

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

PILIPINAS TOTAL GAS, INC.,
Petitioner,

C.T.A. CASE NO. 7550

Members:

- versus -

**ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

MAR 26 2010, 2:00 pm

X ----- X

DECISION

BAUTISTA, J.:

This is a Petition for Review filed by Pilipinas Total Gas, Inc. (petitioner) on December 21, 2006, with an Amended Petition for Review filed on March 22, 2007, pursuant to Rule 8, Section 4(a), in relation to Rule 4 of the Revised Rules of the Court of Tax Appeals, to review by appeal the inaction of the Commissioner of Internal Revenue (respondent) on petitioner's administrative claim for refund or tax credit¹ in the amount of P18,115,604.81, allegedly representing unutilized and unapplied input value-added tax (VAT) for taxable year 2005, arising from sales to

¹ Exhibits "C" to "D-1"

Philippine Economic Zone Authority (PEZA)-registered and Clark Development Corporation (CDC)-registered entities.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal place of business located at the Philippine Stock Exchange Center, 8/F West Tower, PSEC Bldg., Exchange Road, Ortigas Center, Pasig City.² It is engaged in the sale, transportation, and distribution of industrial gases as well as the sale of gas equipment and other related businesses on wholesale basis.³ Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification No. 004-609-538-000, as per Certificate of Registration No. 3RC0000356287.⁴

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its Monthly and Quarterly VAT Returns for taxable year 2005 as well as their amendments on the following dates:⁵

- (a) February 23, 2005 – filing of its January 2005 Monthly VAT Return;
- (b) February 21, 2007 - filing of its First Amended Monthly VAT Return for the month of January 2005;

² Exhibit "A"; par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), *rollo*, p. 293

³ Exhibit "A-1"

⁴ Exhibit "B"

⁵ Par. 8, Facts Admitted, JSFI, *rollo*, pp. 294-296



- (c) February 22, 2007 – filing of its Second and Final Amended Monthly VAT Return for the month of January 2005;
- (d) March 23, 2005 – filing of its Monthly VAT Return for the month of February 2005;
- (e) February 21, 2007 – filing of its First Amended Monthly VAT Return for the month of February 2005;
- (f) February 22, 2007 – filing of its Second and Final Amended Monthly VAT Return for the month of February 2005;
- (g) April 21, 2005 – filing of its Quarterly VAT Return for the first quarter of 2005;
- (h) February 21, 2007 – filing of its First Amended Quarterly VAT Return for the first quarter of 2005;
- (i) February 22, 2007 – filing of its Second and Final Amended Quarterly VAT Return for the first quarter of 2005;
- (j) May 20, 2005 – filing of its Monthly VAT Return for the month of April 2005;
- (k) February 21, 2007 – filing of its First Amended Monthly VAT Return for the month of April 2005;
- (l) February 22, 2007 – filing of its Second and Final Amended Monthly VAT Return for the month of April 2005;
- (m) June 21, 2005 – filing of its Monthly VAT Return for the month of May 2005;
- (n) February 21, 2007 – filing of its First Amended Monthly VAT Return for the month of May 2005;
- (o) February 22, 2007 – filing of its Second and Final Amended Monthly VAT Return for the month of May 2005;
- (p) July 23, 2005 – filing of its Quarterly VAT Return for the second quarter of 2005;
- (q) February 21, 2007 – filing of its First Amended Quarterly VAT Return for the second quarter of 2005;



- (r) February 22, 2007 – filing of its Second and Final Amended Quarterly VAT Return for the second quarter of 2005;
- (s) August 22, 2005 – filing of its Monthly VAT Return for the month of July 2005;
- (t) February 21, 2007 – filing of its First Amended Monthly VAT Return for the month of July 2005;
- (u) February 22, 2007 – filing of its Second and Final Amended Monthly VAT Return for the month of July 2005;
- (v) September 20, 2005 – filing of its Monthly VAT Return for the month of August 2005;
- (w) February 23, 2007 – filing of its First Amended Monthly VAT Return for the month of August 2005;
- (x) February 22, 2007 – filing of its Second and Final Amended Monthly VAT Return for the month of August 2005;
- (y) October 21, 2005 – filing of its Quarterly VAT Return for the third quarter of 2005;
- (z) February 21, 2007 – filing of its First Amended Quarterly VAT Return for the third quarter of 2005;
- (aa) February 22, 2007 – filing of its Second and Final Amended Quarterly VAT Return for the third quarter of 2005;
- (bb) November 15, 2005 – filing of its Monthly VAT Return for the month of October 2005;
- (cc) February 21, 2007 – filing of its First Amended Monthly VAT Return for the month of October 2005;
- (dd) February 22, 2007 – filing of its Second and Final Amended Monthly VAT Return for the month of October 2005;
- (ee) December 19, 2005 – filing of its Monthly VAT Return for the month of November 2005;
- (ff) February 21, 2007 – filing of its First Amended Monthly VAT Return for the month of November 2005;



- (gg) February 22, 2007 – filing of its Second and Final Amended Monthly VAT Return for the month of November 2005;
- (hh) January 23, 2006 – filing of its Quarterly VAT Return for the fourth quarter of 2005;
- (ii) February 21, 2007 – filing of its first Amended Quarterly VAT Return for the fourth quarter of 2005; and
- (jj) February 22, 2007 – filing of its Second and Final Amended Quarterly VAT Return for the fourth quarter of 2005.

On July 25, 2006, petitioner filed an administrative claim for tax refund/tax credit of the alleged excess input tax for taxable year 2005 before the BIR Revenue District Office No. 43-Pasig City, in the amount of P18,115,604.81.⁶ However, respondent had not issued a final decision on said claim for refund or application for issuance of tax credit certificate. Hence, petitioner filed the instant Petition for Review on December 21, 2006.

In his Answer, respondent interposed the following Special and Affirmative Defenses⁷:

"5. Petitioner's claim for refund is still undergoing the routinary investigation being conducted by the Revenue District Office. However, the same has not yet been decided with finality;

6. Claims for refund are strictly construed against the taxpayer as the same partakes the nature of a tax exemption;

7. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of the Petitioner to prove the same is fatal to its cause of action;

8. Petitioner failed, during the course of the administrative investigation, to present all the necessary documents to support his claim for refund;

⁶ Exhibits "C", "D", and "E"

⁷ *Rollo*, p. 85



9. The Petitioner should prove its legal basis for claiming the amount being refunded."

On March 22, 2007, petitioner filed a Motion with Leave of Court to Amend Petition for Review⁸ in view of petitioner's amendment of its Monthly and Quarterly VAT Returns for taxable year 2005. The Amended Petition for Review⁹ was attached to the said Motion. On May 11, 2007, this Court granted petitioner's motion and admitted the Amended Petition for Review.

On February 26, 2008, upon motion of petitioner pursuant to Rules 12 and 13 of the Revised Court of Tax Appeals Rules, this Court commissioned Mr. Armando T. Fernando, partner of Dy Go Fernando and Company, as Independent Certified Public Accountant (CPA).¹⁰

Petitioner, aside from the Independent CPA, presented as witness Ms. Rosalia T. Yu, Finance Supervisor of petitioner. Thereafter petitioner formally offered its documentary evidence¹¹ to support its claims and defenses; while respondent was considered to have waived his right to present evidence.¹²

The instant Petition was submitted for Decision on May 29, 2009, taking into consideration petitioner's Memorandum filed on May 4, 2009 and respondent's failure to submit his Memorandum.

⁸ *Rollo*, pp. 88-90

⁹ *Rollo*, pp. 91-109

¹⁰ *Rollo*, p. 327

¹¹ Exhibits "A" to "DDDD", "IIII" to "IIII-12", and "JJJJ" to "LLLL-3"

¹² *Rollo*, pp. 413 and 428; TSN dated December 4, 2008 and April 2, 2009



The following are the parties' jointly stipulated issues¹³ submitted for this Court's resolution:

- "1. Whether or not Petitioner has unutilized input value-added tax for the period January 1, 2005, to December 31, 2005.
2. Whether or not the unutilized input VAT of Petitioner on its domestic purchases of goods and services is substantiated by documentary evidence.
3. Whether or not the input taxes paid by Petitioner were directly attributable to its zero-rated sales."

The ultimate issue is whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P18,115,604.81, allegedly representing petitioner's unutilized input taxes for taxable year 2005.

Petitioner anchors its claim for refund under Section 106(A)(2)(c) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides that:

"SEC. 106. *Value-added Tax on Sale of Goods or Properties.* —

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

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(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

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¹³ Rollo, p. 296

(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate."

In relation to Section 106(A)(2)(c) of the NIRC of 1997, Section 3(3) of Revenue Memorandum Circular (RMC) No. 74-99, provides:

"SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise. —

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(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular."

Section 15 of Republic Act (R.A.) No. 7227, otherwise known as the "Bases Conversion Development Act of 1992", as amended by Republic Act No. 9400 likewise states:



"SEC. 15. Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ). xxx

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The CFZ shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital equipment within, into and exported out of the CFZ, as well as provide incentives such as tax and duty-free importation of raw materials and capital equipment. However, exportation or removal of goods from the territory of the CFZ to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines.

The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the CFZ. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all registered business enterprises within the CFZ and shall be directly remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the treasurer's office of the municipality or city where they are located.

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Petitioner claims that under the afore-quoted laws, its sales to PEZA-registered and CDC-registered entities are deemed zero-rated; that as a result, it is entitled to the refund of its unutilized input taxes.

This Court agrees with petitioner that sales transactions with PEZA-registered and CDC-registered entities are deemed zero-rated.

Section 23 of R.A. No. 7916, otherwise known as "The Special Economic Zone Act of 1995", provides as follows:

"SECTION 23. *Fiscal Incentives* - Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law



creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.

Furthermore, tax credits for exporters using local materials as inputs shall enjoy the same benefits provided for in the Export Development Act of 1994."

Section 24 of R.A. No. 7916, as amended by R.A. No. 8748, states thus:

"SEC. 24. *Exemption from National and Local Taxes.* - Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

a. Three percent (3%) to the National Government;

b. Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprises is located."

In the case of **Pilipinas Total Gas, Inc. vs. Commissioner of Internal**¹⁴,

which is similar to the present case, this Court declared as follows:

"Among the measures adopted by the government to implement the policy of promoting preferential use of Filipino labor, domestic materials and locally produced goods and to help make them internationally competitive is the establishment of special economic zones or freeports. In pursuit of these social and economic objectives, enterprises registered and authorized to conduct business operations in designated economic zones enjoy fiscal incentives, among which is relief or exemption from payment of national and local taxes, in lieu of which they pay a flat rate on gross income.

Although an ecozone is undeniably a sovereign geographical territory of the Philippines, treating the zone as a special customs territory is necessary to give meaningful effect to the objectives

¹⁴ C.T.A. Case No. 7422, June 16, 2009



expressed in the special law creating a particular economic zone. In effect, what is created is a fiction of a foreign territory. The entity that manages this fiction of foreign territory is the Philippine Economic Zone Authority (PEZA).

In the context of the fiction of foreign territory, the destination principle as a basis for jurisdiction of the Philippines to impose VAT, as well as the *situs* of the transaction as criteria for determining the place where the transaction occurred as the taxable event will apply. As a result of the destination principle, Revenue Memorandum Circular 74-99 provides that any sale of goods and services made by a VAT-registered supplier in the customs territory to any registered enterprise operating in the economic zone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT.

This was affirmed by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils), Inc.*** when the Supreme Court ruled that the services rendered to a PEZA-registered enterprise effectively subjects the supply of such services to VAT at zero percent (0%).

Likewise, in BIR Ruling (DA-736-06), the BIR ruled that sale of industrial gases and equipment by petitioner to its PEZA-registered customers pursuant to contracts entered into prior to the effectivity of Republic Act 9337 is subject to zero percent (0%) VAT and requires no prior approval for zero-rating based on RMC 74-99.

The case of ***Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue***, this Court *En Banc* explained that the sale to an enterprise within the economic zone is actually a sale outside the territory to impose VAT. xxx" (*Emphasis supplied*)

Sales transactions with CDC-registered enterprises are also entitled to zero percent (0%) VAT rate pursuant to R.A. No. 7227, as amended by R.A. No. 9400. Like the PEZA law, R.A. No. 7227 is a special law that effectively subjects sales to CDC-registered enterprises to 0% VAT rate in conjunction with Section 106(A)(2)(c) of the NIRC of 1997, as amended.



Clark Development Corporation is a government-owned and controlled corporation existing under and by virtue of Philippine laws. Through Republic Act No. 7227, or the "Bases Conversion and Development Act of 1992," CDC was authorized to develop the Clark Special Economic Zone.¹⁵

Petitioner, however, must comply with the following requisites to be entitled to a refund or issuance of tax credit certificate for its unutilized input VAT:

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input VAT payments were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

Petitioner, in support of its allegation that its clients are situated in economic zones covered by R.A. No. 7916 and CDC-registered entities covered by R.A. No. 7227, as amended, offered in evidence *Exhibits "SS" to "DDDD"*, which are Certifications issued by PEZA and CDC, certifying that its clients are PEZA or CDC-registered entities. As such, petitioner's sales to PEZA and CDC-registered enterprises in the amount of P290,209,105.41 (total of sales subject to 0% VAT per Quarterly VAT Returns for the first to fourth quarters of taxable year 2005)¹⁶ are subject to zero percent (0%) VAT. Consequently, petitioner may not be liable to pay any output VAT thereon and the reported unutilized input VAT attributable

¹⁵ Clark Development Corporation vs. Mondragon Leisure and Resorts Corporation, *et al.*, G.R. No. 150986, March 2, 2007

¹⁶ Exhibits "N", "W", "FF", and "OO"



thereto may be the proper subject of a claim for refund or issuance of tax credit certificate under Section 112(A) of the NIRC of 1997, to wit:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

While petitioner substantially proved that its sales transactions involved PEZA-registered and CDC-registered entities, which are deemed zero-rated VAT transactions, it failed to discharge its burden of proof pertinent to its claim for refund or issuance of tax credit certificate.

Records reveal that in support of its claim for refund, petitioner formally offered in evidence only the following documents/exhibits:

1. Original and Amended Quarterly and Monthly VAT Returns for taxable year 2005 (*Exhibits "F" to "PP"*), which were all duly identified by petitioner's Finance Supervisor, Ms. Rosalia T. Yu (*Exhibit "QQ"*);
2. Certification issued by PEZA (*Exhibit "SS"*);
3. Certification issued by CDC (*Exhibit "TT"*);



4. Certified true copy of Certifications issued by PEZA and CDC to petitioner's various buyers (*Exhibits "UU" to "DDDD"*);
5. Schedule of sales and receipts for the months of January to December 2005 (*Exhibits "IIII-8-1" to "IIII-8-12"*);
6. Summary of purchases for the months of January to December 2005 (*Exhibits "IIII-5-1" to "IIII-5-12"*); and
7. Final and Amended Final Report of the Independent CPA, Mr. Armando T. Fernando (*Exhibits "IIII" and "LLLL" to "LLLL-3"*).

Even though the Court-commissioned Independent CPA, in his Judicial Affidavit¹⁷, attested and confirmed that he examined the original copies of the documents, such as petitioner's VAT Returns, official receipts, invoices, and other supporting documents, however, the same were not formally offered in evidence before this Court. Petitioner is still required to submit and offer pieces of evidence, particularly, sales invoices and official receipts in support of its claim.

In a number of cases, the Supreme Court held that the courts cannot consider evidence which was not formally offered. The pertinent provision is Section 34 of Rule 132 of the Revised Rules on Evidence, which reads:

"SEC. 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

In the case of **Commissioner of Internal Revenue vs. Manila Mining Corporation**¹⁸, the Highest Tribunal reiterated the importance of substantiating the paid input VAT by purchase invoices or official receipts and presenting the same as evidence to the Court, in this wise.

¹⁷ Exhibit "KKKK"

¹⁸ G.R. No. 153204, August 31, 2005



"For a judicial claim for refund to prosper, however, respondent must not only prove that it is a VAT registered entity and that it filed its claims within the prescriptive period. It must substantiate the input VAT paid by purchase invoices or official receipts.

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Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.

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There is nothing, however, in CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, which either expressly or impliedly suggests that summaries and schedules of input VAT payments, even if certified by an independent CPA, suffice as evidence of input VAT payments.

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The circular, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the Court. It does not relieve respondent of its imperative task of **pre-marking** photocopies of sales receipts and invoices and **submitting the same to the court** after the independent CPA shall have examined and compared them with the originals. Without presenting these pre-marked documents as evidence – from which the summary and schedules were based, the court cannot verify the authenticity and veracity of the independent auditor's conclusions.

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While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of the purchase receipts and/or invoices is not mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of respondent's claims." (*Emphasis supplied*)



Parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made. Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified.¹⁹

Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence cannot, in any manner, be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value. It must be stressed that there is a significant distinction between identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while the latter is done only when the party rests its case. The mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence. It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.²⁰

Clearly, petitioner failed to sufficiently substantiate its reported zero-rated sales to PEZA and CDC-registered enterprises for taxable year 2005. Needless to

¹⁹ Heirs of Roque F. Tabuena, *et al.* vs. Land Bank of the Philippines, G.R. No. 180557, September 26, 2008, citing Far East Bank and Trust Company vs. Commissioner of Internal Revenue, G.R. No. 149589, September 15, 2006

²⁰ Heirs of Pedro Pasag, *et al.* vs. Sps. Lorenzo and Florentina Parocha, *et al.*, G.R. No. 155483, April 27, 2007



say, the failure of petitioner to formally offer said evidence is detrimental to its cause.

Even assuming *arguendo* that petitioner formally offered the required documents to prove and substantiate its zero-rated sales to PEZA and CDC-registered enterprises, as well as the input VAT on its domestic purchases of goods and services for taxable year 2005, still no amount of the claimed input VAT can be granted.

This Court cannot ascertain whether the reported excess input taxes for taxable year 2005 remained unapplied against any output tax liability in the succeeding taxable quarters. Petitioner failed to present the Quarterly VAT Returns for the succeeding taxable quarters/years. The said VAT Returns should have been submitted as evidence to prove that indeed the input taxes of the subject period of claim was not utilized or applied against subsequent output tax liability. Without the said Quarterly VAT Returns, there is doubt as to the application or non-application of the unutilized input taxes for taxable year 2005 to output taxes of the succeeding taxable quarters. Hence, for petitioner's failure to sufficiently prove that no amount of the unutilized input VAT was applied against any output tax liability in the succeeding quarters, the instant Petition must fail.

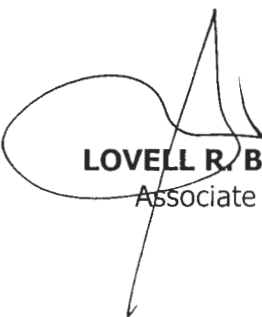
Laws granting exemption from tax are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who seeks to enjoy such privilege must justify it by words too plain to be



mistaken and too categorical to be misinterpreted.²¹ Petitioner therefore has the burden of proof to establish the factual basis of its claim for refund. And this burden petitioner failed to overcome. Accordingly, this Court has to deny petitioner's refund claim.

WHEREFORE, premises considered, the Petition for Review and the Amended Petition for Review are hereby **DENIED** for lack of merit.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

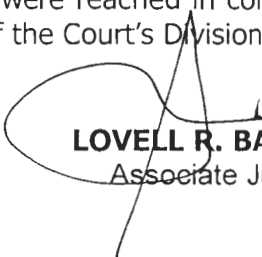
(On Leave)
ERNESTO D. ACOSTA
Presiding Justice



CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest 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's Division.



LOVELL R. BAUTISTA
Associate Justice

²¹ Sea-Land Services Inc. vs. Court of Appeals, *et al.*, G.R. No. 122605, April 30, 2001

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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's Division.


JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice