REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TBG DEVELOPMENT PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

EB No. 237
(CTA Case No. 6852)

Present:
ACOSTA, *PJ.*
CASTAÑEDA JR.,
BAUTISTA
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ:*

Promulgated:

OCT 2 4 2007

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DECISION

CASANOVA, J:

This is a Petition for Review,[1] filed, through registered mail, by the petitioner-TBG DEVELOPMENT PHILIPPINES, INC. (TBG), with the Court *En Banc*, pursuant to Section 4, Rule 8 of the Revised Rules of the Court of Tax Appeals, in relation to Rule 43 of the Revised Rules of Procedure, from the Decision[2] (*Assailed Decision*) of the Court of Tax Appeals Second Division (*CTA Second Division*) dated June 22, 2006 in CTA Case No. 6852 entitled, "*TBG Development Philippines, Inc., petitioner vs. Commissioner of Internal Revenue, respondent,*" dismissing the Petition for Review[3] in the above-mentioned case for

[1] CTA En Banc Rollo, pp. 9-31.
[2] Annex "A", CTA En Banc Rollo, pp.34-42.
[3] CTA Second Division Rollo, pp. 1-4.

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lack of merit, and from the Resolution[4] (*Assailed Resolution*) dated November 27, 2006 denying petitioner's Motion for Reconsideration.

The facts of the case, as culled from the records, are as follows:

> *"TBG Development Philippines, Inc. ('petitioner') is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at the 30th Floor, Citibank Tower, 8741 Paseo de Roxas, Makati City. It is engaged in the real estate business, specifically in the purchase, development, subdivision and sale of real estate. As such, petitioner is registered with the Bureau of Internal Revenue ('BIR') as a value-added tax ("VAT") taxpayer evidenced by Certificate Registration No. 9RC0000120885.*[5]
>
> *The Commissioner of Internal Revenue ('respondent'), on the other hand, is tasked, among others, to act upon and approve claims for refund or tax credit under the 1997 National Internal Revenue Code ('NIRC'), as amended, with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.*
>
> *On December 12, 2001, petitioner purchased from the First Philippine Industrial Park Inc. a parcel of land situated in the First Philippine Industrial Park in the Municipality of Sto. Tomas, Batangas.* [6]
>
> *For the 4th quarter of taxable year 2001, petitioner filed its Quarterly VAT Return declaring an input VAT in the amount of P4,058,483.86.*[7]
>
> *On December 29, 2003, petitioner filed a claim for refund with the BIR of alleged unutilized input VAT for the 4th quarter of taxable year 2001 in the sum of P4,058,483.86.*[8]

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[4] Annex "D", CTA En Banc Rollo, pp. 93-97.
[5] Pars. 1 & 3, Statement of Facts Admitted, CTA Second Division Rollo, pp. 69 & 70; Exhibit B
[6] Par. 4, Statement of Facts Admitted, CTA Second Division Rollo, p. 70; Exhibits C, D & E
[7] Par. 6, Statement of Facts Admitted, CTA Second Division Rollo, p. 70; Exhibit F
[8] Par. 7, Statement of Facts Admitted, CTA Second Division Rollo, pp. 70 & 71

The inaction of the respondent on petitioner's claim for refund prompted the latter to elevate the case before this Court on January 23, 2004.[9]

In Answer to the Petition, respondent raised the following Special and Affirmative Defenses:

> *4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected,*
>
> *5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;*
>
> *6. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;*
>
> *7. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended as well as the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88 and Revenue Regulations No. 7-95, as amended; and*
>
> *8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation.*[10]

The parties jointly stipulated on the following issues to be resolved by this Court:

> *1. Whether or not petitioner has unutilized input VAT in the amount of P4,058,483.86 on its alleged*

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[9] CTA Second Division Rollo, p. 1; par. 8, Statement of Facts Admitted, Rollo, p. 71
[10] CTA Second Division Rollo, p. 34

> *purchases of capital goods for the 4th quarter of taxable year 2001;*
>
> *2. Whether or not the purchases on which the above P4,058,483.86 input VAT were paid are considered as capital goods;*
>
> *3. Whether or not the purchases on which the above P4,058,483.86 input VAT were paid are used by petitioner in its VAT taxable business;*
>
> *4. Whether or not the above P4,058,483.86 input VAT on capital goods has not been applied/credited against any output VAT; and*
>
> *5. Whether or not petitioner's claim for refund/tax credit allegedly representing input VAT for the 4th quarter of taxable year 2001 in the amount of P4,058,483.86 is substantiated by documentary evidence.*[11]
>
> *All the above issues center on whether or not petitioner is entitled to a refund/tax credit of the amount of P4,058,483.86 allegedly representing unutilized input VAT paid on its purchase of a parcel of land in the 4th quarter of taxable year 2001."*[12]

After trial on the merits, the *CTA Second Division* promulgated the *Assailed Decision* on June 22, 2006, the dispositive portion of which reads as follows:

> *"WHEREFORE, premises considered, the Petition for Review is hereby DISMISSED for lack of merit.*
>
> *SO ORDERED."*

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[11] Statement of Issues Admitted, CTA Second Division Rollo, p. 71
[12] Assailed Decision, CTA EB Rollo, pp. 34-37.

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Not satisfied with the above-mentioned Decision, petitioner posted a Motion for Reconsideration [Re: Decision dated June 22, 2006][13] on July 17, 2006 raising the following issues:

1. Whether Petitioner has substantially proven the fact that the input taxes subject matter of the refund have not been applied against the output taxes;

2. Whether Petitioner needs to prove the fact that the land subject of the purchase was used by Petitioner in its VAT taxable business.

On August 28, 2006, respondent filed an Opposition (To Motion for Reconsideration)[14]. The CTA Second Division, in a Resolution[15] dated September 4, 2006, granted counsel for the petitioner fifteen (15) days from receipt of respondent's Comment/Opposition to file a Reply. In compliance with the said Resolution, petitioner filed a Reply[16] on September 20, 2006.

The CTA Second Division promulgated the *Assailed Resolution* on November 27, 2006, the dispositive portion of which reads as follows:

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

SO ORDERED."

Records show that the *Assailed Resolution* was received by the petitioner on December 4, 2006[17], thus, it has fifteen (15) days from said date within which to file a Petition for Review with the Court *En Banc* pursuant to Section 3(b) Rule 8 of the Revised Rules of the Court of Tax Appeals[18]. On December 19, 2006,

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[13] CTA Second Division Rollo, pp. 234-247.
[14] CTA Second Division Rollo, pp. 267-270.
[15] CTA Second Division Rollo, p. 272.
[16] CTA Second Division Rollo, pp. 273-286.
[17] CTA Second Division Rollo, p. 292.
[18] Sec. 3. Who may appeal; period to file petition-
(a) xxx xxx

petitioner filed a "Motion for Extension of Time to File Petition for Review with the CTA En Banc"[19]. On December 27, 2006, the Court *En Banc* issued a Minute Resolution[20] granting the said motion thus, giving petitioner a final and non-extendible period of fifteen (15) days from December 19, 2006 or until January 3, 2007 within which to file a Petition for Review with the Court *En Banc*. In compliance with the Court's Resolution, petitioner filed a Petition for Review[21] on January 3, 2007.

In support of the instant Petition for Review, petitioner raised the following grounds:

1. THE COURT A QUO ERRED WHEN IT RULED THAT PETITIONER FAILED TO SUFFICIENTLY PROVE THAT THE INPUT TAXES SUBJECT MATTER OF THE CLAIM FOR REFUND HAVE NOT BEEN APPLIED AGAINST THE OUTPUT TAXES;

2. THE COURT A QUO ERRED WHEN IT RULED THAT PETITIONER FAILED TO PROVE THAT THE PURCHASED LAND WAS USED BY PETITIONER IN ITS VAT TAXABLE BUSINESS DESPITE THE PARTIES' STIPULATION TO THE CONTRARY;

3. THE COURT A QUO ERRED WHEN IT DISREGARDED THE TAX RETURNS ATTACHED TO PETITIONER'S MOTION FOR RECONSIDERATION DATED 14 JULY 2006 AND REPLY DATED 08 SEPTEMBER 2006 IN THE DETERMINATION OF PETITIONER'S RIGHT TO THE REFUND; AND

4. THE COURT A QUO ERRED WHEN IT DENIED PETITIONER'S CLAIM FOR REFUND.

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Xxx xxx.

[19] CTA En Banc Rollo, pp. 3-6.

[20] CTA En Banc Rollo, p. 7.

[21] Ibid.

After a careful and thorough evaluation and consideration of the records of the case, the Court *En Banc* finds the grounds raised in the instant petition have been exhaustively discussed by the *CTA Second Division* in its assailed Decision and Resolution.

As correctly held by the CTA Second Division and We quote:

"Petitioner anchors its claim on Sections 110(B) and 112(B) of the 1997 NIRC, as amended, and on Section 4.106-1(c) of Revenue Regulations No. 7-95, to wit:

'SEC. 110. Tax Credits. —

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. Any input tax attributable to the purchase of capital goods or 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.

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

xxx xxx xxx

(B) Capital goods. — A VAT registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

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> *SEC. 4.106-1. Refunds or tax credits of input tax. — (a) . . .*
>
> *xxx xxx xxx*
>
> *(c) Land — Only a VAT registered person may apply for the issuance of a tax credit certificate or refund of input taxes on land purchased to the extent that such input has not been applied to output tax. The application should be made within two (2) years after the close of the taxable quarter when the purchase was made.*
>
> *Refund of input taxes on land shall be allowed to the extent that such land is used in VAT taxable business.*

Petitioner likewise relies upon the cases of KBP Realty Estate Corporation vs. Commissioner of Internal Revenue[22] *and Concepcion-Carrier Realty Holdings, Inc. vs. Commissioner of Internal Revenue,*[23] *wherein We held that input VAT on the purchase of a parcel of land may be the proper subject of a claim for refund. The taxpayer has only to prove compliance with the following requisites:*

> *1. That it is VAT-registered person;*
> *2. That it purchased a parcel of land;*
> *3. That the purchase of a land is substantiated by sufficient evidence;*
> *4. That the input taxes have not been applied against the output taxes;*
> *5. That the application for the refund of unutilized or excess creditable input VAT arising from the purchase of land has been made within two (2) years after the close of the taxable quarter when the purchase was made; and*
> *6. That the land subject of the purchase was used by the taxpayer/applicant in his VAT taxable business.*

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[22] CTA Case No. 6035, May 15, 2002.
[23] CTA Case No. 6137, February 17, 2003.

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Petitioner is a VAT-registered person. This fact is undisputed as the parties so stipulated and as shown in petitioner's Certificate of Registration issued by the BIR on November 26, 2001. [24]

As regards the second and third requirements, records reveal that petitioner purchased a parcel of land from First Philippine Industrial Park, Inc. on December 12, 2001 for a consideration of P40,584,838.55 (with US dollar equivalent of 780,928.20) and paid the related input VAT thereon in the amount of P4,058,438.86 (with US dollar equivalent of 78,092.82) as evidenced by a Deed of Absolute Sale,[25] *VAT Sales Invoice,*[26] *VAT Official Receipts*[27] *and Transfer Certificate of Title.*[28]

As regards the fifth requisite, petitioner complied with the same. The reckoning of the two (2)-year prescriptive period for the filing of a claim for input VAT refund commences from the date of filing of the corresponding quarterly VAT return.[29] *However, considering that petitioner's Quarterly VAT Return for the fourth quarter of 2001 was belatedly filed on February 11, 2002, the two (2)-year prescriptive period shall be reckoned from January 25, 2002, the last date prescribed by law and regulations for the filing thereof.*[30] *Thus, the administrative claim and the judicial action filed on December 29, 2003*[31] *and on January 23, 2004,*[32] *respectively, were timely made.*[33]

Although petitioner complied with the first, second, third and fifth requirements, it however failed to comply with the fourth requirement that the claimed input VAT should not have been applied against any output tax.

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[24] Par. 3, Statement of Facts Admitted & Exhibit B, CTA Second Division Rollo.
[25] Exhibit C, CTA Second Division Rollo.
[26] Exhibit D, CTA Second Division Rollo.
[27] Exhibit Q, R & S. Second Division Rollo.
[28] Exhibit E, Second Division Rollo.
[29] San Roque Power Corporation, vs. The Commissioner of Internal Revenue, CTA Case No. 6427, October 19, 2005 & Jideco Manufacturing Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6552, September 16, 2004.
[30] Sections 114 (A) & 112 (B) of the 1997 NIRC, as amended & Section 4.106-1 (c) of Revenue Regulations No. 7-95.
[31] Joint Stipulation of Facts and Issues, CTA Second Division Rollo, p. 71.
[32] CTA Second Division Rollo, p. 1
[33] Petitioner had until January 25, 2004 within which to file its claim.

Petitioner argues that it did not apply the input VAT paid on the purchase of the subject land against its output VAT in the succeeding taxable quarters. According to its Accountant, Ms. Josephine S. Ramos, the first amended VAT Quarterly Returns as well as the second amended VAT Quarterly Returns show that petitioner deducted the amount of P4,058,483.86 representing the VAT paid on the purchase of land from the total available input tax that may be carried over to the subsequent quarters. Thus, petitioner's second amended VAT Quarterly Return for the first quarter of taxable year 2002 indicated the amount of P4,058,483.86 as a deduction from input tax under Line 25A thereof.

We are not persuaded. In its VAT return for the 4th quarter of 2001[34] *and second amended VAT returns for the first, second, third and fourth quarters of 2002,*[35] *petitioner declared that it had no commercial operations. Therefore, it reflected no amount of output VAT liability against which the claimed input VAT of P4,058,483.86 may be applied or credited. While petitioner carried-over the claimed input VAT of P4,058,483.86 in its second amended VAT return for the first quarter of 2002, the same was deducted as "Any VAT Refund/TCC Claimed" from the "Total Available Input Tax".*[36] *Consequently, the claimed input tax of P4,058,483.86 was no longer carried-over in the second amended VAT returns for the subsequent second, third and fourth quarters of 2002.*[37] *Nevertheless, these VAT returns are insufficient to prove that no amount of petitioner's claimed input VAT was applied against any output VAT liability. Notably, the second amended VAT returns of petitioner for the first, second, third and fourth quarters of 2002 were simultaneously filed on June 24, 2004. Prior to this date, petitioner, as the law requires, should have already filed its VAT returns for the first, second, third and fourth quarters of 2003 and the first quarter of 2004. These VAT returns should have been presented by petitioner in order for this Court to ascertain that the claimed input VAT in the amount of P4,058,483.86 was not actually applied against any output VAT liability in the said periods. It must be emphasized that petitioner filed its Formal Offer of Evidence*

[34] Exhibit F, CTA Second Division Rollo.
[35] Exhibits G-2, H-2, I-2 & J-2, CTA Second Division Rollo.
[36] Exhibit G-2, CTA Second Division Rollo.
[37] Exhibit H-2, I-2 & J-2, CTA Second Division Rollo.

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> *only on July 26, 2005, thus, it could have easily presented these VAT returns as well as the VAT returns for the second, third and fourth quarters of 2004 and first quarter of 2005. Yet, it did not. Indubitably, petitioner failed to establish that the input taxes subject of this case have not been applied against its output taxes.*
>
> *In addition, petitioner also failed to comply with the sixth requirement that the purchased land was used by petitioner in its VAT taxable business.*
>
> *Indeed, the parties admitted that petitioner leases out the said parcel of and in the pursuit of its business.*[38] *However, despite such admission, the VAT returns do not reflect that the subject land was leased out, inasmuch as petitioner did not declare any amount of output tax on rental income."*

In addition, petitioner submits that the VAT returns attached to its Motion for Reconsideration dated July 14, 2006 and its Reply dated September 8, 2006 more than sufficiently cleared up whatever doubts may have been raised in the Assailed Decision. The VAT returns will corroborate and show that petitioner did not in fact carry over and apply against its output VAT liability in the subsequent quarters claimed input VAT in the amount of P4,058,483.86. Thus, it was error for the court a quo to totally disregard the said VAT returns.

We are not convinced.

To reiterate the discussion of the CTA Second Division in its Assailed Resolution, to wit:

> *"Petitioner's reliance in the Philam case is misplaced. The Philam case involves creditable withholding taxes wherein any overpayment thereof may either be: a) refunded in a form of cash or tax credit certificate; or b) carried-over and applied against the tax due of the succeeding taxable quarters/years. Thus, if the taxpayer elects the option of a refund, the excess income payment*

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[38] Par. 5, Statement of Facts Admitted, CTA Second Division Rollo, p. 70.

can no longer be carried over to the subsequent year. Hence, the taxpayer need not present the subsequent returns.

In VAT cases, however, any excess/unutilized input VAT is automatically carried over to the succeeding taxable quarters/years in accordance with Section 110(B) of the 1997 National Internal Revenue Code (NIRC). In the case of unutilized/excess input VAT attributable to zero-rated sales or capital goods, the same may be claimed for refund/tax credit which claim shall be deducted from the accumulated unutilized/excess input VAT pursuant to Section 110(C) of the 1997 NIRC.

In the present case, while the claimed excess input VAT of P4,058,483.86 for the fourth quarter of 2001 was carried-over by petitioner in its amended VAT return for the second quarter of 2002, the same was deducted as "Any VAT Refund/TCC Claimed" from the "Total Available Input Tax". Consequently, the claimed input tax of P4,058,483.86 was no longer carried-over in the second amended VAT returns for the second, third and fourth quarters of 2002. Nevertheless, as We have stated in the questioned Decision, these amended VAT returns for the last three quarters of 2002 were insufficient to prove that no amount of the claimed input VAT was applied against any output VAT. While generally, VAT returns subsequent to the period when the input taxes subject matter of the refund was deducted from the allowable input taxes is not actually required, however, We noted that at the time of petitioner's filing of the amended VAT returns for the second, third and fourth quarters of 2002 on June 24, 2004, petitioner could have already filed its VAT returns for the four quarters of 2003 and the first quarter of 2004. Therefore, the presentation of the VAT returns for the said periods was necessary in order for Us to ascertain that the claimed input VAT of P4,058,483.86 was not actually applied against any output VAT liability in the said periods.

Petitioner further insists that the land subject-matter of the purchase was and is used in its VAT taxable business as stipulated by the parties.

Although, the trial of a case is limited to disputed matters and the facts and issues stipulated by the parties are intended to facilitate the immediate disposition of a case, it must be

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> *emphasized that in the case at bench, We cannot uphold the parties' said admission since documentary evidence proves otherwise. The original and amended VAT Returns for the four quarters of year 2003 including the quarterly VAT returns for year 2004 failed to show that petitioner earned rental income subject to output tax. This palpable mistake is sufficient to overthrow the parties' admission that the real property was utilized in petitioner's real estate business.*[39]"

In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed June 22, 2006 Decision and November 27, 2006 Resolution of the *CTA Second Division*. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon by the *CTA Second Division*.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the June 22, 2006 Decision and November 27, 2006 Resolution of the *CTA Second Division* are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

[39] See Section 4, Rule 129 of the Rules of Court.

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ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice