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THIRD DIVISION

[G.R. No. 163835, July 07, 2010]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. EASTERN TELECOMMUNICATIONS PHILIPPINES, INC., RESPONDENT.

D E C I S I O N

BRION, J.:

Through a petition for review on *certiorari*,[1] petitioner Commissioner of Internal Revenue (*CIR*) seeks to set aside the decision dated October 1, 2003[2] and the resolution dated May 26, 2004[3] of the Court of Appeals (*CA*) in CA G.R. SP No. 61157. The assailed CA rulings affirmed the decision dated July 17, 2000[4] of the Court of Tax Appeals (*CTA*) in CTA Case No. 5551, partially granting respondent Eastern Telecommunications Philippines, Inc.'s (*Eastern's*) claim for refund of unapplied input tax from its purchase and importation of capital goods.

THE FACTUAL ANTECEDENTS

Eastern is a domestic corporation granted by Congress with a telecommunications franchise under Republic Act (*RA*) No. 7617 on June 25, 1992. Under its franchise, Eastern is allowed to install, operate, and maintain telecommunications system throughout the Philippines.

From July 1, 1995 to December 31, 1996, Eastern purchased various imported equipment, machineries, and spare parts necessary in carrying out its business activities. The importations were subjected to a 10% value-added tax (*VAT*) by the Bureau of Customs, which was duly paid by Eastern.

On September 19, 1997, **Eastern filed with the CIR a written application for refund or credit of unapplied input taxes** it paid on the imported equipment during the taxable years 1995 and 1996 amounting to P22,013,134.00. In claiming for the tax refund, Eastern principally relied on Sec. 10 of RA No. 7617, which allows Eastern to pay 3% of its gross receipts in lieu of all taxes on this franchise or earnings thereof.[5] In the alternative, Eastern cited Section 106(B) of the National Internal Revenue Code of 1977[6] (*Tax Code*) which authorizes a VAT-registered taxpayer to claim for the issuance of a tax credit

certificate or a tax refund of input taxes paid on capital goods imported or purchased locally to the extent that such input taxes[7] have not been applied against its output taxes.[8]

To toll the running of the two-year prescriptive period under the same provision, Eastern filed an appeal with the CTA on September 25, 1997 without waiting for the CIR's decision on its application for refund. The CIR filed an Answer to Eastern's appeal in which it raised the following special and affirmative defenses:

> 6. [Eastern's] claim for refund/tax credit is pending administrative investigation;
>
> x x x x
>
> 8. [Eastern's] exempting clause under its legislative franchise x x x should be understood or interpreted as written, meaning, the 3% franchise tax shall be collected as substitute for any internal revenue taxes x x x imposed on its franchise or gross receipts/earnings thereof x x x;
>
> 9. The [VAT] on importation under Section 101 of the [1977] Tax Code is neither a tax on franchise nor on gross receipts or earnings thereof. It is a tax on the privilege of importing goods whether or not the taxpayer is engaged in business, and regardless of whether the imported goods are intended for sale, barter or exchange;
>
> 10. The VAT under Section 101(A) of the Tax Code x x x replaced the advance sales tax and compensating tax x x x. Accordingly, the 3% franchise tax did not substitute the 10% [VAT] on [Eastern's] importation of equipment, machineries and spare parts for the use of its telecommunication system;
>
> 11. Tax refunds are in the nature of tax exemptions. As such, they are regarded in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming the exemption. The burden is upon him who claims the exemption in his favour and he must be able to justify his claim by the clearest grant of organic or statute law and cannot be permitted to exist upon vague implication x x x;
>
> 12. Taxes paid and collected are presumed to have been made in accordance with the laws and regulations; and
>
> 13. It is incumbent upon the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the claim for refund.[9]

Ruling in favor of Eastern, the **CTA found that Eastern has a valid claim for the refund/credit of the unapplied input taxes**, not on the basis of the *"in lieu of all taxes"* provision of its legislative franchise,[10] but rather, on Section 106(B) of the Tax Code, which states:

> **SECTION 106.** ***Refunds or tax credits of input tax.***
>
> x x x x
>
> (b) Capital goods. - A **VAT-registered person** may apply for the issuance of a tax credit certificate or refund of **input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes**. The application may be **made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.**[11] [Emphases supplied.]

The CTA ruled that Eastern had satisfactorily shown that it was entitled to the claimed refund/credit as all the elements of the above provision were present: (1) Eastern was a VAT-registered entity which paid 10% input taxes on its importations of capital equipment; (2) this input VAT remained unapplied as of the first quarter of 1997; and (3) Eastern seasonably filed its application for refund/credit within the two-year period stated in the law. However, the CTA noted that Eastern was able to substantiate only P21,487,702.00 of its claimed amount of P22,013,134.00. The difference represented input taxes that were allegedly paid but were not supported by the corresponding receipts, as found by an independent auditor. Moreover, it excluded P5,360,634.00 in input taxes on imported equipment for the year 1995, even when these were properly documented as they were already booked by Eastern as part of the cost. Once input tax becomes part of the cost of capital equipment, it necessarily forms part of depreciation. Thus, to grant the refund of the 1995 creditable input tax amounts to twice giving Eastern the tax benefit. Thus, in its July 17, 2000 decision, the CTA granted in part Eastern's appeal by declaring it entitled to a tax refund of P16,229,100.00, representing unapplied input taxes on imported capital goods for the taxable year 1996.[12]

The CIR filed, on August 3, 2000, a motion for reconsideration[13] of the CTA's decision. About a month and a half later, it filed a supplemental motion for reconsideration dated September 15, 2000.[14] The CTA denied the CIR's motion for reconsideration in its resolution dated September 20, 2000.[15] The CIR then elevated the case to the CA through a petition for review under Rule 43 of the Rules of Court. **The CA affirmed the CTA ruling** through its decision dated October 1, 2003[16] and its resolution dated May 26, 2004,[17] denying the motion for reconsideration. Hence, the present petition.

THE PETITIONER'S ARGUMENTS

The CIR takes exception to the CA's ruling that Eastern is entitled to the *full* amount of unapplied input taxes paid for its purchase of imported capital goods that were substantiated by the corresponding receipts and invoices. The CIR posits that, applying Section 104(A) of the Tax Code on apportionment of tax credits, Eastern is entitled to a tax refund of only P8,814,790.15, instead of the P16,229,100.00 adjudged by the CTA and the CA. Section 104(A) of the Tax Code states:

> **SEC. 104.** ***Tax Credits.*** **-**
>
> **(a)** ***Creditable Input tax.*** **-**
>
> x x x x
>
> **A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed input tax credit as follows:**
>
> (A) Total input tax which can be directly attributed to transactions subject to value-added tax; and
>
> **(B) A ratable portion of any input tax which cannot be directly attributed to either activity.**[18] [Emphases supplied.]

To be entitled to a tax refund of the full amount of P16,229,100.00, the CIR asserts that Eastern must prove that (a) it was engaged in purely VAT taxable transactions and (b) the unapplied input taxes it claims as refund were directly attributable to transactions subject to VAT. **The VAT returns of Eastern for the 1st, 2nd, 3rd, and 4th quarters of 1996, however, showed that it earned income from both transactions subject to VAT and transactions exempt from VAT**;[19] **the returns reported income earned from taxable sales, zero-rated sales, and exempt sales** in the following amounts:

1996	Taxable Sales	Zero-Rated Sales	Exempt Sales
1st Quarter	820,673.70	---	---
2nd Quarter	3,361,618.59	225,088,899.07	140,111,655.85
3rd Quarter	2,607,168.96	169,821,537.80	187,712,657.16
4th Quarter	1,134,942.71	162,530,947.40	147,717,028.53
TOTAL	***7,924,403.96***	***557,441,384.27***	**475,541,341.54**
		Total Amount of Sales	**1,040,907,129.77**

The taxable sales and zero-rated sales are considered transactions subject to VAT,[20] while exempt sales refer to transactions not subject to VAT.

Since the VAT returns clearly reflected income from exempt sales, the CIR asserts that this constitutes as an admission on Eastern's part that it engaged in transactions not subject to VAT. Hence, the proportionate allocation of the tax credit to VAT and non-VAT transactions provided in Section 104(A) of the Tax Code should apply. Eastern is then entitled to only P8,814,790.15 as the ratable portion of the tax credit, computed in the following manner:

$$\frac{\textit{Taxable Sales + Zero-rated Sales}}{\textit{Total Sales}} \times \textit{Input Tax as found by the CTA} = \textbf{\textit{Refundable input tax}}$$

$$\frac{7{,}924{,}403.96 + 557{,}445{,}384.97}{1{,}040{,}907{,}129.77} \times 16{,}229{,}100.00 = \textbf{P8,814,790.15}$$

THE RESPONDENT'S ARGUMENTS

Eastern objects to the arguments raised in the petition, alleging that these have not been raised in the Answer filed by the CIR before the CTA. In fact, **the CIR only raised the applicability of Section 104(A) of the Tax Code in his supplemental motion for reconsideration of the CTA's ruling** which, notably, was filed a month and a half after the original motion was filed, and thus beyond the 15-day reglementary period.[21] Accordingly, **the applicability of Section 104(A) was never validly presented as an issue before the CTA**; this, Eastern presumes, is the reason why it was not discussed in the CTA's resolution denying the motion for reconsideration. Eastern claims that for the CIR to raise such an issue now would constitute a violation of its right to due process; following settled rules of procedure and fair play, the CIR should not be allowed at the appeal level to change his theory of the case.

Moreover, in raising the question of whether Eastern was in fact engaged in transactions not subject to VAT and whether the unapplied input taxes can be directly attributable to transactions subject to VAT, Eastern posits that the CIR is effectively raising factual questions that cannot be the subject of an appeal by *certiorari* before the Court.

Even if the CIR's arguments were considered, Eastern insists that the petition should nevertheless be denied since the CA found that there was no evidence in the claim that it was engaged in non-VAT transactions. The CA has ruled that:

> The following requirements must be present before [Section 104(A)] of the [1977 Tax Code] can be applied, to wit:
>
> 1. The person claiming the creditable input tax must be VAT-registered;
> 2. Such person is engaged in a transaction subject to VAT;
> 3. The person is also engaged in other transactions not subject to VAT; and
> 4. The ratable portion of any input tax cannot be directly attributed to either activity.
>
> In the case at bar, the third and fourth requisites are not extant. It is undisputed that [Eastern] is VAT-registered and the importation of [Eastern's] telecommunications equipment, machinery, spare parts, fiber optic cables, and the like, as found by the CTA, is a transaction subject to VAT. **However, there is no evidence on record that would evidently show that respondent is also engaged in other transactions that are not subject to VAT.** [Emphasis supplied.][22]

Given the parties' arguments, the issue for resolution is ***whether the rule in Section 104(A) of the Tax Code on the apportionment of tax credits can be applied in appreciating Eastern's claim for tax refund, considering that the matter was raised by the CIR only when he sought reconsideration of the CTA ruling?***

THE COURT'S RULING

We find the CIR's petition meritorious.

The Rules of Court prohibits raising new issues on appeal; the question of the applicability of Section 104(A) of the Tax Code was already raised but the tax court did not rule on it

Section 15, Rule 44 of the Rules of Court embodies the rule against raising new issues on appeal:

> SEC. 15. *Questions that may be raised on appeal.* - Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein.[23] An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal.[24] The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.[25]

Eastern posits that since the CIR raised the applicability of Section 104(A) of the Tax Code only in his **supplemental motion for reconsideration** of the CTA decision (which was even belatedly filed), the issue was not properly and timely raised and, hence, could not be considered by the CTA. By raising the issue in his appeal before the CA, the CIR has violated the above-cited procedural rule.

Contrary to Eastern's claim, we find that the CIR has previously questioned the nature of Eastern's transactions insofar as they affected the claim for tax refund in his motion for reconsideration of the CTA decision, although it did not specifically refer to Section 104(A) of the Tax Code. We quote relevant portions of the motion:

> [W]e maintain that [Eastern's] claims are not creditable input taxes under [Section 104(A) of the Tax Code]. What the law contemplates as creditable input taxes are only those paid on purchases of goods and services specifically enumerated under [Section 104 (A)] and that such input tax must have been paid by a VAT[-]registered person/entity in the course of trade or business. It must be noted that **[Eastern] failed to prove that such purchases were used in their VAT[-]taxable business.** [Eastern's pieces of] evidence are not purchases of capital goods and do not fall under the enumeration x x x.
>
> It is significant to point out here that **refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT[-]taxable business. x x x a perusal of the evidence submitted before [the CTA] does not show that the alleged capital goods were used in VAT[-]taxable business of [Eastern] x x x.** [Emphases supplied.][26]

In raising these matters in his motion for reconsideration, the CIR put forward the applicability of Section 104(A) because, essentially, the applicability of the provision boils down to the question of whether the purchased capital goods which a taxpayer paid input taxes were also used in a VAT-taxable business, *i.e.*, transactions that were subject to VAT, in order for them to be refundable/creditable. Once proved that the taxpayer used the

purchased capital goods in a both VAT taxable and non-VAT taxable business, the proportional allocation of tax credits stated in the law necessarily applies. This rule is also embodied in Section 4.106-1 of Revenue Regulation No. 7-95, entitled *Consolidated Value-Added Tax Regulations*, which states:

> SEC. 4.106-1. *Refunds or tax credits of input tax.* - x x x x
>
> (b) Capital Goods. - Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> **Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations, the input tax refundable shall only be the ratable portion corresponding to the taxable operations.** [Emphasis supplied.]

That the CTA failed to rule on this question when it resolved the CIR's motion for reconsideration should not be taken against the CIR. It was the CTA which committed an error when it failed to avail of that "meaningful opportunity to avoid or correct any alleged errors before those errors become the basis for an appeal."[27]

Exceptions to the general rule; Eastern's VAT returns reporting income from exempt sales are matters of record that the tax court should have considered

The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts.[28] Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:

> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them.[29] [Emphasis supplied.]

As applied in the present case, even without the CIR raising the applicability of Section 104(A), the CTA should have considered it since all four of **Eastern's VAT returns** corresponding to each taxable quarter of 1996 **clearly stated that it earned income from exempt sales, *i.e.*, non-VAT taxable sales.** Eastern's quarterly VAT returns are matters of record. In fact, Eastern included them in its formal offer of evidence before the CTA "to prove that [it is] engaged in VAT taxable, ***VAT exempt,*** and VAT zero-rated sales." By declaring income from exempt sales, Eastern effectively admitted that it engaged in transactions not subject to VAT. **In VAT-exempt sales, the taxpayer/seller shall not bill any output tax on his sales to his customers and, corollarily, is not allowed any credit or refund of the input taxes he paid on his purchases.**[30] This non-crediting of input taxes in exempt transactions is the underlying reason why the Tax Code adopted the rule on apportionment of tax credits under Section 104(A) whenever a VAT-registered taxpayer engages in both VAT taxable and non-VAT taxable sales. In the face of these disclosures by Eastern, we thus find the CA's the conclusion that "there is no evidence on record that would evidently show that [Eastern] is also engaged in other transactions that are not subject to VAT" to be questionable.[31]

Also, we disagree with the CA's declaration that:

> **The mere fact that [Eastern's] Quarterly VAT Returns confirm that [Eastern's] transactions involved** zero-rated sales and **exempt sales do not sufficiently establish that the same were derived from [Eastern's] transactions that are not subject to VAT.** On the contrary, **the transactions from which [Eastern's] sales were derived are subject to VAT but are** either zero[-]rated (0%) or otherwise **exempted for falling within the transactions enumerated in** [Section 102(B) or **Section 103] of the Tax Code.**[32] [Emphasis supplied.]

Section 103 of the Tax Code[33] is an enumeration of transactions exempt from VAT. Explaining the relation between exempt transactions in Section 103 and claims for tax refunds, the Court declared in *CIR v. Toshiba Equipment (Phils.), Inc*. that:

> Section 103 x x x of the Tax Code of 1977, as amended, relied upon by petitioner CIR, relates to VAT-exempt transactions. **These are transactions exempted from VAT** by special laws or international agreements to which the Philippines is a signatory. **Since such transactions are not subject to VAT, the sellers** cannot pass on any output VAT to the purchasers of goods, properties, or services, and they **may not claim tax credit/refund of the input VAT they had paid thereon.**[34]

The mere declaration of exempt sales in the VAT returns, whether based on Section 103 of the Tax Code or some other special law, should have prompted the CA to apply Section 104(A) of the Tax Code to Eastern's claim. It was thus erroneous for the appellate court to rule that the declaration of exempt sales in Eastern's VAT return, which may correspond to exempt transactions under Section 103, does not indicate that Eastern was also involved in non-VAT transactions.

Exception to general rule; taxpayer claiming refund has the duty to prove entitlement thereto

Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance.[35]

The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence;[36] hence, the dictum that "taxes are the lifeblood of the government." For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption. Claims for tax refunds, when based on statutes granting tax exemption or tax refund, partake of the nature of an exemption; thus, the rule of strict interpretation against the taxpayer-claimant similarly applies.[37]

The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. This burden cannot be offset by the non-observance of procedural technicalities by the government's tax agents when the non-observance of the remedial measure addressing it does not in any manner prejudice the taxpayer's due process rights, as in the present case.

Eastern cannot validly claim to have been taken by surprise by the CIR's arguments on the relevance of Section 104(A) of the Tax Code, considering that the arguments were based on the reported exempt sales in the VAT returns that Eastern itself prepared and formally offered as evidence. Even if we were to consider the CIR's act as a lapse in the observance of procedural rules, such lapse does not work to entitle Eastern to a tax refund when the established and uncontested facts have shown otherwise. Lapses in the literal observance of a rule of procedure may be overlooked when they have not prejudiced the adverse party and especially when they are more consistent with upholding settled principles in taxation.

WHEREFORE, we **GRANT** the petitioner's petition for review on *certiorari*, and **REVERSE** the decision of the Court of Appeals in CA G.R. SP No. 61157, promulgated on October 1, 2003, as well as its resolution of May 26, 2004. We order the **REMAND** of the case to the Court of Tax Appeals to determine the proportionate amount of tax credit

that respondent is entitled to, consistent with our ruling above. Costs against the respondent.

SO ORDERED.

[*]*Carpio,* [***]*Abad, Villarama, Jr.*, and [****]*Mendoza, JJ.*, concur.

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[*] Designated additional Member of the Third Division, in view of the leave of absence of Associate Justice Lucas P. Bersamin, per Special Order No. 859 dated July 1, 2010.

[**] Designated Acting Chairperson of the Third Division, in view of the leave of absence of Associate Justice Conchita Carpio Morales, per Special Order No. 849 dated June 29, 2010.

[***] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

[****] Designated additional Member of the Third Division, in view of the leave of absence of Associate Justice Conchita Carpio Morales, per Special Order No. 850 dated June 29, 2010

[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 8-25.

[2] Penned by Associate Justice Perlita J. Tria Tirona, and concurred in by Associate Justice Portia Ali×¡o-Hormachuelos and Associate Justice Rosalinda Asuncion-Vicente; *id.* at 29-34.

[3] *Id.* at 35.

[4] Penned by Judge (now Associate Justice) Amancio Q. Saga, and concurred in by Judge (now Associate Justice) Ernesto D. Acosta and Judge (Associate Justice) Ramon O. De Veyra; *id.* at 36-43.

[5] *Id.* at 57; Sec. 10. Tax provisions. - The grantee shall be liable to pay the same taxes on their real estate, buildings, and personal property exclusive of this franchise, as other persons or telecommunications entities are now or hereafter may be required by law to pay. In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, three *per centum* (3%) of the gross receipts of its regulated telecommunication services transacted under this franchise, and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof; *Provided*, that the grantee shall continue to be liable for

income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the later enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

[6] Presidential Decree No. 1158, enacted on June 3, 1977. The 1977 Tax Code has been superseded by Republic Act No. 8424 (*1997 Tax Code*), enacted on December 11, 1997.

[7] The term "input tax" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person (Section 104, 1977 Tax Code).

[8] The term "output tax" means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code (Section 104, 1977 Tax Code).

[9] *Rollo*, pp. 37-38.

[10] See *rollo*, pp. 39-40, where the CTA reasoned:

The "in lieu of all taxes" proviso found [in Eastern's legislative franchise] has been superseded by the passage of x x x the Expanded VAT Law x x x. [The Expanded VAT Law amended,] among others, x x x the Tax Code to *exclude* [franchises] on telephone and telegraph systems, and radio broadcasting stations and other [franchises] *from payment of the franchise tax, [and instead subjected] these companies to pay the VAT* x x x.

Since [Eastern], being a holder of a telecommunications franchise, is no longer subject to franchise tax by the enactment of [the Expanded VAT Law] and is now made liable to pay VAT, the "in lieu of all taxes" proviso under its franchise is no longer a valid legal basis for its claim for refund. [Emphasis supplied.]

[11] Now Section 112(B) of the 1997 Tax Code.

[12] *Rollo*, p. 43.

[13] CA *rollo*, pp. 62-65.

[14] *Id*. at 68-70.

[15] *Id*. at 26-28

[16] *Supra* note 2.

[17] *Supra* note 3.

[18] Now Section 110(A) (3) of the 1997 Tax Code.

[19] *Rollo*, pp. 80-90.

[20] A zero-rated sale is still considered a taxable transaction for VAT purposes, although the VAT rate applied is 0%. A sale by a VAT-registered taxpayer of goods and/or services taxed at 0% shall not result in any output VAT, while the input VAT on its purchases of goods or services related to such zero-rated sale shall be available as tax credit or refund; *Atlas Consolidated Mining and Development Corporation v. CIR*, G.R. Nos. 141104 and 148763, June 8, 2007, 524 SCRA 73, 98.

[21] A motion for reconsideration must be filed within the same period for taking an appeal, *i.e.*, 15 days from notice of judgment. Section 1, Rule 37, in relation to Section 4, Rule 43 of the Rules of Court.

[22] *Rollo*, p. 32.

[23] *People v. Echegaray*, G.R. No. 117472, February 7, 1997, 267 SCRA 682, 689-690.

[24] *Dela Santa v. CA, et al.*, 224 Phil. 195, 209 (1985), and *Dihiansan, et al. v. CA, et al.*, 237 Phil. 695, 701-702 (1987).

[25] L. Bersamin, *Appeal and Review in the Philippines* (2nd ed.), pp. 378, citing *Soriano v. Ramirez*, 44 Phil. 475, *Toribio v. Decasa,* 55 Phil. 461, *San Agustin v. Barrios*, 68 Phil. 475, *US v. Paraiso*, 11 Phil. 799, *US v. Rosa*, 14 Phil. 394, *Pico v. US*, 40 Phil. 1117, and *Dela Rama v. Dela Rama*, 41 Phil. 980.

[26] *Rollo*, pp. 208-210.

[27] *Supra* note 25.

[28] *CIR v. Mirant Pagbilao Corporation*, G.R. No. 159593, October 16, 2003, 504 SCRA 484, 496.

[29] The Revised Rules of Court in the Philippines, Civil Procedure, Rules 40-56, Volume III, pp. 650-651 (1968 ed.).

[30] *CIR v. Seagate Technology Philippines*, G.R. No. 153866, February 11, 2005, 451

SCRA 132, 145; and *Contex Corporation v. CIR*, G.R. No. 151135, July 2, 2004, 433 SCRA 376.

[31] *Rollo*, p. 32.

[32] *Ibid*.

[33] Now Section 109 of the 1997 Tax Code.

[34] G.R. No. 150154, August 9, 2005, 466 SCRA 211, 223.

[35] *Supra* note 25.

[36] *CIR v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436, 457.

[37] *CIR v. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008, 559 SCRA 160.
