REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

NATIONAL DEVELOPMENT COMPANY, Petitioner,	**CTA EB No. 2572** (CTA Case No. 9633)
	Present:
- versus -	**DEL ROSARIO, *P.J.*, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** and **ANGELES, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 13 2023 11:50am

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DECISION

FERRER-FLORES, J.:

This Petition for Review filed by the **National Development Company** (**NDC**) on March 17, 2022[1] seeks to nullify the Decision of the Court in Division promulgated on November 26, 2020 (**assailed Decision**), [2] and the Resolution dated December 4, 2021 (**assailed Resolution**),[3] whereby the Third Division denied petitioner's request for refund in the amount of **Forty-Two Million Six Hundred Three Thousand One Hundred Seventy-Two Pesos and Eighty-Eight Centavos (₱42,603,172.88)**, representing value-added tax (VAT) allegedly erroneously collected from the second (2nd) quarter of 2015 to third (3rd) quarter of 2016, for lack of merit.

[1] *Rollo*, pp. 6 to 28.
[2] *Rollo*, pp. 34 to 48.
[3] *Rollo*, pp. 46 to 48.

FACTUAL ANTECEDENTS

The facts as found by the Court in Division are as follows:[4]

"**The Parties**

Petitioner is a VAT registered government-owned and controlled corporation ("GOCC") created under ***Presidential Decree No. 1648***. It has its principal office address at NDC Building, 116 Tordesillas St., Salcedo Village, Makati City.

Respondent is vested by law with the authority to carry out the functions, duties, and responsibilities of the Bureau of Internal Revenue ("BIR"), including, among others, the power to decide disputed assessments and cancel and abate tax liabilities pursuant to the ***Tax Code*** and other tax laws, rules, and regulations.

The Facts

During the taxable period from the 2nd Quarter of 2015 to the 3rd Quarter of 2016, petitioner paid VAT in the aggregate amount of Php71,100,410.77,

EXHIBIT	QUARTERLY VAT RETURN	DATE PAID	VAT Payable
"P-1"	2nd Quarter 2015	24 July 2015	Php66,427,825.23
"P-2"	3rd Quarter 2015	23 October 2015	Php582,948.26
"P-3"	4th Quarter 2015	26 January 2016	Php108,057.21
"P-4"	1st Quarter 2016	22 April 2016	Php748,106.15
"P-5"	2nd Quarter 2016	22 July 2016	Php2,189,285.25
"P-6"	3rd Quarter 2016	24 October 2016	Php1,044,188.67
Total			Php71,100,410.77

Petitioner then realized that it committed a mistake in utilizing the actual input VAT attributable to its sales to the government, instead of the 7% standard input VAT, as credit against its output VAT.

Upon realizing this error, petitioner filed on 29 November 2016 its Amended VAT Returns for the period from the 2nd Quarter of 2015 to the 3rd Quarter of 2016 to correctly apply the provision on withholding of VAT on sales to the government. This resulted to the present claim for refund which is computed as follows:

Taxable Quarter	Amount Payable per Amended VAT Return	For Refund
2nd Quarter 2015	Php27,556,123.69	Php38,871,701.54
3rd Quarter 2015	Php (165,475.70)/No payment	Php582,948.26
4th Quarter 2015	Php (446,416.78)/No payment	Php108,057.21
1st Quarter 2016	Php 223,667.56)/No payment	Php748,106.15
2nd Quarter 2016	Php 941,114.20	Php1,248,171.05
3rd Quarter 2016	Php (32,235,795.06)/No payment	Php1,044,188.67
Total	**Php28,497,237.89**	**Php42,603,172.88**

[4] *Rollo*, pp. 34 to 36.

> On 7 June 2017, petitioner filed with respondent an administrative claim for refund. However, respondent failed to act on such administrative claim. Thus, petitioner filed the present Petition on 24 July 2017." (Citations omitted)

PROCEEDINGS BEFORE THE COURT

On July 24, 2017, petitioner filed the Petition for Review.[5] This case was raffled to this Court's Third Division and was docketed as CTA Case No. 9633.

Respondent filed his Answer on September 25, 2017 interposing his special and affirmative defenses.[6]

The Pre Trial Brief (for the Respondent) was filed on February 6, 2018[7] while the Pre-Trial Brief for petitioner was filed on February 8, 2018.[8] The Pre-Trial Conference was then held on February 13, 2018.[9]

On February 27, 2018, the parties filed their Joint Stipulations of Facts and Issues[10] and the Court issued the Pre-Trial Order on April 3, 2018.[11]

Trial of the case then ensued.

Petitioner presented documentary and testimonial evidence. It presented Ms. Denise J. Manalansan, petitioner's Accountant V,[12] on May 15, 2018,[13] and Ms. Joyce Anne N. Alimon,[14] its Department Manager for Finance and Administrative Department, on September 10, 2018,[15]

Petitioner then filed its Formal Offer of Evidence on October 1, 2018.[16]

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5 Division Docket, Vol. 1, pp. 10 to 15.
6 Division Docket, Vol. 2, pp. 891 to 894.
7 Via registered mail, and received by the Court on February 12, 2018, Division Docket, Vol. 3, pp. 1074 to 1076.
8 Division Docket, Vol. 2, pp. 913 to 921.
9 Minutes of the hearing and Order dated February 13, 2018, Division Docket, Vol. 3, pp. 1077 and 1084, respectively.
10 Division Docket, Vol. 3, pp. 1089 to 1092.
11 *Ibid.*, pp. 1098 to 1102.
12 Judicial Affidavit of Denise J. Manalansan, Division Docket, Vol. 2, pp. 922 to 929.
13 Minutes of the hearing and Order dated May 15, 2018, Division Docket, Vol. 3, pp. 1103 to 1104.
14 Judicial Affidavit of Joyce Anne N. Alimon, Division Docket, Vol. 3 pp. 1107 to 1114.
15 Minutes of the hearing and Order dated September 10, 2018, Division Docket, Vol. 3, pp. 1270 to 1271.
16 Division Docket, Vol. 3, pp. 1272 to 1282.

On October 25, 2018,[17] respondent manifested that he will no longer present any evidence and requested that he be given a period of thirty (30) days within which to file his memorandum.

In the Resolution dated February 19, 2019, the Court denied all of petitioner's exhibits for failure to submit the duly marked exhibits.[18]

On March 13, 2019, petitioner filed a Motion for Reconsideration and attached the duly marked exhibits.[19] In the Resolution dated June 27, 2019, the Court resolved to grant petitioner's Motion for Reconsideration and admit all of petitioner's exhibits.[20]

Petitioner's Memorandum was filed on August 15, 2019,[21] whereas, respondent failed to file his Memorandum as per Records Verification Report issued by this Court's Judicial Records Division on October 15, 2019.[22] Thereafter, the case was submitted for decision on November 5, 2019.[23]

The Court in Division rendered a Decision on November 26, 2020,[24] stating:

> "**WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In the assailed Decision, the Court ruled that the Court had jurisdiction over the case as the Petition for Review was timely filed. The Court, however, found that petitioner failed to present proof of its actual input VAT declared in its VAT returns.

Petitioner filed its Motion for Reconsideration on December 22, 2020[25] which was denied by the Court for lack of merit in the Resolution dated December 4, 2021.[26] Hence, the instant Petition for Review.

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[17] Manifestation, Division Docket, Vol. 3, pp. 1283 to 1284.
[18] Division Docket, Vol. 3, pp. 1289 to 1290.
[19] *Ibid.*, pp. 1291 to 1294.
[20] Division Docket, Vol. 4, pp. 1761 to 1762.
[21] *Ibid.*, pp. 1763 to 1770.
[22] *Ibid.*, p. 1772.
[23] *Ibid.*, p. 1774.
[24] *Ibid.*, pp. 1781 to 1791.
[25] *Ibid.*, pp. 1792 to 1800.
[26] *Ibid.*, pp. 1827 to 1829.

Respondent Commissioner of Internal Revenue (CIR) failed to file his comment, as per Records Verification dated May 31, 2022.[27] On June 14, 2022, the case was submitted for decision.[28]

ISSUES

Petitioner raises the following grounds for its Petition:

I.

> The Court of Tax Appeals (CTA) has no jurisdiction over this claim for refund as disputes involving a GOCC and a government agency is with the Department of Justice (DOJ). Thus, the CTA Third Division should have dismissed the case and let NDC file its claim before the DOJ.

II.

> Assuming the CTA has jurisdiction, NDC erroneously paid and made an overpayment of VAT for taxable quarters beginning 2nd quarter of 2015 until 3rd quarter of 2016 in the amount of Php42,603,172.88; hence, it is entitled to a refund.

ARGUMENTS OF PETITIONER

I. Lack of jurisdiction of the CTA over the claim for refund

Petitioner argues that the CTA Third Division should have dismissed this case for lack of jurisdiction. It maintains that the Secretary of Justice (SOJ) has jurisdiction to decide all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements, which shall be administratively settled or adjudicated by the SOJ, pursuant to Presidential Decree (PD) No. 242.[29] Based on the foregoing, the dispute between the NDC as a GOCC and the CIR, representing the BIR, a government agency, is within the jurisdiction of SOJ. Accordingly, petitioner contends that the CTA Third Division should not have denied the claim for refund but rather dismissed the case for lack of jurisdiction.

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[27] *Rollo*, p. 52.
[28] *Rollo*, pp. 54 to 55.
[29] Prescribing the Procedure for Administrative Settlement or Adjudication of Disputes, Claims and Controversies between or among Government Offices, Agencies and Instrumentalities, including Government-Owned or Controlled Corporations, and for Other Purposes (July 9, 1973).

II. Petitioner's overpayment of VAT

Assuming CTA has jurisdiction, petitioner posits that it was able to substantiate its claim for refund. Considering that it erroneously used the actual input VAT rather than the standard input VAT (SIV) of seven percent (7%) pursuant to Revenue Regulations (RR) No. 16-2005[30] and as testified by its witnesses, petitioner contends that it clearly established that it had erroneously paid the total of ₱71,100,410.77 for the 2nd quarter of 2015 until the 3rd quarter of 2016. Further, petitioner avers that the amendments of its VAT returns resulted in the reduction of its VAT payable to ₱28,497,237.89, thereby resulting in an overpayment of ₱42,603,172.88. As NDC attached a summary list to the VAT returns, it followed the stringent requirements of Revenue Regulations (RR) No. 16-2005 to prove the error of non-use of the presumed standard input VAT of 7%. In addition, the summary list attached to the VAT returns is presumed to have been made in the performance of the duties as government employees.

RULING OF THE COURT *EN BANC*

We uphold the ruling of the Court in Division.

Timeliness of the Petition for Review

Records show that, on February 17, 2022, petitioner received the Resolution dated December 4, 2021.[31] Counting fifteen (15) days therefrom, petitioner had until March 4, 2022 within which to file its Petition for Review before the Court *En Banc*. On March 4, 2022, petitioner filed a Motion for Extension of Time to File Petition,[32] requesting for an additional period of fifteen (15) days or until March 19, 2022 within which to file its Petition for Review, which was granted by the Court in a minute resolution dated March 7, 2022.[33] On March 17, 2022, petitioner timely filed its Petition for Review.

The CTA has jurisdiction over the instant case

Petitioner asserts that the CTA Third Division should have dismissed this case for lack of jurisdiction. Citing the cases of *Commissioner of Internal Revenue vs. Secretary of Justice and Metropolitan Cebu Water District (MCWD)* (CIR vs. SOJ and MCWD)[34] and *Power Sector Assets and*

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[30] Consolidated Value-Added Tax Regulations of 2005, as amended by RR No. 4-2007 (Amending Certain Provisions of Revenue Regulations No. 16-2005, as Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005).)
[31] *Rollo*, p. 45.
[32] *Rollo*, pp. 1 to 4.
[33] *Rollo*, p. 5.
[34] G.R. No. 209289, July 9, 2018.

Liabilities Management Corporation vs. Commissioner of Internal Revenue (PSALM vs. CIR),[35] petitioner argues that the SOJ has jurisdiction to decide the instant case which is a dispute between the NDC, a GOCC, and the CIR, representing the BIR, a government agency. Since a court or tribunal should have first determined whether or not it has jurisdiction over the subject matter presented before it, any act performed without jurisdiction shall be null and void, and without any binding and legal effect. Accordingly, the CTA Third Division should not have denied the Petition for Review, but rather dismissed the same for lack of jurisdiction.

We disagree with petitioner.

The Supreme Court First Division, in the CIR vs. SOJ and MCWD case cited by petitioner itself,[36] reiterated that "[a] party cannot invoke jurisdiction at one time and reject it at another time in the same controversy to suit its interests and convenience. Jurisdiction is conferred by law and cannot be made dependent on the whims and caprices of a party. Jurisdiction, once acquired, continues until the case is finally terminated."

Here, NDC filed its Petition for Review before the CTA in Division seeking the refund of ₱42,603,172.88, representing the VAT erroneously received by respondent for the period of 2nd quarter of 2015 until 3rd quarter of 2016. After the denial of the CTA Third Division of its claim for refund for lack of merit, petitioner now prays, in its Petition for Review with the Court *En Banc*, for the dismissal of its own claim for refund for lack of jurisdiction, or, in the alternative, render judgment ordering respondent to refund the foregoing amount.

Petitioner lodged the case before this Court, aware of and, in fact, invoking this Court's jurisdiction over its claim for refund. Applying the disposition of the First Division of the Supreme Court in the case of CIR vs. SOJ and MCWD, the Court in Division, having acquired jurisdiction over its dispute with respondent for its claim for refund, continues to exercise the same until the termination of the case. Jurisdiction is not dictated by petitioner by invoking the lack thereof when its claim for refund was denied due to its own failure to establish its entitlement.

The Court also notes petitioner's filing of the Petition for Review before the Court in Division on July 24, 2017. At that time, the prevailing interpretation of the Supreme Court as regards jurisdiction over tax disputes between the CIR and a government agency or instrumentality was governed by the pronouncements in the case of *Commissioner of Internal Revenue vs. Secretary of Justice and Philippine Amusement and Gaming Corporation*

[35] G.R. No. 198146, August 8, 2017.
[36] *Supra.*

(CIR vs. SOJ and PAGCOR),[37] holding that the SOJ has no jurisdiction to review the disputed assessments and reiterating what it enunciated in the case of *Philippine National Oil Company vs. The Hon. Court of Appeals et. al.* (PNOC vs. CA),[38] *to wit*:

> "Although acknowledging the validity of the petitioner's contention, the Secretary of Justice still resolved the disputed assessments on the basis that the prevailing doctrine at the time of the filing of the petitions in the Department of Justice (DOJ) on January 5, 2004 was that enunciated in *Development Bank of the Philippines v. Court of Appeals*, whereby the Court ruled that:
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> > x x x (T)here is an "irreconcilable repugnancy x x between Section 7(2) of R.A. No. 1125 and P.D. No. 242," and hence, that the latter enactment (P.D. No. 242), being the latest expression of the legislative will, should prevail over the earlier.
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> Later on, the Court reversed itself in *Philippine National Oil Company v. Court of Appeals*, and held as follows:
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> > Following the rule on statutory construction involving a general and a special law previously discussed, then P.D. No. 242 should not affect R.A. No. 1125. R.A. No. 1125, specifically Section 7 thereof on the jurisdiction of the CTA, constitutes an exception to P.D. No. 242. Disputes, claims and controversies, falling under Section 7 of R.A. No. 1125, even though solely among government offices, agencies, and instrumentalities, including government-owned and controlled corporations, remain in the exclusive appellate jurisdiction of the CTA. Such a construction resolves the alleged inconsistency or conflict between the two statutes, x x x.
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> Despite the shift in the construction of P.D. No. 242 in relation to R.A. No. 1125, the Secretary of Justice still resolved PAGCOR's petitions on the merits, stating that:
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> > While this ruling (DBP) has been superseded by the ruling in Philippine National Oil Company vs. CA, in view of the prospective application of the PNOC ruling, we (the DOJ) are of the view that this Office can continue to assume jurisdiction over this case which was filed and has been pending with this Office since January 5, 2004 and rule on the merits of the case.
>
> We disagree with the action of the Secretary of Justice.
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> PAGCOR filed its appeals in the DOJ on January 5, 2004 and August 4, 2004. *Philippine National Oil Company v. Court of Appeals* was promulgated on April 26, 2006. The Secretary of Justice resolved the petitions on December 22, 2006. Under the circumstances, the Secretary of Justice had ample opportunity to abide by the prevailing rule and should have referred the case to the CTA because judicial decisions applying or

[37] G.R. No. 177387, November 9, 2016.
[38] G.R. No. 109976, April 26, 2005.

> interpreting the law formed part of the legal system of the country, and are for that reason to be held in obedience by all, including the Secretary of Justice and his Department. Upon becoming aware of the new proper construction of P.D. No. 242 in relation to R.A. No. 1125 pronounced in *Philippine National Oil Company v. Court of Appeals*, therefore, the Secretary of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. Therein lay the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*. Indeed, the doctrine of *stare decisis* required him to adhere to the ruling of the Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts and everyone else should take their bearings.
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> Nonetheless, the Secretary of Justice should not be taken to task for initially entertaining the petitions considering that the prevailing interpretation of the law on jurisdiction at the time of their filing was that he had jurisdiction. Neither should PAGCOR to blame in bringing its appeal to the DOJ on January 5, 2004 and August 4, 2004 because the prevailing rule then was the interpretation in *Development Bank of the Philippines v. Court of Appeals*. **The emergence of the later ruling was beyond PAGCOR's control. Accordingly, the lapse of the period within which to appeal the disputed assessments to the CTA could not be taken against PAGCOR. While a judicial interpretation becomes a part of the law as of the date that the law was originally passed, the reversal of the interpretation cannot be given retroactive effect to the prejudice of parties who may have relied on the first interpretation.**
>
> The Court now undertakes to settle the controversy because of the urgent need to promptly decide it. We cannot lose sight of the fact that PAGCOR is among the most prolific income-generating institutions that contribute immensely to the country's developing economy. Any controversy involving PAGCOR should be resolved expeditiously considering the underlying public interest in the matter at hand. To dismiss the petitions in order to have PAGCOR bring a similar petition in the CTA would not serve the interest of justice. On previous occasions, the Court has overruled the defense of jurisdiction in the interest of public welfare and for the advancement of public policy whenever, as in this case, an extraordinary situation existed." (Citations omitted)

In the foregoing case, the Supreme Court held that the SOJ should have referred the case to the CTA because of the new and proper construction of the Supreme Court in the case of PNOC vs. CA, applying or interpreting that the law formed part of the legal system of the country. The Supreme Court ruled that the SOJ acted with grave abuse of discretion amounting to lack or excess of jurisdiction for arbitrarily and capriciously ignoring the pronouncement in the PNOC vs. CA case.

As already emphasized in the case of CIR vs. SOJ and PAGCOR, the reversal of an interpretation of the law cannot be given retroactive effect to

the prejudice of the parties who may have relied on the first interpretation, as the emergence of the later ruling is beyond the control of petitioner. Accordingly, the lapse of the period within which to appeal the disputed assessments to the CTA should not be taken against petitioner. As reiterated in the same case, while a judicial interpretation becomes part of the law as of the date that law was originally passed, the reversal of the interpretation cannot be given retroactive effect to the prejudice of parties who may have relied on the first interpretation.

The Supreme Court further highlighted in the case of *Philippine Mining Development Corporation vs. The Commissioner of Internal Revenue et. al.* (PMDC vs. CIR)[39] that:

> "**While, as a general rule, judicial interpretation becomes part of the law as of the date that law was originally passed, when a doctrine of this Court is overruled, and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.** In the present case, PMDC filed its petition for review with the CTA on March 14, 2016. Trial then regularly ensued, with both parties having already presented their witnesses so that by the time of promulgation of the *PSALM* Case on August 8, 2017, there was nothing left for the CTA Division to do but to render judgment on the petition of PMDC. Irrefragably, at the time PMDC filed its petition with the CTA, the prevailing jurisprudence then was the *PAGCOR* Case which, in turn, reiterated the ruling in the *PNOC* Case that it was the CTA, not the Secretary of Justice, who had jurisdiction to review disputed tax assessments even if these were solely between or among government agencies and GOCCs. PMDC, thus, cannot be faulted for seeking recourse from the CTA as the prevailing jurisprudence at the time of the filing of the petition directed it to do so. Under the particular circumstances of this case, for the CTA to refuse to render judgment on the petition of PMDC at such late stage and to require that the case be refiled and reheard before the Secretary of Justice, would no longer be the prudent thing to do, as it will only result in the further unjustifiable and unnecessary delay of the case, to the grave prejudice of PMDC." (Citations omitted)

Applying the foregoing to the present case, the Petition for Review filed on July 24, 2017 before the Court in Division is governed by the then interpretation of the Supreme Court in the case of CIR vs. SOJ and PAGCOR, which was promulgated on November 9, 2016. The Supreme Court held that the CTA has jurisdiction over the disputes between the CIR and another government agency/instrumentality; and petitioner cannot be faulted, much less prejudiced, for relying on the prevailing interpretation at the time of the filing of its Petition for Review and in invoking the jurisdiction of the Court in Division over its claim for refund.

While it was already settled that the SOJ has jurisdiction between and among government agencies and GOCCs, regardless of the nature of the

[39] G.R. No. 250748, October 6, 2021.

dispute, *i.e.*, all, without exception, save for those cases already pending at the time of the effectivity of the PD No. 242,[40] the Court cannot allow petitioner to change its stance when it lodged its claim for refund before the Court in Division and eventually allege lack of jurisdiction when it filed its Petition for Review before the Court *En Banc* after the CTA Third Division denied its claim for lack of merit. It is clear that petitioner relied on the prevailing interpretation at the time of its filing of the Petition for Review, where this Court had jurisdiction over any tax case regardless of whether it is between or among government agencies/instrumentalities or involves private persons or entities.

Petitioner failed to establish its entitlement to a refund.

The Court in Division found that petitioner offered as evidence its original and amended VAT returns for the subject period; certificates of tax withheld showing the withholding by the government of five percent (5%) VAT; schedule of Input VAT; letter to the BIR dated June 2, 2017, representing the administrative claim for refund; and, proofs of payment of the VAT Returns. The CTA Third Division held that, while petitioner presented the schedule of input VAT, it does not sufficiently prove the actual input VAT incurred by petitioner. Sections 110(A) and 113(A) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, as implemented by Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1(A) and (B) of RR No. 16-2005, require VAT official receipts and/or invoices emanating from petitioner's purchases of goods, properties and services during the 2nd quarter of 2015 until 3rd quarter of 2016 as substantiation requirement for petitioner's claim for refund. The CTA Third Division ruled that, without proof on the actual input VAT incurred by petitioner, there is no way to determine if an actual overpayment of VAT occurred from petitioner's failure to utilize the standard input VAT of seven percent (7%) on its sales to the government.

Petitioner insists that it had established that it erroneously paid the total amount of ₱71,100,410.77 from the 2nd quarter of 2015 until the 3rd quarter of 2016. It maintains that it failed to use standard input VAT of seven percent (7%) for sales to GOCC resulting in the amendment of its VAT returns. The amendment of VAT returns resulted in the reduction of the amount of its VAT payable to ₱28,497,237.89. Thus, it claims that it has overpayment in the amount of ₱42,603,172.88.

After a careful consideration of its arguments and a review of the assailed Decision, petitioner indeed failed to prove not only its actual input VAT incurred, evidenced by official receipts and/or invoices issued from its

[40] *Philippine Mining Development Corporation vs. The Commissioner of Internal Revenue et. al., ibid.*

purchases, as aptly found by the CTA Third Division, but also its own sales to government, which may be substantiated by the official receipts and/or invoices it issued.

Section 114 of the NIRC of 1997, as amended, provides:

> "SEC. 114. Return and Payment of Value-added Tax. —
>
> xxx xxx xxx
>
> (C) Withholding of Creditable Value-Added Tax. — **The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall**, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, **deduct and withhold the value-added tax due at the rate of five percent (5%) of the gross payment thereof**: Provided, That the payment for lease or use of properties or property rights to non-resident owners shall be subject to ten percent (10%) withholding tax" *(Emphasis supplied)*

Implementing the aforesaid provision is Section 4.114-2 of RR No. 16-2005, which further provides:

> "SEC. 4.114-2. Withholding of VAT on Government Money Payments x x x. —
>
> (a) The government or any of its political subdivisions, instrumentalities or agencies including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or of services taxed at twelve percent (12%) VAT pursuant to Secs. 106 and 108 of the Tax Code, deduct and withhold a final VAT due at the rate of five percent (5%) of the gross payment thereof.
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> The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. **The remaining seven percent (7%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT attributable to sale to government exceeds seven percent (7%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT attributable to sale to government is less than seven percent (7%) of gross payment, the difference must be closed to expense or cost.**" *(Emphasis supplied)*

Based on the afore-cited provisions, sales to government are taxed at twelve percent (12%) where five percent (5%) is withheld by the government

payor. The remaining seven percent (7%), which accounts for the standard input VAT (SIV), will then be compared with the actual input VAT attributable to sale to government with the difference either forming part of or closed to the seller's expense or cost.

In order to establish that there was erroneous overpayment of VAT, it is imperative to determine if petitioner indeed has sales to government properly substantiated by VAT invoices/ORs upon which the seven percent (7%) SIV will be derived. Only then will there be an amount of seven percent (7%) SIV which will be compared to the actual input VAT attributable to sales to government.

In the instant case, petitioner did not offer in evidence the VAT invoices/ORs substantiating its sales of goods or services to the government. Instead, it submitted amended VAT returns and certificates of tax withheld showing the amount of its sales to government. While the amount of seven percent (7%) SIV may be derived from the amount of sales to government indicated in the said documents, the documents presented by the petitioner do not constitute as the proper VAT supporting documents for petitioner's sales. Section 113 of the NIRC of 1997 provides that a VAT-registered person shall issue a VAT invoice for every sale of goods and a VAT official receipt for every sale of services. In *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*,[41] the Supreme Court held that the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller.

For failure to substantiate its sales to government, which is necessary in the determination of the seven percent (7%) SIV where petitioner's claim is derived from, the claim for refund should be denied.

Likewise, petitioner's failure to present official receipts and/or invoices of its purchases attributable to its sales to government negates entitlement to refund for failure to sufficiently prove actual input VAT paid.

Considering the evidence submitted to the Court in Division are limited to the original and amended VAT returns, schedule of input VAT, certificates of tax withheld, administrative claim letter to the BIR and proofs of payment of VAT returns, petitioner's declaration of its sales to government, which shall be the basis for the SIV of seven percent (7%) was not sufficiently proved by the official receipts and/or invoices it issued. Moreover, the pertinent

[41] G.R. No. 181858, November 24, 2010, also cited in *Nippon Express (Philippines) Corporation (Nippon Express) vs. CIR*, G.R. No. 191495. July 23, 2018 and *Nippon Express vs. CIR*, G.R. No. 185666. February 4, 2015.

invoices, receipts, and export sales documents are the best and competent pieces of evidence required to substantiate petitioner's claim for refund.[42]

In fine, it bears to emphasize the well-established rule in taxation that tax refund, as that provided under Section 110 (B) in relation to Section 112, is in the nature of tax exemption. As such, the law must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[43] Aside from this, the pieces of evidence presented entitling a taxpayer to a refund or exemption are also *strictissimi* scrutinized and must be duly proven.[44] Accordingly, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim, but also compliance with all the documentary and evidentiary requirements required by law.[45]

As correctly held by the Court in Division, petitioner failed to prove every minute aspect of its entitlement to refund; thus, the Court *En Banc* finds no reason to disturb the findings of the CTA Third Division denying the Petition for Review for lack of merit.

WHEREFORE, in view of the foregoing, the instant Petition for Review is **DENIED** for lack of merit. The Decision dated November 26, 2020 and the Resolution dated December 4, 2021 of the Court in Division in CTA Case No. 9633 are **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[42] *Atlas Consolidated Mining and Development Corp. vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[43] *Eastern Telecommunications Phils., Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[44] *Atlas Consolidated Mining and Development Corp. vs. Commissioner of Internal Revenue, supra.*
[45] *Ibid.*

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

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
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 write of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice