Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PHILIPPINE ASSOCIATED SMELTING AND REFINING (PASAR) CORPORATION, Petitioner,	**CTA EB No. 1172** (CTA Case No. 8404)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF CUSTOMS and the BUREAU OF CUSTOMS, Respondents.	**Promulgated:** SEP 04 2015 3:20 p.m.

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DECISION

CASANOVA, *J.*:

This is an appeal, *via* a Petition for Review[1], filed by petitioner Philippine Associated Smelting and Refining (PASAR) Corporation assailing the Resolution[2] and Decision[3] promulgated on April 30, 2014 and February 20, 2014, respectively, by the Court of Tax Appeals (CTA) Third Division which denied PASAR Corporation's claim for refund in the amount of ₱5,145,573.38, allegedly representing the duties and taxes it paid on its purchases of petroleum products during the period January to September of 2009, for insufficiency of evidence.

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[1] CTA *En Banc* Rollo, pp. 4-15
[2] Division Docket (Vol. II), pp. 611-614
[3] Division Docket (Vol. II), pp. 568-586

Petitioner is a Philippine corporation engaged in the production of copper and its by-products for export, with plants and principal office at Leyte Industrial Development Estate (LIDE) Isabel, Leyte, a Special Export Processing Zone established pursuant to Presidential Decree (P.D.) No. 66, as amended, and Executive Order (E.O.) No. 567 dated November 13, 1979. As a registered Zone Export Enterprise with the Export Processing Zone (EPZA), it was issued a Certificate of Registration No. 82-40 dated September 23, 1982.[4] It may be served with judicial processes through its counsel at Unit 505, K Tower, 100 Kamias Road, Quezon City.[5]

Respondent-Commissioner of Customs (COC) is the head of respondent Bureau of Customs (BOC), the government agency charged with the responsibility to collect duties and taxes from importation, with principal office at Port Area, South Harbor, Manila.[6] They may be served with court processes through their statutory counsel-the Office of Solicitor General (OSG) at 134 Amorsolo Street, Legaspi Village, Makati City.

The facts of the case, as found by the CTA Third Division, are as follows:[7]

> "Petitioner avers that it uses for its operations petroleum products such as industrial diesel oil (IDO), automotive diesel (ADO), diesel, bunker fuel oil (BFO) or industrial fuel oil (IFO) and lubricants purchased from local distributors like Petron Corporation (Petron). Petron imports these petroleum products and pays the corresponding customs duties to the BOC and excise taxes to the Bureau of Internal Revenue (BIR). Petron, in turn, bills petitioner the duties it paid on the petroleum products.
>
> For purchases of petroleum products during the period January 2009 to September 2009, Petron billed petitioner the duties paid to the BOC in the total amount of Five Million One Hundred Forty-Five Thousand Five Hundred Seventy-Three Pesos and 38/100 (P5,145,573.38).

[4] Par. 2, Decision, Division Docket (Vol. II), pp. 568-569
[5] The Parties, Petition for Review, CTA *En Banc* Rollo, p. 4
[6] Par. 3, Decision, Division Docket (Vol. II), pp. 569
[7] Par. 4-32, Decision, Division Docket (Vol. II), pp. 569-574

On January 29, 2010, petitioner filed with the District Collector of the Port of Manila (POM) a claim for refund or issuance of tax credit certificate (TCC) in the amount of P5,145,573.38, representing customs duties it paid on petroleum products purchased from Petron Corporation from January 2009 to September 2009. This claim for refund/TCC was however denied in the Memorandum dated November 17, 2010.

Petitioner challenged such denial in a letter dated December 9, 2010 before then BOC Commissioner Angelito Alvarez, who endorsed the incident to the District Collector of the POM for comment with instruction to submit the entire docket of the claim.

On December 30, 2010, the District Collector of the POM forwarded to the office of the COC a Memorandum dated December 20, 2010 by the Officer-in-Charge, Law Division, recommending the denial of petitioner's claim for refund with finality.

In view of the said recommendation, the Deputy Commissioner for Revenue Collection returned the Resolution of the Tax Credit Committee to the Tax Credit Secretariat on April 19, 2011 for endorsement to the Ruling and Research Division of the Legal Division.

On June 27, 2011, the Ruling and Research Division of the Legal Division forwarded petitioner's claim for refund/TCC to the Legal Service for referral to the appellate division of the Legal Service.

On November 28, 2011, the POM received the COC's 1st Endorsement dated November 25, 2011 for the dismissal of petitioner's appeal.

On December 2, 2011, petitioner received a copy of the Notice of Decision dated November 29, 2011, dismissing its appeal for failure to perfect the same within the reglementary period.

Hence, the instant Petition for Review filed on December 29, 2011.

On February 22, 2012, respondents COC and BOC filed their Comment, with the following arguments:

I.

Petitioner failed to perfect its appeal within the reglementary period.

II.

Respondents did not violate petitioner's right to due process and equal protection of laws.

III.

In any case, petitioner failed to prove its claim for refund.

On March 14, 2012, petitioner filed a Reply (To Respondent's Comment) arguing that its action is an ordinary claim for refund of payments of tax and duties and not a protest, thus, compliance with Sections 2313 and 2308 of the Tariff and Customs Code of the Philippines (TCCP) is not required. Further, petitioner was denied due process as its claim for refund was acted upon or denied after twenty three (23) months on the ground that it was not perfected within the reglementary period.

To substantiate its allegations, petitioner presented Attorney Gil Valera, Shermila J. Yasay, Emilio Jacinto and Alfredo Palma.

In his Judicial Affidavit, **Attorney Gil A. Valera**, declared that he was petitioner's Tax Counsel since 2007 and had represented petitioner in its claim for refunds of indirectly paid customs duties.

Allegedly, petitioner's previous claim for refund dated July 25, 2007, in the amount of P3,795,019.31 representing the duties it paid for its purchase of petroleum products from Petron for the period October to December 2006 was granted by the District Collector of the POM and the Tax Credit Committee on October 30, 2007. Consequently, Tax Credit Certificate No. 000358 was issued in favor of petitioner.

On January 25, 2010, petitioner filed the subject claim for refund in the amount of P5,145,573.38, representing customs duties on petroleum products it purchased from Petron covering the period January to September 2009. This was however denied on November 17, 2010 on the ground that petitioner failed to establish that such claim represents the proportionate amount of the customs duties and taxes paid by Petron on the importation of Arab Light and/or Super Arab Light. The said Decision did not contain a computation of the proportionate amount of customs duties that petitioner was entitled to claim.

On December 9, 2010, petitioner appealed to the COC, who endorsed it to the District Collector of the POM on December 12, 2010 with the instruction to submit to the Tax Credit Committee the entire docket of case as well as the corresponding comment/opposition thereto within five (5) days from notice. On December 30, 2010, the District Collector of the POM interposed his objection to petitioner's appeal citing petitioner's failure to appeal within the reglementary period of fifteen (15) days and to pay the P3,000.00 processing fee as additional grounds.

On January 18, 2011, petitioner paid the processing fee of P3,000.00 required under Customs Administrative Order (CAO) No. 2-2001.

On November 25, 2011, the COC denied petitioner's claim for refund.

Petitioner's Vice President (VP) for Finance, **Shermila J. Yasay** also executed a Judicial Affidavit in which she alleged that as petitioner's VP for Finance, she oversees its financial affairs, prepares its annual budget, and monitors claim for refund it filed with the BOC.

She explained that part of Petron's selling price of petroleum products constitutes the proportionate amount of duties and taxes paid on its importation of crude oil. Petitioner's claim for refund of such indirectly paid customs duties is authorized under the Philippines Export Zone Authority (PEZA) Law as incentives to PEZA locators like petitioner. The amount for refund is computed based on the Certification issued by Petron indicating the duties it passed on to petitioner for its purchase of bunker fuel oil and diesel fuel oil.

She claims that petitioner's previous claim for refund was processed and approved within 60 days in accordance with Section 106(e) of the TCCP as it was found to be in order and supported by Petron's Certification indicating the correct computations of the proportionate amount of duties upon which the refund was based. Petitioner requests for this certification for every purchase made with Petron.

She confirmed that petitioner filed another claim for refund for P5,144,573.38, representing the customs duties it indirectly paid to Petron for its purchases from January to September 2009 but the same was denied by respondents.

When confronted, the witness admitted that the subject Certification from Petron refers to the amount of customs duties and taxes that Petron paid for the importation of crude oil or Arab Light but petitioner actually purchased bunker fuel and the diesel fuel. In any event, incorporated in the purchase price paid by petitioner were the duties and taxes paid by Petron for its importation.

The first claim for refund was immediately acted upon by respondents unlike the second which was denied after ten (10) months from its filing in violation of the law. Petitioner's motion for reconsideration was likewise denied.

Petitioner's third witness **Emilio L. Jacinto**, the Chief Accountant of BOC admitted that as a member of the Tax Credit Committee, he prepares the computation or summary of refund applications as what he did in the case of petitioner which had a total claim of P5,145,574.49. However, he was not aware that petitioner's claim was denied, for which he was not consulted by the District Collector of the POM.

Processing of claims is among the functions of TCC Secretariat. His computations are based on the rate of the Industry Technology Development Institute (ITDI) and the standard output per barrels. He prepares a computation to determine the correctness of the amount subject of the claim and not to ascertain the entitlement of the claimant to a refund. In any event, his computation is not binding upon the person who issued the ruling.

He believes that petitioner is entitled to the subject refund as it is supported by the Computation of Drawback Claims from January to September 2009.

Petitioner's last witness **Alfredo Palma** testified that his Second Endorsement dated February 18, 2011 stating that the amount of P5,145,573.38 subject of the instant claim for refund/TCC was correct based on the attached documents and computations, which he sent to the TCC Committee. However, he was unaware of what occurred thereafter.

In the Manifestation and Motion dated July 16, 2013, respondents stated that it was unnecessary to present countervailing evidence." *(Citations Omitted)*

Chiefly relying on the case of *Commissioner of Customs vs. Philippine Phosphate Fertilizer Corporation*[8], the CTA Third Division promulgated a Decision[9] on February 20, 2014, categorically ruling that, petitioner, being a duly registered Zone Export Enterprise with the Export Processing Zone Authority (EPZA), is not subject to customs and internal revenue laws and regulations or local tax ordinances. Nonetheless, the Court *a quo* still denied petitioner's claim rationalizing that while there exists no issue as to the legal basis of the refund claim as admitted by both parties, record shows that petitioner failed to present documentary evidence to substantiate its claim. The dispositive portion of the assailed Decision reads as follows:

"**WHEREFORE**, the instant Petition for Review dated December 29, 2011, is hereby **DENIED** for insufficiency of evidence.

SO ORDERED."

On March 7, 2014, petitioner filed a Motion for Reconsideration[10], praying that the above Decision be reconsidered and set aside, and its

[8] G.R. No. 144440, September 1, 2004
[9] *Supra* No. 3
[10] Division Docket (Vol. II), pp. 587-591

claim be remanded to the Office of the Commissioner of Customs for the determination of petitioner's entitlement to the claim sought. Petitioner's counsel, Atty. Gil A. Valera, cited a similar case he is currently handling entitled *Dole Phils. vs. Commissioner of Customs and the Bureau of Customs*, CTA Case No. 8409 (now *En Banc* No. 1142), December 18, 2013, in which the CTA First Division granted its Petition for Review and remanded the case to the Office of the Commissioner of Customs for proper determination of *Dole Phils.'s* claim for refund.

On April 30, 2014, the CTA Third Division promulgated a Resolution[11] denying petitioner's Motion for lack of merit.

Undaunted, petitioner filed the instant Petition for Review[12] with the Court *En Banc* on June 3, 2014.

However, in the July 17, 2014 Resolution[13], the Court *En Banc* observed that counsel for petitioner failed to indicate his Integrated Bar of the Philippines (IBP) Membership No. and to present the authority of Atty. Danilo C. Perolino, Assistant Vice President of PASAR Corporation, to represent petitioner and to file the instant Petition for Review.

On October 3, 2014, petitioner's counsel filed a Compliance[14], indicating therein his IBP Lifetime Member No., also, attaching therewith a copy of his IBP Membership Identification Card[15], an Authorization[16] from Mr. Adam David Purkis, the President of PASAR Corporation, and petitioner's Secretary's Certificate[17] authorizing Atty. Danilo C. Perolino to represent petitioner in the filing of the instant Petition.

Thereafter, on October 21, 2014, the Court *En Banc* issued a Resolution[18] ordering respondents to file their Comment to the Petition for Review within ten (10) days from receipt thereof.

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[11] Supra No. 2
[12] *Supra* No. 1
[13] CTA *En Banc* Rollo, pp. 48-51
[14] CTA *En Banc* Rollo, pp. 57-58
[15] Annex "A" of the Compliance, CTA *En Banc* Rollo, p. 59
[16] Annex "B" of the Compliance, CTA *En Banc* Rollo, p. 60
[17] Annex "C" of the Compliance, CTA *En Banc* Rollo, pp. 61-62
[18] *Ibid.*, pp. 64-65

On December 11, 2014, respondents filed, through registered mail, their Comment[19]. Finding respondents' Comment to be insufficient in number of copies as required under Administrative Memorandum No. 11-9-4-SC, the Court *En Banc*, on January 5, 2015, issued a Minute Resolution[20] ordering respondents to submit additional copies thereof.

Thus, in view of the Court's directive, respondents filed, on January 23, 2015, through registered mail, a Compliance submitting therewith nine (9) additional copies of their Comment dated December 10, 2014.

Finding everything in order, the Court *En Banc*, in the Resolution dated February 12, 2015, deemed the instant Petition for Review submitted for decision.

Petitioner raised this sole issue[21] in its Petition for Review, to *wit*:

> Whether or not the CTA 3rd Division was correct in denying PASAR's claim for refund for failing to submit documentary evidence to support its claim of refund of Php5,145,573.38.

Considering that there are no legal issues in the instant appeal, the *crux* of the controversy essentially boils down to a case of substantiation. After careful scrutiny of the records of the case, *We* find no merit in the instant Petition for Review.

In the instant appeal, petitioner primarily based its argument on the Memorandum[22] for the District Collector of the Port of Manila by Atty. Florante C. Macarilay, Hearing/Legal Officer, dated November 17, 2010, wherein the latter admitted that petitioner had submitted numerous documents in support of its claim. Hence, petitioner strongly believes to have sufficiently proven its entitlement to the claim for refund sought. Furthermore, as to the Court's finding that petitioner failed to present sufficient documentary evidence to substantiate its claim, petitioner asserted that the reason why the Court *a quo* found its evidence insufficient was because respondents COC and BOC failed to

[19] *Id.*, pp. 69-78
[20] As per *En Banc* Resolution No. 09-2010/04-2012, as Amended by *En Banc* Resolution Nos. 01-2013, 02-2013, 05-2013, and A.M. No. 11-9-4 SC
[21] Issue, Petition for Review, CTA *En Banc* Rollo, p. 8
[22] Exhibit "D" for the petitioner, Division Docket (Vol. 1), pp. 359-366

comply with the Court's directive during the hearing conducted on June 5, 2012, wherein respondents were ordered to transmit to the Court the original records of the case from respondent BOC.

However, *We* are not persuaded.

An administrative claim for refund with the District Collector of the Port of Manila is different from a judicial claim for refund with the Court. The burden of proving its entitlement to the amount claimed for refund falls heavily with the claimant. It carries that not only was the claimant entitled under substantive law for the allowance of its claim for refund, but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, and, thereafter, in the trial conducted before the Court. The Court of Tax Appeals, as a court of record, is required to conduct a formal trial of each and every case before it. Pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.[23]

Based on the evidence admitted during trial,[24] petitioner was considered to have only offered the following documents in support of its claim, to *wit*:

Exhibit	Nature	Purpose
A	PASAR's Letter claim of refund dated July 25, 2007	To prove that, previously, PASAR refund had claims simply supported by Certifications from Petron of the amount of duties passed on to PASAR and that BOC did not collect any processing or docket fee.
C	PASAR's letter claim of refund dated January 25, 2010	To prove that PASAR continued to support its duty refund applications with simply Certifications from Petron of the duties passed on by Petron to PASAR.
D	Memorandum Decision of the POM District Collector dated November 17, 2010 but received by PASAR on December 2, 2010	To prove that just at the level of the POM District Collector, it took the new BOC POM District Officials 311 long days to conclude that "PASAR miserably failed to establish that the instant claim represents the proportionate amount of the customs duties and taxes paid by Petron on the importation of Arab Light, which was actually used in the

[23] Phil. Gold Processing and Refining Corp vs. Commissioner of Internal Revenue, CTA Case No. 8301, February 27, 2014
[24] As per Resolution dated November 9, 2012, Division Docket (Vol. 1), pp. 466-467

		manufacture of Bunker Fuel Oil which was subsequently delivered to PASAR". To prove that the POM District Officials all lawyers – Attys. Macarilay, Turingan III and Bauzon did not consult with BOC's accounting officials Alfredo Palma and Emilio Jacinto to check if PASAR's refund claim amount is correct and proportionately computed.
E	Appeal letter dated Dec. 9, 2010 of PASAR to BOC Commissioner furnishing a copy to the POM District Collector	To prove that within 7 days from receipt of the Denial Decision of the POM District Collector, PASAR was able to file its appeal to the BOC Commissioner, a copy of which was duly furnished to the POM District Collector To prove that the Office of the BOC Commissioner received PASAR's Appeal without requiring the payment of Php3,000 processing fee.
F	1st Indorsement dated Dec. 12, 2010 of respondent COC	To prove that then BOC Commissioner Angelito A. Alvarez immediately acted on PASAR's Appeal copy furnishing Atty. Gil Valera, counsel of PASAR who was not required by the BOC Commissioner to pay the Php3,000 processing fee.
G	BOC Official Receipt No. 0185230886 dated January 18, 2011	To prove that upon the advice of Atty. Liza Sebastian Torres of the TCC Secretariat sometime in January, 2011 PASAR paid Php3,000 processing fee.
G-1	CAO Administrative Order 2-2001	To prove that even in the CAO 2-2001, there is no period of time indicated when to pay the Processing fee. To prove that in CAO 2-2001, there is no penalty provision in case of delayed payment of the "customs fees and charges."
I-1	Summary of PASAR's Refund of Duties on Petroleum Products purchased from Petron covering period Jan. to Sept., 2009	To prove that Alfredo A. Palma, CPA made computations to check the accuracy of the amount being claimed by PASAR. To prove that the POM District Officials did not first consult CPA Alfredo Palma when they concluded that PASAR's claim did not represent the proportionate amount.
J	Summary of Refund Claim PASAR Jan. to Sept., 2009	To prove that CPA Emilio L. Jacinto, Chief Accountant of the Revenue Accounting Division of BOC also computed to check the accuracy and the proportionality of the amount being claimed by Dole and just like

		CPA Alfredo Palma, he found the claim of PASAR to be correct and proportionate.
J-1 to J-9	Computation of Drawback Claims of PASAR from Jan. to Sept., 2009 prepared by CPA Emilio Jacinto, Chief Accountant of Revenue Accounting	To prove that CPA Emilio Jacinto Chief Accountant of the Revenue Accounting Division of BOC also computed to check the accuracy and proportionality of the amount being claimed by PASAR and just like CPA Alfredo Palma, he found the claim of PASAR to be correct and proportionate. To prove that POM District Officials did not first consult with BOC Accounting Officials when they concluded that PASAR's claim did not represent the proportionate amount.
O	Denial Decision of BOC Commissioner Rozzano Rufino Biazon on November 25, 2011	To prove that it took the BOC Commissioner 351 days to decide on PASAR's appeal or a total of 662 days from the time PASAR filed its claim on January 25, 2010 versus the 60 days required by Section 106(e) of the TCCP. To prove that the Denial Decision of BOC Comm. Biazon did not even mention the Certifications made by CPAs Palma and Jacinto unlike in the Decision of BOC Comm. Alvarez who relied on the Certification of CPA Jacinto in approving the refund claim of Peza Locator Pan Century Surfactants.
P	Judicial Affidavit of Gil A. Valera, Tax Counsel of PASAR	To prove the truthfulness of the contents of the Judicial Affidavit of Atty. Gil A. Valera and that the dismissal of PASAR's Claim for Refund due to non-perfection of the appeal violate the substantive due process and equal protection rights of PASAR considering the leading cases of Customs Commissioner vs Philphos, GR No. 1440, September 1, 2004 (the PEZA locator claimant has 6 years to claim his wrongfully paid customs duties under the principle of solution indebiti) and BPI vs. CTA 330 SCRA 507 and Article 19 of the Civil Code
Q	Judicial Affidavit of Shermila Yasay	To prove the material allegations of the Judicial Affidavit of Shermila Yasay, VP Finance of PASAR, that PASAR has secured their refund claims fast but in this case, has been decided by BOC only after 662 days. To prove that in the past, the Certifications from Petron of the proportionality of the amount of the refund claim served as the basis for previous BOC officials to grant the refund claim of PASAR.

Clearly, petitioner failed to prove its claim for refund. While the evidentiary documents above show that petitioner indeed has a claim for refund they, nonetheless, fail to prove how much of the claimed amount is petitioner entitled to. As correctly held by the Court *a quo* in its Decision, *"Petitioner only presented the Summary of Refund of Customs Duties on Petroleum Products purchased from Petron covering the period of January to September 2009 made by Alfredo A. Palma and Emilio L. Jacinto, Chief Accountants of the Revenue Accounting Division, and the Computation of Drawback Claims from January to September 2009 prepared by Emilio Jacinto.* ***But sans documents substantiating the entries in the said summaries and computations, there is no way to verify the veracity and correctness of the amounts reflected therein.****" (Citations omitted and Underscoring supplied)*

It cannot be gainsaid that a judicial claim for tax refund or credit brought to the CTA is by no means an original action but an appeal by way of a petition for review of the taxpayer's unsuccessful administrative claim; hence, the taxpayer has to convince the CTA that the quasi-judicial agency *a quo* should not have denied the claim, and to do so the taxpayer should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA, including whatever was required for the successful prosecution of the administrative claim as the means of demonstrating to the CTA that its administrative claim should have been granted in the first place.[25] Needless to say, a just and impartial decision fundamentally requires evidentiary facts from which a principle of law may be based.

Lastly, citing the case of *Dole Phils. vs. Commissioner of Customs and the Bureau of Customs*, petitioner argues that since the former case is identical to the instant case, the latter case should be remanded to the Bureau of Customs for the proper determination of the refundable amount just like what was held by the CTA First Division in the *Dole Phils.* case.

Again, *We* are not convinced.

The Court is well capable of deciding cases elevated to it within its jurisdiction. As stated by the Supreme Court, "*x x x* by the very nature

[25] Luzon Hydro Corporation vs. Commissioner of Internal Revenue, G.R. No. 188260, November 13, 2013; *See also* Commissioner of Internal Revenue vs. Philippine National Bank, G.R. No. 180290, September 29, 2014; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 179356, December 14, 2009

of its functions, the CTA is dedicated exclusively to the resolution of tax problems and has consequently developed an expertise on the subject."[26] The findings and conclusions reached by the CTA Third Division are derived depending on how the parties presented their side of the case. Parenthetically, the same goes with the CTA First Division, as well as the CTA Second Division. The Court in Divisions handle cases elevated to them independently from one another, encompassing their own perspective in the disposition of the issues raised and appreciation of the evidence presented in each case before them. Hence, the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund, absent a showing of abuse or reckless exercise of authority, lies within the sound discretion and judgment of the Court in Division.

On a final note, it is worth mentioning that based on the Petition for Review[27] and Memorandum of the Petitioner[28] filed on December 29, 2011 and January 21, 2013, respectively, petitioner prays among others that its duty refund claim be granted and respondents **be Ordered to issue** a Tax Credit Certificate in the amount of ₱5,145,573.38. After the CTA Third Division denied its claim for insufficiency of evidence, petitioner changed its prayer in its Motion for Reconsideration[29] and in the instant Petition for Review filed on March 7, 2014 and June 3, 2014, respectively, by now asking that the subject claim of PASAR **be remanded to the Office of respondent COC** directing the latter to make a determination of the specific amount to which PASAR is entitled to.

This, *We* cannot allow. By submitting to this Court's jurisdiction, petitioner is bound by the conclusion reached by the Court especially if the said conclusion was based on the merits. As such, petitioner's change of prayer cannot be tolerated on appeal, not due to the strict application of procedural rules, but as a matter of fairness.

Accordingly, finding no reversible error, the Court *En Banc* finds no cogent reason or justification to disturb the conclusions reached by the Court *a quo*.

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[26] Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 179356, December 14, 2009
[27] Division Docket (Vol. 1), pp. 8-37
[28] Division Docket (Vol. 1), pp. 478-483
[29] Division Docket (Vol. 2), pp. 587-591

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated February 20, 2014 and Resolution dated April 30, 2014 rendered by the CTA Third Division are hereby both **AFFIRMED.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
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
MA. BELEN M. RINGPIS-LIBAN
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 with the members of the Court *En banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE ASSOCIATED SMELTING AND REFINING (PASAR) CORPORATION, *Petitioner,*	**CTA EB NO. 1172** *(CTA Case No. 8404)*
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF CUSTOMS and the BUREAU OF CUSTOMS, *Respondents.*	Promulgated: SEP 04 2015 3:20 p.m.

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DISSENTING OPINION

DEL ROSARIO, PJ.:

The *ponencia* of my esteemed colleague, *Honorable Caesar A. Casanova, Associate Justice,* sustained the Court's (Third Division) denial of petitioner's claim for refund due to insufficiency of evidence. The *ponencia* ruled that petitioner failed to prove the specific amount it is entitled to as petitioner presented only the following documents, *namely: (i) the Summary of Refund of Customs Duties on Petroleum Products from Petron covering the period of January to September 2009 made by Alfredo A. Palma and Emilio L. Jacinto, Chief Accountants of the Revenue Accounting Division, and (ii) the Computation of Drawback Claims from January to September 2009 prepared by Emilio Jacinto, sans* documents substantiating the entries in the said summaries and computations. Consequently, the veracity and correctness of the amounts reflected therein cannot be verified.

With utmost respect, it is my humble view that the appealed claim for refund was duly substantiated by the required quantum of evidence. Truth to tell, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case.[1]

Records disclose that the documents described as *Summary of Refund Claim* and *Computation of Drawback Claims of PASAR from January to September 2009,* marked as *Exhibits "J", J-1" to "J-9"* were offered by petitioner as its documentary evidence. The said exhibits show the following amounts for refund, as computed by Emilio L. Jacinto, *Chief of Revenue Accounting Division of the Bureau of Customs*, to wit:

Exhibit		IEIRD No.	Product Description	Volume of Products Exported/ltrs	Volume of Products Exported/bbls	ITDI Rate	Raw Material Used	Allocated Cost (mt)	For Refund
J-1	Jan-09	93377006	ADO 0.05%S	64,000	402.55	5.90%	6,822.94	1.97482	₱ 13,474.05
J-2	Feb-09	94028076	ADO 0.05%S	80,000	503.19	5.90%	8,528.68	4.48182	38,224.01
J-3	Mar-09	94964283	ADO 0.05%S	106,000	666.73	5.90%	11,300.50	4.68337	52,924.41
J-4	Apr-09	94028024	ADO 0.05%S	78,000	490.61	5.90%	8,315.46	5.13170	42,672.44
			Bunker Fuel Oil	1,341,320	8,436.77	24.79%	34,032.95	21.56183	733,812.77
			IDO	332,037	2,088.48	5.90%	35,397.96	5.13170	181,651.65
J-5	May-09	96982611	ADO 0.05%S	76,000	478.03	5.90%	8,102.24	4.02940	32,647.22
			Bunker Fuel Oil	1,635,619	10,287.88	24.79%	41,500.12	16.93033	702,610.67
			IDO	251,231	1,580.22	5.90%	26,783.35	4.02940	107,920.96
J-6	Jun-09	96982611[2]	ADO 0.05%S	48,000	301.92	5.90%	5,117.21	4.02940	20,619.30
			Bunker Fuel Oil	1,294,601	8,142.91	24.79%	32,847.56	16.93033	556,120.02
			IDO	259,389	1,631.53	5.90%	27,653.07	4.02940	111,425.39
J-7	Jul-09	97408281	ADO 0.05%S	106,000	666.73	5.90%	11,300.50	4.48804	50,717.13
			Bunker Fuel Oil	1,483,032	9,328.12	24.79%	37,628.57	18.85739	709,576.66
			IDO	248,025	1,560.05	5.90%	26,441.57	4.48804	118,670.91
J-8	Aug-09	97474386	ADO 0.05%S	76,000	478.03	5.90%	8,102.24	4.37971	35,485.47
			Bunker Fuel Oil	1,439,980	9,057.33	24.79%	36,536.23	18.40220	672,346.87
			IDO	257,483	1,619.54	5.90%	27,449.87	4.37971	120,222.43
J-9	Sep-09	97474465	ADO 0.05%S	64,000	402.55	5.90%	6,822.94	5.05009	34,456.49
			Bunker Fuel Oil	1,283,722	8,074.48	24.79%	32,571.53	21.21895	691,133.69
			IDO	220,776	1,388.66	5.90%	23,536.59	5.05009	118,861.97
									₱ 5,145,574.49

As the foregoing exhibits have been duly admitted in evidence, the same should not be lightly ignored, *more so* since the said documentary evidence were prepared and computed by a public official, who is presumed

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1 Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008.
2 The IEIRD numbers for the month of May and June are the same.

to have regularly performed his official duty.[3] The said documentary exhibits partake of the nature of a public document, being a written official act of a public officer,[4] *or at the very least*, an official document having been prepared in the course of official duty. As an official document, the entries thereof are *prima facie* evidence of the facts stated therein.[5]

To burden petitioner with the submission of additional documents in order to substantiate the entries in the *Summary of Refund Claim* and *Computation of Drawback Claims*, would render meaningless the presumption of regularity in the performance of official duty. To be sure, while its supplier, Petron Corporation, may be in possession of copies of Import Entry Internal Revenue Declarations *(IEIRDs)*, the *Summary of Refund Claim and Computation of Drawback Claims* prepared by Emilio L. Jacinto, the Chief of Revenue Accounting Division of the Bureau of Customs, is necessarily based on the records on file with the Bureau of Customs, among which are the IEIRDs as indicated in the said *Summary of Refund Claim* and *Computation of Drawback Claim*. Absent any showing of error or irregularity in the computation, Emilio L. Jacinto's determination, *in the exercise of his official duty*, deserves weight and respect.

In fine, the computed amounts of refund in the documents captioned as *Summary of Refund Claim* and *Computation of Drawback Claims* sufficiently confirm petitioner is entitled to its claim in the total amount of P5,145,573.38.

IN VIEW OF THE FOREGOING, I vote to GRANT the Petition for Review. Respondents Commissioner of Customs and the Bureau of Customs should accordingly be ordered to refund in favor of petitioner the amount of P5,145,573.38, representing the duties and taxes it paid on its purchases of petroleum products during the period January to September of 2009.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] Rules of Court, Rule 131, Section 3(m).
[4] Sec. 19. Classes of documents. - For the purpose of their presentation in evidence, documents are either public or private.
Public documents are:
(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country; xxx
[5] Office of the Court Administrator vs. Bermejo, A.M. No. P-05-2004, March 14, 2008.