REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TOTAL (PHILIPPINES) CORPORATION, *Petitioner,*	**CTA EB No. 1264** (CTA Case Nos. 8056 & 8163)
- versus –	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1295** (CTA Case Nos. 8056 & 8163)
	Present:
- versus –	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
TOTAL (PHILIPPINES) CORPORATION, *Respondent.*	Promulgated: AUG 15 2016 3:30 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.:*

Submitted for resolution are the following:

1. Commissioner of Internal Revenue's ("CIR") **Motion for Reconsideration** filed on May 17, 2016 with Total (Philippines) Corporation's ("Total") **Comment/Opposition (to Commissioner of Internal Revenue's Motion for Reconsideration dated May 17, 2016)** filed on July 7, 2016; and

2. Total's **Motion for Reconsideration** filed on May 19, 2016 with CIR's **Opposition (re: Motion for Reconsideration)** filed on July 7, 2016.

The aforementioned Motions seek reconsideration of the Decision of the Court *En Banc* promulgated on April 20, 2016, ("Assailed Decision")[1] affirming the Amended Decision of the Third Division ("Court in Division") of this Court in CTA Case Nos. 8056 & 8163. The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed by Total (Philippines) Corporation docketed as CTA EB No. 1264 is hereby **PARTIALLY GRANTED**. The Amended Decision dated December 19, 2014 promulgated by the Third Division of this Court in CTA Case Nos. 8056 and 8163 is hereby **MODIFIED** ordering the Commissioner of Internal Revenue to refund or issue a tax credit certificate in favor of Total (Philippines) Corporation in the adjusted amount of **EIGHTEEN MILLION FOUR HUNDRED THREE THOUSAND EIGHT HUNDRED THIRTY SEVEN AND 32/100 PESOS (₱18,403,837.32)**, representing the latter's excess and unutilized input taxes attributable to its zero-rated sales for the year 2008, computed as follows:

Excess Input VAT:		
Per Assailed Amended Decision		₱16,199,483.63
Add: Discrepancy due to typographical error	₱ 100,000.00	
Discrepancy due to recording error	2,197,705.52	2,297,705.52
Total		₱18,497,189.15
% of Valid Zero-rated Sales to Total Declared Zero-rated Sales		x 99.4953188%

[1] CTA EB No. 1264 Docket, pp. 218-242.

Refundable Excess Input VAT Attributable to Valid Zero-rated Sales	**₱18,403,837.32**

On the other hand, the Petition for Review filed by the Commissioner of Internal Revenue docketed as CTA EB No. 1295 is hereby **DENIED** for lack of merit.

SO ORDERED."

Total interposes in its Motion for Reconsideration the following grounds:

GROUNDS FOR RECONSIDERATION[2]

A. The Honorable Court erred in ruling that refund of input VAT is only proper when the input VAT attributable to zero-rated sales exceeds output VAT.

B. The input tax carried over from the previous quarter had been validated and must not be disallowed on the basis that it was not substantiated.

C. The documents presented by Petitioner were valid proof that its sales were made to entities registered with PEZA/CDC/BOI, which should then be treated as VAT-zero rated transactions.

D. Petitioner is entitled to a refund or issuance of a tax credit certificate in the total amount of P187,554,770.69 representing unutilized input value-added tax (VAT) attributable to its zero-rated sales for the taxable year 2008.

On the other hand, the CIR raises the following ground in his Motion for Reconsideration, to wit:

THE HONORABLE COURT ERRED IN PARTIALLY GRANTING RESPONDENT'S CLAIM FOR REFUND IN THE AMOUNT OF P18,403,837.32 ALLEGEDLY REPRESENTING EXCESS AND UNUTILIZED INPUT TAXES ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE YEAR 2008.[3]

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[2] *Ibid.*, p. 274.
[3] *Id.*, pp. 252-253.

The Court *En Banc* resolves to deny both Motions for lack of merit.

A review of the Motions of the parties reveals that the grounds relied upon are mere reiterations of the matters which have already been thoroughly discussed and passed upon by the Court *En Banc* in the Assailed Decision. Both parties failed to raise any new or substantial matter or any compelling reason that will justify reversal or even modification of the Court *En Banc*'s findings. Nevertheless, the Court *En Banc* shall state below a few points, if only to reinforce its discussion in the Assailed Decision.

By way of reiteration, the Court *En Banc* holds that refund of input value-added tax (VAT) attributable to zero-rated sales is only proper when such input VAT exceeds output VAT. In other words, input VAT attributable to zero-rated sales must first be established as "excess and unutilized" before it may be considered a proper subject of tax refund or tax credit.

While it may be true that a reading of Section 112(A) of the National Internal Revenue Code of 1997, as amended (1997 NIRC) appears to suggest that input VAT, which is attributable to zero-rated sales and "to the extent that such input tax has not been applied against the output tax", may be applied for the issuance of a tax credit certificate or refund, without any further requirement, the said provision may not be taken in isolation but must be read in conjunction with the other provisions of the law such as Section 110(B) thereof.

It must be emphasized that in *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al.*,[4] the Supreme Court stated:

> "A law must not be read in truncated parts; its provisions must be read in relation to the whole law. It is the cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. **Every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.**
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> **In construing a statute, courts have to take the thought conveyed by the statute as a whole; construe the**

[4] G.R. Nos. 158885 & 170680, October 2, 2009.

> **constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious and sensible.**" *(Emphasis supplied)*

Also, in *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*,[5] the Supreme Court similarly held as follows:

> "**Legislative intent must be ascertained from a consideration of the statute as a whole and not of an isolated part or a particular provision alone. This is a cardinal rule in statutory construction.** For taken in the abstract, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those with which it is associated. Thus, an apparently general provision may have a limited application if viewed together with the other provisions." *(Emphasis supplied)*

Consistent thereto, Section 112 of the 1997 NIRC must be read in conjunction with Section 110(B) thereof, which provides:

> "SEC. 110. *Tax Credits.* —
>
> xxx xxx xxx
>
> (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 supplied)*

It is clear from the last proviso of Section 110(B) that the refund or credit of "any input tax attributable to zero-rated sales by a VAT-registered person" is "subject to the provisions of Section 112." Accordingly, the determination of the grant of such refund or credit cannot be confined

[5] G.R. No. 185969, November 19, 2014 citing *Aboitiz Shipping Corp., et.al. v. City of Cebu, et al.*, 121 Phil. 425, 429 (1965).

merely to the provisions of paragraph (A) of Section 112, but to the whole of Section 112.

The phrase "in proper cases" under Section 112(C) qualifies the granting of refund under Section 112 (A). Thus, it is not only when the input VAT is attributable to zero-rated sales and the same has not been applied against the output VAT that the grant of refund or tax credit may be made; it must likewise be "proper" or appropriate under the circumstances.

Likewise, the first sentence of the aforequoted Section 110 (B) is plain that "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." Thus, it would be "improper" or inappropriate, if not irregular, to grant a refund of, or issue a tax credit certificate for, input VAT in favor of Total where there are still unpaid output VAT.

With respect to Total's contention that the input tax carried over from previous quarter had been validated and must not be disallowed on the basis that it was not substantiated, the Court *En Banc* stands by its findings in the Assailed Decision that there can be no excess input tax to be carried over to the succeeding taxable period. As discussed in the Assailed Decision:

> "While it is true that Total submitted supporting documents in relation to its claim for refund of its input taxes for the year 2007, the Court, in its decision on the case of *Total (Philippines) Corporation v. Commissioner of Internal Revenue*, found that of the total ₱2,794,093,313.26 input taxes incurred for the subject year, only ₱2,571,801,573.54 is properly substantiated, computed as follows:

Total claimed input tax	₱	2,794,093,313.26
Less: Disallowances		
Not examined by ICPA	₱	1,554,406.72
Per ICPA's report		120,463,210.92
Per this Court's further verification		100,274,122.08
Total disallowances	₱	222,291,739.72
Properly substantiated input tax	**₱**	**2,571,801,573.54**

> Further, the Court found that the total output tax for the year 2007 exceeds the total substantiated input tax, thus: *gr*

Output tax	₱ 2,914,509,295.82
Properly substantiated input tax	2,571,801,573.54
Output tax still due	**₱ 342,707,722.28**

In fine, Total's claim for refund for the year 2007 was denied because its properly substantiated input taxes are not enough to cover its output taxes for the same year and there is no excess input VAT which may be the subject of a claim for refund.

Consequently, there can be no excess input taxes to be carried over to the succeeding taxable period. Even though Total has reported input taxes carried over from the previous taxable period of ₱205,081,910.96 in its Quarterly VAT Returns, the same cannot be creditable against its output taxes for the taxable year 2008." *(Citations omitted)*

The Court *En Banc* likewise does not find any merit in Total's assertion that the documents it presented constitute valid proof that its sales were made to PEZA/CDC/BOI registered entities. It must be noted that the incentives granted to ecozone registered enterprises shall be effective only during the period of registration of such entities. Accordingly, the effectivity period of such registration must be clearly proven by sufficient evidence. Absent any definite proof of the period of registration of these ecozone entities, there is no way for the court to determine whether the alleged registration covers the taxable year involved.

As regards Total's claim that it is entitled to a refund or issuance of a tax credit certificate in the total amount of ₱187,554,770.69 representing unutilized input VAT attributable to its zero-rated sales for the taxable year 2008, it is enough to say that Total merely rehashed its arguments and again went on to enumerate the input taxes on importation for the year 2008. These arguments have already been considered and exhaustively passed upon not only by the Court *En Banc* in the Assailed Decision but also by the Court in Division in its Amended Decision dated December 19, 2014. Thus, there is no need to belabor the same again.

Lastly, contrary to CIR's contention, there is no need for Total to submit the complete documents required under RMO No. 53-98 in relation to Section 112(C) of the 1997 NIRC. As the Court *En Banc* already discussed in the Assailed Decision, any lingering doubt as to the foregoing issue has been finally resolved by the Supreme Court in *Commissioner of*

Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation).[6] In the said decision, it was held that:

> The CIR's reliance on RMO 53-98 is misplaced. **There is nothing in Section 112 of the NIRC**, RR 3-88 **or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT**. The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities xxx." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable." *(Emphasis supplied)*

In claims for VAT refund, the non-submission of complete supporting documents in the administrative level is not fatal to taxpayer's judicial claim. This Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevance, probative value and weight of evidence presented therein become subject to the relevant provisions of the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.[7]

Notably, in *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[8] this Court ruled that:

> "It has been settled in several CTA *en banc* cases that judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents in support of its administrative claim for refund. In the case of *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, We passed upon the issue on the non-submission of supporting documents in the administrative level as NOT fatal to a claim for refund. The pertinent portion of the Decision provides:

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[6] G.R. No. 205055, July 18, 2014, 730 SCRA 242, 255.

[7] *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 474, September 1, 2009; *Commissioner of Internal Revenue vs. Toledo Power Company*, CTA EB No. 589, September 15, 2010; *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 657, April 4, 2012.

[8] CTA EB No. 775, November 13, 2012.

> **'Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial.** In the case of *CIR vs. Manila Mining Corporation*, it was explained that 'Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases.' Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.
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> This Court is not barred from receiving, evaluating and appreciating evidence formally offered before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court. The 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. Otherwise stated, **judicial claims are being decided based on what has been presented and formally offered by party litigants during the trial of the case before the Court and not on the mere allegation of non-submission of complete documents before the BIR**." *(Citations omitted and emphasis supplied)*

WHEREFORE, finding no reversible error in the Assailed Decision to warrant reconsideration thereof, Total's Motion for Reconsideration dated May 19, 2016 as well as CIR's Motion for Reconsideration dated May 17, 2016, are **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice