REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1501** (CTA Case Nos. 8563, 8594 & 8674)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** JJ.
ABB, INC., Respondent.	***Promulgated:*** MAR 13 2018 4:25 p.m.

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue, petitioner, against ABB Inc., respondent, on September 29, 2016, assailing the Decision dated May 11, 2016[1] and Resolution dated August 8, 2016[2], both rendered by the Third Division of this Court (Court in Division) in the consolidated cases docketed as CTA Case Nos. 8563, 8594 and 8674, entitled "*ABB Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively read as follows:

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[1] Penned by Associate Justice Lovell R. Bautista, concurred by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen Ringpis-Liban, EB Docket, pp. 33 to 63.

[2] *Supra*, EB Docket, pp. 64 to 68.

Decision dated May 11, 2016:

> "**WHEREFORE**, premises considered, the consolidated Petitions for Review are hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner in the reduced amount of **TWENTY ONE MILLION FIVE HUNDRED THIRTY THOUSAND NINE HUNDRED SIXTY AND 5/100 PESOS (Php21,530,960.05).**
>
> **SO ORDERED.**"

Resolution dated August 8, 2016:

> "**WHEREFORE**, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Decision dated May 11, 2016 is hereby **AFFIRMED** and **UPHELD.**
>
> **SO ORDERED.**"

THE FACTS

Petitioner Commissioner of Internal Revenue is the chief of the Bureau of Internal Revenue (BIR), who under the law is empowered to perform the duties of said office including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith.

On the other hand, respondent ABB Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Km. 20 West Service Road, South Superhighway, Sucat, Parañaque. It is engaged in the business of providing automation and power products, systems, and services.

The National Grid Corporation of the Philippines (NGCP) is a domestic corporation engaged in the business of operating, maintaining, expanding and developing the transmission network of the Philippines, with principal address at NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City.

Respondent entered into a Contract with NGCP for the Wright-Calbayog 138 kV Substation Project (Wright-Calbayog Project) after winning the bid therefor. The Contract provides that respondent, as the contractor, shall pay all fees and similar expenses in consequence of its obligations under the contract except for import duties and import VAT; and that NGCP should be the consignee of the importation to be supplied by the respondent.

The Joint Venture of respondent, and AER Construction & Development Co., Inc. entered into a Contract with NGCP for the New Naga 138 kV Substation Project (New Naga Project).

Both contracts are on a turnkey basis, which is defined as a job or contract in which the contractor agrees to complete the work of building and installation to the point of readiness for operation or occupancy. To fulfill its obligations under the contracts, respondent subcontracted specific segments of the Wright-Calbayog and New Naga Projects to both offshore and onshore subcontractors.

The offshore portion of the contracts consists of the complete design, manufacture, testing, supply and delivery, storage, construction, erection, installation, field testing and commissioning of substation, telecommunication, protection and substation control equipment and materials, which were sourced from foreign subcontractors coming from various countries, including Taiwan, Sweden, Italy, Thailand, India, Korea, Malaysia, France, Finland, Switzerland, Vietnam, USA, Singapore, New Zealand, Japan, Canada, Indonesia, China and Germany.

On the other hand, the onshore portion of the Contracts consist of the construction and installation of the materials, machinery and equipment and the performance of related civil works for the two projects and were subcontracted to various local subcontractors.

On March 16, 2009, respondent was registered as a large taxpayer and was issued BIR Certificate of Registration No. 8RC0000019299 by the BIR Large Taxpayers Division.

Respondent filed its *Monthly VAT Declaration* (BIR Form No. 2550-M) from July 2010 to February 2012, as well as its *Quarterly VAT Return* (BIR Form No. 2550-Q) for the 3rd and 4th Quarters of taxable year (TY) 2010; 1st, 3rd and 4th Quarters of TY 2011; and 1st Quarter of TY 2012 as follows:

Period	Date Filed (Original)	Date Filed (Amended)
July 2010	August 24, 2010	October 23, 2012
August 2010	September 27,2010	October 23, 2012
3rd Quarter 2010	October 25,2010	December 23, 2012
Oct 2010	November 22, 2010	November 8, 2012
Nov 2010	December 22, 2010	November 8, 2012
4th Quarter 2010	January 24, 2011	November 15, 2012
Jan 2011	February 23, 2011	November 20, 2012
Feb 2011	March 21, 2011	November 20, 2012
1st Quarter 2011	April 25, 2011	November 20, 2012
July 2011	August 24, 2011	November 21, 2012
August 2011	September 22, 2011	-
3rd Quarter 2011	October 24, 2011	November 28, 2012
Oct 2011	November 23, 2011	November 21, 2012
Nov 2011	December 26, 2011	-
4th Quarter 2011	January 25, 2012	January 25, 2012
Jan 2012	February 21, 2012	-
Feb 2012	March 26, 2012	-
1st Quarter 2012	April 25, 2012	November 22, 2012

Respondent filed separate Petitions for Review before the CTA praying for the refund of 12% output VAT on gross receipts for services rendered outside the Philippines in various taxable years and amounts, the incidents of which are as follows:

CTA Case No. 8563 (3rd Quarter of 2010)

On October 24, 2012, the BIR-Large Taxpayers Service received respondent's letter application for a claim for tax refund of 12% output VAT on gross receipts for services rendered outside the Philippines for July and September 2010 that was erroneously paid and remitted to the BIR together with the *Application for Tax Credits/Refunds* (BIR Form No.1914) amounting to ₱2,781,796.54.

Thereafter, respondent filed a *Petition for Review* on October 25, 2012, docketed as CTA Case No. 8563, which was raffled to the Third Division of this Court

Petitioner filed his *Answer* on January 15, 2013, and interposed the following special and affirmative defenses, to wit: (1) the burden of proof is on the taxpayer to establish its right to a refund, and failure to sustain the burden is fatal to the claim for refund; (2) respondent's claim for refund was filed out of time; and (3) claims for tax exemption must be justified by the clearest grant of law.

CTA Case No. 8594 (4th Quarter of 2010 and 1st Quarter of 2011)

On December 20, 2012, the BIR Large Taxpayers Service received from respondent a letter-application for tax refund, together with BIR Form No. 1914, for the refund of 12% output VAT on gross receipts for services rendered outside the Philippines erroneously paid and remitted to the BIR for the 4th Quarter of 2010, 1st, 3rd, and 4th Quarters of 2011, and 1st Quarter of 2012, amounting to ₱52,493,162.17.

Thereafter, on December 26, 2012, respondent filed a *Petition for Review*, docketed as CTA Case No. 8594, which was raffled to the First Division of this Court. On January 16, 2013, the First Division issued *Summons* addressed to petitioner, ordering him to file an *Answer* in the said case, not a *Motion to Dismiss*, within the time provided.

In petitioner's *Answer* filed on April 5, 2013, petitioner raised the following special and affirmative defenses, to wit: (1) the burden of proof is on the taxpayer to establish its right to a refund, and failure to sustain the burden is fatal to the claim for refund; and (2) claims for tax exemption must be justified by the clearest grant of law.

On April 23, 2013, respondent filed a *Motion to Consolidate and to Defer the Pre-Trial Conference*, stating that CTA Case Nos. 8563 and 8594 involve the same parties and affect closely related subject matters, hence, the two (2) cases must be consolidated and jointly tried in order to serve the best interests of the parties, and to expeditiously settle the issues involved. The said *Motion to Consolidate* was granted by the First Division in the Resolution dated April 30, 2013.

CTA Case No. 8674 (3rd and 4th Quarters of 2011 and 1st Quarter of 2012)

On July 15, 2013, respondent filed a *Petition for Review* for claim for refund of erroneously paid output taxes on VAT-exempt sale/supply of equipment for the taxable periods 3rd Quarter (July) 2011, 4th Quarter (October) 2011, and 1st Quarter (March) 2012, docketed as CTA Case No. 8674, and was raffled to the Second Division of this Court. The corresponding *Summons* was issued on July 17, 2013.

Subsequently, respondent filed a *Motion to Consolidate and to Defer the Presentation of Witnesses* on August 7, 2013, praying that CTA Case No. 8674 be consolidated with the consolidated cases of CTA Case Nos. 8563 and 8594, since the cases involve the same parties and affect closely related subject matters

In the Resolution dated August 30, 2013, the Second Division granted respondent's *Motion to Consolidate*, there being no objection on the part of petitioner. Thus, the consolidation of CTA Case No. 8674 with CTA Case Nos. 8563 and 8594.

Petitioner filed his *Answer* in CTA Case No. 8674 on October 2, 2013, which, except for the amount involved, contains the same arguments raised in his Answer in CTA Case No. 8594.

<u>Consolidated CTA Case Nos. 8563, 8594 and 8674</u>

On December 3, 2013 and December 4, 2013, respondent and petitioner filed their *Consolidated Pre-trial Brief* and *Pre-trial Brief* attached to his *Motion for Leave to Admit Attached*, respectively.

The parties filed their *Consolidated Joint Stipulation of Facts and Issues* on February 4, 2014. Thereafter, the Court in Division issued a Pre-trial Order on February 24, 2014.

On March 10, 2014, respondent filed a *Motion to Amend Pre-trial Order* and a *Manifestation/Comment*. The former was granted by the Court in Division in its May 2, 2014 Resolution, thereby making the necessary changes to the Pre-Trial Order dated February 24, 2014.

On July 24, 2014 and August 1, 2014, respondent filed its *Formal Offer of Exhibits with Manifestation* and a *Supplemental Formal Offer of Exhibits,* respectively, which were both resolved by the Court in Division in its October 10, 2014 Resolution.

On October 30, 2014, respondent filed a *Motion for Reconsideration* of the October 10, 2014 Resolution, which was resolved by the Court in Division in its Resolution dated January 20, 2015.

During the hearing held on March 24, 2015, petitioner manifested that he has no evidence to present, and the Court in Division granted the parties thirty (30) days or until April 23, 2015, to simultaneously file their respective memoranda, and this was confirmed by the Court in Division in its Resolution dated April 1, 2015.

On April 23, 2015, respondent filed its *Memorandum*, while petitioner filed a *Manifestation* on May 27, 2015, stating that he is adopting the arguments raised in his *Answers* as his *Memorandum*.

On May 29, 2015, the Court in Division resolved to submit the case for decision.

In the assailed Decision,[3] the Court in Division partially granted the consolidated *Petitions for Review*, and ordered petitioner to refund or issue a tax credit certificate in favor of respondent in the reduced amount of ₱21,530,960.05.

On June 1, 2016, petitioner filed a *Motion for Partial Reconsideration* of the said Decision.[4] Respondent filed *Comment/Opposition* to the said *Motion* on June 17, 2016.[5]

The Court in Division, in the assailed Resolution,[6] denied petitioner's *Motion for Partial Reconsideration* for lack of merit.

On August 25, 2016, petitioner filed a *Motion for Additional Time (to File Petition for Review)*[7] before the Court *En Banc*, praying for an additional period of fifteen (15) days from August 30, 2016 or until September 14, 2016, within which to file his *Petition for Review*. The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from August 30, 2016, or until September 14, 2016.[8]

Thereafter, petitioner filed an *Urgent Motion for Additional Time (to file Petition for Review)* on September 14, 2016,[9] praying for an

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[3] EB Docket, pp. 33 to 63; Division Docket –Vol. 6 (CTA Case No. 8563), pp. 862 to 892.
[4] Division Docket – Vol. 6 (CTA Case No. 8563), pp. 893 to 899.
[5] Division Docket – Vol. 6 (CTA Case No. 8563), pp. 904 to 912.
[6] EB Docket, pp. 64 to 68; Division Docket –Vol. 5 (CTA Case No. 8563), pp. 916 to 920.
[7] EB Docket, pp. 1 to 4.
[8] Minute Resolution dated September 1, 2016, EB Docket, p. 5.
[9] EB Docket, pp. 6 to 7.

additional period of fifteen (15) days from September 14, 2016 or until September 29, 2016, within which to file his *Petition for Review.*

In the Resolution dated September 26, 2016,[10] the Court *En Banc* granted petitioner's *Urgent Motion for Additional Time (to file Petition for Review)* in the interest of justice. On September 29, 2016, petitioner filed before the Court *En Banc* the instant *Petition for Review.*[11]

In the Resolution dated October 19, 2016,[12] respondent was directed to file its comment on the instant *Petition for Review* within ten (10) days from receipt thereof. In compliance, respondent filed its *Comment (To Petitioner's Petition for Review with CTA En Banc)* on December 8, 2016.[13]

In the Resolution dated January 10, 2017,[14] the Court *En Banc* gave due course to the instant *Petition for Review* and ordered both parties to submit their respective memoranda within thirty (30) days from receipt of the said Resolution. On February 17, 2017, respondent filed its *Memorandum.*[15] Petitioner, however, failed to file its memorandum.[16]

Thereafter, in the Resolution dated March 21, 2017,[17] the instant case was deemed submitted for decision.

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues in his *Petition for Review*, for the Court *En Banc*'s resolution, to wit:

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[10] EB Docket, pp. 11 to 12.
[11] EB Docket, pp. 16 to 31.
[12] EB Docket, pp. 78 to 79.
[13] EB Docket, pp. 85 to 103.
[14] EB Docket, pp. 105 to 106.
[15] EB Docket, pp. 111 to 130.
[16] Per Records Verification dated March 1, 2017 issued by the Judicial Records Division of this Court, EB Docket, p. 133.
[17] EB Docket, pp. 135 to 136.

"-I-

RESPONDENT FAILED TO SUBSTANTIATE ITS CLAIM FOR REFUND EVEN BEFORE THE ADMINISTRATIVE BODY.

-II-

RESPONDENT IS NOT ENTITLED TO CLAIM FOR REFUND IN THE AMOUNT OF P21,530,960.05."[18]

Petitioner's arguments:

Petitioner contends that respondent failed to substantiate its claim for refund before the administrative body by failing to submit complete documents which deprived petitioner of the opportunity and time to study respondent's claim for refund and fully exercise its function.

Allegedly, respondent miserably failed to exhaust administrative remedies before elevating the case to the Court of Tax Appeals. According to petitioner, he was not given sufficient time and information to evaluate respondent's administrative claim for refund, nor was he given sufficient facts to evaluate the claim since the administrative claim for tax refund for the 3rd quarter of 2010 was filed with the BIR only on October 24, 2012 while the Petition for Review was filed with the Court of Tax Appeals on October 25, 2012; while the administrative claim for refund for the 1st quarter of 2011 was filed only on December 20, 2012 and the *Petition for Review* was filed with this Court on December 26, 2012.

Moreover, petitioner contends that respondent is not entitled to the claim for refund in the amount of ₱21,530,960.05 because the services claimed by respondent as tax-exempt do not fall within the transactions exempted from VAT under Section 109 of Republic Act No. 8424.

Lastly, petitioner asserts that the alleged contracts between respondent and NGCP cannot be made conclusive as to its contents. Petitioner claims that the testimony of respondent's witness, Mr. Ramos, cannot be given credence, the signatories in the contracts were not presented by petitioner and the same was merely identified

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[18] EB Docket, p. 21.

by Mr. Ramos.

Respondent's arguments:

Respondent counter-argues that it had sufficiently complied with the procedural requirements in claiming refund including the submission of complete documents in the administrative level. Respondent asserts that it was able to prove during the trial before the Third Division that it had proffered as evidence Exhibits "P-231", "P-232", "P-234" and "P-235" (Application and Transmittal Letter dated October 24, 2012 and December 20, 2012) as proof that the respondent submitted pertinent documents on the claim of refund.

The filing of its administrative claim with petitioner within the period set forth under Section 204 (C) of the 1997 Tax Code prior to filing the instant judicial claim with the Court of Tax Appeals is allegedly a clear manifestation that it had sufficiently exhausted all administrative remedies in its claim refund.

Respondent also asserts that it had amply established its right to a refund of the erroneously paid tax as aptly held by the Court in Division in the assailed Decision pursuant to Section 229 of the 1997 NIRC, as amended. Thus, the Court in Division was correct when it held that construction works performed abroad in turnkey contracts are outside the taxing jurisdiction of the Philippines, and therefore should not be subject to Philippine taxes following the *Marubeni case.*

Allegedly, the presentation of the original notarized contract between respondent and NGCP is the best evidence to prove the contents thereof in accordance with Section 3, Rule 130 of the Revised Rules of Civil Procedure in all respect sufficient to prove the existence of the contract between parties.

Finally, respondent maintains that the Court in Division correctly ruled that it is entitled to a refund of erroneously paid VAT pursuant to the principle of *solution indebiti* found under Article 2154 of the New Civil Code when it made an overpayment of VAT on its services relating to the offshore portion of the contract with NGCP.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is bereft of merit.

Respondent did not fail to substantiate its claim for refund before the BIR. A taxpayer-claimant need not wait for the decision of petitioner before filing a judicial claim with this Court, when the two year prescriptive period is about to expire.

Petitioner contends that a mere filing of an administrative claim for refund or issuance of tax credit certificate without submitting the complete documents in support of the application thereof is not conclusive to sustain respondent's contention that it has the right to claim for a refund. While it is true that respondent filed an administrative claim for refund, the same is allegedly considered merely *pro forma* as it failed to proffer sufficient proof of its claim to prove its entitlement thereto.

In addition, petitioner avers that he was not given sufficient time and information to evaluate respondent's administrative claim for refund, nor was he given sufficient facts to evaluate the same.

We disagree with petitioner.

It must be emphasized that the submission of complete supporting documents by the taxpayer-claimant is presumed. This is in accordance with the Supreme Court's pronouncement in *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[19] wherein it was held that:

> "Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, **it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary.**"

In view of this presumption and there being no evidence to the contrary, the documents submitted with respondent's administrative claims for refund filed on October 24, 2012,[20] and December 20,

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[19] G.R. Nos. 198729-30, January 15, 2014.
[20] Exhibit "P-231", Division Docket (CTA Case No. 8563) – Vol. 5, pp. 3553 to 3558.

2012,[21] are deemed complete documents.

But even granting that We can validly ignore the said presumption and find that respondent indeed did not present or attach the *"complete supporting documents"* in its administrative claims, petitioner can always immediately decide a refund claim, in view of the recognized principle that petitioner **ought to know the tax records of all taxpayers.**[22] Thus, there can be no merit in the contention of petitioner that his office could not have properly acted upon the administrative claim because of respondent's failure to submit the document evidence appurtenant thereto.

In the same vein, petitioner cannot validly complain that he was not given sufficient time to evaluate respondent's administrative claim for refund.

Section 229 of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

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[21] Exhibit "P-234", Division Docket (CTA Case No. 85633) – Vol. 5, pp. 3544 to 3549.

[22] *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*, G.R. No. 122480, April 12, 2000; and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

Relative to the foregoing provision, it is noteworthy to mention the leading case of *Gibbs vs.Collector of Internal Revenue and Court of Tax Appeals*,[23] where the Supreme Court held:

> "Under the above ruling, it is clear that Section 306[24] of the National Internal Revenue Code should be construed together with Section 11 of Republic Act No. 1125. In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, he must file a claim for refund with the Collector of Internal Revenue within two (2) years from the date of his payment of the tax, as required by said Section 306[25] of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. **If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, <u>the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector.</u>** This is so because of the positive requirement of Section 306[26] and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute." *(Emphasis Supplied)*

Based on the foregoing jurisprudential pronouncements, when the two-year prescriptive period is about to expire, a taxpayer-claimant need not wait for the decision of the petitioner before filing a case with this Court.

Moreover, in no wise does Section 229 of the NIRC of 1997 imply that petitioner first act upon the taxpayer's claim, and that the taxpayer shall not go to court before such taxpayer is notified of petitioner's action.[27] It must be emphasized that the claim with petitioner was intended primarily as a notice of warning that unless

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[23] G.R. No. L-13453, February 29, 1960.
[24] Now Section 229 of the NIRC of 1997.
[25] *Ibid.*
[26] *Ibid.*
[27] Refer to *CBK Power Company Limited vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 193383-84 and 193407-08, January 14, 2015, citing *P.J. Kiener Co., Ltd. vs. David*, 92 Phil. 945 (1953).

the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow.[28]

Thus, it was correct on the part of respondent to have elevated its judicial claims before the expiration of the said two-year prescriptive period under Section 229 of the NIRC of 1997.

Respondent is entitled to the refund claim in the amount of ₱21,530,960.05.

In arguing that respondent is not entitled to the refund claim in the amount of ₱21,530,960.05, petitioner asserts that respondent failed to discharge the burden that it is indeed VAT-exempt; and that the alleged contracts between respondent and NGCP have no probative value to establish the claim for exemption of respondent, since the same were merely identified by Mr. Ramos and none of the signatories were presented on the witness stand to identify the said documents, and thus, the contents thereof would be hearsay.

Petitioner is certainly mistaken.

Petitioner proceeds from the wrong notion that the amounts which may be refunded by a taxpayer-claimant are only those that arise from tax-exempt transactions, and thus, such taxpayer-claimant must prove its tax-exempt status under the law to be able to claim a tax refund. Contrary to petitioner's stance, a refundable amount of tax may arise not only from tax-exempt entities or transactions, but also from those not covered by provisions of law imposing taxes.

It must be remembered that pursuant to the aforequoted Section 229 of the NIRC of 1997, the law allows the recovery from the BIR of the following:

1. Any national internal revenue taxes alleged to have been erroneously or illegally assessed or collected,

2. Any penalty claimed to have been collected without authority, and

3. Any sum alleged to have been excessively or in any

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[28] *Ibid.*

manner wrongfully collected.

In this case, what was sought to be refunded belongs to the first category, which is otherwise known as erroneous or illegal taxes. Relative thereto, an "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[29] Simply put, a tax assessed or collected without legal basis may be refunded.

Correspondingly, since respondent was able to establish before the Court *a quo* the illegality of the subject taxes collected by the government, the same is sufficient to justify the grant of the subject tax refund.

Furthermore, there is no merit in petitioner's contention that the contents of the contracts between respondent and NGCP are hearsay.

Section 30, Rule 132 of the 1997 Rules of Civil Procedure states:

> "SEC. 30. *Proof of Notarial Documents.* – Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence **without further proof**, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved." *(Emphasis and underscoring supplied)*

The notarization of a document carries considerable legal effect. Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity.[30]

Records show that the contracts of respondent with NGCP concerning the Wright-Calbayog Project and New Naga Project, were notarized on September 23, 2009[31] and March 16, 2010[32],

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[29] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.
[30] *Tan vs. People of the Philippines*, G.R. No. 218902, October 17, 2016.
[31] Exhibit "P-2", Division Docket (CTA Case No. 8563) – Vol. 5, pp. 2842 to 2843.
[32] Exhibit "P-3", Division Docket (CTA Case No. 8563) – Vol. 5, pp. 2852 to 2853.

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respectively. Considering that the said contracts were notarized, no further proof was necessary to establish the execution thereof. As such it is a perfect evidence of the fact which gives rise to its execution and of its date so long as the act which the officer witnessed and certified to or the date written by him is not shown to be false.[33]

To overcome the presumption, the rules require not just a preponderance of evidence, but evidence that is "clear and convincing" as to exclude all reasonable controversy as to the falsity of the certificate. In the absence of such proof, the document must be upheld.[34] It can be gleaned from the records that petitioner did not present any iota of evidence that would prove that the contracts entered into between respondent and NGCP showed any irregularity in its execution. Hence, the contents found in the contracts between respondent and NGCP, being considered as notarial documents, cannot be treated as hearsay.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[33] *Tan vs. People of the Philippines, supra.*
[34] *Ibid.*

CAESAR A. CASANOVA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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