REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

COCA-COLA BOTTLERS PHILIPPINES, INC., *Petitioner,*	**CTA EB NO. 1061** (CTA Case Nos. 7986 & 8028)
- *versus* -	Present: *Del Rosario, P.J. Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** NOV 25 2015 3:30pm

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RESOLUTION

BAUTISTA, J.:

For resolution is petitioner's "Motion for Reconsideration," filed on May 13, 2015, without any comment from respondent despite notice.

On April 10, 2015, the Court *En Banc* rendered its Decision, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**. Accordingly, the Decision and Resolution dated June 14, 2013 and August 15, 2013, respectively, are hereby **AFFIRMED**.

SO ORDERED.

Petitioner alleges that *Section 229 of the 1997 National Internal Revenue Code, as amended ("NIRC")* applies to its claim for refund as its claim arise from the input VAT in the amounts of Php60,420,422.20 and Php112,341,092.68, which were inadvertently not declared and deducted from the output VAT for the quarters ended September 30, 2007 and December 31, 2007, respectively. Consequently, it paid a higher amount of VAT for the said quarters.

Finally, it aver that the subject matter of the claim for refund is the inadvertent omission/under-declaration of input VAT. Necessarily, the substantiation procedures performed by the Independent Certified Public Accountant are concentrated on the portion of input taxes inadvertently omitted for the said quarters rather than the whole or total input taxes deducted from the total output VAT for the said quarters.

The Court *En Banc* is not persuaded.

Anent the first argument, while the Court *En Banc* agrees with petitioner's position that *Section 229 of the 1997 NIRC* applies to claims for erroneously paid taxes, petitioner, however, failed to show that it made an erroneous payment.

As found by the Court in Division in its Decision[1] dated June 14, 2013, "that out of petitioner's alleged unclaimed input tax credits for the third and fourth quarters of 2007 in the respective amounts of [Php]60,420,422.20 and [Php]112,341,092.68, totaling [Php]172,761,514.88, only the input taxes of [Php]19,342,803.07 and [Php]34,440,405.24 for the third and fourth quarters of 2007, respectively, totaling [Php]53,783,208.31 were properly supported by VAT official receipts. This amount is insufficient to offset against its output taxes for the same taxable periods. Thus, petitioner would not have had erroneously paid output VAT for the third and fourth quarters of 2007 that can be subject of claim under *Section 229 of the [1997] NIRC*."[2]

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[1] *Rollo*, CTA EB Case No. 1061(CTA Case Nos. 7986 & 8028), pp. 54-78; penned by Associate Justice Caesar A. Casanova, with Associate Justice Juañito C. Castaneda, Jr., and Associate Justice Cielito N. Mindaro-Grulla, concurring.

[2] *Id.*, p. 74-77.

Now, anent the second argument, the same deserves scant consideration as this is a matter that needs to be proven.

In the case of *Far East Bank Trust Company v. Roberto Mar Chante, a.k.a. Robert Mar G. Chan*[3], the Supreme Court has held that "the party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it. Verily, the party who asserts, not he who denies, must prove."

In the present case, petitioner failed to discharge this burden when it alleged that it made an overpayment of output VAT since there is no overpayment that can be claimed by petitioner.[4]

Thus, there being no evidence to substantiate its claim, the Court *En Banc* cannot subscribe to petitioner's view.

WHEREFORE, premises considered, the "Motion for Reconsideration," is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

I maintain my separate concurring opinion

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

[3] G.R. No. 170598, October 9, 2013.
[4] *Rollo*, pp. 74-77.

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

CERTIFICATION

Pursuant to *Section 13 of 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.

ROMAN G. DEL ROSARIO
Presiding Justice