REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 1044
(CTA Case No. 8136)

Present:
Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

FEB 12 2015
4:05 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is the Petition for Review[1] filed by Coca-Cola Bottlers Philippines, Inc. on August 2, 2013, pursuant to Section 18[2] of Republic Act ("RA") No. 1125, as amended by RA No. 9282, and RA

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[1] *Rollo*, CTA EB Case No. 1044 (CTA Case No. 8136), pp. 12-97, with Annexes.

[2] Sec. 18. *Appeal to the Court of Tax Appeals En Banc.* - No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc.

No. 9503, praying for the reversal and setting aside of the Decision,[3] promulgated by the Special Second Division of the Court ("Court in Division") on May 15, 2013, and Resolution dated July 3, 2013.[4]

The Parties[5]

Petitioner Coca-Cola Bottlers Philippines, Inc., is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 1980 Paz Guazon Street, Paco, Manila and is primarily engaged in the business of manufacturing and selling, at wholesale, beverages such as Coca-Cola, Sprite, Royal True Orange, Minute Maid, etc.. It is a VAT-registered Taxpayer with Tax Identification Number 000-112-104-000 and Bureau of Internal Revenue ("BIR") Certificate of Registration No. OCN8PC0000019025.

Respondent Commissioner of Internal Revenue ("CIR") is an official of the Republic of the Philippines authorized to, among others, refund or credit taxes pursuant to Section 204 of the 1997 National Internal Revenue Code, as amended ("NIRC"), and may be served with summons at her office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Antecedent Facts

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated May 15, 2013, as follows:[6]

> "In the conduct of its business, petitioner purchases goods from VAT registered suppliers and services from VAT registered service providers.
>
> Petitioner's accounting practice concerning purchases of services on credit consists of charging input tax component into a temporary account Input Tax-Services-

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[3] *Rollo*, CTA EB Case No. 1044 (CTA Case No. 8136), pp. 56-67; penned by Associate Justice Caesar A. Casanova, with Associate Justice Juañito C. Castaneda, Jr., and Associate Justice Cielito N. Mindaro-Grulla, concurring.
[4] *Rollo*, pp. 35-39.
[5] *Id.*, pp. 56-57.
[6] *Id.*, pp. 87-93.

Clearing upon receipt of the invoice from its supplier of services. When petitioner pays the account, the input taxes recorded in the temporary account is transferred to Input Tax Services account, which is subsequently closed to Output Tax Payable at the end of the taxable quarter.

For the quarter ended June 30, 2008, petitioner reported VAT overpayment of P39,431,863.39 in its Quarterly VAT Return:

Vatable sales/receipts		Php12,144,018,171.25
Output tax due		Php1,457,282,180.55
Less: Allowable input tax		
Carried over from previous quarter/		
Excess over 70% of output VAT	89,591,300.05	
Deferred on capital goods exceeding		
P1M from previous quarter	244,984,132.38	Php334,575,432.43
Purchase of capital goods exceeding		
P1M from previous quarter	188,578,618.27	
Domestic purchases of goods	1,042,344,653.11	
Importation of goods	83,234,236.15	
Domestic purchases of services	202,566,364.96	1,516,723,872.50
Total available input tax		Php1,851,299,304.93
Less: Deductions from input tax on		
purchases of capital goods		
exceeding P1M deferred to		
succeeding period		409,422,842.51
Total allowable input tax		Php1,441,876,462.42
Net VAT Payable		Php 15,405,718.13
Less: Tax credits/Payments		
Monthly VAT payments-previous		
two months		54,837,581.52
Tax still payable/(Overpayment)		**Php (39,431,863.39)**

Petitioner further claims that its output tax for the period ended June 30, 2008 was partially paid via the Development Bank of the Philippines (DBP) in the amount of P54,837,581.52 while the rest were offset against its input tax credits for the same quarter.

Petitioner asserts that, due to inadvertence, several purchases of services on credit with input taxes amounting to P80,366,056.99 that had been paid in the second quarter of 2008 were not transferred to the Input Tax-Services account and consequently not declared in its Quarterly VAT Return and, not charged to the output tax payable for the quarter ended June 30, 2008. This resulted to the alleged understatement of petitioner's tax overpayment for the same quarter amounting to P80,366,056.99, computed as follows:

	Should be	**Per Quarterly VAT Return**
Vatable sales/receipts	Php 12,144,018,171.25	Php 12,144,018,171.25
Output tax due	Php 1,457,282,180.55	Php 1,457,282,180.55
Carried over from previous quarter/Excess over 70% of output VAT	Php 89,591,300.05	Php 89,591,300.05
Purchase of capital goods exceeding P1M	Php 188,578,618.27	Php 188,578,618.27
Domestic purchases of goods	1,042,344,653.12	1,042,344,653.12
Importation of goods	83,234,236.15	83,234,236.15
Domestic purchases of services	282,932,421.95	202,566,364.96
Total input tax - current quarter	Php 1,597,089,929.49	Php 1,516,723,872.50
Total available input tax	Php 1,931,665,361.92	Php 1,851,299,304.93
Less: Deductions from input tax On purchases of capital goods exceeding P1M deferred to succeeding period	409,422,842.51	409,422,842.51
Total allowable input tax	Php 1,522,242,519.41	Php 1,441,876,462.42
Net VAT Payable	Php (64,960,338.86)	Php 15,405,718.13
Monthly VAT payments-previous two months	54,837,581.52	54,837,581.52
Tax still payable/(Overpayment)	Php (119,797,920.38)	Php (39,431,863.39)
Difference-Understatement of overpayment		Php **80,366,056.99**

Due to the issuance of a Letter of Authority (LOA) to examine petitioner's books of accounts for all internal revenue taxes for the taxable year 2008, petitioner could no longer amend its VAT Return for the subject quarter to include the alleged input taxes in the amount of P80,366,056.99, when the error was discovered.

Hence, on July 21, 2010, petitioner filed with the Bureau of Internal Revenue its application for tax refund/TCC in the amount of P80,366,056.99 representing over/erroneous payment of value-added tax arising from understatement of VAT overpayment for the quarter ended June 30, 2008 that was carried to the next quarter. Thereafter, petitioner filed its judicial claim before this Court on July 23, 2010.

In her Answer, filed on August 16, 2010, respondent averred the following special and affirmative defenses:

'9. The petition is premature considering that petitioner's claim for tax refund/credit of the alleged erroneously paid Value-Added Tax for the second quarter ending June 30, 2008 in the amount of P80,366,056.99 is still pending investigation with the LT-Regular Audit Division I, BIR National Office, Diliman, Quezon City.

10. The VAT Returns themselves (BIR Form 2550M and 2550Q) filed by the petitioner for the second quarter ending June 30, 2008 did not show any erroneously paid tax whatsoever.

11. Claim for refund is construed strictly against the claimant and should not be allowed unless proven explicitly and categorically.

12. The allegations regarding tax refundability do not ipso facto merit the refund claimed.'

During trial, petitioner presented the following witnesses: 1) Mr. Gerardo E. Espiridion, petitioner's Tax Manager; 2) Ms. Rosemarie M. Gamboa, petitioner's CokeOne Decision Support Team Lead; 3) Mr. Jerome Antonio B. Constantino, Independent Certified Public Accountant (ICPA); 4) Ms. Camille Kate A. Doligosa, Plant Finance Manager of petitioner in its Iloilo Plant; and, 5) Noel I. Anore, Plant Finance Manager of petitioner in its Cagayan de Oro Plant. Thereafter, Formal Offer of Evidence for the Petitioner was filed on July 18, 2011. A Comment/Opposition (To Petitioner's Formal Offer of Evidence) was filed by respondent on August 18, 2011.

On the other hand, respondent's counsel manifested in November 28, 2011 hearing that, 'the tax investigation with regard to petitioner's administrative claim is still pending and respondent is constrained to submit the case for decision.' In the same hearing, the Court granted both parties thirty (30) days within which to file their respective memorandum.

Subsequently, petitioner filed an Urgent Omnibus Motion 1. To Defer Submission of the Parties' Memoranda; 2. To Allow Petitioner to Present Additional

Evidence; and, 3. To Recall the Independent CPA to Examine Petitioner's Additional Evidence and Testify Thereon. On December 28, 2011, petitioner, likewise, filed an Urgent Motion to Defer Submission of Parties Memoranda, which was granted by this Court in a Resolution dated January 3, 2012. Respondent filed her Comment/Opposition (To Petitioner's URGENT OMNIBUS MOTION dated December 12, 2011) on January 2, 2012.

Thereafter, the Court, in the interest of justice, granted, in its January 18, 2012 Resolution, petitioner's Urgent Omnibus Motion and stated that as regards petitioner's Motion to Defer Submission of the Parties' Memoranda, the resolution of the same becomes moot since the Court already issued a Resolution on January 3, 2012 granting respondent's Urgent Motion to Defer Submission of Parties Memoranda.

In the February 20, 2012 hearing, Mr. Jerome Antonio B. Constantino (recalled witness), completed his testimony and, as moved by petitioner's counsel, petitioner was given until March 11, 2012 to file its Supplemental Formal Offer of Evidence. Respondent, on the other hand, was granted 10 days from receipt thereof to file her comment. On March 12, 2012, A Supplemental Formal Offer of Evidence (For the Petitioner) was filed while respondent's Comment/Opposition (To Petitioner's Supplemental Formal Offer of Evidence) was filed on March 27, 2012.

On June 21, 2012, the case was submitted for decision taking into consideration Respondent's Memorandum, filed on June 18, 2012 and Memorandum (For the Petitioner) filed on June 13, 2012."

The Ruling of the Court in Division

On May 15, 2013, the Court in Division promulgated a Decision[7] denying petitioner's Petition for Review by ruling that:

[7] *Id.*, pp. 56-67.

> "**WHEREFORE,** premises considered, petitioner's Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[8]

On May 31, 2013, petitioner filed its "Motion for Reconsideration."[9] On July 3, 2013, the Court in Division issued a Resolution[10] denying the same. The dispositive portion of which is as follows:

> "**WHEREFORE,** petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"[11]

On September 2, 2013, petitioner filed its Petition for Review. On October 14, 2013, respondent filed her Comment/Opposition.

After considering the issues raised by both parties in their respective pleadings, the Court *En Banc* resolved to give due course to the Petition for Review.

Both parties were required to submit their respective memoranda.

On January 15, 2014, respondent filed her "Respondent's Memorandum," while petitioner filed its "Memorandum," on January 20, 2014.

On February 12, 2014, the case was submitted for decision.

The Issues

The following grounds are proffered for resolution:[12]

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[8] *Id.*, p. 67.
[9] *Id.*, p. 35.
[10] *Id.*, pp. 35-39.
[11] *Id.*, p. 39.
[12] *Id.*, Petition for Review dated October 3, 2012, pp. 13-23.

1. **WHETHER PETITIONER IS ENTITLED TO TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF P80,366,056.99 REPRESENTING OVER/ERRONEOUS PAYMENT OF VALUE-ADDED TAX ARISING FROM UNDERSTATEMENT OF VAT OVERPAYMENT FOR THE QUARTER ENDED JUNE 30, 2008 THAT WAS CARRIED TO THE NEXT QUARTER;**

2. **WHETHER THE UNDECLARED INPUT TAX FOR THE SECOND QUARTER OF 2008 IN THE AMOUNT OF P80,366,056.99 IS REQUIRED TO BE REPORTED IN THE QUARTERLY VAT RETURNS OF THE PETITIONER FOR THE SAID QUARTER TO BE ABLE TO CLAIM FOR REFUND OF TAX ERRONEOUSLY PAID UNDER SECTION 204(C) IN RELATION TO SECTION 229 OF THE NIRC OF 1997, AS AMENDED; and**

3. **WHETHER PETITIONER'S CLAIM FOR REFUND/TAX CREDIT FALLS WITHIN THE PURVIEW OF SECTION 229.**

Petitioner's Arguments:

Petitioner alleges that it is entitled to refund on the amount of P80,366,056.99 as this represents its undeclared excess input VAT for the period June 30 2008.

Furthermore, petitioner contends that the provisions of Sections 204(C) and 229 of the 1997 National Internal Revenue Code, as amended ("NIRC") do not provide for the requirement that the VAT Return should show the undeclared input VAT as long as such error or mistake can be shown and explained in the application for tax refund or credit, petitioner is entitled to its claim.

Finally, petitioner claims that the applicable provisions in its claim for refund is Section 229 in relation to Section 204(C) as its claim involves an erroneous payment in the amount of P54,837,581.42 which it would not have made if the amount of P80,366,056.99 has been considered.

Respondent's Counter Arguments:

Respondent avers that in order for petitioner to be entitled to refund on its alleged understatement of overpayment of VAT (excess input taxes) due to undeclared input taxes for the second quarter of 2008, it must comply with the substantiation requirement provided in Section 4.110-8 of Revenue Regulations No. 16-2005, as amended.

Furthermore, she alleges that in order for *solutio indebiti* to apply, petitioner must first prove its entitlement to the claim.

Finally, she alleges that the governing provisions in petitioner's claim for refund or issuance of a tax credit certificate on its input tax is Section 112 of the NIRC and not Section 229 of the NIRC.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the Petition for Review.

The issues raised boil down to the sole issue of whether or not petitioner is entitled to tax refund or issuance of tax credit certificate in the amount of P80,366,056.99 representing its undeclared input taxes for the quarter ended June 30, 2008.

In the Decision[13] dated May 15, 2013, the Court in Division unanimously ruled in this wise:

> "In the case at bench, petitioner anchors its claim on the provisions of Section 204 (C) in relation to Section 229 of the NIRC of 1997, which are hereby quoted for easy reference:
>
> > "SEC. 204.Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —
> >
> > xxx xxx xxx
> >
> > (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority,

[13] *Id.*, pp. 49-58.

refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

xxx xxx xxx

'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.'

It should be noted that in this case, petitioner is essentially claiming for its alleged understatement of overpayment of VAT (excess input taxes) due to undeclared input taxes for the second quarter of 2008. But, in order for input taxes to be available as tax credits, they must be substantiated and reported in the VAT returns of a taxpayer following Section 4.110-8 of Revenue Regulations No. 16-2005, as amended, which explicitly provides:

> 'SEC. 4.110-8.Substantiation of Input Tax Credits.
> –
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated by the following documents, <u>and must be reported in the information returns required to be submitted to the Bureau</u>:' (Emphasis supplied)

xxx xxx xxx.

In the present petition, the ICPA found that out of petitioner's total claim of P80,366,056.99, only the amount of P67,528,010.56 was properly supported:

xxx xxx xxx

The ICPA, likewise, examined petitioner's voluminous documents supporting its input taxes from domestic purchases and importation of goods other than capital goods and purchase of services and purchase of capital goods, as reported in its Quarterly VAT Return for the second quarter of 2008 amounting to P1,328,145,254.23 and P188,578,618.27, respectively. The ICPA further examined the supporting documents pertaining to petitioner's input taxes declared in its Quarterly VAT Return for the previous quarter (first quarter of 2008) amounting to P1,454,376,536.09. 37 The following were found to be duly substantiated.

This Court noted that, while the substantiated claimed input taxes in the amount of P67,528,010.56 for the second quarter of 2008 were recorded in petitioner's books of accounts, the same shall be denied on the ground that the said amount was not reported in petitioner's VAT return due to the alleged inadvertence. Therefore, following Section 4.110-8 of Revenue Regulations No. 16-2005, as amended, petitioner cannot credit or offset the undeclared input taxes against output taxes for the said taxable period.

Corollary thereto, Section 110 (A) (2) and (B) of the NIRC of 1997, as amended, states:

> 'SEC. 110. Tax Credits. –
>
> (A) Creditable Input Tax. –
>
> xxx xxx xxx
>
> (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
>
> (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> *Provided,* That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): Provided, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: Provided, finally, that 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. (Emphasis and underscoring supplied)

xxx xxx xxx

(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.'

The foregoing provides for the time when the input taxes are creditable. Moreover, the output and input taxes contemplated in the foregoing provisions are those reported in the taxpayer's VAT return. Thus, the input tax for the second quarter of 2008 should have been declared in petitioner's Quarterly VAT Return pertaining to the same quarter so that it could be creditable against the output tax of the same taxable period.

Petitioner's Quarterly VAT Returns for the first and second quarters of 2008 show the following output taxes due:

Exhibit	Period Covered	Output Tax
EEEEE	1st Quarter	Php1,269,933,934.95
F to F-1	2nd Quarter	1,457,282,180.55
Total		Php2,727,216,115.50

Thus, had petitioner declared the substantiated input taxes of P67,528,010.56 in its Quarterly VAT Return for the second quarter of 2008, considering its output taxes and substantiated input taxes for the first and second quarters of 2008 per ICPA examination, it would not have had enough input taxes to offset against its output taxes for the same taxable periods. Thus, petitioner would not have had erroneously paid output VAT for the second quarter of 2008, which may be the subject of a claim for refund under Section

229 of the NIRC of 1997, as amended. To illustrate, the computation is shown hereafter:

	1st Quarter	2nd Quarter
Output	Php1,269,933,934.95	Php1,457,282,180.55
Less: Substantiated Input Taxes	59,120,806.00	202,484,577.64
VAT Payable	Php1,210,813,128.95	Php1,254,797,602.91

Hence, the claimed P80,366,056.99 subject of the instant case essentially represents undeclared input taxes for the second quarter of 2008, and not the erroneously paid VAT or understatement of VAT overpayment, since it was not declared in the pertinent VAT Return and consequently not offset against output tax for the same period.

Moreover, Section 112 of the NIRC of 1997, as amended, enumerates the two instances when excess input taxes may be claimed for refund:

a) when they are attributable to zero-rated or effectively zero-rated sales, and

b) upon cancellation of VAT registration due to retirement from or cessation of business.

Applying Section 112, petitioner's claim for refund or tax credit of its undeclared input taxes for the second quarter of 2008 clearly does not fall under any of the foregoing instances provided by law. Consequently, petitioner is not entitled to a refund or issuance of tax credit certificate in the amount of P80,366,056.99."

The Court *En Banc,* after a consideration of the factual circumstances of the case, finds no merit in petitioner's Petition for Review.

The provisions of Section 110 of the NIRC provides as follows:

"SEC. 110. Tax Credits. –

(A) Creditable Input Tax. –

xxx xxx xxx

(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

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): Provided, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: Provided, finally, that 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.

xxx xxx xxx

(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." (Emphasis supplied).

Likewise, in Section 4.110-8 of Revenue Regulations No. 16-2005, as amended, it states that the input taxes being claimed as tax credit should be reported in the information returns, to wit:

"SEC. 4.110-8.Substantiation of Input Tax Credits. –

> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated by the following documents, and must be reported in the information returns required to be submitted to the Bureau:" (Emphasis supplied)

Thus, from the foregoing, it is clearly contemplated that only the input tax declared in petitioner's Quarterly VAT Return is considered for credit against the output tax on the same taxable quarter.

In the present case, as found by the Court in Division, the input taxes of P80,366,056.99 for the second quarter of 2008 was not reported in petitioner's VAT return due to the alleged inadvertence by the employees of petitioner.

Therefore, applying the foregoing, petitioner cannot credit or offset the undeclared input taxes against output taxes for the said taxable period.

Furthermore, petitioner cannot claim its allegedly input tax under Section 112 of the NIRC as unutilized creditable tax. Section 112 applies only when the excess input taxes arise from the following transactions:

> a) when they are attributable to zero-rated or effectively zero-rated sales, or
>
> b) upon cancellation of VAT registration due to retirement from or cessation of business.

In the present case, the subject input tax is allegedly a result of an undeclaration, that is, if the input tax was declared, petitioner would not have paid a higher output tax. This then does not fall under the purview of Section 112 of the NIRC but it can be claimed under Section 229 of the NIRC.

In the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*,[14] the Supreme Court has ruled that when an input tax has been excessively collected, the taxpayer can file its claim under Section 229 of the NIRC, to wit:

> "Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax 'erroneously,. . illegally, . . excessively or in any manner wrongfully collected.' The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact "excessively" collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. Only the person legally liable to pay the tax can file the judicial claim for refund." (Emphasis supplied).

However, as found by the Court in Division, petitioner failed to substantiate its claim that it made an overpayment of output tax as a result of its undeclared input tax. As found by the Court in Division, petitioner only made a declaration of Php67,528,010.56 input tax, this amount is insufficient to cover its output tax in the total amount of Php2,727,216,115.50.[15] Therefore, petitioner could not have possibly made an erroneous payment that can be the subject of refund under Section 229 of the NIRC.

Therefore, from the foregoing, the Court *En Banc* finds no reversible error on the part of the Court in Division in ruling that petitioner is not entitled to a refund or issuance of tax credit certificate in the amount of Php80,366,056.99.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED**. Accordingly, the Decision and Resolution dated May 15, 2013 and July 3, 2013, respectively, are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[14] G.R. No. 191498, January 15, 2014.
[15] Rollo, p.66.

WE CONCUR:

with separate concurring opinion
ROMAN G. DEL ROSARIO
Presiding Justice

With separate concurring opinion
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

I join Justice Castañeda's Separate concurring opinion
CAESAR A. CASANOVA
Associate Justice

ON LEAVE
ESPERANZA R. FABON-VICTORINO
Associate Justice

I join Justice Castañeda's separate concurring opinion
CIELITO N. MINDARO-GRULLA
Associate Justice

I join PJ's separate concurring opinion.
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

I join PJ del Rosario's separate concurring opinion.
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COCA-COLA BOTTLERS PHILIPPINES, INC,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 1044
(CTA Case No. 8136)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
FEB 12 2015
4:05 p.m.

x -- x

SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Lovell R. Bautista, which affirms the denial of petitioner's claim for refund of alleged erroneously paid Value Added Tax (VAT) on the ground that based on evidence presented, output VAT exceeds input VAT. I also concur that Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, applies in petitioner's claim for refund.

I am, however, of the opinion that though the regulations require that input tax must be reflected in the tax returns, said rule is not absolute as long as the taxpayer is able to prove and substantiate its entitlement to the said deduction.

In this regard, Section 229 of the NIRC of 1997, as amended, gives a taxpayer a period of two (2) years from date of payment to file an administrative and judicial claim for refund of erroneously collected tax, to wit:

> "**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."

In the instant case, records show that petitioner's input VAT amounting to ₱80,366,056.99 incurred in the 2nd quarter of 2008 was inadvertently not reported in the tax return and consequently was not deducted against the output tax. Pursuant to Section 110(A)(1) of the NIRC of 1997, as amended, input taxes from certain transactions that are evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, shall be creditable against the output tax. Considering that the input tax amounting to ₱80,366,056.99 was not deducted against the output tax, petitioner paid a higher output tax. The erroneous payment of higher output tax provides a justifiable claim for refund under Section 229 of the NIRC of 1997, as amended.

To be sure, the additional output taxes paid to the government (arising from the taxpayer's inadvertent failure to declare its input taxes) represents erroneously collected taxes. In applying Section 229 of the NIRC of 1997, as amended, the taxpayer is merely using the clear, plain and unconditional provision of Section 229 of the NIRC of 1997, as amended, which is the available remedy to pursue its claim for refund or tax credit of its alleged erroneously collected output taxes.

Section 6(A) of the NIRC of 1997, as amended, which prohibits a taxpayer from amending his tax return after the issuance of a Letter of Authority (LOA) is insignificant in pursuing the remedy under Section 229 of the NIRC of 1997, as amended. Besides, the amendment of the return is

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prohibited under Section 6(A) of the NIRC of 1997, as amended, to prevent a taxpayer from curing any fraud he has committed if a letter of authority for the examination of his return has already been served on him or such amendment has been made in the course of an investigation of his tax liability.[1] The prohibition is relevant in connection with the Commissioner of Internal Revenue's (CIR) power to make an assessment of a taxpayer's liability. In contrast, Section 229 of the NIRC of 1997, as amended, is confined to a determination of whether or not there was an erroneous payment of tax, irrespective of the entries in tax returns. Significantly, there is nothing in Section 229 of the NIRC of 1997, as amended, which expressly requires that the erroneously paid tax be reflected in the tax return. Said requirement is explicit only in cases where the CIR *motu proprio* gives a refund or tax credit, even without a written claim, that is - - "where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

In the assailed Decision of the Second Division, the Court denied the claim for refund as the substantiated input taxes were not reported in petitioner's VAT return due to the alleged inadvertence. As a general rule, input taxes must be substantiated and reported in the VAT returns of a taxpayer in order for said taxes to be available as tax credits.[2] But this rule is not inflexible. In *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*,[3] **the transitional input VAT was likewise not shown in the VAT return, yet the Supreme Court granted the refund of the corresponding overpayment of output VAT,** *viz:*

> "In this case, when petitioner realized that its transitional input tax credit was not applied in computing its output VAT for the 1st quarter of 1997, **it filed a claim for refund to recover the output VAT it erroneously or excessively paid for the 1st quarter of 1997. In filing a claim for tax refund, petitioner is simply applying its transitional input tax credit against the output tax it has paid.** Hence, it is merely availing of the tax credit incentive given by law to first time VAT taxpayers."

It must be stressed that the term 'input tax' includes transitional input tax determined in accordance with Section 111 of the NIRC of 1997, as amended.[4] In granting the claim for refund in the Fort Bonifacio

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[1] De Leon Hector S. and De Leon, Jr. Hector M., The National Internal Revenue Code Annotated, Eight Edition 2003, p.34.
[2] Section 4.110.8 of Revenue Regulations No. 16-2005, as amended, October 19, 2005.
[3] G.R. No. 173425, September 4, 2012.
[4] SEC. 110. Tax Credits. –
xxx

The term *"input tax"* means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business or importation of goods or local purchase of

Development Corporation case, the Supreme Court allowed input tax **not reported in the VAT returns** to be deducted against output tax.

Thus, on this note, I wish to address the point raised by my learned colleague, the Honorable Associate Justice Juanito C. Castañeda, Jr., that the *Fort Bonifacio Development Corporation case* is not applicable to the present case because it does not involve transitional input tax.

In applying the *Fort Bonifacio Development Corporation case* to the present case, what is actually being adopted is the principle that input taxes not reported in the VAT return may still be credited against the output tax due. **Stated differently, although the input taxes were not reported in the VAT returns, the same may still be credited against the output tax liability of the taxpayer for as long as said input taxes were properly substantiated.** Hence, any output tax paid by the taxpayer, *on account of its failure to declare its correct and substantiated input taxes in its VAT returns and apply the same as credit against its output tax*, shall be available for refund as erroneously paid output tax. Petitioner is therefore allowed under Section 229 of the NIRC of 1997, as amended, to claim for refund or credit of its *alleged* erroneously paid output tax.

It is at this juncture that I quote the enlightening disquisition of the Honorable Associate Justice Amelia R. Cotangco-Manalastas as the *ponente* in **Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue**,[5] *viz.*:

> Clearly then, any increase in the input tax shall lead to a decrease in the output tax, while a decrease in input tax leads to an increase in output tax. If there is an error in the computation of input taxes, such that less input tax is recognized, there is a higher output tax liability. Such error when corrected, i.e., a higher input tax is recognized, results to a lower output tax than that already paid and thus provides a justifiable claim for refund of erroneously paid output tax.
>
> By analogy, the ruling of the Supreme Court in Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, et al., is instructive:
>
> Xxx xxx xxx.

goods or services, including lease or use of property, from a VAT-registered person. **It shall also include the transitional input tax determined in accordance with Section 11 of this Code.** (Emphasis supplied)

[5] CTA Case No. 8183, January 17, 2014; penned by Honorable Associate Justice Amelia R. Cotangco-Manalastas and concurred by Honorable Associate Justice Lovell R. Bautista.

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> In the instant case, petitioner failed to consider in its computation of output tax liability certain input taxes on some of its purchases of services on credit, thus leading to a payment of higher output taxes than it otherwise should have paid. When petitioner realized this and could no longer amend its VAT returns 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 the output VAT, hence, petitioner is merely availing of the creditable input tax mechanism provided for in Section 110.

Even though petitioner can file a claim for refund pursuant to Section 229 of the NIRC of 1997, as amended, and the *Fort Bonifacio Development Corporation case*, the claim for refund must still be denied. As found by the Independent CPA and the Court in Division, petitioner's substantiated input VAT is not enough to offset its output VAT liability, as follows:

Output Tax	₱1,457,282,180.55
Less: substantiated input taxes	202,484,577.64
VAT Payable	₱1,254,797,602.91

Considering that petitioner's VAT payments for the 2nd quarter of 2008 only amounted to P54,837,581.52, petitioner did not overpay its taxes due in the 2nd quarter of 2008. Thus, there is no basis for petitioner to ask for refund of erroneously paid output VAT.

All told, I **VOTE** to **DENY** the Petition for Review filed by Coca-Cola Bottlers Philippines, Inc. in CTA EB Case No. 1044 but solely on the afore-stated reasons.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1044
(CTA Case No. 8136)

Members:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:
FEB 12 2015
4:05 p.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.*:

In this case, petitioner seeks the refund or issuance of tax credit certificate of P80,366,056.99 representing undeclared input taxes for the second quarter of 2008. The undersigned concurs with the stance of the *ponente* that Section 112 of the 1997 NIRC, as amended, is inapplicable since petitioner is not engaged in zero-rated or effectively zero-rated sales, and in eventually dismissing the Petition due to understatement of VAT overpayment for the covered period. However, the undersigned respectfully disagrees with the *ponente's* posture in invoking Section 229 as the appropriate provision subject to compliance with the substantiation requirements on the following grounds:

1. Petitioner has failed to timely amend its return prior to receipt of the Letter of Authority under Section 6(A) of the 1997 NIRC, as amended.

1a. To invoke the provision of Section 229 of the 1997 NIRC, as amended, as basis of petitioner's refund claim in the event of undeclaration of input taxes will render nugatory the provision of Section 6(A) of the same Code.

2. The case of *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*[1] involves transitional input tax and not passed-on VAT as part of the purchase price paid by petitioner.

PETITIONER SHOULD HAVE TIMELY AMENDED ITS RETURN REFLECTING THE CORRECT INPUT TAX OF P80,366,056.99 PRIOR TO RECEIPT OF THE LETTER OF AUTHORITY ("LOA") UNDER SECTION 6(A) OF THE 1997 NIRC, AS AMENDED.

TO INVOKE THE PROVISION OF SECTION 229 OF THE 1997 NIRC, AS AMENDED, AS BASIS OF PETITIONER'S REFUND CLAIM IN THE EVENT OF UNDECLARATION OF INPUT TAXES WILL RENDER NUGATORY THE PROVISION OF SECTION 6(A) OF THE SAME CODE.

Under Section 4.110-8 of Revenue Regulations No. 16-2005, as amended, input taxes are available as tax credits if they are substantiated and reported in the VAT returns as follows:

"SEC. 4.110-8. <u>Substantiation of Input Tax Credits.</u> –

[1] G.R. No. 173425, September 4, 2012.

> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties, or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, **must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau.** (Emphasis supplied.)

If a taxpayer has committed an error or mistake in the entries in the return such as in the case at bar, the law allows its amendment under Section 6(A) of the 1997 NIRC which reads:

> "Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, **That within three (3) years from the date of such filing, the same may be modified, changed or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer.** (Emphasis supplied.)

Amendment or modification of the tax return is prohibited by law upon the issuance of the LOA. This is to prevent situations where the government is at the losing end in allowing refund or tax credit when eventually it is found that the taxpayer has an existing similar tax liability for the same covered period.

Here, considering that petitioner has undeclared a substantial amount of input tax for the 2nd quarter of 2008, it should have immediately modified its return prior to the receipt of the Letter of Authority ("LOA") on June 2, 2009[2] pursuant to Section 6(A) of the 1997 NIRC, as amended; properly declared P80,366,056.99 input tax; and carried over this amount to the succeeding year. Petitioner informed the BIR that it could no longer amend its return for the

[2] Exhibit "B".

covered period due to the earlier issuance of LOA as shown in its refund letter dated July 20,2010.[3] Evidently, petitioner acted with negligence in its failure to declare input tax and in its failure to timely amend the return reflecting the correct entry for the covered period.

Should Section 229 serve as basis of petitioner's refund claim in the event of undeclaration of input taxes, this will render nugatory the provision of Section 6(A) of the 1997 NIRC, as amended.

To illustrate, assuming for the sake of argument that petitioner was able to substantiate its input tax enough to cover its output tax liability, to allow petitioner to refund or claim for tax credit under Section 229 in effect sanctions the amendment of return despite the issuance of LOA in violation of Section 6(A) of the 1997 NIRC. In granting its claim, petitioner will be placed in a better position than the claimant under Section 112 entitled to ordinary tax credit or refund on zero-rated sales or effectively zero-rated sales. One cannot do directly, he cannot do indirectly.[4]

In view of the aforestated reasons, the undersigned humbly disagrees with Presiding Justice Del Rosario's contentions that the declaration of input tax in the VAT return is not a prerequisite to claim for refund or tax credit, and Section 6(A) on LOA is insignificant relative to the refund claim because this pertains only to assessment cases.

For failure to timely avail of the remedy to modify the return reflecting the correct input tax of P80,366,056.99, the petitioner is barred from seeking solace of the provision of Section 229.

THE *FORT BONIFACIO* CASE INVOLVES TRANSITIONAL INPUT TAX AND NOT PASSED-ON VAT AS PART OF THE PURCHASE PRICE PAID BY PETITIONER.

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[3] Exhibit "N".

[4] *Alvarez v. PICOP Resources, Inc.*, Resolution, G.R. Nos. 162243, 164516 and 171875, 3 December 2009, 606 SCRA 444 and *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, G.R. No. 166471, March 22, 2011, 646 SCRA 21.

The undersigned sees no reason to apply the case of *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*[5] as relied by Presiding Justice Del Rosario. In that case, when petitioner failed to apply its transitional input tax in computing its output VAT for the 1st quarter of 1997, the Supreme Court allowed the refund by deducting transitional input tax credit against output tax paid.

Here, the case does not involve transitional input tax credit under Section 111 of the 1997 NIRC, as amended. The amount being claimed by petitioner for refund or tax credit represents passed-on VAT as part of the purchase price it paid. The transitional input tax credit aims to avoid any inequity resulting from the change in status of a person who becomes liable to VAT for the first time or elects to be a VAT-registered person without recognizing the VAT paid on related inputs before becoming VAT-registered.[6]

Moreover, in the *Fort Bonifacio* case, there was no LOA issued; nor was the issuance or non-issuance of LOA raised as among the issues in the case. Thus, the *Fort Bonifacio* case is not on all fours with the instant case.

The undersigned concurs with the findings of the Special Second Division[7] that the claimed P80,366,056.99 represents "undeclared input taxes" in the VAT return for the second quarter of 2008, and not as "erroneously paid taxes" contemplated under Section 229. Thus, the undeclared input tax was not offset against output tax for the covered period.[8] Clearly, neither Section 229 nor Section 112 of the 1997 NIRC, as amended, is the applicable provision in the case at bar.

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[5] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, supra*.
[6] De Leon Hector S. And De Leon, Jr. Hector M., The National Internal Revenue Code Annotated, 2003 Edition, p. 131.
[7] Penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla.
[8] See Resolution dated July 3, 2013 in CTA Case No. 8136.

In any event, petitioner's substantiated input tax is not sufficient to offset its output VAT liability; thus, it is disqualified to claim for refund or tax credit of the claimed amount.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice