REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

GAMESA EOLICA, SL-UNIPERSONAL PHILIPPINE BRANCH,
Respondent.

CTA *EB* NO. 2523
(CTA Case No. 9668)

Present:

DEL ROSARIO, *PJ,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JAN 3 1 2023 11:55am

x - x

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue (CIR) assailing the Decision dated September 2, 2020 (assailed Decision)[2] and the Resolution dated July 8, 2021 (assailed Resolution)[3] of the CTA Third Division (Court in Division), partially granting respondent's claim for refund or issuance of a tax credit certificate (TCC) in the reduced amount of ₱10,610,677.24, representing its unutilized excess input taxes for the first (1st) quarter of calendar year (CY) 2015.

[1] *En Banc (EB)* Docket, pp. 1-51, with annexes.
[2] *EB* Docket, pp. 17-46; Division Docket – Vol. 3, pp. 1013-1042.
[3] *EB* Docket, pp. 47-51; Division Docket – Vol. 3, pp. 1077-1081.

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, and other laws and regulations administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

Respondent is a foreign corporation organized and existing under the laws of Spain. It is registered with the Securities and Exchange Commission (SEC) as a branch office with SEC Registration No. FS20 1 120007. It is also registered with the BIR Revenue District Office (RDO) No. 44 as a VAT entity with BIR Tax Identification Number (TIN) 416-244-858-000.[5]

Respondent is engaged in the development, preparation, manufacture, production, marketing, sale, and supply on a wholesale basis, and commercialization of wind turbines and wind generators, including components thereof such as blades, mould models and stands for blades and other similar components for wind generators, and to perform after-sales, auxiliary, or support services necessary for the proper installation, use, and maintenance of wind turbines and wind generators, including components thereof necessary for the generation of wind energy.[6]

THE FACTS

The facts, as found by the Court in Division, are as follows:

> On 31 March 2017, [respondent] filed its Application for Tax Credits/Refunds (BIR Form No. 1914), with attached letter and supporting documents to BIR RDO No. 44 requesting for the refund and/or issuance of a tax credit certificate of its alleged excess/unutilized input VAT amounting to ₱12,646,222.73 for the 1st Quarter of CY 2015.

[4] Petition for Review, *EB* Docket, Parties, p. 2.
[5] *Id.*
[6] Decision, CTA Case No. 9668, September 2, 2020; *EB* Docket, pp. 17-18.

Subsequently, on 17 August 2017, [respondent] received from the BIR a letter, dated 14 July 2017, partially granting its VAT refund/credit claim in the amount of ₱1,419,010.24 (hereinafter referred to as "BIR Decision").

[Respondent] then filed the instant Petition for Review on 25 August 2017.

On 18 September 2017, the Court issued a Resolution, ordering the [respondent] to submit, within five (5) days from receipt thereof, proof that it actually received the BIR Decision on 17 August 2017, and an original or certified true copy of the Secretary's Certificate or Board Resolution authorizing: (a) [respondent]'s counsel to act on its behalf, and (b) [respondent]'s Head of Administration, Mr. Jesus Tomas I. Ibañez to sign the Certification and Verification of Non-Forum Shopping.

On 6 October 2017, [respondent] filed a Motion for Extension of Time to Submit Documents asking for an additional period of twenty (20) days to comply with the aforementioned Resolution. The Court granted the same.

On 26 October 2017, [respondent] filed its Manifestation and Motion for Extension of Time to Submit Document manifesting that it was submitting to Court a letter, dated 6 October 2017, issued by the Tax Audit Review Division of the BIR confirming [respondent]'s receipt of the BIR Decision on 17 August 2017. However, it requested for an additional period of 20 days to submit the Secretary's Certificate or Board Resolution. The Court granted [respondent]'s request and gave it a final non-extendible period of 20 days or until 16 November 2017 to submit the required document.

On 16 November 2017, [respondent] filed its Compliance, submitting the Affidavit of Mr. Leandro Ben M. Robediso, attesting his receipt of the BIR Decision on 17 August 2017, on behalf of the [respondent], and the duly notarized and authenticated Director's Certificate authorizing [respondent],'s counsel to represent the same in the above-captioned case and Mr. Jesus Tomas I. Ibañez to sign the Certification and Verification of Non-Forum Shopping.

Thereafter, on 1 December 2017, the Court issued the Summons requiring [petitioner] to file its Answer.

[Petitioner] filed his Answer on 8 February 2018 which is within the extended period granted by the Court.

In his Answer, [petitioner] interposed the following defenses: (a) that it is incumbent upon the [respondent] to prove that it received the BIR Decision only on 17 August 2017; (b) that the [respondent] failed to prove with sufficient evidence that it is entitled to the VAT refund/credit prayed for; (c) that the Court should only consider pieces of evidence submitted by the [respondent] to the BIR in support of its administrative claim; and (d) that this case, being a tax refund case, should be construed strictly against the taxpayer and in favor of the government.

After filing his Answer, [petitioner] transmitted the BIR Records on 19 February 2018 and filed a Manifestation on 21 February 2018 stating that it submitted a compact disc together with the BIR Records but was inadvertently not described in the Compliance it filed with the BIR Records.

On 26 April 2018, [petitioner] filed his Pre-Trial Brief, while [respondent] submitted its Pre-Trial Brief on 7 May 2018.

The Pre-Trial Conference was held on 8 May 2018. However, only [petitioner]'s counsel was present in the hearing despite notice to [respondent]'s counsel. This prompted the Court to dismiss the instant case.

Aggrieved, [respondent] filed a Manifestation and Motion for Reconsideration and to Reinstate Case on 10 May 2018, asking the Court to reverse its order dismissing the instant case. [Respondent] explained that its counsel arrived in Court ten (10) minutes after the scheduled time of the hearing due to the unforeseen re-routing in Agham Road and had no intention to miss the Pre-Trial Conference.

On 21 June 2018, the Court reversed its order of dismissal and set the Pre-Trial Conference anew on 18 September 2018.

On 17 September 2018, [respondent] filed a Motion to Commission an Independent Certified Public Accountant asking the Court to commission Mr. Richard S. Querido to act as the Independent Certified Public Accountant ("ICPA") in this case.

Subsequently, on 18 September 2018, the Pre-Trial Conference took place.

On 3 October 2018, the parties filed their Joint Stipulation of Facts and Issue, following which, the Court issued a Pre-Trial Order on 11 October 2018.

Thereafter, trial proceeded.

On 4 December 2018, the Court granted [respondent]'s Motion to Commission an Independent Certified Public Accountant and appointed Mr. Richard S. Querido as the ICPA in the instant case.

As part of its testimonial evidence, [respondent] offered the testimonies of the following individuals: (a) Mr. Jesus Tomas I. Ibañez-Head of Administration of petitioner; and (b) Mr. Richard S. Querido-Court-commissioned ICPA.

On 18 January 2019, Mr. Querido submitted the ICPA Report.

On 30 January 2019, [respondent] filed its Motion to Admit, stating that it is submitting to Court documents that were inadvertently not attached to the Judicial Affidavit of its witness Mr. Jesus Tomas I. Ibañez, and prayed for the Court to admit the same to form part of the records of the instant case. Considering that [petitioner] did not interpose any objection to the Motion to Admit, the Court granted the same in open court on 31 January 2019.

On 8 February 2019, [respondent] filed the Consolidated Motions for the Re-Marking of Exhibits and for the Pre-Marking of Exhibits Attached to the ICPA Report, asking the Court to allow it to re-mark and pre-mark some of its exhibits. The Court granted the said motion in open court on 21 February 2019.

Subsequently, on 8 March 2019 [respondent] filed its Formal Offer of Evidence while [petitioner] submitted his Comment Re: [Respondent]'s Formal Offer of Evidence on 18 March 2019.

In a Resolution dated 22 May 2019, [respondent]'s exhibits were admitted, except Exhibit "P-2" for failure to submit the duly marked exhibit and Exhibits "P-2-a" and "P-2-b" to "P-2-c" for failure to present originals for comparison and failure to identify the said exhibits.

On 13 June 2019, [petitioner] presented his lone witness Revenue Officer Leo-Gibbs C. Tapiru.

On 1 July 2019, [petitioner] filed his Formal Offer of Evidence. [Respondent] submitted its Comments/Opposition to [Petitioner]'s Formal Offer of Evidence on 11 July 2019. The Court issued a Resolution admitting all the exhibits of the [petitioner].

> On 4 September 2019, [petitioner] filed a Manifestation stating that he is adopting his Answer as his Memorandum. Meanwhile, [respondent] filed its Memorandum on 23 September 2019.
>
> Thereafter, the instant case was submitted for decision on 26 September 2019.

On September 2, 2020, the Court in Division ruled in favor of respondent and disposed of the case as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **₱10,610,677.24**, representing petitioner's unutilized excess input taxes for the 1st quarter of CY 2015 attributable to its zero-rated sales.
>
> **SO ORDERED.**

In its assailed Resolution, the Court in Division denied petitioner's Motion for Partial Reconsideration[7] filed on October 7, 2020. The *fallo* reads:

> **WHEREFORE**, premises considered, respondent's Motion for Partial Reconsideration (Re: Decision dated 02 September 2020) is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

Undaunted, petitioner filed this Petition for Review on October 26, 2021. With the filing of respondent's Comment[8] on March 4, 2022, the case is submitted for decision on March 29, 2022.[9]

ISSUE

The sole ground raised by petitioner in this Petition for Review is quoted as follows:

> RESPONDENT'S CLAIM FOR VAT REFUND/TAX CREDIT HAS NO FACTUAL AND LEGAL BASIS.

[7] Division Docket – Vol. 3, pp. 1043-1052.
[8] *EB* Docket, pp. 55-61.
[9] *Id.*, pp. 63-64.

Petitioner's Arguments

Petitioner argues that it is respondent's burden to prove that it received the BIR decision dated July 14, 2017, partially granting its VAT refund in the amount of ₱1,419,010.24, on August 17, 2017, or after the lapse of the one hundred twenty (120)-day period under Section 112 (C) of the NIRC to overturn the presumption that an addressee is presumed to have immediately received a letter that was transmitted to it in the ordinary course of mail under Rule 131, Section 3(v)[10] of the Revised Rules on Evidence.

Petitioner further argues that respondent's claim for VAT refund/credit arising from its unutilized input VAT carried over from the previous period in the amount of ₱11,149,552.88 should be disallowed, considering that its corresponding supporting documents were not ascertained to be in accordance with Section 110 (A), in relation to Section 113 of the Tax Code; that the unutilized input VAT arising from respondent's purchase from Carmont Enterprises Ltd. Co. in the amount of ₱60,000.00 should be disallowed since it was not proven to be paid by respondent; and that this Court should only consider the pieces of evidence that respondent presented to the BIR during its administrative claim for VAT refund/credit since the judicial claim for refund is not an original action but an appeal from an unsuccessful administrative remedy.

Lastly, petitioner states that this case being a tax refund case, should be construed strictly against the taxpayer and in favor of the government.

Respondent's Counter-Arguments

Respondent counters that it rightfully elevated its case to the CTA on August 25, 2017, after the 120-day period expired on July 29, 2017; that the CTA is not precluded from admitting new and additional evidence, and correctly considered the evidence submitted by respondent to prove its claim for a VAT refund/tax credit; and that by successfully complying with the mandatory and jurisdictional requirements of an administrative and judicial claim, respondent is entitled to a VAT Refund/Tax Credit.

[10] SEC. 3. Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
(v) That a letter duly directed and mailed was received in the regular course of the mail; ...

THE COURT *EN BANC*'S RULING

We find no merit in the Petition.

The instant Petition for Review was timely filed.

On July 22, 2021, petitioner received a copy of the assailed Resolution denying his Motion for Partial Reconsideration for lack of merit. Under Section 3(b), Rule 8,[11] in relation to Section 2(a)(1), Rule 4[12] of the Revised Rules of CTA, petitioner had 15 days, or until August 6, 2021, to file a Petition for Review before the Court *En Banc*. However, on July 30, 2021, the Supreme Court issued Administrative Circular No. 56-2021,[13] physically closing all courts and judicial offices in the National Capital Region (NCR) due to heightened restrictions. Further, the time for filing and service of pleadings and motions during the said period was suspended and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court.

On October 18, 2021, given the lowered restrictions within the NCR, the Supreme Court issued Administrative Circular No. 83-2021,[14] lifting the suspension for filing and service of pleadings and motions in all collegial appellate courts within the NCR, which resumed seven (7) calendar days from October 20, 2021.

On October 25, 2021, petitioner filed this instant petition. Hence, it is timely filed.

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[11] SEC 3. Who May Appeal; Period to File Petition. – (a) ...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[12] SEC 2. Cases Within the Jurisdiction of the Court en banc. — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; ...
[13] Re: Court Operations on 2-20 August 2021.
[14] Re: Court Operations Beginning October 20, 2021 until October 29, 2021.

The Petition for Review before the Court in Division was filed on time.

The Court in Division is not confined to the evidence presented in the administrative claim for refund or issuance of tax credit certificate.

Before delving into the merits of respondent's refund claim, the Court *En Banc* shall first resolve the procedural matters raised by petitioner.

In his Petition for Review before the Court *En Banc,* and in his Motion for Partial Reconsideration (Re: Decision dated 02 September 2020) with the Court in Division, petitioner claims that:

> 2. Under Section 112 (C) of the National Internal Revenue Code of 1997, as amended (NIRC of 1997), petitioner has 120 days from the date of submission of complete documents in support of the application for refund to act on the said application.
>
> 3. Thus, assuming that respondent indeed filed its application for refund ... on 31 March 2017, petitioner had until 29 July 2017 to act on the application for refund.
>
> 4. Respondent alleged that on 17 August 2017, it received a letter dated July 14, 2017 partially granting its VAT refund in the amount of P1,419,010.24. However, its is the burden of respondent to prove that such letter dated 14 July 2017 was received only on 17 August 2017.
>
> 5. Petitioner posits that the letter is deemed served when sent within the prescribed period, even if received by the taxpayer after its expiration.
>
> 6. Respondent cannot allege that it received the letter dated July 14, 2017 only on 17 August 2017 considering that presumption that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. Thus, the contention of respondent remains a bare allegation.
>
> ... ...

19. Clearly, the judicial claim for refund/tax credit is not an original action but an appeal from an unsuccessful administrative remedy.

22. Thus, it is expected that only pieces of evidence presented by respondent in the administrative claim for refund are the ones to be presented in the judicial appeal to the Honorable Court.

Respondent counters[15] that:

3. Petitioner argues that its mailing of the BIR Decision on July 14, 2017, should be considered as the date of receipt by the respondent. Hence, it was within the 120-day period counted from March 31, 2017 to July 29, 2017;

4. Petitioner is incorrect;

5. As alleged by the petitioner, the presumption of receipt in the ordinary course of mail of the BIR Decision is merely a disputable presumption;

6. The same may be contradicted and overcome by other evidence, which was what transpired in the case at bar;

7. The respondent successfully presented proof - *gathered from the petitioner itself* - that its receipt of the BIR Decision was only on August 17, 2017;

8. Respondent presented an acknowledgement from Nelia A. Castillo, Chief of the Tax Audit Review Division of the BIR dated on 6 October 2017, stating that:

> "This refers to your request for a Certified True Copy (CTC) of the decision of this Bureau relative to your Value- Added Tax (VAT) refund claim for the period January to March 2015 dated July 14, 2017 **which was duly received by your authorized representative on August 17, 2017**." (*Emphasis on the original*)

9. In addition to the acknowledgment from Ms. Castillo, the respondent also presented the affidavit of Mr. Leandro Ben M. Robediso, respondent's authorized representative, attesting that he received the BIR's decision only on 17 August 2017;

10. With the foregoing, the disputable presumption raised by the petitioner has been satisfactorily overturned;

[15] Comment [to the Petition for Review], CTA *EB* No. 2523, *EB* Docket, pp. 55-61.

> 11. Thus, having received the BIR Decision on August 17, 2017, it was already beyond the 120-day period provided in Section 112 (C) of the Tax Code: ...
>
> ... ...
>
> 13. Therefore, the respondent rightfully elevated its case to the Court of Tax Appeals on August 25, 2017 after the 120-day period expired on July 29, 2017;

A cursory reading of the instant Petition for Review reveals that petitioner merely repeated and *copied verbatim* his lone ground and discussions in his Motion for Partial Reconsideration (Re: Decision dated 02 September 2020), which the Court in Division exhaustively considered and passed upon in the assailed Decision and Resolution, leaving no stone unturned.

The Court *En Banc,* after a perspicacious evaluation of the surrounding facts and the parties' arguments, as well as the applicable jurisprudence on the matter, agrees with the Court in Division's findings that the original Petition for Review was timely filed, and respondent is not precluded from submitting additional documents to support its judicial claim for a tax refund or credit. The disquisition of the Court in Division is hereby reiterated and quoted with approval, *viz.*:

> In ***Barcelon, Roxas Securities, Inc., v. CIR***, "the Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to conversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee."
>
> Here, not only did the petitioner categorically state that it received the BIR Decision on 17 August 2017, but it was also able to support its contention with pieces of documentary evidence, one of which was even issued by the BIR.
>
> Considering the glaring evidence on record, there is no contest that petitioner did in fact receive the BIR Decision on 17 August 2017, which was 19 days after the lapse of the 120-day period for the respondent to render his decision. Hence, the said BIR Decision is already inconsequential in determining the timeliness of the filing of the judicial claim.
>
> ... ...

> Finally, respondent is also erroneous in arguing that the Court in Division may only consider pieces of evidence that were initially submitted by petitioner to the BIR during the administrative proceedings.
>
> The Supreme Court had already ruled in ***Commissioner of Internal Revenue v. Philippine National Bank*** that the Court of Tax Appeals ("CTA") is not precluded from accepting evidence even assuming these were not presented at the administrative level since cases filed in the CTA are litigated de novo. Thus, the petitioner should prove every minute aspect of its case by presenting, formally offering, and submitting to the Court all evidence required to justify the grant of its claim for refund.
>
> Furthermore, even assuming that this Court is barred from considering pieces of evidence that were not presented by petitioner during its administrative claim, respondent's contention still cannot be entertained since it failed to timely raise its objection upon petitioner's submission of its evidence.

It bears to emphasize that the CTA is a court of record, and cases filed before it are litigated *de novo.*

In the recent case of *Commissioner of Internal Revenue v. Philippine Bank of Communications*,[16] the Supreme Court underscored that the CTA's decision *should* be based *solely* on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR, *viz.*:

> We agree with the CTA *en banc*'s ruling that the failure of PBCOM to comply with the requirements of its administrative claim for CWT refund/credit does not preclude its judicial claim.
>
> In the case of *Commissioner of Internal Revenue v. Manila Mining Corporation*, this Court held that cases before the CTA are litigated *de novo where party litigants should prove every minute aspect of their cases, to wit:*
>
> > Under Section 8 of Republic Act No. 1125 (RA 1125), the CTA is described as a court of record. As cases filed before it are litigated *de novo, party litigants should prove every minute aspect of their cases.* No evidentiary value can be given to the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these

[16] G.R. No. 211348, February 23, 2022.

> documents must be formally offered before the CTA.

As applied in the instant case, since the claim for tax refund/credit was litigated anew before the CTA, the latter's decision should be solely based on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR. Thus, **what is vital in the determination of a judicial claim for a tax credit/refund of CWT is the evidence presented before the CTA, regardless of the body of evidence found in the administrative claim**. (*Emphasis supplied*)

In *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.)*, this Court has explained that the CTA is not limited by the evidence presented in the administrative claim, to wit:

> The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.
>
> Cases filed in the CTA are litigated *de novo as such, respondent* "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim." Consequently, **the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** (*Emphasis supplied*)

More, in *Pilipinas Total Gas v. Commissioner of Internal Revenue,*[17] the Supreme Court explained that "the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court."

[17] G.R. No. 207112, December 8, 2015.

Given the foregoing, We agree with the Court in Division that respondent may present *new* and *additional* evidence to support its judicial claim for a tax refund or credit. In the determination of the judicial claim, only those pieces of evidence presented and formally offered by the parties, and admitted by the Court, would be considered in the latter's decision *regardless* of the evidence submitted to the BIR in support of the administrative claim.

Further, even if the Court in Division is precluded from considering pieces of evidence that were not submitted before the BIR, it still could not entertain petitioner's claim since he did not specifically identify which document or exhibit was not presented in the administrative claim, and did not interpose any objection to the admission of respondent's evidence.[18] Hence, this argument remains a mere allegation of non-submission of documents that will not hold water. Allegations must be proven by sufficient evidence because a mere allegation is not evidence.[19]

The Court in Division was correct in partially granting respondent's claim for refund or issuance of tax credit certificate.

We shall now determine whether respondent is entitled to its claim for a VAT refund or tax credit.

To reiterate, the sole ground and arguments raised in the present Petition for Review are mere rehash or reiterations of matters which have already been considered, weighed, and resolved in the assailed Decision and Resolution.

Nevertheless, this Court finds it necessary to recapitulate and further elucidate some points discussed in the assailed Decision and Resolution.

Section 112 (A) and (C) of the NIRC of 1997, as amended, has laid down specific requisites that the taxpayer-applicant must comply with to obtain a refund or tax credit successfully.

> As to the timeliness of the filing of the administrative and judicial claims:

[18] Comment (Re: Petitioner's Formal Offer of Evidence), Division Docket, Vol. 2, p. 925.
[19] *Spouses Nilo Ramos and Eliadora Ramos, v. Raul Obispo and FEBTC*, G.R. No. 193804, February 27, 2013.

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[20]

2. that in case of full or partial denial of the refund claim, or the failure on the part of Respondent to act on the said claim within a period of ninety (90) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;[21]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[22]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[23]

5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with Bangko Sentral ng Pilipinas (BSP) rules and regulations;[24]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[25]

7. the input taxes are due or paid;[26]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[27] and

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[20] *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.
[21] *Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[22] *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[28]

First and _second_ requisites: Respondent's administrative and judicial claims were timely filed.

Third requisite: Respondent is a VAT-registered entity.

The Court *En Banc* affirms the Court in Division's findings that respondent has complied with the first, second and third requisites.

Fourth requisite: Respondent is engaged in zero-rated sales.

Respondent claims that it generated VAT zero-rated sales from its sales of goods and services to Petrowind Energy Inc. (Petrowind) and Alternergy Wind One Corporation (Alternergy),[29] both Renewable Energy (RE) Developers, which under Section 15(g)[30] of Republic Act (RA) No. 9513 or the Renewable Energy Act of 2008 (REA),[31] and Section 108(B)(3)[32] of the Tax Code enjoy VAT zero-rating on its purchases of local supply of goods, properties, and services needed for the development, construction, and installation of its plant facilities.

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[28] *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

[29] Petition for Review, Division Docket – Vol. 1, par. 7.2, p. 13.

[30] SEC. 15. Incentives for Renewable Energy Projects and Activities. – RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives: ... g) Zero Percent Value-Added Tax Rate. – The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.
All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and **services needed for the development, construction and installation of its plant facilities.** (*Emphasis supplied*)
This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

[31] An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes, December 16, 2008.

[32] SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. – xxx
(B) Transactions Subject to Zero Percent (0%) Rate - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate. xxx
(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate; xxx

The Court quotes the pertinent disquisition made by the Court in Division:

> In order to qualify for the incentives under RA No. 9513, Chapter VII, Section 25 of RA No. 9513 requires the **RE Developers to register with the DOE, through the Renewable Energy Management Bureau** ("REMB"). Upon registration, a certification will be issued to the RE Developer which will serve as proof of its entitlement of the incentives provided under Chapter VII of RA No. 9513, to wit: ...
>
> In addition, the REA IRR[33] require the taxpayer-applicant to present the **RE Developers' Registration with the Board of Investment** ("BOI") and **Certificate of Endorsement by the DOE** as additional conditions for availment of the incentives under RA No. 9513, to wit: ...
>
> Hence, based on the foregoing provisions, to qualify for VAT zero-rating under RA No. 9513, the petitioner must prove with sufficient evidence that:
>
> (1) It is engaged in the sale of goods and services to RE Developers;
>
> (2) The goods and services sold (a) are needed for the development, construction, and installation of the plant facilities of RE Developers or (b) pertain to the whole process of exploration and development of RE sources up to its conversion into power; and
>
> (3) The RE Developers must have secured a DOE Certificate of Registration, Registration with the BOI, and Certificate of Endorsement by the DOE. (*Emphasis supplied*)

As found in the records and by the Court in Division, respondent rendered inland transportation, installation, start-up, and testing of wind turbine generators and the execution of specific electrical and civil works to the RE Developers — Alternergy and Petrowind, as evidenced by the following documents: (1) DOE Certificates of Registration of Alternergy[34] and Petrowind;[35] and (2) BIR-approved Application Forms for VAT Zero Rate issued to respondent for its clients Alternergy[36] and Petrowind,[37] both with exemption periods from January 1, 2015 to December 31, 2015.

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[33] Rules and Regulations Implementing Republic Act No. 9513, Department Circular No. DC2009-05-0008, May 25, 2009.
[34] Exhibit "P-8", Division Docket – Vol. 2, p. 874.
[35] Exhibit "P-9", Division Docket – Vol. 2, p. 875.
[36] Exhibit "P-11-a", Division Docket – Vol. 2, p. 879.
[37] Exhibit "P-10-a", Division Docket – Vol. 2, p. 877.

The Court concurs with the Court in Division's finding that while respondent presented only one out of three documents required by the REA IRR for an RE Developer to qualify for VAT zero-rating, *i.e.*, DOE Certificates of Registration, respondent was able to submit its BIR-approved Application Forms for VAT Zero Rate under Revenue Memorandum Order No. 7-2006,[38] which requires the submission *complete* supporting documents before the seller's application for VAT zero-rating under Sections 106(A)(2) and 108(B) of the Tax Code can be processed. By submitting the BIR-approved Application Forms, respondent has proved, with sufficient evidence, that its sales to Alternergy and Petrowind qualified for VAT zero-rating under the Tax Code.

As per respondent's amended 1st Quarterly VAT (QVAT) Return for CY 2015,[39] it declared total sales/receipts of ₱471,522,994.77, which comprised both VATable and zero-rated sales/receipts, broken down as follows:

Sales/Receipts (1st quarter of CY 2015)	**Total**
VATable Sales/Receipts	₱219,508,799.74
Zero-rated Sales/Receipts	
Petrowind Energy, Inc.	176,032,523.49[40]
Alternergy Wind One Corp.	75,981,671.54[41]
Total Zero-rated Sales/Receipts	252,014,195.03
TOTAL SALES/RECEIPTS	**₱471,522,994.77**

Respondent was also able to prove that it rendered services to Alternergy and Petrowind by presenting its Schedule of Zero-rated Sales[42] with the related official receipts,[43] which were examined by the ICPA, and were found to be compliant with the invoicing requirements under Sections 113 (A)(1) and (2), (B)(1), (2)(c) and (d), (3) and (4)[44] of the Tax Code, as implemented by

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[38] Prescribing Guidelines and Procedures in the Processing of Applications for Zero-Rating of Effectively Zero-Rated Transactions for Value-Added Tax Purposes, December 15, 2005.
[39] Exhibit "P-13", BIR Records, Folder 2, pp. 488-489.
[40] Exhibit "P-193", CD submitted by ICPA.
[41] *Id.*
[42] *Id.*
[43] Exhibits "P-164" to "P-172", CD submitted by ICPA.
[44] SEC. 113. Invoicing and Accounting Requirements for VAT Registered Persons. —
(A) Invoicing Requirements. — A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
(B) Information Contained in the VAT Invoice or VAT Official Receipt. — The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); and
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:
...
(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt.

Sections 4.113-1 (A)(1) and (2), (B)(1) and (2)(c)[45] of Revenue Regulations No. 16-2005.[46]

Hence, the Court *En Banc* affirms the Court in Division's findings that petitioner has complied with the fourth requisite.

***Fifth* requisite: Zero-rated sales under Sections 106(A)(2)(a)(1), (2), and (b); and 108(B)(1) and (2) must be paid for in acceptable foreign currency exchange proceeds and have been duly accounted for under BSP rules and regulations.**

***Sixth* requisite: Respondent's input VAT is not transitional.**

The Court *En Banc* concurs with the Court in Division that the fifth requisite is inapplicable, while the sixth requisite, *i.e.*, petitioner's input taxes are not transitional, has been complied with.

(d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

[45] SEC. 4.113-1. Invoicing Requirements. —
(A) A VAT-registered person shall issue: —
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his TIN;
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:
...
(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

[46] Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

Seventh requisite: Respondent's input VAT were due or paid.

As found by the Court in Division, respondent declared in its amended 1st QVAT Returns for CY 2015, input VAT of ₱38,987,278.68 arising from its input tax carried over from the previous period, domestic purchases of goods other than capital goods, domestic purchase of services, and services rendered by non-residents, broken down as follows:

Input tax as per amended 1st QVAT Return	**Amount**
Input Tax Carried Over from Previous Period	₱11,149,552.88
Add: Current Input Taxes	
Domestic Purchase of Goods Other than Capital Goods	4,848.00
Domestic Purchase of Services	24,357,459.05
Services Rendered by Non-residents	3,475,418.75
Total Available Input Tax	**₱38,987,278.68**
Less: Output Tax Due	(26,341,055.97)
EXCESS INPUT TAX	**₱12,646,222.71**

To support the above figures, respondent presented and offered as evidence the official receipts, invoices, Monthly Remittance Return of VAT or BIR Forms No. 1600, and documents issued by its suppliers,[47] which the ICPA examined and, in turn, noted exceptions in the total amount of ₱2,035,545.54 for failure to meet the substantiation requirements prescribed under the Tax Code. Accordingly, the amount of ₱2,035,545.54 must be disallowed. This includes the ₱60,000.00,[48] *i.e.*, the unutilized input VAT arising from respondent's purchase from Carmont Enterprises Ltd. Co., which petitioner argues should be disallowed since it was not proven to be paid by respondent.

Deducting the disallowance amounting to ₱2,035,545.54, the respondent's total valid input VAT is now ₱36,951,733.21, *viz.*:[49]

[47] Exhibits "P-54" to "P-56", "P-66" to "P-152", CD submitted by the ICPA.
[48] Exhibit "P-201", Division Docket – Vol. I, p. 355.
[49] Per ICPA, ₱38,987,278.75 (Total Input VAT) - ₱2,035,545.54 (exceptions) = ₱36,951,733.21.

Total Available Input Tax	**₱38,987,278.68**
Less: Disallowed Input VAT by the ICPA	(2,035,545.45)
TOTAL VALID INPUT VAT	**₱36,951,733.21**

As found by the ICPA, the valid input VAT amount of ₱36,951,733.21 should be considered in ascertaining respondent's claim, *viz.*:

Input VAT from previous quarters directly attributable to zero-rated sales[50]	₱10,372,876.81[51]
Domestic purchase of services	23,103,437.62[52]
Services rendered by non-residents	3,475,418.78[53]
TOTAL VALID INPUT VAT	**₱36,951,733.21**

***Eighth* requisite: Petitioner's input VAT claimed is attributable to its valid zero-rated sales.**

The input taxes claimed must be attributable to zero-rated or effectively zero-rated sales. However, when there are zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes claimed cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.[54]

Apart from the valid input VAT of ₱10,372,876.81, which is found to be directly attributable to respondent's zero-rated sales, the difference of **₱26,578,856.40**[55] valid input VAT shall be allocated proportionately based on the volume of sales, as shown below:

Taxable sales for 1st quarter of CY 2015	₱219,508,799.74
Divided by: Reported Total Sales per Amended 1st QVAT Return	471,522,994.77
Multiplied by: Valid Input VAT	26,578,856.40
Valid Input VAT attributable to VATable Sales	**₱12,373,294.48**

Total Valid Zero-Rated Sales for 1st quarter of CY 2015	₱252,014,195.03
Divided by: Reported Total Sales per Amended 1st QVAT Return	471,522,994.77

[50] Exhibits "P-12-A" to "P-12-D", CD submitted by the ICPA.
[51] Exhibit "P-201", Division Docket – Vol. 1, p. 344.
[52] ₱6,981,874.12+ 10,997,920.22+ 4,694,361.55+ 429,281.73=₱23,103,437.62; *Id.*, pp. 343-344.
[53] ₱2,930,470.57+ 298,138.32+ 246,809.89=₱3,475,418.78; *Id.*, pp. 343-344.
[54] *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.
[55] ₱36,951,733.21-₱10,372,876.81=₱26,578,856.40.

Multiplied by: Valid Input VAT	26,578,856.40
Input VAT attributable to Zero-Rated Sales	14,205,561.92
Add: Input VAT from previous quarters directly attributable to zero-rated sales	10,372,876.81
Valid Input VAT attributable to Zero-Rated Sales	**₱24,578,438.73**

Thus, for purposes of, and with regard to respondent's compliance with, the eighth requisite, only the amount of **₱10,610,677.24** represents excess input VAT allocated to valid zero-rated sales, computed as follows:

Output Tax Due per QVAT Return 2015	₱26,341,055.97[56]
Less: Input VAT allocated to VATable Sales	(12,373,294.48)
Excess Output VAT	**₱13,967,761.49**
Valid Input VAT attributable to Zero-Rated Sales	₱24,578,438.73
Less: Excess Output VAT	(13,967,761.49)
Excess Valid Input VAT attributable to Zero-Rated Sales	**₱10,610,677.24**

As a result, respondent's refundable excess input VAT attributable to its zero-rated sales for the 1st quarter of CY 2015 is only ₱10,610,677.24.

***Ninth* requisite: Respondent's input VAT has not been applied against output VAT during and in the succeeding quarters.**

Respondent's claimed input VAT for the 1st Quarter of CY 2015,[57] *i.e.*, ₱12,646,222.71,[58] was carried over by respondent in the succeeding quarters[59] and was not applied against the output VAT until it was deducted as "VAT Refund/TCC Claimed" in respondent's 1st QVAT Return for CY 2017.[60] Records also show that the claimed input VAT was not carried over nor applied to the succeeding quarters.[61]

To echo the observation of the Court in Division, both parties failed to allege and present evidence that a Tax Credit

[56] Exhibit "P-13", CD submitted by the ICPA.
[57] Exhibit "P-13", CD submitted by the ICPA.
[58] ₱38,987,278.68 (Total Available Input Tax) - ₱26,341,055.97 (Output Tax due) = ₱12,646,222.71.
[59] Exhibits "P-13" to "P-20", CD submitted by the ICPA.
[60] Exhibit "P-21", CD submitted by the ICPA.
[61] The input VAT claimed as refund was not added back in the succeeding quarters as per QVAT Returns for the 2nd quarter of CY 2017, 4th quarter of FY 2017, 1st, 2nd, 3rd and 4th quarters of FY 2018, Exhibit "P-201", Division Docket – Vol. 1, pp. 344-350.

Certificate in the amount of ₱1,419,010.24 was issued to respondent. Hence, the total amount of ₱10,610,677.24 must be refunded or credited to respondent.

CONCLUSION

At this juncture, it must be stressed that the findings of fact by the Court in Division are *not* to be disturbed without any showing of grave abuse of discretion, considering that the members of the Division are in the best position to analyze the documents presented by the parties.[62]

In this case, apart from the general averment that respondent's claim for VAT refund/tax credit has no factual and legal bases, petitioner failed to point out *and* discuss any specific error that may have been committed by the Court in Division in the appreciation of the admitted evidence. The Court *En Banc* cannot simply reverse the Court in Division's findings based on petitioner's general averment.

It is well-settled that tax refunds are in the nature of an exemption; therefore, the law is construed *strictissimi juris* against the taxpayer. Accordingly, the evidence presented entitling a taxpayer to an exemption must also be *strictissimi* scrutinized and duly proven.[63]

Here, respondent was able to prove, by sufficient and competent evidence, its entitlement to a claim for refund or issuance of a tax credit certificate in the amount of ₱10,610,677.24.

Accordingly, We find no cogent reason to modify or reverse the assailed Decision and Resolution.

WHEREFORE premises considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue is **DENIED** for lack of merit. Accordingly, the Decision dated September 2, 2020, and the Resolution dated July 8, 2021, of the Court's Third Division in CTA Case No. 9668 are **AFFIRMED.**

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[62] *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. Nos. 242647 & 243814 & 242842-43, March 15, 2022.
[63] *Atlas Consolidated Mining and Development Corporation v. CIR*, G.R. No. 159490, February 18, 2008.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice