REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ASSOCIATED SWEDISH STEELS PHILS, INC., Petitioner,	**CTA EB No. 854** (CTA Case No. 7850)
	Present:
-versus-	Acosta, *PJ*, Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, Fabon-Victorino, Mindaro-Grulla, and Cotangco-Manalastas, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 23 2012 2:50pm

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DECISION

CASTAÑEDA, JR., *J*.:

Before this Court is a Petition for Review by petitioner Associated Swedish Steels Phils, Inc., dated January 30, 2012, assailing the Decision[1] of the Court of Tax Appeals (CTA) First Division dated September 16, 2011, the *fallo* of which reads:

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[1] Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Esperanza R. Fabon-Victorino. Division *Rollo*, pp. 518-526; Annex "A", *Rollo*, pp. 38-47.

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[2]

Also assailed in the Petition is the Resolution[3] promulgated on December 15, 2011 which denied petitioner's Motion for Reconsideration dated October 11, 2011, the dispositive portion of which provides:

> **WHEREFORE**, premises considered, the *Motion for Reconsideration* filed by petitioner on October 11, 2011 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[4]

<u>THE FACTS</u>

The facts[5] of this case were summarized by the CTA First Division in this wise:

> Petitioner is a corporation duly organized and registered under the laws of the Philippines, with principal office previously located at No. 3 E. Rodriguez Jr. Avenue, Bagong Ilog, Pasig City.
>
> On the other hand, respondent is vested by the National Internal Revenue Code (NIRC) with the authority to decide, approve, and grant tax refunds. She holds office at the Bureau of Internal Revenue (BIR), National Office Building, Diliman, Quezon City.
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> On November 15, 2007, the Board of Directors of petitioner approved the cessation of the latter's operations effective December 31, 2007. Petitioner indeed ceased its business operations effective December 31, 2007. From then on, it did not recommence any form of business.

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[2] Division *Rollo,* p. 526.
[3] Annex "B", *Rollo,* pp. 48-52; *Id.,* at pp. 545-549.
[4] Division *Rollo,* p. 549.
[5] *Id.,* pp. 519-521.

As of December 31, 2007, petitioner has accumulated excess/unutilized input tax credits from its importation of goods and from domestic purchase of goods and services in the total amount of ₱ 23,303,769.83, the details of which are as follows:

(In Philippine Pesos)			
Period	INPUT VAT FOR THE YEAR	OUTPUT VAT FOR THE YEAR	EXCESS INPUT VAT
Carried-over from 2007	1,502,557.73	724,619.78	23,303,769.83

On July 1, 2008, petitioner filed an Application for Registration Information Update. Subsequently, on July 7, 2008, petitioner filed with the BIR Regional District Office No. 43 an Application for Tax Credits/Refunds (BIR Form No. 1914) to claim a refund of excess or unutilized input VAT credits. On the same date, an administrative claim for issuance of a TCC was also filed.

Due to the inaction of respondent and upon the notion that it would want to preserve its right to claim said TCC, petitioner was constrained to file the instant Petition for Review on December 5, 2008, supposedly pursuant to Section 112(B) of the NIRC of 1997.

Respondent filed her Answer on February 19, 2009, and interposed the following Special and Affirmative Defenses:

> "7. The claim for refund is still under examination by the respondent's Bureau;
>
> 8. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;
>
> 9. The grant of claim for refund tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority; *gr*

> 10. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."
>
> The case was then set for pre-trial conference on March 6, 2009. Thereafter, the parties filed their Joint Stipulation of Facts and Issues on March 16, 2009, which was approved in the Resolution dated March 26, 2009. During trial, petitioner presented and offered documentary and testimonial evidence to prove its claim.
>
> On the other hand, respondent, through counsel, manifested during the hearing held on August 5, 2010 that there is no news on the supposed terminated examination; therefore, respondent would just submit the case for decision. The parties then were required to file their respective memorandum. On November 3, 2010, petitioner filed its Memorandum but respondent did not file Memorandum. On November 11, 2010 the case was submitted for decision, considering the Memorandum filed by petitioner, sans respondent's memorandum.

On September 16, 2011, the CTA First Division denied the Petition. Dissatisfied, on October 11, 2011, petitioner moved for reconsideration[6] but this was likewise denied on December 15, 2011.[7]

On January 10, 2012, petitioner filed an "Urgent Motion for Time to File an Appeal to the Court of Tax Appeals *en banc*," seeking for an extension of fifteen (15) days within which to file its Petition for Review.[8] Acting on the said motion, this Court in a Minute Resolution dated January 11, 2012 granted the extension prayed for and petitioner was accordingly given a final and non-extendible period of fifteen (15) days from January 13, 2012 or until January 30, 2012 to file its

[6] Division *Rollo*, pp. 527-538.
[7] *Id.*, pp. 545-549.
[8] *Rollo*, pp. 1-4.

Petition for Review.[9] Indeed, within the extended period, petitioner filed its Petition for Review before the Court *en banc*.[10]

On February 20, 2012, this Court ordered the respondent to Comment on the Petition within a period of ten (10) days from receipt thereof,[11] but the latter did not file the same.[12] Subsequently, on April 16, 2012, this Court gave due course to the petition and accordingly ordered both parties to file their respective Memorandum within a non-extendible period of thirty (30) days.[13]

However, on May 23, 2012, only the petitioner filed its Memorandum.[14] Thus, in a Resolution dated June 20, 2012, the Court *en banc* considered this case submitted for decision.[15] Hence, this Decision.

THE ISSUE

Petitioner submits its sole issue[16] for this Court's consideration *viz*:

> **WHETHER THE HONORABLE COURT – 1ST DIVISION ERRED IN DENYING PETITIONER-APPELLANT'S CLAIM FOR REFUND IN THE AMOUNT OF PESOS: TWENTY THREE MILLION THREE HUNDRED THREE THOUSAND SEVEN HUNDRED SIXTY NINE AND 83/100 (₱23,303,769.83) ON THE GROUND THAT THE ADMINISTRATIVE CLAIM FOR ISSUANCE OF A TCC WAS PREMATURELY MADE, THUS FAILING TO COMPLY WITH THE LAST REQUISITE OF SECTION 112 (B) OF THE TAX CODE.**

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[9] *Rollo,* p. 21.
[10] *Id.,* pp. 22-37.
[11] *Id.,* pp. 85-86.
[12] *Id.,* p. 87.
[13] *Id.,* pp. 89-90.
[14] *Id.,* p. 105.
[15] *Id.,* pp. 106-108.
[16] Petition for Review, *Id.,* p. 28

THE COURT'S RULING

The Petition must fail.

The cancellation of petitioner's VAT registration commences from the first day of the following month under Section 236 of the NIRC of 1997, as amended

Petitioner asseverates that the reckoning point of the two (2)-year period within which to claim for refund is from the time it filed the Application for Registration Information Update which is on July 1, 2008 in accordance with Sec. 236 of the NIRC of 1997, as amended.

We do not agree.

The prevailing rule on claims for tax credit or tax refund of excess and unutilized Value-Added Tax on account of cessation of business is Section 112(B) of the National Internal Revenue Code of 1997 (NIRC), as amended by Rep. Act No. 9337[17] which provides:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) xxx xxx xxx
>
> (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)

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[17] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

On the other hand, Section 236 of the NIRC provides:

> SEC. 236. *Registration Requirements.* –
>
> xxx xxx xxx
>
> (F) *Cancellation of Registration.* –
>
> (1) *General Rule.* – The registration of any person who ceases to be liable to a tax type shall be cancelled upon filing with the Revenue District Office where he is registered, an application for registration information update in a form prescribed therefor;
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> (2) *Cancellation of Value-added Tax Registration.* – **A VAT-registered person may cancel his registration for VAT if**:
>
> xxx xxx xxx
>
> (b) **He has ceased to carry on his trade or business, and does not expect to recommence any trade or business within the next twelve (12) months**.
>
> **<u>The cancellation of registration will be effective from the first day of the following month</u>**. (emphasis and underscoring supplied)

In addition, Section 4.112-1(b) of Revenue Regulations No. 16-05, dated September 1, 2005, also provides:

> SECTION 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.* –
>
> xxx xxx xxx
>
> (b) *Cancellation of VAT Registration*
>
> A VAT-registered 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 the Tax 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 he may use in payment of his other internal revenue taxes**; *Provided, however,* **that he shall be entitled to a refund if he has no internal revenue tax liabilities against which the tax credit certificate may be utilized.** (emphasis supplied)

The above provisions states that a taxpayer whose registration has been cancelled due to, among others, cessation of business, may, within two (2) years from the date of cancellation of its registration, apply for the issuance of a tax credit certificate for any unused input tax which may be used to pay other internal revenue taxes. Moreover, where a taxpayer has no internal revenue tax liabilities, the latter shall be entitled to a refund in accordance with Section 204 of the NIRC.[18] The two (2)-year prescriptive period is reckoned from the date of the cancellation of the taxpayer's registration as provided for by Section 236(F)(1) and (2)(b) of the NIRC which categorically provides that the cancellation of petitioner's registration will take effect **only from the first day of the following month**.

Applying the above provisions to the case at bar, it is undisputed that the Board of Directors of the petitioner resolved to cease operations effective

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[18] SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* – The Commissioner may –

xxx xxx xxx

A tax credit certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. Any request for conversion into refund of unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code: *Provided*, That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: *Provided, further,* That in no case shall a tax availment of incentives granted pursuant to special laws for which no actual payment was made.

December 31, 2007 on account of unfavorable economic conditions and unprofitable returns of the business. Consistent with its efforts to cease operations, petitioner filed an Application for Registration Information Update on July 1, 2008 before the Revenue District Office No. 43 (now 43-A as claimed by the petitioner) of the BIR which provides the cancellation of petitioner's registration grounded on cessation of business operations.

The effectivity date of petitioner's formal cessation of business is reckoned from the first day of the following month where its Application for Registration Information Update was filed on July 1, 2008, and that is, on August 1, 2008. The pertinent portion of the assailed Decision which we adopt is clear:

> xxx xxx xxx
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> In this case, petitioner was able to establish that it ceased its business operations effective December 31, 2007 and from then on, it did not recommence any form of business, and that it filed an Application for Registration Information Update on July 1, 2008.
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> Accordingly, the cancellation of petitioner's registration as a VAT-registered person took effect only on August 1, 2008, *i.e.*, the first day of the following month. Such being the case, insofar as petitioner is concerned, the two-year period under the earlier quoted Section 112(C)[19] commenced to run only on such date.
>
> Consequently, the filing of petitioner's administrative claim for issuance of TCC on July 7, 2008 was **prematurely** made. Thus, petitioner failed to comply with the above-stated *last* requisite under Section 112(B) of the NIRC of 1997, as amended by RA 9337.

[19] Should be read as Section 112(B).

Thus, effective August 1, 2008, petitioner's VAT registration is considered cancelled. Counting the two (2)-year period from August 1, 2008, petitioner may apply for the issuance of a tax credit certificate of its unutilized input tax until August 1, 2010. However, in the case of the petitioner, it filed its administrative claim as early as July 7, 2008.[20] Such being the case, petitioner's administrative claim for refund is premature considering that that two (2)-year period under Section 112(B) in relation to Section 236 has not yet commenced to run. In short, the cancellation of petitioner's VAT registration will become effective on August 1, 2008 and not July 1, 2008 as what petitioner claims.

The joint stipulation of facts and issues agreed upon by the parties does not necessarily bind this Court

Petitioner argues that the administrative claim was seasonably filed considering that there is a waiver on the part of the respondent to invoke the defense of prematurity when the latter admitted in their joint stipulation of facts that petitioner ceased to be a VAT-registered entity on July 1, 2008 and therefore, the two (2)-year prescriptive period commences to run on July 1, 2008. Put it differently, petitioner claims that stipulations of fact constitute admissions by both parties, for as a rule, a judicial admission, such as that made by petitioner in the Joint Stipulation of Facts, is binding on the declarant.

Petitioner's argument deserves scant consideration.

There is no doubt that the parties agreed on the following facts: *je*

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[20] Par. 8, Joint Stipulation of Facts and Issues, Division *Rollo,* p. 57; Exhibit "D-3" Division *Rollo,* p. 166.

> 4. Petitioner ceased its business operations effective December 31, 2007. From then on, it did not recommence any form of business. Subsequently, Petitioner filed an Application for Registration Information Update on July 1, 2008. Thus, petitioner ceased to be liable as a VAT-Registered entity starting July 1, 2008, pursuant to Section 236 of the Tax Code as reiterated in Section 9.236-6 of Revenue Regulations No. 16-05 (Consolidated Value-Added Tax Regulations of 2005), as amended. x x x x
>
> 6. Within two (2) years from cancellation of Petitioner's VAT registration (which took effect on July 1, 2008), Petitioner may apply for the issuance of a Tax Credit Certificate (TCC) representing unused/excess input VAT credits.
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> 7. Petitioner filed with BIR Regional District Office No. 43 ("BIR") an Application for Tax Credits/Refunds (BIR Form No. 1914) to claim a refund of excess or unutilized input VAT credits on July 7, 2008.
>
> 8. An administrative claim for issuance of a TCC was also filed on July 7, 2008, clearly within the two-year period provided therefrom.

Although we agree with the petitioner that admission by the parties at the pre-trial conference be considered as a judicial admission under Sec. 4, Rule 129 of the Rules of Court[21] which requires no proof, they are however, subject to exceptions. Besides, to prevent manifest injustice, the admissions made by the parties during pre-trial may be disregarded by the court.[22]

While it is true that a judicial stipulation of facts is conclusive between the parties as long as it stands and such fact is not subject to contradiction by showing the fact to be otherwise as agreed upon. **However, it is noteworthy that the**

[21] SEC. 4. *Judicial Admissions.* – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.
[22] *Avon River Power Holdings Corporation [Formerly Avon River Holdings Corporation] vs. Commissioner of Internal Revenue,* CTA EB No. 715, April 26, 2012.

binding effect of the fact applies only to the parties in agreement; it is no more binding on the Court than any other evidence in the case.[23]

While it is undeniable that the parties made a joint admission that the administrative claim for refund or issuance of tax credit certificate fell within the two (2)-year prescriptive period provided for by law, a close scrutiny of the records would disclose that petitioner indeed prematurely filed its administrative claim. Therefore, this Court finds petitioner's assertions unmeritorious.

Procedural rules are not to be belittled or simply disregarded, for these prescribed procedures ensure an orderly and speedy administration of justice

In its Petition for Review, petitioner argues that administrative bodies like the Bureau of Internal Revenue are unfettered by the rigidity of certain procedural requirements and may therefore be relaxed as the exigencies of the case may warrant. Further, petitioner relies on the principle that technical rules of procedure are not ends in themselves but are primarily designed to aid in the administration of justice and finally, petitioner claims that rules of procedure should be liberally construed so that litigants can have ample opportunity to prove their claims and thus prevent a denial of justice due to technicalities.

The Court begs to disagree.

It is a basic principle in taxation that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Upon the person

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[23] *Oceanic Wireless Network Inc., vs. Commissioner of Internal Revenue*, CTA EB No. 76, June 22, 2006, citing *Ireland vs. Stalaum,* 162 Neb. 630, 77 N.W. 2d 155 (1956).

claiming an exemption from tax payments rests the burden of justifying the exemption too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[24] Moreover, while it is true that litigation is not a game of technicalities, and that the rules of procedure should not be enforced strictly at the cost of substantial justice, still it does not follow that the procedural rules may be ignored at will and at random to the prejudice of the orderly presentation, assessment and just resolution of the issues. Procedural rules should not be belittled or dismissed simply because they may have resulted into a party's substantial rights. Like all rules, they are required to be followed except only for compelling reasons.[25]

It should be emphasized that a party seeking an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter

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[24] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,* G.R. No. 188497, April 25, 2012; *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue,* G.R. No. 178090, February 8, 2010, 612 SCRA 28, 38.

[25] *Atty. Erlando A. Abrenica vs. Law Firm of Abrenica, Tungol and Tibayan,* G.R. No. 169420, September 22, 2006, 502 SCRA 614, 622, citing *Sebastian vs. Morales,* G.R. No. 141116, February 17, 2003, 397 SCRA 549, 558-559; *Teoville Homeowners Association, Inc., vs. Ferreira,* G.R. No. 140086, June 8, 2005, 459 SCRA 459, 472-473 citing *Lanzaderas vs. Amethyst Security and General Services, Inc.,* G.R. No. 143604, June 20, 2003, 404 SCRA 505, 513.

itself correctly and prevent unnecessary and premature resort to court action.[26] Further, revenue statutes are substantive laws and in no sense must their application be equated with that of remedial laws. Revenue laws are not intended to be liberally construed. Again, considering that taxes are the lifeblood of the government and in Holmes's memorable metaphor, the price we pay for civilization, tax laws must be faithfully and strictly implemented.[27]

WHEREFORE, premises considered, the Petition for Review is **DISMISSED** for lack of merit. Accordingly, both the assailed Decision dated September 16, 2011 and Resolution dated December 15, 2011 of the CTA First Division are hereby **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

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[26] *Asia International Auctioneers, Inc. vs. Parayno, Jr.,* G.R. No. 163445, December 18, 2007, 540 SCRA 536, 552.
[27] *Vide Commissioner of Internal Revenue vs. Acosta,* G.R. No. 154068, August 3, 2007, 529 SCRA 186, citing *Froehlich & Kuttner vs. Collector of Customs,* 18 Phil. 461, 481-482 (1911).

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice