REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2373** (CTA Case No. 9804)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ*
TULLET PREBON (PHILIPPINES), INC., Respondent.	***Promulgated:*** DEC 16 2021 9:59 am

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review*[1] filed on November 6, 2020 by the Commissioner of Internal Revenue, petitioner, against Tullet Prebon (Philippines), Inc., respondent, praying that the *Decision* dated June 15, 2020, and the *Resolution* dated October 20, 2020, rendered by the Second Division of this Court (or Court in Division) in CTA Case No. 9804, entitled "*Tullet Prebon (Philippines), Inc., petitioner, v. Commissioner of Internal Revenue, respondent*", be reversed and set aside, and another one be rendered denying the entire claim for refund filed by herein respondent. The dispositive portions respectively read as follows:

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[1] EB Docket, pp. 1 to 18.

Decision **dated June 15, 2020:**

"**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND, *or* TO ISSUE A TCC** in favor of petitioner in, the reduced amount of **₱8,571,938.77**, representing its excess and unutilized CWT for CY 2015.

SO ORDERED."

Resolution **dated October 20, 2020:**

"**WHEREFORE,** in view of the foregoing, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 15 June 2020) is **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue (or CIR), vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to decide, approve and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes.

Respondent Tullet Prebon (Philippines), Inc., (or Tullet Prebon) is a corporation duly organized and existing under the laws of the Philippines, with principal business office located at 25th Floor, Rufino Pacific Tower, 6784 Ayala Avenue, Makati City. It is a registered taxpayer under Tax Identification Number 004-653-622-000 with Certificate of Registration No. OCN 8RC0000019324.

THE FACTS

On September 15, 2017, Tullet Prebon filed with the Bureau of Internal Revenue (BIR) an administrative claim for refund for its excess and unutilized creditable withholding tax (CWT) for calendar year (CY) 2015, amounting to ₱12,481,971.00.

Due to the CIR's failure to resolve the administrative claim for refund, Tullet Prebon filed a *Petition for Review* before the Court of Tax Appeals on April 10, 2018, docketed as CTA Case No. 9804, entitled *"Tullet Prebon (Philippines), Inc. v. Commissioner of Internal Revenue"*. The case was assigned to the Second Division of this Court or Court in Division.

On May 21, 2018, the CIR filed his *Answer* in CTA Case No. 9804, interposing, among others, the following special and affirmative defenses, *to wit*:

(a) That Tullet Prebon must show that it has complied with the prescriptive period for claiming tax refund or credit;

(b) That Tullet Prebon must prove not only its entitlement to the claim for refund or tax credit but also compliance with all the documentary and evidentiary requirements thereof;

(c) That Tullet Prebon's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma; thus, the Court in Division has no jurisdiction to entertain the *Petition for Review*; and

(d) That tax refunds, like tax exemptions, are construed strictly against the taxpayer.

After the Pre-Trial Conference held on June 21, 2018, the parties filed their *Joint Stipulation of Facts and Issues (JSFI)* on July 6, 2018. Thereafter, the Court in Division approved the said *JSFI*, and issued the *Pre-Trial Order* dated July 16, 2018.

During trial, Tullet Prebon presented two witnesses, namely: Philip G. Arabia, respondent's Finance Manager, and Katherine O. Constantino, the Court-commissioned Independent Certified Public Accountant (ICPA).

On the other hand, the CIR's counsel manifested during the hearing held on November 21, 2018 that he has no witness to present in CTA Case No. 9804. Thus, the parties were given a period of thirty (30) days to file their respective *Memoranda*.

On June 15, 2020, the Court in Division rendered the assailed *Decision*[2] partially granting the *Petition for Review* in CTA Case No. 9804, ordering the CIR to refund or issue a tax credit certificate in the reduced amount of ₱8,571,938.77, representing Tullet Prebon's excess and unutilized CWT for CY 2015.

Dissatisfied with the Court in Division's *Decision*, the CIR filed a *Motion for Partial Reconsideration (Re: Decision promulgated 15 June 2020)* on June 30, 2020,[3] while Tullet Prebon filed its *Comment (Re: Motion for Reconsideration dated June 29, 2020)* on August 4, 2020.[4]

In the assailed *Resolution* dated October 20, 2020,[5] the Court in Division denied the CIR's *Motion for Partial Reconsideration (Re: Decision promulgated 15 June 2020)* for lack of merit.

Thus, on November 6, 2020, the CIR filed before the Court *En Banc* the instant *Petition for Review*.[6]

As directed in the *Resolution* dated November 26, 2020,[7] Tullet Prebon filed its *Comment (Re: Petition for Review dated November 4 2020)* on December 21, 2020.[8] Thereafter, on January 12, 2021, the Court *En Banc* submitted the instant case for decision.[9]

Hence, this *Decision*.

ASSIGNMENT OF ERROR

The CIR presents the following assignment of error for the Court *En Banc's* consideration, *to wit*:

> "The Second Division of the Honorable Court erred in ruling that respondent is entitled to refund in the reduced

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[2] Division Docket – Vol. 2 (CTA Case No. 9804), pp. 562 to 585.
[3] Division Docket – Vol. 2 (CTA Case No. 9804), pp. 586 to 597.
[4] Division Docket – Vol. 2 (CTA Case No. 9804), pp. 601 to 616.
[5] Division Docket – Vol. 2 (CTA Case No. 9804), pp. 618 to 625.
[6] EB Docket, pp. 1 to 18.
[7] EB Docket, pp. 52 to 53.
[8] EB Docket, pp. 54 to 70.
[9] EB Docket, pp. 71 to 72.

amount of ₱8,571,938.77 representing its excess and unutilized CWT for CY 2015.[10]

Petitioner's arguments:

The CIR argues that Tullet Prebon failed to sufficiently prove its entitlement to a refund or issuance of a tax credit certificate. According to the CIR, Tullet Prebon was not able to provide supporting documents to prove that the income from which CWT is being claimed was declared in respondent's Annual Income Tax Return (AITR).

Moreover, the CIR claims that Tullet Prebon failed to present evidence to prove actual remittance of the CWT to the BIR, said proof of actual remittance being indispensable in a claim for refund of CWT.

Allegedly, Tullet Prebon should prove compliance with Revenue Memorandum Order (RMO) No. 53-98[11] and Revenue Regulations (RR) No. 2-2006[12] in order to support its claim for unutilized CWT. Without compliance with the administrative requirements enumerated in RMO No. 53-98 and RR No. 2-2006, the administrative claim for tax refund or credit is merely pro-forma and treated as if no administrative claim was filed at all. Thus, for failure of Tullet Prebon to comply with the requirements for an administrative claim for refund, it cannot seek judicial relief due to prematurity or lack of cause of action.

Respondent's counter-arguments:

Tullet Prebon counter-argues that there is no law, jurisprudence or administrative regulation that requires proof of actual remittance of tax before any claim for refund of excess CWT could be had.

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[10] EB Docket, p. 3.

[11] Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which comprise a Complete Tax Docket.

[12] Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld at Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.

Moreover, Tullet Prebon maintains that non-submission of the documentary requirements prescribed under RMO No. 53-98 and RR No. 2-2006 is not fatal to a claim for refund or tax credit as these regulations merely enumerate the documents that the BIR requires from taxpayers when making an audit and not to support a claim for refund of overpaid or erroneously collected taxes, and to help promote a better business environment and secure government revenues, respectively.

THE COURT *EN BANC*'S RULING

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

Tullet Prebon was able to prove that income from which CWT is being claimed was declared in its AITR.

The CIR insists that Tullet Prebon failed to prove that the income from which CWT is being claimed was declared in its AITR.

We find no merit in the CIR's contention.

The foregoing matter on the alleged non-inclusion in Tullet Prebon's AITR of the income from which CWT is being claimed was extensively discussed and duly resolved by the Court in Division in the *Decision* dated June 15, 2020. Thus, We quote with approval the Court *a quo's* ruling that Tullet Prebon was able to prove that income payments from which CWT is being claimed formed part of its AITR, *to wit*:

> "The certificates show that the claimed CWT were withheld on income payments amounting to ₱137,083,359.45 representing gross commissions or service fees of customs, insurance, stock, real estate, immigration, and commercial brokers.
>
> On the other hand, petitioner's *Audited Financial Statements* (AFS) for CY 2015 has disclosed that the principal activity of petitioner is to operate as a broker between market participants in foreign exchange, deposits and fixed income securities, among others.

Brokerage fees-net derived from such activity in 2015 amounted to ₱135,729,752.00. This is the same amount reflected as *"Net Sales/Revenues/Receipts/Fees"* from *Sales of Services* in petitioner's AITR for CY 2015.

As ascertained by the ICPA, petitioner's revenue subjected to withholding tax at the rates of 2%, 10%, or 15% was lodged under *"Account 60005 – Gross Brokerage Name Give Up"* which shows a total amount of ₱135,729,752.42 per petitioner's general ledger.

To verify that the ₱137,083,359.45 income payments per certificates indeed formed part of petitioner's declared income per Annual ITR, the ICPA traced in the revenue general ledger of *"Account 6005 – Gross Brokerage Name Give Up"* the related income amount of the claimed creditable withholding tax based on petitioner's *Schedule of Creditable Withholding Taxes*, billing invoices, and official receipts for CY 2015. The ICPA's detailed analysis is presented as follows:

xxx xxx xxx

The Court could not verify the CWTs traced to CY 2014 Gross Brokerage Account General Ledger by the ICPA as petitioner failed to present the same, thus, shall be denied.

Correspondingly, **petitioner has been able to prove that the income payments of ₱123,433,851.71, with corresponding CWT of ₱10,987,193.77, formed part of the income declared in its Annual ITR for CY 2015**, as shown below: *(Emphasis supplied)*

xxx xxx xxx"

In the instant case, the CIR failed to point out any error in the aforequoted findings of fact of the Court in Division. Correspondingly, the same must be sustained.

As between a well-discussed ruling of the Court in Division and a very general and perfunctory statement made by the CIR against

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the said ruling, the former must perforce prevail. After all, the Court in Division's findings are always presumed correct.[13]

Proof of actual remittance of tax not an indispensable requirement for a claim for refund or tax credit of excess CWT.

The CIR insists that Tullet Prebon should prove that the tax was actually remitted to the BIR before its claim for refund or tax credit of excess CWT may prosper.

Petitioner's contention is unfounded.

In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals, et al.*,[14] the Supreme Court laid down three conditions for the grant of a claim for refund of CWT, *to wit*: 1) the claim is filed with the CIR within the two-year period from the date of payment of the tax; 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and 3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

Nowhere in law, jurisprudence, or existing regulation, is proof of actual remittance of tax required before any claim for refund of excess CWT could prosper.

Section 2.58.3 (B) of RR No. 2-98, as amended, provides:

> "SECTION 2.58.3. *Claim for Tax Credit or Refund.* –
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by

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[13] Refer to *Metropolitan Fabrics, Inc., et al., v. Property Credit Resources, Inc., et al.*, G.R. No. 154390, March 17, 2014.
[14] G.R. No. 155682, March 27, 2007.

> a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.
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> **Proof of remittance is the responsibility of the withholding agent.**" *(Emphasis supplied)*

In *Commissioner of Internal Revenue v. Philippine National Bank,*[15] the Supreme Court held that the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. In the same case, the Supreme Court categorically stated that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits, *to wit*:

> "Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits**. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes." *(Emphasis supplied)*

From the foregoing, it is clear that there is no requirement on the part of Tullet Prebon to prove that it has remitted the tax. The fact of withholding was sufficiently established by respondent upon presentation of the relevant BIR Forms No. 2307.

Submission of requirements under RMO No. 53-98 and RR No. 2-2006 is not required in order to be entitled to a refund.

The CIR insists that for Tullet Prebon's failure to comply with the administrative requirements enumerated in RMO No. 53-98 and RR No. 2-2006, it is as if the latter did not file an administrative claim at all, resulting in the prematurity of its recourse to this Court.

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[15] G.R. No. 180290, September 29, 2014.

Petitioner's argument does not hold water.

The Court in Division correctly pointed out that there is nothing in the law which requires the submission of all the documents specified in RMO No. 53-98 and RR No. 2-2006 before a taxpayer may be entitled to a refund.

In *Pilipinas Total Gas, Inc. v Commissioner of Internal Revenue,*[16] the Supreme Court held, *to wit*:

> "Anent RMO No. 53-98, the CTA Division found that the said order provided a checklist of documents for the BIR to consider in granting claims for refund, and served as a guide for the courts in determining whether the taxpayer had submitted complete supporting documents.
>
> **This should also be corrected**.
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> To quote RMO No. 53-98:
>
> xxx xxx xxx
>
> As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present **upon audit of their tax liabilities**.[17] **Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are *actually*[18] complete to support a claim for tax credit or refund of excess unutilized excess VAT**. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*:[19]
>
> > The CIR's reliance on RMO 53-98 is misplaced. <u>There is nothing in Section 112 of the NIRC.[sic] RR 3-88 or RMO K3-Q8 itself that requires submission of the complete documents enumerated in RMO 53-98 for a</u>

[16] G.R. No. 207112, December 8, 2015.
[17] Emphasis by the Supreme Court.
[18] *Id.*
[19] G.R. No. 205055, July 18, 2014.

> grant of a refund or credit of input VAT.[20] The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit**[21] of his Tax Liabilities xxx." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."" *(Emphasis supplied)*

Clearly from the foregoing, submission of the documents enumerated in RMO No. 53-98 and RR No. 2-2006 is not required in order that Tullet Prebon may file a claim for refund of excess and unutilized CWT. Thus, the CIR cannot now say that Tullet Prebon's administrative claim for refund or credit is *pro-forma* and should be construed as if no administrative claim was filed at all. Correspondingly, Tullet Prebon had every right to seek judicial recourse due to the CIR's inaction.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the *Decision* dated June 15, 2020, and the *Resolution* dated October 20, 2020 by the Second Division of this Court in CTA Case No. 9804 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[20] Emphasis by the Supreme Court.
[21] *Id.*

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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