REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Respondent,	**CTA EB NO. 1842** (CTA Case No. 8879)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
FOSECO PHILIPPINES, INC., Petitioner.	Promulgated: AUG 13 2019 3:16 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] ("assailed Decision") dated November 03, 2017 and Resolution[2] ("assailed Resolution") dated April 02, 2018 of the Court of Tax Appeals First Division ("First Division"), partially granting Respondent's claim for refund or issuance of a Tax Credit Certificate ("TCC") amounting to Php3,102,813.87, representing its alleged excess and unutilized input value-added tax ("VAT") attributable to its zero-rated sales for the first to fourth quarters of calendar year ("CY") 2012.

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1 Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy concurring. Docket, pp. 336-379.

2 *Id.*, pp. 403-409.

The Facts

The facts as found by the First Division are as follows:

"[Respondent] Foseco Philippines, Inc. is a domestic corporation duly registered with and authorized by the Securities and Exchange Commission (SEC) to operate as a domestic corporation. Its principal office address is located at Warehouse No. 8, c/o Sun-Made Agri Plus, Inc. Cpd., No. 1706 Manggahan St., Barangay Dita, Sta. Rosa City, Province of Laguna.

On the other hand, [Petitioner] is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

[Respondent] is engaged in the importation, distribution, marketing and wholesale of FOSECO metallurgical branded chemical products. It is registered with the BIR as a VAT taxpayer under Certificate of Registration No. OCN 9RC0000266419.

The Quarterly VAT Returns of [Respondent] for the four quarters of calendar year 2012 were filed on April 12, 2012, on July 6, 2012, on January 9, 2013, and on January 7, 2013, respectively. Its Annual Income Tax Return was filed on April 11, 2013.

On March 27, 2014, [Respondent] filed with [Petitioner], through BIR Revenue District Office (RDO) No. 57, an administrative claim for refund of its alleged excess and unutilized input VAT for the four quarters of calendar year 2012 in the amount of [Php]4,635,229.77.

[Petitioner] failed to act on [Respondent]'s administrative claim for refund of its excess and unutilized input VAT for the four quarters of calendar year 2012, prompting [Respondent] to file the instant Petition for Review with the Court on August 22, 2014."[3]

[3] *Id.*, pp. 337-338.

The Ruling of the First Division

On November 03, 2017, the First Division promulgated the assailed Decision partially granting the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, [Petitioner] is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of [Respondent] in the amount of **[Php]3,102,813.87**, representing its excess and unutilized input value-added tax attributable to its zero-rated sales for the first to fourth quarters of calendar year 2012.
>
> **SO ORDERED.**"[4]

Aggrieved, herein Petitioner filed a "Motion for Partial Reconsideration (Re: Decision dated November 03, 2017)"[5] on November 22, 2017, which the First Division denied in the assailed Resolution on April 02, 2018, thus:

> "**WHEREFORE,** premises considered, [Petitioner]'s **Motion for Partial Reconsideration Re: Decision dated November 3, 2017** is **DENIED** for lack of merit.
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> **SO ORDERED.**"[6]

On April 25, 2018, Petitioner filed a "Motion for Extension to File Petition for Review"[7], which the Court granted in a Minute Resolution[8] dated April 27, 2018.

On May 10, 2018, Petitioner filed the present "Petition for Review"[9] *via* registered mail.

[4] *Id.*, p. 378.
[5] *Id.*, pp. 380-387.
[6] *Id.*, p. 408.
[7] Rollo, pp. 1-5. Record shows that Petitioner received the Assailed Resolution on April 10, 2018; Docket, p. 402.
[8] Rollo, p. 7.
[9] *Id.*, pp. 9-93.

On June 01, 2018, the Court issued a Resolution[10] which ordered Petitioner to submit an additional nine (9) copies of the Petition for Review within five (5) days lest it shall be deemed as not filed. Petitioner filed on June 13, 2018 its "Compliance"[11], attaching thereon the additional nine (9) copies, which the Court noted in a Minute Resolution[12] dated June 19, 2018.

On July 10, 2018, the Court issued a Resolution[13] ordering Respondent to comment on the Petition for Review.

On September 12, 2018, Respondent filed its "Comment".[14]

On October 04, 2018, the Court issued a Resolution[15] giving due course to the Petition for Review and submitting the case for decision.

The Issues

Petitioner raises the following grounds in support of its petition:

1) Submission of complete documents is a *condition sine qua non* before the prescriptive period of one hundred twenty (120) days should commence. Thus, Petition for Review in the court *a quo* was filed prematurely; and

2) The First Division erred in ruling that Respondent incurred input taxes for CY 2012 which are attributable to its zero-rated or effectively zero-rated sales for the same period.[16]

The Ruling of the Court

The Court En Banc has jurisdiction over the present petition

The Court in Division issued the assailed Resolution, denying Petitioner's "Motion for Partial Reconsideration (Re: Decision dated November 03, 2017)",

[10] *Id.*, pp. 95-96.
[11] *Id.*, pp. 97-100.
[12] *Id.*, p. 101.
[13] *Id.*, pp. 107-108.
[14] *Id.*, pp. 109-115.
[15] *Id.*, p. 28.
[16] *Id.*, p. 26.

on April 02, 2018. Petitioner received said Resolution on April 10, 2018. Pursuant to Rule 4, Section 2(a)(1)[17] in relation to Rule 8, Section 3(b)[18] of the Revised Rules of the Court of Tax Appeals[19] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the Resolution or until April 25, 2018 within which to file its petition for review.

On April 25, 2018, Petitioner timely filed a "Motion for Extension to File Petition for Review", praying for an extension of fifteen (15) days or until May 10, 2018 within which to file its petition for review. The Court granted the same in a Minute Resolution dated April 27, 2018.

On May 10, 2018, Petitioner timely filed the present "Petition for Review" through registered mail. Hence, the Court *En Banc* validly acquired jurisdiction.

The Court in Division properly assumed and exercised jurisdiction over the case

Petitioner submits that Respondent's Petition for Review with the *court a quo* was prematurely filed. According to Petitioner, considering that the application of Respondent at the administrative level did not satisfy the minimum requirement mandated by Revenue Memorandum Order ("RMO") No. 53-98, the 120-day prescriptive period for which it should act on the claim have not yet commenced.

Respondent on the other hand contends that the Court in Division made findings of fact in the assailed Decision that Respondent submitted complete

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17 **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

18 **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) 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 by filing before it a petition for review within fifteen 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 and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

19 A.M. No. 05-11-07-CTA, November 22, 2005.

supporting documents upon filing of its administrative application for VAT refund.

We find Petitioner's argument misplaced and unmeritorious.

Compliance with RMO No. 53-98, especially at the judicial level, is not required for the claim of refund to prosper. As explained in *Commissioner of Internal Revenue* v. *Team Sual Corporation (formerly Mirant Sual Corporation)*[20]:

> "**There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT**. The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities x x x.'"[21]

This ruling was reiterated in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[22] where the Supreme Court emphatically pronounced:

> "x x x RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. **Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund of excess unutilized excess VAT**.
>
> xxx xxx xxx
>
> As explained earlier and underlined in *Team Sual* above, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.
>
> <u>Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or</u>

[20] G.R. No. 205055, July 18, 2014.
[21] *Emphasis supplied.*
[22] G.R. No. 207112, December 08, 2015.

> refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court."[23]

The reason for this is aptly explained in the *Pilipinas Total* decision above. It is the taxpayer who determines what constitutes complete supporting documents in an administrative action. The Commissioner of Internal Revenue ("CIR") could only ask for additional documents if he is unsatisfied with what had actually been submitted by the taxpayer, in order to properly determine the merits of the claim. The High Court reasoned:

> "For purposes of determining when the supporting documents have been completed — **it is the taxpayer who ultimately determines when complete documents have been submitted** for the purpose of commencing and continuing the running of the 120-day period. x x x.
>
> xxx xxx xxx
>
> Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund - it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim."[24]

In other words, unless there is a notification from the CIR requiring the taxpayer to submit additional supporting documents to substantiate the administrative claim for refund, what has actually been submitted at the discretion of the taxpayer is already deemed complete.

In the instant case, the Court in Division found that Respondent filed its administrative claim for the refund or issuance of a TCC in the amount of Php4,635,229.77 with the BIR Revenue District Office No. 57 on March 27, 2014.[25] Evidently, the documents submitted by Respondent should be deemed

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[23] *Emphasis and underscoring supplied.*
[24] *Emphasis and underscoring supplied.*
[25] Docket, Decision, p. 359.

complete at the time the administrative claim was filed, as there was no record of any notification coming from Petitioner requiring the submission of other supporting documents. The 120-day period for Petitioner to act on the claim commenced to run on that day and ended on July 25, 2014. Since no decision was issued by Petitioner up until July 25, 2014, it is only proper for Respondent to file an appeal before the Court *a quo* on August 22, 2014.

Respondent's input VAT for CY 2012 are attributable to its zero-rated sales for the same period

Petitioner avers that there is no direct linkage between the input tax being claimed for refund and the zero-rated sales by Respondent. Petitioner argues that one of the requisites in order to be entitled to a refund or issuance of a TCC is that the input VAT must be "directly attributable" to zero-rated or effectively zero-rated sales. Petitioner points out that "directly attributable" means "arising from a particular source or cause". In the case of Respondent, there is no direct connection of its purchases or input VAT to its finished product, the good whose sale is zero-rated.

The Court is not convinced.

As pointed out in the Assailed Resolution, the law does not require that the input VAT subject of the claim be directly attributable to zero-rated sales. As a matter of fact, the National Internal Revenue Code of 1997, as amended, allows allocation of input taxes in case the same cannot be directly or entirely attributed to any of the sales.[26]

The Court *En Banc* echoes the First Division's declaration on the matter:

> "Contrary to [Petitioner]'s assertion, Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, does not require that the input taxes subject of a claim refund be directly attributable to zero-rated sales or effectively zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. Moreover, 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, the provision allows allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales, to wit:

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[26] Section 112(A).

> '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 (8)(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 anyone 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 (8)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.'"[27]

Considering all these pronouncements, We find no cogent reason to reverse or modify the assailed Decision and assailed Resolution of the Court *a quo*. Respondent was able to establish its right to claim for refund or issuance of a TCC amounting to Php3,102,813.87.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**. The Decision dated November 03, 2017 and the Resolution dated April 02, 2018 of the First Division in CTA Case No. 8879 are **AFFIRMED**.

SO ORDERED.

Ma. Belen S

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[27] Docket, Resolution dated April 02, 2018, pp. 85-86.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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