REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PILIPINAS KYOHRITSU INC., *Petitioner,*	**CTA *EB* NO. 2715** (CTA Case No. 9991)
	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: FEB 06 2024 4:30pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review (Under Rule 8, Section 1 of the Revised Rules of the Court of Tax Appeals)*[1] by petitioner Pilipinas Kyohritsu Inc. (petitioner) assailing the Decision dated May 16, 2022[2] (assailed Decision) and the Resolution dated October 10, 2022[3] (assailed Resolution) of the Court's Third Division (Court in Division) in CTA Case No. 9991, denying petitioner's claim for refund or issuance of tax credit certificate (TCC) of unutilized input value-added tax (VAT) for ₱7,874,469.66 covering the period of July 1, 2016 to September 30, 2016.

[1] *En Banc* (*EB*) Docket, pp. 1-36.
[2] *EB* Docket, pp. 68–80; Division Docket – Vol. 3, pp. 1087-1099.
[3] *EB* Docket, pp. 105–109; Division Docket – Vol. 3, 1127-1131.

The dispositive portion of the assailed Decision and the assailed Resolution reads:

Assailed Decision dated May 16, 2022:

> **WHEREFORE**, in light of the foregoing considerations, the present Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Assailed Resolution dated October 10, 2022:

> **WHEREFORE**, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated May 16, 2022) is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE PARTIES

Petitioner is a domestic corporation registered with the Bureau of Internal Revenue (BIR) as a VAT-registered taxpayer, under Tax Identification Number (TIN) 000-269-082-00000, with address at Km. 75 Laurel Highway, Inosloban, Lipa City, Batangas.[4]

Respondent is the Commissioner of Internal Revenue (CIR), who was duly appointed and is empowered to perform the duties of his office, including the power to deny tax refunds under the National Internal Revenue Code (NIRC) of 1997, as amended, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

THE FACTS

On September 18, 2018, petitioner filed an administrative claim for a refund or credit[6] of its unutilized input VAT attributable to effectively zero-rated sales amounting to ₱13,391,857.11, for the period July 1, 2016 to September 30, 2016, under Section 112 (A) of the NIRC of 1997, as amended. Petitioner attached therewith its Application for Tax Credits/Refund (BIR Form No. 1914).[7]

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[4] Par. 2, II. The Parties, *Petition for Review* (Petition), *EB* Docket, pp. 1-2.
[5] Par. 5, *id.*, p. 2.
[6] Exhibit "P-2", Division Docket – Vol. 2, pp. 716-718.
[7] Exhibit "P-3", Division Docket – Vol. 2, p. 720.

On December 3, 2018, petitioner received a copy of VAT Refund Notice[8] dated November 15, 2018 issued by Assistant Commissioner of Assessment Service, Ms. Erlinda A. Simple, partially granting petitioner's claim for refund in the total amount of ₱3,386,009.79, out of which, ₱1,036,955.91 and ₱2,349,053.88, represent input taxes on local purchases and importation, respectively.

On December 21, 2018, petitioner filed a Petition for Review[9] praying for the refund of the portion of the disallowed amount of ₱7,874,469.66, which pertains to the assets written off in the books of petitioner that respondent considered as transactions deemed sale subject to output VAT.

On January 15, 2019, respondent filed his *Answer,*[10] interposing the following special and affirmative defenses:

(a) that the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund;

(b) that since respondent rendered a Decision in the administrative level, the Court's jurisdiction becomes strictly appellate in nature;

(c) that since respondent rendered a decision, the jurisdiction of the Court shifts from a trial court to an appellate tribunal;

(d) that the Court should confine itself to whether the findings of respondent are consistent with law;

(e) that since the instant case is a judicial review, it is *trial de novo* in the sense that litigants must present anew their evidence in accordance with the Rules of Court;

(f) that a Decision has been rendered in this case denying petitioner's administrative claim for refund for failure to substantiate the same, petitioner cannot submit documents it did not submit at the administrative level;

(g) that petitioner is not entitled to refund in the amount of ₱7,874,469.66; and

(h) that taxes paid and collected by the Bureau of Internal Revenue (BIR) are presumed to have been made in accordance with law, rules, and regulations, and the burden to prove otherwise is upon petitioner.

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[8] Exhibit "P–4", *id.*, pp. 722-723; Exhibit "R-1", BIR Records, pp. 575-576.
[9] Division Docket – Vol. 1, pp. 10-25.
[10] *Id.*, pp. 37-44.

On January 17, 2019, respondent transmitted the BIR Records of this case.[11]

Respondent's Pre-Trial Brief was filed on February 7, 2019,[12] while petitioner's *Pre-Trial Brief* was submitted on April 26, 2019.[13] The Pre-Trial Conference was set and held on May 2, 2019.[14]

On May 10, 2019, the parties presented their *Joint Stipulation of Facts and Issues*,[15] which was admitted and approved in the Resolution[16] dated May 16, 2019. The Court in Division issued the Pre-Trial Order[17] on June 17, 2019.

Trial then ensued.

During the trial, petitioner offered the testimonies of (1) its Manager of the Finance and Management Accounting Department, Ms. Edna Luisa Lopez,[18] and (2) its Assistant Manager of the Management Accounting Section, Ms. Evelyn Ocampo.[19]

Petitioner filed its *Formal Offer of Evidence* on November 25, 2019,[20] to which respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on November 28, 2019.[21]

The Court in Division admitted Exhibits "P-30", "P-30.1", "P-31", and "P-31-1" but denied the admission of the rest of petitioner's exhibits for failure to submit the duly marked exhibits.[22]

On February 17, 2020, petitioner filed its *Motion for Reconsideration with Motion to Admit Exhibits Marked*[23] without respondent's comment.[24]

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[11] *Id.*, pp. 46-48.
[12] *Id.*, pp. 53-56.
[13] *Id.*, pp. 376-382.
[14] Notice of Pre-Trial Conference dated January 18, 2019, Division Docket – Vol. 1, pp. 51-52; Minutes of the hearing held on and Order dated May 2, 2019, Division Docket – Vol. 1, pp. 385 and 387-388.
[15] Division Docket – Vol. 1, pp. 389-395.
[16] *Id.*, p. 397.
[17] *Id.*, pp. 414 to 420.
[18] Exhibit "P-30", Division Docket – Vol. 1, pp. 73-96; Minutes of the hearing held on, and Order dated, July 25, 2019, Division Docket – Vol. 1, pp. 443-444.
[19] Exhibit "P-31", Division Docket – Vol. 2, pp. 453-465; Minutes of the hearing held on, and Order dated, November 14, 2019, Division Docket – Vol. 2, pp. 681-683.
[20] Division Docket – Vol. 2, pp. 684 to 692.
[21] *Id.*, pp. 695 to 697.
[22] Resolution dated January 28, 2020, Division Docket – Vol. 2, pp. 702-705.
[23] Division Docket – Vol. 2, pp. 706-712.
[24] Records Verification Report dated June 17, 2020, Division Docket – Vol. 3, p. 1007.

In the Resolution dated July 16, 2020,[25] the Court in Division granted petitioner's *Motion for Partial Reconsideration with Motion to Admit Exhibits Marked* and admitted all the previously denied exhibits.

On March 10, 2021, respondent presented his witness, Revenue Officer Orlando B. Torre.[26] Thereafter, respondent's counsel orally presented his Formal Offer of Evidence. The Court in Division admitted all his exhibits.[27]

On April 26, 2021, the *Memorandum (for Petitioner Pilipinas Kyohritsu, Inc.)*[28] was posted, while respondent's *Memorandum*[29] was filed on June 7, 2021.

On May 16, 2022, the Court in Division promulgated the assailed Decision[30] denying petitioner's claim for refund due to its failure to prove that it has complied with the invoicing requirements under the NIRC of 1997, as amended, and other appropriate regulations.

On June 8, 2022, petitioner filed a *Motion for Reconsideration (Re: Decision dated May 16, 2022)*[31] without respondent's comment as per the Records Verification Report dated August 16, 2022.[32]

On October 10, 2022, the Court in Division issued the assailed Resolution denying petitioner's *Motion for Reconsideration (Re: Decision dated May 16, 2022).*[33]

On November 23, 2022, petitioner filed the present *Petition for Review.*[34]

On January 24, 2023, the Court *En Banc* issued a Resolution [35] directing respondent to file a comment to petitioner's *Petition for Review* within ten (10) days from receipt of the said Resolution.

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[25] Division Docket – Vol. 3, pp. 1009-1011.
[26] Exhibit "R-3", Division Docket – Vol. 1, pp. 63-67; Minutes of the hearing held on and Order dated, March 10, 2021, Division Docket – Vol. 3, pp. 1019-1021.
[27] Minutes of the hearing held on and Order dated, March 10, 2021, Division Docket – Vol. 3, pp. 1019-1021.
[28] Division Docket – Vol. 3, pp. 1048-1070.
[29] *Id.*, pp. 1074-1080.
[30] *Supra*, note 2.
[31] Division Docket – Vol. 3, pp. 1101-1122.
[32] *Id.*, p. 1125.
[33] *Supra*, note 3.
[34] *Supra*, note 1.
[35] *EB* Docket, pp. 269-270.

On February 3, 2023, respondent filed his *Comment (Re: Petition for Review)*.[36]

On March 8, 2023, the case was submitted for decision.[37]

THE ISSUES

Petitioner assigns the following errors[38] for the Court *En Banc*'s resolution:

I. WHETHER OR NOT THE CTA THIRD DIVISION ERRED IN HOLDING THAT THE ASSETS WRITTEN OFF IN THE BOOKS OF THE PETITIONER ARE TRANSACTIONS DEEMED SALE SUBJECT TO OUTPUT VAT.

II. WHETHER OR NOT THE CTA THIRD DIVISION ERRED IN RULING ON AN ISSUE NOT PLEADED BEFORE IT.

Petitioner's arguments

Petitioner argues that the Court in Division misappreciated the evidence when it held that petitioner failed to prove that it has complied with the invoicing requirements under the NIRC of 1997, as amended, and other appropriate regulations. The sets of evidence formally offered by petitioner prove that entries related to the fixed assets are not considered transactions deemed sale.

Petitioner argues that the Court in Division could not rule upon whether or not petitioner could substantiate its claim through documentary evidence because the said issue is not pleaded before it. Instead, the issue is whether respondent erred in imposing output VAT and considered as deemed sale the assets written-off in the books of petitioner.

Respondent's arguments

Respondent differs from petitioner's claim that it presented sufficient evidence to establish that it is entitled to the refund sought by echoing the assailed Decision, saying that the cases filed with this Court are litigated *de novo*. Hence, petitioner must substantiate its administrative claim for a

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[36] *Id.*, pp. 271-275.
[37] Resolution, *EB* Docket, pp. 278-279.
[38] *Supra*, note 1, p. 10.

refund as it is incumbent upon petitioner to prove that it is entitled to the refund sought as refunds are construed strictly against the claimant. In this case, petitioner failed to discharge its burden of establishing its claim for a tax refund or credit.

THE COURT *EN BANC*'S RULING

The Court En Banc has jurisdiction over the instant Petition for Review.

On November 8, 2022,[39] petitioner received a copy of the assailed Resolution denying its *Motion for Reconsideration (Re: Decision dated May 16, 2022).*

Under Section 3(b), Rule 8[40] of the Revised Rules of the Court of Tax Appeals (RRCTA), petitioner had fifteen (15) days from receipt of the assailed Resolution on November 8, 2022, or until November 23, 2022, to file a petition for review with the Court *En Banc.*

On November 23, 2022, petitioner *timely* filed its *Petition for Review.*[41] As such, the Court *En Banc* has jurisdiction to take cognizance of this case under Section 2(a)(1), Rule 4[42] of the RRCTA.

We now discuss the merits.

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[39] Notice of Resolution, Division Docket – Vol. 3, p. 1126.

[40] SEC. 3. *Who may appeal; period to file petition.* – ... (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.

[41] *Supra*, note 1.

[42] 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.

The Court in Division did not err in ruling that the assets written off in the books of petitioner are transactions deemed sale subject to output VAT.

Record reveals that the BIR disallowed the amount of ₱7,874,469.66 as part of petitioner's refundable amount as it found that petitioner is liable for output VAT on the assets written-off of the same amount.

Petitioner claims that it simply made correcting and adjusting entries in its books to correct the amount of its Property, Plant, and Equipment (PPE). No sale, barter, importation, lease, or exchange of property was made. It avers that no actual transaction was made and no transfer or change of ownership or possession of petitioner's PPE. It asserts that the PPE were not withdrawn from its business for the personal use of its owners/shareholders. Just plain and simple reclassification, adjustment, and correction of entries were made due to missing items and wrong account classification; thus, these could not be considered transactions deemed sale.

The Court *En Banc* is not convinced.

After a painstaking review of the case records, the Court *En Banc* finds that the documents presented by petitioner before the Court in Division, such as the Journal Vouchers, Fixed Asset schedules, and KIAN Forms (Request for Decision), as well as the Judicial Affidavits of petitioner's witnesses, Ms. Edna Luiza Lopez[43] and Ms. Evelyn Ocampo,[44] merely establish the authorization and/or approval of the entries corresponding to the write-off from, and adjustment to, the PPE account. Said documentary evidence are inadequate to prove the actual nature of the transactions underlying the write-offs in petitioner's PPE account. More importantly, the same do not prove that the underlying reason for the write-off and adjustment was due to lost or missing inventory of PPE. At best, the Court *En Banc* finds the documents presented by petitioner to be self-serving and insufficient.

[43] Exhibit "P-30", Division Docket – Vol. 1, pp. 73 to 95.
[44] Exhibit "P-31", Division Docket – Vol. 2, pp. 453 to 464.

The Court in Division did not err in ruling on an issue not pleaded before it.

Petitioner asserts that the only issue brought before the Court in Division is whether respondent correctly denied petitioner's claim for refund/credit solely because the reclassification, adjustment, and write-off of fixed assets from its books are considered transactions deemed sale.

On the contrary, the parties stipulated the following issues:

> 1. Whether or not petitioner is entitled to an additional refund of its unutilized and/or unused input VAT in the total amount of ₱7,874,469.66 covering the period of July 1, 2016 to September 30, 2016.
>
> 2. Whether or not the decision of the Commissioner of Internal Revenue dated November 15, 2018 is correct based on the documents submitted by the petitioner to the respondent.[45]

We agree with the Court in Division that the issue of determining whether petitioner is entitled to its claim for refund based on the documents submitted to respondent was explicitly included in the stipulated issues.[46]

The Court *En Banc* also notes that petitioner even failed to present the documents it submitted to respondent before the Court in Division,[47] which are essential to resolve the second stipulated issue of whether the CIR's decision dated November 15, 2018 is correct based on the documents submitted by petitioner to respondent.

Nonetheless, under Section 1, Rule 14[48] of the RRCTA,[49] the CTA, whether sitting in Division or *En Banc*, is not precluded from ruling on issues not raised that are necessary for an orderly disposition of the case.

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[45] *Supra*, note 15. II. Issues, *Joint Stipulation of Facts and Issues*, Division Docket – Vol. 1, p. 390.
[46] Resolution dated October 10, 2022, *EB* Docket, p. 107.
[47] Exhibit "P-2", Division Docket – Vol. 2, p. 716.
[48] SEC. 1. *Rendition of judgment.* — ...
In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
[49] *Republic v. First Gas Power Corporation*, G.R. No. 214933, February 15, 2022, citing *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

Citing the aforesaid provision of the RRCTA, the Supreme Court, in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[50] affirmed the authority of the CTA to rule on an issue that the parties did not explicitly raise:

> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
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> > SECTION 1. *Rendition of judgment.* - xxx In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.

Thus, the Court in Division did not err in ruling that petitioner failed to submit all supporting documents that would prove whether the claimed amount of ₱7,874,469.66 alleged to be unutilized and/or unused input VAT could be refunded as it is crucial for the determination of the propriety of its claim.

Petitioner failed to comply with the requisites for the refund or issuance of a tax credit certificate of input VAT.

Petitioner's claim for refund or credit is grounded on Section 112 (A) and (C) of the NIRC of 1997, as amended by RA No. 10963, which read as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the

[50] G.R. No. 183408, July 12, 2017.

> issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> ... ...
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> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Based on the foregoing provision, jurisprudence has laid down specific requisites the taxpayer-applicant must comply with to successfully obtain a refund or credit of input VAT. Said requisites may be classified into distinct categories as follows:

> *As to the timeliness of the filing of the administrative and judicial claims:*
>
> 1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[51]

[51] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25,

2. 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 must be filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;

Concerning the taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person;[52]

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[53]

5. For zero-rated sales under Sections 106(A)(2)(a)(1),(2) and (b); and 108(B)(1) and (2) of the NIRC of 1997, as amended, the payments for the sales must have been made in acceptable foreign currency duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations;[54]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional;[55]

7. The input taxes are due or paid;[56]

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 based on sales volume;[57] and

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[58]

2009; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[52] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue, supra*; and *AT&T Communications Services Philippines, Inc., supra.*

[53] *Id.*

[54] Par. 2, Sec. 4.112-1. (a) of RR No. 16-2005, as further amended by RR No. 13-2018.

[55] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue, supra*; and *AT&T Communications Services Philippines, Inc., supra.*

[56] *Id.*

[57] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, supra*; and *San Roque Power Corporation v. Commissioner of Internal Revenue, supra.*

[58] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, supra*; and *San Roque Power Corporation v. Commissioner of Internal Revenue, supra.*

The Court in Division found that petitioner was able to comply with the *first* and *second* requisites (timely filing of the administrative and judicial claims), *third* requisite (VAT-registered taxpayer), and *sixth* requisite (input VAT claimed are not transitional input taxes) but failed to satisfy the *fourth* and *fifth* (zero-rating of its sales and equivalent foreign currency proceeds), *seventh* (payment of input VAT), *eighth* (attributability to zero-rated sales of input VAT claimed), and *ninth* (non-application of the input VAT against the output taxes in the succeeding quarters) requisites for absence of evidence proving the same.

To prove its entitlement to the alleged unutilized and/or unused input VAT, petitioner offered as evidence the following:

1. BIR Certificate of Registration;[59]
2. Letter Application for VAT Refund;[60]
3. Application for Tax Credits/Refunds (BIR Form No. 1914);[61]
4. BIR VAT Refund Notice;[62]
5. Audited Financial Statement for the year ending March 31, 2017;[63]
6. KIAN Form (Request for Decision), [64] Secretary's Certificate;[65]
7. Journal Vouchers;[66]
8. Fixed Asset Schedules;[67] and
9. Systems Procedure.[68]

None of the above evidence proves that petitioner is engaged in zero-rated or effectively zero-rated sales; that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; that the input taxes are due or paid; that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; and that the input taxes were not carried over and not utilized in the succeeding quarters.

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[59] Exhibit "P-1", Division Docket – Vol. 2, pp. 713-714.
[60] Exhibit "P-2", Division Docket – Vol. 2, pp. 716-718.
[61] Exhibit "P-3", Division Docket – Vol. 2, p. 720.
[62] Exhibit "P-4", Division Docket – Vol. 2, pp. 722-723.
[63] Exhibit "P-5", Division Docket – Vol. 2, pp. 725-777.
[64] Exhibits "P-6", "P-7" & "P-8", Division Docket – Vol. 2, pp. 778, 780 & 783, respectively.
[65] Exhibit "P-9", Division Docket – Vol. 2, pp. 785-786
[66] Exhibits "P-10" & "P-16", Division Docket – Vol. 2, pp. 787 & 817, respectively.
[67] Exhibits "P-11" to "P-15" & "P-18" to "P-29", Division Docket – Vol. 2, pp. 789-815 & Division Docket – Vol. 3, pp. 848-1004, respectively.
[68] Exhibit "P-17", Division Docket – Vol. 3, pp. 821-824.

In *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*, [69] the Supreme Court explained the nature of a judicial claim as follows:

> ... First, **a judicial claim for refund or tax credit** in the CTA **is** by no means an original action but rather **an *appeal* by way of petition for review of a previous, unsuccessful administrative claim.** Therefore, **as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims.** In this case, **it was necessary for petitioner to show the CTA** not only that it was entitled under substantive law to the grant of its claims but also **that it satisfied <u>all</u> the documentary and evidentiary requirements for an administrative claim for refund or tax credit**. Second, cases filed in the CTA are litigated *de novo*. Thus, **a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA**. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, **part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim**. [*Emphasis supplied*]

A judicial claim for a refund or tax credit requires that petitioner satisfies *all* the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. Petitioner must not only prove that it is a VAT-registered entity and that it filed its claims within the prescriptive period but must also *substantiate* the input VAT paid by purchase invoices or official receipts[70] and the non-application of its input VAT claimed against its output taxes in the succeeding quarters.

Thus, the Court *En Banc* concurs with the findings of the Court in Division that petitioner failed to substantiate its claim for refund of the unutilized and/or unused input VAT as it did not submit any evidence proving the requisites for valid refund/credit of unutilized input VAT.

In arriving at this conclusion, the Court *En Banc* is guided by the ruling in *Commissioner of Internal Revenue v. Manila Mining Corporation:*[71]

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[69] G.R. No. 145526, March 16, 2007.
[70] *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[71] *Supra*, Note 70.

Under Section 8 of 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.

This Court thus notes with approval the following findings of the CTA:

> ... What is being claimed in the instant petition is the refund of the input taxes paid by the herein petitioner on its purchase of goods and services. Hence, it is necessary for the Petitioner to show proof that it had indeed paid the said input taxes during the year 1991. In the case at bar, Petitioner failed to discharge this duty. It did not adduce in evidence the sales invoice, receipts or other documents showing the input value added tax on the purchase of goods and services.
>
> ... ...
>
> Section 8 of Republic Act 1125 (An Act Creating the Court of Tax Appeals) provides categorically that **the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (trial *de novo*) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.** [*Emphasis in the original*]

Since cases brought before the CTA are litigated *de novo*, the party litigants must prove every *minute* aspect of their case[72] to the satisfaction of the Court, regardless of the documentary evidence submitted before the administrative body. It behooves petitioner to comply with the foregoing requisites, and the absence of *any* requisite is a valid ground to deny the claim for refund or credit.

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[72] *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon v. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

The foregoing ruling was reiterated in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* (*Total Gas*):[73]

> **... When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It**, thus, **becomes imperative for the taxpayer to show the CTA** that not only is he entitled under substantive law to his claim for refund or tax credit, but also **that he satisfied *all* the documentary and evidentiary requirements for an administrative claim.** It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA. [*Emphasis supplied*]

To repeat, petitioner must prove entitlement to its claim and comply with all the documentary and evidentiary requirements,[74] such as VAT invoicing requirements under the Tax Code and its implementing rules and regulations.[75]

All told, petitioner failed to establish the factual basis for its claim for refund or credit before the Court in Division; hence, the Court *En Banc* is left with no recourse but to sustain the Court in Division's denial of petitioner's claim.

WHEREFORE, premises considered, the instant *Petition for Review* is **DENIED** for lack of merit.

Accordingly, the Decision dated May 16, 2022, and the Resolution dated October 10, 2022, of the Court's Third Division in CTA Case No. 9991 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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[73] G.R. No. 207112, December 8, 2015.
[74] *Philippine Gold Processing and Refining Corp. v. Commissioner of Internal Revenue*, G.R. No. 222904 (Notice), July 15, 2020, citing *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015, citing *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[75] *Id.*

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With Concurring and Dissenting Opinion)
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

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 writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PILIPINAS KYOHRITSU INC., Petitioner,	**CTA EB NO. 2715** (CTA Case No. 9991)
	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: FEB 06 2024 4:30 pm

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur in the denial of the present Petition for Review for lack of merit. However, I wish to clarify the bases for the denial of the present Petition for Review filed by Pilipinas Kyohritsu Inc. (**petitioner/PKI**) against respondent Commissioner of Internal Revenue (**respondent/CIR**). Specifically, the grounds mentioned in the *ponencia* are: (1) the assets written-off in petitioner's books amounting to **₱7,874,469.66** are 'transactions deemed sale' subject to output value-added tax (**VAT**); and, (2) petitioner failed to comply with the requisites for a refund or issuance of a tax credit certificate (**TCC**) of unutilized input VAT for the said amount deemed sale.

For the reasons essayed below, I humbly offer a slightly different view on two (2) key points. *Firstly*, I agree that petitioner failed to present sufficient

proof of the actual nature of the transactions underlying the write-offs in petitioner's Property, Plant and Equipment (**PPE**) account. To clarify this finding further, it should be emphasized that the pieces of evidence presented and admitted by the Court in Division do not fully substantiate the disallowed amount. This lack of substantiation casts doubt on the validity of the write-off itself and renders such evidence essentially self-serving. Given these circumstances, it is understandable why respondent is justified in disallowing the portion of the refund claim related to these written-off fixed assets on the ground that these should instead be treated as 'transactions deemed sale' subject to output VAT.

Secondly, with all due respect, notwithstanding the fact that petitioner failed to substantiate the aforesaid written-off fixed assets, I submit that petitioner should no longer be required to demonstrate compliance with the remaining requisites for a refund or issuance of a TCC, *i.e., fourth*[1], *fifth*[2], *seventh*[3], *eight*[4], and *ninth*[5], presumably established at the administrative level when respondent **partially granted** petitioner's refund claim amounting to **₱3,386,009.79**.

My stance on the second point is supported by reasons stated below, in *seriatim*.

As regards the appreciation of evidence on the subject written-off fixed assets, I note that the Court *En Banc*'s finding that the pieces of evidence offered by petitioner, such as the Journal Vouchers, Fixed Asset schedules and KIAN Forms (Request for Decision), as well as the Judicial Affidavits of petitioner's witnesses, Edna Luisa D. Lopez (**Lopez**) and Evelyn Ocampo (**Ocampo**), merely establish the authorization and/or approval of the entries corresponding to the write-off from and adjustment to petitioner's PPE account for various reasons (allegedly due to change in policy, inventory variance and correction of the lapsing schedule), such pieces of evidence offered to substantiate such adjustments are **incomplete**.

It is worth noting that petitioner did not provide a detailed breakdown of the derecognized items of PPE, the total cost of which should be **$10,088,983.00**, as indicated in the rollforward analysis of the PPE account

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1 The taxpayer is engaged in zero-rated or effectively zero-rated sales.

2 For zero-rated sales under Section 106(A)(2)(a)(1),(2) and (b) and 108(B)(1) and (2) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, the payments for the sales must have been made in acceptable foreign currency duly accounted for in accordance with the Bangko Sentral ng Pilipinas (**BSP**) rules and regulations.

3 The input taxes are due or paid.

4 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 based on sales volume.

5 The input taxes have not been applied against output taxes during and in the succeeding quarters.

under Note 10[6] of petitioner's Audited Financial Statements (**AFS**) for the fiscal year (**FY**) ended 31 March 2017.

While petitioner submitted various Fixed Assets Schedules as of 31 July 2016[7], detailing the PPE items grouped according to sub-types (such as 'Plant Machinery & Equipment', 'Tools, Acc & Other Equipment' and 'Office Machine & Equipment', among others) and classified further based on the reason for derecognition (such as 'Disposed/Not Found', 'Unit Price is ₱50,000.00 and Below', among others), the total dollar cost of these items amounted to only $7,778,898.30[8]. Consequently, there is a difference of $2,310,084.70 remaining unaccounted for after deducting the cost of written-off fixed assets, which was $10,088,983.00.

Given the aforementioned discrepancy, the Court cannot conclusively determine whether the assets listed in the said Fixed Assets Schedules correspond to those that were derecognized for being no longer in use or already lost, as referred to in petitioner's AFS for FY ended 31 March 2017 — which encompasses the period of claim from 31 July 2016 to 30 September 2016. Understandably so, since the write-offs in question were not reconciled with the pertinent AFS disclosure, respondent correctly disallowed the related input VAT amounting to ₱7,874,469.66, computed as follows:

Respondent's Computation of the Disallowed Input VAT	**Amount**
Total Cost of PPE Written-Off	$10,088,983.00
Less: Accumulated Depreciation of PPE Written-Off	8,728,407.00

6 Exhibit "P-5". Division Docket. Volume II. p. 759.
7 Exhibits "P-11" to "P-15 and "P-18" to "P-29". id.. Volumes II and III. pp. 789-816 and 846-1004. respectively.
8

Exhibit No.	Description	Total Cost in USD	Docket Reference
"P-11"	Fixed Asset Schedule No. 3301	$90.162.77	Volume II. pp. 789-792.
"P-12"	Fixed Asset Schedule No. 3311	2.859.120.54	Id.. pp. 793-801.
"P-13"	Fixed Asset Schedule No. 3313	515.700.83	Id.. pp. 802-809.
"P-14"	Fixed Asset Schedule No. 3503	87.936.82	Id.. pp. 810-813.
"P-15"	Fixed Asset Schedule No. 3513	350.355.41	Id.. pp. 814-816.
"P-18"	Fixed Asset Schedule No. 3207	1.906.18	Volume III. pp. 846-847.
"P-19"	Fixed Asset Schedule No. 3301	287.911.73	Id.. pp. 848-864.
"P-20"	Fixed Asset Schedule No. 3303	223.438.27	Id.. pp. 865-909.
"P-21"	Fixed Asset Schedule No. 3311	609.112.79	Id.. pp. 910-917.
"P-22"	Fixed Asset Schedule No. 3313	504.824.39	Id.. pp. 918-956.
"P-23"	Fixed Asset Schedule No. 3503	150.999.10	Id.. pp. 957-963.
"P-24"	Fixed Asset Schedule No. 3507	2.013.88	Id.. pp. 964-965.
"P-25"	Fixed Asset Schedule No. 3513	47.663.26	Id.. pp. 966-968.
"P-26"	Fixed Asset Schedule No. 3601	1.527.336.27	Id.. pp. 969-984.
"P-27"	Fixed Asset Schedule No. 3603	177.233.54	Id.. pp. 985-998.
"P-28"	Fixed Asset Schedule No. 3611	262.959.19	Id.. pp. 999-1000.
"P-29"	Fixed Asset Schedule No. 3701	80.223.33	Id.. pp. 1001-1004.
Total		**$7,778,898.30**	

Respondent's Computation of the Disallowed Input VAT		**Amount**
Net Book Value of PPE Written-Off		$1,360,576.00
Multiplied by:		
Total Assets *per* AFS in PHP	₱2,823,648,001.00	
Divided by Total Export Sales in USD	$58,540,952.00	
Average Conversion Rate *per* USD		₱48.23
Amount Deemed Sale in PHP		₱65,620,580.48
Multiplied by VAT rate		12%
Disallowed Input VAT		**₱7,874,469.66**

Again, to prove the actual nature of the transactions underlying the write-offs in question, petitioner should have provided a detailed breakdown of the $10,088,983.00 cost of the written-off fixed assets. This breakdown ought to identify specifically which PPE items were derecognized. It should classify these items according to the basis for derecognition — be it a change in policy, inventory variance, or corrections in the lapsing schedule. Additionally, these items need to be segregated based on the relevant taxable periods, which includes the period of claim from 31 July 2016 to 30 September 2016 that likewise falls within the FY ended 31 March 2017. Petitioner is required to account for all such written-off fixed assets disclosed in petitioner's AFS. Only then can it demonstrate that these cost items were properly written-off for the alleged reasons and reflected as adjustments in petitioner's books, following the authorization and/or approval of petitioner's responsible officers.

Regrettably, petitioner's approach in this case focused on proving the existence of adjusting entries made to update the PPE account for alleged missing fixed assets and those reclassified following company policy to expense outright items acquired at the cost of ₱50,000.00 and below, along with the corresponding authorizations. However, this was done without first reconciling such adjusting entries with the written-off fixed assets disclosed in petitioner's AFS for the FY ended 31 March 2017.

Having determined that petitioner failed to substantiate the transactions underlying the write-offs of fixed assets in question, respondent is thus justified in treating the same as 'transactions deemed sale' subject to output VAT pursuant to Section 106(B)(1)[9] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

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[9] **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* —
...
(B) *Transactions Deemed Sale.* — The following transactions shall be deemed sale:
(1) Transfer. **use or consumption not in the course of business of goods or properties originally intended** for sale or **for use in the course of business**[.] (Emphasis and underscoring supplied)

In *San Roque Power Corp. v. Commissioner of Internal Revenue*[10], the Supreme Court ruled that Section 106(B) of the NIRC of 1997, as amended, does not limit the term "sale" to commercial sales, rather it extends the term to transactions that are "deemed" sale. Given that the lack of substantiation could imply that the write-offs in question were done to conceal a transfer or disposal of assets, to my mind, treating them as 'transactions deemed sale' subject to output VAT is justified under the circumstances.

Furthermore, **I humbly submit that the discussion in the *ponencia* should have concluded at this point, or at least confined itself to discussing why the lack of substantiation casts doubt on the validity of the write-off itself. This is because, in filing a Petition for Review before the Court in Division, petitioner is simply questioning the propriety of the disallowance made by respondent regarding the written-off fixed assets deemed sale. The question is not whether petitioner has met all the requisites for the grant of a refund or issuance of a TCC. It is presumed, if not undisputed, that petitioner has already met these requisites, as evidenced by respondent's partial grant of a refund amounting to ₱3,386,009.79. Clearly, petitioner's compliance with the requisites for a refund is not the issue in this case and, as such, does *not* require re-examination for resolution.**

Notwithstanding the foregoing, the *ponencia* upheld the Court in Division's finding that petitioner was only able to comply with the *first*[11], *second*[12], *third*[13] and *sixth*[14] requisites to successfully obtain a refund or credit of input VAT and that it failed to satisfy the *fourth*[15], *fifth*[16], *seventh*[17], *eight*[18], and *ninth*[19] requisites, as no evidence was submitted to prove the same. In reaching this conclusion, the *ponencia* cited the established rule that cases before the Court in Division are litigated *de novo*. Therefore, it behooves petitioner to prove every minute aspect of its case to the Court's satisfaction, regardless of the documentary evidence previously submitted at the administrative level. The absence of proof for any of these requisites is a valid ground to deny the claim. Accordingly, it concluded that petitioner's refund claim related to the disallowed input VAT for the written-off fixed assets deemed sale must be denied.

---

10 G.R. No. 180345, 25 November 2009.
11 The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made.
12 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 must be filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period.
13 The taxpayer is a VAT-registered person.
14 The input taxes are not transitional.
15 Supra at note 1.
16 Supra at note 2.
17 Supra at note 3.
18 Supra at note 4.
19 Supra at note 5.

I, respectfully, beg to differ.

Assuming for the sake of argument that petitioner has sufficiently proven the actual nature of the transactions underlying the write-offs in its PPE account, **it is my humble opinion that it need not *again* substantiate the input VAT components that were reduced or charged against as a result of the disallowance on written-off fixed assets deemed sale amounting to ₱7,874,469.66 *considering that the same had already been found by respondent to be properly substantiated and compliant with the invoicing requirements* under Section 113(A)[20] of the National Internal Revenue Code (NIRC) of 1997, as amended, *as can be gleaned from the VAT Refund Notice* dated 15 November 2018[21] (respondent's decision), which is respondent's decision on petitioner's administrative claim for refund and the subject of the present appeal.**

Firstly, in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[22], the Supreme Court stated:

> ...
>
> ... If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim.**

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20 **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);
(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:
(a) The amount of the tax shall be known as a separate item in the invoice or receipt;
(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
(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.
(d) If the sale involves 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.

21 Exhibit "P-4", Division Docket, Volume II, pp. 722 - 723; Exhibit "R-1", BIR Records, pp. 575-576.

22 G.R. No. 207112, 08 December 2015.

> It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that **its administrative claim should have been granted in the first place**. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.[23]
>
> ...

Clearly from the foregoing, in the case of an appeal from an unsuccessful administrative claim, it is incumbent upon the taxpayer to convince this Court that the CIR had no reason to deny its claim. On this score, I submit that petitioner has done so in the instant case, as demonstrated clearly in its own allegations in its Petition for Review[24] filed before the Court *En Banc*, to wit:

> ...
>
> 28. It must be emphasized at the outset that Petitioner accepts the following disallowed items by Respondent and their corresponding amounts, to wit:

Description	Amount
Disallowed input VAT per Vouching	₱113,784.40
Disallowed input VAT per ITS	11,603.44
Deferred input VAT on capital goods	199,151.80
Output VAT on interest income	20,517.53
Output VAT from reimbursed expenses	890,065.88
Withholding VAT on royalty fees paid to parent	816,725.15
Input tax allocable to unsupported export proceeds	334.92
Additional Deferred Input VAT	2,176.75
Disallowed input VAT per Vouching	49,796.32
Allocable input VAT to non-substantiated export sales	27,221.47
TOTAL	**₱2,131,377.66**

> 29. However, **Petitioner does not agree and vehemently takes exception to the Respondent's findings making Petitioner liable for an Output VAT of ₱7,874,469.66 on transactions deemed sale, and deducted the same from Petitioner's refundable/unused input VAT.**
>
> ...
>
> 33. Given the foregoing, the issue clearly lies with whether the transactions should be deemed sales, and thus, are deductible from Petitioner's refundable/unused input VAT.[25]
>
> ...

---

23 Emphasis supplied.
24 *Rollo*, pp. 1-36.
25 Emphasis and underscoring supplied.

As shown from the allegations in petitioner's own Petition for Review, **it only particularly challenges the propriety of respondent's disallowance of the written-off fixed assets deemed sale**. To this end, petitioner has confined its arguments **only** to such disallowed item amounting to ₱7,874,469.66 and accepted the rest of the disallowed items totalling ₱2,131,377.66, as detailed in respondent's decision.

Additionally, it can be deduced from respondent's allegations in his or her Answer that petitioner has complied with the requisites for the grant of a refund of input VAT on local purchases and importations attributable to zero-rated or effectively zero-rated sales to the extent of ₱3,386,009.79, *viz*:

> ...
>
> 13. As stated in respondent's **VAT Refund Notice dated 15 November 2018**, addressed to Edna Luisa D. Lopez, Manager-Finance of Pilipinas Kyoritsu, Inc., the processing of the application for refund under Tax Verification Notice (TVN) No. 2018-00024330 dated 18 September 2018, **the total amount of input tax allowable for VAT refund on local purchases and importations is ₱3,386,009.79**[.][26]
>
> ...

Given that respondent, in rendering his or her decision, has already been convinced of petitioner's compliance with the requisites to successfully obtain a refund or credit of input VAT, it follows that petitioner need not reassert this fact before this Court all the more so that compliance with such requisites are not mere allegations but already corroborated by respondent's allowance of the same in the decision appealed from.

Relevantly, as explained in the old case of *Emilio V. Reyes v. Apolonio R. Diaz*[27] (**Reyes**), jurisdiction over the issue should be distinguished from jurisdiction over the subject matter, the latter being conferred by law and the former by the pleadings. Jurisdiction over the issue, unlike jurisdiction over the subject matter, may be conferred by consent either express or implied of the parties. Although an issue is not duly pleaded it may validly be tried and decided if no timely objection is made thereto by the parties. This cannot be done when jurisdiction over the subject matter is involved. In truth, jurisdiction over the issue is an expression of a principle that is involved in jurisdiction over the persons of the parties.

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26 Emphasis supplied.

27 G.R. No. 48754, 26 November 1941.

Applying the aforementioned doctrine in *Reyes* to this case, the Court in Division lacks jurisdiction to rule on petitioner's compliance with the requisites for obtaining a refund or credit of input VAT, as this issue was not raised in the parties' pleadings.

Secondly, **in reviewing administrative decisions, the reviewing court cannot re-examine or weigh once more the factual basis and sufficiency of the evidence submitted before the administrative body and substitute its own judgment for that of said body.[28] The general rule is that, courts will not disturb on appeal the factual findings of administrative agencies acting within the parameters of their own competence so long as such findings are supported by substantial evidence.**[29]

In the instant case, respondent's factual determination that input VAT (inclusive of the ₱7,874,469.66 disallowed as 'transactions deemed sale') is properly substantiated[30] as can be gleaned from the following portions of respondent's decision:

> ...
>
> This has reference to your claim for Value Added Tax (VAT) refund covering the period from **July 1, 2016 to September 30, 2016** in the amount of ₱13,391,857.11 pursuant to Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.
>
> Please be informed that, **upon processing of the aforementioned claim under Tax Verification Notice (TVN) No. 2018-000224330 dated September 18, 2018**, the total amount of input tax allowable for VAT refund on local purchases and importations is **₱3,386,009.79, net of disallowances**. Details are shown on the attached sheet marked as Annex "A".[31]
>
> ...

Annex A of respondent's decision states:

---

28 See *Maynilad Water Services, Inc. v. The Secretary of the Department of Environment and Natural Resources ("DENR")*, G.R. No. 202897, 06 August 2019.

29 *Substantial evidence* is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Ang Tibay, et al. v. The Court of Industrial Relations, et al.*, 69 Phil. 635 (1940); *Gelmart Industries (Phil.), Inc. v. Hon. Vicente Leogardo, Jr., et al.*, 155 SCRA 403 (1987); *Protector's Services, Inc. v. Court of Appeals, et al.*, 330 SCRA 404 (2000).

30 Out of petitioner's VAT refund claim of ₱13,391,857.11 sourced from local purchases and importations, based on respondent's vouching, he or she disallowed ₱10,005,847.32 input VAT (inclusive of the subject ₱7,874,469.66 disallowed as 'transactions deemed sale'). This resulted in a total net allowable VAT refund of ₱3,386,009.79.

31 Emphasis in the original text and supplied.

...

ANNEX "A"

PILIPINAS KYOHRITSU INC.
Summary of Recommendation for VAT Refund
For July 1, 2016 - September 30, 2016

A. **Local Purchases**		₱10,965,785.44
VAT Refund Claimed		
Disallowances after VCAD verification:		
Disallowed input VAT per Vouching	(₱113,784.40)	
Disallowed input VAT per ITS	(11,603.44)	
Deferred input VAT on capital goods	(199,151.80)	
Output VAT on interest income	(20,517.53)	
Output VAT from reimbursed expenses	(890,065.88)	
Withholding VAT on royalty fees paid to parent	(816,725.15)	
Input tax allocable to unsupported export proceeds	(334.92)	(2,052,183.12)
Disallowances after review:		
Output VAT assessed on PPE written-off deemed sale	(₱7,874,469.66)	
Additional Deferred Input VAT	(2,176.75)	(7,876,646.41)
NET ALLOWABLE VAT REFUND		**₱1,036,955.91**
B. **Importations**		
VAT Refund Claimed		₱2,426,071.67
Disallowances after VCAD verification:		
Disallowed input VAT per Vouching	(₱49,796.32)	(49,796.32)
Disallowances after review:		
Allocable input VAT to non-substantiated export sales	(₱27,221.47)	(27,221.47)
NET ALLOWABLE VAT REFUND		**₱2,349,053.88**

...

Lastly, **petitioner itself did not contest respondent's findings (except for the disallowance on written-off fixed assets deemed sale) and did not raise an issue as to its compliance with the requisites for refund as regards the ₱7,874,469.66 deducted from the allowable VAT refund. Obviously, it would have been absurd to do so given that such part of its claim was duly substantiated. Similarly, consistent with the presumption of regularity[32] in the discharge of respondent's official duties, there is no reason to doubt that respondent has examined petitioner's documents and *only* found a disallowance of ₱7,874,469.66 corresponding to the written-off fixed assets deemed sale.**

32 *The People of the Philippines v. William Ernest Jolliffe*, G.R. No. L-9553, 13 May 1959.

With the foregoing, the correctness of respondent's finding that input VAT (inclusive of the ₱7,874,469.66 disallowed as 'transactions deemed sale') was substantiated is already beyond dispute and clearly has become a non-issue. **By relitigating a matter, the correctness of which was never challenged even by petitioner, the Court is effectively substituting its own arguments and issues with that of petitioner, and rewriting the allegations in petitioner's Petition for Review.**

To reiterate, petitioner's allegations as to the correctness of respondent's finding of substantiated input VAT (inclusive of the ₱7,874,469.66 disallowed as 'transactions deemed sale') is not only supported by evidence, but also corroborated by its witnesses' testimony and unopposed by respondent.

It should also be considered that re-examining the uncontested findings of an administrative body is not only redundant but also encroaches upon the purview of the administrative process. It is both tedious and an inefficient use of judicial resources to reassess the factual basis and sufficiency of evidence that has already undergone thorough examination by a specialized administrative body. A contrary finding would certainly undermine the effectiveness and purpose of the administrative mechanisms in place, which are designed to streamline legal processes and limit the scope of issues requiring judicial intervention. Thus, it is prudent and in accordance with legal precedent to defer to respondent's findings in this case, ensuring that the judicial system complements, rather than supplants, the administrative process.

All told, I vote to deny the present petition **solely** on the ground that petitioner did not present sufficient proof of the actual nature of the transactions underlying the write-offs in its PPE account. Consequently, it failed to refute the disallowance of the input VAT pertaining to the said written-off fixed assets deemed sale.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice