REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2592** (CTA Case No. 10115)
-versus-	Present: **DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
SONY PHILIPPINES, INCORPORATED, *Respondent.*	Promulgated: JUN 22 2023 4:24 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a Petition for Review,[1] filed on 12 April 2022, under ***Section 3 (b), Rule 8[2] of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[3] seeking the reversal of the Decision[4] ("Assailed Decision"), promulgated on 16 December 2021, and the Resolution[5] ("Assailed Resolution").

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1 *See* Petition for Review ("Petition for Review"), *Rollo*, pp. 1-50, with annexes.

2 SECTION 3. Who May Appeal; Period to File Petition. —
xxx xxx xxx
(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.

3 A.M. No. 05-11-07-CTA, 22 November 2005.

4 *See* Decision, dated 16 December 2021, *Rollo*, pp. 20-45.

5 *See* Resolution, dated 23 March 2023, *id.*, p. 46-50.

dated 23 March 2022, both issued by the Court's First Division ("Court in Division"); and the rendering of a new Decision denying the entire claim for refund.[6]

The Parties

Petitioner Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who is charged with the administration and enforcement of national internal revenue laws, including the granting of refunds and tax credits of taxes erroneously or illegally collected. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[7]

On the other hand, respondent, Sony Philippines, Incorporated ("Sony Philippines") is a corporation duly organized and existing under the laws of the Philippines, with principal office at 12/F Inoza Tower, 40th Street, Bonifacio Global City, Fort Bonifacio, Taguig City. It is a registered taxpayer of the BIR under the Regular Taxpayer Audit Division I, with Taxpayer Identification No. 005-338-777-000.[8]

The Facts

On 17 July 2017, respondent Sony Philippines filed its Annual Income Tax Return ("AITR") for the fiscal year ("FY") ending 31 March 2017 ("FY 2017"), indicating on the face of the FY2017 AITR its option to be refunded for its tax overpayments for the FY 2017.[9]

Pursuant to this, respondent filed an administrative claim for refund of its unutilized creditable withholding taxes ("CWT") for FY2017 in the amount of Php48,443,111.00, on 11 July 2019.[10]

Due to the inaction of petitioner, respondent filed a Petition for Review before the Court of Tax Appeals ("CTA") on 15 July 2019, docketed as CTA Case No. 10115.[11] The case was raffled to the First Division of the Court.

On 16 December 2021, the Court in Division rendered the Assailed Decision partially granting the Petition for Review and upholding respondent's entitlement to refund in the reduced amount of Php39,948,964.75. The dispositive portion of the Assailed Decision reads as follows:

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6 *See* Prayer, Petition for Review, *id.*, p. 10.
7 *See* Par. 2, Parties, Assailed Decision, *id.*, p. 21; Par. 1, Parties, Petition for Review, *id.*, p. 2.
8 *See* Par. 1, Parties, *id.*, p. 20.
9 See Assailed Decision, *Rollo* p. 21.
10 *Id.*
11 *Id.*

> "**WHEREFORE**, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner Sony Philippines, Inc. the amount of ₱39,948,964.75 representing its excess and unutilized creditable withholding taxes for Fiscal Year ending March 31, 2017."[12]

Thereafter, on 22 February 2022, petitioner filed a Motion for Partial Reconsideration,[13] to which respondent filed its Opposition on 10 March 2022.[14]

On 23 March 2022, the Court in Division issued the Assailed Resolution, denying the Motion for Partial Reconsideration.

This led to the filing of the current Petition for Review[15] on 12 April 2022.

Via a Resolution[16] dated 5 May 2022, respondent was ordered to file its Comment on the Petition for Review within ten (10) calendar days from notice.

Subsequently, respondent filed a Manifestation with Motion for Extension to File a Comment[17] on 19 May 2022 stating that it has yet to receive a copy of the Petition for Review. The Motion for Extension was granted on 21 June 2022,[18] and the Comment[19] was filed on 30 June 2022.

The Issue[20]

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO A REFUND IN THE REDUCED AMOUNT OF PHP39,948,964.75 REPRESENTING THE ALLEGED EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR THE FISCAL YEAR ENDING 31 MARCH 2017

The Arguments of the Parties

Petitioner's Arguments

In his Petition for Review, petitioner raises the following arguments:

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[12] *Id.* p. 45.
[13] Division Docket Vol. II, CTA Case No. 10115, pp. 809-819.
[14] *Id.*, pp. 823-835.
[15] *Supra* note 1.
[16] *Rollo* pp. 52-53.
[17] *Id.*, p 54-55.
[18] *Id.*, p 59-60.
[19] *Id.*, p 61-70.
[20] *See* Assignment of Error, Petition for Review, *id.*, p. 3.

(1) That Sony Philippines failed to provide supporting documents to show that the income from which the CWT was withheld was declared in the AITR as there is no direct linkage between the CWT and the income reflected in the return;[21]

(2) That the documents submitted by Sony Philippines fail to show proof of actual remittance of CWT, as required in claims for refund;[22] and

(3) That Sony Philippines failed to comply with the prescribed checklist of requirements to be submitted for claims of unutilized creditable withholding tax under ***Revenue Memorandum Order ("RMO") No. 53-98***[23] and ***Revenue Regulations ("RR") No. 2-2006,***[24] resulting in its failure to substantiate its administrative claim for refund.[25]

Respondent's Counter-Arguments

Respondent, on the other hand, counter-argues that (1) it was able to adduce supporting documents to show that income from which CWT was being claimed was declared in the AITR;[26] (2) petitioner was mistaken in claiming that proof of actual remittance of taxes withheld is required in claims for refund;[27] and (3) it was able to substantiate its administrative claim pursuant to RMO No. 53-98 and RR No. 2-2006.[28]

The Ruling of the Court

The instant Petition for Review was timely filed before the Court En Banc

We shall first look into the timeliness of the filing of the Petition for Review.

Under ***Sections 3 (b), Rule 8 of the RRCTA,***[29] a party adversely affected by a Decision or Resolution of a Division of the CTA on a motion for reconsideration or new trial may appeal to the Court *En Banc* by filing a Petition for Review within fifteen (15) days from receipt of the assailed decision or resolution.

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[21] *See* Petition for Review, *id.*, pp. 3-4.
[22] *Id.*, pp. 5-6.
[23] Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket, 1 June 1998.
[24] Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns with Claimed Tax Credits due to Creditable Tax Withheld at Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received have been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments, 1 December 2005.
[25] *See* Petition for Review, *Rollo* pp. 4-10.
[26] See Comment, *id.*, pp. 63-64.
[27] *Id.*, pp. 64-66.
[28] *Id.*, pp. 67-69.
[29] *Supra* note 2.

In the case at hand, the Assailed Resolution was received by petitioner on 1 April 2022.[30] Counting fifteen (15) days from such receipt, petitioner had until 16 April 2022 within which to file his appeal. Thus, the Court finds the instant Petition for Review timely filed on 12 April 2022.

We shall now proceed to determine the merits of the instant case.

At the outset, the Court notes that the CIR's arguments in his Petition for Review are mere rehash of issues already considered by the Court in Division in the Assailed Decision and Assailed Resolution. Nonetheless, the Court shall pass upon the arguments to fully resolve the case.

Respondent has sufficiently shown that the income payments subjected to CWTs were declared as part of the gross income

Petitioner argues that respondent failed to prove that the income payments subjected to CWT were reported as part of its gross income for FY2017. The Court finds such argument without merit.

As discussed by the Court in Division in the Assailed Decision, respondent submitted its General Ledger ("GL") Nos. 621001 to 621500 to prove that the income payments with CWTs of Php40,647,484.03 were part of the Php5,496,324,878.00 declared sales/revenues/receipts/fees. The Court in Division evaluated the GLs and was able to determine that the CWTs in the total amount of Php39,948,964.75 were reflected in the GLs which were in turn declared part of respondent's FY2017 gross income.[31]

Clearly, the CWTs were duly traced by the Court in Division back to the GLs and to the gross income per AITR. The GLs constitute sufficient evidence to show the disputed linkage between the CWTs and the income reflected in the AITR.

Accordingly, the Court does not find any error specific to this matter that would warrant a reversal of the Court in Division's ruling on respondent's compliance with the subject refund claim requirement, as held in the Assailed Decision.

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[30] See Notice of Resolution stamped "Received" by the BIR on 1 April 2022, Division Docket Vol. II, CTA Case No. 10115, p. 837.

[31] See Assailed Decision, *Rollo*, pp. 38-40.

Respondent is not required to prove the fact of remittance of taxes withheld by its income payors/withholding agents

Petitioner raises that, in refund claims, there must be proof of actual remittance of the withheld taxes to the BIR, as distinguished from proof of the mere fact of withholding. According to the CIR, while the latter may be sufficiently proven by the CWT Certificates submitted by Sony Philippines, the former was not substantiated by any evidence from respondent.

The Court, however, disagrees. As aptly discussed by the Court in Division in the Assailed Resolution, proof of actual remittance of taxes withheld is not indispensable in claims for refund or the issuance of tax credit certificates (TCC) covering excess and unutilized CWT. It is the withholding agent, not the taxpayer-claimant, who has the responsibility to prove actual remittance of withheld taxes to the BIR.

Indeed, in the case of ***Commissioner of Internal Revenue vs. Ayala Corporation***,[32] the Supreme Court, citing ***Commissioner of Internal Revenue vs. Philippine National Bank***[33] and ***Philippine Airlines, Inc. vs. Commissioner of Internal Revenue ("PAL case")***,[34] ruled as follows:

> "As correctly ruled by the CTA *En Banc*, **proof of actual remittance is not necessary for respondent's claim for refund of excess or unutilized creditable withholding tax (CWT) to prosper**. Notably, '[i]t is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.' **In establishing its entitlement to a claim for refund for CWT, respondent need only prove the fact that taxes were actually withheld through the presentation of the certificates of withholding issued by the corresponding withholding agents, as it did so in this case**. It is settled that 'the CTA's findings can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or abuse on the part of the Tax Court,' which does not obtain in this case. Hence, the instant petition must be denied."
> (Emphasis supplied; citations omitted.)

Moreover, in the ***PAL case***, the Supreme Court clarified that in case of non-remittance, the action should be against the withholding agent and not the income payee/refund claimant:

> "When a particular income is subject to a final withholding tax, it means that a withholding agent will withhold the tax due from the income earned to remit it to the Bureau of Internal Revenue. Thus, the liability for remitting the tax is on the withholding agent:
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> x x x

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[32] G.R. No. 256539 (Notice), 28 July 2021.
[33] G.R. No. 180290, 29 September 2014.
[34] G.R. Nos. 206079-80 & 206309, 17 January 2018.

> Clearly, the withholding agent is the payor liable for the tax, and any deficiency in its amount shall be collected from it. **Should the Bureau of Internal Revenue find that the taxes were not properly remitted, its action is against the withholding agent, and not against the taxpayer.**"
> (Emphasis supplied; citations omitted.)

Any such non-remittance should thus not be a ground for the disallowance of the income payee's refund application.

Accordingly, the Court finds no merit in petitioner's insistence on requiring proof of actual remittance of withholding taxes to the BIR.

Compliance with RMO No. 53-98 and RR No. 2-2006 is not required for purposes of determining entitlement to refund of excess and unutilized CWTs

Lastly, the CIR argues that respondent failed to comply with the requirements of ***RMO No. 53-98*** and ***RR No. 2-2006*** and that such non-compliance necessarily makes the administrative claim for tax refund or credit pro-forma, as if no administrative claim was filed at all.

Petitioner anchors its position on the case of ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue***,[35] which states that a taxpayer / refund claimant has to "show to the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit."

Further, petitioner argues that due to respondent's non-submission of the documents, the BIR was deprived of the opportunity to study the refund claim and to fully exercise its function. Thus, according to petitioner, the court suit may be dismissed for prematurity or lack of cause of action due to failure to seek administrative relief before filing a judicial action.

Again, petitioner's argument has no merit.

It must be emphasized that ***RMO No. 53-98*** refers mainly to the requirements in the **administrative level** for claims for refund or tax credit, wherein the taxpayer is required to submit all of its pertinent documents or records for audit purposes and to establish the veracity of its claim. On the other hand, ***RR No. 2-2006*** prescribes the attachment to the tax returns of Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source ("SAWT") when a taxpayer files a claim for refund.

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[35] G.R. No. 145526, 16 March 2007.

A cursory reading of both BIR issuances shows that there is nothing which requires the submission of all the documents specified therein before a taxpayer may be entitled to a refund. Similarly, neither issuance explicitly states that failure to submit the required documents is tantamount to a non-filed claim.[36]

Specific to ***RMO No. 53-98***, the Supreme Court has already clarified, in the case of ***Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue***,[37] that the failure of a taxpayer to comply with the requirements listed in the memorandum order is not fatal to its claim for tax refund or issuance of TCC. While this case involves a claim for refund of excess and unutilized VAT, the Court finds the equal applicability of the ruling therein to refund applications for excess CWTs, thus:

> "Anent RMO No. 53-98, the CTA Division found that the said order provided a checklist of documents for the BIR to consider in granting claims for refund, and served as a guide for the courts in determining whether the taxpayer had submitted complete supporting documents.
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> x x x
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> **As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund of excess unutilized excess VAT**. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*:
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> > The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities x x x." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."
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> > Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA EB's finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents.

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[36] Philippine National Bank vs. Commissioner of Internal Revenue, G.R. Nos. 242647 & 243814, Commissioner of Internal Revenue vs. Philippine National Bank, G.R. Nos. 242842-43, 15 March 2022.

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

> in support of its application for refund or credit of its input tax at the same time.
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> As explained earlier and underlined in *Team Sual* above, **taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required.** Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.
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> Indeed, **a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT.** This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, 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."
> (Underlining included; emphasis supplied; citations omitted.)

As can be gleaned from the above, ***RMO No. 53-98*** is simply a guide to revenue officers as to what documents they may require taxpayers to present upon audit. Any non-compliance therewith should not be considered fatal to a taxpayers' refund application.

Meanwhile, ***RR No. 2-2006*** merely provides for a penalty in case of non-compliance with the information and submissions required therein, to wit:

> "**Section 5. PENALTY PROVISION.** – In accordance with the provisions of the NIRC of 1997, a person who fails to file, keep or supply a statement, list or information required herein on the date prescribed therefor shall pay, upon notice and demand by the CIR, an administrative penalty of One Thousand Pesos (P1,000) for each failure, unless it is satisfactorily shown that such failure is due to reasonable causes not due to willful neglect. For this purpose, the failure to supply the required information shall constitute a single act or omission punishable thereof. However, the aggregate amount to be imposed for all such failures during the year shall not exceed Twenty Five Thousand Pesos (P25,000).
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> In addition to the imposition of administrative penalty, willful failure by such person to keep any record and to supply the correct and accurate information at the time required therein, shall be subject to the criminal penalty under the relevant provisions of the Tax Code of 1997, upon conviction of the offender.
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> x x x"

Clearly, nothing in the regulations indicate the intention to outrightly deny a refund claim in case of non-compliance therewith.

Moreover, even assuming that the non-compliance with ***RMO No. 53-98*** and ***RR 2-2006*** would result in the failure of a claim at the administrative level, it would not necessarily result in the failure of the judicial claim, as held in the case of

Commissioner of Internal Revenue vs. Philippine Bank of Communications ("PBCOM case"),[38] which states:

> "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.
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> 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:
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> > 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 the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.
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> 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."**
> (Citations omitted; underlining included; emphasis supplied.)

The Supreme Court reiterated in the above-cited discussions the established rule that cases filed in the CTA are litigated *de novo* and that party litigants should prove every minute aspect of their case. Consequently, the determination on whether the taxpayer has presented sufficient evidence to substantiate its claim for refund or issuance of tax credit lies within the sound discretion and judgment of the Court.[39]

Further in the ***PBCOM case***, the Supreme Court clarified that the law does not require that the CIR should first act on the CWT refund claim before a court action may be filed, to wit:

> "In any event, the independence of the judicial claim for a tax credit/refund CWT from its administrative counterpart is implied in the National Internal Revenue Code (NIRC), which allows the filing of both claims contemporaneously within the two-year prescriptive period. Sections 204(C) and 229 of the NIRC provide:
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> x x x
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> The above provisions require both administrative and judicial claims to be filed within the same two-year prescriptive period. **With reference to Section 229 of the NIRC, the only requirement for a judicial claim of tax credit/refund to be maintained is that a claim of refund or credit has been filed before the CIR;**

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[38] G.R. No. 211348, 23 February 2022.
[39] Philippine National Bank vs. Commissioner of Internal Revenue, G.R. Nos. 242647 & 243814, Commissioner of Internal Revenue vs. Philippine National Bank, G.R. Nos. 242842-43, 15 March 2022.

> **there is no mention in the law that the claim before the CIR should be acted upon first before a judicial claim may be filed.**
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> Clearly, the legislative intent is to treat the judicial claim as independent and separate action from the administrative claim; provided that the latter must be filed in order for the former to be maintained. **While the CIR should be given opportunity to act on PBCOM's claim, PBCOM should not be faulted for lawfully filing a judicial claim before the expiration of the two-year prescriptive period, notwithstanding the alleged defects in its administrative claim**. This is considering that, **unlike administrative claims for Input Tax refund/credit before the CIR, which have a required specific period of action (the expiration of which shall be deemed as a denial),there is no such period of action required in administrative claims for CWT refund/credit before the CIR**."
> (Citations omitted; emphasis supplied.)

The Supreme Court thus stressed that refund claims for excess CWTs must be distinguished from those actions related to VAT. While the latter requires a specific period of action from the CIR, the same is not true for the former. Instead, the law provides a prescription of two (2) years within which both the administrative and judicial actions may be filed for excess CWT refunds. A taxpayer / refund claimant thus cannot be faulted for duly filing its judicial claim before the expiration of the two (2)-year period, regardless of whether the administrative claim was acted upon by the CIR.

In light of the foregoing, petitioner's claim that the instant judicial action must fail due to non-compliance with ***RMO No. 53-98*** and ***RR 2-2006*** is devoid of merit.

All told, the Court finds no reason to disturb the findings of the Court in Division. The denial of the Petition for Review is in order.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 16 December 2021 and the Resolution dated 23 March 2022 of the Court's First Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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