REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1265** (CTA Case No. 8620)
- versus-	Present:
	Del Rosario, *PJ*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
CE CASECNAN WATER AND ENERGY COMPANY, INC., *Respondent.*	Promulgated: JAN 14 2016 11:38a.m.

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DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a petition for review under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (CTA), seeking the nullification of the *Decision*[1], dated September 16, 2014, and *Resolution*[2], dated December 18, 2014, of the CTA First Division in CTA Case No. 8620.

The Facts

The facts, as found by the Division, are as follows:

> "Petitioner [now, respondent] is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at Pantabangan, Nueva Ecija.

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[1] *Rollo*, CTA EB No. 1265, pp. 22-62.
[2] *Rollo*, pp. 63-65.

Respondent [now, petitioner], on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR), empowered to perform the duties of said office, including among others, the power to decide, approve, and grant refunds and/or tax credits of erroneously paid taxes, as provided by law.

Petitioner was incorporated on September 21, 1994, the primary purpose of which is to 'design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydro-electric power project and related facilities in Central Luzon, Philippines, for the conversion into electricity of water provided by and under contract with the National Irrigation Administration for the supply of water for agricultural purposes to the National Irrigation Administration (the 'Project'); provided that, in no event shall the corporation itself engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility to furnish electricity to end-users and consumers, or provide a public service or engage in industries or activities reserved by the Constitution or by law to corporation wholly or partially owned by Filipino citizens.' It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification No. 004-500-931-000.

Petitioner's multipurpose irrigation and power plant project, with an installed capacity of 140-150 MW hydropower generation plant component, has been duly accredited and certified as a Private Sector Generation Facility by the Department of Energy (DOE) as evidenced by its Certificate of Accreditation No. 95-07-12 issued by the DOE on July 20, 1995. On June 21, 2010, petitioner was issued a Certificate of Compliance No. 10-06-GN8-10701 by the Energy Regulatory Commission (ERC) for its Hydroelectric Generation Facilities which is valid until June 20, 2015.

Petitioner filed with the BIR its Original and Amended Quarterly VAT Returns for the 1st to 4th quarters of the year 2011 on the following dates:

Exhibit	Taxable Quarter	Date of Filing of Quarter VAT Return and Reference No.
"P-8"	1st	April 25, 2011/101100004709121
"P-12"	1st (Amended)	November 15, 2012/101200006573724
"P-9"	2nd	July 25, 2011/101100004968255
"P-13"	2nd (Amended)	November 15, 2012/101200006574447
"P-10"	3rd	October 25, 2011/101100005233508
"P-14"	3rd (Amended)	November 15, 2012/101200006575354
"P-11"	4th	January 25, 2012/101200005545659
"P-15"	4th (Amended)	November 16, 2012/101200006577452

> On November 16, 2012, petitioner filed with the Large Taxpayers Excise Audit Division I of the BIR (BIR-LTEAD I) an administrative claim for refund or tax credit of its unutilized input VAT for the period covering the 1st quarter to the 4th quarter of the year 2011. Claiming inaction on the part of respondent, petitioner filed on March 21, 2013 the present Petition for Review invoking Section 112(C) of the National Internal Revenue Code of 1997 (1997 NIRC), as amended. Petitioner prays for a refund or issuance of a TCC in the amount of P17,807,940.34, allegedly representing its unutilized input VAT for the four quarters of the year 2011."[3] (*Citations omitted*)

After trial, the CTA First Division found that respondent CE Casecnan has sufficiently proven its entitlement to a refund or issuance of a TCC in the amount of P17,593,284.22, representing its unutilized input VAT incurred for the four quarters of the year 2011 attributable to its zero-rated receipts for the same period. Thus, the Division's September 16, 2014 *Decision*, as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent COMMISSIONER OF INTERNAL REVENUE [herein petitioner] is ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner CE CASECNAN WATER AND ENERGY COMPANY, INC. [herein respondent] in the reduced amount of P17,593,284.22, representing petitioner's unutilized excess input VAT attributable to its zero-rated sales of generated power to NIA for the four quarters of 2011.[4]

The CTA First Division denied the motion for reconsideration in its December 18, 2014 *Resolution*. Hence, the instant Petition for Review filed by the Commissioner of Internal Revenue (CIR).

Respondent CE Casecnan Water and Energy Company, Inc. filed its Comment on May 13, 2015.[5] The CTA *En Banc*

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[3] *Rollo*, pp. 22-24.
[4] *Rollo*, p. 61.
[5] *Rollo*, pp. 119-131.

resolved to give due course to the petition and ordered the parties to file their memoranda.[6]

Respondent filed its Memorandum[7] through registered mail on July 8, 2015, which was received by the CTA on July 16, 2015. Petitioner failed to file her memorandum.[8]

The instant case was deemed submitted for decision in the CTA *En Banc*'s Resolution dated August 4, 2015.[9]

Issues

The issues raised by petitioner CIR are:

A. Whether or not respondent's failure to submit complete supporting documents was tantamount to a non-exhaustion of its administrative remedies, which then prevented this Honorable Court from assuming jurisdiction over the petition for review filed by respondent.

B. Whether respondent is entitled to a refund of, and/or issuance of tax credit certificate for, its unutilized input VAT in the reduced amount of P17,593,284.22.[10]

Ruling of the Court

Petitioner argues that the CTA Division did not have jurisdiction over respondent's claim because respondent's supporting documents for its administrative claim for refund were grossly insufficient.[11] This failure to submit the necessary supporting documents means that respondent's claim for refund cannot be acted upon by petitioner and is merely *pro forma*. In sum, respondent failed to exhaust administrative

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[6] *Rollo*, p. 134.
[7] *Rollo*, pp. 136-156.
[8] *Rollo*, p. 160.
[9] *Rollo*, p. 162.
[10] *Rollo*, pp. 11-12.
[11] *Rollo*, p. 12.

remedies and as such, the petition for review before the CTA Division should have been dismissed.[12]

Respondent argues that petitioner's arguments are a mere replication of the arguments presented in the motion for reconsideration before the CTA Division. These arguments have already been sufficiently and correctly discussed in the CTA Division's December 18, 2014 *Resolution*. [13] Notwithstanding, respondent argues that it submitted sufficient and complete supporting documents with its administrative claim for refund, and that petitioner never made any request for additional supporting documents from respondent.[14] Respondent reiterates that the CTA Division had already held that the documents attached to the administrative claim for refund were already complete, and thus the 120-day period already commenced.[15]

In essence, petitioner once again argues that respondent failed to submit complete supporting documents for its administrative claim for refund, which failure amounts to non-exhaustion of administrative remedies and which renders the judicial claim for refund dismissible on the ground of premature filing.

The Court *En Banc* finds no reason to modify or reverse the CTA Division's findings that respondent had submitted the supporting documents simultaneously with the filing of its administrative claim for refund. Thus, as succinctly summarized by the CTA Division in its *Resolution*:

> "To recall, in the assailed Decision, the Court found that when petitioner [herein respondent] filed its administrative claim on November 16, 2012, petitioner simultaneously submitted various documents in support thereof and informed the respondent [now petitioner] that its books of accounts and accounting records are already available for audit and verification of the BIR. Thus, the 120-day period started and continued to run from the date when petitioner filed its administrative claim as it was on the same date that petitioner submitted its supporting documents to substantiate its claim. Contrary to respondent's argument, petitioner's judicial claim was not

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[12] *Rollo*, p. 16.
[13] *Rollo*, p. 120.
[14] *Rollo*, pp. 123-124.
[15] *Rollo*, p. 129.

> prematurely filed as the same was filed within 30 days from the expiration of the 120-day period, xxx."[16]

Petitioner argues that only 28 classes of supporting documents were submitted by respondent with its administrative claim, and yet petitioner did not make any request for the submission of additional supporting documents.

It has been held that the determination of what are "complete documents" lies with the taxpayer. In the instant case, respondent submitted its supporting documents with its administrative claim. Petitioner did not make any request for additional documents. Thus, the running of the 120-day period commenced and continued to run from the date respondent filed its administrative claim for refund together with the said 28 classes of supporting documents.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[16] *Rollo*, p. 64.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice