REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB NO. 357
(C.T.A. Case No. 7243)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

DASH ENGINEERING PHILIPPINES, INC.,
Respondent.

Promulgated:
JUL 17 2008 2:05 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review[1] filed pursuant to Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals, praying for the reversal of:

[1] *Rollo*, pp. 7 – 46 with Annexes.

1. the Decision dated October 4, 2007 rendered by the Second Division of the Court ("Court in Division") in C.T.A. Case No. 7243, which partially granted herein respondent's claim for tax refund or issuance of a tax credit certificate in the reduced amount of ₱1,147,683.78, representing unutilized input value-added tax ("VAT") incurred for the months of January to June 2003; and
2. the Resolution of the Court in Division promulgated on January 3, 2008, which denied the Motion for Partial Reconsideration of herein petitioner.

Antecedent Facts

The following are the relevant facts of the case:

Herein petitioner Commissioner of Internal Revenue is the official of the Republic of the Philippines charged with the duty, among others, of acting on claims for tax refund or tax credit. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[2]

Herein respondent is a corporation organized and existing under Philippine laws, with current address at 8th – 10th Floors, PIPC – Dash Engineering Science Building, Asia Town, IT Park, Cebu City.[3]

Respondent is a VAT-registered entity engaged in the export sales of computer-aided engineering and design. It is a corporation duly registered

[2] *Records*, p. 142, Joint Stipulation of Facts and Issue.
[3] *Id.*

with the Securities and Exchange Commission authorized to do business in the Philippines, and presently registered with the Philippine Economic Zone Authority ("PEZA") as an ecozone IT (Export) Enterprise. It is a VAT-registered entity with VAT Registration Certification No. 94-800-000340 issued on June 13, 1984.[4]

Respondent filed its VAT returns for the period January 1, 2003 to June 30, 2003 with the Bureau of Internal Revenue. On August 9, 2004, it filed a claim for tax credit or refund for the amount of ₱2,149,684.88. When respondent filed a Petition for Review with the Court in Division, petitioner had not yet acted upon the subject claim for tax refund or credit.[5]

In the Answer, petitioner, by way of special and affirmative defenses, alleged that the amount of ₱2,149,684.88 being claimed by respondent representing the input taxes it paid for the first (1st) and second (2nd) quarters of the year 2003 is not properly documented; in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund or credit; the taxpayer must show that it complied with the provisions of Sections 204 (C) and 229 of the 1997 National Internal Revenue Code ("NIRC") on the prescriptive period for claiming a tax refund or credit; and claims for refund are construed strictly

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[4] *Records*, p. 143, Joint Stipulation of Facts and Issue.
[5] *Id.*

against the claimant for the same partake of the nature of exemption from taxation, and as such, they are looked upon with disfavor.[6]

Respondent presented as witnesses Ms. Loraine Joy Y. Singculan, its Accounting Staff, and Mr. Yukihiro Mimura, its President, as well as documentary evidence, marked as Exhibits "A" to "Y", inclusive of their submarkings, which were all admitted by the Court in Division, after respondent filed a "Motion for Reconsideration" of the Resolution dated May 26, 2006.[7]

Petitioner submitted the case for decision, without presenting any evidence. Subsequently, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice.[8]

However, on October 10, 2006, respondent filed a "Motion to Allow Reception of Additional Evidence for Petitioner And To Defer Submission of Memorandum" which the Court in Division granted in a Resolution dated December 4, 2006. Respondent then presented as additional witness, Ms. Milagros Remillano Madayag of Mizuho Corporate Bank Ltd., Manila Branch, and documentary evidence, additionally marked as Exhibits "Z" to "Z-7", "AA", and "AA-1", which were all admitted by the Court in Division.[9]

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[6] *Rollo*, pp. 26-27, Decision, C.T.A. Case No. 7243.
[7] *Id.*, p. 27, Decision, C.T.A. Case No. 7243.
[8] *Id.*
[9] *Id.*

After both parties filed their respective memorandum, the case was deemed submitted for decision.[10]

The Ruling of the Court in Division

On October 4, 2007, the Court in Division rendered its Decision, partially granting respondent's claim for refund or issuance of a tax credit certificate in the reduced amount of ₱1,147,683.78, representing unutilized excess input VAT for the period of January 1, 2003 to June 30, 2003.

The Court in Division made the following findings:

1. Out of ₱62,787,889.17 declared as zero-rated sales by respondent, only the amount of ₱62,277,136.49 consisted of respondent's direct export sales to Japan, which qualify for zero-rating.
2. The amount of ₱62,277,136.49 which covered respondent's sales for the period of January 1, 2003 to June 30, 2003, was duly substantiated.
3. Respondent's administrative and judicial claims for refund for the 1st and 2nd quarters of 2003, were filed within the two (2) year prescriptive period.
4. Of the total input VAT claim of ₱2,149,684.88, only the amount of ₱1,157,096.26 was duly supported by VAT invoices and/or receipts.
5. The substantiated input VAT of ₱1,157,096.26 was not applied against any output VAT during the 1st and 2nd quarters of 2003.

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[10] *Id.*, p. 27, Decision, C.T.A. Case No. 7243.

The dispositive portion of the said Decision reads as follows:

> "**WHEREFORE**, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **ONE MILLION ONE HUNDRED FORTY SEVEN THOUSAND SIX HUNDRED EIGHTY THREE and 78/100 PESOS** (P1,147,683.78), representing the unutilized input VAT incurred for the months of January to June 2003.
>
> SO ORDERED."

Dissatisfied, petitioner filed a Motion for Partial Reconsideration which was denied for lack of merit by the Court in Division in its Resolution promulgated on January 3, 2008.

Hence, this recourse to the Court *En Banc*.

The Issue

The lone issue raised by petitioner is whether or not respondent is entitled to a tax refund or credit of its unutilized VAT input taxes on its purchases of goods and services for the 1st and 2nd quarters of 2003.

Petitioner's Arguments

Petitioner contends that respondent failed to show that its purchases of goods and services were made in the course of its trade and business. It also alleges that respondent failed to show that the said purchases were properly supported by VAT invoices and/or official receipts and other documents such as entries made in its subsidiary purchase journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the 1997 NIRC, as amended and in pursuance to Section 4.104-5(a) & (b) of Revenue Regulations ("RR") 7-95.

Petitioner likewise avers that respondent failed to show proof that the claimed input VAT payments are directly attributable to its zero-rated sales and that the proceeds of the export sales were inwardly remitted and duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

Lastly, petitioner asserts that the Petition for Review filed by respondent with the Court in Division was filed out of time. Respondent filed the administrative claim for refund on August 9, 2004. The one hundred twenty (120)-day period expired on December 7, 2004 without any action on the part of the Commissioner. Hence, respondent had only until January 6, 2005, or thirty days from the expiry of the 120-day period within which to file its judicial claim for refund. Thus, the Petition for Review filed on May 5, 2005 was filed out of time pursuant to Section 112 (D) of the 1997 NIRC.

Respondent's Counter-arguments

Respondent avers that it had fully complied with all the requisites for entitlement to a tax credit or refund of unutilized input VAT.

Respondent also points out that the records reveal that petitioner only raised the issue of prescription by virtue of Section 112 (D) of the NIRC in its

Motion for Partial Reconsideration. In petitioner's Answer filed with the Court in Division, it was stated that respondent must comply with Sections 204(c) and 229 of the NIRC on the prescriptive period for claiming a tax refund or credit.

The Ruling of the Court En Banc

The Petition for Review lacks merit.

The judicial claim for refund was filed within the period provided under the law

At the outset, We shall rule first on petitioner's argument on prescription. Contrary to the assertion of petitioner, the Court in Division correctly ruled that respondent's judicial claim for refund was filed within the reglementary period of two (2) years.

The applicable provision is Section 112(A) of the 1997 NIRC which outlines the procedure for Refunds or Tax Credits of Input Tax, *viz*:

> "**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 where 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." (*Emphasis supplied*)

Based on the foregoing provision as well as relevant jurisprudence, a taxpayer must comply with the following requisites to be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated or effectively zero-rated sales:

1. Both the administrative and the judicial claim for a tax credit or refund were filed within 2 years from the filing of the quarterly VAT return(s) covered by the claim[11] as provided under Section 4.106-2(c) of RR 7-95, in relation to Section 112(D) of the NIRC;
2. The claimed input VAT payments were not applied against any output tax during the period covered by the claim and in the succeeding periods;
3. The claimed input VAT payments are directly attributable to zero-rated sales; and

[11] Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, Resolution, C.T.A. Case No. 5296, July 20, 1998; Taganito Mining Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 5983, dated October 11, 2001; Air Liquide Philippines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs, C.T.A. Case No. 5748, January 23, 2002; Nichie Pilipinas, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 6910, October 18, 2007; Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.), C.T.A. EB Case No. 251(C.T.A. Case Nos. 6628 & 6732), May 30, 2007.

4. The claimed input VAT payments are duly supported by VAT invoice or official receipts, in accordance with Section 4.104-5 of RR 7-95, in relation to Section 113 and 237 of the NIRC.[12]

We have consistently ruled that the 2-year prescriptive period in claiming a refund of input VAT in the administrative and judicial levels is reckoned from the date of filing of the quarterly VAT return.[13] In other words, a taxpayer has 2 years from the date of filing of the quarterly VAT return to file <u>both</u> the administrative and judicial claims for refund.

We do not subscribe to petitioner's contention that respondent's judicial claim was filed out of time since the 120 days given to the Commissioner of Internal Revenue to decide on the claim under Section 112 (D) of the 1997 NIRC, had already lapsed when the Petition for Review was filed with the Court on May 5, 2005. Section 112(D) provides:

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

xxx xxx xxx

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

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[12] Intel Philippines Manufacturing, Inc. v. Commissioner of Internal Revenue, C.T.A. Case Nos. 5760 and 5902, February 05, 2002.

[13] Commissioner of Internal Revenue v. Matsushita Business Machine Corporation of the Philippines, C.T.A. EB Case No. 290 (C.T.A. Case NO. 6495), January 17, 2008; Kepco Philippines Corp. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 107 (C.T.A. Case No. 6413), June 29, 2007; Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.), C.T.A. EB Case No. 251 (C.T.A. Case Nos. 6628 & 6732), May 30, 2007.

> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected <u>may</u>, within thirty (30) days** from the receipt of the decision denying the claim or **after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**" **(***Emphasis and underscoring supplied*)

The use of the word "may" in the afore-quoted provision indicates that judicial recourse within thirty days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period. It is a settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.[14]

Corollary thereto, the Honorable Court of Appeals has ruled that when the 2-year period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon, for the protection of the interest of the taxpayer, the latter should file a petition for review with the Court of Tax Appeals within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to the Court of Tax Appeals. The Court of Appeals ratiocinated as follows:[15]

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[14] Republic Planters Bank v. Agana, Sr., 269 SCRA 1 (1997).

[15] Commissioner of Internal Revenue v. Hitachi Computer Products (Asia) Corporation, CA-G.R. SP No. 63340, February 7, 2002 *citing Gibbs v. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil 232, Johnson Lumber Co. vs. CTA, 101 Phil 151.*

"It appears therefore, that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case. This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.

Incidentally, the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal. **The law fixed the same period — two years — for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be made in court.** Indeed, only the latter case presupposes the existence of a prior decision of the Commissioner which could be subjected to review by the court. In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*Emphasis supplied*)

Moreover, the Bureau of Internal Revenue has cited the foregoing disquisition of the Court of Appeals as basis when it made the following ruling:

"In reply, please be informed that a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the CTA may acquire jurisdiction, particularly if the claim is about to prescribe. **The Tax Code fixed the period of two (2) years for filing a claim for refund with the Commissioner [Sec. 112(A) in relation to Sec. 204(c)] and for filing a case in court [Section 229].** Hence, a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law."[16] (*Emphasis supplied*)

A scrutiny of the records of this case reveals that herein respondent filed with the BIR its original VAT returns for the 1st and 2nd quarters of 2003 on April 25, 2003 and July 23, 2003, respectively. It filed its amended quarterly VAT returns for the same quarters on July 24, 2004. Thus, the Court in Division correctly ruled that respondent had until July 24, 2006 to file both its administrative and judicial claims for refund. It is clear that respondent timely filed its administrative claim for refund for the said quarters of year 2003 with the BIR on *August 9, 2004*, pursuant to Section 112(A) of the NIRC, in relation to RR 7-95. The judicial claim for refund for unutilized input VAT covering the 1st and the 2nd quarters of 2003 was also seasonably filed on *May 5, 2005*.

Respondent has sufficiently proven that it is entitled to a refund amounting to ₱1,147,683.78

A review of the records of this case shows that the Court in Division made no error in partially granting respondent's claim for refund of unutilized input VAT for the period of January 1, 2003 to June 30, 2003.

We agree with the following findings of the Court in Division that only respondent's zero-rated sales in the amount of ₱62,277,136.49 were substantiated and qualified for zero-rating:

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[16] BIR Ruling [DA-489-03] dated December 10, 2003, signed by Deputy Commissioner (Legal and Enforcement Group) Jose Mario C. Buñag.

"Records show that out of P62,787,889.17 declared as zero-rated sales by petitioner,[17] only the amount of P62,277,136.49 consists of direct export sales to Japan by the petitioner, which will qualify for zero-rating. The amount of 138,028,531.00 Japanese Yen or P62,277,136.49 in Philippine Peso covering petitioner's sales for the period of January 1, 2003 to June 30, 2003 was duly substantiated. Petitioner presented Sales Invoices *(Exhibits "H", "I", "J", "K", "L", "O", "P", "Q", "R", "S", "T", "U", "V", and "W")* and Official Receipts *(Exhibits "H-1", "I-1", "J-1", "K-1", "L-1", "O-1", "P-1", "Q-1", "R-1", "S-1", "T-1", "U-1", "V-1", and "W-1")*, which are all zero-rated. The proceeds of the said export sales were inwardly remitted to petitioner, as evidenced by the Certification of the Vice President and Manager for Operations 2 of Mizuho Corporate Bank, Ltd. – Manila Branch *(Exhibit "Z")*, and copies of petitioner's Bank Statements with Mizuho Corporate Bank, Ltd. *(Exhibits "Z-1" to "Z-7")*, and Credit Advices *(Annexes "G-6", "G-10", "G-13", "G-25", "G-29", "G-38", "G-43" and "G-46" of the Petition for Review)*.

However, with regard to the amount of 8,304 US Dollars or its Philippine Peso equivalent to P510,752.68, a perusal of the Sales Invoices *(Exhibits "M" and "N")* and Official Receipts *(Exhibits "M-1" and "N-1")* shows that said amount does not pertain to direct export sales. Petitioner failed to substantiate that said sales were made to entities that are zero-rated. Hence, this Court cannot consider them as zero-rated sales."[18]

We also find that respondent is indeed a duly registered VAT entity with Tax Identification No. 800-001-943-838-V, as shown in its BIR Certificate of Registration, bearing RDO Control No. 94-800-000340.[19]

We likewise quote with approval the Court in Division's findings that out of the total input VAT claim of ₱2,149,684.88, only the amount of ₱1,157,096.26 was duly supported by invoices and/or receipts, pursuant to Section 4.104-5 of RR 7-95, in relation to Sections 110(A) and 113 of the 1997 NIRC, to wit:

"In his report dated February 17, 2006 *(Exhibit "Y")*, the commissioned Independent CPA, Benjamin C. Hortelano, noted the

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[17] Herein respondent.
[18] *Rollo*, pp. 30-31, Decision, C.T.A. Case No. 7243.
[19] *Records*, p. 301, Exhibit "A".

following exceptions, in so far as petitioner's[20] input VAT claim of P2,149,684.88 is concerned:

	Exceptions/Findings	Exhibit No. CPA Report	Amount of Input VAT
a)	Supporting documents not in the name of the Company	"F-1"	P16,884.64
b)	Exceptions supported only by tape receipts	"F-2"	15,061.69
c)	Expenses not incurred within the period	"F-3"	18,881.24
d)	Supporting documents are not VAT registered	"F-4"	97,082.84
e)	ORs not on file for the sale of service	"F-5"	15,379.48
f)	Invoices not on file for purchase of goods	"F-6"	20,470.00
Total			P183,759.89 *(Exhibit "Y")*

After a careful examination of the CPA report and verification of the supporting invoices and receipts covering petitioner's domestic purchases of goods and services *(Exhibits "C1-1" to "C1-89", "C2-1" to "C2-101", "C3-1" to "C3-117", "C4-1" to "C4-111", "C5-1" to "C5-121" and " C6-1" to "C6-163" of Exhibit "Y")*, this Court agrees with the independent CPA that the total input VAT of P183,759.89 excepted by him should be disallowed by this Court from petitioner's claim.

In addition to the disallowed input VAT of P183,759.89, the Court finds that the amount of P808,828.73 *(detailed breakdown, attached as Annex "A" of this Decision)* should also be denied for the following reasons:

	This Court's Findings	Input VAT
a)	Input VAT on purchases of goods supported by zero rated invoice and dated not within the period of claim;	P1,418.18
b)	Input VAT on purchases of goods dated not within the period of claim;	327.27
c)	Input VAT on purchases of goods without invoices and with "NV" Official Receipts altered to VAT;	17,589.08
d)	Input VAT on purchases of services supported by "TIN" VAT Official Receipts;	755,080.05

[20] Herein respondent.

e)	Input VAT on purchases of goods/services supported by invoices/Official Receipts not in the name of the petitioner;	5,721.71
f)	Supporting documents show that the purchases pertain to automobiles, which should be excluded from the claim for refund of input VAT, pursuant to Section 4.104-1 of Revenue Regulations No. 7-95;	28,692.44

Total Input VAT Denied		P808,828.73
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In sum, of the total input VAT claim of P2,149,684.88, only the amount of P1,157,096.26, as computed below, is duly supported by VAT invoices and/or receipts, in accordance with Section 4.104-5 of Revenue Regulations No. 7-95, in relation to Sections 110 (A) and 113 of the NIRC of 1997, as amended:

Amount of Input VAT Claim		P2,149,684.88
Less: Disallowances		
a)	Per CPA's Report	P 183,759.89
b)	Per this Court's findings	808,828.73
		— — — — —
Total Disallowances		P992,588.62

Validly Supported Input VAT		**P1,157,096.26"**[21]
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Therefore, the Court in Division correctly concluded that respondent had sufficiently proven its entitlement to a refund or issuance of a tax credit certificate, representing unutilized excess input taxes, which are directly attributable to its zero-rated sales for the period January 1, 2003 to June 30, 2003, but in the reduced amount of ₱1,147,683.78, computed as follows:

Substantiated Zero-rated Sales	₱62,277,136.49
Divided by Total Zero-Rated Sales per Amended VAT Returns	62,787,889.12
Multiplied by Validly Supported Input VAT	1,157,096.26
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[21] *Rollo*, pp. 35 -37, Decision, C.T.A. Case No. 7243.

Input VAT Attributable to Substantiated Zero-Rated Sales **₱1,147,683.78**

We need not belabor that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[22] Thus, in the absence of the Court's abuse or improvident exercise of authority, findings of facts made by the Court in Division, especially if supported by the evidence, must be accorded deference and respect.[23] Such is the situation in the present case.

In view of the foregoing, We find no cogent reason to reverse the assailed Decision promulgated on October 4, 2007 and the Resolution dated January 3, 2008.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED.** Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

[22] El Greco Ship Manning and Management Corporation v. Commissioner of Customs, C.T.A. EB No. 172 (C.T.A. Case No. 6618), March 14, 2007.
[23] Union Refinery Corporation v. Commissioner of Customs, C.T.A. EB NO. 149 (C.T.A. Case No. 5917), January 15, 2007.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, 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.

ERNESTO D. ACOSTA
Presiding Justice