REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1165
(CTA Case No. 8183)

Present:
Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

OCT 12 2015
3:10 p.m.

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DECISION

CASTAÑEDA, JR., *J.* :

Before this Court is the Petition for Review filed by petitioner Coca-Cola Bottlers Philippines, Inc., seeking modification of the January 17, 2014 Decision[1] and April 22, 2014 Resolution[2] of the Court of Tax Appeals-Special Third Division (Court in Division) in CTA Case No. 8183 entitled *Coca-Cola Bottlers Philippines, Inc., v. Commissioner of Internal Revenue.* The CTA in Division denied petitioner's claim for refund or issuance of tax credit certificate amounting to ₱72,738,183.31 allegedly representing erroneously paid value-added tax (VAT) for the quarter ended September 30, 2008. In this appeal, petitioner prays that the assailed Decision and

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[1] Penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justice Lovell R. Bautista. *Rollo*, pp. 45-58.
[2] *Id.*, pp. 32-36.

Resolution of the Special Third Division be modified and its claim for refund/tax credit as substantiated by the Independent Certified Public Accountant (ICPA) in the amount of ₱30,940,207.27 be granted.

The dispositive portion of the assailed Decision states:

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

The dispositive portion of the assailed Resolution reads:

> **WHEREFORE**, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE FACTS

The factual antecedents as borne by the records and found by the Court in Division are as follows:[3]

> Petitioner Coca-Cola Bottlers Philippines, Inc. is a corporation duly organized and existing by virtue of Philippine laws, with principal office at No. 1890 Paz Guazon Street, Paco, Manila. It is primarily engaged in the business of manufacturing and selling at wholesale beverages such as Coca-Cola, Sprite, Royal True Orange, Minute Maid, etc. Petitioner is a VAT-registered entity as evidenced by its Certificate of Registration No. 0000019025, with Tax Identification No. 000-112-104-000.
>
> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) 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. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

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[3] *Rollo*, pp. 45-48; Citations Omitted.

On October 25, 2008, petitioner e-filed with the BIR its Quarterly VAT Return for the quarter ended September 30, 2008 and paid value-added tax in the amount of ₱128,486,308.29 for the said quarter.

On October 19, 2010, petitioner filed with respondent's Large Taxpayers Service an administrative claim for refund or tax credit of its alleged over/erroneous payment of VAT for the quarter ended September 30, 2008 in the total amount of ₱72,738,183.31.

Petitioner filed a judicial claim for refund or issuance of tax credit certificate by way of a Petition for Review before this Court on October 26, 2010.

Respondent filed her Answer on December 3, 2010 and interposed the following special and affirmative defenses:

> "5. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
>
> 6. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 7. 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.
>
> 8. Petitioner must prove compliance with the following in order to be entitled to the claim for refund:
>
> a. That the alleged Value-Added Tax was erroneously or illegally collected.
>
> b. That it has complied with the governing rules and regulations with regard to recovery of taxes erroneously or illegally collected/received as provided in Sections 204 and

229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

c. Submission of complete records in support of the administrative claim for refund otherwise there would be no compliance with regard to the filing of administrative claim for tax credit/refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 229 of the NIRC of 1997, as amended.

9. Petitioner's basis to support its claim for refund or issuance of tax credit is Section 204 of the National Internal Revenue Code, hereunder quoted for reference:

xxx xxx xxx

It is very implausible for petitioner to omit the date of payment of value-added tax erroneously or illegally paid when in fact Section 204 of NIRC which served as the basis of petitioner's claim clearly and palpably mandates. The foregoing constituted ultimate fact supporting petitioner's cause of action. For failure to allege the date of payment, the instant claim for refund has no leg to stand on.

10. Petitioner cannot justify the date of filing of instant petition on October 26, 2010 on the supposition that the amount of the said over/erroneous payment of VAT was only finally determined in July 2009 and that petitioner is barred from amending its VAT return for the quarter ended September 30, 2008 by reason of the issuance of the Letter of Authority. Section 229 of the NIRC provides that the claim for refund must be filed within the two (2) year period *regardless of any supervening cause that may arise after payment.* Hence, it is the date of payment that is material.

11. Taxes are essential to government's existence; (**CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003**) hence, the

dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. **(CIR v. Fortune Tobacco Corporation, G.R. No. 167274-75, July 21, 2008)**[.] Since tax refunds are regarded as tax exemptions and these are to be considered ***strictissimi juris*** against the person [or] entity claiming the exemption. **(Philippine Phosphate Fertilizer Corporation v. CIR, G.R. No. 141973, June 28, 2005)**[.]

12. 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 v. Hon. Court of Appeals, G.R. [No.] 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. [No.]163835[,] July 7, 2010).**

13. The amount of Seventy-Two Million, Seven Hundred Thirty-Eight Thousand, One Hundred Eighty-Three and 31/100 (P72,738,183.31) being claimed by petitioner arising from unutilized input value-added tax ('VAT') incurred for the taxable year 2008 is not properly documented.

14. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

After the parties submitted their Joint Stipulation of Facts and Issues on February 4, 2011, the Court issued a Pre-trial Order on February 17, 2011, declaring the pre-trial terminated.

During trial, petitioner presented its documentary evidence and its witnesses, namely: Gerardo Espiridion, Katherine Constantino, Noel Anore, Rosemarie Gamboa, and Nelson Empalmado. On the other hand, respondent presented her documentary evidence and her sole witness, Miguel Sulit.

On January 17, 2014, the Court in Division rendered a decision denying the petition for lack of merit.

On February 7, 2014, petitioner filed its Motion for Reconsideration praying for the reversal and setting aside of the assailed decision. Respondent in turn filed her Comment on February 26, 2014. On April 22, 2014, the Court in Division resolved to deny the motion for lack of merit.

On May 12, 2014, the Court *en banc* granted petitioner's "Motion for Extension of Time to File Petition for Review". On May 22, 2014, petitioner filed its petition.

On June 26, 2014, the CTA *en banc* ordered respondent to file her comment within ten (10) days from receipt of the resolution. However, respondent moved for an additional period of ten (10) days from July 25, 2014 or until August 4, 2014 within which to file her comment. On July 28, 2014, this Court granted the extension sought for. On August 4, 2014, respondent filed her "Comment (Re: Petitioner's Petition for Review)."

On September 8, 2014, the CTA *en banc* gave due course to the petition and directed both parties to submit their memoranda within 30 days from receipt of the resolution. On October 24, 2014, petitioner submitted its Memorandum. On November 3, 2014, this Court noted respondent's Manifestation that she is adopting the arguments raised in her Comment and in her Memorandum in CTA Case No. 8183 as her Memorandum in this case.

On November 13, 2014, this Court submitted this case for decision.

Hence, this decision.

ISSUES

The issues for disposition of the Court are presented in this wise:

1. The CTA Special Third Division erred in failing to consider that the substantiation procedures performed by the independent CPA were concentrated on the ₱72,738,183.31 amount of input taxes that were erroneously omitted or not included in the computation of the output VAT for the quarter ended September 30, 2008 since it is the subject of petitioner's claim;

2. The CTA Special Third Division erred in failing to consider that the instant claim for refund shall not be construed in *"strictissimi juris"* against the petitioner.

3. The CTA Special Third Division erred in failing to consider that the government will be unjustly enriched at the expense of the petitioner if the output VAT erroneously paid is not refunded to the petitioner.

Based on the foregoing, the core issue in this case is whether the CTA Special Third Division correctly denied petitioner's claim for refund/tax credit amounting to ₱72,738,183.31 allegedly representing erroneously paid value-added tax (VAT) for the quarter ended September 30, 2008.

THIS COURT'S RULING

The petition is denied.

At the outset, We emphasize that petitioner posits that due to the inadvertence of its employees, several purchases of services on credit with input taxes amounting to ₱72,738,183.31 that have been paid in the Third Quarter of 2008 were not transferred to the Input Tax-Services account and consequently not declared in its Quarterly VAT Return and not charged to the output VAT payable for the quarter ended September 30, 2008. This resulted in the alleged overpayment of VAT for the same quarter amounting to ₱72,738,183.31, broken down as follows:[4]

	Should be	Per Quarterly VAT Return
Output Tax Due	₱1,357,219,175.12	₱1,357,219,175.12
Less: Allowable Input Tax		

[4] *Rollo*, p. 53.

Input Tax Carried over from previous Quarter	₱ 39,431,863.36	₱ 39,431,863.36
Input Tax Deferred on Capital Goods from previous Quarter	409,422,842.51	409,422,842.51
Input Tax on Purchase of Capital Goods exceeding P1 Million	89,463,048.10	89,463,048.10
Input Tax on Domestic Purchases of Goods Other than Capital Goods	701,688,570.81	701,688,570.81
Input Tax on Importation of Goods Other than Capital Goods	81,126,061.88	81,126,061.88
Input Tax on Domestic Purchases of Services:		
1. Paid upon presentation of the Invoice	28,510,178.19	28,510,178.19
2. Purchased on credit and paid during the quarter	252,495,919.57	179,757,736.26
Total Available Input Tax	₱1,602,138,484.42	₱1,529,400,301.11
Less: Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period.	469,013,117.43	469,013,117.43
Total Allowable Input Tax	₱1,133,125,366.99	₱1,060,387,183.68
VAT Paid/Should be Paid	**₱ 224,093,808.13**	**₱ 296,831,991.44**
Over/Erroneously paid VAT for the quarter		**₱ 72,738,183.31**

In the case at bar, petitioner is neither claiming a reported input tax nor output tax, but instead its alleged understatement of overpayment of VAT due to undeclared input taxes for the quarter ended 2008. Clearly, the amount sought to be refunded is part of petitioner's undeclared input VAT

Section 4.110-8 of Revenue Regulations No. 16-2005 states:

SEC. 4.110-8. *Substantiation of Input Tax Credits.–*

> **(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services** is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and **must be reported in the information returns required to be submitted to the Bureau:** (*Emphasis Supplied)*

Based on the foregoing regulation, in order for input taxes to be available as tax credits, the same must be substantiated and reflected in the VAT return of the taxpayer.

Sections 110 (B), 204 (C) and 229 of the 1997 NIRC, as amended, do not apply

Pertinent provisions to this case are Sections 110(B), 204(C), and 229 of the 1997 NIRC, as amended, which state:

> "SEC. 110. *Tax Credits.* –
>
> xxx xxx xxx
>
> (B) *Excess Output or Input Tax.* – **If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters**: *Provided*, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT:[5] *Provided, however,* **That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.**" *(Emphasis Supplied)*
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> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*—The Commissioner may—
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> xxx xxx xxx" *gr*

[5] The underlined portions were deleted by RA 9361, which took effect on 13 December 2006.

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Based on Section 110 (B) of the 1997 NIRC, as amended, it is when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter/s. But when input tax, attributable to zero-rated sales, exceeds the output tax, it may be refunded or credited. Hence, for input tax attributable to zero-rated sales, it is only when input tax exceeds the output tax that a refund or credit is proper, subject to the provisions of Section 112.[6]

In this case, as correctly pointed out by respondent, since petitioner's claim is not attributable to zero-rated sales, it is not entitled to a tax refund/credit. Petitioner is only entitled to carry over any excess input VAT

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[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 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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

(B) *Cancellation of VAT Registration.* — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate **for any unused input tax** which may be used in payment of his other internal revenue taxes. *(Emphasis Supplied)*

xxx xxx xxx"

to the succeeding quarter or quarters. However, the subject matter of this case is undeclared/unreported input VAT and not excess input VAT.

On the other hand, Sections 204(C) and 229 of the NIRC "apply only to instances of erroneous payment or illegal collection of internal revenue taxes."[7]

In *Commissioner of Internal Revenue v. San Roque Power Corporation* (*"San Roque case"*),[8] the Supreme Court ruled that input VAT is not excessively collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper. Pertinent portions of the *San Roque* case provide:

> The input VAT is **not** "excessively" collected as understood under Section 229 because **at the time the input VAT is collected the amount paid is correct and proper.** The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties or services. xxx xxx xxx
>
> xxx xxx xxx
>
> From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, x x x illegally, x x x excessively or **in any manner wrongfully** collected." In short, there must be a **wrongful payment** because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should **"apply only to instances of erroneous payment or illegal collection of internal revenue taxes."** Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due.** Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected."

Based on the foregoing, We find that Sections 204 (C) and 229 of the 1997 NIRC, as amended, do not apply in this case because at the time the input VAT is collected the amount paid is correct and proper.

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[7] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* G.R. No. 172129, September 12, 2008, 565 SCRA 154.
[8] G.R. Nos. 187485, 196113 and 197156, February 12, 2013, 690 SCRA 336.

VAT refund is in the nature of exemption which is construed strictly against the taxpayer

Petitioner alleges that its claim for refund, being based on erroneous payment of output VAT, shall not be construed strictly against the petitioner and in fact necessitates only preponderance of evidence for its approbation like in any other ordinary civil case as explained by the Supreme Court in *Commissioner of Internal Revenue v. Fortune Tobacco Corporation ("Fortune Tobacco* case*").*[9]

Petitioner's contention lacks merit.

In *Panasonic Communications Imaging Corporation v. Commissioner of Internal Revenue,*[10] the Supreme Court categorically states that tax refunds in relation to VAT are in the nature of such exemptions, which are construed strictly against the taxpayer. Pertinent portions of the said case state:

> xxx xxx xxx **statutes that grant tax exemptions are construed *strictissmi 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. *(Emphasis Supplied)*

Petitioner's reliance on the ruling of the Supreme Court in the *Fortune Tobacco* case in order to bolster its position is unavailing because the factual milieu and the issue involved in the *Fortune Tobacco* case are different from the instant case. The *Fortune Tobacco* case involves the grant of a tax refund or credit representing specific taxes erroneously collected from its tobacco products, and the main issue is whether the revenue regulation has exceeded the allowable limits of legislative delegation. In that case, Fortune Tobacco's "claim for refund is premised on its erroneous payment of the tax, or better still the government's exaction in the absence of a law." Moreover, the ruling in *Fortune Tobacco* case supports our view of strict interpretation against the taxpayer because "[a] claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund

[9] G.R. Nos. 167274-75, July 21, 2008, 559 SCRA 160.
[10] G.R. No. 178090, February 8, 2010, 612 SCRA 28.

partakes of the nature of an exemption, xxx xxx xxx." Clearly, petitioner has the burden of proof to prove its claim.

As correctly held by the Court in Division in the assailed Resolution, as follows:[11]

> The Court agrees with the rules laid down in the case of *Commissioner of Internal Revenue vs. Fortune Tobacco.* Notwithstanding, petitioner still has the burden of proof to establish as a fact that it had undeclared input VAT in the amount of [₱]72,738,183.31 due to inadvertence and that the same was refundable. It is a well-settled rule that he, who alleges, has the burden of proof.

Solutio indebiti is not applicable to refund of input taxes

Petitioner contends that tax refunds are based on the principle of *solutio indebiti* and that the Government comes within the scope of *solutio indebiti* as elucidated in *Commissioner of Internal Revenue v. Fireman's Fund Insurance Company.*[12]

Petitioner's contentions are not applicable in this case.

In *CBK Power Company Limited v. Commissioner of Internal Revenue ("CBK Power case"),*[13] the Supreme Court ruled that *solutio indebiti* is not applicable to refund of input tax because, among others, input VAT is not paid through mistake and that there is a binding relation between petitioner and the CIR. Pertinent portions of the *CBK Power* case provide:

> "Also devoid of merit is the applicability of the principle of *solutio indebiti* to the present case. According to this principle, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In that situation, a creditor-debtor relationship is created under a quasi-contract, whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive the payment becomes obligated to return it. The quasi-contract of *solutio indebiti* is based on the ancient principle that no one shall enrich oneself unjustly at the expense of another.

[11] *Rollo*, p. 35.
[12] G.R. No. L-30644, March 9, 1987, 148 SCRA 315.
[13] G.R. Nos. 198729-30, January 15, 2014, 714 SCRA 46; Citations Omitted.

There is *solutio indebiti* when:

(1) Payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and

(2) Payment is made through mistake, and not through liberality or some other cause.

Though the principle of *solutio indebiti* may be applicable to some instances of claims for a refund, the elements thereof are wanting in this case.

First, there exists a binding relation between petitioner and the CIR, the former being a taxpayer obligated to pay VAT.

Second, the payment of input tax was not made through mistake, since petitioner was legally obligated to pay for that liability. The entitlement to a refund or credit of excess input tax is solely based on the distinctive nature of the VAT system. At the time of payment of the input VAT, the amount paid was correct and proper.

Finally, equity, which has been aptly described as "a justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure. Section 112 is a positive rule that should preempt and prevail over all abstract arguments based only on equity.

Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show strict compliance with the conditions for the grant of the tax refund or credit."

Applying the foregoing jurisprudence, the principle of *solutio indebiti,* therefore, does not apply in this instant case, which involves input VAT.

Amendment of the VAT return is not allowed in this case

Petitioner alleges that, assuming without admitting, that the erroneous overpayment of VAT is not refundable to petitioner or to be given as tax credit, petitioner contends that this Court, in the interest of substantial justice, may allow or order respondent to authorize petitioner to include the aforesaid omitted VAT which was not included in the computation of VAT payable for the quarter ended September 30, 2008 to the current or available input tax of the petitioner. Petitioner believes this alternative will remedy the unjust enrichment on the part of the government arising from the mistake or error committed by petitioner's employees.

This Court finds that it is not allowed by law.

Section 6 (A) of the 1997 NIRC, as amended, allows amendment of the return within three (3) years from the date of filing provided that the Letter of Authority (LOA) has not yet been served to the taxpayer.[14] In this case, it is undisputed fact that respondent already issued a Letter of Authority for taxable year 2008, which was received by petitioner, thus, amendment of the VAT for the Third Quarter of 2008 is already barred by law.

In view of the foregoing discussions, this Court will no longer discuss the other issues in this case for being moot.

We reiterate that "even with the alleged undeclared input tax of [₱]72,738,183.31, petitioner would still have no overpayment of Output Tax which may be the subject of a claim for refund on the ground of erroneous overpayment, as shown below:"[15]

		3rd Quarter 2008	2nd Quarter 2008
Output Tax Due		₱ 1,357,219,175.12	₱ 1,457,282,180.55
Less:	Substantiated Declared Input Taxes	134,178,638.87	207,415,216.11
	Alleged Undeclared Input Taxes, subject of the present claim	72,738,183.31	
Net VAT Payable		**₱ 1,150,302,352.94**	**₱ 1,249,866,964.44**

It follows that even with the substantiated input taxes of ₱30,940,207.27, the result is also Net VAT Payable. Pertinent portions of the assailed Decision,[16] provides:

[14] Section 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements For Tax Administration and Enforcement.—*

xxx xxx xxx

Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn:*Provided,* That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further,* That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer .

[15] *Rollo*, pp. 56-57.

[16] *Id.*, p. 57.

> Petitioner's Quarterly VAT Return for the third quarter of 2008 shows output taxes due in the amount of ₱1,357,219,175.12. Had petitioner declared the substantiated input taxes of ₱30,940,207.27 in its Quarterly VAT Return for the third quarter of 2008, considering its output taxes and substantiated input taxes for the third quarter of 2008 per the Independent CPA's examination, it would not have enough input taxes to offset against its output taxes for the same taxable period. Thus, petitioner would still not have a VAT overpayment for the third quarter of 2008, which may be the subject of a claim for refund under Section 229 of the NIRC of 1997, as amended. xxx xxx xxx

Based on the foregoing discussions, this Court finds that the Court in Division did not err in denying petitioner's claim for refund or issuance of tax credit certificate amounting to ₱72,738,183.31 allegedly representing erroneously paid value-added tax (VAT) for the quarter ended September 30, 2008.

WHEREFORE, the petition is **DENIED** for lack of merit. The January 17, 2014 Decision and April 22, 2014 Resolution of the CTA Special Third Division in CTA Case No. 8183 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

I join the concurring + dissenting opinion of PJ Del Rosario

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(I join the Concurring and Dissenting Opinion of PJ Del Rosario.)
MA. BELEN RINGPIS-LIBAN
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COCA-COLA BOTTLERS PHILIPPINES, INC, *Petitioner,*	**CTA EB CASE NO. 1165** (CTA Case No. 8183)
	Present:
-versus-	**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 12 2015 3:10 p.m.

x -- x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *Ponente* in denying the present Petition for Review for lack of merit.

With all due respect, however, I am of the opinion that: (1) though the regulations require that input taxes must be reflected in the tax returns, said rule is not absolute as long as the taxpayer is able to prove and substantiate its entitlement to the said deduction; and, (2) Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, applies to petitioner's claim for refund.

Truth be told, the issue involved in the case is not of first impression. The very same issue was raised in the earlier cases[1] involving the same parties in this case *albeit* relating to different taxable quarters and years.

As elucidated in my Separate Concurring Opinion in *Coca Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*,[2] Section 229 of the NIRC of 1997, as amended, allows claims for refund or tax credit of erroneously paid output tax, *viz:*

> "In this regard, Section 229 of the NIRC of 1997, as amended, gives a taxpayer a period of two (2) years from date of payment to file an administrative and judicial claim for refund of erroneously collected tax, to wit:
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> > "**SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected.*** –No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> > In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."
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> To be sure, the additional output taxes paid to the government (arising from the taxpayer's inadvertent failure to declare its input taxes) represents erroneously collected taxes. In applying Section 229 of the NIRC of 1997, as amended, the taxpayer is merely using the clear, plain and unconditional provision of Section 229 of the NIRC of 1997, as amended, which is the available remedy to pursue its claim for refund or tax credit of its alleged erroneously collected output taxes.
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> Section 6(A) of the NIRC of 1997, as amended, which prohibits a taxpayer from amending his tax return after the issuance of a Letter of Authority (LOA) is insignificant in pursuing the remedy under Section

[1] Coca Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB Case No. 1044, February 12, 2015; CTA EB Case No. 1061, April 10, 2015; CTA EB Case No. 1100, March 10, 2015, and CTA EB Case No. 1178, May 18, 2015.

[2] CTA EB Case No. 1044, February 12, 2015.

229 of the NIRC of 1997, as amended. Besides, the amendment of the return is prohibited under Section 6(A) of the NIRC of 1997, as amended, to prevent a taxpayer from curing any fraud he has committed if a letter of authority for the examination of his return has already been served on him or such amendment has been made in the course of an investigation of his tax liability.[3] The prohibition is relevant in connection with the Commissioner of Internal Revenue's (CIR) power to make an assessment of a taxpayer's liability. In contrast, Section 229 of the NIRC of 1997, as amended, is confined to a determination of whether or not there was an erroneous payment of tax, irrespective of the entries in tax returns. Significantly, there is nothing in Section 229 of the NIRC of 1997, as amended, which expressly requires that the erroneously paid tax be reflected in the tax return. Said requirement is explicit only in cases where the CIR *motu propio* gives a refund or tax credit, even without a written claim, that is - - "where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

In the assailed Decision of the Special First Division, the Court denied the claim for refund as the substantiated input taxes were not reported in petitioner's VAT return due to the alleged inadvertence. As a general rule, input taxes must be substantiated and reported in the VAT returns of a taxpayer in order for said taxes to be available as tax credits.[4] But as earlier stated, this rule is not inflexible. In *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*,[5] **the transitional input VAT was likewise not shown in the VAT return, yet the Supreme Court granted the refund of the corresponding overpayment of output VAT**, *viz:*

> "In this case, when petitioner realized that its transitional input tax credit was not applied in computing its output VAT for the 1st quarter of 1997, **it filed a claim for refund to recover the output VAT it erroneously or excessively paid for the 1st quarter of 1997. In filing a claim for tax refund, petitioner is simply applying its transitional input tax credit against the output tax it has paid.** Hence, it is merely availing of the tax credit incentive given by law to first time VAT taxpayers."

It must be stressed that the term 'input tax' includes transitional input tax determined in accordance with Section 111 of the NIRC of 1997, as amended.[6] In granting the claim for refund in the Fort Bonifacio Development Corporation case, the Supreme Court allowed input tax **not reported in the VAT returns** to be deducted against output tax.

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[3] De Leon Hector S. and De Leon, Jr. Hector M., The National Internal Revenue Code Annotated, Eight Edition 2003, p.34.
[4] Section 4.110.8 of Revenue Regulations No. 16-2005, as amended, October 19, 2005.
[5] G.R. No. 173425, September 4, 2012.
[6] SEC. 110. Tax Credits. –
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The term *"input tax"* means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business or importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. **It shall also include the transitional input tax determined in accordance with Section 11 of this Code.** (Emphasis supplied)

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In applying the *Fort Bonifacio Development Corporation case* to the present case, what is actually being adopted is the principle that input taxes not reported in the VAT return may still be credited against the output tax due. **Stated differently, although the input taxes were not reported in the VAT returns, the same may still be credited against the output tax liability of the taxpayer for as long as said input taxes were properly substantiated.** Hence, any output tax paid by the taxpayer, *on account of its failure to declare its correct and substantiated input taxes in its VAT returns and apply the same as credit against its output tax*, shall be available for refund as erroneously paid output tax. Petitioner is therefore allowed under Section 229 of the NIRC of 1997, as amended, to claim for refund or credit of its *alleged* erroneously paid output tax.

It is at this juncture that I quote the enlightening disquisition of the Honorable Associate Justice Amelia R. Cotangco-Manalastas as the *ponente* in **Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue,**[7] *viz.*:

> "Clearly then, any increase in the input tax shall lead to a decrease in the output tax, while a decrease in input tax leads to an increase in output tax. If there is an error in the computation of input taxes, such that less input tax is recognized, there is a higher output tax liability. Such error when corrected, i.e., a higher input tax is recognized, results to a lower output tax than that already paid and thus provides a justifiable claim for refund of erroneously paid output tax.
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> By analogy, the ruling of the Supreme Court in Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, et al., is instructive:
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> In the instant case, petitioner failed to consider in its computation of output tax liability certain input taxes on some of its purchases of services on credit, thus leading to a payment of higher output taxes than it otherwise should have paid. When petitioner realized this and could no longer amend its VAT returns due to the issuance of the Letter of Authority, petitioner applied for refund of erroneously/excessively paid output tax. In filing for tax refund, petitioner is simply applying its input tax credit against the output VAT, hence, petitioner is merely availing of the creditable input tax mechanism provided for in Section 110." (*Emphases in the original*)

In the case at bar, records show that petitioner's input VAT amounting to ₱72,738,183.31, incurred in the 3rd quarter of 2008, was inadvertently not

[7] CTA Case No. 8183, January 17, 2014; penned by Honorable Associate Justice Amelia R. Cotangco-Manalastas and concurred by Honorable Associate Justice Lovell R. Bautista.

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reported in its tax return and consequently, was not deducted against its output tax. Pursuant to Section 110(A)(1) of the NIRC of 1997, as amended, petitioner's input taxes from certain transactions that are evidenced by VAT invoices or official receipts issued in accordance with Section 113 of the NIRC of 1997, as amended, shall be creditable against its output tax resulting to the its VAT liability. Due to inadvertence, petitioner was not able to deduct the input VAT amounting to ₱72,738,183.31. As a result, petitioner's VAT payment for the 3rd quarter of 2008 amounted to ₱296,831,991.44, instead of ₱224,093,808.13, computed as follows:

	Per Return	Should Be
Output Tax	₱1,357,219,175.12	₱1,357,219,175.12
Less: Input Tax	1,060,387,183.68	1,133,125,366.99
VAT Due	₱ 296,831,991.44	₱ 224,093,808.13

	VAT Due
Per Return	₱296,831,991.44
Should Be	224,093,808.13
Difference	₱ 72,738,183.31

By not deducting its input tax, petitioner overpaid its VAT in the amount of ₱72,738,183.31. Thus, the payment of VAT amounting to ₱296,831,991.44 is not correct and proper. **Petitioner, therefore, is claiming a refund of overpayment of VAT**, under Section 229 of the NIRC of 1997, as amended **and not a refund of excess or unutilized input VAT attributable to zero-rated sales**, under Section 112 of the NIRC of 1997, as amended, vis-à-vis the doctrine laid down in *Commissioner of Internal Revenue vs. San Roque (San Roque case).*[8]

To be emphatic, the *San Roque case* is not applicable to the case at bar. The *San Roque* case pertains to claims for refund of excess or unutilized input VAT **attributable to zero-rated sales**. In the said case, the taxpayer had zero-rated VAT sales of power generated through renewable sources of energy, pursuant to Section 108(B)(7) of the NIRC of 1997, as amended. As zero-rated VAT entity, San Roque is liable to pay VAT at a rate of zero percent (0%). In the course of its conduct of its business, San Roque incurred input taxes from purchases of goods and services attributable to its zero-rated sales. The said input taxes, however, remained unutilized for San Roque had zero output tax. Hence, San Roque filed its claim for refund of its unutilized or excess input taxes attributable to its zero-rated sale by invoking Section 229 of the NIRC of 1997, as amended. It is in this context wherein the Supreme Court ruled that excess input VAT cannot be refunded *via* Section 229 of the NIRC of 1997, as amended, as the applicable remedy is provided under Section 112 of the NIRC of 1997, as amended.

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

Indubitably, this is not the scenario in the case at bar. Almost all of petitioner's sales for the 3rd quarter of 2008 are subject to twelve percent (12%) VAT. Petitioner's input taxes were fully utilized except for the amount of ₱72,738,183.31 which was inadvertently not deducted from its output tax by its accountant. Petitioner would have been able to deduct the said input taxes had it been so incorporated in its VAT Return.

Clearly, the case at bar does not pertain to unutilized input VAT attributable to zero-rated sales but to an input VAT which *was erroneously not deducted* against petitioner's output tax.

Otherwise stated, due to its accountant's failure to deduct the input tax, petitioner overpaid its VAT for the 3rd quarter of 2008. The erroneous and excessive payment of VAT provides a justifiable claim for refund under Section 229 of the NIRC of 1997, as amended.

Nevertheless, the claim for refund must still be denied. As aptly ruled by the Court in Division:

> "Considering that petitioner's Output Tax Due is P1,357,219,175.12, less the substantiated and reported input tax of P134,178,638.87 and actual VAT payments for the quarter of P296,831,991.44, still results to a Net VAT Payable instead of a VAT Overpayment, this Court cannot grant petitioner's claim for refund of erroneously overpaid output tax for the quarter ended September 30, 2008."

All told, I **VOTE** to **DENY** the Petition for Review filed by Coca-Cola Bottlers Philippines, Inc. in CTA EB Case No. 1165 but solely for the afore-stated reasons.

ROMAN G. DEL ROSARIO
Presiding Justice