REPUBLIC OF THE PHILIPPINES
# *Court of Tax Appeals*
QUEZON CITY

## *En Banc*

**COCA-COLA BOTTLERS PHILIPPINES, INC.,**
Petitioner,

- *versus* -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB CASE NO. 1061**
(CTA Case Nos. 7986 & 8028)

Present:
*Del Rosario, P.J.*
*Castañeda, Jr.,*
*Bautista,*
*Uy,*
*Casanova,*
*Fabon-Victorino,*
*Mindaro-Grulla,*
*Cotangco-Manalastas, and*
*Ringpis-Liban, JJ.*

**Promulgated:**

APR 10 2015
3:42 p.m.

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# *DECISION*

*BAUTISTA, J.:*

### *The Case*

Before the Court *En Banc* is the Petition for Review[1] filed by Coca-Cola Bottlers Philippines, Inc. on September 23, 2013, pursuant to Section 18[2] of Republic Act ("RA") No. 1125, as amended by RA No. 9282, and RA No. 9503, praying for the reversal and setting aside of the

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[1] *Rollo*, CTA EB Case No. 1061 (CTA Case Nos. 7986 & 8028), pp. 10-131, with Annexes.

[2] Sec. 18. *Appeal to the Court of Tax Appeals En Banc*. – No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *En Banc*.

Decision,[3] promulgated by the Special Second Division of the Court ("Court in Division") on June 14, 2013, and Resolution[4] dated August 15, 2013.

## *The Parties*[5]

Petitioner Coca-Cola Bottlers Philippines, Inc., is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 1890 Paz Guazon Street, Paco, Manila, now at 24th Floor, Net Lima, 5th Avenue corner 26th Street, Bonifacio Global City, Taguig. It is primarily engaged in the manufacture, distribution and sale of non-alcoholic beverages, commonly known as softdrinks in the Philippines and any incidental or related businesses. It is registered on May 5, 1981 as VAT-registered Taxpayer with Tax Identification Number 000-112-104-000.

Respondent Commissioner of Internal Revenue ("CIR") is an official of the Republic of the Philippines authorized to, among others, refund or credit taxes pursuant to Section 204 of the 1997 National Internal Revenue Code, as amended ("NIRC"), and may be served with summons at her office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

## *Antecedent Facts*

The relevant antecedents are succinctly recited by the Court in Division in its Decision dated June 14, 2013, as follows:[6]

> "On October 21, 2009, petitioner filed its administrative claim for refund for its alleged erroneous overpayment of VAT for the quarter ending September 30, 2007 in the amount of P60,420,422.20.

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[3] *Rollo*, CTA EB Case No. 1061(CTA Case Nos. 7986 & 8028), pp. 54-78; penned by Associate Justice Caesar A. Casanova, with Associate Justice Juañito C. Castaneda, Jr., and Associate Justice Cielito N. Mindaro-Grulla, concurring.
[4] *Id.*, pp. 35-37.
[5] *Id.*, p. 55.
[6] *Id.*, pp. 55-69.

Petitioner, likewise, filed with respondent its claim for refund/tax credit on January 20, 2010, for its alleged erroneous overpayment of VAT for the quarter ending December 31, 2007 in the amount of P112,341,092.68.

Thereafter, the instant Petitions for Review were filed on October 23, 2009 and January 22, 2010.

Respondent, for her part, filed her Answers and interposed the following special and affirmative defenses:

For CTA Case No. 7986:

'5. He reiterates and re-pleads the preceding paragraphs of his Answer as part of his Special and Affirmative Defenses.

6. Taxes collected are presumed to be in accordance with pertinent laws and regulations.

7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

8. Petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected.

9. Petitioner must prove that the claim was filed within the period prescribed by law.

10. Petitioner must prove compliance with the following in order to be entitled to the claim for refund:

a. That the alleged Value-Added Tax paid for the 3rd quarter of taxable year 2007 in the total amount of Sixty Million Four Hundred Twenty Thousand Four Hundred Twenty Two Pesos and 20/100 (P60,420,422.20) was erroneously or illegally collected.

b. That it has complied with the governing rules and regulations with regard to recovery of taxes erroneously or illegally collected/received as provided in

Sections 204 and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Corollary thereto, Sections 204 and 229 of the NIRC of 1997, as amended, explicitly provides:

Section 204. Authority of the Commissioner to Compromise, Abate or Refund or Credit Taxes. –

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for refund within two (2) years after the payment of the tax or penalty: Provided, however, That a refund filed showing an overpayment shall be considered as a written claim for refund . . . .' (Emphasis and underscoring supplied)

Section 229. Recovery of Tax Erroneously or Illegally Collected. –

No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or for any penalty claimed to have been collected until a claim for refund or credit has been duly filed with the Commissioner, but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; *Provided*, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.' (Emphasis and underscoring supplied)

c. Submission of complete documents in support of the administrative claim for refund otherwise there would be no compliance with regard to the filing of administrative claim for tax credit/refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 229 of the NIRC of 1997, as amended;

11. In view of the foregoing provision of the law, respondent humbly manifests that the Honorable Court is bereft of jurisdiction to hear and try the case considering that petitioner's administrative claim for refund was already belatedly filed on October 21, 2009. It bears stressing that the claim for refund arose from the alleged erroneous VAT payments for the quarter ending September 30, 2007. Ergo, by express provision of law, petitioner is given a period of two (2) years from the date or payment of erroneously or illegally collected taxes or until September 30, 2009 within which to file a written claim for refund. However, in the case at hand, petitioner filed the administrative claim for refund only on October 21, 2009 which was already a month beyond the deadline period set on September 30, 2009 in total disregard of the provision of law.

12. The law is likewise strict in stating that the same must be filed within the two (2)-year period regardless of any supervening cause that may arise after payment. Suffice it to say that petitioner's allegations that the erroneous payment was finally determined only by petitioner last July 2009 and that it was barred from amending its VAT returns by reason of the issuance of the Letter of Authority dated August 29, 2008 cannot prevent the filing of the administrative claim for refund within the period prescribed by law. Therefore, the same is fatal to its administrative claim for refund. Lest it be forgotten, what the law prohibits upon the issuance of a Letter of Authority is the amendment of tax returns subject of the audit and investigation and not the filing of the administrative claim for refund with respondent;

13. It is likewise noteworthy of emphasis that the Petition for Review was filed by petitioner before the Court of Tax Appeals on October 23, 2009 or exactly two (2) days after the filing of the administrative claim for refund with respondent giving the latter no ample opportunity to decide and act on the matter. 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.

14. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.

15. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption. (Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005). The law does not look with favor on tax exemptions and that he would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. (Sea Land Service v. Court of Appeals, 357 SCRA 444).

16. In relation thereto, in the case entitled 'Philippine Bank of Communications vs. Commissioner of Internal Revenue, Court of Tax Appeals and Court of Appeals,' the Supreme Court had the occasion to say:

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From the same perspective, claims for refund or tax credit should be exercised within the time fixed by law because the BIR being an administrative body enforced to collect taxes, its functions should not be unduly delayed or hampered by incidental matters.

Sec. 230 of the National Internal Revenue Code (NIRC) of 1977 (now Sec. 229, NIRC of 1997) provides for the prescriptive period for filing a court proceeding for the recovery of tax erroneously or illegally collected, viz.:

Sec. [229]. Recovery of tax erroneously or illegally collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive (sic) or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceedings shall be filed after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment, Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. . . .' (Emphasis supplied)

The rule states that the taxpayer may file a claim for refund or credit with the Commissioner of Internal Revenue, within two (2) years after payment of tax, before any suit in CTA is commenced. . . .'

17. Corollary thereto, in the case entitled 'Felix A. Sajot vs. Court of Appeals and People of the Philippines', the Supreme Court had the occasion to say:

'In a minute resolution, we said:

True, appeal is an essential part of our judicial system. As such, courts should proceed with caution so as not to deprive a party of the right to appeal, particularly if the appeal is meritorious. Respect for the appellant's right, however, carries with it the corresponding respect for the appellee's similar rights to fair play and justice. The appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court.'

In Garbo vs. Court of Appeals, we ruled that:

Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances.

While litigation is not a game of technicalities, it is a truism that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and [specify] administration of justice' (Emphasis and underscoring supplied)

18. Finally, in the interest of justice, the Rules of Procedure are required to be followed, except only when for the most persuasive of reasons, they must be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. (Limpot vs. Court of Tax Appeals, 170 SCRA 367). While the rigid application of the rules of procedure has, in the past, been relaxed so that the ends of justice may be better served, such liberality may not be invoked if it would result to wanton disregard of the rules and cause needless delay. Save for the most persuasive reasons, strict compliance with the rules is enjoined to facilitate the orderly administration of justice.' (Citations omitted)

For CTA Case No. 8028:

'4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR);

5. Petitioner must prove the alleged erroneous payment of VAT and that the same was remitted to the BIR.

6. Petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law.

7. The action has already prescribed, Section 204 and Section 229 state[s]:

Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —

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(c) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, (sic) in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a refund filed showing an overpayment shall be considered as a written claim for credit or refund.

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Section 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; Provided however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.' (Emphasis and underscoring supplied)

Both Section 204 and Section 229 give the taxpayer up to two years from the date of payment of the tax to file their claim for refund. Petitioner paid the subject VAT for October and November 2007 on November 26 and December 26, 2007, respectively. The administrative claim was filed on January 20, 2010 and the judicial claim was filed on January 22, 2010. Thus, the action has already prescribed, petitioner can no longer claim the refund of its supposedly erroneously paid VAT for October and November 2007. In fact in Dart Philippines, Inc. vs. Commissioner of Customs, (CTA Case No. 6394, November 5, 2003), this Honorable Court dismissed the petition due to the fact that two years from date of payment of VAT had already lapsed before the filing of the same.

8. It is interesting that in paragraph 10 of the Petitioner (sic) for Review, petitioner states that they discovered the over/erroneous payment on July 2009, but yet it only chose to file its administrative claim only on January 20, 2010. It further aggravates the error when it filed its judicial claim for refund 2 days later on January 22, 2010. This clearly shows the intent of petitioner to make the administrative claim a mere formal requirement in filing a judicial claim.

9. In claims for a refund, a claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court, first, to afford the CIR an opportunity to correct the action of subordinate officers; and second, to notify the government that such taxes have been questioned, and notice should then be borne in mind in estimating the revenue available for expenditure.

(Bermejo vs. Collector, 87 Phil. 96 cited in CIR vs. Rosemarie Acosta, G.R. No. 154068, August 3, 2007)

10. In Ang Tibay vs. Court of Industrial Relations, G.R. No. L-46496, it states the primary rights which must be respected even in an administrative proceeding:

(1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Hughes, in Morgan v. U.S., 304 U.S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129, 'the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. (Chief Justice Hughes in Morgan v. U.S., 298 U.S. 468, 56 S. Ct. 906, 80 law. ed. 1288.) In the language of this court in Edwards vs. McCoy, 22 Phil., 598, 'the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.'

(3) 'While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support it is a nullity, a place when directly attached.' (Edwards vs. McCoy, supra.) This principle emanates from the more fundamental is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) Not only must there be some evidence to support a finding or conclusion (City of Manila vs. Agustin, G.R. No. 45844, promulgated November 29, 1937, XXXVI O. G. 1335), but the evidence must be 'substantial.' (Washington, Virginia and Maryland Coach Co. v. national labor (sic) Relations Board, 301 U.S. 142, 147, 57 S. Ct. 648, 650, 81 Law. ed. 965.) It means such

relevant evidence as a reasonable mind accept as adequate to support a conclusion.' (Appalachian Electric Power v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989; National Labor Relations Board v. Thompson Products, 6 Cir., 97 F. 2d 13, 15; Ballston-Stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 760.). . . The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent inn (sic) judicial proceedings would not invalidate the administrative order. (Interstate Commerce Commission v. Baird, 194 U.S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; Interstate Commerce Commission v. Louisville and Nashville R. Co., 227 U.S. 88, 93 33 S. Ct. 185, 187, 57 Law. ed. 431; United States v. Abilene and Southern Ry. Co. S. Ct. 220, 225, 74 Law. ed. 624.) But this assurance of a desirable flexibility in administrative procedure does not go far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. (Consolidated Edison Co. v. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.)'

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. (Interstate Commerce Commission vs. L. & N. R. Co., 227 U.S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer any industrial or agricultural dispute

or any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal, a justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers. (Section 10, ibid.)

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally Relations personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with the right to appeal to board or commission, but in our case there is no such statutory authority.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The performance of this duty is inseparable from the authority conferred upon it. (Emphasis supplied)

Petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. If there is lack of evidence, then the decision will probably be contrary to petitioner. Only the evidence presented will be reviewed by the quasi-judicial body. An administrative claim is meant to expedite the proceedings where all the relevant evidence is presented. Petitioner, however, instead chose not to submit any evidence to support its claim.

11. Furthermore, 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. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc. 98 Phil. 670)."

The Court, subsequently, issued Notices of Pre-Trial Conference for CTA Case No. 7986 on March 9, 2010 and for CTA Case No. 8028 on March 18, 2010, both setting the said cases for pre-trial conference on May 17, 2010 at 9:00 a.m.

On April 15, 2010, CTA Case No. 8028 was finally consolidated with CTA Case No. 7986 and the parties were ordered to file their respective consolidated pre-trial brief within ten (10) days from April 15, 2010 or until April 25, 2010.

Accordingly, the Pre-Trial Brief (For the Petitioner) was filed on April 26, 2010 while respondent's Consolidated Pre-Trial Brief was filed on May 14, 2010.

On June 2, 2010, the parties filed their Joint Stipulation of Facts and Issues 17 which was later approved in a Resolution dated June 4, 2010. In the same Resolution, the Pre-Trial was considered terminated.

Thereafter, on July 21, 2010, petitioner moved for the commissioning of Ms. Katherine O. Constantino, CPA, a partner in Constantino Guadalquiver & Co. as an Independent Certified Public Accountant (ICPA) pursuant to Section 5 Rule 12 in relation to Sections 1 and 2 of Rule 13 of the Revised Rules of the Court of Tax Appeals. The said motion was later granted during the hearing held on August 2, 2010.

Consequently, the trial of the case proceeded giving both parties the opportunity to present their documentary and testimonial evidence. Petitioner formally offered in evidence Exhibits 'A' to 'D8-2' which were admitted in a

Resolution dated July 25, 2011. For her part, respondent formally offered in evidence Exhibits '1' to '9a' which were later admitted in a Resolution dated January 16, 2012.

Also, pursuant to its Supplemental Formal Offer of Evidence (For the Petitioner) filed on June 4, 2012, petitioner formally offered in evidence Exhibits 'CC-2101' to 'CC-4243,' 'DD-3742' to 'DD-6632,' 'L8,' 'L8-1,' 'M8', 'N8,' 'O8' and 'O8-1' which were later admitted in a Resolution 27 dated June 25, 2012 with the exception of Exhibits 'CC-2216,' 'CC-2889' and 'CC-4243' which were denied admission.

Subsequently, the 'Memorandum (For the Petitioner)' was submitted on August 28, 2012 while respondent adopted the arguments in her Memorandum filed on February 8, 2012 as her Supplemental Memorandum pursuant to her Manifestation filed on July 3, 2012. Accordingly, the case was submitted for decision on August 31, 2012.

*The Ruling of the Court in Division*

On June 14, 2013, the Court in Division promulgated a Decision[7] denying petitioner's Petitions for Review by ruling that:

> "**WHEREFORE**, premises considered, petitioner's Petitions for Review are hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."[8]

On July 3, 2013, petitioner filed its "Motion for Reconsideration,"[9] while respondent filed her Comment on July 23, 2013.[10] On August 15, 2013, the Court in Division issued a Resolution[11] denying the same. The dispositive portion of which reads as follows:

[7] *Id.*, pp. 54-78.
[8] Id., p. 78.
[9] *Id.*, p. 35.
[10] *Id.*
[11] *Id.*, pp. 35-37.

"**WHEREFORE**, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED**."[12]

On September 23, 2013, petitioner filed its Petition for Review. On December 5, 2013, respondent filed her "Comment (re: Petitioner for Review dated 19 September 2013)."

After considering the issues raised by both parties in their respective pleadings, the Court *En Banc* resolved to give due course to the Petition for Review.

Both parties were required to submit their respective memorandum.

On March 12, 2014, petitioner filed its "Memorandum (For the Petitioner)."[13] While, respondent in a "Manifestation"[14] filed on March 21, 2014, manifests that she is adopting the arguments raised in the "Comment (re: Petitioner for Review dated 19 September 2013)" filed on December 5, 2013.[15]

On April 30, 2014,[16] the case was submitted for decision.

## *The Issues*

The following grounds are proffered for resolution:[17]

1. **WHETHER PETITIONER IS ENTITLED TO TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF P60,420,422.20 AND P112,341,092.68 REPRESENTING OVER/ERRONEOUS PAYMENT OF OUTPUT VAT FOR THE QUARTERS**

[12] *Id.*, p. 37.
[13] *Id.*, pp. 170-190.
[14] *Id.*, p. 191.
[15] *Id.*, pp. 152-161.
[16] *Id.*, pp.197-198.
[17] *Id.*, Petition for Review dated September 23, 2013, p.18.

**ENDED SEPTEMBER 30, 2007 AND DECEMBER 31, 2007, RESPECTIVELY, OR A TOTAL OF P172,761,514.88.**

2. **WHETHER THE UNDECLARED INPUT TAX FOR THE QUARTERS ENDED SEPTEMBER 30, 2007 AND DECEMBER 31, 2007 IN THE AMOUNTS OF P60,420,422.20 AND P112,341,092.68 ARE REQUIRED TO BE DECLARED IN THE QUARTERLY VAT RETURNS FOR THE SAID QUARTERS TO BE ABLE TO CLAIM FOR REFUND OF OUTPUT VAT ERRONEOUSLY PAID UNDER SECTION 204(C) IN RELATION TO SECTION 229 OF THE NIRC OF 1997, AS AMENDED.**

3. **WHETHER PETITIONER'S CLAIMS FOR REFUND/TAX CREDIT FALLS WITHIN THE PURVIEW OF SECTION 229.**

*Petitioner's Arguments:*

Petitioner claims that it made an overpayment of output VAT in the amount of Php128,535,025.61 and Php206,803,296.79 respectively for the third and fourth quarters of 2007 as a result of its undeclared input VAT in the amount Php60,420,422.20 and Php112,341,092.68 respectively representing the said period. If not for this error, petitioner would have only paid the amount of Php68,114,603.41 and Php94,462,204.11, respectively.

Furthermore, petitioner contends that the provisions of Sections 204(C) and 229 of the 1997 National Internal Revenue Code, as amended ("NIRC") do not provide for the requirement that the VAT Return should show the undeclared input VAT as long as such error or mistake can be shown and explained in the application for tax refund or credit.

Finally, petitioner claims that the applicable provisions in its claim for refund are Sections 229 in relation to 204(C) of the NIRC as its claim involves an erroneous payment of output VAT in the amount Php68,114,603.41 and Php94,462,204.11 respectively for the third and fourth quarters of 2007 as a result of its undeclared input tax amounting to Php60,420,422.20 and Php112,341,092.68 respectively for the third and fourth quarters of 2007.

***Respondent's Counter Arguments:***

Respondent avers that Sections 204(C) and 229 of the NIRC apply to claims for taxes erroneously or illegally assessed or collected, or to any penalty collected without authority, or any sum wrongfully collected, and not to claims sought to be refunded is undeclared.

Moreover, she claims that in order for input VAT to be available as tax credit, it must comply with the substantiation requirement provided in Section 4.110-8 of Revenue Regulations No. 16-2005, as amended.

Finally, she alleges that petitioner failed to substantiate its claim.

***The Ruling of the Court En Banc***

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

The issues raised boil down to the sole issue of whether or not petitioner is entitled to tax refund or issuance of tax credit certificate in the aggregate amount of Php172,761,514.88 allegedly representing erroneous payment of output VAT for the third and fourth quarters of taxable year 2007, which are broken down as follows:

| CTA Case No. | Period Covered | Amount of Claim |
|---|---|---|
| 7986 | 3rd qtr. - 2007 | Php60,420,422.20 |
| 8028 | 4th qtr. - 2007 | Php112,341,092.68 |
| | **TOTAL** | **Php172,761,514.88** |

In the Decision[18] dated June 14, 2013, the Court in Division unanimously ruled in this wise:

> "In these consolidated cases, petitioner cited only two provisions of law as its bases for the claims for tax credit or refund and, these are: Sections 204 (C) and 229 of the NIRC of 1997, which respectively provides:

[18] *Id.*, pp. 72-78.

'SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.'

xxx xxx xxx

'SEC. 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.'

Under Section 229, a taxpayer who intends to file a claim for refund or tax credit of any tax alleged to have been erroneously paid or illegally collected, must file both the administrative claim and the judicial claim within the period of two (2) years from the date of payment of the tax sought to be refunded, regardless of any supervening cause that may arise after such payment.

Upon verification, records reveal that the dates of filing of petitioner's administrative and judicial claims for the [third] and [fourth] quarter[s] of 2007 fall within the two-year prescriptive period as shown hereafter:

| CTA Case No. | Period Covered in 2007 | Date of Payment | Administrative Claim | Judicial Claim | End of Two-year Period |
|---|---|---|---|---|---|
| 7986 | 3rd Quarter | 25-Oct-07 | 21-Oct-09 | 23-Oct-09 | 25-Oct-09 |
| 8028 | 4th Quarter | 25-Jan-08 | 20-Jan-10 | 22-Jan-10 | 25-Jan-10 |

Records, likewise, show that in petitioner's administrative claims for refund for the third and fourth quarters of 2007, petitioner enumerated the documents attached thereto which petitioner's witness, Mr. Gerardo E. Espirion, mentioned during the hearing held on July 5, 2010. In fact, the Final Report dated September 23, 2010 which was presented as evidence by the respondent confirmed respondent's receipt of supporting documents attached to the Administrative Claim for Refund filed on January 20, 2010. Thus, there is no reason for this Court to subscribe to respondent's assertion that petitioner failed to present evidence to support its administrative claims for refund.

However, notwithstanding the timeliness of the filing of petitioner's administrative and judicial claims under Section 229, it should not be forgotten that Sections 204 and 229 must be read together with the provision of Section 4.110-8 of Revenue Regulations No. 16-2005, which provides:

SEC. 4.110-8. Substantiation of Input Tax Credits. –

> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated by the following documents, and must be reported in the information returns required to be submitted to the Bureau: . . . ." (Emphasis supplied)

Based from the foregoing provision, in order for input taxes to be available as tax credits, they must be substantiated and reported in the VAT returns of the taxpayer.

Here, the Court-commissioned Independent CPA (ICPA) found that out of petitioner's alleged unclaimed input tax credits for the third and fourth quarters of 2007 in the respective amounts of P60,420,422.20 and P112,341,092.68, totaling P172,761,514.88, only the input taxes of P19,342,803.07 and P34,440,405.24 for the third and fourth quarters of 2007, respectively, totaling P53,783,208.31 were properly supported by VAT official receipts. Below is the breakdown of the amount of P53,783,208.31:

| | **Input tax amount** | | |
|---|---|---|---|
| **Period** | **Amended Final Consolidated Report** | **Supplemental Report** | **Total** |
| 3rd quarter of CY 2007 | Php16,852,085.91 | Php2,490,717.16 | Php19,342,803.07 |
| 4th quarter of CY 2007 | 25,541,697.83 | 8,898,707.41 | 34,440,405.24 |
| **Total** | **Php42,393,783.74** | **Php11,389,424.57** | **Php53,783,208.31** |

The ICPA, likewise, examined petitioner's voluminous documents supporting its input taxes from domestic purchases and importation of goods other than capital goods and purchase of services and purchase of capital goods, as reported in its Quarterly VAT Return for the third and fourth quarters of 2007 amounting to P1,131,788,771.00 and P1,192,027,553.15, respectively. The ICPA further examined the supporting documents pertaining to petitioner's input taxes on purchases of capital goods declared in its Quarterly VAT Return for the previous quarters (first and second quarters of 2007). The following were found to be duly substantiated, viz.:

| | 1ST Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|
| Input Taxes from: | | | | |
| Domestic purchases and importation of goods other than capital goods and purchase of services | Php - | Php - | Php83,976,787.85 | Php104,400,005.68 |
| Purchase of capital goods | 8,571.43 | 189,128.57 | | 829,123.89 |
| **TOTAL** | **Php8,571.43** | **Php189,128.57** | **Php83,976,787.85** | **Php105,229,129.57** |

However, while records show that the substantiated input taxes of P19,342,803.07 and P34,440,405.24 for the third and fourth quarters of 2007, respectively, were recorded in petitioner's books of accounts, this Court, after a thorough scrutiny of petitioner's documents found out that, they were not reported in petitioner's VAT returns due to alleged inadvertence. Therefore, following Section 4.110-8 of Revenue Regulations No. 16-2005, petitioner cannot credit or offset the undeclared input taxes against output taxes for the said taxable periods.

In connection thereto, Section 110 (A) (2) and (B) of the NIRC of 1997, as amended, states:

'SEC. 110. Tax Credits. –

(A) Creditable Input Tax. –

xxx xxx xxx

(2) The input tax on domestic purchase or importation of goods or properties shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

'Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this

Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000.00): Provided, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: Provided, finally, that in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee. (Emphasis and underscoring supplied)

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.'

The afore-quoted provision provides for the time when the input taxes are creditable. The output and input taxes contemplated therein are those reported in the taxpayer's VAT return. Thus, petitioner's input taxes for the third and fourth quarters of 2007 should have been declared in petitioner's Quarterly VAT Returns pertaining to the same quarter so that it could be creditable against the output tax of the same taxable periods.

But as previously discussed, petitioner's input taxes were not reported in its VAT returns, thus, following Section 4.110-8 of Revenue Regulations No. 16-2005 and Section 110 (A) (2) and (B) of the 1997 NIRC, as amended, petitioner cannot credit or offset the undeclared input taxes against output taxes for the said taxable periods.

Petitioner's Quarterly VAT Returns for the first to the fourth quarters of 2007 show the following output taxes due:

| Exhibit | Period Covered | Output Tax |
|---|---|---|
| O | 1st Quarter | Php757,872,102.18 |
| RR | 2nd Quarter | 1,229,075,851.39 |
| E to E-2 | 3rd Quarter | 1,273,407,842.67 |
| H to H-2 | 4th Quarter | 1,396,292,919.71 |
| TOTAL | | **Php4,656,648,715.95** |

Assuming arguendo that petitioner was able to declare the substantiated input taxes in the aggregate amount of P53,783,208.31 in its Quarterly VAT Return for the third and fourth quarters of 2007, considering its output taxes and substantiated input taxes for the first to fourth quarters of 2007 per ICPA examination, records still show that it would not have had enough input taxes to offset against its output taxes for the same taxable periods. Thus, petitioner would not have had erroneously paid output VAT for the third and fourth quarters of 2007. To illustrate, the computation is shown hereafter:

| | 1ST Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|
| Output Tax | Php757,872,102.18 | Php1,229,075,851.39 | Php1,273,407,842.67 | Php1,396,292,919.71 |
| Less: Substantiated Input Taxes | 8,571.43 | 189,128.57 | 83,976,787.85 | 105,229,129.57 |
| **VAT Payable** | **Php757,863,530.75** | **Php1,228,886,722.82** | **Php1,189,431,054.82** | **Php1,291,063,790.14** |

Hence, the claimed P60,420,422.20 and P112,341,092.68 in the instant cases essentially represents undeclared input taxes for the third and fourth quarters of 2007, and not the so-called "erroneously paid taxes" as contemplated under Section 229 of the 1997 NIRC, as amended, since it was not declared in the pertinent VAT Return and, consequently, not offset against output tax for the same period. Consequently, the circumstances of the instant cases do not fall within the purview of Section 229 of the 1997 NIRC, as amended.

Another provision of the Code which pertains to the refund of input taxes is Section 112. In this section, there are only two instances when excess input taxes may be claimed for refund:

a) when they are attributable to zero-rated or effectively zero-rated sales; and,

b) upon cancellation of VAT registration due to retirement from or cessation of business.

> Unfortunately, petitioner's claims for refund or credit of its undeclared input taxes for the third and fourth quarters of 2007 do not fall in any of the instances enumerated under Section 112 of the 1997 NIRC, as amended. Thus, Section 112 is likewise not applicable to the case at bench. Consequently, whether it be under Section 229 or Section 112 of the 1997 NIRC, as amended, petitioner is not entitled to a tax refund or issuance of tax credit certificate in the respective amount of P60,420,422.20 and P112,341,092.68."

The Court *En Banc*, after a consideration of the factual circumstances of the case, finds no merit in petitioner's Petition for Review.

In order that input taxes can be creditable against output taxes based on Section 110[19] of the NIRC, this must be read with Section 4.110-8 of Revenue Regulations No. 16-2005, as amended, which provides that input taxes must be reported in the information returns, to wit:

> SEC. 4.110-8. Substantiation of Input Tax Credits. —
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, <u>must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau</u>: (Emphasis supplied).

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[19] 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
(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 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.

Thus, from the foregoing, it is clearly contemplated that only the input tax declared in petitioner's Quarterly VAT Return are considered for credit against the output tax on the same taxable quarter.

In the present case, as found by the Court in Division, petitioner is claiming an input VAT for the third and fourth quarters of 2007 amounting to Php60,420,422.20 and Php112,341,092.68 respectively or a total amount of Php172,761,514.88, which were <u>undeclared</u> in the returns.

Applying the foregoing, the claimed input taxes for the said quarters cannot be credited against the output taxes as the said input taxes were not declared in the return.

Furthermore, based on the report of the Independent Certified Public Accountant (ICPA),[20] " it was found out that out of petitioner's alleged unclaimed input tax credits for the third and fourth quarters of 2007 in the respective amounts of Php60,420,422.20 and Php112,341,092.68 or totaling to Php172,761,514.88 only the input taxes of Php19,342,803.07 and Php34,440,405.24 for the third and fourth quarters of 2007, respectively or totaling Php53,783,208.31 were properly supported by VAT official receipts."

It is clear then that the aforesaid amount of input tax payments are insufficient to cover the alleged output tax in the amount of Php128,535,025.61 and Php206,803,296.79 respectively for the third and fourth quarters of 2007. Therefore, petitioner could not have possibly made excessive output VAT payments.

In the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*,[21] the Supreme Court has held that it is only when petitioner made an excessive payments that it can file its claim under Section 229 of the NIRC, to wit:

> "Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly 'zero-rated or effectively zero-rated' under the law, like companies generating power through renewable sources of energy. Thus, a non zero-rated VAT-

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[20] Ms. Katherine O. Constantino, Partner Constantino Guadalquiver & Co.
[21] G.R. No. 191498, January 15, 2014.

registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his 'excess' input VAT under the VAT System. He can only carry-over and apply his 'excess' input VAT against his future output VAT. If such 'excess' input VAT is an 'excessively' collected tax, the taxpayer should be able to seek a refund or credit for such 'excess' input VAT whether or not he has output VAT. The VAT System does not allow such refund or credit. Such 'excess' input VAT is not an 'excessively' collected tax under Section 229. The 'excess' input VAT is a correctly and properly collected tax. However, such 'excess' input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added by the taxpayer. If the input VAT is in fact 'excessively' collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.

Any suggestion that the 'excess' input VAT under the VAT System is an 'excessively' collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System. Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is 'erroneously . . . illegally, . . . excessively or in any manner wrongfully collected.' In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. As the Court held in Mirant, Section 229 should 'apply only to instances of erroneous payment or illegal collection of internal revenue taxes.' Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due. Under the VAT System, there is no claim or issue that the 'excess' input VAT is 'excessively or in any manner wrongfully collected.' In fact, if the 'excess' input VAT is an 'excessively' collected tax under Section 229, then the taxpayer claiming to apply such 'excessively' collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such 'excessively' collected tax, and thus there will no longer be any 'excess' input VAT. This will upend the present VAT System as we know it."

Since petitioner failed to substantiate its claim that its undeclared input VAT payments resulted to overpayment of output VAT, the Court *En Banc* cannot grant petitioner's claim.

Thus, from the foregoing, the Court *En Banc* finds no reversible error on the part of the Court in Division in ruling that petitioner is not entitled to a refund or issuance of tax credit certificate in the amount of Php60,420,422.20 and Php112,341,092.68 respectively for the third and fourth quarters of 2007.

**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**. Accordingly, the Decision and Resolution dated June 14, 2013 and August 15, 2013, respectively, are hereby **AFFIRMED**.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

***WE CONCUR:***

**ROMAN G. DEL ROSARIO** with separate concurring opinion
Presiding Justice

**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**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

## *CERTIFICATION*

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice

REPUBLIC OF THE PHILIPPINES
***Court of Tax Appeals***
QUEZON CITY

## ***EN BANC***

| | |
|---|---|
| **COCA-COLA BOTTLERS PHILIPPINES, INC,**<br>*Petitioner,* | **CTA EB CASE NO. 1061**<br>(CTA Case Nos. 7986 & 8028) |
| | Present: |
| -versus- | **DEL ROSARIO,** *PJ,*<br>**CASTAÑEDA, JR.,**<br>**BAUTISTA,**<br>**UY,**<br>**CASANOVA,**<br>**FABON-VICTORINO,**<br>**MINDARO-GRULLA,** |
| **COMMISSIONER OF INTERNAL REVENUE,**<br>*Respondent.* | **COTANGCO-MANALASTAS,** *and*<br>**RINGPIS-LIBAN,** *JJ.* |
| | Promulgated:<br>APR 10 2015<br>3:42 p.m. |

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# SEPARATE CONCURRING OPINION

***DEL ROSARIO, P.J.:***

I concur with the *ponencia* of my esteemed colleague, Associate Justice Lovell R. Bautista, which affirms the denial of petitioner's claim for refund of alleged erroneously paid Value Added Tax (VAT) on the ground that based on evidence presented, output VAT exceeds input VAT.

I am, however, of the opinion that: 1) Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, applies in petitioner's claim for refund; and, 2) though the regulations require that input tax must be reflected in the tax returns, said rule is not absolute as long as the taxpayer is able to prove and substantiate its entitlement to the said deduction.

In this regard, Section 229 of the NIRC of 1997, as amended, gives a taxpayer a period of two (2) years from date of payment to file an administrative and judicial claim for refund of erroneously collected tax, to wit:

> "**SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected.*** – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

In the instant case, records show that petitioner's input VAT amounting to ₱60,420,422.20 and ₱112,341,092.68 incurred in the 3rd and 4th quarters of 2007 respectively were inadvertently not reported in the tax return and consequently was not deducted against the output tax. Pursuant to Section 110(A)(1) of the NIRC of 1997, as amended, input taxes from certain transactions that are evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, shall be creditable against the output tax resulting to the taxpayer's VAT liability, as follows:

| | |
|---|---|
| Output tax | ₱xxx,xxx.xx |
| Less: Input tax | xxx,xxx.xx |
| VAT Due | ₱xxx,xxx.xx |

Considering that the input tax amounting to ₱60,420,422.20 and ₱112,341,092.68 for the 3rd and 4th quarters of 2007 were not deducted against the output tax, petitioner paid a higher output tax. **It is the alleged overpayment of output VAT amounting to ₱60,420,422.20 and ₱112,341,092.68 arising from the taxpayer's inadvertent failure to declare its input taxes which is the subject matter of the present claim for refund**. The erroneous payment of higher output tax provides a justifiable claim for refund under Section 229 of the NIRC of 1997, as amended.

To be sure, the additional output taxes paid to the government (arising from the taxpayer's inadvertent failure to declare its input taxes) represents erroneously collected taxes. In applying Section 229 of the NIRC of 1997, as amended, the taxpayer is merely using the clear, plain and unconditional provision of Section 229 of the NIRC of 1997, as amended, which is the available remedy to pursue its claim for refund or tax credit of its alleged erroneously collected output taxes.

In the assailed Decision of the Special Second Division, the Court denied the claim for refund as the substantiated input taxes were not reported in petitioner's VAT return due to the alleged inadvertence. As a general rule, input taxes must be substantiated and reported in the VAT returns of a taxpayer in order for said taxes to be available as tax credits.[1] But as earlier stated, this rule is not inflexible. In *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*,[2] **the transitional input VAT was likewise not shown in the VAT return, yet the Supreme Court granted the <u>refund</u> of the corresponding overpayment of output VAT,** *viz:*

> "In this case, when petitioner realized that its transitional input tax credit was not applied in computing its output VAT for the 1st quarter of 1997, **it filed a claim for refund to recover the output VAT it erroneously or excessively paid for the 1st quarter of 1997. In filing a claim for tax refund, petitioner is simply applying its transitional input tax credit against the output tax it has paid.** Hence, it is merely availing of the tax credit incentive given by law to first time VAT taxpayers."

It must be stressed that the term 'input tax' includes transitional input tax determined in accordance with Section 111 of the NIRC of 1997, as amended.[3] In granting the claim for refund in the Fort Bonifacio Development Corporation case, the Supreme Court allowed input tax **not reported in the VAT returns** to be deducted against output tax.

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[1] Section 4.110.8 of Revenue Regulations No. 16-2005, as amended, October 19, 2005.
[2] G.R. No. 173425, September 4, 2012.
[3] SEC. 110. Tax Credits. –
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The term *"input tax"* means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business or importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. **It shall also include the transitional input tax determined in accordance with Section 11 of this Code.** (Emphasis supplied)

In applying the *Fort Bonifacio Development Corporation case* to the present case, what is actually being adopted is the principle that input taxes not reported in the VAT return may still be credited against the output tax due. **Stated differently, although the input taxes were not reported in the VAT returns, the same may still be credited against the output tax liability of the taxpayer for as long as said input taxes were properly substantiated.** Hence, any output tax paid by the taxpayer, *on account of its failure to declare its correct and substantiated input taxes in its VAT returns and apply the same as credit against its output tax*, shall be available for refund as erroneously paid output tax. Petitioner is therefore allowed under Section 229 of the NIRC of 1997, as amended, to claim for refund or credit of its *alleged* erroneously paid output tax.

It is at this juncture that I quote the enlightening disquisition of the Honorable Associate Justice Amelia R. Cotangco-Manalastas as the *ponente* in **Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue,**[4] *viz.*:

> Clearly then, any increase in the input tax shall lead to a decrease in the output tax, while a decrease in input tax leads to an increase in output tax. If there is an error in the computation of input taxes, such that less input tax is recognized, there is a higher output tax liability. Such error when corrected, i.e., a higher input tax is recognized, results to a lower output tax than that already paid and thus provides a justifiable claim for refund of erroneously paid output tax.
>
> By analogy, the ruling of the Supreme Court in Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, et al., is instructive:
>
> Xxx xxx xxx.
>
> In the instant case, petitioner failed to consider in its computation of output tax liability certain input taxes on some of its purchases of services on credit, thus leading to a payment of higher output taxes than it otherwise should have paid. When petitioner realized this and could no longer amend its VAT returns due to the issuance of the Letter of Authority, petitioner applied for refund of erroneously/excessively paid output tax. In filing for tax refund, petitioner is simply applying its input tax credit against the output VAT, hence, petitioner is merely availing of the creditable input tax mechanism provided for in Section 110.

While petitioner's claim for refund is properly anchored on Section 229 of the NIRC of 1997, as amended, and the *Fort Bonifacio Development*

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[4] CTA Case No. 8183, January 17, 2014; penned by Honorable Associate Justice Amelia R. Cotangco-Manalastas and concurred by Honorable Associate Justice Lovell R. Bautista.

*Corporation case*, such claim must still be denied. As found by the Independent CPA and the Court in Division, petitioner's substantiated input VAT is not enough to offset its output VAT liability, as follows:

| | 3rd Quarter | 4th Quarter |
|---|---|---|
| Output Tax | Php1,273,407,842.67 | Php1,396,292,919.71 |
| Less: substantiated input taxes | 83,976,787.85 | 105,229,129.57 |
| **VAT Payable** | **Php1,189,431,054.82** | **Php1,291,063,790.14** |

Considering that petitioner's VAT payments for the 3rd and 4th quarters of 2007 only amounted to ₱128,535,025.61 and ₱206,803,296.79, respectively, petitioner did not overpay its taxes due in the 3rd and 4th quarters of 2007. Thus, there is no basis for petitioner to ask for refund of erroneously paid output VAT.

All told, I **VOTE** to **DENY** the Petition for Review filed by Coca-Cola Bottlers Philippines, Inc. in CTA EB Case No. 1061 but solely on the afore-stated reasons.

**ROMAN G. DEL ROSARIO**
Presiding Justice