REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MARUBENI PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. E.B. NO. 240
(C.T.A. CASE NO. 6548)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

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D E C I S I O N

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on January 10, 2007 seeking a review of the Decision and Resolution dated February 14, 2006 and November 28, 2006, respectively, rendered by the First Division of this Court[1] (Court in Division) in C. T. A. Case No. 6548 entitled "Marubeni Philippines Corporation, petitioner, vs. Commissioner of Internal Revenue, respondent", pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282. The dispositive portions of which read as follows:

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[1] Ponencia of Associate Justice Lovell R. Bautista, and concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.

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Decision promulgated on February 14, 2006:

"**IN VIEW OF THE FOREGOING**, the instant Petition for Review is hereby **DISMISSED**.

SO ORDERED."

Resolution promulgated on November 28, 2006:

"**WHEREFORE**, in view of the foregoing, petitioner's "Motion for Reconsideration" is hereby **DENIED**.

SO ORDERED."

THE FACTS

The undisputed facts are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with office address at 9th Floor, LV Locsin Building, Ayala Avenue corner Makati Avenue, Makati City while respondent is the duly constituted official authorized, among others, to decide, approve and grant tax credits and/or refunds of overpaid or erroneously paid internal revenue taxes, with office address at 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner was organized primarily to engage in the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description; and to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment or all kinds of goods, wares, merchandise or

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products whether natural or artificial. It is duly registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer.

Petitioner filed its VAT return for the third quarter of 2000 on October 25, 2000. However, on September 17, 2002, petitioner filed an amended return for the third quarter of 2000 declaring as excess input VAT the amount of P3,981,951.29.

On September 30, 2002, petitioner through its external auditor, Sycip, Gorres, Velayo and Company, filed with the BIR an administrative claim for refund or issuance of a tax credit certificate in the amount of P3,970,070.43 allegedly representing unutilized input VAT credits attributable to its zero-rated sales for the third quarter of 2000.

Due to the respondent's inaction on its claim, petitioner filed a Petition for Review before the Court in Division on October 15, 2002, docketed as C.T.A. Case No. 6548, in order to toll the running of the two-year period within which it may judicially claim for refund or tax credit the aforesaid input VAT in the amount of P3,970,070.43.

In its Decision promulgated on February 14, 2006, the Court in Division, in computing for the amount of sale of services that will qualify for zero-rating, disallowed the amount of P680,432.72 on the ground that these reported direct export sales did not have foreign currency remittances or supporting bills of lading/export declarations.

Moreover, although majority of the petitioner's sale of services to PEZA registered companies and non-residents for the third quarter of 2000 were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Banko Sentral ng Pilipinas (BSP); thereby considered under the category of services subject to zero percent (0%) VAT under Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, the total amount of P43,791,911.09 (P407,524.78[2] + P43,384,386.31[3]) was not duly supported by VAT official receipts as required by Section 113 of the same code. Therefore, out of the total declared sales of P81,001,845.95 for the third quarter of 2000, only the amount of P36,529,502.14[4] qualified for VAT zero-rating; hence, the input VAT attributable thereto maybe refunded or claimed as tax credit certificate upon compliance with the requisites set forth in Section 112(A) of the NIRC of 1997.

However, in applying the aforesaid requisites, the Court in Division dismissed petitioner's claim for refund or issuance of tax credit certificate of the unutilized input VAT attributable or allocable to zero-rated sales, primarily on the ground that petitioner failed to prove that no amount of the claimed input taxes was applied against any output VAT liability of the succeeding quarters. The pertinent portions of the Court in Division's ruling are quoted hereunder, to wit:

> "As to whether or not the claimed input taxes were carried over or applied against any output VAT liability in the succeeding quarters, petitioner presented its amended VAT return for the fourth quarter of 2000. The return shows that no amount of input tax carried-over from the previous quarter was indicated. **However, this Court finds the said document insufficient to prove that no amount of the claimed input taxes was applied against any output VAT liability of the succeeding quarters. It is to be noted that the amended VAT return for the fourth quarter of 2000 was filed on October 28, 2002. Prior to this date, petitioner as the law**

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[2] The Court in Division's findings that out of the reported sales of services to PEZA registered companies of P597,997.25, only the amount of P190,472.47 qualified for VAT zero-rating.

[3] The Court in Division's findings that the said amount did not qualify for VAT zero-rating for not being duly supported by VAT official receipts.

[4] Total declared sales less the amounts of P680,432.72 (no foreign currency remittances or supporting bills of lading/export declarations) and P43,791,911.09 (not supported by VAT official receipts).

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> **requires, should have already filed its VAT returns for the four taxable quarters of 2001 and the first three quarters of 2002. These VAT returns should have been presented by petitioner in order to ascertain that the claimed input taxes were not actually applied in the said periods**.
>
> For petitioner's failure to sufficiently prove that no amount of the substantiated input taxes of P1,121,851.03 was applied against any output VAT liability in the succeeding quarters, the same cannot be granted." *(Emphasis Ours)*

On March 8, 2006, petitioner filed its Motion for Reconsideration seeking reconsideration of the aforesaid Decision and, in the alternative, that it be allowed to present in evidence its quarterly VAT returns for the four quarters of 2001 and the first three quarters of 2002. However, the same was denied by the Court in Division in its Resolution dated November 28, 2006.[5]

Hence, this recourse before the Court *En Banc* assailing the Decision and Resolution of the Court in Division promulgated on February 14, 2006 and November 28, 2006, respectively, raising the following grounds in support thereof:

A. The exclusion of petitioner's sales to a PEZA-registered entity in the amount of P407,524.78 and petitioner's sales of services to non-residents amounting to P43,384,386.31 from its total zero-rated sales was contrary to law;

B. There is no legal basis for the disallowance of some of petitioner's input VAT based solely on the ground that these were supported by VAT invoices or official receipts dated outside the period of claim; and

C. Petitioner presented sufficient evidence to prove that its excess input VAT for the third quarter of 2000 was not applied against any output VAT liability incurred during the succeeding quarters.

Furthermore, petitioner prays: (1) that the assailed Decision and Resolution be reversed and set aside, and that a new judgment be rendered

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[5] Docket, pp. 52-55.

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ordering respondent to refund or issue to petitioner a tax credit certificate in the aggregate amount of P3,970,070.43 representing unutilized input VAT for the third quarter of taxable year 2000; or in the alternative, (2) that an order be issued remanding this case back to the Court in Division for further reception of evidence.

THE ISSUES

Petitioner submits the following issues for the Court *En Banc*'s consideration:

A. Whether or not the presentation of VAT invoices or official receipts are necessary evidence for the establishment of the existence of zero-rated sales;

B. Whether or not the petitioner is entitled to refund or tax credit of its input VAT, invoice dates of which fall outside the period of claim; and

C. Whether or not the petitioner presented sufficient evidence to prove that its excess input VAT for the third quarter of 2000 was not applied against any output VAT liability incurred during the succeeding quarters.

On January 23, 2007, this Court issued a Resolution requiring respondent to file a Comment thereto. However, upon the expiration of the given period, respondent failed to file the same. Hence, the case was deemed submitted for decision on March 12, 2007.

THE COURT EN BANC'S RULING

Anent the first issue, in citing the provisions of Section 108(B)(2) and (3) of the NIRC of 1997 and Section 4.102-2(b)(2) and (3) of Revenue Regulations No. 7-95, petitioner contends that neither the VAT provisions of the NIRC of 1997 nor its implementing regulations require the presentation of VAT official receipts in order for a sale of services to non-residents or to

PEZA-registered entities to qualify as VAT zero-rated. It further expounded by arguing that its sales of services to PEZA-registered entities and to non-residents do not violate the requirements for VAT zero-rating considering that it is only the existence of zero-rated sales, and not necessarily the issuance of VAT official receipts, that must be proven in order to be entitled to a refund or tax credit.

We do not agree.

This Court has consistently emphasized the importance of presenting VAT official receipts as evidence to establish the existence of zero-rated or effectively zero-rated sales before a refund of input VAT could prosper, pursuant to Section 113 of the NIRC of 1997, in relation to Section 4.108-1 of Revenue Regulations No. 7-95, quoted hereunder as follows:

> "***SEC. 113. Invoicing and Accounting Requirements for VAT Registered Persons. –***
>
> **(A)** ***Invoicing Requirements***. – A VAT-registered person **shall**, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax." *(Underscoring and emphasis Ours)*
>
> "***SEC. 4.108-1. Invoicing Requirements.*** — All VAT-registered persons **shall**, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of seller;
> 2. date of transaction;

3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

xxx xxx xxx

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoices or receipts and this shall be considered as 'VAT Invoice'. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax." *(Underscoring and emphasis supplied)*

In interpreting the above-cited provisions, We had the occasion to stress in the case of ***American Express International Inc., Philippine Branch v. Commissioner of Internal Revenue***,[6] that:

"The law is very clear. Section 113 provides that 'a VAT registered person shall, for every sale, issue a duly registered VAT invoice or receipt for every sale transaction'. Such VAT invoice or receipt must show the taxpayer identification number, followed by the word 'VAT', the BIR Authority imprint or BIR permit marker and the word 'zero-rated' imprinted on the invoice or receipt covering a zero-rated sale. Considering so, the sales of services referred to under Section 108 (B) (2) of the NIRC of 1997, as amended, as being subject to zero percent (0%) rate are those sales covered by duly registered VAT official receipts.

The VAT registered person must substantiate the input VAT paid by purchase invoices or official receipts. An official receipt issued by the taxpayer is an essential requirement to prove the existence of sale and receipt of income and thereafter duly recorded in the accounting records.

The aforequoted revenue regulation issued to implement the NIRC provision on VAT invoicing and accounting requirements is mandatory as the word 'shall' is used. The word 'shall' is imperative, commonly operating to impose an obligation or duty, which may be enforced; it is a word of

[6] CTA EB No. 103 (CTA Case No. 6294), March 3, 2006.

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command that must be given a compulsory meaning (Pioneer Texturing Corp. vs. NLRC, 280 SCRA 806). Indeed, it is the duty of a seller-taxpayer to comply with the invoicing requirements laid down in the said NIRC provisions and Revenue Regulations." *(Emphasis Ours)*

Likewise, this Court had earlier explained the matter in this wise:

"Considering, however, that petitioner reported taxable sales along with its zero-rated and exempt sales, **the court finds it also necessary for the petitioner to submit invoices pertaining to the taxable sales and the corresponding input VAT. These documents are necessary to determine the veracity of such declaration for any discrepancy will affect petitioner's claim for refund**. To illustrate, an underdeclaration of output VAT liability or overstatement of input VAT will reduce the excess VAT credit.

Based on the evidence submitted by petitioner, we cannot verify if the latter had indeed incurred any excess input VAT credits. **Petitioner failed to present the invoices and/or official receipts pertaining to the said taxable sales and purchases of goods and services to support its taxable sales and the input VAT attributable thereto. As a consequence, the court cannot verify the amounts declared in the quarterly VAT returns. We cannot determine with accuracy the allocated input VAT for taxable sales. Petitioner's presentation of the abovementioned documents is material to its claim for refund. Its failure to do so is a fatal defect**."[7] *(Emphasis Ours)*

In the case of ***Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue***,[8] the Supreme Court discussed the invoicing requirements for VAT-registered persons. It ruled that "[i]t is clear that a VAT invoice can be used only for the sale of goods or services that are subject to VAT'. This means that the issuance of VAT invoices or official receipts is mandatory for sales that are subject to VAT

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[7] Honda Trading Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6282, August 21, 2003 (also cited in ECW Joint Venture, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 14 [CTA Case No. 6509], March 22, 2006).
[8] 318 SCRA 386 (1999).

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either at 10% or 0% (zero-rated sales). The Supreme Court further ruled, in the same case, that "it is the duty of the seller to comply with the invoicing and accounting requirements laid down in, among others, Section 108 of the Tax Code" (now Sec. 113 of the NIRC of 1997).

This is a clear recognition that there are other sources of VAT invoicing and accounting requirements aside from Section 113 of the NIRC of 1997, such as implementing rules and regulations issued by the administrative agencies of the government that require strict compliance, i.e. Revenue Regulations.

Thus, although the commissioned independent CPA Roel Rabaja stated in his Report that the sales of services to non-residents have been proven through other documentary evidence, but if such other evidence are not in accord with the requirements mandated by law, then, the subject sales of services could not be recognized as zero-rated sales of services.

This Court maintains its stand that in claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent and supporting evidence, then the granting thereof could prove to be improper, if not difficult.[9] Therefore, pursuant to settled jurisprudence, petitioner in claiming for tax refund has the burden of proof to establish the factual basis of its claim. Having failed to discharge the burden in this regard, petitioner's claim must therefore fall.

Applying the foregoing discussion, the Court in Division committed no reversible error in disallowing petitioner's reported sales of services for VAT

[9] ECW Joint Venture, Inc., vs. Commissioner of Internal Revenue, supra.

zero-rating in the amount of P43,791,911.09 for its failure to present the invoices and official receipts in support of the alleged zero-rated sales as required by law.

Anent the second issue which pertains to the out-of-period claims, petitioner posits that "while certain invoices may be dated outside the period covered by the claim, this should not detract from the fact that these invoices still substantiate valid creditable input VAT". It argues that Section 110(2)(a) of the NIRC of 1997 simply requires that input VAT from the purchase of goods may be credited against output VAT only after the sale has been consummated. Meaning, "there is nothing in the said code which even remotely implies that input VAT may only be credited against output VAT falling within the same taxable quarter".

We disagree.

As consistently ruled by this Court, input taxes on domestic purchases of goods supported by VAT invoices, as well as on domestic purchases of services supported by VAT official receipts, which are not dated with the VAT-taxable quarter, should be disallowed considering that input VAT supported by VAT invoices and official receipts dated earlier than the period of claims can no longer be claimed for refund.[10]

In the case at bench, We accentuate that petitioner should have declared these input taxes in the corresponding taxable quarters when payments for the services were made as evidenced by VAT official receipts

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[10] Matsushita Business Machine Corporation of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6580, September 14, 2006.

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and when purchases of goods were consummated as evidenced by VAT invoices.[11]

Relevant thereto, this Court enunciated in ***Lepanto Consolidated Mining Co. vs. Commissioner of Internal Revenue***,[12] that:

> "The alleged unutilized input VAT of P5,820,863.87 should be denied since the supporting invoices and official receipts thereof bore dates which were earlier than the period of petitioner's claim. Section 110(A)(2) of the 1997 Tax Code provides:
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> > 'Sec. 110. *Tax Credits.* –
> >
> > A. *Creditable Input Tax.* –
> >
> > 2. The input tax on domestic purchase of goods or properties shall be creditable:
> >
> > (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
> >
> > However, 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.'
>
> It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value-added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty, or fee, that is, upon the date of official receipt. Section 110(A) is explicit. It states 'upon consummation', in the case of domestic purchases of goods, and 'upon payment', in the case of purchases of services. It does not provide any qualification, such as 'upon

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[11] Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.) vs. Commissioner of Internal Revenue, CTA Case Nos. 6628 & 6732, July 31, 2006, affirmed in CTA EB No. 251, May 30, 2007.

[12] CTA Case Nos. 6368 and 6480, December 15, 2004, cited in the cases of Mirant (Navotas II) Corporation (formerly Southern Energy Navotas II Power, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6418, April 11, 2006 (Entry of Judgment dated September 14, 2006) and Takenaka Corp. Phil. Branch vs. Commissioner of Internal Revenue, CTA Case No. 6752, January 2, 2007 (Entry of Judgment dated February 16, 2007).

> delivery of invoice or official receipt' which is the main thesis of petitioner's contention.
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> In a resolution of the case entitled ***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6168, promulgated on July 28, 2004***, this Court elucidated that 'the input VAT on domestic purchases of goods or properties shall be allowed as tax credit to the purchaser upon consummation of sale, which means upon issuance by the seller of the VAT sales invoices evidencing the sale of goods/properties. On the other hand, the input VAT on purchases of services shall be available as tax credit to the purchaser only upon payment of the compensation or fee, i.e., upon issuance by the seller of the VAT official receipt evidencing receipts of the payment for services performed or yet to be performed.'
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> Thus, it is indubitable on the part of the petitioner to declare the input value added taxes on domestic purchases of goods and services at the end of the corresponding taxable quarter where purchases of goods were consummated, as evidenced by VAT invoice and for payment of services, as evidenced by VAT official receipt.
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> Therefore, the amount of input VAT of P5,820,863.87 which is supported by VAT invoices and official receipts dated earlier than the period of petitioner's claims can no longer be claimed for refund pursuant to Section 110(A) in relation with Section 112(A) of the 1997 National Internal Revenue Code." *(Underscoring Ours)*

Clearly, petitioner's input VAT supported by VAT invoices and official receipts dated earlier than the subject period of claims cannot be considered in support of petitioner's instant claim for refund.

Anent the third issue, We note that the Court in Division denied petitioner's claim on the ground that the evidence presented, the Amended VAT Return for the fourth quarter of 2000, is insufficient to prove that no amount of the claimed input taxes was applied against any output VAT liability of the succeeding quarters.

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Petitioner disagrees by saying that for failure of respondent to contest the information stated in the subject Amended Vat Return, the same remains uncontroverted; and consequently, said documentary evidence has sufficiently established the fact that the claimed input taxes were not carried over or applied against any output VAT liability for the succeeding quarter. As a matter of fact, petitioner pointed out that, in its Motion for Reconsideration,[13] it did not present its quarterly VAT returns for the four taxable quarters of 2001 and the first three quarters of 2002 due to its sincere belief that the presentation of the subject Amended VAT Return was sufficient to clearly show that the excess input taxes from the previous quarters were not carried over. Nevertheless, petitioner attached to the aforesaid Motion for Reconsideration copies of its quarterly VAT returns for the four taxable quarters of 2001 and the first three quarters of 2002,[14] and prayed that it be allowed to present the same in evidence. However, its motion was denied in the assailed Resolution dated November 28, 2006.

Hence, petitioner now seeks before this Court to issue a decision reversing or setting aside the assailed Decision and Resolution dated February 14, 2006 and November 28, 2006, respectively, or as an alternative, to remand this case back to the Court in Division for further reception of evidence, citing the cases of BPI-Family Savings Bank vs. Court of Appeals,[15]

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[13] Annex "C", Petition for Review filed on January 10, 2007.
[14] Photocopies of said quarterly VAT returns were attached to petitioner's Motion for Reconsideration filed on March 8, 2006 in CTA Case No. 6548.
[15] G.R. No. 122480, April 12, 2000.

Paseo Realty & Development Corporation vs. Court of Appeals,[16] and Metro Rail Transit Corporation vs. Court of Tax Appeals, et al.[17]

On this issue, We are inclined to consider petitioner's position.

While it is true that the evidence that are sought to be presented are documents that already exist during the trial of the case, it was petitioner's honest belief that the said evidence are not anymore necessary to prove that the excess input VAT was not yet carried over or applied against any output VAT liability in the succeeding quarters considering that it has already presented the Amended VAT Return for the fourth quarter of 2000, the contents of which are uncontested.

In giving petitioner the opportunity to present and offer the pieces of evidence deemed lacking to prove its claim for refund in the assailed Decision, We adopt the Supreme Court's ruling in the case of ***Phil. Phosphate Fertilizer Corp. vs. Commissioner of Internal Revenue***,[18] enunciating that: "[s]ince it is not disputed that petitioner is entitled to tax exemption, it should not be precluded from presenting evidence to substantiate the amount of refund it is claiming on mere technicality especially in this case, where the failure to present invoices at the first instance was adequately explained by petitioner".

Likewise, in ***Filinvest Development Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals***,[19] where petitioner failed to present its 1997 Income Tax Return during trial to prove that it did not carry

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[16] G.R. No. 119286, October 13, 2004.
[17] G.R. No. 166273, September 21, 2005.
[18] 461 SCRA 369 (2005).
[19] G.R. No. 146941, August 9, 2007.

over any excess income tax paid from 1996, the Supreme Court held, that since the 1997 Income Tax Return was duly attached to the Motion for Reconsideration, then it has become part of the records of the case. Thus, the court cannot simply ignore such document.

Applying the principles of the afore-cited jurisprudence, since petitioner's entitlement to its claim for refund or issuance of tax credit certificate in its favor is not disputed, in fact, the amount of which has been ascertained to be P1,121,851.03 by the Court in Division in the assailed Decision, petitioner cannot be precluded from presenting evidence that it has not carried over such amount to the succeeding quarters on mere technicalities when it has explained reasonably why the subject VAT returns were not presented in court as evidence during the trial despite its availability.

It should be noted that it is "[t]rue, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy".[20]

Now, considering that petitioner has already attached the subject quarterly VAT returns for the four taxable quarters of 2001 and the first three quarters of 2002, the Court *En Banc*, being a trier of facts, is authorized to

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[20] BPI-Family Savings Bank, Inc. vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, 330 SCRA 507 (2000); also cited in the case of Filinvest Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 146941, August 9, 2007.

receive the same in evidence and to take into account the same in the proper disposition of the instant petition, consistent with the Supreme Court's ruling in ***Paseo Realty & Development Corporation vs. Court of Appeals***.[21]

As earlier stated, the Court in Division found that petitioner had excess input VAT amounting to P1,121,851.03 which can be attributed to its zero-rated sales for the third quarter of 2000. Clearly, the only issue left for this Court's determination is whether or not the input VAT of P1,121,851.03 was applied or credited against petitioner's succeeding quarters' output VAT liability as may be shown in its VAT returns for the four quarters of 2001 and first three quarters of 2002.

A scrutiny of the VAT return filed by petitioner for the first quarter of 2001[22] shows that no amount of input VAT carry-over from the fourth quarter of 2000 was reflected. Thus, in its succeeding VAT returns for the second quarter of 2001 to the third quarter of 2002,[23] petitioner's output VAT liability was offset against the declared input VAT for the said quarters. In other words, with the presentation of the aforesaid returns, petitioner has now sufficiently established that the excess input VAT in the amount of P1,121,851.03 for the third quarter of 2000 was neither carried over nor applied against its output VAT liability to the succeeding quarters.

The rule "[t]hat no one shall unjustly enrich oneself at the expense of another is a long-standing principle prevailing in our legal system. This applies not only to individuals but to the State as well. In the field of taxation where the State exacts strict compliance upon its citizens, the State must

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[21] Supra.
[22] Docket, p. 69.
[23] Ibid., pp. 74, 80, 85, 92, 93 and 94.

likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*, the Government has to restore to petitioner the sums representing erroneous payments of taxes".[24]

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. On the other hand, the Court in Division's denial of petitioner's claim for refund or issuance of a tax credit certificate in its favor in the amount of P2,848,219.40,[25] is **AFFIRMED**.

Accordingly, the assailed Resolution dated November 28, 2006 is hereby **LIFTED AND SET ASIDE** and respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of **ONE MILLION ONE HUNDRED TWENTY ONE THOUSAND EIGHT HUNDRED FIFTY ONE PESOS and 3/100 (P1,121,851.03)** representing excess/unutilized input VAT for the third quarter of taxable year 2000.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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[24] Filinvest Development Corporation vs. Commissioner of Internal Revenue, supra.
[25] Amount disallowed by the Court in Division for various legal reasons in the assailed Decision in CTA Case No. 6548.

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

LOVELL R. BAUTISTA
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 conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice