REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CARMEN COPPER CORPORATION, Petitioner,	**CTA EB NO. 2428** (CTA Case No. 9543)
	Present:
- versus -	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, and CUI-DAVID, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 22 2022 1:55 pm

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DECISION

DEL ROSARIO, P.J.:

Before the Court *En Banc* is the "**Petition for Review**"[1] filed by Carmen Copper Corporation on February 22, 2021 praying for the reversal of the Decision dated June 25, 2020 and the Resolution dated January 8, 2021 rendered by the Third Division of the Court; and for the Court *En Banc* to *(i)* render a decision ordering respondent to refund or issue a tax credit certificate to petitioner amounting to ₱32,155,471.50; *(ii)* alternatively, order the Third Division of the Court to reopen the case to allow petitioner to recall its witness to further elaborate on the findings and conclusions of the Independent Certified Public Accountant (ICPA) that petitioner's sales were all zero-rated; and, *(iii)* order the Third Division of the Court to resolve the issue with

[1] Docket (CTA EB No. 2428), pp. 8-64.

respect to the supporting documents for input taxes denied by respondent.

The dispositive portions of the assailed Decision and Resolution, respectively, read:

<u>Decision dated June 25, 2020</u>

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED**."[2]

<u>Resolution dated January 8, 2021</u>

> "**WHEREFORE**, in view of the for[e]going, petitioner's Motion for Reconsideration (with Motion for Leave of Court to Reopen the Case for the Recall of a Witness) is **DENIED** for lack of merit.
>
> **SO ORDERED**."[3]

THE PARTIES

Petitioner Carmen Copper Corporation is a domestic corporation duly organized and existing under Philippine laws, with principal office at Unit 502-P and 503-P, 5/F Five E-Com Center, Palm Coast Avenue corner Pacific Drive, Mall of Asia Complex, Barangay 76, Pasay City.[4] It is also registered with the Board of Investments (BOI) as a "New Producer of Copper Concentrate" under Certificate of Registration No. 2006-158.[5]

Respondent Commissioner of Internal Revenue[6] (CIR) 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 tax refunds or tax credits as provided by law.

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[2] *Id.* at 54.
[3] *Id.* at 63.
[4] *Id.* at 10 and 34.
[5] *Id.* at 51.
[6] The incumbent CIR is Hon. Caesar R. Dulay.

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THE FACTS

On September 28, 2016, petitioner filed with the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914), requesting for the refund of its alleged unutilized input value-added tax (VAT) amounting to ₱54,813,948.05, for the period covering July 1, 2014 to September 30, 2014.[7]

On January 25, 2017, petitioner received a copy of the undated letter signed by OIC-Assistant Commissioner Teresita M. Angeles, Large Taxpayers Service of the BIR, granting the issuance of a tax credit certificate in favor of petitioner in the reduced amount of ₱22,658,476.55.[8]

On February 24, 2017, petitioner filed a "Petition for Review" with the Court of the Tax Appeals (CTA) which was initially raffled to the First Division.[9]

Summons was served upon respondent on March 20, 2017 and on the Office of the Solicitor General on March 21, 2017.[10]

On March 29, 2017, respondent filed his "Answer", interposing the following special and affirmative defenses:

(i) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the BIR;

(ii) The amount of ₱32,155,471.50, representing alleged excess VAT for the period 1 July to 30 September 2014, was not properly documented;

(iii) In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

(iv) Petitioner must show that it has complied with the provisions of Section 112 of the National Internal Revenue Code

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[7] Docket (CTA EB No. 2428), p. 35.
[8] *Id.*
[9] *Id.*
[10] Docket (CTA Case No. 9543), pp. 84-86.

(NIRC) of 1997, as amended, on the prescriptive period for claiming tax refund/credit;

(v) Petitioner must prove that it paid the alleged input taxes for the period stated;

(vi) Petitioner must prove that its sale of services is subject to VAT at 0%;

(vii) Petitioner must prove that it's alleged unutilized input taxes have not been applied against any output tax liabilities both in the current or succeeding year;

(viii) While it is true that Section 112(A) of the NIRC of 1997, as amended, allows tax refund or credit on input tax attributable to zero-rated or effectively zero-rated sale, nonetheless, compliance with certain invoicing requirement must be met before such claim for refund or credit can be granted;

(ix) The input taxes claimed on the amortized input tax generated from purchases/importations of capital goods exceeding ₱1,000,000.00 in the total amount of ₱32,155,471.50 was disallowed by the BIR in accordance with Section 112 of the NIRC of 1997, as amended; and,

(x) The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority.[11]

Respondent filed his Pre-Trial Brief on April 17, 2017 while petitioner filed its Pre-Trial Brief on June 16, 2017. The Pre-Trial Conference was held on June 22, 2017 as scheduled.[12]

On July 17, 2017, the parties submitted their "Joint Stipulation of Facts and Issues" (JSFI),[13] which was approved in the Resolution

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[11] Docket (CTA Case No. 9543), pp. 35-39.
[12] *Id.* at 39.
[13] *Id.*

dated August 7, 2017.[14] Thereafter, the Pre-Trial was terminated and a Pre-Trial Order dated August 25, 2017 was issued.[15]

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of its three (3) witnesses, namely: (1) Mr. Fernando A. Rimando, petitioner's Chief Finance Officer; 2) Ms. Michelle E. Paray, Financial Accounting Manager of Atlas Mining Corporation; and, (3) Mr. Neil U. Sison, the Court-commissioned Independent Certified Public Accountant (ICPA).[16]

On March 15, 2018, petitioner filed its "Formal Offer of Evidence (with Motion for Substitution of Exhibit)".[17] In the Resolution dated June 20, 2018, the First Division granted petitioner's Motion for Substitution of Exhibit and set the Commissioner's Hearing for the marking of petitioner's BIR Certificate of Registration for its Branch Office as Exhibit "P-3" on June 28, 2018.[18]

In the Resolution dated September 18, 2018, the First Division admitted petitioner's exhibits except for the following:

> "1. Exhibit **'P-20-B', ('P-20-R-156'), ('P-20-V-1' to 'P-20-V-6'), ('P-20-AA-26' to 'P-20-AA-27')**, and **('P-20-AD-1' to 'P-20-AS-16')**, for not being found in the records of the case; and,
>
> 2. Exhibit **'P-20-AH'** (Summary List of Purchases 2nd Quarter of Taxable Year 201**4**), for failure of the exhibit formally offered to correspond with the pre-marked document, to wit:

Description in Formal Offer	*Pre-Marked document*
Summary List of Purchases **2nd Quarter** of Taxable year 2014	Summary List of Purchases **April** and **May** of Taxable year 201**5**"[19]

In the Order dated October 1, 2018, the case was transferred to the Third Division of the Court (Court in Division).[20]

Respondent also presented documentary and testimonial evidence. He offered the sole testimony of Revenue Officer Dalisay Umlas.[21]

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[14] Docket (CTA Case No. 9543), pp. 242-243.
[15] Docket (CTA EB No. 2428), p. 39.
[16] *Id.*
[17] *Id.* at 40.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.* at 41.

On January 29, 2019, respondent filed his "Formal Offer of Evidence".[22] In the Resolution dated March 29, 2019, the Court in Division admitted respondent's exhibits and gave the parties thirty (30) days within which to submit their respective memoranda.[23]

On April 25, 2019, respondent filed his "Memorandum" while the "Memorandum for Petitioner" was filed on June 10, 2019.[24]

On June 25, 2020, the Court in Division rendered the assailed Decision denying petitioner's refund claim.[25]

On August 3, 2020, petitioner filed a "Motion for Reconsideration (With Motion for Leave of Court to Reopen the Case for the Recall of a Witness)"[26] which was likewise denied by the Court in Division in its Resolution dated January 8, 2021.[27]

Undeterred, petitioner filed a "Motion for Extension of Time to File Petition for Review"[28] with the Court *En Banc* on February 5, 2021, which was granted in the Minute Resolution dated February 8, 2021[29] giving petitioner until February 20, 2021[30] within which to file its Petitioner for Review. On February 22, 2021, petitioner filed the present "Petition for Review".

In the Resolution dated May 26, 2021, the Court *En Banc* directed petitioner to submit a compliant Verification and Certification of Non-Forum Shopping and the original or certified true copy of the Secretary's Certificate within five (5) days from receipt thereof.[31] On June 11, 2021, petitioner filed its "Compliance".[32]

In the Resolution dated July 7, 2021, petitioner's "Compliance" and its attachments were deemed sufficient compliance with the Resolution dated May 26, 2021, and respondent was ordered to file his comment on the petition within ten (10) days from receipt thereof.[33]

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[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.* at 34-55.
[26] Docket (CTA Case No. 9543), pp. 583-629.
[27] Docket (CTA EB No. 2428), pp. 57-63.
[28] *Id.* at 1-6.
[29] *Id.* at 7.
[30] February 20, 2020 was a Saturday. The next working day is February 22, 2021, Monday.
[31] *Id.* at 67-69.
[32] *Id.* at 70-76.
[33] *Id.* at 78-79.

Respondent filed his "Comment (Re: Petition for Review)"[34] on July 27, 2021.

On October 21, 2021, the present "Petition for Review" was submitted for decision of the Court *En Banc*.[35]

THE ASSIGNED ERRORS

Petitioner raises the following errors allegedly committed by the Court in Division, to wit:

> "A. THE DIVISION ERRED IN NOT HOLDING THAT RESPONDENT IS REQUIRED BY LAW AND THE CONSTITUTION TO PROVIDE SUFFICIENT EXPLANATION AND SPECIFIC LEGAL BASES FOR ITS DENIAL OF CLAIM FOR VAT REFUND IN COMPLIANCE WITH DUE PROCESS.
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> B. THE DIVISION ERRED IN HOLDING THAT A BOI-REGISTERED ENTERPRISE MUST PROVE THAT ITS EXPORT SALES [WERE] PAID FOR IN ACCEPTABLE FOREIGN CURRENCY AND ACCOUNTED FOR UNDER THE BSP RULES BEFORE THE SAME COULD BE TREATED AS ZERO-RATED SALES FOR VAT PURPOSES.
>
> C. THE DIVISION ERRED IN HOLDING THAT SINCE EXPORT SALES OF PHP105,471,946.18 IN THE SUMMARY OF LIST OF SALES CANNOT BE TRACED TO THE SALES INVOICES, THE SALES INVOICES CANNOT BE CONSIDERED COMPLIANT WITH THE [INVOICING] REQUIREMENTS.
>
> D. THE DIVISION, IN DENYING THE PETITIONER'S CLAIM FOR REFUND ON THE BASES OF UNSUBSTANTIATED EXPORT SALES, EXCEEDED ITS JURISDICTION WHEN IT RULED ON AN ISSUE THAT WAS NEITHER BROUGHT UP BY THE PARTIES NOR THE BASIS FOR THE ADMINISTRATIVE DECISION APPEALED FROM.
>
> E. THE DIVISION, BY NOT RECALLING THE ICPA TO TESTIFY AND EXPLAIN HIS FINDINGS WITH RESPECT TO THE EXPORT SALES, VIOLATED PETITIONER'S RIGHT TO DUE PROCESS WHEN [IT] BASED ITS DECISION ON THE SUBSTANTIATION OF EXPORT SALES BECAUSE THE EXPORT SALES [WERE] ALREADY A

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[34] *Id.* at 80-89.
[35] *Id.* at 91-92.

(initials)

SETTLED MATTER AS FAR AS THE PARTIES ARE CONCERNED.[36]

THE PARTIES' ARGUMENTS

Petitioner's Arguments[37]

Petitioner avers that due process requires that the taxpayer must be informed of the factual and legal bases supporting the administrative decision of respondent. It believes that the undated decision on its application for refund does not comply with the due process requirement of the Constitution and Section 14, Chapter 3, Book III of the Administrative Code. It argues that Section 228 of the NIRC of 1997, as amended (requiring that the taxpayer shall be informed in writing of the law and the facts on which an assessment is made; otherwise, the assessment is void) is likewise applicable to claims for refund. In support of its averment, petitioner cites *Avon Products Manufacturing vs. The Commissioner of Internal Revenue*[38] and *Ang Tibay vs. The Court of Industrial Relations.*[39]

Purportedly, there is no law that exempts the BIR from the application of the due process requirements in administrative proceedings and quasi-judicial proceedings. The CIR's strictness with respect to taxpayer's compliance with the substantiation requirement must be applied with the same degree of fervor to his duties, especially on matters of fundamental importance, such as the constitutional right of the taxpayer to be informed of the underlying reason for the deprivation of its property rights. Petitioner notes that the Memorandum Report ("Exhibit R-2") in the BIR Records would show that the BIR already performed the task of analyzing petitioner's submitted documents and made factual and legal determinations. These were not, however, communicated to petitioner.

Petitioner concludes that for respondent's failure to give sufficient factual and legal reasons why the amount of ₱32,155,471.50 must be denied, the denial letter, to the extent that it improperly denies a portion of its refund claim, must be rendered invalid, and the claim for refund be deemed fully granted as a necessary consequence.

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[36] *Id.* at 13-14.
[37] *Id.* at 14-29.
[38] G.R. Nos. 201418-19, October 3, 2018.
[39] 69 Phil. 635 (1940).

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On the merits of petitioner's refund claim, it posits that the sales of BOI-registered enterprises, like itself, are zero-rated for VAT purposes by mere fact of exportation, citing Article 23 of Executive Order No. 226 or the Omnibus Investments Code of 1987 (OIC). Allegedly, its sales qualify both under Section 106(A)(2)(a)(1) and (5) of the NIRC of 1997, as amended. Thus, even if petitioner failed to prove that its export sales were paid for in foreign currency, its sales remain zero-rated for VAT-purposes under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, because purportedly the requirement that the direct export sales must be paid in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) does not apply to BOI-registered enterprises that export 100% of their production. Consequently, the Court in Division erred in denying its refund claim for petitioner's alleged failure to prove payment in foreign currency.

On the disallowed export sales amounting to ₱105,471,946.18, petitioner claims that whenever there is a conflict between the summary list of sales (SLS) and the source documents, which are the sales invoices, the source documents must prevail. The Court in Division effectively ruled that the SLS prevails over the sales invoices.

Petitioner contends that when the Court in Division denied its claim on grounds that were not brought up by any of the parties, the Court in Division effectively supplanted respondent's original jurisdiction to decide the tax refund at the very first instance. In doing so, its right to due process was violated, citing *Chinatrust (Phils.) Commercial Bank vs. Philip Turner*.[40] Petitioner adds that the Court in Division should have respected the factual findings of respondent that petitioner's export sales were fully substantiated. Allegedly, the fact of zero-rated sales was already an admitted fact binding on respondent.

Moreover, petitioner submits that the policy of trial *de novo* must be circumscribed by the issues brought by the parties before the Court. While the maxim *strictissimi juris* applicable to claim for tax refunds applies only if the law is silent as to whether a claimant has the right to claim the tax refund, it is not a rule for determining the quantum of evidence. There being a statutory provision, *i.e.,* NIRC of 1997, as amended, allowing petitioner's claim for VAT refund, there is no longer a need to resort to the legal maxim of *strictissimi juris.*

Finally, petitioner insists that the recall of the ICPA was necessary since the proceedings were based on the issues stipulated

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[40] G.R. No. 191458, July 3, 2017.

by the parties which were not the bases of the assailed Decision. Petitioner explains that while it is undeniable that the Court in Division has the power to appreciate the facts based on the evidence presented at the trial and is within its power to override respondent's factual determination when it finds the same to be unsupported by evidence, in this case, respondent and the ICPA actually performed the audit and both arrived at the same conclusion that the export sales were all supported by sales invoices, bills of ladings, and were actually proven to have been paid with foreign currency. Petitioner's motion to recall was, thus, necessitated by the Court in Division's own findings that it cannot trace the amount of export sales in the SLS contrary to the evidence already on record, not by the discovery of new evidence. It claims that it is unfair to petitioner who had no opportunity to present further evidence material to the new issues raised by the Court in Division, which it could have done had it been aware of it at the time of the trial.

Respondent's Counter-Arguments[41]

Respondent counters that the issues raised by petitioner have been conclusively passed upon by the Court in Division in its assailed Decision and Resolution.

He contends that it is incumbent upon petitioner to prove that it is entitled to the refund sought. Failure to prove the same is fatal to its claim for tax refund. And, in the case at bar, petitioner failed to discharge its burden of establishing its claim for a tax refund or credit.

He also vehemently objects to petitioner's motion to reopen the case for the recall of a witness. He submits that the additional evidence sought to be presented by petitioner is not newly discovered nor were omitted through inadvertence or mistake. Neither will it be presented to correct evidence previously offered. As stated in the motion, the purpose is only to afford petitioner full opportunity to present its case. Respondent emphasizes that petitioner was already afforded full opportunity to ventilate its case during trial.

Moreover, respondent argues that a motion to reopen trial may be presented only before judgment. As a decision was already rendered by the Court in Division, allegedly petitioner's motion to reopen trial has no legal basis.

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[41] Docket (CTA EB No. 2428), pp. 80-86.

Respondent also pleads for the Court not to tolerate the practice of litigants, in the guise of substantial justice, to present additional evidence after a decision has already been rendered. He adds that litigation must end at one point and that compliance with the rules is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.

Moreover, respondent reiterates that claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictly against the claimant and liberally in favor of the taxing authority.

Lastly, respondent echoes the Court in Division's ruling that petitioner's justification is insufficient to qualify as a "good reason and in the furtherance of justice" to warrant the reopening of the present case.

THE COURT *EN BANC*'S RULING

The present Petition for Review is partly meritorious.

Timeliness of the Petition for Review

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), provides that any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen (15) days from the date of receipt of notice of the decision, resolution or order of the Court in question.

Section 3(b), Rule 8 of the RRCTA, provides that a party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court *En Banc* by filing before it a petition for review within fifteen (15) days from receipt of a copy of the questioned decision or resolution.

Upon proper motion and the payment of the full amount of the docket fees and other lawful fees and deposit for costs before the expiration of the reglementary period fixed, the Court may grant an additional period of fifteen (15) days from the expiration of the original period within which to file the petition for review.

Here, petitioner received the assailed Decision on July 17, 2020.[42] On August 3, 2020,[43] it timely filed a Motion for Reconsideration. On January 21, 2021, petitioner received the assailed Resolution denying its Motion for Reconsideration. On February 5, 2021, petitioner filed a "Motion for Extension of Time to File Petition for Review", which was granted in the Minute Resolution dated February 8, 2021 giving it until February 20, 2021 within which to file its petition for review. Hence, the filing of the present "Petition for Review" on February 22, 2021[44] was timely.

Procedural Matters

Before delving into the merits of petitioner's refund claim, the Court *En Banc* will first resolve the procedural matters raised by petitioner.

Respondent is required to state the basis of the partial denial of petitioner's refund claim in compliance with administrative due process.

Respondent's exercise of his power to decide tax cases involving disputed assessments or refunds of internal revenue taxes is an exercise of his administrative adjudicatory power or quasi-judicial functions.[45]

Although quasi-judicial agencies like the BIR "may be said to be free from the rigidity of certain procedural requirements, it does not mean that they can, in justiciable cases coming before them, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character."

Accordingly, the proceedings before the BIR must be conducted in accordance with the tenets of administrative due process, *viz.*:

1. The party interested or affected must be able to present his or her own case and submit evidence in support of it;

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[42] Docket (CTA Case No. 9543), p. 560.
[43] August 1, 2020, the 15th day, was a Saturday. The next working day is August 3, 2020, Monday.
[44] February 20, 2020 was a Saturday. The next working day is February 22, 2021, Monday.
[45] *Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division) and Petron Corporation*, G.R. No. 207843, July 15, 2015.

2. The administrative tribunal or body must consider the evidence presented;

3. There must be evidence supporting the tribunal's decision;

4. The evidence must be substantial or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion";

5. The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.

6. The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case; and,

7. **The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.**[46]

Decisions issued or actions taken in violation of the right to due process are void *ab initio.*[47]

Thus, the BIR must not only consider petitioner's submissions in making its conclusion on its refund application but must also sufficiently inform petitioner of the reasons for such conclusion. Failure to do so, petitioner's right to due process is transgressed.

The presumption of regularity in the performance of the BIR or respondent's official duties cannot stand in the face of positive evidence of irregularity or failure to perform a duty.[48]

The assailed undated one-page letter signed by OIC-Assistant Commissioner Teresita M. Angeles, Large Taxpayer Service is reproduced below:

CARMEN COPPER CORP.
9th Floor Quad Alpha Centrum

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[46] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 and G.R. Nos. 201418-19, October 3, 2018.
[47] *Teresita L. Salva vs. Flaviana M. Valle*, G.R. No.193773, April 2, 2013.
[48] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 and G.R. Nos. 201418-19, October 3, 2018.

CM

125 Pioneer St., Mandaluyong City

Gentlemen:

This has reference to your application for tax credit/refund in the amount of Php54,813,948.05, representing excess value-added tax (VAT) for the period July 1 to September 30, 2014.

Relative thereto, please be informed that after verification of the documents you submitted to substantiate your claim, it was ascertained that only the amount of **PESOS: Twenty Two Million Six Hundred Fifty Eight Thousand Four Hundred Seventy Six & 55/100 only (Php22,658,476.55)** was recommended for issuance of Tax Credit Certificate (TCC), computed as follows:

	BIR	BOC	TOTAL
Amount Applied for TCC	Php1,166,329.39	Php53,647,618.66	Php54,813,948.05
Less: Disallowances			
Non compliance of invoicing requirements, Section 113, IRC	994,788.21	14,051.00	1,008,839.21
Input tax allocable to exempt sales		12,861.40	12,861.40
Capital Goods-Importation		22,090,578.00	22,090,578.00
Deferred Input Tax – Capital Goods		5,864,086.41	5,864,086.41
Discrepancy between Schedule vs claim		3,179,106.48	3,179,106.48
Sub-total	994,788.21	31,160,683.29	32,155,471.50
Amount recommended for TCC	**Php171,541.18**	**Php22,486,935.37**	**Php22,658,476.55**

Please be guided accordingly.

Very truly yours,
CAESAR R. DULAY
Commissioner of Internal Revenue
By:
(signed)
TERESITA M. ANGELES
OIC-Assistant Commissioner
Large Taxpayers Service[49]

There is no denying that the letter does not state the reasons, factual or legal, for the partial denial of petitioner's refund claim. The table showing the breakdown of petitioner's partial refund hardly explains how the amount refunded *vis-à-vis* the amount applied for, was arrived at.

As noted by petitioner, the Memorandum dated November 17, 2016[50] found in the BIR Records discloses that there was an audit/investigation conducted on its application for refund by the revenue officers of the BIR. The Memorandum also details how the

[49] Exhibit "P-7", Docket (CTA Case No. 9543), p. 456; Exhibit "R-4", BIR Records, p. 271.
[50] Exhibit "R-2", BIR Records, pp. 253-257.

amount of the partial refund granted by respondent was computed. Petitioner was, however, not informed of the contents of this Memorandum which could have aided in understanding the partial denial of its refund claim.

Notably, RR No. 26-2018[51] on the implementation of the processing of VAT Refund under Republic Act No. 10963 (TRAIN Law), now categorically states that "should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial", to wit:

> Section 4.112-1. Claims for Refund/Credit of Input Tax. –
>
> xxx xxx xxx
>
> (d) Period within which refund/credit of input taxes shall be made
>
> In proper cases, the Commissioner of Internal Revenue shall grant refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with subsections (a) and (b) hereof; Provided, That, **should the Commissioner find that the grant of refund is not proper, the Commissioner <u>must state in writing the legal and factual basis for the denial</u>.**" (*Boldfacing and underscoring added*)

The fact that the duty to "state in writing the legal and factual basis for the denial" was only expressly stated in RR No. 26-2018 does not make such duty any less mandatory prior to such issuance. With or without such express provision in RR No. 26-2018, respondent and the BIR are duty-bound to comply with administrative due process in the processing of refund claims under the NIRC of 1997, as amended.

Respondent's failure to communicate the factual and legal basis of the partial denial of petitioner's refund claim, through the undated letter signed by OIC-Assistant Commissioner Teresita M. Angeles, is a transgression of petitioner's due process rights. Consequently, the partial denial of petitioner's refund claim is void for failure to observe due process.

Despite such finding, petitioner's contention that as a necessary consequence, its refund claim should be deemed as fully granted, has

[51] SUBJECT: Amends Certain Provisions of Revenue Regulations No. 13-2018 to Implement the 90-Day Processing of Claim for VAT Refund Under Section 112(C) of the Tax Code of 1997, as amended by Republic Act (R.A.) No. 10963, Otherwise Known as the Tax Reform for Acceleration and Inclusion or TRAIN.

no leg to stand on. An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all documentary and evidentiary requirements.[52] And, in cases filed before the CTA, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.

The recall of a witness is subject to the sound discretion of the Court.

While the recall of a witness is sanctioned by the rules,[53] the same is subject to the sound discretion of the Court.

The Court *En Banc* agrees with the Court in Division that petitioner's justification for the recall of the ICPA is insufficient to warrant the reopening of the case, *viz.*:

> "In the present case, petitioner prays that this Court allow the recall of the ICPA whom petitioner believes to be in the best position to explain how the amount of ₱105,471,946.18 could be traced to the sales invoices presented by petitioner.
>
> **Unfortunately, the Court finds petitioner's justification insufficient to qualify as a "good reason and in the furtherance of justice" to warrant the reopening of the present case**. Notably, petitioner offers no evidence that is newly discovered, or has been omitted through inadvertence or mistake, or the purpose of which is to correct evidence previously offered. To allow the ICPA to clarify his procedures and to submit working papers or schedules to prove how the amount of ₱105,471,946.18 could be traced to the sales invoices, at this point in time, would only be an exercise in futility. xxx"[54] (*Boldfacing added*)

Furthermore, it is worthy to note that the Court is not bound by the findings of the ICPA, as provided in Section 3, Rule 13 of the RRCTA, thus:

> "Sec. 3. *Findings of independent CPA.* - The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may**

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[52] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[53] Sec. 9. Recalling witness. – After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of the court. The court will grant or withhold leave in its discretion as the interests of justice may require.
[54] Docket (CTA EB No. 2428), p. 61.

> **be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**" (*Boldfacing added*)

In other words, the Court is free to either adopt (completely or partially) or even disregard the ICPA's findings and conclusions, after making its own verification and evaluation of the same and the evidence on record. Petitioner cannot then insist that the ICPA's findings are sufficient to validate its claims, since the ultimate determination rests upon the Court based on the evidence presented.

To be sure, the ICPA's findings on petitioner's zero-rated sales *vis-à-vis* the pertinent pieces of evidence presented to support the said zero-rated sales were taken into consideration, and were thoroughly examined by the Court in Division in arriving at its conclusions in the assailed Decision and Resolution.

For the above reasons, the Court finds it unnecessary to recall the ICPA to testify on the latter's report and the evidence presented, which were already verified, evaluated and scrutinized by the Court in Division.

The Court in Division is vested with sufficient authority to rule on an issue not raised by the parties.

The Court's authority to rule upon issues not stipulated upon by the parties is expressly provided in Section 1, Rule 14 of the RRCTA, *viz.*:

> "RULE 14
>
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. *Rendition of judgment.* - x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

The Supreme Court laid this matter to rest in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[55] to wit:

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[55] G.R. No. 183408, July 12, 2017.

> "**On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**
>
> **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> > SECTION 1. *Rendition of judgment.* - x x x
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> **The above section is clearly worded.** On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." (*Boldfacing added*)

Again, cases filed before the CTA are litigated *de novo*, hence, party-litigants must prove every minute aspect of their case. In a claim for refund of excess and unutilized input tax, as in this case, the existence of zero-rated sales to which such input tax may be attributed to is among the conditions which petitioner must meet in order to be entitled to the claimed refund.

Evidently, the Court in Division did not err in deciding the case based on its findings that petitioner's sales did not comply with the substantiation requirements.

MERITS OF THE REFUND CLAIM

The Court *En Banc* will now resolve the arguments on the merits of petitioner's refund claim.

Section 112 (A) and (C) of the NIRC of 1997, as amended, has laid down certain requisites which the taxpayer-applicant must comply to successfully obtain a credit/refund of input taxes. The said requisites may be classified into categories, to wit:

cm

A. As to the timeliness of the filing of the administrative and judicial claims:

1. The refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;

2. In case of full or partial denial of the refund claim, the judicial claim is filed with this Court, within thirty (30) days from receipt of the decision;

B. With reference to the taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person;

C. In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;

5. For zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;

D. As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional input taxes;

7. The input taxes are due or paid;

8. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and,

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[56]

The Court *En Banc* affirms the Court in Division's findings that petitioner has complied with the *first*, *second* and *third* requisites that petitioner has timely filed its administrative and judicial claims and it is a VAT-registered taxpayer.[57] Anent compliance of petitioner with the rest of the requirements, the Court *En Banc* shall discuss them hereunder.

Petitioner is not required to prove that its direct export sales to foreign entities were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

In petitioner's Petition for Review filed with the Court in Division, it alleged that its sales are zero-rated based on Section 106(A)(2)(a)(1) and (5) of the NIRC of 1997, as amended,[58] which provides:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) Rate and Base of Tax. – xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export Sales. - The term 'export sales' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> xxx xxx xxx
>
> **(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws**. xxx" (*Boldfacing added*)

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[56] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.
[57] Docket (CTA EB No. 2428), pp. 45-46.
[58] Docket (CTA Case No. 9543), p. 22.

Relative thereto, Section 4.106-5 of Revenue Regulations (RR) No. 16-2005, provides:

> SECTION 4.106-5. Zero-Rated Sales of Goods or Properties. — A zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export sales. — "Export Sales" shall mean:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> xxx xxx xxx
>
> **(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.**
>
> **"Considered export sales under Executive Order No. 226"** shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, **of export products exported directly by a registered export producer**, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; Provided, further, That without actual exportation the following shall be considered constructively exported for purposes of these provisions: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (4) sales to diplomatic missions and other agencies and/or instrumentalities

granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and Provided, finally, that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI." (*Boldfacing added*)

Applying Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the Court in Division ruled that petitioner was unable to establish that its substantiated direct export sales amounting to ₱3,815,192,229.56 for the 3rd quarter of taxable year 2014 were paid for in acceptable foreign currency and duly accounted for in accordance with the rules and regulations of the BSP.

To justify its non-compliance with the aforementioned requirements, **petitioner invokes Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, on the ground that it is a BOI-registered enterprise whose sales are considered as export sales under the OIC**.

A scrutiny of Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and Article 23 of the OIC is, thus, in order to ascertain which transactions under the OIC are considered as export sales and whether petitioner's export sales are among those transactions which may be treated as zero-rated sales.

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, pertains to the treatment of sales by VAT-registered persons considered as export sales under the OIC as zero-rated VAT sales. Article 23 of the OIC pertinently reads:

"ARTICLE 23. "**Export sales**" shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products **exported directly by a registered export producer** or the net selling price of **export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same**: Provided, That sales of export products to another producer or to an export

> trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: Provided, further, That **without actual exportation the following shall be considered constructively exported for purposes of this provision**: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: Provided, further, That export sales of registered export trader may include commission income: and Provided, finally, That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.
>
> Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government and paid for in convertible foreign currency inwardly remitted through the Philippine banking systems shall also be considered export sales." (*Boldfacing added*)

Based on Article 23 of the OIC, the following transactions are deemed export sales:

1. Direct exportation by the registered export producer (*i.e.*, BOI-registered enterprise);

2. Sale by a registered export producer to another export producer or to an export trader that subsequently exports the same; provided that sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; and,

3. Even without actual exportation, the following sales by a registered export producer shall be considered constructively exported:

   a. Sales to bonded manufacturing warehouses of export-oriented manufacturers;

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b. Sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones;

c. Sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA No. 7227;

d. Sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the BIR and the Bureau of Customs (BOC); and,

e. Sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

In Section 4.106-5(a)(5) of RR No. 16-2005, sales by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are also considered as export sales. *Commissioner of Internal Revenue vs. Filminera Resources Corporation*,[59] also affirms that sales of a VAT-registered supplier to a BOI-registered enterprise are transactions considered as export sales under the OIC, thus, a zero-rated sale under Section 106 (A)(2)(a)(5) of the NIRC of 1997, as amended.

In sum, **sales by and to a BOI-registered enterprise** are transactions considered as export sales under the OIC, hence, subject to VAT at 0% under Section 106 (A)(2)(a)(5) of the NIRC of 1997, as amended. When either the buyer or the seller is a BOI-registered export enterprise, the sales transaction falls under the ambit of Section 106 (A)(2)(a)(5) of the NIRC of 1997, as amended.

From the foregoing, direct export sales by a VAT-registered person who is also a BOI-registered enterprise, similar to petitioner, are considered zero-rated when substantiated by the following documents:

1. The sales invoice as proof of sale of goods; and,

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[59] G.R. No. 236325, September 16, 2020.

2. The bills of lading, inward letters of credit, landing certificates, and other commercial documents as proof of actual shipment of goods from the Philippines to a foreign country.

The BOI-registered enterprise is not, however, required to prove that its sales are paid for in acceptable foreign currency and accounted for in accordance with BSP rules and regulations since Section 106 (A)(2)(a)(5) of the NIRC of 1997, as amended, does not impose such requirements.

In the case at bar, petitioner's direct export sales to foreign entities being actual shipments of goods outside the Philippines, and petitioner being a BOI-registered enterprise, qualify as export sales under the OIC and are VAT zero-rated under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended. Thus, petitioner as a BOI-registered enterprise rightfully invoked Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and need not comply with the substantiation requirements for export sales required under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Evidently, the Court in Division erred in not applying Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, to petitioner's direct export sales and in insisting petitioner's compliance with Section 106(A)(2)(a)(1) of the NIRC, as amended.

Disallowance of petitioner's export sales amounting to ₱105,471,946.18 per SLS not traceable to the sales invoices is proper.

The SLS is a required attachment to the Quarterly VAT Return mandated by RR No. 16-2005, as amended by RR No. 1-2012[60]. The SLS ought to reflect the details of a taxpayer's total sales for the relevant period, *viz.*:

> " Section 4.114-3. Submission of Quarterly Summary List of Sales and Purchases. —
>
> a. Persons Required to Submit Summary Lists of Sales/Purchases. —
>
> **(1) Persons Required to Submit Summary Lists of Sales. - All persons liable for VAT such as manufacturers,**

[60] SUBJECT: Requiring the Mandatory Submission of Quarterly Summary List of Sales and Purchases (SLSP) by All VAT Registered Taxpayer Thereby Amending Section 4.114-3 of Revenue Regulations No. 16-2005, as Amended.

wholesalers, service-providers, among others are required to submit Summary List of Sales.

(2) Persons Required to Submit Summary Lists of Purchases. - All persons liable for VAT such as manufacturers, service-providers, among others are required to file Summary List of Purchases.

c. Information that Must be Contained in the Quarterly Summary List of Sales to be Submitted. — **The quarterly summary list must contain the monthly <u>total sales</u>** generated from regular buyers/customers, regardless of the amount of sale per buyer/customer, as well as from casual buyers/customers with individual sales amounting to P100,000.00 or more. For this purpose, the term "regular buyers/customers" shall refer to buyers/customers who are engaged in business or exercise of profession and those with whom the taxpayer has transacted at least six (6) transactions regardless of amount per transaction either in the previous year or current year. The term "casual buyers/customers", on the other hand, shall refer to buyers/customers who are engaged in business or exercise of profession but did not qualify as regular buyers/customers as defined in the preceding statement.

The foregoing paragraph, notwithstanding, information pertaining to sales made to buyers not engaged in business or practice of profession (e.g., foreign embassies) may still be required from the seller.

The Quarterly Summary List of Sales to Regular Buyers/Customers and Casual Buyers/Customers and Output Tax **shall reflect** the following:

1) BIR-registered name of the buyer who is engaged in business/exercise of profession;
(2) TIN of the buyer (Only for sales that are subject to VAT);
(3) Exempt Sales;
(4) Zero-rated Sales;
(5) Sales Subject to VAT (exclusive of VAT);
(6) Sales Subject to Final VAT Withheld; and
(7) Output Tax (VAT on sales subject to 10%).

(The total amount of sales shall be system-generated)"[61] (*Boldfacing and underscoring added*)

The requirement that the sales amount per SLS must be traced to the sales invoices ensures that the sales evidenced by the sales invoices were reported in the Quarterly VAT Return and the VAT due thereon was paid. Otherwise stated, sales invoices which cannot be traced to the SLS means that they were not reported as sales and that the VAT due thereon was not paid.

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[61] RR No. 16-2005, as amended.

Hence, the Court in Division did not err in disallowing petitioner's export sales amounting to ₱105,471,946.18 which sales invoices cannot be traced to the SLS.

It is well to emphasize that actions for tax refund, such as the present case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[62]

CONCLUSION

The Court in Division denied petitioner's claim for refund on the sole finding that its direct export sales were not established to have been paid for in acceptable foreign currency and accounted for in accordance with BSP rules and regulations. As afore-discussed, such evidence is insignificant in determining whether petitioner has zero-rated sales.

On the other hand, what appears vital are the existence of evidence proving the sales of goods through sales invoices and actual shipment of goods from the Philippines to a foreign country through bills of lading, inward letters of credit, landing certificates, and other commercial documents, which needs to be addressed. Thus, remand of the present case to the Court in Division is warranted.

WHEREFORE, in view of the foregoing discussion, the Petition for Review filed by Carmen Copper Corporation is hereby **PARTIALLY GRANTED**. The assailed Decision dated June 25, 2020 and Resolution dated January 8, 2021 rendered by the Court in Division are **SET ASIDE.** This case is hereby **REMANDED** to the Court in Division for determination of the refund due to petitioner, if any, in accordance with the foregoing disquisition.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[62] *Atlas Consolidated Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

With due respect, please see my Dissenting Opinion.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

With due respect, I join Justice Liban's Dissenting Opinion.
CATHERINE T. MANAHAN
Associate Justice

With due respect, I join the Dissenting Opinion of Associate Justice Liban.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

With due respect, I join the Dissenting Opinion of Associate Justice Liban.
LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CARMEN COPPER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2428
(CTA Case No. 9543)

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

Promulgated:
JUN 22 2022 1:57pm

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DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With all due respect, I express my dissent on the view that Petitioner is not required to prove that its direct export sales to foreign entities were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP").

The National Internal Revenue Code ("NIRC") of 1997, as amended, provides that export sales by value-added tax ("VAT") registered persons shall be subject to zero percent (0%) rate. Export sales is defined under Section 106(A)(2)(a)[1] as to include the following:

"SEC. 106. **Value-Added Tax on Sale of Goods or Properties.** -

[1] Before the amendment of Republic Act (RA) No. 10963 or the TRAIN Law.

xxx xxx xxx

(a) *Export Sales*. The term '*export* sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

(4) Sale of gold to the *Bangko Sentral ng Pilipinas* (BSP);

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws; and

(6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations..."

In relation thereto, Section 112 of the NIRC of 1997, as amended, allows the refund or tax credit of unutilized excess input VAT attributable to zero-rated or effectively zero-rated sales, subject to the condition that the acceptable foreign currency exchange proceeds had been duly accounted for in accordance with the rules and regulations of the BSP, in export sales falling under Sections 106(A)(2)(a)(1) and (2), 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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *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."[2]

The *ponencia* ruled that since Petitioner alleged that its direct export sales are zero-rated based on Section 106(A)(2)(a)(5), and not under Sections 106(A)(2)(a)(1) and (2) of the NIRC of 1997, as amended, the requirement above need not be complied with.

At first glance, this may seem sound. However, a plain reading of the pertinent provisions of Executive Order ("EO") No. 226[3] show that export sales are classified into two (2) categories, the direct export sales and the constructive export sales. Articles 23 and 77(2) of EO No. 226 are reproduced hereunder:

"ARTICLE 23. 'Export sales' shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an

[2] *Emphasis and underscoring supplied.*
[3] The Omnibus Investments Code of 1987, August 13, 1987.

export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: *Provided, further*, That without actual exportation the following shall be considered constructively exported for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: *Provided, further*, That export sales of registered export trader may include commission income: and *Provided, finally*, That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.

Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government and paid for in convertible foreign currency inwardly remitted through the Philippine banking systems shall also be considered export sales."[4]

"ARTICLE 77. Tax Treatment of Merchandise in the Zone. —

xxx xxx xxx

(2) Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exported thereof shall be entitled to the benefits allowed by law for such transaction."

From the foregoing, the classification of export sales (by the nature of the sales transaction) under EO No. 226 may be summarized as follows:

1) direct export sales
   a. exports products exported directly by a registered export producer; and

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[4] *Underscoring supplied.*

b. sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government.

2) constructive export sales
   a. export product sold by a registered export producer to another export producer or to an export trader that subsequently and actually exports the same;
   b. sales to bonded manufacturing warehouses of export-oriented manufacturers;
   c. sales to export processing zones
   d. sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under Board of Investment (BOI) guidelines;
   e. sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products; and
   f. merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone.

The classification above is further supported by the inclusion of the phrase "whether paid for in foreign currency or not" to sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, which intimates that Congress intended to group the said sales as constructive export sales (notwithstanding the fact that they may be actually directly exported), and be exempted from the BSP rules on foreign currency. Conversely, the inclusion of the phrase "paid for in convertible foreign currency inwardly remitted through the Philippine banking systems" to sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other Filipino non-residents indicates their treatment as direct export sales.

Incidentally, the phrase "paid for in foreign currency" was not conjugated to "exports products exported directly by a registered export producer". And yet, it would be too much of a stretch to construe that Congress intended the absence of the said phrase on direct export sales. On the contrary, Congress may have been well aware the same is superfluous for direct export sales are necessarily paid using foreign currency.

Thus, it is inaccurate to say that the condition found in Section 112 of the NIRC of 1997, as amended, does not apply to export sales falling under Section 106(A)(2)(a)(5). The correct conclusion is that the BSP rules on foreign currency exchange is not required for constructive export sales under EO No. 226, but not those which constitute direct export sales.

Indeed, Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, clearly states that "the sale and actual shipment of goods from the Philippines to a foreign country" (*i.e.,* referring to direct export sales) should be paid for in acceptable foreign currency and accounted for in accordance with BSP rules. By adding Section 106(A)(2)(a)(5) in the enumeration of export sales under the Tax Code, the lawmakers in all likelihood acknowledged the existence of constructive export sales, and the inapplicability of using foreign currency on these transactions.

Interpretare et concordare leges legibus, est optimus interpretandi modus. The best method of interpretation is that which makes laws consistent with other laws. To say that direct export sales under Article 23 of EO No. 226 [and consequently Section 106(A)(2)(a)(5)] are exempt from BSP rules on foreign currency exchange, will contradict the provision of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Hence, such interpretation should be frowned upon.

Lastly, a tax credit or refund, like a tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that it is entitled to the refund by showing that it has strictly complied with the conditions for the grant of the tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper.[5]

From all the foregoing, I vote to **DENY** Petitioner's claim for refund of its alleged unutilized input VAT arising from its domestic purchases of goods and services, as well as importations of goods for the period covering July 01, 2014 to September 30, 2014, in the aggregate amount of Php32,155,471.50.

Ma. Belen rl

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[5] Silicon Philippines, Inc., (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue, G.R. Nos. 184360 & 184361, 19 February 2014.