REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1785** (CTA Case No. 8874)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
SONY MOBILE COMMUNICATIONS INTERNATIONAL AB, *Respondent.*	Promulgated: JUL 25 2019 1:45 p.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) praying for the reversal of the Court in Division's Decision and Resolution, dated August 28, 2017 and January 26, 2018, respectively; and that another decision be rendered entirely denying Sony Mobile Communications International AB (Sony Mobile)'s claim for tax refund/credit of unutilized input taxes attributable to zero-rated sales for calendar year 2012.

The Facts

The Court in Division recited the facts, as follows:

> [Respondent] Sony Mobile Communications International AB is a branch office of Sony Ericsson

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[1] *Rollo*, pp. 4-13.

> Mobile Communications AB (SEMCAB), which is a foreign corporation duly organized and existing under the laws of Sweden. It is licensed to do business in the Philippines. [Respondent]'s primary objectives are to market and support the sale of products, primarily within the areas of public telecommunications and mobile radio communications as well as other operations related thereto. The corporate name of [respondent] has been amended from Sony Ericsson Mobile Communications International AB to Sony Mobile Communications International AB. It is a registered taxpayer with the Bureau of Internal Revenue (BIR), with Taxpayer's Identification Number (TIN) 219-660-821-000 under Certificate of Registration No. OCN3RC0000600810.
>
> [Respondent] and SEMCAB has a Sales Promotion and Marketing Services Agreement that started on January 1, 2006.
>
> On the other hand, [petitioner] is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.
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> The Quarterly VAT Returns of [respondent] for the 1st, 2nd, 3rd, and 4th quarters of calendar year 2012 were filed on April 25, 2012, on July 20, 2012, on October 23, 2012, and on January 25, 2013, respectively.
>
> On March 28, 2014, [respondent] filed with the BIR an administrative claim for refund for the four taxable quarters of calendar year 2012, allegedly representing its unutilized input VAT in the amount of P2,342,099.75.
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> Due to [petitioner]'s inaction on the administrative claim, [respondent] filed this Petition for Review on August 24, 2014.[2]

The case proceeded to trial, after which the Court in Division rendered the assailed Decision granting Sony Mobile's claimed refund in a reduced amount, the dispositive portion of which states:

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[2] *Rollo*, Division Decision, August 18, 2017, p. 16.

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, [petitioner] is **ORDERED TO REFUND** in favor of [respondent] the amount of P1,633,869.88, representing [respondent]'s unutilized input taxes attributable to zero-rated sales for calendar year 2012.
>
> **SO ORDERED**.[3]

The CIR's Motion for Reconsideration was denied in the Court in Division's Resolution, dated January 26, 2018, as follows:

> **WHEREFORE**, premises considered, [petitioner]'s Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED**.[4]

On March 9, 2018, the Court received the CIR's Petition for Review[5] filed through registered mail on March 5, 2018. After notice,[6] Sony Mobile filed its Comment (To the Petition for Review)[7] on April 25, 2018.

The Court required the submission of memoranda.[8] On June 21, 2018, Sony Mobile filed its Memorandum,[9] however, the CIR failed to file his memorandum per Records Verification[10] dated July 2, 2018. Thus, the case was deemed submitted for decision on August 2, 2018.[11]

Issue

Petitioner states the following grounds for the petition:

I. The input taxes claimed were carried over to the succeeding quarter or quarters in respondent's VAT returns

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[3] *Rollo*, Division Decision, August 18, 2017, p. 30.
[4] *Rollo*, Division Resolution, January 26, 2018, p. 35.
[5] *Rollo*, pp. 4-13.
[6] *Rollo*, Resolution dated April 2, 2018, pp. 41-42.
[7] *Rollo*, pp. 43-52.
[8] *Rollo*, Resolution dated May 8, 2018, pp. 54-55.
[9] *Rollo*, pp. 56-70.
[10] *Rollo*, p. 71.
[11] *Rollo*, pp. 73-74.

II. Respondent must prove that the alleged unutilized input VAT were indeed attributable to such zero-rated sales

III. Respondent is not entitled to refund of alleged unutilized input VAT for the 1st to 4th quarters of calendar year 2012 in the reduced amount of P1,633,869.88.

Ruling of the Court

The petition lacks merit.

The Petition for Review was timely filed.

The Court in Division issued the assailed Resolution denying the CIR's Motion for Reconsideration on January 26, 2018. The CIR received the said resolution on February 1, 2018.[12]

Pursuant to Rule 4, Section 2(a)(1),[13] in relation to Rule 8, Section 3(b)[14] of the Revised Rules of the Court of Tax Appeals (CTA), the CIR had fifteen (15) days from February 1, 2018, or until February 16, 2018 within which to file his petition for review.

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[12] *Rollo*, Notice of Resolution, January 29, 2018, p. 32.

[13] Rule 4 Jurisdiction of the Court

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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:

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

[14] Rule 8 Procedure in Civil Cases

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SEC. 3. *Who may appeal; period to file petition.*

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(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.

On February 14, 2018, the CIR filed his Motion for Extension of Time to File Petition for Review[15] praying for an extension of fifteen (15) days from February 16, 2018 within which to file his petition for review. The CIR was granted an extension until March 3, 2018.[16]

On March 9, 2018, the Court received the CIR's Petition for Review timely posted on March 5, 2018, considering that March 3, 2018 was a Saturday.

There is no compelling reason to reverse or modify the Court in Division's Decision and Resolution.

The CIR argues that based on the Memorandum Report of Revenue Officer Mayrose M. Vega, it was found that there was a carryover of the excess 2012 input tax to the succeeding year 2013 and its utilization as input tax for purchases of goods exceeding One Million Pesos for the 2nd and 3rd quarters of the same year. The CIR also states that Sony Mobile must prove that its alleged unutilized input VAT were indeed attributable to zero-rated sales. Finally, the CIR argues that taxes are the lifeblood of the government and that tax refund are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.

On the other hand, Sony Mobile states that the CIR's arguments are a reiteration of the allegations which the Court in Division had already ruled upon. Sony Mobile reiterates that it had no output taxes for 2012, as such, there is no way that the input taxes carried over were utilized. This was testified to by its witness, and also ruled by the Court in Division. Sony Mobile also states that the CIR merely alleged that Sony Mobile failed to prove that the subject input VAT indeed attributable to its zero-rated sales. Sony Mobile reiterates that the Court in Division already found that its substantiated input VAT is wholly attributable to zero-rated sales for 2012.

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[15] *Rollo*, pp. 1-2.
[16] *Rollo*, Minute Resolution dated February 19, 2018, p. 3-A and 3-B.

Indeed, the arguments raised by the CIR have been fully addressed in the assailed Decision and Resolution of the Court in Division.

The CIR did not present any evidence to support the allegations that the input VAT carried over were utilized in 2013, or that the said input VAT were not attributable to effectively zero-rated sales. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[17] Thus, absent proof to the contrary, the findings of the Court in Division will not be disturbed, *to wit:*

> Since Petitioner reported 100% zero-rated sales for CY 2012, the substantiated input VAT of P1,633,869.88 is wholly attributable thereto.
>
> Moreover, although the claimed input VAT carried over by Petitioner in its succeeding Quarterly VAT Returns, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Return for the third quarter of taxable year 2013. Consequently, the subject claim no longer formed part of the excess input VAT of P2,566,710.17 as of the end of the third quarter of 2013, which was carried over/applied to the succeeding fourth quarter of 2013.

Based on the foregoing, the Court *En Banc* finds no compelling reason to modify nor reverse the findings of the Court in Division.

WHEREFORE, the Petition for Review, filed by the Commissioner of Internal Revenue, through registered mail on March 5, 2018, is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[17] *Real v. Belo*, G.R. No. 146224, January 26, 2007.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(took no part)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(took no part)
MARIA ROWENA G. 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