Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COCA-COLA BOTTLERS PHILIPPINES, INC., Petitioner,	**CTA EB No. 1100** (CTA Case No. 7951)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 05 2015 11:10 a.m.

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RESOLUTION

CASANOVA, *J.*:

Submitted before the Court *En Banc* is petitioner's MOTION FOR RECONSIDERATION filed on April 10, 2015, with respondent's COMMENT/OPPOSITION filed, through registered mail, on June 4, 2015.

In its Motion, petitioner seeks that the *En Banc* Decision promulgated on March 10, 2015 be reconsidered and a new one be rendered granting its claim for refund in the amount of at least ₱19,245,971.95. The dispositive portion of the said Decision reads as follows:

> "**WHEREFORE,** the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision dated July 5, 2013 and Resolution dated November 20, 2013 of the CTA Special First Division in CTA Case No. 7951 are hereby both **AFFIRMED.**
>
> **SO ORDERED.**"

Petitioner anchors its Motion on the following grounds:

I. Petitioner's judicial claim or recovery of erroneously collected tax was timely filed pursuant to Section 229 of the NIRC of 1997, as amended. Corollary to this, Section 112 is not applicable because the instant claim for refund does not pertain to refund of input tax based on zero-rated sales.

II. The subject matter of the claim for refund or tax credit is the inadvertent omission/underdeclaration of input VAT amounting to ₱45,142,592.91 in computing output VAT for the quarter ended June 30, 2007. Necessarily, the substantiation procedures performed by the independent CPA were concentrated on the portions of input taxes inadvertently omitted for said quarter rather than the whole or total input taxes deducted from the total output VAT for the quarter ended June 30, 2007. The ultimate legal issue involved is whether the amount to be substantiated is the input taxes omitted which is the subject of the claim or the whole input taxes for the quarter.

III. As ruled by the Supreme Court in BPI-Family Savings Bank case, (G.R. 122480, April 12, 2002) substantial justice, equity and fair play prevail over technicalities and legalism.

Anent the first ground raised, petitioner cited the case of *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*[1], wherein the Special Third Division of the Court of Tax Appeals (CTA) held that "*x x x* When petitioner realized this and could no longer amend its VAT return due to the issuance of the Letter of Authority, petitioner applied for refund of erroneously/excessively paid output tax. In filing for tax refund, petitioner is simply applying its input tax credit against

[1] CTA Case No. 8183, January 17, 2014

the output VAT, hence, petitioner is merely availing of the creditable input tax mechanism provided for in Section 110." Therefore, petitioner insists that its inadvertent failure to declare its input taxes resulted in an erroneous collection of VAT payable which is cognizable under Section 229 of National Internal Revenue Code (NIRC) of 1997, as amended. Thus, petitioner stresses that the application of Section 112 of the NIRC of 1997, as amended, is incorrect because said section refers to refunds or tax credits of input on zero-rated or effectively zero rated sales and not erroneous payments.

With regard to the second ground, petitioner argues that it is unreasonable to require it to substantiate all of its input VAT for the quarter ended June 30, 2007 because the subject matter of its claim for refund is limited to the amount of input VAT inadvertently not deducted from output VAT. Further, since the testimony of the Independent Certified Public Accountant (ICPA) was not controverted by respondent, the evidence it presented far outweigh the evidence of the respondent. Petitioner asserts that claims for refund of erroneously paid tax under Section 229 of the NIRC of 1997, as amended, is not strictly construed against the taxpayer and only necessitates a preponderance of evidence for its appropriation.

Lastly, petitioner invokes the *ratio decidendi* in the case of BPI-Family Savings Bank, Inc. vs. Court of Appeals, et. al.[2], wherein the Supreme Court reversed the decisions of the Court of Tax Appeals and the Court of Appeals which denied petitioner's claim for tax refund for its failure to present a copy of its Final Adjustment Return for taxable year 1990. The High Court set aside technicalities and legalisms, and granted BPI-Family Savings Bank's claim for tax refund based on substantial justice, equity and fair play.

After due consideration of the grounds and arguments presented, *We* find no merit in petitioner's Motion for Reconsideration.

Bearing in mind that petitioner's arguments have already been discussed in the *En Banc* Decision it currently assails, *We* shall, at the risk of being repetitive, nonetheless, address the grounds raised by petitioner in its Motion.

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[2] G.R. 122480, April 12, 2002

I.

Petitioner's judicial claim or recovery of erroneously collected tax was timely filed pursuant to Section 229 of the NIRC of 1997, as amended. Corollary to this, Section 112 is not applicable because the instant claim for refund does not pertain to refund of input tax based on zero-rated sales.

On this issue, *We* partly agree with petitioner.

In the *En Banc* Decision, *We* held that petitioner's judicial claim for refund was **not** timely filed since Section 229 of the NIRC of 1997, as amended, is not applicable in the present case considering that it only contemplates erroneous or illegally collected tax; and, Section 112 is, likewise, **not** applicable because under said Section, there are only two (2) instances when excess input taxes may be claimed for refund and/or issuance of tax credit certificate, namely, those that are attributable to zero-rated or effectively zero-rated sales, and those whose VAT registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of the NIRC of 1997, as amended.

Petitioner, having admitted that Section 112 of the NIRC of 1997, as amended, is not applicable in the present case since "said section refers to refunds or tax credits of input tax on zero-rated or effectively zero-rated sales"[3]. *We* shall only discuss the inapplicability of Section 229 as basis for claiming VAT refund.

Section 229 of the NIRC of 1997, as amended, is not the proper basis for claiming refund under the VAT system since an "excess" input VAT is different from an "excessively" collected tax under said Section 229. The Supreme Court, in the case of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue*[4] *and Commissioner of Internal Revenue vs. San Roque Corporation*[5], elaborated on the reason why an excess input VAT cannot be refunded *via* Section 229 of the tax code. Thus:

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[3] Page 4 of petitioner's Motion for Reconsideration, CTA *En Banc* Rollo, p. 221
[4] G.R. No. 193301 & G.R. No. 194637, March 11, 2013
[5] G.R. Nos. 187485, 196113, and 197156, February 12, 2013

"**The input VAT is not 'excessively' collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper.** The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for input VAT, is the one who applies the input VAT as credit for his own output VAT. **If the input VAT is in fact 'excessively' collected as understood under Section 229, then it is the first VAT-registered person - the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT - who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System.** In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.

xxx *xxx* *xxx*

x x x In fact, if the 'excess' input VAT is an 'excessively' collected tax under Section 229, then the taxpayer claiming to apply such 'excessively' collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such 'excessively' collected tax, and thus there will no longer be any 'excess' input VAT. This will upend the present VAT System as we know it." *(Emphases Ours)*

Clearly, based thereon, Section 229 of the NIRC of 1997, as amended is not applicable in claims for refunds of excess input VAT.

II.

The subject matter of the claim for refund or tax credit is the inadvertent omission/underdeclaration of input VAT amounting to ₱45,142,592.91 in computing output VAT for the quarter ended June 30, 2007. Necessarily, the substantiation procedures performed by the

> **independent CPA were concentrated on the portion of input taxes inadvertently omitted for said quarter rather than the whole or total input taxes deducted from the total output VAT for the quarter ended June 30, 2007. The ultimate legal issue involved is whether the amount to be substantiated is the input taxes omitted which is the subject of the claim or the whole input taxes for the quarter.**

On this score, petitioner suggests that the Court should only focus on the "inadvertent omission/under declaration" of input taxes as the subject matter of the instant claim, and not the whole input tax for the taxable quarter involved.

We do not agree.

VAT involves a system of crediting (input) and offsetting (output) taxes accumulated by a VAT-registered taxpayer in a series of transactions in the course of his trade or business. In view of this, the VAT law provides that if at the end of any taxable quarter, the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person, while, on the other hand, if the input tax exceeds the output tax, then the excess shall be carried over to the succeeding quarters or quarters.[6]

Consequently, in order for the VAT system to work, input taxes must be substantiated and reported in the VAT returns of the taxpayer to be available as tax credits under Section 110 of the NIRC of 1997, as amended. In other words, the input and output taxes declared at the end of the previous quarter is needed as reference thereof in order to ascertain whether there is an excess VAT credits to be paid by the taxpayer or that should be carried over to the succeeding quarter or quarters.

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[6] "**SEC.110. Tax Credits.** -

x x x

(B) Excess Output or Input Tax. - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

III.

As ruled by the Supreme Court in BPI-Family Savings Bank case, (G.R. 122480, April 12, 2002) substantial justice, equity and fair play prevail over technicalities and legalism.

It cannot be gainsaid that the bare invocation of "in the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules.[7] Where the provision of the law or rule is clear and unequivocal, its meaning must be determined from the language employed. It must be given its literal meaning and applied without interpretation.[8] Parties praying for the liberal interpretation of the rules must be able to hurdle that heavy burden of proving that they deserve an exceptional treatment,[9] especially since well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.[10]

All told, *We* find no cogent justification to disturb the findings and conclusions spelled out in the March 10, 2015 *En Banc* Decision.

WHEREFORE, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[7] Gabriel Lazaro, et al. vs. Court of Appeals, et al., G.R. No. 137761, April 6, 2000
[8] Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, G.R. No. 159610, 12 June 2008
[9] Rhodora Prieto vs. Alpadi Development Corporation, G.R. No. 191025, July 31, 2013
[10] Commissioner of Internal Revenue vs. Bank of the Philippine Islands, G.R. No. 178490, July 7, 2009; Commissioner of Internal Revenue vs. Solidbank Corporation, G.R. No. 148191, November 25, 2003; Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corp., G.R. Nos. 83583-84, March 25, 1992

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I join PJ Del Rosario's Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COCA-COLA BOTTLERS PHILIPPINES, INC, *Petitioner,*	**CTA EB CASE NO. 1100** (CTA Case No. 7951)
-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: AUG 05 2015 11:10a.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

After a careful review of the evidence on record, as well as the applicable law and jurisprudence, I concur with the *Ponente* in denying petitioner's "Motion for Reconsideration" for lack of merit.

With all due respect, however, I maintain my position that Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, is the applicable provision to pursue petitioner's claim for refund or tax credit of erroneously and excessively collected VAT for the following reasons:

1) This case pertains to petitioner's overpayment of Value-Added Tax (VAT) amounting to ₱45,142,592.91 arising from its inadvertent failure to deduct its input taxes against the output taxes due;

Records show that petitioner's input VAT amounting to ₱45,142,592.91, incurred in the 2nd quarter of 2007, was inadvertently not reported in its tax return and consequently, was not deducted against its output tax; thereby, resulting to an overpayment of VAT amounting to ₱45,142,592.91. **Petitioner, therefore, is claiming a refund of overpayment of VAT**, under Section 229 of the NIRC of 1997, as amended **and not a refund or excess or unutilized input VAT attributable to zero-rated sales**, under Section 112 of the NIRC of 1997, as amended.

2) At the time when petitioner paid its VAT liability for the 2nd quarter of 2007, the amount paid is not correct and proper; and,

Pursuant to Section 110(A)(1) of the NIRC of 1997, as amended, petitioner's input taxes from certain transactions that are evidenced by VAT invoices or official receipts issued in accordance with Section 113 of the NIRC of 1997, as amended, shall be creditable against its output tax resulting to the its VAT liability. Due to inadvertence, petitioner was not able to deduct the input VAT amounting to ₱45,142,592.91. As a result, petitioner's VAT payment for the 2nd quarter of 2007 amounted to ₱255,581,011.92, instead of ₱210,438,419.01, computed as follows:

	Per Return	Should Be
Output Tax	₱1,229,075,851.39	₱1,229,075,851.39
Less: Input Tax	973,494,839.46	1,018,637,432.37
VAT Due	₱ 255,581,011.92	₱ 210,438,419.01

	VAT Due
Per Return	₱255,581,011.92
Should Be	210,438,419.01
Difference	₱ 45,142,592.91

By not deducting its input tax, petitioner overpaid its VAT in the amount of ₱45,142,592.91. Thus, the payment of VAT amounting to ₱255,581,011.92 is not correct and proper.

3) The cases of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue (Mindanao II case)*[1] and *Commissioner of Internal Revenue vs. San Roque (San Roque case),*[2] are not applicable to the case at bar.

The cases of *Mindanao II* and *San Roque* pertain to claims for refund of excess or unutilized input VAT attributable to zero-rated sales. In the said cases, the taxpayers had zero-rated VAT sales of power generated through

[1] G.R. No. 193301 & G.R. No. 194637, March 11, 2013.
[2] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

renewable sources of energy, pursuant to Section 108(B)(7) of the NIRC of 1997, as amended. As zero-rated VAT entities, Mindanao II and San Roque are liable to pay VAT at a rate of zero percent (0%). In the course of their conduct of their respective business, these entities incurred input taxes from purchases of goods and services attributable to their zero-rated sales. The said input taxes, however, remained unutilized for these entities had zero output tax. Hence, Mindanao II and San Roque filed their respective claims for refund of their unutilized or excess input taxes attributable to their zero-rated sale by invoking Section 229 of the NIRC of 1997, as amended. It is in this context wherein the Supreme Court ruled that an excess input VAT cannot be refunded *via* Section 229 of the NIRC of 1997, as amended.

Indubitably, this is not the scenario in the case at bar. Almost all of petitioner's sales for the 2nd quarter of 2007 are subject to twelve percent (12%) VAT. Petitioner's input taxes were fully utilized except for the amount of ₱45,142,592.91 which was inadvertently not deducted from its output tax by its accountant. Petitioner would have been able to deduct the said input taxes against its output tax and pay a lower VAT if only it can amend its VAT return. Unfortunately, a Letter of Authority (LOA) had been issued against petitioner and pursuant to Section 6(A) of the NIRC of 1997, as amended, petitioner is prohibited from amending its tax return. Clearly, the case at bar does not pertain to unutilized input VAT attributable to zero-rated sales but to an input VAT which was erroneously not deducted against petitioner's output tax.

Due to the accountant's failure to deduct the input tax, petitioner overpaid its VAT for the 2nd quarter of 2007. The erroneous and excessive payment of VAT provides a justifiable claim for refund under Section 229 of the NIRC of 1997, as amended.

Considering that petitioner is claiming a refund of erroneously and excessively paid VAT, under Section 229 of the NIRC of 1997, as amended, it is my humble opinion that the cases of *Mindanao II* and *San Roque,* which cases pertain to claims for refund of excess or unutilized input VAT attributable to zero-rated sales, are not applicable to the case at bar.

ROMAN G. DEL ROSARIO
Presiding Justice