REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MATSUSHITA BUSINESS MACHINE CORPORATION OF THE PHILIPPINES,
Respondent.

C.T.A. EB NO. 290
(C.T.A. Case No. 6495)

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

Promulgated:
JAN 17 2008 1:50 p.m.

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D E C I S I O N

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed under Rule 43 of the Rules of Court in relation to Section 3(b) of Rule 8 of the Revised Rules of

[1] *Rollo,* pp. 8 – 51, with Annexes.

the Court of Tax Appeals ("RRCTA"), by the Commissioner of Internal Revenue, praying for the reversal of:

1.) the Decision of the Second Division of this Court ("Court in Division") promulgated on January 5, 2007 in C.T.A. Case No. 6495 entitled *"Matsushita Business Machine Corporation of the Philippines vs. Commissioner of Internal Revenue"* which partially granted herein respondent's claim for refund or issuance of a tax credit certificate in the reduced amount of ₱4,583,654.73, representing unutilized excess input tax for the period of April 1, 2000 to September 30, 2000; and

2.) the Resolution of the Court in Division dated June 13, 2007, denying herein petitioner's Motion for Partial Reconsideration for lack of merit.

Antecedent Facts

The facts of this case follows.

Petitioner is the Commissioner of Internal Revenue vested with the authority to act as such, including *inter alia,* the power to decide, approve and grant claims for refunds or tax credits of overpaid internal revenue taxes as provided by law, with office address at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.[2]

[2] *Records,* C.T.A. Case No. 6495, p. 51 (Joint Stipulation of Facts and Issues).

Respondent is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office located at Lot C4 – 10 Carmelray Industrial Park II, Bgy. Punta, Calamba, Laguna.[3]

Respondent is registered with the BIR as a Value-Added Tax ("VAT") taxpayer with Taxpayer Identification Number ("TIN") 004-649-223-000.[4]

Respondent filed with the BIR its Quarterly VAT Returns for the quarter April 1, 2000 to June 30, 2000 on July 25, 2000, and for the quarter July 1, 2000 to September 30, 2000 on October 25, 2000.[5]

On August 24, 2001, respondent filed with the BIR an application for tax credit and/or refund requesting for the refund of the amount of ₱8,321,089.01 representing unutilized and/or unapplied input VAT for the period April 1, 2000 to September 30, 2000.[6]

Since petitioner had not acted with finality upon respondent's claim for refund, respondent filed a Petition for Review with this Court on June 28, 2002, to prevent prescription from barring its claim.[7]

In his Answer, herein petitioner alleged by way of special and affirmative defenses, that the amount of ₱7,136,065.57 representing alleged unutilized and/or unapplied input VAT for the period covering April 1, 2000 to September 30, 2000 was not properly documented. Petitioner pointed out that it is incumbent upon respondent to show that it has complied with the

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[3] *Records*, C.T.A. Case No. 6495, p. 51(Joint Stipulation of Facts and Issues).
[4] *Id.*, p. 52.
[5] *Id.*, pp. 202-203.
[6] *Id.*, p. 204.
[7] *Id.*, pp. 1 – 17.

provisions of Sections 204 (C) and 229 of the National Internal Revenue Code ("NIRC") on the prescriptive period for claiming a tax refund or credit.[8]

Respondent presented as witnesses its System Manager for Accounting, *Mrs. Ana Ma. Molano*, its Assistant Manager for Finance, *Ms. Elma Guillermo*, its Finance Supervisor, *Mr. Jose Fernan Mendoza*, and the commissioned independent CPA, *Ms. Mary Ann Capuchino*. Respondent also offered documentary evidence. On the other hand, herein petitioner submitted the case for decision, without presenting any evidence.

Thereafter, both parties were granted thirty (30) days from August 31, 2005 within which to file their simultaneous memoranda. Both parties having complied, the case was deemed submitted for decision of the Court in Division on December 2, 2005.

The Ruling of the Court in Division

On January 5, 2007, the Court in Division rendered its Decision partially granting herein respondent's claim for refund or issuance of a tax credit certificate in the reduced amount of ₱4,583,654.73, representing unutilized excess input VAT for the period of April 1, 2000 to September 30, 2000.

The Court in Division agreed with the findings of the independent CPA that only the claimed export sales in the amounts of ₱263,090,259.32 and ₱325,170,939.23, for the second and third quarters of 2000, respectively, or in

[8] *Records*, C.T.A. Case No. 6495, pp. 25 – 29.

the sum of ₱588,261,198.55, can be considered as export sales, subject to zero percent (0%) VAT under Section 106 (A) (2) (a) (1) of the 1997 NIRC.

The Court in Division also found that out of the reported input VAT of ₱8,491,149.11, the amount of ₱1,185,023.44 representing input VAT payment for March 2000 but reported in the 2000 second quarterly VAT return, was not included in the subject claim. Out of the reduced amount of ₱7,306,125.67, only the input taxes of ₱4,702,927.43 and ₱939,250.01 for the second and third quarters of 2000 respectively, or in the sum of ₱5,642,177.44 represent herein respondent's valid claim.

The Court in Division likewise ruled that the remaining portion of respondent's claimed input VAT in the amount of ₱1,663,948.23 (₱7,306,125.67 less ₱5,642,177.44) should be disallowed for non-compliance with the substantiation requirements under Section 4.104-5, in relation to Section 4.104-1 of Revenue Regulations ("RR") 7-95. From the substantiated input VAT of ₱5,642,177.44, respondent's output VAT liabilities for the second and third quarters of 2000 in the respective amounts of ₱68,767.72 and ₱135,392.37 were deducted. The resulting net input VAT of ₱5,438,017.35 was further reduced by the amount of input VAT related to respondent's export sales which was denied zero-rating by the Court. Thus, out of the input VAT of ₱5,438,017.35, only the amount of ₱4,583,654.73 can be attributed to respondent's zero-rated sales for the second and third quarters of 2000.

Lastly, the Court in Division held that the amount of ₱4,583,654.73 was not applied against any output VAT in the succeeding quarter and that both administrative and judicial claims for refund were filed within the two-year prescriptive period.

The dispositive portion of the Decision reads as follows:

> "**WHEREFORE**, foregoing premises considered, the instant Petition For Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **FOUR MILLION FIVE HUNDRED EIGHTY THREE THOUSAND SIX HUNDRED FIFTY FOUR PESOS AND 73/100 (₱4,583,654.73)**, representing unutilized excess input tax for the period of April 1, 2000 to September 30, 2000.
>
> SO ORDERED."

Dissatisfied, herein petitioner moved for a partial reconsideration of the Decision, which was denied for lack of merit by the Court in Division in its Resolution dated June 13, 2007.

Hence, the present recourse.

The Issues

In his Petition for Review, petitioner raises the following issues:

I

> WHETHER OR NOT RESPONDENT IS ENTITLED TO A REFUND IN THE REDUCED AMOUNT OF ₱4,583,654.73, ALLEGEDLY REPRESENTING UNUTILIZED EXCESS INPUT TAX FOR THE PERIOD APRIL 1, 2000 TO SEPTEMBER 30, 2000

II

WHETHER OR NOT RESPONDENT'S PETITION FOR CLAIM FOR REFUND WAS FILED WITHIN THE PRESCRIPTIVE PERIOD UNDER SECTION 112(A) IN RELATION TO SECTION 112 (D) OF THE 1997 NIRC.

Petitioner's Arguments

Petitioner contends that respondent failed to show that its purchases of goods and services were made in the course of its trade and business. It also alleges that respondent failed to show that the said purchases were properly supported by VAT invoices and/or official receipts and other documents such as entries made in its subsidiary purchase journal showing that the VAT has actually passed on to it in accordance with Sections 110 (A) (2) and 113 of the 1997 NIRC, as amended and in pursuance to Section 4.104-5(a) & (b) of RR 7-95.

Petitioner likewise avers that respondent failed to show proof that the claimed input VAT payments are directly attributable to its zero-rated sales and that the proceeds of the export sales were inwardly remitted and duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

Lastly, petitioner asserts that the Petition for Review filed by respondent with the Court in Division was filed out of time. Respondent filed the administrative claim for refund on August 24, 2001. The one hundred twenty (120)-day period expired on December 22, 2001, without any action on the part of the Commissioner. Hence, respondent had only until January 22, 2002, or thirty days from the expiry of the 120-day period within which to file its judicial claim for refund. Thus, the Petition for Review filed on June 28, 2002 was filed out of time pursuant to Section 112 (D) of the 1997 NIRC.

Respondent's Counter-arguments

Respondent points out that the Court in Division declared in its Decision that respondent presented its sales invoices, bills of lading/airways bills, export declarations and proofs of inward remittances, Schedule of Export Sales Per Department, which were verified by the commissioned auditing firm, SGV & Co. Moreover, the detailed findings of the commissioned Independent CPA were even incorporated by the Court in Division in its Decision. Such detailed findings would have easily answered petitioner's questions as to the fact that the purchases of goods and services were made in the course of business and were duly substantiated by the necessary VAT invoices/receipts and other supporting documents.

Respondent also submits that the assailed Decision of the Court in Division had long become final and executory considering that the motion for reconsideration filed with the Court in Division miserably failed to comply with the requirements of Rule 15 of the RRCTA and Section 2 of the Rules of Court. Hence, the filing of the *pro forma* motion for reconsideration did not toll the reglementary period of appeal.

Lastly, respondent asseverates that the additional ground relied upon by petitioner in his appeal that respondent's judicial claim for refund was filed out of time, was never raised in issue during the trial in the Court in Division. Any issue raised for the first time on appeal and not timely raised in the proceedings in the lower court is barred by estoppel.

The Ruling of the Court En Banc

The Petition for Review has no merit.

The judicial claim for refund was filed within the period provided under the law

Before delving into the other issue raised in this petition, this Court would like to clarify once and for all the issue of prescription. Contrary to the assertion of petitioner, the Court in Division correctly ruled that respondent's judicial claim for refund was filed within the reglementary period of two (2) years.

The applicable provision is Section 112(A) of the 1997 NIRC which outlines the procedure for Refunds or Tax Credits of Input Tax, *viz*:

> "**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 where made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of

the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods 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." (*Emphasis supplied*)

Based on the foregoing provision, a taxpayer must comply with the following requisites to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated or effectively zero-rated sales:

1. Both the administrative and the judicial claim for a tax credit or refund were filed within 2 years from the filing of the quarterly VAT return(s) covered by the claim[9] as provided under Section 4.106-2(c) of RR 7-95, in relation to Section 112(D) of the NIRC;

2. The claimed input VAT payments were not applied against any output tax during the period covered by the claim and in the succeeding periods;

3. The claimed input VAT payments are directly attributable to zero-rated sales; and

4. The claimed input VAT payments are duly supported by VAT invoice or official receipts, in accordance with Section 4.104-5 of RR 7-95, in relation to Section 113 and 237 of the NIRC.[10]

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[9] Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, Resolution, C.T.A. Case No. 5296, July 20, 1998; Taganito Mining Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 5983, dated October 11, 2001; Air Liquide Philippines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs, C.T.A. Case No. 5748, promulgated January 23, 2002.
[10] Intel Philippines Manufacturing, Inc. v. Commissioner of Internal Revenue, C.T.A. Case Nos. 5760 and 5902, February 05, 2002.

We have consistently ruled that the 2-year prescriptive period in claiming a refund of input VAT in the administrative and judicial levels is reckoned from the date of filing of the quarterly VAT return.[11] In other words, a taxpayer has 2 years from the date of filing of the quarterly VAT return to file both the administrative and judicial claims for refund.

We do not subscribe to petitioner's contention that respondent's judicial claim was filed out of time since the 120 days given to the Commissioner of Internal Revenue to decide on the claim under Section 112 (D) of the 1997 NIRC, had already lapsed when the Petition for Review was filed with the Court on June 28, 2002. Section 112(D) provides:

> "SEC. 112. **Refunds or Tax Credits of Input Tax.** –
>
> xxx xxx xxx
>
> (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*)

The use of the word "may" in the afore-quoted provision indicates that judicial recourse within thirty days after the lapse of the 120-day period is

[11] Kepco Philippines Corp. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 107 (C.T.A. Case No. 6413), June 29, 2007; Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.), C.T.A. EB Case No. 251 (C.T.A. Case Nos. 6628 & 6732), May 30, 2007.

directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period. It is a settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.[12]

Corollary thereto, the Honorable Court of Appeals has ruled that when the 2-year period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, the latter should file a petition for review with the Court of Tax Appeals within the said two-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the two-year period, he can no longer appeal the same to the Court of Tax Appeals. The Court of Appeals ratiocinated as follows:[13]

> "It appears therefore, that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case. This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.
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> **Incidentally, the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund.** Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal. **The law fixed the same period — two years — for filing a claim for refund with the**

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[12] Republic Planters Bank v. Agana, Sr., 269 SCRA 1 (1997).

[13] Commissioner of Internal Revenue v. Hitachi Computed Products (Asia) Corporation, CA-G.R. SP No. 63340, February 7, 2002 *citing Gibbs v. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil 232, Johnson Lumber Co. vs. CTA, 101 Phil 151.*

> **Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be made in court.** Indeed, only the latter case presupposes the existence of a prior decision of the Commissioner which could be subjected to review by the court. In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*Emphasis supplied*)

Moreover, the BIR has cited the foregoing disquisition of the Court of Appeals as basis when it made the following ruling:

> "In reply, please be informed that a taxpayer-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. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the CTA may acquire jurisdiction, particularly if the claim is about to prescribe. **The Tax Code fixed the period of two (2) years for filing a claim for refund with the Commissioner [Sec. 112(A) in relation to Sec. 204(c)] and for filing a case in court [Section 229].** Hence, a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law."[14] (*Emphasis supplied*)

A scrutiny of the records of this case reveals that herein respondent filed with the BIR its VAT returns for the second and third quarters of 2000 on July 25, 2000 and October 25, 2000, respectively. Thus, respondent had until July 25, 2002 and October 25, 2002 to file <u>both</u> its administrative and judicial claims for refund. It is clear therefore that respondent timely filed its administrative claim for refund for the said quarters of year 2000 with the BIR on *August 24, 2001*, pursuant to Section 112(A) of the NIRC, in relation to RR No. 7-95. The judicial claim for refund for unutilized input VAT covering the second and the third quarters of 2000 was also seasonably filed on *June 28, 2002*.

[14]BIR Ruling [DA-489-03] dated December 10, 2003, signed by Deputy Commissioner (Legal and Enforcement Group) Jose Mario C. Buñag.

Respondent has sufficiently proven that it is entitled to a refund amounting to ₱4,583,654.73

A review of the records of this case shows that the Court in Division made no error in partially granting respondent's claim for refund of unutilized excess input tax for the period of April 1, 2000 to September 30, 2000. Thus, We quote with approval the meticulous findings of the Court in Division:

> "The fact that Petitioner[15] is a VAT registered entity is not disputed (Joint Stipulation of Facts & Issues, par. 3). To prove that it actually generated zero-rated export sales during the period April 1, 2000 to September 30, 2000 and that the foreign currency proceeds thereof were duly accounted for in accordance with the rules and regulations of the BSP, **petitioner presented its sales invoices, bills of lading/airway bills, export declarations and proofs of inward remittances, Schedule of Export Sales Per Department** (*Exhibits 'K', 'L', 'GG-1' to 'GG-11', 'HH-1-1' to 'HH-1-191', 'HH-2-1' to 'HH-2-155', 'HH-3-1' to 'HH-3-178', 'HH-4-1' to 'HH-4-205', 'HH-5-1' to 'HH-5-248', 'HH-6-1' to 'HH-6-272' and 'II-1-1' to 'II-1-74'*), which were verified by the commissioned auditing firm, SGV & Co.
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> In its final report dated January 14, 2005 (*Exhibit 'JJ', page 20*), SGV & Co. noted that the zero-rated sales of P700,443,437.35 reflected in petitioner's 'Summary of Export Sales Per Department' for the second and third quarters of 2000 erroneously included sales for the month of May 2000 in the amount of P2,534,281.02. Thus, petitioner's export sales for the period April 1, 2000 to September 30, 2000 amounted only to P697,909,156.33. Moreover, it was noted that the zero-rated sales amount of P315,490,155.98 reflected in petitioner's VAT returns is understated by P382,419,000.35 when compared against the total sales amount of P697,909,156.33 per the 'Schedule of Export Sales Per Department'. This difference is due to the erroneous presentation by petitioner of its export sales as exempt sales in its third quarter 2000 VAT return (*Exhibit 'JJ', page 21*).
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> xxx xxx xxx
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> In the case at bench, only the claimed export sales in the amounts of P263,090,259.32 and P325,170,939.23, for the second and third quarters

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[15] Herein Respondent.

of 2000, respectively, or in the sum of P588,261,198.55, as classified by SGV & Co. under categories 1 and 2, can be considered as export sales, subject to zero percent (0%) VAT under *Sec. 106 (A)(2)(a)(1)*, to wit:

Findings	2nd Quarter 2000	3rd Quarter 2000	Total (Amounts in P)
1.There are export sales supported by original invoices, original bills of Lading/airway bills, original bank remittance certificates/advices and photocopies of export declarations.	257,667,199.71	319,208,680.17	576,875,879.88
2. There are export sales supported by original invoices, original bills of Lading/airway bills and original bank remittance certificates/advices but with no supporting export declaration	5,423,059.61	5,962,259.06	11,385,318.67
TOTAL:	263,090,259.32	325,170,939.23	588,261,198.55

The rest of petitioner's claimed zero-rated export sales classified by SGV & Co. under categories 3 to 12 amounting to P54,934,168.97 (P318,024,428.29 less P263,090,259.32) for the second quarter and P57,248,059.70 (P382,318,998.93 less P325,170,939.23) for the third quarter of 2000 or in the sum of P112,182,228.68 cannot qualify as such for the following reasons:

1.) The photocopied bills of lading/airway bills, export declarations and invoices supporting the alleged export sales cannot be given evidentiary value for being mere photocopies, in violation of the Best Evidence Rule;

2.) The export sales do not have either proof of foreign currency payments (bank remittance certificates/advises) or proof of actual shipment of goods abroad (bills of lading/airway bills/export declarations). This Court has repeatedly held that the certification of inward remittances, bank credit advices, export declarations, bills of lading/airway bills and duly registered VAT invoices, taken collectively, are the best means to prove exportation of goods and receipt of the corresponding foreign currency payments. This is a settled rule in this jurisdiction.

Having established that petitioner had zero-rated export sales for the second and third quarters of 2000 in the respective amounts of P263,090,259.32 and P325,170,939.23 totalling P588,261,198.55, We now proceed to the second and third requisites of whether or not petitioner incurred input VAT in the amount of P7,136,065.57 which is directly attributable to its zero-rated sales.

In its final and consolidated report dated January 14, 2005 (*Exhibit 'JJ', pages 6-8*), SGV & Co. compared the figures of total input VAT, as reflected in the Quarterly VAT Returns [P8,491,129.11] (*Exhibits 'B' & 'C'*), the Summary of Input Tax Refund [P8,321,089.01] (*Exhibit 'BB'*), and the Summary of Input VAT per Department [P7,346,018.73] (*Exhibit 'CC'*) of petitioner. The difference between the figures of the Quarterly VAT Returns and the Summary of Input Tax Refund was due to the application of the input VAT to output VAT, detailed as follows:

Quarterly VAT Returns	P8,491,149.11
Summary of Input Tax Refund	8,321,089.01

Difference	P 170,060.10
	==========
Accounted for as follows:	
Input VAT applied in April	P 45,926.48
Input VAT applied in June	22,841.24
Input VAT applied in August	74,012.38
Unaccounted application of Input VAT	27,280.00

	P170,060.10
	==========

The difference between the Summary of Input Tax Refund and the Summary of Input VAT, per Department, was due to the inclusion of the input VAT for March and an unsupported amount in the former, and also due to an overstatement and inclusion of input VAT already applied in the latter, as follows:

Summary of Input Tax Refund	P8,321,089.01
Summary of Input VAT per Department	7,346,018.73

Difference	P 975,070.28
	===========
Accounted for as follows:	
Input VAT for March	P1,185,023.44
Unsupported amount	123.64
Applied input VAT	(170,060.10)
Overstatement in the per department summary	(40,016.70)

	P 975,070.28
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The amount of refund (P7,136,065.57) being claimed by petitioner was derived from the figure on the Summary of Input Tax Refund (P8,321,089.01), minus input VAT for March (P1,185,023.44).

In addition, the commissioned independent CPA examined and verified the supporting documents of petitioner, and accordingly classified petitioner's reported input VAT into the following categories:

xxx xxx xxx

After a careful examination of the report of SGV & Co., the Court finds the same to be in order. Out of the reported input VAT of P8,491,149.11, the amount of P1,185,023.44 representing input VAT payment for March 2000 but reported in the 2000 second quarterly VAT return was not included in the subject claim. Hence, We shall use as reference point the input VAT amount of P7,306,125.67 (P8,491,149.11 less P1,185,023.44).

Of the total amount of P7,306,125.67, only the input taxes of P4,702,927.43 and P939,250.01 for the second and third quarters of 2000, respectively, or in the sum of P5,642,177.44 (under categories 1, 2, 19 to 22) **represent petitioner's valid claim,** to wit:

xxx xxx xxx

The remaining portion of petitioner's claimed input VAT (under categories 3 to 18 & 23 to 25) in the amount of P1,663,948.23 (P7,306,125.67 less P5,642,177.44) is disallowed for non-compliance with the substantiation requirements prescribed under Section 4.104-5, in relation to Section 4.104-1 of Revenue Regulations No. 7-95.

From the substantiated input VAT of P5,642,177.44, petitioner's reported output VAT liabilities for the second and third quarters of 2000 in the respective amounts of P68,767.72 and P135,392.37 shall be deducted. The resulting net input VAT of P5,438,017.35 shall be further reduced by the amount of input VAT related to petitioner's export sales which We earlier denied zero-rating.

Consequently, out of the input VAT of P5,438,017.35, only the amount of P4,583,654.73 can be attributed to petitioner's zero-rated sales for the second and third quarters of 2000, computed as follows:

Substantiated Zero-Rated Export Sales	P588,261,198.55
Divided by Total Reported Export Sales	697,909,156.32
Multiplied by Net Input VAT	x 5,438,017.35
Input VAT Attributable to Zero-Rated Export Sales	**P 4,583,654.73**

As regards the fourth requisite of whether or not the substantiated input VAT of P4,583,654.73 was applied against any output VAT in the succeeding quarters, We rule in the negative. While the input VAT of P4,583,654.73 was carried-over by petitioner in its VAT returns for the fourth quarter of 2000 to the third quarter of 2001, the same formed part of the input VAT of P8,321,089.01, deducted by petitioner as 'Any VAT Refund/TCC Claimed' (*Exhibit 'X-1'*) from the Total Available

Input Tax of P37,809,120.92, reflected in its 2001 third quarterly VAT return (*Exhibit 'X'*). Hence, the claimed input VAT of P4,583,654.73 was no longer included in the excess input tax of P29,312,414.95, as of the end of the third quarter of 2001, which was to be carried-over to the fourth quarter of 2001. In other words, petitioner could not have possibly utilized or credited against any output tax the claimed amount of P4,567,070.63 in the fourth quarter of 2001 or any succeeding quarter."[16] *(Emphasis supplied)*

We need not belabor that the question of whether or not 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.[17] Thus, in the absence of the Court's abuse or improvident exercise of authority, findings of facts made by the Court in Division, especially if supported by the evidence, must be accorded deference and respect.[18] Such is the situation in the present case.

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision promulgated on January 5, 2007 and the Resolution dated June 13, 2007 are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

[16] Decision, C.T.A. Case No. 6495, pp. 7 – 20.
[17] El Greco Ship Manning and Management Corporation v. Commissioner of Customs, C.T.A. EB No. 172 (C.T.A. Case No. 6618), March 14, 2007.
[18] Union Refinery Corporation v. Commissioner of Customs, C.T.A. EB NO. 149 (C.T.A. Case No. 5917), January 15, 2007.

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice