscoring supplied)*

Anent the *Southern Phils.* case, while it may be true that the High Court applied the principle of *solutio indebiti* therein, We still cannot apply the same in the instant case.

In the *Southern Phils.* case, there is still a possibility that the sales of the taxpayer Southern Philippines Power Corporation (or "SPP") may be subjected to VAT zero-rated, *viz*:

> "While acknowledging that SPP's sale of electricity to NPC is a zero-rated transaction, the CTA *En Banc* ruled that SPP failed to establish that it made zero-rated sales. True, SPP submitted official receipts and sales invoices stamped with the words 'BIR VAT Zero-Rate Application Number 419.2000' but the CTA *En Banc* held that these were not sufficient to prove the fact of sale.
>
> But NIRC Section 110 (A.1) provides that the input tax subject of tax refund is to be evidenced by a VAT Invoice 'or' official receipt issued in accordance with Section 113. Section 113 has been amended by Republic Act (R.A.) 9337 but it is the unamended version that covers the period when the transactions in this case took place. It reads:

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[28] G.R. No. 178090, February 8, 2010.

xxx xxx xxx

[The unamended version of Section 113] does not distinguish between an invoice and a receipt when used as evidence of a zero-rated transaction. **Consequently, the CTA should have accepted either or both of these documents as evidence of SPP's zero-rated transactions.**

xxx xxx xxx

xxx. **In zero-rating transaction, the purpose is not to benefit the person legally liable to pay the tax, like SPP, but to relieve exempt entities like NPC which supplies electricity to factories, offices, and homes, from having to shoulder the tax burden that ultimately would passed to the public.**

xxx xxx xxx

Notably, SPP does no other business except to sell the power it produces to NPC, a fact that the CIR did not contest in the parties' joint stipulation of facts. Consequently, the likelihood that SPP would claim input taxes paid on purchases attributed to sales that are not zero-rated is close to nil."

This not so in the case at bar. As We have already ruled, petitioner's sales cannot qualify as subject to VAT zero-rating, since petitioner failed to show compliance with Section 108(B)(2) of the NIRC of 1997. Thus, petitioner's alleged creditable input VAT for the fourth quarter of 2009 may not be a subject of an application for the issuance of tax credit certificate or refund under Section 112(A) of the same Code.

Correspondingly, it cannot be said that *"the BIR received something that it was not entitled to"*, which would call for the operation of the principle of *solutio indebiti* in this case. In other words, if there is nothing to refund or when there is no indication that government ought to return something to petitioner, the principle of *solutio indebiti* does not apply.

WHEREFORE, all the foregoing considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice