

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

Second Division

PILIPINAS TOTAL GAS, INC.,
Petitioner,

CTA CASE NO. **7777**

-versus-

Members:

CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, J.J.

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

APR 08 2010

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7:15 p.m.

DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed by Pilipinas Total Gas, Inc. as petitioner against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Section 4(a), Rule 8, in relation to Section 3 (a) (2), Rule 4, 2005 Revised Rules of the Court of Tax Appeals, as amended.

Petitioner claims for tax refund or tax credit in the amount of P17,528,906.71, allegedly representing unutilized and unapplied input value-added tax (VAT) for taxable year 2006, arising from sales to C

Philippine Economic Zone Authority (PEZA)-registered and Clark Development Corporation (CDC)-registered entities.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal place of business located at MDD 121 East Science Avenue, Laguna Technopark, Binan Laguna. It is engaged in the sale, transportation, and distribution of industrial gases as well as the sale of gas equipment and other related businesses on wholesale basis. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification No. 004-609-538-000, as evidenced by its Certificate of Registration No. 3RC0000031647.¹

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed with respondent its Quarterly VAT Returns and Final Amended Quarterly VAT Returns for the four quarters of 2006 on the following dates:

Year 2006	Exh.	Date Filed of Quarterly VAT Returns	Exh.	Date filed of the Final Amended Quarterly VAT Returns
1st Qtr	"J"	April 25, 2006	"N"	September 19, 2007

¹ Pars. 8 and 9, Facts Admitted, Joint Stipulation of Facts and Issues, Docket, p. 275 

2 nd Qtr	"W"	July 25, 2006	"Z"	September 19, 2007
3 rd Qtr	"II"	October 23, 2006	"LL"	September 19, 2007
4 th Qtr	"UU"	January 23, 2007	"XX"	September 19, 2007

On July 31, 2007, petitioner filed an administrative claim for tax refund/tax credit of the alleged excess input tax for taxable year 2006, in the amount of P17,528,906.17, before the BIR Revenue District Office No. 057-Biñan, Laguna.² However, respondent had not issued a final decision on said claim for refund or tax credit. Hence, petitioner filed the instant Petition for Review on April 24, 2008.

In Answer, respondent interposed the following Special and Affirmative Defenses³:

- "4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special Affirmative Defenses;
5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by respondent's Bureau;
6. Petitioner failed to demonstrate that the amount allegedly paid was erroneously or illegally collected;
7. Taxes collected are presumed to be in accordance with laws and regulations;
8. Petitioner's claim for refund has prescribed already in view of Section 112(C) of the 1997 National Internal Revenue Code which provides that:

**'Section 112. Refunds or Tax Credits of Input
Tax –**

**(C) Period within which Refund or Tax Credit
of Input Taxes shall be Made. - In proper cases,**

² Annexes "O" to "O-2", Petition for Review, Docket, pp. 231-233

³ Docket, pp. 244-248 (

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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 Subsection (A) 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 (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'. – (Italics supplied)

Hence, when petitioner filed its administrative claim for tax refund/credit with the Bureau of Internal Revenue ('BIR') Revenue District Office No. 57 on 31 July 2007, respondent had 120 days within which to decide on petitioner's claim for tax refund/credit. And in case of full or partial denial of the claim or failure of respondent to act on the application within the 120 day period, petitioner has 30 days to appeal the decision or inaction with the Court of Tax Appeals. Thus, respondent had to render a decision within 120 days from 31 July 2007 or until 28 November 2007. In the event that respondent failed to act upon petitioner's claim for tax refund/credit, petitioner has 30 days from 28 November 2007 or until 28 December 2007 to appeal the unacted claim with the Court of Tax Appeals. Petitioner filed the instant Petition for Review with the Court of Tax Appeals only on 24 April 2008, almost four (4) months after the lapse of the period allowed by law to file the judicial claim for tax refund/credit with the Court of Tax appeals. This being so, the instant petition for review was clearly filed out of time.

The above-mentioned periods are clearly given for strict compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions (Agpalo, *Statutory Construction, Third Edition 1995*, p. 266). For this reason, the courts construe these provisions of statutes as mandatory (*Ibid.*, citing *Alvero vs. De la Rosa*, 76 Phil. 428, 434). (

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The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people (*Mactan Cebu International Airport Authority vs. Marcos*, 261 SCRA 667, 690). Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its cause.

9. Assuming without admitting that the subject claim for refund has not yet prescribed, it is imperative for the petitioner to prove its compliance with the following:
 - a. The registration requirements of a value-added taxpayer under the pertinent provision of the National Internal Revenue Code of 1997, as amended, and its implementing revenue regulations;
 - b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the Tax Code of 1997, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003);
 - c. The submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (C) of the Tax Code of 1997, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with Section 229 of the Tax Code, as amended; ⚡

- d. That the input taxes of P17,528,906.17 allegedly representing unutilized input VAT from its domestic purchases of goods and services and importation of goods were:
 - i. paid by the petitioner;
 - ii. attributable to its zero-rated or effectively zero-rated sales; and,
 - iii. such input taxes paid should not have been applied against any output tax;
 - e. That petitioner's claim for tax credit or refund of the unutilized input tax (VAT) in the amount of P17,528,906.17 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code of 1997, as amended;
 - f. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly provided in Sections 112 (A) and 229 of the Tax Code, as amended.
10. Moreover, in an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund;
11. Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same (*Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 154028, July 27, 2005). Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. (*Sea-Land Service, Inc., vs. Court of Appeals*, 357 SCRA 444)." 

During trial, petitioner presented its documentary and testimonial evidence to support its claim. However, respondent's counsel manifested that she is waiving the right of respondent to present evidence absent an audit report.⁴

On January 5, 2010, this Court issued a Resolution⁵ submitting this case for Decision, considering that petitioner and respondent have already submitted their Memoranda on December 28, 2009 and January 4, 2010, respectively.

The parties' jointly stipulated issues⁶ are as follows:

- "1. Whether or not Petitioner's judicial claim for tax refund of unutilized input VAT with this Honorable Court was filed out of time.
2. Whether or not the Petitioner has complied with the substantiation requirements as provided by law.
3. Whether or not the input taxes of P17,528,906.17 allegedly representing unutilized input VAT from its domestic purchases of goods and services and importation of goods, were:
 - a. paid by Petitioner;
 - b. attributable to its zero-rated or effectively zero-rated sales; and
 - c. not applied against any output tax
4. Whether or not Petitioner is entitled to its claim for refund or issuance of TCC on its unutilized input tax attributable to zero-rated sales in the amount of P17,528,906.17 incurred for taxable year 2006."

The foregoing issues may be summed up into the single issue of whether or not petitioner is entitled to a refund or issuance of tax credit

⁴ Docket, p. 438

⁵ Docket, p. 565

⁶ Docket, p. 278 

certificate in the amount of P17,528,906.17, allegedly representing petitioner's unutilized input taxes for the taxable year 2006.

Petitioner anchors its claim for refund on Section 106(A)(2)(c) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

"SEC. 106. Value-added Tax on Sale of Goods or Properties. —

(A) Rate and Base of Tax. — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

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(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

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(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate."

In relation to Section 106(A)(2)(c) of the NIRC of 1997, Section 3(3) of Revenue Memorandum Circular (RMC) No. 74-99 states:

"SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise. —

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(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such 

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enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular."

Section 15 of Republic Act (R.A.) No. 7227, otherwise known as the "Bases Conversion Development Act of 1992", as amended by Republic Act No. 9400 likewise states:

"SEC. 15. Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ). xxx

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The CFZ shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital equipment within, into and exported out of the CFZ, as well as provide incentives such as tax and duty-free importation of raw materials and capital equipment. However, exportation or removal of goods from the territory of the CFZ to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines.

The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the CFZ. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all registered business enterprises within the CFZ and shall be directly remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the treasurer's office of the municipality or city where they are located. ⤵

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Petitioner claims that under the afore-quoted laws, its sales to PEZA-registered and CDC-registered entities are deemed zero-rated; that as a consequence, it is entitled to the refund of its unutilized input taxes.

This Court agrees with petitioner that sales transactions with PEZA-registered and CDC-registered entities are deemed zero-rated.

Section 23 of R.A. No. 7916, otherwise known as "The Special Economic Zone Act of 1995", provides:

"SECTION 23. *Fiscal Incentives* - Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.

Furthermore, tax credits for exporters using local materials as inputs shall enjoy the same benefits provided for in the Export Development Act of 1994."

Section 24 of R.A. No. 7916, as amended by R.A. No. 8748, further provides, thus:

"SEC. 24. *Exemption from National and Local Taxes*. - Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:

a. Three percent (3%) to the National Government;

b. Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprises is located." 

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In the case of **Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.**⁷, the Supreme Court ruled that services rendered to a PEZA-registered enterprise effectively subjects the supply of such services to VAT at zero percent (0%). The pertinent portions of the said Decision are quoted as follows:

"The rule that any sale by a VAT-registered supplier from the Customs Territory to a PEZA-registered enterprise shall be considered an export sale and subject to zero percent (0%) VAT was clearly established only on 15 October 1999, upon the issuance of RMC No. 74-99. Prior to the said date, however, whether or not a PEZA-registered enterprise was VAT-exempt depended on the type of fiscal incentives availed of by the said enterprise. This old rule on VAT-exemption or liability of PEZA-registered enterprises, followed by the BIR, also recognized and affirmed by the CTA, the Court of Appeals, xxx cannot be lightly disregarded considering the great number of PEZA-registered enterprises which did rely on it to determine its tax liabilities, as well as, its privileges."

Equally noteworthy is the ruling made by the Supreme Court in the case entitled **Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.**⁸, to wit:

"Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent."

Indeed, based on the foregoing, petitioner's sales to PEZA and CDC-registered enterprises in the amount of P185,719,273.82 (total of sales subject to zero percent VAT per Quarterly VAT Returns for the first to fourth

⁷ G.R. No. 150154, August 9, 2005

⁸ G.R. No. 149671, July 21, 2006 

quarters of the taxable year 2006)⁹ are subject to zero percent (0%) VAT. Consequently, petitioner is not liable to pay any output VAT thereon and the reported unutilized input VAT attributable thereto may be a proper subject of a claim for refund/tax credit under Section 112(A) of the NIRC of 1997, to wit:

"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 or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

However, records reveal that petitioner failed to sufficiently substantiate its reported zero-rated sales to PEZA and CDC-registered enterprises, as well as the input VAT on its domestic purchases of goods and services for taxable year 2006, as it merely presented the following documents:

1. Original and amended Quarterly and Monthly VAT Returns (*Exhibits "A" to "XX" and Exhibits "RRRR" to "TTTT"*) for the subject periods and the succeeding first quarter of taxable year 2007 that were all duly identified

⁹ Exhibits "N", "Z", "LL", and "XX" 

by petitioner's Finance Supervisor, Ms. Rosalia T. Yu
(Exhibit "YY");

2. Certification issued by PEZA (Exhibit "ZZ");
3. Certification issued by CDC (Exhibit "GGGG");
4. Certified true copy of Certification issued by PEZA and CDC to petitioner's various buyers (Exhibits "AAA" to "JJJJ");
5. Summary of sales and receipts for the months of January to December 2006 (Exhibits "NNNN-8" to "NNNN-8-12");
6. Summary list of purchases for the months of January to December 2006 (Exhibits "NNNN-5-1" to "NNNN-5-12"); and
7. Final Report of the Independent CPA, Mr. Armando T. Fernando (Exhibits "OOOO").

In the case of **Commissioner of Internal Revenue vs. Manila Mining Corporation**¹⁰, the Supreme Court reiterated the importance of substantiating the input VAT by purchase invoices or official receipts and presenting the same as evidence to the Court, in the following manner:

"For a judicial claim for refund to prosper, however, respondent must not only prove that it is a VAT registered entity and that it filed its claims within the prescriptive period. It must substantiate the input VAT paid by purchase invoices or official receipts.

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Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.

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¹⁰ G.R. No. 153204, August 31, 2005 

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There is nothing, however, in CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, which either expressly or impliedly suggests that summaries and schedules of input VAT payments, even if certified by an independent CPA, suffice as evidence of input VAT payments.

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The circular, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the Court. It does not relieve respondent of its imperative task of **pre-marking** photocopies of sales receipts and invoices and **submitting the same to the court** after the independent CPA shall have examined and compared them with the originals. Without presenting these pre-marked documents as evidence – from which the summary and schedules were based, the court cannot verify the authenticity and veracity of the independent auditor's conclusions.

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While 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 the purchase receipts and/or invoices is not mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of respondent's claims." (*Emphasis supplied*)

Even though the Court-commissioned Independent CPA, in his Judicial Affidavit¹¹, attested and confirmed that he examined the original copies of the documents, such as petitioner's VAT Returns, official receipts, invoices, and other supporting documents, however, the same were not formally offered in evidence before this Court. Petitioner is still required to submit and offer pieces of evidence, particularly, sales invoices and official receipts in support of its claim.

¹¹ Exhibit "PPPP" ◀

In a long line of cases, the Supreme Court held that courts cannot consider evidence which was not formally offered. Section 34 of Rule 132 of the Revised Rules on Evidence, reads:

“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.”

Parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made. Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified.¹²

Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence cannot, in any manner, be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value. It must be stressed that there is a significant distinction between identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while the latter is done only when the party rests its case. The mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence. It must be emphasized that any evidence which a party desires to submit for the consideration of the court

¹² Heirs of Roque F. Tabuena, *et al.* vs. Land Bank of the Philippines, G.R. No. 180557, September 26, 2008, citing *Far East Bank and Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006 ☞

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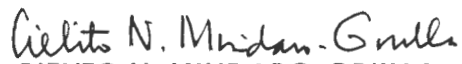
must formally be offered by the party; otherwise, it is excluded and rejected.¹³

Clearly, petitioner failed to sufficiently substantiate its reported zero-rated sales to PEZA and CDC-registered enterprises for the taxable year 2006. Needless to say, the failure of petitioner to formally offer said evidence is detrimental to its cause.

As correctly cited, laws granting exemption from tax are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who seeks to enjoy such privilege must justify it by words too plain to be mistaken and too categorical to be misinterpreted.¹⁴ Petitioner therefore has the burden of proof to establish the factual basis of its claim for refund. Petitioner failed to do so. Accordingly, this Court is constrained to deny petitioner's claim for refund.

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

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

¹³ Heirs of Pedro Pasag, *et al.* vs. Sps. Lorenzo and Florentina Parocha, *et al.*, G.R. No. 155483, April 27, 2007

¹⁴ Sea-Land Services Inc. vs. Court of Appeals, *et al.*, G.R. No. 122605, April 30, 2001

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice

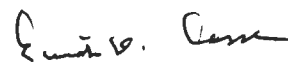
ATTESTATION

I attest 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's Division.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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's Division.


ERNESTO D. ACOSTA
Presiding Justice