REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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MAXIMA MACHINERIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2145
(CTA Case No. 9358)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 28 2020
2:30p.m.

x - x

DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review* filed by petitioner Maxima Machineries, Inc., on October 1, 2019 against respondent Commissioner of Internal Revenue (CIR),[1] assailing the Decision dated March 11, 2019[2] and Resolution dated September 4, 2019[3], both issued by the Special Third Division of this Court (Court in Division) in CTA Case No. 9358, entitled *"Maxima Machineries, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

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[1] EB Docket, pp. 1 to 18 .

[2] EB Docket, pp. 22 to 63; Division Docket (CTA Case No. 9358) – Vol. 3, pp. 1270 to 1311. Penned by Associate Justice Esperanza R. Fabon-Victorino (retired), concurred by Associate Justice Ma. Belen M. Ringpis-Liban.

[3] EB Docket, pp. 65 to 72; Division Docket (CTA Case No. 9358) – Vol. 3, pp. 1407 to 1414. Penned by Associate Justice Esperanza R. Fabon-Victorino (retired), concurred by Associate Justice Ma. Belen M. Ringpis-Liban.

Resolution dated March 11, 2019:

"**WHEREFORE,** the instant Petition for Review filed by petitioner Maxima Machineries, Inc. on May 26, 2016, is hereby **DENIED** for lack of merit.

SO ORDERED."

Resolution dated September 4, 2019:

"**WHEREFORE,** petitioner's *Motion for Reconsideration and/or New Trial* dated April 2, 2019 is **DENIED**, for lack of merit. The assailed Decision dated March 11, 2019 is **AFFIRMED**.

SO ORDERED."

THE FACTS

Petitioner Maxima Machineries, Inc. is a domestic corporation, with principal business address at 871 Quezon Avenue, Barangay Sta. Cruz, Quezon City. It is a VAT-registered taxpayer, with Taxpayer Identification No. (TIN) 006-618-023-000.

As stated in its Amended Articles of Incorporation, petitioner's primary purpose is to buy, sell, barter, trade, lease out, manufacture, import, export or otherwise acquire, dispose of, and deal with any kind of goods, wares, and merchandise such as spare parts or replacement parts and/or complete assemblies of agricultural, industrial or commercial machineries, automobiles, buses trucks, tractors or other motor vehicles and/or related machineries and equipment of every kind and description and to carry on such business as manufacturers, wholesaler, importers and exporters, except the manufacture of food, drugs and cosmetics.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), who has the power to decide on 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.

Petitioner claims that for the period covering October 1 to December 31, 2013, it has accumulated unutilized input VAT arising from its zero-rated transactions in the total amount of ₱13,448,721.74. The said zero-rated transactions allegedly originated from its sale of goods and services to export-oriented entities registered with the Philippine Economic Zone Authority (PEZA), such as the Subic Bay Metropolitan Authority (SBMA), the Clark Development Authority (CDA), and the Board of Investments (BOI). It also rendered services to Marubeni Corporation of Japan, a non-resident foreign corporation from which it received indent commission as payment.

On April 23, 2014, petitioner filed with the BIR its Quarterly VAT Return for the 3rd quarter of FY ending March 31, 2014.

On December 29, 2015, petitioner filed with the BIR Large Taxpayers Regular Audit Division I an Application for Tax Credits/Refunds, together with a transmittal letter of supporting documents dated December 28, 2015, requesting for the issuance of a Tax Credit Certificate (TCC) for its alleged unutilized input VAT for the 3rd quarter of Fiscal Year (FY) ending March 31, 2014 in the total amount of ₱13,448,721.74.

On February 4, 2016, petitioner received Letter of Authority (LOA) No. eLA201200042234 dated January 14, 2016, authorizing Revenue Officers Jan Andre Abellera, Ruby Ann Oradia and Group Supervisor Gilquin Tolentino of Revenue District Office (RDO) No. 116-Regular Large Taxpayers Audit Division I, to examine its books of accounts and other accounting records for VAT for the period covering October 1, 2013 to December 31, 2013.

On May 26, 2016, petitioner filed a Petition for Review before the Court in Division and the case was docketed as CTA Case No. 9358.

In respondent's Answer filed on June 24, 2016, he averred by way of special and affirmative defenses, the following: that petitioner's alleged claim for refund is subject to administrative routinary investigation/ examination by the BIR. The amount of ₱13,448,721.74 representing alleged unutilized or unapplied creditable input taxes allegedly allocable and directly attributable to its VAT zero-rated sales for the period of October 1, 2013 to

December 31, 2013 was not properly documented. 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/credit. Allegedly, petitioner must show that it has complied with Section 112 of the NIRC of 1997, as amended, particularly on the prescriptive periods and has submitted all the documentary and evidentiary requirements thereof. Further, the burden of proof is on petitioner to establish its right to refund and failure to sustain the burden is fatal to its cause.

Respondent also claims that petitioner failed to comply with the invoicing and accounting requirements mandated under Sections 13, 114 and 236 of the NIRC of 1997, as amended, as implemented by Revenue Regulations (RR) No. 16-2005. Further, petitioner also failed to submit all supporting and relevant documents required under Revenue Memorandum Order (RMO) No. 53-98 and other existing rules and regulations to warrant the grant of its application for refund, rendering its administrative action pro-forma. Hence, deemed not filed and thereby depriving the Court of jurisdiction to entertain the present action.

Lastly, respondent argues that like tax exemptions, claims for refund/TCC are construed strictly against the taxpayer.

After the pre-trial conference held on February 7, 2017[4], a Pre-Trial order was issued on March 16, 2017[5].

During trial, petitioner presented Yusuke Yamada, Jenelyn Palayon-Tagao and Neil U. Sison, as its witnesses. Thereafter, petitioner filed its Formal Offer of Evidence on September 13, 2017 and November 7, 2017. Upon resolution of its Formal Offer of Evidence, petitioner rested its case per Resolutions dated October 19, 2017[6] and January 5, 2018[7].

On the other hand, respondent did not present any evidence in support of its defense.

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[4] Division Docket (CTA Case No. 9358), Minutes of Hearing, Vol. 2, p. 618
[5] Division Docket (CTA Case No. 9358), Vol. 2, pp. 661-667
[6] Division Docket (CTA Case No. 9358), Vol. 3, pp. 1154-1157
[7] Division Docket (CTA Case No. 9358), Vol. 3, pp. 1186-1190

The case was submitted for decision on March 21, 2018[8], after the parties' submission of their respective memoranda.

On March 11, 2019, the Court in Division rendered the assailed Decision.[9] Consequently, on April 2, 2019, petitioner filed a *Motion for Reconsideration and/or New Trial.*[10] On September 4, 2019, the Court in Division promulgated the assailed Resolution.[11]

Subsequently, on October 21, 2019, petitioner filed a *Petition for Review* before the Court *En Banc* docketed as CTA EB No. 2145.[12]

On October 1, 2019, respondent was directed by the Court *En Banc* to file his comment on the Petition for Review.[13] Thus, respondent filed his *Comment (Re: Petition for Review)* on October 30, 2019.[14]

In the Resolution dated November 13, 2019,[15] the Court *En Banc* submitted the instant Petition for Review for decision.

Hence, this Decision.

THE ISSUES

Petitioner raises a sole issue for the Court *En Banc*'s resolution, to wit:

> "Whether the Honorable Court's Special Third Division erred in applying the input VAT attributable to zero-rated sales of ₱6,456,298.98 for the period from October 1, 2013 to December 31, 2013 (Third Quarter of Fiscal Year ending March 31, 2014) against its output VAT liability for the same period instead of applying the input VAT carried over from the previous periods, which was not sustained

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[8] Division Docket (CTA Case No. 9358), Vol. 3, p. 1268
[9] EB Docket, pp. 22 to 63; Division Docket (CTA Case No. 9358) – Vol. 3, pp. 1270 to 1311.
[10] Division Docket (CTA Case No. 9358) – Vol. 3, pp. 1312 to 1322.
[11] EB Docket, pp. 65 to 72; Division Docket (CTA Case No. 9358) – Vol. 3, pp. 1407 to 1414.
[12] EB Docket, pp. 1 to 18.
[13] EB Docket, pp. 76 to 77.
[14] EB Docket. pp. 78 to 82.
[15] EB Docket, pp. 85 to 86.

in the assailed Decision and Resolution for lack of merit."[16]

Petitioner's arguments:

Petitioner argues that the Court in Division erred in applying the input VAT attributable to zero-rated sales of ₱6,456,298.98 for the period from October 1, 2013 to December 31, 2013 (Third Quarter of FY ending March 31, 2014) against its output VAT liability for the same period instead of applying the input VAT carried over from the previous periods.

According to petitioner, its input VAT attributable to Vatable sales of ₱6,456,298.98 for the said period should not be applied against its output liability for the same period considering that it has sufficient input VAT carried over from previous periods that can be applied against its output VAT liability for the same period.

Petitioner argues that it has sufficiently shown in its quarterly VAT return for the 3rd quarter of FY 2014 its input tax carried over from the previous period amounting to ₱320,781,112.70 and the deferred tax on capital goods in excess of ₱1,000,000.00 from previous quarters amounting to ₱2,926,925.56.

Moreover, petitioner submits that the input tax carried over from previous quarters is not an issue at the case at bar, but refers to the allocation of the input VAT arising from purchases of goods and services between VAT and zero-rated sales.

Respondent's counter-arguments:

Respondent CIR counter-argues that the Court in Division did not err in ruling that the input tax carry-over of ₱320,781,112.70 cannot be validly applied against petitioner's output tax pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997. Allegedly, petitioner's claim must be denied there being no excess input VAT which may the subject of a claim for refund or issuance of tax credit certificate.

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[16] Petition for Review, EB Docket, p. 9.

It is the claimant who has the burden of proof to establish the factual basis of his claim for tax credit or refund; and that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

The Court in Division did not err in finding that petitioner is not entitled to refund for failure to prove that it has no excess input VAT available for refund.

Petitioner avers that its Input VAT attributable to vatable sales of ₱6,456,298.98 for the period of October 1, 2013 to December 31, 2013 should not be applied against its output liability for the same period considering that it has sufficient input VAT carried over from previous periods that can be applied against its output liability for the same period. Petitioner posits that it has sufficiently shown in its quarterly VAT Return for the 3rd Quarter of FY 2014 that its input tax carried over from the previous period amounted to ₱320,781,112.70 and the deferred tax on capital goods in excess of ₱1,000,000.00 from previous quarters amounted to ₱2,926,925.56, or the aggregate amount of ₱323,708,038.26, which may be credited against its output tax due on its vatable sales for the instant period of claim.

We disagree.

One of the essential requisites in a refund claim is that the taxpayer must show that the input taxes were not applied against any output VAT liability pursuant to Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Pertinent thereto, Sections 110 (A) and in relation to Section 110(B) of the NIRC of 1997, as amended, read as follows:

"SEC. 110. *Tax Credits.* –

(A) *Creditable Input Tax.* –

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> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> xxx xxx xxx
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> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.[17]

Based on the foregoing provision, when it comes to claiming excess or unutilized input VAT from zero-rated sales transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Accordingly, it is crucial that the taxpayer prove that it has enough excess input VAT credits to cover its output VAT liability for the pertinent period or periods.

In the instant case, only excess input VAT attributable to zero-rated sales amounting to ₱6,456,298.98 were properly substantiated with official receipts, invoices and other documents to support petitioner's input VAT claim. However, this amount is not enough to cover its output VAT liability of ₱79,430,875.62[18].

Petitioner claims that its "*Input Tax Carried Over from Previous Period*" amounting to ₱320,781,112.70[19] is more than enough to cover its output tax liability of ₱79,430,875.62 for the 3rd quarter of FY ending March 31, 2014 and that the amount being claimed for refund was not utilized or applied to the current VAT liability.

To reiterate, out of the reported input VAT of ₱787,884,159.13[20], during the 2nd quarter of FY March 31, 2013 up to the 2nd quarter of FY ending March 31, 2014, only the input VAT on importations in the

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[17] NIRC of 1997, as amended by R.A. 9361, November 21, 2006.
[18] Exhibit "P-17", Line 15B.
[19] Exhibit "P-17", Line 20A.
[20] Exhibit "P-46", par. b, ICPA Report, Docket, Vol. 2, p.734.

amount of ₱639,560,932.43[21] were verified by the ICPA. Even assuming that the amount of ₱639,560,932.43 is valid input VAT attributable to VATable sales to private entities and zero-rated sales, the same is still not enough to cover petitioner's reported output VAT on VATable sales to private entities for the same period in the aggregate amount of ₱667,068,872.26[22]. The resulting net output VAT payable is still ₱27,507,939.83[23]. Therefore, the input tax carry-over of ₱320,781,112.70 cannot be validly applied against petitioner's current output tax liability of ₱79,430,875.62 pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended.

Thus, We find no merit in petitioner's claims that it has sufficiently presented the existence and validity of the input tax carried over from the previous period, and that the burden is shifted to respondent to prove that the input tax carried over from the previous period is not valid and non-existent.

Petitioner failed to satisfy one of the requisites in a claim for refund under Section 112 of the NIRC of 1997, as amended, *i.e.*, that the input taxes have not been applied against output taxes during and in the succeeding quarters.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[24] Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[25] The pieces of evidence presented entitling a taxpayer to an exemption,

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[21] Exhibit "P-46", par. d, ICPA Report, Docket, Vol. 2, p.736.

[22]

2nd Qtr. Of FY 2013(Exhibit P-46-AW-1)	₱ 84,819,335.25
3rd Qtr. Of FY 2013(Exhibit P-46-AW-2)	125,260,567.74
4th Qtr. Of FY 2013(Exhibit P-46-AW-3)	256,342,295.31
1st Qtr. Of FY 2014(Exhibit P-46-AW-4)	111,853,742.35
2nd Qtr. Of FY 2014(Exhibit P-46-AW-5)	88,792,931.61
Total Output Tax on VAT Sales to Private Entities	**₱667,068,872.26**

[23] ₱667,068,872.26 - ₱639,560,932.43 = ₱27,507,939.83.

[24] *Citibank N.A. vs. Court of Appeals and the Commissioner of Internal Revenue,* G.R. No. 107434, October 10, 1997.

[25] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.,* G.R. No. 127105, June 25, 1999.

are also *strictissimi* scrutinized and must be duly proven.[26] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[27]

Hence, the Court *En Banc* finds no reversible error committed by the Court in Division when it denied petitioner's claim for refund/issuance of TCC on petitioner's alleged unutilized input VAT.

The Court in Division did not err in addressing the issue that petitioner has no excess input VAT, even if this was not put in issue by the parties.

Petitioner argues that the input tax carried over from previous quarters is not an issue and that the issue in this case is limited only to the allocation of the input VAT arising from purchases of goods and services between VAT and zero-rated sales. Allegedly the Court in Division, effectively amended the issue in the case.

Petitioner's argument is misplaced.

Pertinent in addressing this issue is Section 1 of Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) which states, to wit:

> "**RULE 14**
>
> **JUDGMENT, ITS ENTRY AND EXECUTION**
>
> SECTION 1. *Rendition of judgment.* – xxx
>
> **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**

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[26] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011 citing *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.

[27] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015 citing *J.R.A Philippines, Inc. vs. CIR,* G.R. No. 171307, August 28, 2013.

> **orderly disposition of the case.** *(2002 Internal Rules of the Court of Appeals, Rule VI, secs. 9 and 10a; and Rules of Court, Rule 51, sec. 2a)*"[28]

Based on the foregoing, the Court in Division is not precluded from considering other related issues, not otherwise stipulated by the parties, which may be necessary to achieve a just, complete and orderly disposition of the case.

In the instant case, the determination of whether the taxpayer showed that the input taxes were not applied against any output VAT liability is connected to the sole issue in this case, i.e., whether petitioner is entitled to its claim for refund. As already discussed above, absent compliance with the requisite that the input taxes were not applied against any output VAT, resulted to the denial of petitioner's claim for refund.

The Court En Banc finds no basis to remand the case to the Court in Division for the continuance of audit by the ICPA.

In the instant petition, petitioner states that the Court-commissioned Independent Certified Public Accountant (ICPA) was not able to complete his audit of petitioner's documents due to lack of material time. Hence, it prays before the Court *En Banc* that the case be remanded to the Court in Division for the continuance of the audit of the ICPA with regard to the relevant documents pertaining to the Prior Period Excess Input VAT Carry-Over.

The Court *En Banc* finds no basis to grant petitioner's request. Section 3, Rule 13 of the RRCTA reads as follows:

> "SECTION 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 processing such documents and, secondarily, by the

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[28] Emphasis supplied.

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> independent CPA. **The findings and conclusions of the independent CPA may 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**." (*Emphasis Supplied)*

The foregoing provision provides that the ICPA Report shall not be conclusive upon the Court. Thus, the Court is not bound by the findings of the ICPA.

It is noteworthy to mention that although the Court in Division partially considered the findings of the ICPA, it nevertheless arrived at its own findings and computations. While the ICPA may allegedly not have had enough time to study the documents to submit a more comprehensive report, the Court in Division had ample time to examine the evidence on record and came up with its own findings. Accordingly, there is no need to remand the case to the Court in Division.

In sum, there being no reversible errors committed by the Court in this case, the Court *En Banc* finds no cogent reason to reverse and set aside the assailed Decision and Resolution.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated March 11, 2019 and September 4, 2019, both rendered by the Court in Division in CTA Case No. 9358, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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

Catherine T. Manahan
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