

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

EN BANC

COMMISSIONER OF  
INTERNAL REVENUE,  
*Petitioner,*

CTA EB No. 2816  
(CTA Case No. 10237)

-versus-

TETRA PAK PHILIPPINES, INC.,  
*Respondent.*

x-----x

TETRA PAK PHILIPPINES, INC.,  
*Petitioner,*

CTA EB No. 2818  
(CTA Case No. 10237)

Present:

-versus-

DEL ROSARIO, P.J.,  
RINGPIS-LIBAN,  
MANAHAN,  
BACORRO-VILLENA,  
MODESTO-SAN PEDRO,  
REYES-FAJARDO,  
CUI-DAVID,  
FERRER-FLORES, and  
ANGELES, JL.

COMMISSIONER OF  
INTERNAL REVENUE,  
*Respondent.*

Promulgated:

FEB 04 2025

*[Signature]*  
3:12 p.m.

x-----x

DECISION

REYES-FAJARDO, J.:

*[Handwritten mark]*

## THE CASE

Before the Court En Banc (the "Court") are appeals from the Decision promulgated on May 19, 2023 (the "assailed Decision")<sup>1</sup> and Resolution promulgated on October 9, 2023 (the "assailed Resolution"),<sup>2</sup> by the Special Second Division of this Court (the "Court in Division") in the case entitled "*Tetra Pak Philippines, Inc. v. Commissioner of Internal Revenue*," docketed as CTA Case No. 10237.

The assailed Decision partially granted Tetra Pak Philippines, Inc. ("Tetra Pak")'s Petition for Review and ordered the Commissioner of Internal Revenue ("CIR") to refund or issue a tax credit certificate ("TCC") in favor of Tetra Pak in the aggregate amount of ₱10,326,777.19, representing its unutilized input value-added tax ("VAT") attributable to its zero-rated sales for the third quarter of calendar year ("CY") 2017.<sup>3</sup>

The assailed Resolution, on the other hand, denied the Motions for Partial Reconsideration separately filed by Tetra Pak and the CIR for lack of merit.<sup>4</sup>

## THE PARTIES

Tetra Pak is a corporation duly organized under Philippine laws, with principal office at the 19<sup>th</sup> Floor, Twenty-Five Seven Mckinley, 25<sup>th</sup> Street Corner, 7<sup>th</sup> Avenue, Fort Bonifacio, Taguig City. Its primary purpose is to engage in the importation, exportation, distribution, leasing, servicing, and maintenance of propriety Tetra Pak filling and packaging equipment and materials among various food processors.<sup>5</sup>

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<sup>1</sup> Decision, EB 2816, Docket, Volume 1 – pp. 39 to 94; EB 2818, Docket – pp. 30 to 84.  
<sup>2</sup> Resolution, EB 2516, Volume 1 – pp. 95 to 104; EB 2818, Docket – pp. 86 to 95.  
<sup>3</sup> Decision, EB 2816, Docket, Volume 1 – p. 93; EB 2818, Docket – p. 84.  
<sup>4</sup> Resolution, EB 2516, Volume 1 – p. 104; EB 2818, Docket – p. 95.  
<sup>5</sup> Decision, EB 2816, Docket, Volume 1 – p. 39; EB 2818, Docket – p. 30.

The CIR, on the other hand, is vested by law with the authority to carry out the functions, duties and responsibilities of the Bureau of Internal Revenue ("BIR"), including, *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code ("NIRC") of 1997, as amended, and other tax laws, rules and regulations.<sup>6</sup>

### THE FACTS

During the period covering July 1, 2017 to September 30, 2017 ("3rd Quarter"), Tetra Pak's operating revenues were sourced from the sale of its packing equipment, materials, and other related services to its customers, which include non-resident foreign corporations and entities registered with the Board of Investment ("BOI") and the Philippine Economic Zone Authority ("PEZA"), for which it reported zero-rated sales totaling ₱347,840,708.88.

During the same period, Tetra Pak reported VATable sales amounting to ₱652,418,018.41. Thus, Tetra Pak's sales for the 3<sup>rd</sup> quarter of CY 2017 amounted to ₱1,000,258,727.29.

On September 30, 2019, Tetra Pak filed with the Regular Large Taxpayer Audit Division ("RLTAD") III of the BIR a claim for refund of its excess and/or unutilized creditable input VAT in the amount of ₱20,826,859.40, together with the complete supporting documents in compliance with the requirements of Revenue Memorandum Circular ("RMC") No. 17-2018.

On November 29, 2019, Tetra Pak received the Denial Letter of the RLTAD III, prompting it to file a Petition for Review before the Court in Division on December 27, 2019.

The CIR filed a Motion to Admit Attached Answer on July 2, 2020, which the Court granted in its Resolution dated July 8, 2020. In his Answer, the CIR interposed as a defense that Tetra Pak is not entitled to a refund of its alleged excess and/or unutilized input VAT

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<sup>6</sup> *Id.*

for the 3<sup>rd</sup> quarter of CY 2017 in the amount of ₱20,826,859.40 for failure to substantiate its administrative claim. Citing the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* ("*Pilipinas Total Gas*"), the CIR argues that since a decision has been rendered in this case denying Tetra Pak's administrative claim for refund for failure to substantiate the same, Tetra Pak can no longer submit documents it did not present at the administrative level. For the CIR, the only issue to be resolved by the Court in Division is whether or not the denial was proper, given the evidence submitted at the administrative level.

After the Pre-Trial Conference, the parties filed their Joint Stipulation of Facts and Issues on September 23, 2020, based on which a Pre-Trial Order was issued on October 2, 2020.

The trial then ensued. Tetra Pak presented its witnesses, namely: (1) Ms. Russel A. Magallanes, its Reporting and Tax Analyst; and (2) Mr. Glenn Ian D. Villanueva, the Court-commissioned Independent Certified Public Accountant ("*ICPA*").

There being other witnesses to be presented, Tetra Pak rested its case and formally offered its documentary evidence via its Formal Offer of Documentary Evidence filed on June 24, 2021, which the Court partly admitted in the Resolution dated November 26, 2021.

On his turn to present evidence, the CIR presented Revenue Officer ("*RO*") III, Ms. Carolyn V. Mendoza, as his lone witness.

There being no other witnesses to be presented, and considering that there are only a few documents to be offered, the CIR moved for an oral formal offer of exhibits, which the Court in Division granted and admitted all of the CIR's offered documentary exhibits.

On April 7, 2022, the Court in Division received Tetra Pak's Tender of Excluded Evidence, filed through registered mail on March 25, 2022. The CIR failed to file his comment thereto despite due notice.

On May 24, 2022, the Court in Division issued a Resolution noting Tetra Pak's Tender of Excluded Evidence. In the same Resolution, the instant case was submitted for decision, considering that the parties had already submitted their Memoranda.

On May 19, 2023, the Court in Division promulgated the assailed Decision partially granting Tetra Pak's Petition for Review. The dispositive portion of said assailed Decision reads:<sup>7</sup>

**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱10,326,777.19 representing its unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of CY 2017.

**SO ORDERED.**

On June 9, 2023, both parties filed their respective Motions for Partial Reconsideration.

Acting on the parties' respective Motions for Partial Reconsideration, the Court in Division ordered both parties to file their respective comments, within five (5) days from notice in a Resolution dated June 23, 2023.

On July 10, 2023, both parties filed their respective Opposition/Comment.

On October 9, 2023, the Court in Division promulgated the assailed Resolution denying both parties' respective Motions for Partial Reconsideration for lack of merit.<sup>8</sup>

Undaunted, both parties filed their respective appeals before the Court.

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<sup>7</sup> Decision, EB 2816, Docket, Volume I – p. 93; EB 2818, Docket – p. 84.

<sup>8</sup> Resolution, EB 2516, Volume I – p. 104; EB 2818, Docket – p. 95.

On October 31, 2023, the CIR filed a Motion for Extension of Time to File Petition for Review via electronic mail. On the other hand, on November 3, 2023, Tetra Pak filed its Petition for Review and was docketed as CTA EB Case No. 2818.<sup>9</sup>

In a Resolution dated November 7, 2023, the Court granted the CIR's Motion for Extension and gave him an additional period of fifteen (15) days from November 3, 2023, or until November 18, 2023,<sup>10</sup> within which to file his Petition for Review. On November 20, 2023, the CIR filed his Petition for Review dated November 17, 2023 and was docketed as CTA EB Case No. 2816.<sup>11</sup>

On November 21, 2023, the Court resolved to consolidate CTA EB Case No. 2818 with CTA EB No. 2816, the latter bearing the lower docket number, pursuant to Section 1, Rule 31 of the Revised Rules of Court.

On January 15, 2024, the Court directed both parties to file their respective comments to each one's Petition for Review, within ten (10) days from notice.

On January 26, 2024, the CIR filed his Comment/Opposition (Re: Petition for Review dated November 3, 2023).<sup>12</sup> Meanwhile, on January 29, 2024, Tetra Pak filed its Comment/Opposition (to the Petition for Review dated November 17, 2023).<sup>13</sup>

Therefore, on February 7, 2024, the Court promulgated a Resolution submitting the consolidated cases for decision.

## THE ARGUMENTS

### Tetra Pak's Petition for Review (CTA EB No. 2818)

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<sup>9</sup> EB 2818, Docket – pp. 1 to 21.

<sup>10</sup> November 18, 2023 falls on a Saturday. Hence, deadline is on November 20, 2023, the next working day.

<sup>11</sup> EB 2816, Docket, Volume I – pp. 20 to 32.

<sup>12</sup> EB 2816, Docket, Volume II – pp. 669 to 677.

<sup>13</sup> *Id.* at pp. 679 to 700.

Tetra Pak contends that the Court in Division erred in holding that –

1. Its subject sales to Axelum in the total amount of ₱110,969,568.96 do not qualify as VAT zero-rated sales for the following reasons:<sup>14</sup>
  - a. Under Executive Order (“EO”) No. 226, in relation to Republic Act (“RA”) No. 7716, it is the BOI that can determine if a 70% BOI-exporter is entitled to VAT zero-rating in its transactions with its suppliers;
  - b. The Court in Division’s literal interpretation of the “*total annual production*” is unreasonable; and
  - c. The Court in Division had sufficient legal basis and evidence to consider the subject sales to Axelum as VAT zero-rated.
2. Its “*considered export sales*” in the amount of ₱33,036,237.77 are not zero-rated on the basis of Section 113 of the NIRC of 1997, as amended.<sup>15</sup>

#### **CIR’s Petition for Review (CTA EB No. 2816)**

The CIR faults the Court in Division for not dismissing the Petition due to Tetra Pak’s failure to substantiate its administrative claim for refund and for partially granting Tetra Pak’s claim for refund.<sup>16</sup>

#### **THE COURT’S RULING**

The Petitions for Review are denied.

At the onset, the arguments raised by both parties in their respective Petitions for Review are mere reiterations of the same

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<sup>14</sup> Petition for Review, EB 2816, Docket – p. 9.

<sup>15</sup> *Id.* – p. 10.

<sup>16</sup> Petition for Review, EB 2816, Volume I, Docket – p. 24.

arguments previously pleaded by Tetra Pak in its Motion for Partial Reconsideration (Re: Decision dated 19 May 2023)<sup>17</sup> and by the CIR in his Motion for Partial Reconsideration (Re: Decision promulgated on May 19, 2023).<sup>18</sup> These arguments have already been extensively discussed and resolved by the Court in Division and are unsubstantial to warrant reconsideration or modification of both the assailed Decision and Resolution.<sup>19</sup> Thus, the Court adopts the findings of the Court in Division and expounds on matters below.

**The term “total annual production” must be given its literal meaning and applied without attempted interpretation.**

Section 106(A)(2)(a)(3) of the NIRC of 1997, as amended, expressly provides that sale of raw materials or packaging materials by VAT-registered persons to export-oriented enterprise whose export sales exceed seventy percent (70%) of total **annual** production shall be subject to zero percent (0%) rate.

The same provision is echoed in Section 4.106-5(a)(3) of Revenue Regulations No. 16-05, to wit:

SECTION 4.106-5. Zero-Rated Sales of Goods or Properties.  
– A zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

Export sales. – “Export Sales” shall mean:

...

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<sup>17</sup> Motion for Partial Reconsideration, CTA Case No. 10237, Volume III, Docket – unpaginated.

<sup>18</sup> *Id.*

<sup>19</sup> *Rosario v. Commission on Audit*, G.R. No. 253686, June 29, 2021; *Caranto v. Caranto*, G.R. No. 202889, March 2, 2020; *Castillo y Fernandez v. People*, G.R. No. 232735, November 22, 2017; *Cojuangco, Jr. v. Republic*, G.R. No. 180705, July 9, 2013.



(3) The sale of raw materials or packaging materials to an export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

Any enterprise whose export sales exceed 70% of the total annual production of the preceding taxable year shall be considered an export-oriented enterprise.

...<sup>20</sup>

Relative thereto, the Civil Code provides that when the laws speak of years, months, or days, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; and days, of twenty-four hours.<sup>21</sup> On the other hand, Black's Law Dictionary defines the word "annual" as occurring or recurring once in each year; continuing for the period of a year; or relating to or covering the events or affairs of a year.<sup>22</sup>

The simple and categorical language of the aforementioned provisions leaves no other interpretation for the word "annual" but as a period covering three hundred sixty-five days or twelve months in a given year. Basic is the rule in statutory construction that where the words of the law or rule are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.<sup>23</sup>

Here, the Court, considering the BOI Endorsement Letter for VAT zero-rating presented by Tetra Pak, determined the percentage of export sales to total sales of Axelum only from **January to November 2016**. No information was provided for December 2016. Without such vital information, the Court cannot ascertain whether the export sales of Axelum in 2016 indeed exceed 70% of its total **annual** production. As such, Axelum cannot be considered an export-oriented enterprise for purposes of VAT zero-rating. Consequently, Tetra Pak's sales to Axelum in the total amount of ₱110,969,568.96 do not qualify as VAT zero-rated sales.

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<sup>20</sup> Emphasis supplied.

<sup>21</sup> Article 13, Republic Act No. 386, Civil Code of the Philippines.

<sup>22</sup> Black's Law Dictionary, 2nd Ed., available at <https://thelawdictionary.org/annual/#:~:text=Occurring%20or%20recurring%20once%20in,or%20affairs%20of%20a%20year> (last accessed November 19, 2024).

<sup>23</sup> *Crisologo v. Hao*, G.R. No. 216151, December 2, 2020.

**The Court is not bound by BIR Rulings which are mere administrative opinions interpreting a provision of a tax law.**

Tetra Pak's reliance on BIR Ruling [DA-193-06]<sup>24</sup> in arguing that the BOI endorsement letter or certification is sufficient for establishing its entitlement to VAT zero-rating is misplaced as the Court is not bound by BIR Rulings which are mere administrative opinions interpreting a provision of a tax law. It is binding only on the party who sought for an opinion concerning the interpretation of a tax provision.<sup>25</sup>

As consistently held by the Supreme Court, these BIR Rulings are not conclusive and will be ignored if judicially found to be erroneous as the courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.<sup>26</sup>

More importantly, it should be emphasized that a BIR ruling cannot prevail over the clear provisions of the NIRC of 1997, as amended.

**The findings and conclusions of the ICPA are not conclusive on the Court and are subject to verification.**

Tetra Pak cannot impose upon the Court to adopt the conclusion reached by the ICPA finding the sales invoices ("SIs") generated through Tetra Pak's Computerized Accounting System ("CAS") as sufficient for purposes of complying with the invoicing requirements under the NIRC of 1997, as amended, and other BIR regulations.

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<sup>24</sup> Dated March 28, 2006.

<sup>25</sup> *Brewery Properties, Inc. v. Commissioner of Internal Revenue*, G.R. No. 239260, March 6, 2023.

<sup>26</sup> *Id.*

Section 3 of the Revised Rules of the Court of Tax Appeals<sup>27</sup> is clear. Any document presented by the ICPA is subject to verification. The findings and conclusions of the ICPA are not conclusive on the Court and are likewise subject to further verification.<sup>28</sup>

SECTION 3. Findings of Independent CPA. – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**<sup>29</sup>

Since the appreciation of the evidence still lies within the sound discretion of the Court,<sup>30</sup> the Court is free to adopt or reject the findings of the ICPA.<sup>31</sup>

Here, the Court, through its independent verification of the documents presented, finds certain SIs supporting Tetra Pak's "considered export sales" to BOI-registered and PEZA-registered entities (i.e., Celebes Coconut Corporation, Peter Paul Coconut Water Corporation, and Del Monte Philippines, Inc.) not fully compliant with the invoicing requirements under Section 113 of the NIRC of 1997, as amended for: (1) failure to indicate the nature or description of goods sold and (2) failure to indicate the tax identification number of said entities in the SIs. Hence, the disallowance of the "considered export sales" amounting to a total of ₱33,036,237.77 is justified.

It bears stressing that tax refunds derogate the State's power of taxation; thus, they must be construed strictly against the taxpayer and liberally in favor of the State.<sup>32</sup> Strict compliance with the

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<sup>27</sup> A.M. No. 05-11-07-CTA, November 22, 2005.

<sup>28</sup> *Takenaka Corporation Philippine Branch v. Commissioner of Internal Revenue*, G.R. No. 211589, March 12, 2018.

<sup>29</sup> Emphasis supplied.

<sup>30</sup> *Commission of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*, G.R. Nos. 226548 & 227691, 226682-83, February 15, 2023.


<sup>31</sup> *Tullett Prebon (Philippines), Inc. v. Commissioner of Internal Revenue*, G.R. No. 257219, July 15, 2024.

<sup>32</sup> *Brewery Properties, Inc. v. Commissioner of Internal Revenue*, G.R. No. 239260, March 6, 2023.

invoicing and accounting requirements mandated by the NIRC of 1997, as amended, as well as by the revenue regulations relative to the refund claim is vital for a successful judicial claim for tax refund.<sup>33</sup>


**WHEREFORE**, in light of the foregoing considerations, the Petitions for Review are **DENIED** for lack of merit. Accordingly, the Decision promulgated on May 19, 2023 and Resolution promulgated on October 9, 2023 rendered by the Special Second Division of this Court in CTA Case No. 10237 are **AFFIRMED**.


**SO ORDERED.**

  
**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice

**WE CONCUR:**

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

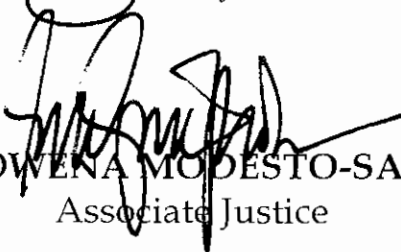
  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice


  
**CATHERINE T. MANAHAN**  
Associate Justice

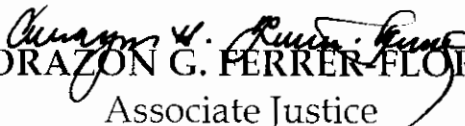
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
<sup>33</sup> *Commissioner of Internal Revenue v. Philex Mining Corp.*, G.R. No. 230016, November 23, 2020; *Bonifacio Water Corp. v. Commissioner of Internal Revenue*, G.R. No. 175142, July 22, 2013; *Western Mindanao Power Corp. v. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.

  
JEAN MARIA A. BACORRO-VILLENA  
Associate Justice

  
MARIA ROWENA MODESTO-SAN PEDRO  
Associate Justice


  
LANEE S. CUI-DAVID  
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 cases were assigned to the writer of the opinion of the Court.

  
ROMAN G. DEL ROSARIO  
Presiding Justice