REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NOKIA (PHILIPPINES), INC., Petitioner,	**CTA EB NO. 2238** **(CTA CASE NO. 8405)**
	Present:
-versus-	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, and REYES-FAJARDO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 2 8 2021 2:03 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is the Petition for Review filed by Nokia (Philippines) Inc., under Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court, which seeks to reverse the following:

1. September 24, 2019 Resolution[1] of the CTA Special First Division[2] the dispositive portion of the decision reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **DENIED**, for failure of petitioner to show that its sales of services for the fourth quarter of 2009 qualify for VAT zero-rating.
>
> **SO ORDERED.**"

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[1] Division Docket, pp. 591-601.

[2] Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario inhibiting and Associate Justice Cielito N. Mindaro-Grulla concurring.

2. February 3, 2019 Resolution[3] denying the taxpayer's Motion for Reconsideration for lack of merit.

THE FACTS

The facts are condensed from the records, as follows:

Taxpayer Nokia (Philippines), Inc. [Nokia Philippines] is a domestic corporation[4] and VAT-registered entity, under Certificate of Registration No. OCN 8RC0000019384, with address at the 40th Floor, Philamlife Tower, 8767 Paseo de Roxas Street, Salcedo Village, Makati City.[5]

On the other hand, Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), holding office at BIR National Office, Diliman, Quezon City.[6]

Nokia Philippines is engaged in the business of providing marketing support and other services to its parent company, Nokia Corporation (Finland) [Nokia Finland], and, in the course thereof, purchases various goods and services for which it pays the applicable input VAT.[7]

During the 4th calendar quarter of taxable year 2009, it engaged in numerous transactions which included, among others, rendering marketing support and other services to its parent company Nokia Finland.[8]

Proceedings Before the Court A Quo

On January 21, 2010, petitioner filed its Quarterly VAT Return for the 4th quarter of 2009 via E-filing, wherein it reported its input VAT for the said quarter in the total amount of ₱16,260,487.45.[9]

Subsequently, on September 2, 2011, petitioner filed an administrative claim with the BIR for the refund or issuance of TCC for its alleged unutilized input VAT for the 3rd and 4th quarters of 2009.[10]

Upon the belief that the two (2)-year prescriptive period to file a judicial action under Section 112 (A) of the National Internal Revenue Code (NIRC)

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[3] Annex A, Petition for Review, *Rollo*, pp. 13-18.
[4] Service Agreement between Nokia Corporation and Nokia (Philippines), Inc., Annex H, Petition for Review, Division Docket, p. 35.
[5] November 7, 2014 Decision, Division Docket, p. 413.
[6] *Id.*, pp. 413-414.
[7] Judicial Affidavit of Ms. Joselyn L. Lapira, Shared Accounting Services Manager, Exhibit I, Division Docket, p. 212.
[8] *Id.*
[9] November 7, 2014 Decision, Division Docket, p. 414.
[10] *Id.*

is about to expire, and considering that the claim for refund or tax credit is still pending with respondent, petitioner was allegedly constrained to file a Petition for Review on January 2, 2012 which covers its creditable input VAT for the 4th quarter of 2009 in the amount of ₱16,134,824.44. The case was initially raffled to the Former Second Division of the Court.[11]

In the Answer, the CIR raised the following special and affirmative defenses, to wit:

> "12. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.
>
> 13. xxx. Since tax refunds are regarded as tax exemptions and these are to be construed *strictissimi juris* against the person or entity claiming the exemption. **(Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue, G.R. 141973, June 28, 2005)**
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> 14. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R. 127624, November 18, 2003)** The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund **(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc., G.R. 163835 July 7, 2010).**
>
> 15. To support its claim, it is imperative for petitioner to prove the following, viz.:
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>> 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 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
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>> 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 Tax Code, as amended;
>>
>> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of an administrative application for refund which is a condition sine qua non prior to the filing of a judicial claim** in accordance with Section 112 of the Tax

[11] *Id.*

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

d. That the input taxes of ₱16,134,824.44 allegedly incurred by petitioner for the 4th quarter of taxable year 2009 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to 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 the periods provided in Section 112(A) and (C) of the Tax Code, as amended;

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 Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits)

10. The amount of Sixteen Million, One Hundred Thirty Four Thousand, Eight Hundred Twenty Four and 44/100 (16,134,824.44) claimed by petitioner arising from unutilized input VAT paid and incurred for the taxable year 2009 is not properly documented."[12]

The case was set for pre-trial on April 26, 2012. Thereafter, as directed by the court, both parties filed their Joint Stipulations of Facts and Issues on May 9, 2012, and the same was approved in the Resolution dated May 15, 2012.[13]

During trial, Nokia Philippines presented three (3) witnesses to prove its claim,[14] namely:

- Jocelyn L. Lapira, its Shared Accounting Services Manager;[15]

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[12] *Id.*, pp. 414-417.
[13] *Id.*, p. 417.
[14] *Id.*
[15] Exhibit I, Division Docket, pp. 211-216.

- Abbet R. Barce, the Court-commissioned Independent Certified Public Account;[16] and,

- Bridgette C. Redolfin, its Shared Accounting Services Accountant.[17]

Pursuant to the Order dated April 2, 2013 by the Chairperson of the Former Second Division of the Court, concerning the CTA Administrative Circular No. 01-2013 dated March 26, 2013 entitled "Reorganization of the Three (3) Divisions of the Court of Tax Appeals", the case was transferred to the First Division.[18]

On June 6, 2013, Presiding Justice Roman G. Del Rosario, as Chairperson of the First Division, voluntarily inhibited himself from sitting in the proceedings or participating in the decision-making process in accordance with Section 1, Rule 137 of the Revised Rules of Court and Section 6 (a) and (b) of the RRCTA, because the case was being handled by his former division at the Office of the Solicitor General.[19]

During the June 20, 2013 hearing for the initial presentation of respondent CIR's evidence, Atty. Felix Paul R. Velasco III, manifested that despite repeated follow-ups, there was no investigation report submitted to them, and thus, he had to forego the presentation of respondent's evidence. Consequently, the parties were ordered to submit their respective memorandum within a period of thirty (30) days from the said date. Nevertheless, the Court took note of petitioner's manifestation that it will file a motion to re-open the case for the presentation of the ICPA anew.[20]

Thus, on June 25, 2013, petitioner filed a Motion to Re-open Petitioner's Presentation of Evidence praying for a reopening of the case for the identification by the ICPA of Exhibits "L-6" and "S-1" and for the deferment of the submission of its memorandum pending resolution of said motion or until after the presentation and offer of said exhibits. Subsequently, on July 9, 2013, petitioner filed a Motion for Leave to Allow Conditional Recall of Independent CPA.[21]

On the other hand, as directed by the trial court, respondent filed a Comment (On Petitioner's Motion to Re-Open Petitioner's Presentation of Evidence) on July 12, 2013. The CIR opposed petitioner's motion on the ground that said motion to re-open is akin to a second motion for reconsideration and stressed further that the documents being attempted to be presented were not newly discovered evidence which warranted reconsideration by the trial court.[22]

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[16] Exhibit W, Division Docket, pp. 242-245.
[17] Exhibit V, Division Docket, pp. 246-249.
[18] November 7, 2014 Decision, Division Docket, p. 417.
[19] *Id.*, pp. 417-418.
[20] *Id.*, p. 418.
[21] *Id.*
[22] *Id.*

In the Resolution dated August 14, 2013, the trial court granted Nokia Philippines' Motion to Re-open Petitioner's Presentation of Evidence, in the interest of justice, as well as its Motion for Leave to Allow Conditional Recall of Independent CPA. Hence, the filing of the parties' memoranda was deferred by the court.[23]

During the October 18, 2013 hearing, the Court-commissioned ICPA, Abbet Barce, testified and identified his judicial affidavit, as well as Exhibits "L-6" and "S-1". Without objection from respondent CIR, said documents were admitted. Considering that respondent had no more evidence to present, both parties were given a period of thirty (30) days to submit their memoranda.[24]

Petitioner submitted its Memorandum on November 15, 2013, while respondent submitted her Memorandum on January 10, 2014. Accordingly, the case was submitted for decision on the January 21, 2014.[25]

On November 7, 2014, the trial court promulgated its Decision, which reads in pertinent part:

> "Based on the foregoing, the services rendered or to be rendered by petitioner primarily consists of 'handling any specific or general business matter that may arise with respect to Nokia's business in the Philippines'. Thus, petitioner's services to Nokia Corporation is anticipatory and is premised on the fact that the latter has an existing business in the Philippines. Such being the case, Nokia Corporation cannot be treated as a 'nonresident foreign corporation' or 'a foreign corporation not engaged in trade or business within the Philippines'.
>
> Correspondingly, considering that it was not established that the subject services were performed in the Philippines and that the recipient of the service is not a nonresident foreign corporation, it must already be stated, at this juncture, that the transaction between petitioner and Nokia Corporation cannot be treated as subject to zero-rated VAT under Section 108 (B) (2) of the NIRC of 1997, as amended by RA 9337. Therefore, the instant claim for refund or TCC of input VAT must perforce be denied.
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> Statutes that grant tax exemptions are construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.
>
> **WHEREFORE**, all of the foregoing considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."[26] (*Citations omitted*)

[23] *Id.*
[24] *Id.*, p. 419.
[25] *Id.*
[26] *Id.*, p. 441.

On November 28, 2014, petitioner Nokia Philippines then filed, a Motion for Reconsideration, which the First Division denied for lack of merit in the Resolution dated May 11, 2015.[27]

CTA En Banc (CTA EB Case No. 1313) and Supreme Court (G.R. No. 229979)

Aggrieved, Nokia Philippines filed a Petition for Review on June 25, 2015 before the Court *En Banc* and prayed that a new decision be rendered ordering respondent to refund or issue a tax credit certificate in the amount of ₱16, 134,824.44. The case was docketed as CTA EB No. 1313.[28]

On September 22, 2016, the Court *En Banc* rendered a Decision, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The Decision dated November 7, 2014 and Resolution dated May 11, 2015 in the CTA Case No. 8405 are **REVERSED** and **SET ASIDE**. Accordingly, the instant case is hereby **REMANDED** to the CTA First Division for determination of the amount refundable.
>
> **SO ORDERED**."[29]

Consequently, respondent CIR filed a Motion for Reconsideration (Re: Decision dated 22 September 2016) on October 18, 2016, which was denied for lack of merit in a Resolution dated February 15, 2017.[30]

Undaunted, respondent filed a Petition for Review on Certiorari before the Supreme Court, praying for the annulment and setting aside of the Court *En Banc's* decision and resolution. The case was entitled "*Commissioner of Internal Revenue, Petitioner, versus Nokia (Philippines), Inc., Respondent*", and docketed as G.R. No. 229979.[31]

On June 19, 2017, the Second Division of the Supreme Court denied the CIR's petition, as follows:

> "**G.R. No. 229979 (Commissioner of Internal Revenue vs. Nokia [Philippines], Inc.).** - Considering the allegations, issues and arguments adduced in the petition for review on certiorari assailing the Decision dated 22 September 2016 and Resolution dated 15 February 2017 of the Court of

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[27] Division Docket, pp. 490-507.
[28] September 24, 2019 Resolution, Division Docket, p. 592.
[29] *Id.*
[30] *Id.*
[31] *Id.*

> Tax Appeals, En Banc in CTA EB No. 1313 (CTA Case No. 8405), the Court resolves to **DENY** the petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case. *Carpio, J., on official leave*."[32]

Respondent then filed a Motion for Reconsideration (Of the Resolution dated 19 June 2017) on August 3, 2017, praying for the reconsideration and setting aside of the Supreme Court's Resolution dated June 19, 2017. However, the Motion was denied with finality by the Third Division of the Supreme Court in its Resolution dated January 22, 2018, which reads:

> "**G.R. No. 229979 (Commissioner of Internal Revenue vs. Nokia [Philippines], Inc.).** - Acting on the motion of the Office of the Solicitor General for reconsideration of the Resolution dated June 19, 2017 which denied the petition for review on certiorari, the Court resolves to **DENY** the motion with **FINALITY**, as no substantial arguments were raised to warrant its reconsideration. No further pleadings, motions, letters or other communications shall be entertained in this case. Let entry of judgment be issued. (**Martinez, J.**, *on leave*.)"[33]

Thereafter, the Supreme Court recorded its Resolution dated January 22, 2018 in its Book of Entries of Judgments.[34]

On October 19, 2018, the CTA *En Banc* issued a Resolution which remanded the case to the court *a quo*, pursuant to its Decision dated September 22, 2016 in CTA EB No. 1313.[35]

CTA Special First Division (CTA Case No. 8405)

On September 24, 2019, the court a quo issued a Resolution which still denied Nokia Philippines' refund claim for input VAT, thus:

> "Thus, although this case was remanded to this Court in Division for the determination of the amount refundable, the same can only be done if petitioner has complied with the legal requisites for it to be entitled to the refund claim. <u>Again, this Court in Division reiterates the settled finding of the Court *En Banc* in CTA EB Case No. 1313, that petitioner failed to comply with the third requisite, as there is no showing that its services were performed in the Philippines</u>.
>
> Correspondingly, with the finding that petitioner failed to show that it is engaged in sales which are zero-rated or effectively zero-rated, or the *third* requisite

[32] *Id.*, p. 593.
[33] *Id.*
[34] *Id.*
[35] Division Docket, pp. 587-588.

> for the grant of the subject refund claim, it likewise becomes unnecessary to determine whether petitioner satisfied the *fourth* and *fifth* requisites therefor.
>
> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **DENIED**, for failure of petitioner to show that its sales of services for the fourth quarter of 2009 qualify for VAT zero-rating.
>
> **SO ORDERED**." (*Underscoring supplied*)

Finally, in its February 3, 2020 Resolution, the court *a quo* denied petitioner's Motion for Reconsideration for lack of merit.[36]

CTA En Banc (CTA EB Case No. 2238)

Again aggrieved by the resolutions of the court *a quo*, petitioner elevated the case to the CTA *En Banc* by filing a Petition for Review on February 21, 2020.[37]

With the filing of respondent CIR's Comment on August 26, 2020, the Court submitted the case for decision in a Resolution dated September 29, 2020.[38]

THE ISSUES

In assailing the September 24, 2019 and February 3, 2020 Resolutions of the Court *a quo*, petitioner reiterated the following grounds previously raised in its Motion for Reconsideration[39] filed before the court *a quo*:

- The trial court erred in deciding that the VAT zero-rated Official Receipts, VAT zero-rated Sales Invoices and the Judicial Affidavit of its Shared Accounting Services Accountant, Ms. Bridgette C. Redolfin, did *not* establish that the services it rendered to Nokia Finland were performed in the Philippines;[40] and, therefore,

- The trial court erred denying the claim in the light of the holdings in:

    - *KEPCO Phils. Corporation v. Commissioner of Internal Revenue* (G.R. No. 181858, November 24, 2010) which

[36] Division Docket, pp. 622-627.
[37] *Rollo*, pp. 1-12.
[38] *Rollo*, pp. 53-54.
[39] Division Docket, pp. 602-609.
[40] *See* Division Docket, pp. 604-605 and *Rollo*, p. 4.

explained the relevance of VAT invoices and VAT receipts;[41] and,

- *Commissioner of Internal Revenue v. Nippon Express (Phils.) Corporation* (CTA EB No. 505, June 11, 2010) which confirmed the competence, materiality and credibility of VAT official receipts in proving zero-rated sales of services.[42]

THIS COURT'S RULING

We resolve to *deny* the petition.

First, the Court notes that the holding in *Kepco Phils. Corporation v. Commissioner of Internal Revenue,*[43] relied upon by petitioner, is not in point to the issue in this case.

The issues raised and resolved in *Kepco* pertain to the failure of the taxpayer to comply with the substantiation requirements for input VAT under Section 113 of the National Internal Revenue Code of 1997 (NIRC/tax code). In fact in that case, where the taxpayer filed a refund claim of its input VAT attributable to its zero-rated sales of electricity to the National Power Corporation, the Supreme Court rejected the taxpayer's argument that non-compliance with the invoicing requirement was *not* fatal to its claim, thus:

> "At any rate, even if the Court would disregard this procedural flaw, the petition would still fail.
>
> Kepco argues that the 1997 National Internal Revenue Code (NIRC) does not require the imprinting of the word zero-rated on invoices and/or official receipts covering zero-rated sales. It claims that Section 113 in relation to Section 237 of the 1997 NIRC 'does not mention the requirement of imprinting the words 'zero-rated' to purchases covering zero-rated transactions.' Only Section 4.108-1 of Revenue Regulation No. 7-95 (RR No. 7-95) 'required the imprinting of the word 'zero-rated' on the VAT invoice or receipt.' 'Thus, Section 4.108-1 of RR No. 7-95 cannot be considered as a valid legislation considering the long-settled rule that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce.'
>
> The Court does not agree.
>
> xxx xxx xxx

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[41] *See* Division Docket, pp. 605-606 and *Rollo*, pp. 5-6.
[42] *See* Division Docket, pp. 607-608 and *Rollo*, pp. 7-8.
[43] G.R. No. 181858, November 24, 2010.

> Evidently, as it failed to indicate in its VAT invoices and receipts that the transactions were zero-rated, Kepco failed to comply with the correct substantiation requirement for zero-rated transactions.
>
> Kepco then argues that non-compliance of invoicing requirements should not result in the denial of the taxpayer's refund claim. Citing *Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue*, it claims that a party who fails to issue VAT official receipts/invoices for its sales should only be imposed penalties as provided under Section 264 of the 1997 NIRC.
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> The Court has read the *Atlas* decision, and has not come across any categorical ruling that refund should be allowed for those who had not complied with the substantiation requirements. It merely recited "Section 263" which provided for penalties in case of "Failure or refusal to Issue Receipts or Sales or Commercial Invoices, Violations related to the Printing of such Receipts or Invoices and Other Violations." It does not categorically say that the claimant should be refunded. At any rate, Section 264 (formerly Section 263) of the 1997 NIRC was not intended to excuse the compliance of the substantive invoicing requirement needed to justify a claim for refund on input VAT payments." (*Underscoring supplied*)

Accordingly, petitioner cannot rely upon *KEPCO* to support its position that its VAT invoices and official receipts are sufficient to establish that the services it rendered to Nokia Finland were performed in the Philippines. A careful reading of *KEPCO* will show that the Supreme Court simply clarified that, contrary to the taxpayer's position, the VAT invoices and official receipts should be distinguished from each other and, therefore, should not be used interchangeably, thus:

> "Kepco further argues that under Section 113(A) of the 1997 NIRC, invoices and official receipts are used interchangeably for purposes of substantiating input VAT. Hence, it claims that the CTA should have accepted its substantiation of input VAT on (1) ₱64,509.50 on purchases of goods with official receipts and (2) ₱256,689.98 on purchases of services with invoices.
>
> The Court is not persuaded.
>
> Under the law, a VAT invoice is necessary for every sale, barter or exchange of goods or properties while a VAT official receipt properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. In *Commissioner of Internal Revenue v. Manila Mining Corporation*, the Court distinguished an invoice from a receipt, thus:
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>> A 'sales or commercial invoice' is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services. ⁊

> A 'receipt' on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.
>
> In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (proof of transaction), and the best means to prove the input VAT payments (proof of payment). Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.
>
> Although it is true that the CTA is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of Kepco's claims. Verily, the CTA *En Banc* correctly disallowed the input VAT that did not meet the required standard of substantiation." (*Underscoring supplied*)

Petitioner also invokes the CTA *En Banc* case of *Commissioner of Internal Revenue v. Nippon Express (Phils.) Corporation*[44] to advance its position above. In that case, the tax court also relied upon the ruling in the *Kepco* case discussed at length above. On appeal, the Supreme Court eventually denied the taxpayer's petition and affirmed the denial of its refund claim by the CTA *En Banc*.[45]

Secondly, a closer review of the Judicial Affidavit of petitioner's Shared Accounting Services Accountant, Ms. Bridgette C. Redolfin,[46] does *not* yield any proof that the services sold to its parent company, Nokia Finland, were *actually* performed in the Philippines.

Specifically, in the four-page judicial affidavit, the witness merely testified on the nature of services rendered to Nokia Finland, *i.e.* marketing support and other services, the registered principal place of business of the parent company in Helsinki, Finland, the proof thereof from the Trade Register of Finland, and the fact that the services rendered to Nokia Finland were paid for in US dollars. The same failed to cover any testimony that would have explained or described in detail where the services were performed.

In fact, the Court notes that under the Service Agreement between Nokia Philippines and Nokia Finland, the subsidiary Nokia Philippines is

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[44] CTA EB No. 505, June 11, 2010.
[45] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue,* G.R. No. 196907, March 13, 2013.
[46] Exhibit V, Division Docket, pp. 246-249.

expressly allowed to provide services covered under the contract *in other countries or areas close to the Philippines*, with Nokia Finland's prior consent.[47]

Thirdly, the CTA *En Banc* already rendered an opinion on the probative value of the VAT zero-rated official receipts and sales invoices:

> **"The VAT zero-rated official receipts and sales invoices do not sufficiently establish that the services were indeed performed in the Philippines.**
>
> Petitioner states that being in the nature of an excise tax, VAT imposed on the sale of services can only be levied by the State when the acts, privileges or businesses are performed within the jurisdiction of the Philippines. Based thereon, petitioner argues that where the payment of the services were receipted with VAT zero-rated official receipts and, thereafter, collected by the government, such shows that the services were performed within the Philippines; thus, the matter of whether or not the services were rendered within the Philippines should not be an issue anymore.
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> To bolster its premise, petitioner claims that the significance of issuing VAT official receipts and invoices can be found in Section 113 (A) of the NIRC of 1997, as amended, which clearly mandates a VAT-registered person to issue a VAT invoice for every sale, barter or exchange of goods or properties, and a VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. Petitioner continues that the next logical step would be to determine what is meant by the phrase 'sale, barter or exchange of services.' Thus, in resolving the matter, petitioner cites Section 108 of the same code wherein the pertinent portion which provides that:
>
>> **'SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties.** —
>>
>> (A) Rate and Base of Tax. — . . .
>>
>> xxx xxx xxx
>>
>> The phrase '**sale or exchange of services**' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by . . .
>>
>> xxx xxx xxx.'
>
> From the foregoing, petitioner concludes that the phrase 'sale of service' means all kinds of services performed or rendered in the Philippines. Thus, it therefore follows that the VAT zero-rated official

[47] Appendix 1 of the Service Contract, Division Docket, p. 39.

> receipts and sales invoices are themselves proof that the services were performed in the Philippines.
>
> We are not persuaded.
>
> Invoices are merely written accounts of the particulars of merchandise shipped or sent to a purchaser or consignee with the value or prices and charges annexed. As such, it may be used to evidence a sale or transfer, or an agreement to sell or transfer goods and services.
>
> On the other hand, an official receipt is a more formal and official evidence of a transaction. For purposes of VAT pursuant to Section 108 of the NIRC, as amended, it is a proof of sale of service and/or leasing of properties which shall be the basis of the output tax liability of the seller and the input tax claim of the buyer. It is a written admission or acknowledgment of the fact that money has been paid and received for the payment or settlement between persons rendering services and its customers.
>
> While it is true that VAT official receipts and invoices are proofs of the parties' business transactions — to prove sale or lease of goods or services and payment thereof, the same, however, does not *ipso facto* equate that the said sale or lease were actually rendered within the Philippines. Nowhere in the said documents is it stated or shown that the services were actually performed in the Philippines. As correctly held by the court *a quo*, the determination of whether a certain sale or lease of a good or service is performed within or outside of the Philippines is a question of fact which should, therefore, be duly proven and substantiated.
>
> Moreover, *We* agree with the court *a quo* that the phrase 'performance of all kinds of services in the Philippines,' as mentioned in Section 108 (A), merely recognizes the country's taxing jurisdiction. In fact, Section 108 only provides for the rate and base of VAT derived from sale or exchange of services and use of lease of properties. Notably, legislative intent must be ascertained from consideration of the statute as a whole and not of an isolated part or a particular provision alone. For taken in the abstract, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those in which it is associated."[48] (*Underscoring supplied and citations omitted*)

As correctly highlighted in the September 24, 2019 Resolution of the court *a quo*, the principle of the *law of the case* bars the petitioner from *again* relitigating the CTA *En Banc's* holding that the "VAT zero-rated official receipts and sales invoices do not sufficiently establish that the services were indeed performed in the Philippines."

It will be recalled that only the respondent CIR appealed that decision before the Supreme Court, which later on denied the same for failure to

[48] Decision, CTA EB 1313, September 22, 2016, Division Docket, pp. 535-538.

sufficiently show reversible error[49] and then, in due course, issued an Entry of Judgment.[50]

The principle of the *law of the case* was defined by the Supreme Court *En Banc* in *Philippine Coconut Producers Federation, Inc. (Cocofed), et al. v. Republic of the Philippines, et al*:[51]

> "*Yu v. Yu*, as effectively reiterated in *Vios v. Pantangco*, defines and explains the ramifications of the law of the case principle as follows:
>
> > Law of the case has been defined as the opinion delivered on a former appeal. It is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, . . . so long as the facts on which such decision was predicated continue to be the facts of the case before the court.
>
> Otherwise put, the principle means that questions of law that have been previously raised and disposed of in the proceedings shall be controlling in succeeding instances where the same legal question is raised, provided that the facts on which the legal issue was predicated continue to be the facts of the case before the court."

Recently in *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*,[52] which is a collection suit instituted against the taxpayer for unpaid taxes and customs duties, the Supreme Court affirmed the RTC's dismissal of the case, which had become final and executory due to a procedural error by way of appeal to the Court of Appeals instead of the CTA. The Supreme Court explained that a case that has attained finality becomes the law of the case and can no longer be reversed, not even by the Supreme Court:

> "Finally, in view of respondent's availment of a wrong mode of appeal via notice of appeal stating that it was elevating the case to the CA — instead of appealing by way of a petition for review to the CTA within thirty (30) days from receipt of a copy of the RTC's August 3, 2012 Order, as required by Section 11 of RA 1125, as amended by Section 9 of RA 9282 — the Court is constrained to deem the RTC's dismissal of respondent's collection case against petitioner final and executory. It is settled that the perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well, and that failure to perfect an appeal within the period fixed by law renders the judgment appealed from

[49] September 24, 2019 Resolution, Division Docket, p. 593.
[50] October 19, 2018 Resolution, Division Docket, pp. 584-585.
[51] G.R. Nos. 177857-58, October 5, 2016.
[52] G.R. No. 209830, June 17, 2015.

final and executory. The Court's pronouncement in *Team Pacific Corporation v. Daza* is instructive on this matter, to wit:

> Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court — not even the Supreme Court — has the power to revise, review, change or alter the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.

WHEREFORE, the petition is GRANTED. Accordingly, the Resolutions dated June 7, 2013 and November 4, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 99594 are hereby REVERSED and SET ASIDE. Accordingly, a new one is entered DISMISSING the appeal of respondent Bureau of Customs to the Court of Appeals.

SO ORDERED." (*Citations omitted and underscoring supplied*)

Probative value refers to the ability of a piece of evidence to make a relevant disputed point more or less true.[53] It is also defined as the weight or persuasive value that the court assigns to that particular piece of evidence when considering its value towards proving a point of fact in question for the case being heard.[54]

In this case, the trial court[55] and then, subsequently, the CTA *En Banc* quoted earlier have both concluded that the VAT zero-rated sales invoices and official receipts were *inadequate* to prove that Nokia Philippines' services were rendered locally. Clearly, the controlling legal rule on the probative value of said documents, which was established in the CTA *En Banc* decision,[56] became final and binding to the parties as well. Petitioner is, thus, barred from elevating the issue anew before the Court, especially when an Entry of Judgment was issued by the Supreme Court.[57]

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[53] Please see https://www.law.cornell.edu/wex/probative_value, accessed on September 24, 2021.
[54] From Introduction to Criminal Investigation: Processes, Practices and Thinking, https://pressbooks.bccampus.ca/criminalinvestigation/chapter/chapter-3-what-you-need-to-know-about-evidence/, accessed on September 24, 2021.
[55] November 7, 2014 Decision, Division Docket, p. 441.
[56] Decision, CTA EB 1313, September 22, 2016, Division Docket, pp. 531-552.
[57] October 19, 2018 Resolution, Division Docket, p. 584.

Finally, statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions. The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.[58] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[59]

The Court finds nothing in the instant case that merits a reversal of the ruling of the court *a quo*.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the February 3, 2019 and September 24, 2019 Resolutions are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(*Inhibited*)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[58] *Panasonic Communication Imaging Corporation of the Philippines (*formerly *Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.
[59] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(*With due respect, attached is my Concurring and Dissenting Opinion*)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(*With due respect, I join Justice Manahan's Concurring and Dissenting Opinion*)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NOKIA PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* No. 2238
(CTA Case No. 8405)

Members :

DEL ROSARIO, *P.J.*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *JJ.*

Promulgated:

OCT 28 2021 2:03 p.m.

x- x

CONCURRING AND DISSENTING OPINION

MANAHAN, J.:

I concur with the ponencia that applied the principle of the *law of the case* which has been defined by the Supreme Court as a "term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal."[1] In the instant case, the Supreme Court's Resolution dated January 22, 2018 has already been rendered final and executory and recorded in its Books of Entries of Judgments, hence legal issues resolved therein need not be relitigated, as there will be no end to litigation.

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[1] *Philippine Coconut Producers Federation, Inc. (Cocofed), et.al. vs. Republic of the Philippines,* G.R. Nos. 177857-58, October 5, 2016.

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In the case of *Spouses Manuel Sy and Victoria Sy vs. Genalyn D. Young,*[2] the Supreme Court distinguished between the doctrine of the law of the case and *res judicata* in this manner, thus:

> "xxx Law of the case applies only to the same case, while *res judicata* forecloses parties or privies in one case by what has been done in another case. In law of the case, the rule made by an appellate court cannot be departed from in subsequent proceedings in the same case. **Furthermore, law of the case relates entirely to questions of law while *res judicata* is applicable to the conclusive determination of the issues of fact.** Although *res judicata* may include questions of law, it is generally concerned with the effect of adjudication in a wholly independent proceeding."

My humble analysis of the CTA *En Banc* Decision entitled *Nokia (Philippines), Inc. vs. CIR*[3] which was affirmed by the Supreme Court in *CIR vs. Nokia (Philippines), Inc.* (G.R. No 2229979), is that the taxpayer has proven that its sales of services to Nokia Corporation (Finland) are considered VAT zero-rated under Section 108 (B)(2) of the 1997 National Internal Revenue Code (NIRC), as amended, the relevant protions are quoted below:

> Section 108. **Value -Added Tax on Sale of Services and Use or Lease of Properties. –**
>
> (B) *Transactions Subject to Zero Percent (0%) –*
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside of the Philippines or to a non-resident person not engaged in business who is outside of the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (*BSP).

It is well-settled that in claims for refund of alleged excess input VAT based on the aforequoted Section 108 (B)(2) of the 1997 NIRC as amended, the claimant must not only prove that the recipient of the service is a foreign corporation, it must also specifically prove that it is a non-resident foreign

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[2] G.R. No. 169214, June 19, 2013.
[3] CTA EB No. 1313 (CTA Case No. 8405) dated September 22, 2016.

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corporation. [4] Equally well-entrenched is the evidentiary standard to prove such a claim and this was clearly mentioned in the affirmed En Banc decision of *Nokia (Philippines), Inc. vs. CIR,* (CTA *EB* No. 1313), and I quote:

> "Time and again, We have consistently held in a plethora of cases, that for an entity to be considered a non-resident foreign corporation doing business outside of the Philippines, the said entity must be supported at the very least by the Certfication of Non-Registration of Corporation/Partnership duly issued by the SEC **and** proof of incorporation or registration in a foreign country (e.g., Certificate of Incorporation, Memorandum of Articles of Association and Certificate of Registration), or any other equivalent document.
>
> **In the instant case, petitioner's Certificate of Non-Registration of Company issued by the SEC, Extract from the Trade Register of Finland and Certificate of Fiscal Residence issued by the Tax Authority of Finland are deemd adequate to prove that Nokia (Finland) is indeed a non-resident foreign corporation doing business outside of the Philippines."** (emphasis supplied)

This evidentiary standard to prove that the recipient of the services is a non-resident foreign corporation has been upheld in the case of *CIR vs. Deutsche Knowledge Services, PTE. Ltd.*[5]

The Court *En Banc* in CTA *EB* No.1313, then went on to rule on the action to be taken given such a conclusion and I quote its dispositive portion:

> **"WHEREFORE,** the instant Petition for Review is hereby **PARTIALLY GRANTED**. The Decision dated November 7, 2014 and Resolution dated May 11, 2015 in CTA Case No. 8405 are **REVERSED** and **SET ASIDE.** Accordingly, the instant case is **REMANDED** to the CTA First Division for determination of the amount refundable.
>
> **SO ORDERED."**

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[4] *Accenture Corporation vs. CIR,* G.R. No. 190102, July 11, 2012.
[5] G.R. No. 234445, July 15, 2020.

As mentioned earlier, the above ruling was affirmed by the Supreme Court in the case entitled *CIR vs. Nokia (Philippines), Inc,*[6] which was later on recorded in the Book of Entries of Judgement.

Here lies my dissent.

If the doctrine or principle of the law of the case is to apply what has been legally settled in the appellate level, i.e., that the sale of services of Nokia (Philippines), Inc,. to Nokia Corporation (Finland), are considered zero-rated, then remand to the Court in Division for the determination of the refundable amount, is to my mind, clearly in order.

In my humble view, it is difficult to reconcile the application of the principle of the law of the case with the ponencia's conclusion that the claim for refund of input VAT for the fourth quarter of 2009 should be denied.

WHEREFORE, I vote that this case be remanded to the the CTA First Division for the determination of the amount refundable.

CATHERINE T. MANAHAN
Associate Justice

[6] G.R. No. 229979, Decision promulgated on June 19, 2017 and Resolution issued on January 22, 2018.