REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CBK POWER COMPANY LIMITED, Petitioner,	**CTA CASE NOS. 8043 & 8116** (CTA EB No. 759)
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 09 2017 4:00 PM

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RESOLUTION

CASANOVA, *J.*:

For the Court's resolution are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 28 October 2016)**, filed on November 18, 2016, with petitioner's **Comment on Respondent's Motion for Partial Reconsideration**, filed on December 5, 2016; and

2. petitioner's **Manifestation and Motion**, filed on December 5, 2016.

Respondent moves for the reconsideration of the Decision promulgated on October 28, 2016, the dispositive portion of which is quoted as follows:

"**WHEREFORE**, premises considered, the Petitions for Review filed on March 29, 2010 and June 28, 2010, are **PARTIALLY GRANTED**. Accordingly, let a Tax Credit Certificate be issued in favor of CBK in the reduced amount of ₱51,955,454.12, representing its unutilized excess input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the first to fourth quarters of 2008.

SO ORDERED."

Respondent asserts the following arguments: (1) petitioner failed to substantiate its claim for refund before the administrative body; (2) petitioner miserably failed to exhaust administrative remedies before elevating the case to the Court; (3) the judicial claim pertaining to CTA Case No. 8116 was prematurely filed; and (4) claims for refund are construed strictly against the taxpayer and in favor of the government.

Petitioner, on the other hand, contends that the present motion does not raise any new argument nor any cogent reasons to justify a reversal of the Decision of the Court. Petitioner further asserts that it has sufficiently proven compliance with the requisites for the refund of unutilized input VAT for the periods January 1, 2008 to March 31, 2008 and April 1, 2008 to December 31, 2008, attributable to its zero-rated sales to the extent of ₱51,955,454.12 out of the total claimed input VAT of ₱61,503,335.47.

Respondent's motion lacks merit.

It is worthy to note that the issues and arguments presented are mere rehash of what had been said and reiterated in the parties' previous pleadings, all of which have been considered, weighed and resolved in the assailed Decision. Nevertheless, the Court will discuss the same for emphasis.

Non-submission of supporting documents in the administrative level provided under RMO No. 53-98 is not fatal to the claim for refund.

Respondent alleges that petitioner failed to proffer sufficient evidence to prove its claim for refund in the administrative level. He asserts that petitioner failed to prove that it has submitted the required complete documents in support of its administrative claim for refund or issuance of tax credit certificate (TCC) pursuant to Revenue Memorandum Order (RMO) No. 53-98.

It must be noted, however, that in the case of *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*[1], this Court *En Banc* ruled that non-compliance with the submission of documents listed in RMO No. 53-98 is not fatal to taxpayer's judicial claim for tax refund or issuance of TCC, as follows:

> "In the same light, respondent's non-compliance with the requirements listed under RMO No. 53-98 is not fatal. The requirements listed under RMO No. 53-98 refer mainly to the requirements for refund of tax credit in the administrative level for purposes of establishing the authenticity of a taxpayer's claim for refund or tax credit. However, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. In this connection, it may not be amiss to mention that the question of whether or not 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."

In the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[2], the Supreme Court held:

> "xxx 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"

In the same case, the Supreme Court further ruled, as follows:

[1]CTA EB No. 474 (CTA Case Nos. 6792 & 6837), September 1, 2009.
[2]G.R. No. 207112, December 8, 2015.

> "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."

Hence, respondent's allegation of petitioner's non-submission of complete documents at the administrative level will not bar this Court from entertaining the appeal, or from receiving, evaluating and appreciating the evidence presented before it. Once the claim for refund has been appealed to this Court, the Rules of Court governs.

Moreover, CTA being a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of their cases. Judicial claims are decided based on the evidence presented and formally offered by the party litigants during the trial and not on mere allegation of non-submission of complete documents before the BIR.[3]

Petitioner's judicial claim covering second, third and fourth quarters of 2008 (under CTA Case No. 8116) was exempted from the strict application of the 120-30 day mandatory period since it was filed within the period covered by BIR Ruling No. DA-489-03.

Respondent argues that the administrative claim for tax refund for the second, third and fourth quarters of 2008 was filed with the Bureau of Internal Revenue (BIR) only on June 25, 2010 while the Petition for Review was filed with this Court on June 28, 2010. As a result, he was not given the chance to evaluate petitioner's claim for

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[3] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 657 (CTA Case Nos. 7424 & 7492), April 4, 2012.

refund. Moreover, respondent contends that the judicial claim was prematurely filed.

It must be stressed that respondent's allegation of petitioner's premature filing of the judicial claim had already been resolved in the assailed Decision, quoted as follows:

> "The CTA Court *En Banc*, citing the ruling of the Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corporation (San Roque Case)*, exhaustively explained in its Resolution dated June 26, 2013, that the compliance with the aforementioned 120-30 day period under Section 112 (A) and (C) of the NIRC of 1997, as amended, is mandatory and jurisdictional, save for those VAT refund cases that were prematurely filed (i.e., before the lapse of the 120-day period) with the CTA between December 10, 2003 and October 6, 2010 (when the BIR Ruling No. DA-489-03 was issued).
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> xxx xxx xxx
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> Anent the claim for the second to fourth quarters of 2008 (CTA Case No. 8116), the same was filed on June 28, 2010, or only three (3) days after CBK filed its administrative claim with the Commissioner on June 25, 2010. Clearly, CBK failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny CBK's application for the issuance of TCC. Nonetheless, since CBK filed its judicial claim within the window created in *San Roque Case*, its Petition for Review in CTA Case No. 8116 is exempted from the strict application of the 120-day mandatory period. As such, it 'can claim the benefit of being shielded from the vice of prematurity.'"

Thus, while petitioner was unable to follow the 120-30 day rule, its judicial claim covering the second, third and fourth quarters of 2008 (CTA Case No. 8116) was filed within the period covered by BIR Ruling No. DA-489-03, and can claim the benefit of being shielded from the vice of prematurity. In other words, petitioner was allowed to file its judicial claim even before the lapse of the 120-day waiting period given by law for respondent to decide whether to grant or deny petitioner's application for the issuance TCC.

It bears reiterating that respondent's motion does not raise new issues and arguments. In the case of *Shangri-La International Hotel Management, Ltd., et al. vs. Developers Group of Companies, Inc.*[4], the Supreme denied respondent's Motion for Reconsideration for being a mere reiteration of their previous arguments and for failure to raise matters substantially plausible or compellingly persuasive to warrant the reversal of the assailed Decision, as follows:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
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> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

Since respondent's instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought, the Court, therefore, finds no reason to reverse or modify the assailed Decision.

Substantial justice, equity and fair play take precedence over technicalities and legalisms. The government must keep in mind that it has no right to keep the money not belonging to it, thereby enriching itself at the expense of the law-abiding citizen or entities who have complied with the requirements of the law in order to forward the claim for refund. Under the principle of *solutio indebiti* provided in Article 2154 of the Civil Code, the CIR must return anything it has received.[5] If the State expects its taxpayers to

[4] G.R. No. 159938, January 22, 2007.
[5] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.[6]

On the other hand, as to the instant Manifestation and Motion, petitioner manifests that there were inadvertent omission and typographical error in the first sentence of the paragraph immediately preceding the dispositive portion of the assailed Decision, as follows:

> "Considering that CBK's reported sales for the **first and second quarters of 2009** were all zero-rated, the substantiated input VAT in the amount of ₱51,955,454.12 is entirely attributable thereto and was not applied against any output tax. Additionally, CBK's reported unutilized input taxes for the first and second to fourth quarters of 2008 were deducted as 'VAT Refund / TCC claimed' in the Quarterly VAT Returns filed for the same taxable quarters preventing the carry-over or application of such input taxes in the next taxable quarter/s."

Thus, petitioner moves that it be corrected to: (1) reflect the inclusive period of the claim for CTA Case No. 8116: April 1, 2008 to December 31, 2008 (second to fourth quarters of 2008); and (2) reflect that the input taxes claimed were all attributable to zero-rated sales for the same periods of claim which covers the entire calendar year 2008.

After a careful review of the records, the Court finds it proper to correct the above-mentioned paragraph in the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 28 October 2016)** is **DENIED** for lack of merit.

On the other hand, petitioner's **Manifestation and Motion** is **NOTED** and **GRANTED**. Accordingly, the first sentence of the paragraph immediately preceding the dispositive portion of the assailed Decision is **AMENDED** as follows:

[6] *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*, G.R. No. 122480, April 12, 2000.

"Considering that CBK's reported sales for the first and second **to fourth quarters of 2008** were all zero-rated, the substantiated input VAT in the amount of ₱51,955,454.12 is entirely attributable thereto and was not applied against any output tax. Additionally, CBK's reported unutilized input taxes for the first and second to fourth quarters of 2008 were deducted as 'VAT Refund / TCC claimed' in the Quarterly VAT Returns filed for the same taxable quarters preventing the carry-over or application of such input taxes in the next taxable quarter/s."

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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