REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NORTHWIND POWER DEVELOPMENT CORPORATION,
Petitioner,

- *versus* –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1132
(CTA Case No. 8260)

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

NORTHWIND POWER DEVELOPMENT CORPORATION,
Respondent.

CTA EB No. 1141
(CTA Case No. 8260)

Present:

Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

SEP 02 2015
2:40 p.m.

x---x

RESOLUTION

CASTAÑEDA, JR., *J.:*

Submitted for resolution are the following:

1. Northwind Power Development Corporation's ("NPDC or Northwind") **"Motion for Reconsideration"** filed on February 25, 2015; and

2. Commissioner of Internal Revenue's ("CIR") **"Motion for Reconsideration"** filed via registered mail also on February 25, 2015 with **"Comment/Opposition (To Respondent's Motion for Reconsideration dated February 25, 2015)"** filed via registered mail by NPDC on April 20, 2015.

The aforementioned Motions seek reconsideration of the Decision of the Court *En Banc* promulgated on January 29, 2015, ("Assailed Decision")[1] affirming the judgment of the Special First Division ("Court in Division") of this Court in CTA Case No. 8260. The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, premises considered, the Court hereby **AFFIRMS** the Decision dated July 16, 2013 and the Resolution dated February 14, 2014. The Petitions for Review filed by NPDC and CIR, are hereby **DISMISSED**."

NPDC raises the following grounds in its Motion for Reconsideration, to wit:

I.

THIS HONORABLE COURT GRAVELY ERRED IN AFFIRMING THE DECISION AND RESOLUTION OF THE SPECIAL FIRST DIVISION IN CTA CASE NO. 8260 THAT ONLY THE AMORTIZED PORTION (PHP167,600.73) OF THE INPUT VAT AMOUNT OF PHP1,797,810.08 INVOLVING PURCHASES OF CAPITAL GOODS EXCEEDING P1,000,000 FOR THE 3RD QUARTER AND 4TH QUARTER OF THE YEAR 2008 IS ALLOWED TO BE REFUNDED.

---

[1] Court *En Banc*'s Docket, pp. 488-513.

II.

THIS HONORABLE COURT GRAVELY ERRED IN AFFIRMING THE DECISION AND RESOLUTION OF THE SPECIAL FIRST DIVISION IN CTA CASE NO. 8260 THAT THE NORTHWIND'S ZERO-RATED SALES TO ILOCOS NORTE ELECTRIC COOPERATIVE FOR THE 3RD QUARTER AND 4TH QUARTER OF THE YEAR 2008 IN THE RESPECTIVE AMOUNTS OF PHP7,775,084.14 AND PHP30,634,465.59 SHOULD NOT BE RECOGNIZED AS NORTHWIND'S VAT ZERO-RATED SALES.

III.

THIS HONORABLE COURT GRAVELY ERRED IN AFFIRMING THE DECISION AND RESOLUTION OF THE SPECIAL FIRST DIVISION IN CTA CASE NO. 8260 IN RULING THAT NORTHWIND'S SUBSTANTIATED INPUT VAT SHOULD BE APPORTIONED/PRO-RATED BETWEEN THE SUBSTANTIATED AND ALLEGEDLY UNSUBSTANTIATED VAT ZERO-RATED SALES AND TO LIMITING (SIC) THE REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE TO 63.6352134% OF THE SUBSTANTIATED INPUT VAT.

On the other hand, CIR interposes in her Motion for Reconsideration the following grounds:

I.

THE CTA EN BANC ERRED IN CONFIRMING (SIC) THE DECISION OF THE SPECIAL FIRST DIVISION ORDERING THE REFUND IN FAVOR OF RESPONDENT ON ITS ALLEGED UNUTILIZED INPUT VAT FOR THE 3RD AND 4TH QUARTERS OF TAXABLE YEAR 2008 DESPITE RESPONDENT'S FAILURE TO COMPLY [WITH] THE INVOICING REQUIREMENTS.

II.

THE CTA EN BANC ERRED IN GRANTING THE REFUND IN FAVOR OF RESPONDENT FOR ITS FAILURE TO ADEQUATELY SHOW THAT ITS OFFICIAL RECEIPTS ARE DULY REGISTERED WITH THE BIR DISTRICT OFFICE WHERE IT IS REGISTERED. *gr*

III.

THE CTA EN BANC ERRED IN GRANTING THE REFUND INASMUCH AS THE INPUT TAXES ARE NOT DIRECTLY ATTRIBUTABLE TO ITS ZERO-RATED SALES.

IV.

THE CTA EN BANC ERRED IN NOT APPLYING THE RULE THAT TAX REFUNDS BEING IN THE NATURE OF TAX EXEMPTION ARE CONSTRUED STRICTISSIMI JURIS AGAINST THE PERSON OR ENTITY CLAIMING THE EXEMPTION; THUS, ENTITLEMENT TO A TAX REFUND IS FOR THE TAXPAYER TO PROVE AND NOT FOR THE GOVERNMENT TO DISPROVE.

The Court *En Banc* resolves to deny both Motions for lack of merit.

A perusal of the arguments presented by both parties in their respective Motion reveals that they failed to raise any new or substantial matter or any compelling reason that will justify reversal or even modification of the Court *En Banc*'s findings. Nevertheless, the Court *En Banc* will address the parties' arguments if only to reinforce the discussion in the Assailed Decision.

Only the amortized portion amounting to P167,600.73 of the P1,797,810.08 input VAT incurred by NPDC on capital goods is creditable for the 3rd and 4th quarters of taxable year 2008.

NPDC maintains that the Court *En Banc* erred in ruling that only the amortized portion of the input VAT incurred by NPDC on capital goods for the 3rd quarter of taxable year 2008 is creditable for the 3rd and 4th quarters of 2008. NPDC argues that the said ruling creates a conflict between the amortization of input tax credits over the useful life of the capital goods purchased as mandated by Section 4.110-3 of Revenue Regulations ("RR") No. 16-2005 and the two-year period to claim refund of input VAT counted from the close of the taxable quarter on which input VAT on capital goods was paid under Section 112 (A) and (C) of the National Internal Revenue Code, as amended ("1997 NIRC").[2] Moreover, NPDC posits that the amortization of input VAT over the useful life of capital goods imported or *Je*

[2] Court *En Banc*'s Docket, pp. 522.

purchased whose aggregate value exceeds One Million Pesos (P1,000,000.00) under Section 4.110-3 of RR No. 16-2005 should be interpreted as applicable only if the input VAT thereon is credited against the output VAT.[3] NPDC further postulates that the amortization of input VAT on capital goods does not apply to claims for refund of input VAT paid on purchases or importation of capital goods directly attributable to zero-rated sales.[4]

NPDC's arguments lack basis.

As stated in the Assailed Decision, the Court in Division correctly ruled that only the amortized portion amounting to P167,600.73 of the P1,797,810.08 input VAT incurred by NPDC is creditable or refundable for the 3rd and 4th quarters of taxable year 2008.

Section 112 (A) of the 1997 NIRC provides:

> "SECTION 112. Refunds or Tax Credits of Input Tax. —
>
> (A) **Zero-rated or Effectively Zero-rated Sales**. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund of <u>creditable input tax</u> 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 and underscoring supplied)*

As may be gleaned from the above quoted provision, what may be the subject of an application for the issuance of a tax credit certificate or tax refund is the "creditable" input VAT attributable to zero-rated or effectively zero-rated sales. Accordingly, input VAT attributable to zero-rated or

[3] *Ibid.*, pp. 523.
[4] *Id.*

effectively zero-rated sales that is not, or not yet, creditable against output VAT cannot be claimed as tax credit or refunded.

Consistent thereto, Section 110 (A) of the 1997 NIRC enumerates the transactions where input VAT shall be creditable against output VAT. It was explicitly stated in the said provision that input VAT on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable against output VAT of purchaser upon consummation of sale and on importation of goods or properties,[5] or against the output VAT of the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.[6] As an exception, however, input VAT on goods purchased or imported for use in trade or business for which deduction for depreciation is allowed under the 1997 NIRC, and the aggregate acquisition cost of which exceeds P1,000,000.00, excluding the VAT component thereof, shall be spread evenly and creditable over a period of 60 months starting from the month of acquisition or the estimated useful life of the capital goods, whichever is shorter.[7]

The rule on amortization of input VAT on capital goods as provided under Section 110 (A)(2)(b) of the 1997 NIRC[8] shall be applicable provided that: (1) the goods purchased for use in trade or business are allowed deduction for depreciation under the 1997 NIRC; and (2) the aggregate acquisition cost of such goods, excluding the VAT component thereof, exceeds One Million pesos (P1,000,000.00). For easy reference, the Court *En Banc* quotes the pertinent provision below:

> "SECTION 110. Tax Credits. —
>
> (A) Creditable Input Tax. —
>
> x x x x x x x x x
>
> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
>
> x x x x x x x x x
>
> (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs. *je*

[5] Section 110 (A)(2)(a) of the 1997 NIRC.
[6] Section 110 (A)(2)(b) of the 1997 NIRC.
[7] *Ibid.*
[8] As implemented by Section 4.110-3 of RR No. 16-2005.

> ***Provided,* That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee. x x x"** *(Emphasis supplied)*

Contrary to NPDC's stance, nowhere in the aforequoted provision is it stated that the same does not apply to goods purchased or imported which are directly attributable to zero-rated or effectively zero-rated sales.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation.[9] There is only room for application.[10] Where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[11] This is what is known as the plain-meaning rule or *verba legis*.[12]

In addition, the phrase "creditable against the output tax" under the first paragraph of Section 110 (A) of the 1997 NIRC means that the input taxes incurred are available as tax credits against the taxpayer's VATable transactions, be it VAT zero-rated or subject to the 12% VAT. Note that both taxable sales and zero-rated sales are considered transactions subject to output VAT.[13] The difference between them lies only in the rate of VAT to be used, *i.e.*, 12% for taxable sales and 0% for zero-rated sales. Inasmuch as the output tax due is 0% in the case of zero-rated sales transactions, the creditable input tax attributable thereto in a taxable quarter is deemed unutilized or excess input tax which may be the subject of a claim for refund or tax credit certificate under Section 110 (B) in relation to Section 112 (A) of the 1997 NIRC.[14]

---

[9] *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010, 634 SCRA 429, 437; *Amores v. House of Representatives Electoral Tribunal and Emmanuel Joel J. Villanueva*, G.R. No. 189600, June 29, 2010, 622 SCRA 593, 598.
[10] *Ibid.*
[11] *Francisco I. Chavez v. Judicial and Bar Council et. al.*, G.R. No. 202242, July 17, 2012, 676 SCRA 579, 598.
[12] *Bolos v. Bolos*, supra.
[13] *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, G.R. No. 149073, February 16, 2005, 451 SCRA 447, 461.
[14] *Ibid.*, pp. 462.

VAT on sale of services accrues upon actual or constructive receipt of payment or consideration by the seller.

NPDC also argues that the Court *En Banc* erred in affirming the exclusion of the amounts of P7,775,084.14 and P30,634,465.59 from NPDC's zero-rated sales for the 3rd and 4th quarters of taxable year 2008. With respect to the amount of P7,775,084.14 representing collectible sales from Ilocos Norte Electric Cooperative ("INEC"), NPDC asserts that it should be given full credit therefor provided it has proof of pending collection suit against INEC.[15] On the other hand, NPDC claims that the amount of P30,634,465.59 is duly supported by Official Receipt No. 57 ("Exhibit HHH-469"), as testified to by the independent Certified Public Accountant ("ICPA") for this case.[16]

NPDC's argument deserves scant consideration.

The value-added tax on sale of services accrues upon actual or constructive receipt of payment or consideration by the seller of service as evidenced by official receipts, regardless of whether or not the service have already been rendered.[17] To put it differently, VAT should not be based on the income that must have been received but on the income that was actually received; although the taxable transaction is the past, present or future performance of service, the tax accrues only upon actual or constructive receipt of consideration.[18] In this regard, the Court in Division correctly ruled that "as long as the amount of P7,775,084.14 is uncollected, the same cannot form part of petitioner's [NPDC] zero-rated sales."[19] The same also holds true as regards the amount of P30,634,465.59. As the Court in Division rightly held:

> "In the same vein, the amount of P30,634,465.59 was correctly disallowed for being made outside the period of the claim. **It is here noted that while it may be true that the same is billed during the last quarter of 2008, it was only collected in the first quarter of 2009. Thus, such amount should form part**

[15] Court *En Banc*'s Docket, pp. 528.
[16] *Ibid.*, pp. 529.
[17] Section 108 of the 1997 NIRC; *Harte-Hanks Philippines, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 949 (Resolution) (CTA Case No. 7975 & 7998), September 26, 2014, penned by Associate Justice Caesar A. Casanova.
[18] *Philippine Fast Ferry Corporation v. Honorable Commissioner of Internal Revenue*, CTA Case No. 6302, August 15, 2002 (penned by Presiding Judge Ernesto D. Acosta) *citing* Deoferio and Mamalateo, *The Value Added Tax in the Philippines* (1st Ed.), pp. 103.
[19] Court *En Banc*'s Docket, pp. 500.

of petitioner's zero-rated sales in the 1st quarter of 2009, not in the 4th quarter of 2008."[20]

NPDC cannot seek refuge from the opinion of the ICPA. It must be emphasized that the Court is not bound by the findings and conclusions of the ICPA.[21] The Court is free to adopt or disregard, completely or partially, the findings of the ICPA.[22] It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.[23]

Refundable amount of creditable input VAT shall be limited to the percentage of substantiated zero-rated sales.

NPDC likewise assails the Court *En Banc*'s ruling that the refundable amount should be limited to 63.6352134% of the substantiated zero-rated sales. In relation thereto, NPDC claims that the apportionment or allocation made by the Court has no legal basis. NPDC further asserts that in claims for refund attributable to zero-rated sales, the documentary substantiation of the input VAT rather than that of the zero-rated sales should be scrutinized.

NPDC's assertions are devoid of merit.

It bears stressing that the Court *En Banc* based its ruling on Section 112 (A) of the 1997 NIRC which explicitly requires that the creditable input VAT must be "attributable" to zero-rated or effectively zero-rated sales, not on the proportionate allocation rule relating to mixed transactions (*i.e.*, where the taxpayer is engaged not only in zero-rated but also in taxable and/or exempt sale of goods or properties or services). The rate of 63.6352134% was arrived at by deducting from the total zero-rated sales per NPDC's VAT returns for the 3rd and 4th quarters of 2008 amounting to P105,622,920.74 the amounts of P7,775,084.14 and P30,634,465.59. As discussed earlier, these amounts cannot form part of the total zero-rated sales considering that NPDC have not yet received, either actually or constructively, the said amounts. For that reason, only the input VAT attributable to the duly substantiated zero-rated sales shall be subject to refund.

---

[20] *Ibid.*, pp. 500-501.
[21] *United Coconut Planters Bank v. Commissioner of Internal Revenue*, CTA EB No. 979 (CTA Case No. 7903), September 3, 2014, penned by Associate Justice Esperanza R. Fabon-Victorino; *Energy Development Corporation v. Commissioner of Internal Revenue*, CTA EB No. 1067 (CTA Case No. 8019), November 3, 2014, penned by Associate Justice Cielito N. Mindaro-Grulla.
[22] Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals.
[23] *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*, CTA EB No. 563 (CTA Case No. 6200), March 1, 2011, penned by Associate Justice Esperanza R. Fabon-Victorino.

Disallowance of portion of the claim due to non-compliance with the mandatory invoicing and accounting requirements.

Once again, the CIR argues that NPDC's claim for input VAT refund must be disallowed for its failure to comply with the invoicing requirements prescribed under the 1997 NIRC. More particularly, CIR avers that:

1. VAT was not separately indicated in the supporting VAT official receipts/invoices;

2. Some of NPDC's invoices/official receipts do not have the quantity, unit cost and description of the goods or properties or the nature of the service;

3. Invoices/official receipts do not have the TIN and address of NPDC;

4. Some invoices/official receipts merely reflect the name "NORTHWIND" instead of the complete name of "Northwind Power Development Corporation".

In the Assailed Decision, the Court *En Banc* held that the Court in Division correctly disallowed the following items for failure to comply with the invoicing requirements, to wit:

Exhibit	Reference	Particulars	Amount
DDD	Schedule 6	Input VAT without supporting VAT invoices and ORs/Documents for retrieval	P68,617.35
EEE	Schedule 7	Supporting documents other than VAT ORs/VAT invoices	23,825.07
FFF	Schedule 8	VAT amount not specified in ORs/invoices	10,549.11
GGG	Schedule 9	VAT ORs issued outside period of claim	1,928.46
		Unaccounted item/s	390.31
		TOTAL	**P105,310.30**

In addition, the Court *En Banc* also disallowed the items indicated below for the following reasons:

Findings	Input Tax
Purchase of services which were supported by "TIN-V" ORs, instead of "TIN-VAT" ORs as required by Section 4.113-1 of Revenue Regulations No. 16-2005 and pursuant to the case of *Kepco Philippines Corporation v. Commissioner of Internal Revenue.*	P2,796.86
Purchase of goods which were supported by "TIN-V" invoices, instead of "TIN-VAT" invoices required by Section 4.113-1 of Revenue Regulations No. 16-2005 and pursuant to the case of *Kepco Philippines Corporation v. Commissioner of Internal Revenue.*	13,120.25
Purchase of goods which were supported by cash register machine tapes without information required by Section 4.110-8 (a) (2) and (4) of Revenue Regulations No. 16-2005 and Sections 113 and 237 of the 1997 NIRC, as amended by R.A. 9337.	586.49
Purchase of goods which were supported by VAT ORs instead of VAT invoices as required by Section 113 of the 1997 NIRC, as amended by R.A. 9337.	38,514.56
Purchase of goods which were supported by non-VAT invoices.	214.29
Total	**P55,232.45**

The basis for the disallowance of the foregoing items had already been exhaustively discussed by the Court *En Banc* in the Assailed Decision and thus, needs no further elaboration herein.

Input VAT attributable to zero-rated sales.

CIR also postulates that the input VAT incurred by NPDC on the following transactions shall be disallowed because they are not directly attributable to NPDC's zero-rated sale of electricity generated from renewable wind energy, to wit:

1. Purchase of certain appliances (Exhibits HHH-18 to HHH-20 and Exhibit HHH-200); and

2. Lawyer's fees (Exhibit HHH-17).

According to CIR, the input VAT incurred from these items should be excluded since they do not form part of the electricity product sold.[24]

The Court *En Banc* does not agree. CIR's reasoning is flawed.

Under Section 110 (A)(1) of the 1997 NIRC, input VAT derived from the following transactions shall be creditable against the output tax. The said provision reads:

"SECTION 110. Tax Credits. —

(A) Creditable Input Tax. —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code. Je

[24] Court *En Banc*'s Docket, pp. 542.

(b) Purchase of services on which a value-added tax has been actually paid. x x x"

Based on the foregoing, it is evident that creditable input VAT may be derived not only from purchase of goods or properties which are intended to form part of the product or service to be sold. On the contrary, creditable input VAT may be incurred through, among others, purchase of goods to be used as supplies in the course of business and purchase of services for which VAT was paid, provided, these are made in the course of trade or business of the taxpayer.

NPDC's Authority to Print (ATP) was duly obtained from the proper BIR office. Thus, the official receipts issued pursuant thereto are valid.

CIR contends that NPDC's official receipts marked as Exhibits HHH-463 to HHH-469 were not duly registered with the proper BIR office, in violation of Revenue Memorandum Order (RMO) No. 83-99 in relation to RR No. 18-2012. Thus, according to CIR, these official receipts cannot be considered as valid.

CIR's contention must fail.

As the Court *En Banc* had properly ruled in the Assailed Decision, RR No. 18-2012 is inapplicable because the present case involves a claim for input VAT refund covering taxable year 2008. As such, the present case is governed by the provisions of RMO No. 83-99 which prescribes that the ATP for invoices and receipts to be used by a branch shall be approved by the Revenue District Office (RDO) having jurisdiction over the said branch. Consequently, the ATP pertaining to taxable year 2008 was duly obtained from RDO No. 1, Laoag, Ilocos Norte which has jurisdiction over NPDC's branch office. Therefore, official receipts (marked as Exhibits HHH-463 to HHH-469) issued pursuant to such ATP was duly registered and hence, valid.

WHEREFORE, finding no reversible error in the Assailed Decision to warrant reconsideration thereof, NPDC's Motion for Reconsideration as well as CIR's Motion for Reconsideration, both dated February 25, 2015, are hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice