REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

RIOFIL CORPORATION, *Petitioner,*	**CTA *EB* NO. 1984** *(CTA Case No. 9344)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 0 9 2020 3:53 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under *Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals[3]* ("RRCTA"), seeking the reconsideration and setting aside of the Decision[4] dated 17 August 2018 and the Resolution[5] dated 23 November 2018 promulgated by the Court of Tax Appeals ("CTA")

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[1] See Petition for Review; *Rollo,* pp. 1-79, 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."

[3] *A.M. No. 05-11-07-CTA*, November 22, 2005.

[4] See Decision; *Rollo*, pp. 40-72.

[5] See Resolution; *Rollo*, pp. 73-79.

Special Second Division ("Court in Division"); and praying for the Court *En Banc* to render a decision granting petitioner's entire claim for refund, or in the alternative, granting petitioner's Motion for New Trial.[6]

The Parties

Petitioner Riofil Corporation is a domestic corporation with office address at Units 1704-1706 Hanston Square, 17 San Miguel Avenue, Ortigas Center, Pasig City.[7] It is engaged in general contracting business.[8] It renders services to clients registered with the Philippine Economic Zone Authority and the Clark Development Corporation, as well as those located within the customs territory and outside of the economic zones.[9]

Respondent Commissioner of Internal Revenue ("CIR") is vested with the authority 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 administered by the Bureau of Internal Revenue ("BIR"). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[10]

The Facts

In the course of providing services to its clients, petitioner allegedly incurred and/or paid input taxes on its purchases of goods and services for the four (4) quarters of taxable year 2014.[11]

On 8 December 2015, petitioner filed its Application for Tax Credits/Refund (BIR Form No. 1914) with Revenue District Office No. 43A-East Pasig, requesting for the refund of its alleged unutilized input VAT for the four (4) quarters of taxable year 2014.[12]

As respondent failed to act on the claim for refund, petitioner filed a Petition for Review before the Court in Division on 6 May 2016.

On 17 August 2018, the assailed Decision[13] was promulgated denying the Petition for Review, as follows:

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6 See Prayer in the Petition for Review; *Rollo*, p. 31.
7 See Decision; Records, Vol. 3, pp. 1315-1316.
8 See Decision; Records, Vol. 3, p. 1316.
9 See Decision; Records, Vol. 3, p. 1316.
10 See Decision; Records, Vol. 3, p. 1316.
11 See Decision; Records, Vol. 3, p. 1316.
12 See Decision; Records, Vol. 3, p. 1316.
13 See Decision; Records, Vol. 3, pp. 1314-1346.

> **WHEREFORE**, premises considered, the instant Petition for Review filed by Riofil Corporation is **DENIED** for lack of merit.
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> Conversely, the claim for refund in the amount of Php34,491,953.38 representing alleged unutilized and/or unapplied input VAT for taxable year 2014 is hereby **DENIED.**
>
> **SO ORDERED.**[14]

Aggrieved, petitioner filed a Motion for Reconsideration with Motion for New Trial on 4 September 2018.[15] Respondent no longer filed his Comment/Opposition thereto.[16]

On 23 November 2018, the Court in Division promulgated the assailed Resolution[17] denying the Motion for Reconsideration with Motion for New Trial, the dispositive portion thereof reads as follows:

> **WHEREFORE**, in light of the foregoing, petitioner's *Motion for Reconsideration with Motion for New Trial* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[18]

Petitioner filed the instant Petition for Review[19] on 27 December 2018, and respondent was directed[20] to file his Comment thereto within ten (10) days from notice. Respondent did not file a Comment.[21] On 9 May 2019, the Court *En Banc* promulgated a Resolution giving due course to the Petition for Review and directed the parties to submit their respective Memoranda within thirty (30) days from notice.[22]

On 17 July 2019, petitioner filed its Memorandum.[23] Respondent did not file his Memorandum.[24] On 19 July 2019, the Court *En Banc* promulgated a Resolution[25] submitting the case for decision.

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14 See Dispositive Portion of the Decision; Records, Vol. 3, p. 1345.
15 Records, Vol. 3, pp. 1347-1370.
16 Records, Vol. 3, p. 1380.
17 Records, Vol. 3, pp. 1373-1379.
18 See Dispositive Portion of the November 23, 2018 Resolution; Records, Vol. 3, p. 1379; emphases retained.
19 *Rollo*, pp. 1-79, with annexes.
20 See January 17, 2019 Resolution; *Rollo*, pp. 80-82.
21 *Rollo*, p. 83.
22 *Rollo*, pp. 84-89, with dissenting opinion from Presiding Justice Roman G. Del Rosario.
23 *Rollo*, pp. 90-122.
24 *Rollo*, p. 123.
25 *Rollo*, pp. 124-126.

The Assigned Errors[26]

I.

Whether the Second Division erred in holding that Riofil's accumulated "input tax carry-over" from previous taxable quarters could not be credited against its output tax liabilities for year 2014 because Riofil failed to substantiate the same.

II.

Whether the Second Division erred in applying the valid and substantiated excess input tax of Php17,648,467.72 for year 2014 against Riofil's Php79,430,473.89 output tax liabilities for the same year.

III.

Whether the Second Division erred in finding additional disallowance of input VAT amounting to Php1,520,258.56.

IV.

Whether Riofil is entitled to its claim for refund in the amount of Php34,491,953.38 representing its unutilized and/or unapplied input VAT for the four quarters of taxable year 2014.

V.

Whether the Second Division erred in denying the Motion for New Trial to substantiate the accumulated input VAT from previous quarters.

Arguments of the Parties

Petitioner's Arguments[27]

Petitioner alleges that the Court in Division "erred in holding that Riofil's accumulated 'input tax carry-over' from previous taxable quarters could not be credited against its output tax liabilities for year 2014 even if it failed to substantiate the same."[28] Petitioner posits the following arguments, *viz:*

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26 See Issues in the Petition for Review; *Rollo*, p. 6.
27 See petitioner's Arguments in the Petition for Review; *Rollo*, pp. 6-31.
28 See petitioner's Arguments in the Petition for Review; *Rollo*, p. 8.

a) "The elements that entitle a taxpayer to a refund of input taxes under Section 112 (A) of the Tax Code are clear and unequivocal. Substantiation of input tax carried over is not required for a taxpayer to avail of refund of input taxes. Requiring the substantiation of input tax carried over, which is absent from Section 112 (A) amounts to judicial legislation."[29];
b) "The issue of the validity of 'Input Tax Carried Over From Previous Quarter" is separate and distinct from the issue of whether input taxes incurred within the period of claim was applied against output tax liability for the given quarters or subsequent quarters."[30]; and
c) "The issue of the validity of 'Input Tax Carried Over From Previous Quarter' is not among those raised by respondent in his Answer nor jointly stipulated upon by the parties."[31]

Petitioner further contends that the Court in Division "erred in applying the valid and substantiated excess input tax of Php17,648,467.72 for year 2014 against Riofil's Php79,430,473.89 output tax liabilities for the same year."[32] In support of this contention, petitioner argues that:

a) "Taxes cannot be subject of set-off or compensation. In the interest of due process and fair play, petitioner ought to be allowed to present evidence to substantiate its [a)] prior quarters' accumulated and excess input taxes carried over to taxable year 2014 because the validity thereof was never raised as a defense in the Answer nor an issue in the Joint Stipulation of Facts and Issues" [33], and b) input taxes attributable to its 2014 VATable sales.[34]; and
b) "Proceedings before the Court of Tax Appeals shall not be governed strictly by technical rules of evidence; such rules must be construed liberally to promote a just, speedy and inexpensive determination of the pending action."[35]

Moreover, petitioner faults the Court in Division "in finding additional disallowance of input taxes amounting to Php1,520,258.56."[36] Petitioner submits that:

a) Input taxes subject of refund were properly supported by original copies of supplier's invoices, official receipts and other supporting documents which were compliant with Section 110 (A) (2) and 113 of the NIRC and applicable regulations;[37] and

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29 See petitioner's Arguments in the Petition for Review; *Rollo*, pp. 8-17.
30 See petitioner's Arguments in the Petition for Review; *Rollo*, pp. 18-20.
31 See petitioner's Arguments in the Petition for Review; *Rollo*, pp. 21-23.
32 See petitioner's Arguments in the Petition for Review; *Rollo*, p. 23.
33 See petitioner's Arguments in the Petition for Review; *Rollo*, pp. 23-29.
34 See petitioner's Arguments in the Petition for Review; *Rollo*, pp. 28-29.
35 See petitioner's Arguments in the Petition for Review; *Rollo*, pp. 29-30.
36 See petitioner's Arguments in the Petition for Review; *Rollo*, p. 30.
37 See petitioner's Arguments in the Petition for Review; *Rollo*, p. 30.

b) Only a preponderance of evidence is necessary for a claim of tax refund to prosper.[38]

Finally, petitioner concludes that, following these arguments, "Riofil is entitled to its claim for refund in the amount of Php34,491,953.38 representing its unutilized and/or unapplied input VAT for the 1st, 2nd, 3rd and 4th quarters of taxable year 2014."[39]

The Ruling of the Court En Banc

The instant Petition for Review deserves scant consideration. The Court En Banc finds no reason to modify much less reverse the assailed Decision and Resolution of the Court in Division.

The arguments raised by petitioner have been amply discussed by the Court in Division in the assailed 17 August 2018 Decision and 23 November 2018 Resolution. To fortify the raison d'etre in the denial of the Petition for Review, the Court En Banc will discuss anew the issues raised by petitioner.

Substantiation of accumulated input tax carry-over is necessary to claim excess or unutilized input VAT refund.

Petitioner's main contention is that proof of accumulated input tax carry-over is not required to support a claim for input tax refund. *We disagree.*

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.[40]

Section 110 (A) (1) and (B) of the NIRC provides, as follows:

> "**SEC. 110.** Tax Credits. –
>
> (A) *Creditable Input Tax.* - (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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38 See petitioner's Arguments in the Petition for Review; *Rollo*, p. 30.

39 See petitioner's Arguments in the Petition for Review; *Rollo*, p. 31.

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

> (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.**"
> (Emphasis, Ours)

Meanwhile, ***Section 112 (A) and (C) of the NIRC*** provides, as follows:

> "**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**. xxx xxx xxx
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> xxx xxx xxx
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> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - **In proper cases,** the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof. x x x"
> (Emphasis, Ours)

Pursuant to ***Section 110 (A) (1) of the NIRC***, any input VAT, including accumulated input tax carry-over, shall be creditable against the output VAT only if the same is evidenced by a VAT invoice or official receipt issued in accordance with ***Section 113 of the NIRC.*** Conversely, if the taxpayer fails to present VAT invoices or official receipts to substantiate its accumulated input tax carry-over, said accumulated input tax carry-over cannot be credited against its current output VAT liability.

In this case, petitioner failed to present any evidence, such as validly issued VAT invoices or official receipts, to substantiate its previous year's accumulated input tax carry-over. As such, petitioner cannot claim its accumulated input tax carry-over as a credit against its current output VAT liability.

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.[41] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the refund.[42] The pieces of evidence presented entitling a taxpayer to an exemption are also strictissimi scrutinized and must be duly proven.[43]

The Court in Division properly applied the excess or unutilized input VAT of Php17,648,467.72 for year 2014 against petitioner's Php79,430,473.89 output VAT for the same year.

Petitioner argues that the Court in Division erred in applying the excess input tax of Php17,648,467.72 for year 2014 against its Php79,430,473.89 output tax liabilities for the same year. Petitioner posits that taxes cannot be subject of set-off or compensation. Petitioner insists that the Court in Division completely disregarded Riofil's other input VAT not attributable to its zero-rated sales (*i.e.*, accumulated input tax carry-over and input VAT attributable to VAT-able transactions).

We are not persuaded.

It is the excess of the unutilized input VAT from zero-rated transactions over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. ***Section 110 (B) of the NIRC*** provides that the refund or issuance of a tax credit certificate ("TCC") for excess or unutilized input VAT from zero-rated transactions shall be subject to the provisions of ***Section 112 of the NIRC.*** A perusal of ***Section 112 (A) of the NIRC*** shows that excess or unutilized input VAT from zero-rated transactions may be refunded, or credited to other internal revenue taxes to the extent that it has not been applied against the output VAT. The ability of a taxpayer to refund its excess or unutilized input VAT from zero-rated transactions is further restricted by ***Section 112 (C) of the NIRC.*** Under the said provision, the CIR may grant a refund or issue TCCs for excess or unutilized input VAT from zero-rated transactions only "in proper cases." Thus, it is not only when

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

[42] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al., G.R. No. 127105, 25 June 1999

[43] Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 179961, January 31, 2011.

the input VAT is attributable to zero-rated transactions and that the subject amount has not been applied against output VAT that a claim for refund/TCC may be granted, it must likewise be "proper" or appropriate under the obtaining circumstances.

As petitioner presented evidence to substantiate only its excess or unutilized input VAT from zero-rated transactions, the Court in Division correctly found that the output VAT liability of petitioner is more than its properly substantiated input VAT, as follows:[44]

Period Covered	**Output VAT**	**Substantiated Input VAT**	**Net Output VAT Payable**
1st Quarter	P 14,235,117.06	P 3,052,180.89	P 11,182,936.17
2nd Quarter	20,718,762.25	8,181,214.51	12,537,547.74
3rd Quarter	24,335,962.83	4,294,079.30	20,041,883.53
4th Quarter	20,140,631.75	2,120,993.02	18,019,638.73
Total	**P 79,430,473.89**	**P 17,648,467.72**	**P 61,782,006.17**

It would be highly "improper" or inappropriate, if not highly irregular, to grant a claim for input VAT refund in favor of petitioner if it still has unpaid output VAT. Hence, the Court in Division properly applied the excess input tax of Php17,648,467.72 for year 2014 against petitioner's Php79,430,473.89 output tax liabilities for the same year.

The Court in Division did not err in denying petitioner's Motion for New Trial.

Petitioner requests for a reopening of the case to allow presentation of evidence to substantiate its accumulated input tax carry-over and input VAT from VATable transactions. In support, petitioner cites the case of ***San Roque Power Corporation v. Commissioner of Internal Revenue***[45] where a motion to reopen the case for presentation of additional documents was granted in the interest of substantial justice.

This contention is bereft of merit.

A Motion for New Trial may only be granted upon specific, well-defined grounds, set forth in the Rules of Court.[46] ***Sections 1 and 2, Rule 37 of the Rules of Court*** provide, *viz*:

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44 See Decision; Records, Vol. 3, p. 1344.
45 CTA Case No. 8007, 6 December 2012.
46 Ramon Alegre v. Manuel Reyes, G.R. No. L-56923, 9 May 1988

"**SEC. 1.** *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

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"**SEC. 2.** *Contents of motion for new trial or reconsideration and notice thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motion. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

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A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal. (2a)"
(Emphasis, Ours)

Relative to these provisions are ***Sections 5 and 6, Rule 15 of the RRCTA,*** to wit:

"**SEC. 5.** *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.

A motion for new trial shall include all grounds then available and those not included shall be deemed waived.
(Rules of Court, Rule 37, sec. 1a)

"**SEC. 6.** *Contents of motion for reconsideration or new trial and notice.* – The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits.

A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

xxx xxx xxx"
(Emphasis, Ours)

Other than "substantial justice", petitioner did not raise any of the circumstances enumerated under ***Section 1 of Rule 37 of the Rules of Court*** and ***Section 5 of Rule 15 of the RRCTA*** that would justify the reopening of the case for reception of additional evidence. Similarly, petitioner failed to attach the necessary affidavits and documents in support of a Motion for New Trial under ***Section 2 of Rule 37 of the Rules of Court*** and ***Section 6 of Rule 15 of the RRCTA.*** Due to petitioner's failure to comply with these mandatory requirements, we do not find any reason to disturb the Court in Division's denial of petitioner's Motion for New Trial.

In light of the foregoing discussions, there is no more need to discuss the remaining issues.

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WHEREFORE, the instant Petition for Review filed by petitioner, **RIOFIL CORPORATION**, is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 17 August 2018 and the Resolution dated 23 November 2018 promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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