REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TOTAL (PHILIPPINES) CORPORATION, Petitioner,	**CTA EB No. 1154** (CTA Case Nos. 7898, 7980, and 8008)
-versus-	Present: Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 21 2015 11:58 a.m.

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DECISION

CASTAÑEDA, JR. *J.*:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed by petitioner TOTAL (PHILIPPINES) CORPORATION assailing the (1) Resolution of the CTA Special First Division dated March 17, 2014,[1] which denied for lack of merit, petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration; and (2) Decision of the CTA Special First Division dated July 24, 2013,[2] which denied the Petitions for Review.

THE FACTS

[1] *Rollo*, pp. 30-44. Penned by Associate Justice Erlinda P. Uy, with Associate Justice Esperanza R. Fabon-Victorino, concurring.
[2] *Rollo*, pp. 46-81. Penned by Associate Justice Erlinda P. Uy, with Associate Justice Esperanza R. Fabon-Victorino, concurring.

The facts of the case as found by the CTA Special First Division are as follows:

Petitioner Total (Philippines) Corporation is a domestic corporation duly registered with and licensed by the Securities and Exchange Commission (SEC), with principal office address at Penthouse, Total Corporate Center, 1012 Triangle Drive, North Bonifacio, Bonifacio Global City, 1634 Taguig City. It is licensed by the SEC to acquire, assemble, install, construct, equip, repair, remodel, maintain, develop, operate, hold, own, lease and otherwise deal with oil terminals and service station networks; to develop and operate a wholesale distribution network and carry out the purchase, acquisition, including importation, if appropriate, storage, marketing, distribution, transport, use, wholesale, exportation, refinement, treatment, distillation and manufacture of, and generally deal in, Fuel Oils, Gas Oils, Gasolines, Lubricants and, subject to market conditions, Bitumens, Solvents and Kerosenes and, subject to the written agreement of the stockholders any and all kinds of oil and oil products, such as Jet Fuel and liquefied petroleum gas.

Moreover, petitioner is a VAT-registered entity and was assigned with Taxpayer's Identification Number (TIN) 005-145-964-000 VAT. Such registration was made on September 5, 1997.

On the other hand, respondent Commissioner of Internal Revenue is sued in her official capacity, having been duly appointed and empowered to perform the duties of her office, including, among others, to act and approve claims for refund or tax credit as provided by law. She holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

On the belief that it has unutilized input tax for the first, second, third, and fourth quarters of 2007, petitioner filed its administrative claims for refund with the Large Taxpayer Audit and Investigation Division II of the BIR, summarized as follows:

Exhibit	Period Covered		Amount Claimed	Date of Filing
"D"	1st & 2nd Quarters, 2007		P49,384,322.00	March 31, 2009
"E"	3rd Quarter, 2007		P33,010,816.00	June 2, 2009
"F"	4th Quarter, 2007		P38,175,828.03	October 27, 2009
		Total	P120,570,966.03	

Subsequently, petitioner filed its judicial claims for refund on the following dates:

Case No.	Period Covered	Date of Filing
CTA Case No. 7898	1st & 2nd Quarters, 2007	March 31, 2009

CTA Case No. 7980	3rd Quarter, 2007	September 30, 2009
CTA Case No. 8008	4th Quarter, 2007	December 21, 2009

Respondent filed her separate Answers to the Petitions for Review on the following dates: (1) in CTA Case No. 7898, on May 5, 2009; (2) in CTA Case No. 7980, on November 11, 2009; and in CTA Case No. 8008, on January 25, 2010. Basically, respondent raises the following similar arguments and defenses in her separate Answers, to wit:

1) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

2) The amounts of P49,384,322 for the period from January 1, 2007 to June 30, 2007; P33,010,816.00 for the period July 1, 2007 to September 30, 2007; and P38,175,828.03 for the period from 1 October 2007 to 31 December 2007, subject of petitioner's refund claims in CTA Case Nos. 7898, and 8008,[3] respectively, as alleged unutilized VAT input taxes were not properly documented.

3) 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/credit.

4) To support its claim, it is imperative for petitioner to prove the following, *viz.*:

a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a (a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);

b. The invoicing and accounting requirements for Vat-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98. It is worthy of emphasis that Section 112 (D) of the NIRC of 1997 requires the submission of complete documents in support of the application

[3] Also in CTA Case 7980 for the period July 1, 2007 to September 30, 2007.

filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of taxable year 2005 (should be 2007) were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) year after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) of the NIRC of 1997;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the NIRC of 1997, and in pursuance to Section 4.104-5(a) and (b) of Revenue Regulations No. 7-95 (RE: Substantiation of Claims for Input Tax Credit); and

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits).

5) All the Petitions for Review in the instant consolidated cases were prematurely filed in contravention of Section 112(D) of the NIRC of 1997, which 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.

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 may, 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.'

It is clear from the foregoing provision of law that petitioner should give respondent 120 days to process its claim for refund. It can appeal to this Honorable Court only after the expiration of the 120-day period granted by law or within thirty days from the decision of respondent denying its claim for refund. All of the Petitions for Review filed in these consolidated cases were prematurely filed, to wit:

a. In CTA Case No. 7898, petitioner filed its administrative claim for refund on the same day that it filed the instant petition for review on March 31, 2009;

b. In CTA Case No. 7980, petitioner filed its judicial claim September 30, 2009 or within 120 days after it filed its administrative claim on June 2, 2009; and

c. In CTA Case No. 8008, petitioner filed its judicial claim on December 21, 2009 or within 120 days after it filed its administrative claim for refund on October 27, 2009.

6) Petitioner did not submit complete documents in support of its administrative claim for refund in CTA Case Nos. 7898 and 8008 and therefore the 120-day period commenced to run on the date of filing of the administrative claims in said cases; while petitioner only submitted 4 documents during the administrative proceedings in CTA Case No. 7980. It seems that petitioner only

plans to present the necessary documents/evidences allegedly supporting its claim for refund before this Honorable Court. It is well-settled that matters not raised in the administrative level cannot be raised for the first time on appeal. (*Aguinaldo Industries Corp. Fishing Nets Division vs. Commissioner of Internal Revenue, et al.*, L-29790, February 25, 1982).

7) Equally noteworthy is the fact that the Highest Tribunal in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526 promulgated on March 26, 2007 held:

> "Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceeding in that court. First a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that quasi-judicial agency *a quo* did not have reason to deny its claim. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to grant of its claim but also that is satisfied all the documentary evidence and evidentiary requirements for administrative claim for refund or tax credit. x x x" (Underscoring provided)

On April 20, 2010, petitioner moved for the consolidation of CTA Case Nos. 7898, 7980 and 8008. In the Resolution dated April 27, 2010, this Court granted petitioner's motion, and the three (3) cases were accordingly consolidated.

During trial, petitioner presented testimonial and documentary evidence in support of its claims. On the other hand, respondent's counsel manifested during the hearing held on May 8, 2012 that there was no report of investigation from the Revenue Examiner regarding petitioner's administrative claim for refund, and thus he waived respondent's right to present evidence.

Per this Court's Resolution dated May 23, 2012, the parties were directed to file their respective Memorandum within thirty (30) days from said date.

These cases were submitted for decision after respondent filed her Memorandum on June 6, 2012, and petitioner filed its Memorandum on August 6, 2012. *gr*

On July 24, 2013, CTA Special First Division promulgated a Decision denying the Petitions for Review, the dispositive portion of which reads as follows:

> **WHEREFORE,** in view of the foregoing considerations, the present Petitions for Review are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[4]

On August 30, 2013, petitioner filed a Motion for Reconsideration.[5] On September 20, 2013, respondent filed her Comment/Opposition (Re: Motion for Reconsideration)[6] and on the same date, petitioner submitted a Supplemental Motion for Reconsideration[7]. The CTA Special First Division denied both the Motion for Reconsideration and the Supplemental Motion for Reconsideration in its March 17, 2014 Resolution[8], the dispositive portion of which is as follows:

> **WHEREFORE**, all the foregoing considered, the instant *Motion for Reconsideration* and *Supplemental Motion for Reconsideration* are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[9]

Hence, this Petition for Review *En Banc.*

THE ISSUES

Petitioner raises the following assignment of errors:

I.

THE HONORABLE SPECIAL FIRST DIVISION ERRED IN DISREGARDING PETITIONER'S SALES IN 2007 IN THE AMOUNT OF ₱1,091,958,783.59 AS ZERO-RATED SALES, THE SAME HAVING BEEN ACTUALLY EXPORTED OR SOLD TO ENTITIES REGISTERED WITH PEZA/CDC/BOI.

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[4] *Rollo,* p. 80.
[5] Division Docket, CTA Case No. 7898, pp. 851-1257.
[6] Division Docket, CTA Case No. 7898, pp. 1293-1300.
[7] Division Docket, CTA Case No. 7898, pp. 1259-1292.
[8] *Rollo*, pp. 30-44.
[9] *Ibid.*, p. 43.

II.

THE HONORABLE SPECIAL FIRST DIVISION ERRED IN DISREGARDING THE INPUT VAT FROM THE PREVIOUS QUARTER.

III.

THE HONORABLE SPECIAL FIRST DIVISION ERRED IN THE DISALLOWANCE OF PETITIONER'S INPUT TAX IN THE AMOUNT OF ₱99,993,863.07.

IV.

THE HONORABLE SPECIAL FIRST DIVISION IN RULING THAT THE GRANT OF REFUND OR TAX CREDIT REPRESENTING INPUT VAT, ATTRIBUTABLE TO ZERO-RATED SALES MUST BE MADE ONLY "IN PROPER CASES".

THIS COURT'S RULING

The petition is dismissed for lack of merit.

After a careful reexamination of the records of this case, We find no cogent reason to overturn the findings and conclusion of the CTA Special First Division (Court *a quo*).

Petitioner failed to prove that its sales were zero-rated sales.

Based on the findings of the Court *a quo*, out of the alleged zero-rated sales of ₱1,091,958,783.59, only the amount of ₱74,460,845.27 was considered while the remainder was disregarded for lack of sufficient evidence to prove that it pertained to zero-rated sales. Petitioner failed to prove that the sales were made to entities duly registered with Philippine Economic Zone Authority (PEZA), Clark Development Corporation (CDC), or Board of Investment (BOI).

As correctly found by the Court *a quo*, some Certifications/Certificate of Registration failed to indicate the effectivity dates or period of coverage of the registration. The period of coverage will aid the court in ascertaining whether or not the sales for taxable year 2007 were made to duly registered PEZA/CDC/BOI entities. The court cannot easily assume that once an entity is registered, the registration covers an infinite period. It appears from the other certifications that a certain period of coverage or effectivity date was indicated. Hence, absence of the required period of coverage, there is no way the court can determine if the said registration covers the taxable year involved.

We agree with the ruling of the Court *a quo* when it reasoned out as follows:

> However, it must be remembered that the period covered by the instant claim is taxable year 2007, and therefore, only the Certifications which are indicative of the fact that the named entities therein are <u>duly registered</u> with the PEZA or BOI or CDC, as the case may be, and <u>only during the effectivity thereof, which must be within the year 2007</u>, shall be considered valid for purposes of determining petitioner's zero-rated sales for the year 2007. As a corollary, any sale to the above-named entities at the time their respective registration has expired, either fully for the entire year of 2007, or partially after a certain month in 2007, or was not yet effective in the year 2007, shall not be included in the computation of such zero-rated sales for the said year.
>
> **Circumspection is called for in this instance, since the respective registration with the above-stated government agencies may already have been revoked or suspended, or is not yet effective or is no longer renewed, in the year 2007**. It must be emphasized that to be subject to zero percent (0%) VAT, it is crucial that a transaction be classified as an export sale, which in turn is dependent on the requirement that the sale was indeed made to an enterprise, whose registration with any of the said government agencies is already effective or is still in effect. [10] (Emphasis ours)

Meanwhile, We cannot give evidentiary value on the Certifications and additional evidence attached to petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration. These pieces of evidence were not submitted during trial, were not formally offered, and were merely attached to the Motion for Reconsideration and to the Supplemental Motion for Reconsideration.

In the recent case of *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*,[11] the Supreme Court restated the significance of formal offer of evidence in a proceeding before the CTA. It was held:

> While we concur with petitioner that 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 PANs as evidence of the taxpayer's liability is not mere procedural technicality. It is a means by which a taxpayer is informed of his liability for deficiency taxes. It serves as basis for the taxpayer to answer the notices, present his case and adduce supporting

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[10] *Rollo*, p. 70. Decision dated July 24, 2013.
[11] G.R. No. 197515, July 2, 2014, 729 SCRA 113.

evidence. More so, the same is the only means by which the CTA may ascertain and verify the truth of respondent's claims. We are, therefore, constrained to apply our ruling in *Heirs of Pedro Pasag v. Spouses Parocha*, *viz.*:

> xxx . ***A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial.*** Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, ***this allows opposing parties to examine the evidence and object to its admissibility.*** Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.[12] (Underline ours)

On the other hand, the Supreme Court recognized the condition when relaxation of rules is proper. A document, not formally offered, may be admitted provided the following requirements are present: (1) the same must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case. Being an exception, the same may only be applied when there is strict compliance with the requisites mentioned above; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court[13] should prevail.[14]

Since this case does not fall within the exception, the CTA is constrained to disregard the documents attached to petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration. "Cases filed in the Court of Tax Appeals are litigated *de novo*."[15] Thus, petitioner "should prove every minute aspect of its case by presenting, formally offering and submitting ... to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim"[16].

Input Tax carried over from the previous quarter was not validated.

Petitioner insists that there is no more need to validate the input tax carried over from the previous quarter (fourth quarter) of 2006. According to petitioner, what is required is for the taxpayer to validate only the input taxes out of which the claim is being made, *i.e.*, for taxable year 2007. Also, petitioner would like the court to look into the validation made in the Independent CPA Report in CTA Case No. 7855, which allegedly shows the

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[12] *Ibid.*
[13] 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.
[14] *Supra,* note 11.
[15] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014.
[16] *Ibid.*

validation of the amount carried over from the last quarter of 2006 to the first quarter of 2007.

We are not convinced.

The validation of the carried over excess input VAT from the last quarter of 2006 is necessary in the determination of petitioner's entitlement to refund. This is to verify that the 2006 carried over input VAT is sufficient to cover the 2007 output VAT so that the 2007 input VAT remains undiminished by any 2007 output VAT.

Meanwhile, We cannot take judicial notice of the Independent CPA Report in CTA Case No. 7855 which allegedly validated the 2006 carried over input VAT. In the case of *Silkair (Singapore) Pte. Ltd v. Commissioner of Internal Revenue*,[17] the Supreme Court explained the circumstances when the courts may take judicial notice, to wit:

> Furthermore, the documents are not among the matters which the law mandatorily requires the Court to take judicial notice of, without any introduction of evidence, as petitioner would have the CTA do. Section 1, Rule 129 of the Rules of Court reads:
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> "SECTION 1. *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions."
>
> Neither could it be said that petitioner's SEC Registration and operating permits from the CAB are documents which are of public knowledge, capable of unquestionable demonstration, or ought to be known to the judges because of their judicial functions, in order to allow the CTA to take discretionary judicial notice of the said documents.
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> Moreover, Section 3 of the same Rule provides that a hearing is necessary before judicial notice of any matter may be taken by the court. This requirement of a hearing is needed so

[17] G.R. No. 184398, February 25, 2010, 613 SCRA 638.

that the parties can be heard thereon if such matter is decisive of a material issue in the case.

Thus, the Report of an Independent CPA is not a document which allows the court to take judicial notice of, mandatorily or discretionarily. A hearing is necessary before judicial notice of the said report may be taken by the court.

Valid disallowance of petitioner's input VAT in the amount of ₱99,993,863.07.

On the argument that the input VAT disallowances were baseless, the same argument was already raised in petitioner's Motion for Reconsideration filed on August 30, 2013. This argument was extensively passed upon by the Court *a quo* and sufficiently explained in the assailed Resolution, and even if the same argument was to be given a second look, We find no merit.

At any rate, We emphasize the recent cases where the Supreme Court observed the stringent application of the substantiation requirements under the law and its implementing regulations. The non-compliance with the requirements led to the denial of claims for refund. In the case of *Taganito Mining Corporation v. Commissioner of Internal Revenue,*[18] the claim for refund was denied for failure to provide the valid import entries.

> Even assuming that the proper year was indicated, these official receipts would still not comply with the substantiation requirements provided by law. Indeed, under Sections 110(A) and 113(A) of the NIRC, any input tax that is subject of a claim for refund must be evidenced by a VAT invoice or official receipt. With regard to the importation of goods or properties, however, Section 4.110-8 of R.R. No. 16-05, as amended, further requires that an import entry or other equivalent document showing actual payment of VAT on the imported goods must also be submitted, to wit:
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> > SECTION 4.110-8. Substantiation of Input Tax Credits. — (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents and must be reported in the information returns required to be submitted to the Bureau:

[18] G.R. No. 201195, November 26, 2014.

> (1) **For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.**
>
> (Emphasis supplied)
>
> In relation to this requirement, Customs Administrative Order No. 2-95 provides:
>
> > 2.3 The Bureau of Customs Official Receipt (BCOR) will no longer be issued by the AABs (Authorized Agent Banks) for the duties and taxes collected. In lieu thereof, **the amount of duty and tax collected including other required information must be machine validated directly on the following import documents and signed by the duly authorized bank official**:
> >
> > 2.3.1 Import Entry and Internal Revenue Declaration (IEIRD) for final payment of duties and taxes.
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> > xxx
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> From the foregoing, it is apparent that an IEIRD is required to properly substantiate the payment of the duties and taxes on imported goods. Considering that the petitioner failed to submit the import entries relevant to its claim, the CTA did not err in ruling that the petitioner's claim was not sufficiently proven. (Emphases ours)

In *Bonifacio Water Corporation (formerly Bonifacio Vivendi Water Corporation) v. The Commissioner of Internal Revenue,*[19] the official receipts issued under the new corporate name of the taxpayer were disallowed on the ground that the use of said business name was without approval of the SEC. In strict adherence to the invoicing requirements under the law and regulations, the Supreme Court ruled as follows:

> xxx the taxpayer, claiming the refund must comply with invoicing and accounting requirements mandated by the Tax Code, as well as the revenue regulations implementing them.
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> Thus, the change of petitioner's name to "Bonifacio GDE Water Corporation," being unauthorized and without approval of the SEC, and the issuance of official receipts under the name which were presented to support petitioner's claim for tax refund, cannot be used to allow the grant of tax refund or issuance of a tax credit certificate in petitioner's favour. The absence of official receipts issued in its name is tantamount to non-compliance with the substantiation requirements provided by law and, hence, the CTA *En Banc*'s partial grant of its refund on that ground should be upheld. *gr*

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[19] G.R. No. 175142, July 22, 2013, 701 SCRA 574.

In *Eastern Telecommunications Philippines Inc. v. Commissioner of Internal Revenue*,[20] the implementing regulations on invoicing requirements, particularly RR No. 7-95 and Revenue Memorandum Circular (RMC) No. 42-2003, were recognized as valid and were given effect as follows:

> Consequently, the following invoicing requirements enumerated in Section 4.108-1 of Revenue Regulations No. 7-95 must be observed by all VAT-registered taxpayers:
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> > Sec. 4.108-1. *Invoicing Requirements.* — **All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:**
> >
> > 1. the name, TIN and address of seller;
> > 2. date of transaction;
> > 3. quantity, unit cost and description of merchandise or nature of service;
> > 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> > 5. **the word "zero-rated" imprinted on the invoice covering zero-rated sales**; and
> > 6. the invoice value or consideration.
> >
> > In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.
> >
> > Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT invoice." All purchases covered by invoices other than a "VAT Invoice" shall not give rise to any input tax. (Emphasis supplied)
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> xxx xxx xxx
>
> A consequence of failing to comply with the invoicing requirements is the denial of the claim for tax refund or tax credit, as stated in Revenue Memorandum Circular No. 42-2003, to wit:
>
> > A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant. (Underlines ours)

In *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*,[21] the Supreme Court ruled that "in a claim for tax refund

[20] G.R. No. 168856, August 29, 2012, 679 SCRA 305.
[21] G.R. No. 181136, June 13, 2012, 672 SCRA 350.

or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit.[22]" Similarly, in *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue*,[23] the taxpayer's claim for refund was denied when the invoicing requirements were not complied with, *viz.*:

> The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales. **A "VAT invoice" is an invoice that meets the requirements of Section 4.108-1 of RR 7-95**. Contrary to Microsoft's claim, RR 7-95 expressly states that "[A]ll purchases covered by invoices other than a VAT invoice shall not give rise to any input tax." [24](Emphasis ours)

Therefore, in view of the foregoing, "the Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim."[25]

Refund of input VAT is proper when input VAT, attributable to zero-rated sales, exceeds output VAT.

Petitioner maintains that it is entitled to refund of input taxes related to VAT zero-rated sales, regardless of the amount of total input taxes and output taxes. Essentially, petitioner claims that under Section 112 of the NIRC of 1997, a taxpayer can claim input VAT attributable to zero-rated sales even if the output VAT on other taxable sales is greater than its input taxes attributable to zero-rated sales.

The argument lacks merit. As aptly explained in the assailed Resolution, Section 112 of the NIRC of 1997 must be read in relation to the whole law, particularly to Section 110 of the same law which provides:

SEC. 110. *Tax Credits.* — . . .

xxx xxx xxx *jr*

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[22] *Ibid.*
[23] G.R. No. 180173, April 6, 2011, 647 SCRA 398.
[24] *Ibid.*
[25] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: [*Provided*, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT:][26] *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

It is clear from the provision of law that when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter/s. But when input tax, attributable to zero-rated sales, exceeds the output tax, it may be refunded or credited. Hence, for input tax attributable to zero-rated sales, it is only when input tax exceeds the output tax that a refund or credit is proper.

Moreover, the Court *a quo* debunked petitioner's argument in the assailed Resolution, thus:

> While it may be true that a reading of the said Section 112(A) appears to suggest that input VAT, which is attributable to zero-rated sales and "to the extent that such input tax has not been applied against the output tax", may be applied, without any further requirement, for the issuance of a tax credit certificate or refund, the said provision may not be read or applied in isolation with the other provisions of the VAT law.
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> xxx xxx xxx
>
> Thus, the aforequoted Section 112 must still be read in conjunction with Section 110 (B) of the same Code, as last amended by RA No. 9361, provides as follows:
>
> "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: *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered

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[26] Bracketed proviso was deleted by RA 9361, which took effect on 13 December 2006.

> person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."
>
> It is clear from the last proviso of the foregoing Section 110 (B) that the refund or credit of *"any input tax attributable to zero-rated sales by a VAT-registered person"* is *"subject to the provisions of Section 112."* Correspondingly, the grant of such refund or credit cannot be confined merely to the provisions of paragraph (A) of Section 112, but must perforce include the whole of Section 112.
>
> The term "in proper cases" under Section 112 (C) qualifies the granting of refund under Section 112 (A). Thus, it is not only when the input VAT is attributable to zero-rated sales and the same has not been applied against the output VAT that the grant of refund or tax credit may be made; it must likewise be "proper" or appropriate under the circumstances.
>
> In this case, on the basis of the evidence offered and admitted during the trial, it is the finding of this Court that the output VAT liability of petitioner is more than its input VAT credits for the four (4) quarters of taxable year 2007, to wit:
>
> xxx xxx xxx
>
> **The first sentence of the aforequoted Section 110 (B) is plain that *"(i)f at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person."* Thus, it would be "improper" or inappropriate, if not irregular, to grant a refund of, or issue a tax credit certificate for, input VAT in favor of petitioner where there are still unpaid output VAT for taxable year 2007.**

"Indeed, it has been pronounced time and again that taxes are the lifeblood of the government and, consequently, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed."[27]

WHEREFORE, in view of the foregoing, the Petition for Review is **DISMISSED.** Accordingly, the assailed Decision and Resolution of the CTA Special First Division promulgated on July 24, 2013 and March 17, 2014, respectively, are hereby **AFFIRMED.**

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[27] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, October 22, 2014.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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