REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

SMARTMATIC-TIM CORPORATION,
Petitioner,

CTA *EB* NO. 1480
(CTA Case No. 8643)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 28 2017 3:41 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court of Tax Appeals ("CTA") *En Banc* ("Court *En Banc* ") is a Petition for Review[1] filed under *Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals*[2] *("RRCTA")* praying for the

[1] *Rollo, CTA EB No. 1480, Petition for Review ("PFR")*, pp. 9-93, with annexes.

[2] SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

xxx xxx xxx

(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.

Court *En Banc* to annul, reverse, and set aside the Decision[3] promulgated on January 4, 2016 and the Resolution[4] promulgated on June 16, 2016, both rendered by the First Division of the CTA ("Court in Division"); and to render judgment ordering respondent to refund or to issue a tax credit certificate ("TCC") in favor of petitioner in the amount of Php193,448,562.15.[5]

The Parties[6]

Petitioner is a corporation duly organized under Philippine law, with principal office at Ground Floor, King's Court Building 2, 2129 Dela Rosa St., Don Chino Roces Avenue, Makati City. It is registered with the Bureau of Internal Revenue ("BIR") for VAT purposes.

Respondent is the head of the BIR, holding office at the BIR National Office, Diliman, Quezon City; and is represented by the Legal Division of the BIR Revenue Region No. 8.

The Facts

On July 10, 2009, petitioner and the Commission on Elections ("COMELEC") entered into a Contract for the Provision of an Automated Election System for the May 10, 2010 Synchronized National and Local Elections ("AES Contract").[7]

On April 24, 2012 and June 11, 2012, petitioner filed with the BIR its claims for refund or for the issuance of a TCC representing input VAT for the third and the fourth quarters of fiscal year ("FY") 2010.[8]

On June 15, 2012, petitioner received from the BIR letters requesting the submission of certain documents in connection with its

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[3] *Records, CTA Case No. 8643, Vol. 2, Decision,* pp. 742-765; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla concurring.
[4] *Id., Resolution,* pp. 1967-1980; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla concurring.
[5] *Rollo, PFR, Prayer,* p. 46.
[6] *Records, Vol. 2, Decision, The Parties,* pp. 742-743.
[7] *Id., The Facts,* p. 743.
[8] *Id.*

claims.[9] Hence, on November 19, 2012, petitioner sent letters to the BIR submitting certain documents.[10]

Alleging inaction on the part of the BIR, on April 18, 2013, petitioner filed its Petition for Review before the Court in Division.[11]

On January 4, 2016, the Court in Division promulgated the assailed Decision[12], the dispositive portion[13] thereof reads as follows:

> **WHEREFORE**, all the foregoing considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**[14]

In the assailed Decision, the Court in Division listed the legal requisites for claiming a tax refund or credit, *viz.*: *(1)* the taxpayer must be VAT-registered; *(2)* the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; *(3)* the claim must be filed within two (2) years after the close of the quarter when such sales were made; *(4)* the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and *(5)* in case of full or partial denial of the refund claim, or failure on the part of the CIR to act on the claim within one hundred and twenty (120) days from the date of submission of complete documents in support of the application, the judicial claim must be filed with the Court within thirty (30) days from receipt of the decision or after the expiration of the one hundred and twenty (120)-day period.

The Court in Division first determined compliance with the third and fifth requirements. It found that only the administrative claim for refund for the fourth quarter of FY 2010 was timely filed, while the third quarter was belatedly filed; and that the fourth quarter judicial claim was likewise timely filed. Thereafter, the Court in Division declared that the first requisite was complied with. As to the second

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[9] *Records, Vol. 2, Decision, The Facts,* p. 743.
[10] *Id.*
[11] *Id.*
[12] *Records, Vol. 2, Decision,* pp. 742-765; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla concurring.
[12] Emphases retained.
[13] *Records, Vol. 2, Decision,* pp. 764-765
[14] Emphases retained.

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requisite, the Court in Division stated that for effective zero-rating, the taxpayer must comply with the invoicing requirements under *Section 113(A) and (B) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*; and that considering that petitioner's receipts are duly supported by official receipts ("ORs") containing the information required by law, the same qualify for VAT zero-rating. Moving to the fourth requisite, the Court in Division found that out of the total input VAT claim of Php135,699,362.34, only Php1,412,776.75 represents claimable input tax for the fourth quarter of FY 2010; and that to be entitled to the said amount, it must be shown that the input VAT claimed remained unutilized, which petitioner failed to do. Accordingly, the Court in Division denied petitioner's Petition for Review for insufficiency of evidence.

Not satisfied with the Decision, on January 22, 2016, petitioner filed his Omnibus Motion A) For Reconsideration of the Decision dated 4 January 2016; B) To Permit the Presentation of Evidence with Respect to the Attached Documents; and C) To Admit into Evidence and Consider for Purposes of Resolving this Motion the Attached Documents[15]. In response, respondent filed his Comment/Opposition (To Smartmatic-TIM's Omnibus Motion)[16] on March 2, 2016 *via* registered mail.

On June 16, 2016, the Court in Division resolved[17] the Omnibus Motion in the following manner:

> **WHEREFORE,** premises considered, petitioner's **Omnibus Motion A) For Reconsideration of the Decision dated 4 January 2016; B) To Permit the Presentation of Evidence with Respect to the Attached Documents; and C) To Admit into Evidence and Consider for Purposes of Resolving this Motion the Attached Documents** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[18]

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[15] *Records, Vol. 2, Omnibus Motion,* pp. 770-949, with annexes.
[16] *Id., Comment/Opposition,* pp. 1957-1962.
[17] *Id., Resolution,* pp. 1967-1980; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla concurring.
[18] Emphases retained.

After being granted an extension,[19] petitioner raised an appeal to the Court *En Banc* when it filed the present Petition for Review[20] on July 25, 2016; to which no comment[21] was filed by respondent.

On October 12, 2016, the Court *En Banc* gave due course to the Petition for Review and ordered the parties to submit their respective memoranda.[22]

Petitioner submitted its Memorandum[23] on November 18, 2016; while respondent failed[24] to file any Memorandum.

Consequently, on February 21, 2017, the case was submitted for decision;[25] hence, this Decision.

The Assigned Errors[26]

WHETHER THE CLAIM FOR REFUND OF PETITIONER'S UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS FOURTH[27] QUARTER ZERO-RATED SALES HAS ALREADY PRESCRIBED;

WHETHER THE EXISTENCE OF THE INPUT VAT SOUGHT TO BE REFUNDED IS PROPERLY PROVEN; AND

WHETHER PETITIONER HAS NOT YET UTILIZED OR APPLIED THE INPUT VAT SUBJECT OF THE REFUND CLAIM AGAINST ITS OUTPUT VAT.

Petitioner's Arguments[28]

Petitioner claims that the issue of prescription cannot be raised nor decided upon by the CTA since said matter has been waived by

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[19] *Rollo, Motion for Additional Time to File Petition for Review*, pp. 1-7; *Rollo, July 14, 2016 Minute Resolution*, p. 8.
[20] *Rollo, PFR*, pp. 9-93, with annexes.
[21] *Id., Records Verification Report*, p. 97.
[22] *Id., Resolution*, pp. 99-100.
[23] *Id., Memorandum*, pp. 101-139.
[24] *Id., Records Verification Report*, p. 140.
[25] *Id., Resolution*, pp. 142-143.
[26] *Rollo, PFR, Statement of the Issues*, pp. 17-18.
[27] Should be "third" quarter.
[28] *Rollo, Memorandum, Arguments and Discussion*, pp. 107-135.

the BIR when it failed to raise the same in its Answer; that the proper reckoning point in the input VAT refund claim is the date of filing of the VAT return since it is only at this point when the taxpayer knows that it has unutilized input VAT which may be the proper subject of a claim for refund.

Petitioner likewise avers that it has unutilized input VAT attributable to its zero-rated sales made during the fourth quarter of FY 2010; and that the existence of the input VAT is sufficiently established by VAT invoices, VAT ORs, and/or other supporting documents; that on VAT invoices or ORs not providing for the breakdown, neither the *1997 NIRC* nor the BIR Regulations require the indication of the VAT component therein in order for the purchaser to be able to claim for refund the input VAT passed on to it; that on out of period claims, these pertain to purchases made in the fourth quarter of FY 2010; that on claims not supported by VAT invoices or ORs, these are actually supported by competent evidence; that the requisites laid down for a claim for refund do not include the strict compliance with the invoicing requirement under *Section 113 of the 1997 NIRC* for its purchases; and that relaxed and substantial compliance is sufficient in claiming unutilized input VAT. Finally, petitioner argues that its input VAT subject of the refund have not been utilized or applied against its output VAT.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the instant Petition for Review.

The issue of prescription can be considered by the Court in Division.

Petitioner insists that since respondent failed to raise the issue of prescription, the same is deemed waived, barring the Court in Division from deciding the matter. The Court *En Banc* does not agree.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.[29] In order for a court to have authority to

[29] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs,* G.R. No. 209830, June 17, 2015, 759 SCRA 306.

dispose of the case on the merits, it must acquire jurisdiction over the subject matter, which is the power to hear and determine the general class to which the proceedings in question belong, and is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.[30] Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[31]

In the present case, the issue of prescription goes into the issue of whether petitioner is entitled to its claim for refund. If it filed its administrative and/or judicial claims beyond the reglementary periods provided by law, petitioner's right to claim the same will prescribe and it will not be entitled to the refund sought.

Moreover, *Section 1, Rule 16 of the Rules of Court,* which enumerates the grounds on which a motion to dismiss a complaint may be based, includes prescription of an action. Failure to raise or plead the grounds generally amounts to a waiver, except if the ground pertains to prescription, among others.

In the case of *Benjamin Cua v. Wallem Philippines Shipping, Inc. and Advance Shipping Corporation*[32], the Supreme Court declared that "[p]rescription may be considered by the courts *motu proprio* if the facts supporting the ground are apparent from the pleadings or the evidence on record." Therefore, courts are empowered to dismiss actions on the basis of prescription even if it is not raised by the defendant so long as the facts supporting this ground are evident from the records.

As found by the Court in Division, the fact of prescription is apparent from the records of the case, *e.g.* the date when the taxable quarter ended, and the date when the administrative claim was filed.

The Court in Division correctly declared that petitioner's claim for tax refund or credit for the fourth quarter was timely filed,

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[30] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs,* G.R. No. 209830, June 17, 2015, 759 SCRA 306.
[31] *Id.*
[32] G.R. No. 171337, July 11, 2012.

while the claim for the third quarter has prescribed.

Petitioner argues that its refund claim for the third quarter of FY 2010 has not prescribed since the reckoning point in input VAT refund claims is the date of the filing of the VAT return and not the end of the taxable quarter. The Court *En Banc* finds no merit in this argument.

As to the prescriptive periods involved, *Section 112(A) of the 1997 NIRC* clearly states that a taxpayer has two (2) years from the close of the taxable quarter when the sales were made to file an administrative claim with the CIR. The latter is given one hundred and twenty (120) days from submission of complete supporting documents to decide on the claim. In case of inaction by the CIR after one hundred and twenty (120) days from the date of submission of the application with complete documents, *Section 112(C) of the 1997 NIRC,* in relation to *Revenue Regulations ("RR") No. 16-2005,* grants the taxpayer thirty (30) days to file a judicial claim with the CTA.

The periods covered by petitioner's claim are the third and fourth quarters of FY 2010. Following its FY ending June 30, 2010, the end of the taxable quarters fall on March 31, 2010 and June 30, 2010, respectively. Hence, the due dates for the filing of the administrative claims for refund are March 31, 2012 and June 30, 2012, respectively. Accordingly, the Court in Division did not err in ruling that the administrative claim for the third quarter was belatedly made on April 24, 2012, while the one for the fourth quarter was timely filed on June 11, 2012.

Considering that the submission of supporting documents was made on November 19, 2012, respondent had one hundred and twenty (120) days or until March 19, 2013 to grant or deny the same. Due to respondent's inaction, petitioner had thirty (30) days or until April 18, 2013 to file a petition for review with the Court in Division. Records reveal that petitioner timely filed its Petition for Review on April 18, 2013. Hence, only the administrative and the judicial claims for refund for the fourth quarter were filed within the reglementary periods provided by law, to wit:

PERIOD	END OF TAXABLE QUARTER	ADMINISTRATIVE FILING DUE DATE	ACTUAL DATE OF FILING	SUBMISSION OF DOCUMENTS	LAST DAY FOR CIR TO DECIDE	JUDICIAL FILING DUE DATE
3rd Qtr. 2010	31-Mar-10	31-Mar-12	24-Apr-12	---	---	---
4th Qtr. 2010	30-Jun-10	30-Jun-12	11-Jun-12	19-Nov-12	19-Mar-13	18-Apr-13

Accordingly, the Court *En Banc* finds no reason to reverse the findings of the Court in Division.

The Court in Division did not err in finding that petitioner failed to comply with the fourth requisite due to insufficiency of evidence.

Petitioner likewise claims that there is no requirement to provide a breakdown of the VAT component in the invoice or OR; that with respect to the undated ORs, the date is irrelevant to the claim for refund; that the claims which are unsupported by VAT invoices or ORs are actually supported by competent evidence; that the requisites laid down by the *1997 NIRC* do not include strict compliance with the invoicing requirements under *Section 133 of the 1997 NIRC;* and that petitioner's input VAT has not been applied or utilized against its output VAT, as indicated in the findings of the Independent Certified Public Accountant ("ICPA"). The Court *En Banc* does not agree.

The relevant portions of *Section 113(B) of the 1997 NIRC* are reproduced below, for reference:

> CHAPTER II
> Compliance Requirements
>
> SECTION 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* –
>
> <u>The following information shall be indicated in the VAT invoice or VAT official receipt:</u>
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) <u>The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax</u>: Provided, That:

(a) <u>The amount of the tax shall be shown as a separate item in the invoice or receipt</u>;

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(d) <u>If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt</u>: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The <u>date of transaction</u>, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.[33]

Based on the foregoing, the following, among others, should be indicated on the face of the invoice or OR: *(1)* the date of the transaction; *(2)* the amount of tax shall be shown as a separate item; and *(3)* the breakdown of the sale price between its taxable, exempt and zero-rated components and the calculation of the VAT on each portion of the sale.

Additionally, *Revenue Memorandum Circular No. 42-03*[34] provides that failure to comply with the invoicing requirements will cause the denial of a claim for tax refund or credit, to wit:

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[33] Underscoring ours.

[34] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters, July 15, 2013.

> A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.[35]

Finally, the Supreme Court had the occasion to rule on the issue of whether failure to comply with the invoicing requirements under *Section 113 of the 1997 NIRC* will result in the denial of a claim for refund. In the case of *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[36] *("Kepco")*, the taxpayer claims that non-compliance of invoicing requirements should not result in the denial of the taxpayers refund claim, citing *Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue ("Atlas")*. The Supreme Court held that it has not come across any categorical ruling in *Atlas* that refund should be allowed for those who failed to comply with the substantiation requirements; and that *Section 264*[37] *of the 1997 NIRC*

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[35] Underscoring ours.

[36] G.R. No. 181858, November 24, 2010, 636 SCRA 166.

[37] SECTION 264. *Failure or Refusal to Issue Receipts or Sales or Commercial Invoices, Violations Related to the Printing of such Receipts or Invoices and Other Violations.* –

(a) Any person who, being required under Section 237 to issue receipts or sales or commercial invoices, fails or refuses to issue such receipts or invoices, issues receipts or invoices that do not truly reflect and/or contain all the information required to be known therein, or uses multiple or double receipts or invoices, shall, upon conviction for each act or omission, be punished by a fine of not less than One thousand pesos (P1,000) but not more than Fifty thousand pesos (P50,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years.

(b) Any person who commits any of the acts enumerated hereunder shall be penalized in the same manner and to the same extent as provided for in this Section:

(1) Printing of receipts or sales or commercial invoices without authority from the Bureau of Internal Revenue; or

(2) Printing of double or multiple sets of invoices or receipts; or

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was not intended to excuse compliance with the substantive invoicing requirements needed to justify a claim for refund on input VAT payments. Thereafter, the Highest Tribunal reminded taxpayers that although it is true that the CTA is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of a taxpayer's claims. The Supreme Court then ended by stating that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government; that exemptions, must not rest on vague, uncertain, or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken; and that such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

The Court *En Banc* finds no justifiable reason to deviate from the doctrine in *Kepco*.

Lastly, petitioner avers that the Court in Division made its own factual findings and conclusions, which are not supported or are even contrary to the findings of the Court-commissioned Independent Certified Public Accountant ("ICPA").

The Court *En Banc* finds the need to stress that the Court in Division is not bound by the findings of the ICPA. The ICPA Report is a mere tool or guide to aid the Court in the resolution of the case, hence, the determination of the merit or the probative value of such Report is still within the province of the Court's discretion. The Court is free to adopt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision promulgated on January 4, 2016 and the Resolution promulgated on June 16, 2016, both rendered by the Court in Division are hereby **AFFIRMED**.

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(3) Printing of unnumbered receipts or sales or commercial invoices, not bearing the name, business style, Taxpayer Identification Number, and business address of the person or entity.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

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

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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

SMARTMATIC-TIM CORPORATION, *Petitioner,*	**CTA EB NO. 1480** (CTA Case No. 8643)
-versus-	Present: **DEL ROSARIO**, P.J., **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 28 2017 3:41 p.m.

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CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the ponencia of my esteemed colleague, the Honorable Associate Justice Lovell R. Bautista, which denies the Petition for Review filed by Smartmatic-TIM Corporation thereby affirming the January 4, 2016 Decision and June 16, 2016 Resolution of the Court in Division.

In its June 16, 2016 Resolution, the Court in Division treated petitioner's Omnibus Motion as a Motion for New Trial and denied petitioner's motion for presentation of evidence and motion to admit attached documents (Annexes MR-1 to MR-6 of the Motion for Reconsideration) due to petitioner's failure to establish the existence of fraud, accident, mistake or excusable negligence and upon finding that the documents sought to be presented are not newly discovered evidence.

I, however, would like to stress that the admissibility or inadmissibility of the documents attached to the Omnibus Motion is insignificant to petitioner's cause.

A close perusal of the attached documents reveals the following:

Supplier	Annex	Supporting Document	Date of Transaction	Input VAT
Abenson, Inc.	MR-1	Electronic Receipt	April 23, 2010	P5,464.29
Placewell International Services Corporation	MR-2	Statement of Account	May 12, 2010	P8,075,454.40
Centrex Corporation	MR-3	VAT Sales Invoice	May 12, 2010	P10,311.51
Globe Telecom, Inc.	MR-4	VAT Official Receipt and Billing Statement	June 9, 2010	P1,251.98
LDLA Marketing	MR-5	VAT Official Receipt	May 7, 2010	P53,571.43

The foregoing input VAT were not paid during the fourth (4^{th}) quarter of 2010, which is the only period that has not prescribed. Moreover, the Statement of Account and VAT Sales Invoice are not sufficient to substantiate the VAT paid by petitioner on its purchases of services from Placewell International Services Corporation and Centrex Corporation. It is well-settled that input VAT on purchases of services must be supported by Official Receipts.

Finally, even assuming *arguendo* that the foregoing input VAT are considered by the Court, petitioner's claim for refund would still fail. As stated in the assailed Decision, petitioner failed to show that its total claim for the fourth (4^{th}) quarter of 2010 was not fully utilized in the succeeding periods.

In fine, the presentation of the documents attached to petitioner's Omnibus Motion in a new trial would not alter or modify the conclusion reached by the Court in Division in the assailed Decision.

All told, I VOTE to deny the Petition for Review filed by Smartmatic-TIM Corporation for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice