REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CRESCENT PARK 6-3 PROPERTY HOLDINGS, INC., *Petitioner,*	CTA EB No. 1126 (CTA CASE No. 8058)
-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: OCT 15 2015 2:30 p.m.

x---x

DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Amended Decision dated February 05,

---

[1] **SEC. 4.** *Where to appeal; mode of appeal.* –

x x x x x x x x x

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

x x x x x x x x x

2014[2] rendered by the Special First Division of this Court, the dispositive portion of which reads as follows:

> "**WHEREFORE,** premises considered, respondent's "**MOTION FOR RECONSIDERATION**" is hereby **GRANTED.** Accordingly, the Amended Decision of this Court dated July 15, 2013 is hereby **CANCELLED** and **SET ASIDE** and the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

The facts of the case, as recited by the Special First Division in its Decision,[3] read as follows:

> "Petitioner Crescent Park 6-3 Property Holdings, Inc. is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Company Registration Number CS200604935, with principal office address at Net One Center, Third Avenue corner 26th Street, E-Square Crescent Park West, Bonifacio Global City, Taguig City. It is also a VAT-registered entity as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. 9RC0000224650 VAT and Taxpayer's Identification Number (TIN) 006-939-704-000 VAT.
>
> Respondent is the Commissioner of Internal Revenue, sued in her official capacity, having been duly appointed and empowered to perform the duties of her office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law.
>
> Petitioner was established to buy and acquire by purchase, lease or otherwise, lands, and interest in land and to own, hold, improve, promote, develop, subdivide and manage any land owned, held or occupied by the corporation or belonging to them, to construct, erect and manage or administer buildings such as condominiums, apartments, hotels,

---

[2] Penned by Associate Justice Erlinda P. Uy, concurred in by Associate Justice Esperanza R. Fabon-Victorino, *En Banc* Docket, pp. 58-65.
[3] January 04, 2013, *En Banc* Docket, pp. 24-43.

restaurants, stores or other structures now or hereafter erected on any land owned, held or occupied by it.

On January 5, 2008, petitioner and 6-3 Property Holdings, Inc., a Philippine Economic Zone Authority (PEZA)-registered entity (an Ecozone Facilities Enterprise) at E-Square Information Technology Park, entered into a contract, whereby the latter sold by virtue of a "Deed of Absolute Sale of Land on Installment" a parcel of land consisting of 1,600 square meters located at 30th Street corner 3rd Avenue, Bonifacio Global City, Taguig City, Metro Manila in favor of petitioner for the amount of P178,944,000.00.

Subsequently, on January 9, 2008, petitioner and 6-3 Property Holdings, Inc. entered into a "Land Lease Agreement", whereby the same parcel of land covered by the "Deed of Absolute Sale of Land on Installment" was leased back by petitioner in favor of 6-3 Property Holdings, Inc. in order for the latter to build and maintain a PEZA-registered information technology building or facility. The term of the lease shall be for a period of fifty (50) years from the signing of the contract.

Petitioner filed its original and amended Quarterly VAT Returns for the years 2008 and 2009. The said amended Quarterly VAT Returns, with the exception of amended Quarterly VAT Return for the third quarter of 2009, reported that petitioner had a tax overpayment in the amount of P21,473,280.00.

Petitioner, on March 29, 2010, filed an application for issuance of tax credit certificate representing unutilized input VAT in the amount of P21,473,280.00 with Revenue District Office No. 44 (Taguig-Pateros).

Two days later or on March 31, 2010, petitioner filed its judicial claim for refund/issuance of tax credit certificate in its favor before this Court."

Relying on the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.,*[4] *(the "Aichi*

[4] G.R. No. 184823, October 06, 2010.

Case") the Division ruled to dismiss the Petition for Review for having been filed prematurely.

Crescent Park's Motion for Reconsideration filed on January 31, 2013 was partially granted *via* Amended Decision promulgated on July 15, 2013, in accordance with BIR Ruling No. DA-489-03 as an exception to the 120+30 day rule in *Aichi,* as enunciated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. San Roque Corporation etseq.*[5]

CIR's Motion for Reconsideration of the July 15, 2013 Amended Decision was granted *via* the assailed Amended Decision, hence, this Petition.

Petitioner argues in its Petition for Review that to be considered engaged in zero-rated sales, it need not prove compliance with the invoicing requirements on its sales/receipts; instead, it only proves that its sales/receipts are zero-rated. The issues raised by petitioner boils down to the core issue of whether or not its invoices or receipts duly registered with the Bureau of Internal Revenue (BIR) is a requirement for substantiating a claim for refund for unutilized input VAT attributable to its zero-rated sale of service.

We rule to DENY the Petition for Review.

A perusal of the assailed Amended Decision reveals that petitioner's claim for refund was denied due to failure to substantiate its zero-rated sales with official receipts duly registered with the BIR. The assailed Amended Decision provides:

> "As correctly raised by respondent, petitioner's Official Receipt (OR) Nos. 0003, 0004, 0006, 0007, 0008, 0009 and 0010 reveal that the Authority to Print/BIR Permit was issued only on February 22, 2011. However, the said receipts were allegedly issued to 6-3 PHI in 2009. Consequently, petitioner <u>had no duly registered official receipts at the time the</u>

---

[5] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

> sales transaction was made. As such, failure of petitioner to issue a duly registered official receipt warrants the denial of its claim for refund for it failed to substantiate its zero-rated sales." (Underlining Supplied.)

While it is true that non-indication of ATP does not result in outright nullification of one's claim, as contended by petitioner, the denial of its claim was premised on the fact that during the taxable year 2009, the official receipts submitted were not yet duly registered with the BIR. It is important that the ATP is secured and obtained by the taxpayer and the official receipts were duly registered as the burden of proof in claiming refund rests with the taxpayer.

Under Section 112(A)[6] of the National Internal Revenue Code (NIRC) of 1997, as amended, to be entitled to refund of input tax, a claimant must prove, among others, that it is engaged in zero-rated or effectively zero-rated sales, and, to prove said zero-rated or effectively zero-rated sales, the claimant must present duly registered invoices or receipts evidencing zero-rated sales. This is the ruling pronounced by the Supreme Court in the case of *Silicon Philippines Inc., (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*[7] *(the "Silicon Case").* This is in line with the principle that the burden of proving entitlement to a refund lies with the claimant.[8]

---

[6] SEC. 112. Refunds or Tax Credits of Input Tax. –

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

xxx xxx xxx

[7] G.R. No. 172378, January 17, 2011.
[8] Ibid.

At the time the official receipts were issued in 2009, they were not yet registered with the BIR as the ATP/BIR Permit was only issued on February 22, 2011.[9] The denial of the claim in the assailed Amended Decision was premised on the ground that petitioner had no duly registered official receipts at the time the transaction was made, which is what is laid down in the *Silicon Case.*

To note, the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR; otherwise, the invoices or receipts would have no probative value for the purpose of refund. As stated in the *Silicon Case:*

> "But while there is no law requiring the ATP to be printed on the invoices or receipts, Section 238 of the NIRC expressly requires persons engaged in business to secure an ATP from the BIR prior to printing invoices or receipts. Failure to do so makes the person liable under Section 264 of the NIRC.
>
> This brings us to the question of whether a claimant for unutilized input VAT on zero-rated sales is required to present proof that it has secured an ATP from the BIR prior to the printing of its invoices or receipts.
>
> We rule in the affirmative.
>
> Under Section 112(A) of the NIRC, a claimant must be engaged in sales which are zero-rated or effectively zero-rated. To prove this, <u>duly registered invoices or receipts evidencing zero-rated sales must be presented</u>. However, since the ATP is not indicated in the invoices or receipts, <u>the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR. Without this proof, the invoices or receipts would have no probative value for the purpose of refund</u>. xxx" (Underlining Supplied.)c

---

[9] Exhs. "EE", "FF", "GG", "HH", "II", "JJ", and "KK", Division Docket pp. 414-420.

With the findings of the Court in Division in its assailed Amended Decision that the ATP was secured in 2011, only after the official receipts were issued by petitioner in 2009, it clearly shows that petitioner had no duly registered official receipts at the time the sales transactions were made. Absence of a duly-registered official receipts to establish zero-rated sales is fatal to petitioner's claim.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Amended Decision dated February 5, 2014 is hereby **AFFIRMED**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(with dissenting opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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 among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc.*

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

CRESCENT PARK 6-3 PROPERTY HOLDINGS, INC., Petitioner,	**CTA EB Case No. 1126** (CTA Case No. 8058)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 15 2015 2:30 p.m.

x- -x

DISSENTING OPINION

CASANOVA, *J.*:

With utmost respect to the *ponencia* of my esteemed colleague, the Honorable Justice Cielito N. Mindaro-Grulla, I dissent in denying the present Petition for Review[1], filed by petitioner Crescent Park 6-3 Property Holdings, Inc., and, in affirming the Amended Decision[2] dated February 5, 2014 by the Court of Tax Appeal's (CTA) Special First Division in CTA Case No. 8058.

In the penned Decision, the Court *En Banc* chiefly relied in the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing,*

[1] CTA *En Banc* Rollo, pp. 6-22
[2] Division Docket (Vol. II), pp. 691-698

Inc.) vs. Commissioner of Internal Revenue[3] *("Silicon case")*, in denying the present petition on the premise that the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its Authority to Print (ATP) from the Bureau of Internal Revenue (BIR); otherwise, the invoices or receipts would have no probative value for the purpose of refund.

While, I agree in the wisdom of the Supreme Court's rationalization, it is of my humble opinion that the factual milieu in the cited case is different from the case at hand. In the *Silicon case*, petitioner therein, totally disregarded to present to the Court its ATP during trial, or have it indicated in the invoices presented as evidence. It was Silicon Philippines, Inc.'s failure to show that it has indeed secured an ATP from the BIR and, also, to indicate the word "zero-rated" in its export sales invoices that led to the denial of its claim for refund. However, in the present case, petitioner has an ATP. As such, its claim for refund should not be dismissed outright; especially, since in its Amended Decision dated July 15, 2013, the Court *a quo*, after due computation on the merits, found petitioner to be partially entitled to its claim for refund in the reduced amount of ₱21,473,280.00.

Moreover, instead of dismissing petitioner's claim for refund, petitioner should rather be sanctioned under Section 264 of the National Internal Revenue Code of 1997, as amended, which provides that:

> "**Sec. 264.** *Failure or refusal to Issue Receipts or Sales or Commercial Invoices, Violations related to the Printing of such Receipts or Invoices and Other Violations.* -
>
> (a) Any person who, being required under Section 237 to issue receipts or sales or commercial invoices, fails or refuses to issue such receipts of invoices, issues receipts or invoices that do not truly reflect and/or contain all the information required to be shown therein, or uses multiple or double receipts or invoices, shall, upon conviction for each act or omission, be punished by a fine of not less than One thousand pesos (P1,000) but not more than Fifty thousand pesos (P50,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years.

---

[3] G.R. No. 172378, January 17, 2011

(b) Any person who commits any of the acts enumerated hereunder shall be penalized in the same manner and to the same extent as provided for in this Section:

(1) Printing of receipts or sales or commercial invoices without authority from the Bureau of Internal Revenue; or

(2) Printing of double or multiple sets of invoices or receipts; or

(3) Printing of unnumbered receipts or sales or commercial invoices, not bearing the name, business style, Taxpayer Identification Number, and business address of the person or entity."

It is also worthy to note that, the issue of petitioner's ATP only came about during respondent's Motion for Reconsideration[4] dated August 22, 2013. Nowhere in respondent's Answer[5] dated May 24, 2010, and the parties' Joint Stipulation of Facts and Issues[6] dated July 5, 2010, and subsequent Amended Joint Stipulation of Facts and Issues[7] dated July 5, 2012 did the issue of petitioner's ATP was raised. In fact, respondent's main defense revolved around 1) lack of cause of action on the part of the petitioner for non-exhaustion of administrative remedies, and, 2) lack of jurisdiction for there was no decision or inaction which is tantamount to denial by the Commissioner. Thus, to deny petitioner's claim on a different basis which was formulated only after trial would be, in a way, changing the theory of the present case.

In view of the foregoing, I vote to REVERSE and SET ASIDE the Amended Decision dated February 5, 2014, and to REINSTATE the Amended Decision dated July 15, 2013.

CAESAR A. CASANOVA
Associate Justice

---

[4] Division Docket (Vol. II), pp. 665-670
[5] *Ibid.*, (Vol. I), pp. 39-45
[6] *Id.*, pp. 79-83
[7] *Id.*, pp. 91-96