Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 183880**
	Present:
- *versus* -	VELASCO, JR., *J.*, *Chairperson,* PERALTA, ABAD, MENDOZA, and LEONEN, *JJ.*
TOLEDO POWER, INC., Respondent.	**Promulgated:** January 20, 2014

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DECISION

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Court of Tax Appeals (*CTA*) *En Banc* Decision[1] dated May 7, 2008, and Resolution[2] dated July 18, 2008.

The pertinent facts, as narrated by the CTA First Division, are as follows:

> Petitioner (*herein respondent Toledo Power, Inc.*) is a general partnership duly organized and existing under Philippine laws, with principal office at Sangi, Toledo City, Cebu. It is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation,

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring; *rollo*, pp. 28-41.

[2] *Id.* at 43-45.

Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc., and is registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) with Tax Identification No. 003-883-626-VAT and BIR Certificate of Registration bearing RDO Control No. 94-083-000300.

On June 20, 2002, petitioner filed an application with the Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance pursuant to the Implementing Rules and Regulations of R.A. 9136, otherwise known as the "Electric Power Industry Reform Act of 2007" (EPIRA).

On October 25, 2001, petitioner filed with the BIR Revenue District Office (RDO) No. 83 at Toledo City, Province of Cebu, its Quarterly VAT Return for the third quarter of 2001, declaring among others, the following:

Zero-rated Sales/Receipts	₱ 143,000,032.37
Taxable Sales-Sale of Scrap/Others	378,651.74
Output Tax	34,422.89
Less: Input Tax	
On Domestic Purchases	4,765,458.58
On Importation of Goods	1,242,792.00
Total Available Input Tax	6,008,250.58
Excess Input Tax & Overpayment	₱ 5,973,827.69

However, an amended Quarterly VAT Return for the same quarter of 2001 was filed on November 22, 2001. The amended return shows unutilized input VAT credits of ₱5,909,588.96 arising from petitioner's taxable purchases for the third quarter of 2001 and the following other information:

Zero-rated Sales/Receipts	₱ 143,000,032.37
Taxable Sales-Sale of Scrap/Others	378,651.74
Output Tax	34,422.89
Less: Input Tax	
On Domestic Purchases	4,718,099.85
On Importation of Goods	1,225,912.00
Total Available Input Tax	5,944,011.85
Excess Input Tax & Overpayment	**₱ 5,909,588.96**

Thus, for the third quarter of 2001, petitioner allegedly has unutilized input VAT in the total amount of ₱5,909,588.96 on its domestic purchase of taxable goods and services and importation of goods, which purchases and importations are all attributable to its zero-rated sale of power generation services to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc. Said input VAT of ₱5,909,588.96 paid by petitioner on its domestic purchase of goods and services for the third quarter of 2001 allegedly remained unutilized against output VAT liability in said period or even in subsequent matters.

On January 25, 2002, petitioner filed with the BIR RDO No. 83 at Toledo City, Province of Cebu, its Quarterly VAT Return for the fourth quarter of 2001 declaring, among others, the following:

Zero-Rated Sales/Receipts	₱ 127,259,720.44
Taxable Sales-Sale of Scrap/Others	309,697.50
Output Tax	28,154.33
Less: Input Tax	
On Domestic Purchases	1,374,608.64
On Importation of Goods	1,873,327.00
Total Available Input Tax	3,247,935.64
Excess Input Tax & Overpayment	**₱ 3,219,781.31**

Thus, petitioner allegedly had an excess input VAT credits of ₱3,219,781.31 for the fourth quarter of 2001 which remained unutilized against output VAT liability in said period or even in the subsequent quarters.

For the third and fourth quarters of 2001, petitioner incurred and accumulated input VAT from its domestic purchase of goods and services, which are all attributable to its zero-rated sales of power generation services to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development Inc., in the total amount of ₱9,129,370.27. Said excess and unutilized input VAT was allegedly not utilized against any output VAT liability in the subsequent quarters nor carried over to the succeeding taxable quarters.

On September 30, 2003, pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed with the BIR RDO No. 83, an administrative claim for refund or unutilized input VAT for the third and fourth quarter of 2001 in the amounts of ₱5,909,588.96 and ₱3,219,781.31, respectively, or the aggregate amount of ₱9,129,370.27.

Respondent (*herein petitioner Commissioner of Internal Revenue*) has not ruled upon petitioner's administrative claim and in order to preserve its right to file a judicial claim for the refund or issuance of a tax credit certificate of its unutilized input VAT, petitioner filed a Petition for Review to suspend the running of the two-year prescriptive period under Section 112(D) of the 1997 NIRC and Section 4.106-2(c) of Revenue Regulations No. 7-95, as amended. On October 24, 2003, petitioner filed a Petition for Review for the refund or issuance of a tax credit certificate in the amount of ₱5,909,588.96 for the third quarter of 2001, docketed as CTA Case No. 6805 and, on January 22, 2004, filed another Petition for Review for the refund or issuance of tax credit certificate in the amount of ₱3,219,781.31 for the fourth quarter of 2001, docketed as CTA Case No. 6851, both for its unutilized input VAT paid by petitioner on its domestic purchases of goods and services and importation of goods attributable to zero-rated sales.

On January 30, 2004, petitioner filed a Motion for Consolidation CTA Case Nos. 6805 and 6851, since these cases involve the same parties, same facts and issues. The said Motion was granted in open court on February 27, 2004 and confirmed in a Resolution dated March 8, 2004.

x x x x

> After presenting its testimonial and documentary evidence, petitioner formally offered its evidence on February 16, 2006. On March 24, 2006, this Court promulgated a Resolution admitting all the exhibits offered by petitioner. Respondent, on the other hand, failed to adduce any evidence.
>
> In a Resolution dated July 6, 2006, this consolidated case was ordered submitted for decision with only petitioner's Memorandum, as respondent failed to file one within the period given by the Court.[3]

Acting on the petition, the CTA First Division issued a Decision dated May 17, 2007 partially granting Toledo Power, Inc.'s (*TPI*) refund claim or issuance of tax credit certificate. Pertinent portions of the Decision read:

> In sum, petitioner was able to show its entitlement to the refund or issuance of tax credit certificate in the amount of ₱8,553,050.44 computed as follows:
>
> | | |
> |---|---|
> | Total Available Input VAT | ₱ 9,191,947.49 |
> | Less: Disallowed Input VAT (₱20,696.34+₱52,363.64+₱277,207.50) | 350,267.48 |
> | Substantiated available input VAT | ₱ 8,841,680.01 |
> | Less: Output VAT | 62,577.22 |
> | Substantiated Unutilized Input VAT | ₱ 8,779,102.79 |
> | Multiply by the ratio of substantiated zero-rated sales to the total zero-rated sales | |
> | Substantiated zero-rated sales | 263,300,858.02 |
> | Total zero-rated sales | 270,259,752.81 |
> | Refundable Input VAT | ₱ 8,553,050.44 |
>
> **IN VIEW OF THE FOREGOING**, the Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to refund or to issue a tax credit certificate in favor of petitioner in the reduced amount of ₱8,553,050.44 representing the substantiated unutilized input VAT for the third and fourth quarters of 2001.
>
> **SO ORDERED**.[4]

The Commissioner of Internal Revenue (*CIR*), thereafter, filed a Motion for Reconsideration against said Decision. However, the same was denied in a Resolution dated October 15, 2007.

On appeal to the CTA *En Banc*, the CIR argued that TPI failed to comply with the invoicing requirements to prove entitlement to the refund or

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3 *Id*. at 47-53. (Citations omitted)

4 *Id*. at 62. (Emphasis in the original)

issuance of tax credit certificate. In addition, he challenged the jurisdiction of the CTA First Division to entertain respondent's petition for review for failure on its part to comply with the provisions of Section 112 (C) of the Tax Code.

In a Decision dated May 7, 2008, the CTA *En Banc* affirmed with modification the First Division's assailed decision. It held –

> x x x after re-examination of the records of this case, out of the alleged Zero-rated sales amounting to ₱270,259,752.81, only the amount of ₱248,989,191.87 is fully substantiated. Therefore, respondent is entitled to the refund or issuance of tax credit certificate in the amount of ₱8,088,151.07 computed as follows:
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> | | |
> |---|---|
> | Total Available Input VAT | ₱ 9,191,947.49 |
> | Less: Disallowed Input VAT (₱20,696.34+₱52,363.64+₱277,207.50) | 350,267.48 |
> | Substantiated available input VAT | ₱ 8,841,680.01 |
> | Less: Output VAT | 62,577.22 |
> | Substantiated Unutilized Input VAT | ₱ 8,779,102.79 |
> | Multiply by the ratio of substantiated zero-rated sales to the total zero-rated sales | |
> | Substantiated zero-rated sales | 248,989,191.87 |
> | Total zero-rated sales | 270,259,752.81 |
> | Refundable Input VAT | ₱ 8,088,151.07 |
>
> **WHEREFORE**, premises considered, the Petition for Review *En Banc* is **DENIED** for lack of merit. Accordingly, the Decision dated May 17, 2007 and Resolution dated October 15, 2007 are **AFFIRMED with MODIFICATION**. Petitioner is hereby **ORDERED TO REFUND** to respondent the sum of **EIGHT MILLION EIGHTY-EIGHT THOUSAND ONE HUNDRED FIFTY-ONE PESOS AND SEVEN CENTAVOS (₱8,088,151.07)** only for the third and fourth quarters of taxable year 2001.
>
> **SO ORDERED**.[5]

In a Resolution dated July 18, 2008, the CTA *En Banc* denied the CIR's motion for reconsideration.

Undaunted by the adverse ruling of the CTA, the CIR now seeks recourse to this Court on the following ground:

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5 *Id*. at 39-40. (Emphasis in the original)

> THE COURT OF TAX APPEALS *EN BANC* ERRED IN RULING THAT THE GOVERNMENT IS LIABLE TO REFUND PETITIONER FOR ALLEGED OVERPAYMENT OF VAT.[6]

In essence, two issues must be addressed to determine whether TPI is indeed entitled to its claim for refund or issuance of tax credit certificate: (1) whether TPI complied with the 120+30 day rule under Section 112 (C) of the Tax Code, and (2) whether TPI sufficiently complied with the invoicing requirements under the Tax Code.

Let us discuss the issues *in seriatim*.

First, it must be emphasized that to validly claim a refund or tax credit of input tax, compliance with the 120+30 day rule under Section 112 of the Tax Code is mandatory.

Pertinent portions of Section 112 of the Tax Code, as amended by Republic Act No. 9337,[7] state:

> 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 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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> x x x x
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred

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6 *Id.* at 17.

7 An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes.

> twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Section 112 decrees that a VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit or refund creditable input tax due or paid attributable to such sales within two years after the close of the taxable quarter when the sales were made. From the date of submission of complete documents in support of its application, the CIR has 120 days to decide whether or not to grant the claim for refund or issuance of tax credit certificate. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the CIR to act on the application within the given period, the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal with the CTA the decision or inaction of the CIR.

Recently, in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[8] (*San Roque*), the Court confirmed the mandatory and jurisdictional nature of the 120+30 day rule. It ratiocinated as follows:

> At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112 (C) expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain and unequivocal: "x x x the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days** from the date of submission of complete documents." Following the *verba legis* doctrine, this law must be applied exactly as worded since it is clear, plain and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.
>
> Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

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[8] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

> x x x the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one-hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied.)

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

x x x x

When Section 112 (C) states that "the taxpayer affected **may**, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner.

The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period**. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.

To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.[9]

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[9] *CIR v. San Roque Power Corporation, supra*, at 387-399. (Citations omitted; emphasis in the original)

In a nutshell, the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT, as provided in Section 112 of the Tax Code, are as follows:

> (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.
>
> (3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.
>
> (4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.[10]

Here, TPI filed its third and fourth quarterly VAT returns for 2001 on October 25, 2001 and January 25, 2002, respectively. It then filed an administrative claim for refund of its unutilized input VAT for the third and fourth quarters of 2001 on September 30, 2003. Thus, the CIR had 120 days or until January 28, 2004, after the submission of TPI's administrative claim and complete documents in support of its application, within which to decide on its claim. Then, it is only after the expiration of the 120-day period, if there is inaction on the part of the CIR, where TPI may elevate its claim with the CTA within 30 days.

In the present case, however, it appears that TPI's judicial claims for refund of its unutilized input VAT covering the third and fourth quarters of 2001 were prematurely filed on October 24, 2003 and January 22, 2004, respectively.

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[10] *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. Nos. 193301 & 194637, March 11, 2013, 693 SCRA 49, 89.

However, although TPI's judicial claim for the fourth quarter of 2001 has been filed prematurely, the most recent pronouncements of the Court provide for a window wherein the same may be entertained.

As held in the *San Roque* ponencia, strict compliance with the 120+30 day mandatory and jurisdictional periods is not necessary when the judicial claims are filed between December 10, 2003 (*issuance of BIR Ruling No. DA-489-03 which states that the taxpayer need not wait for the 120-day period to expire before it could seek judicial relief*) to October 6, 2010 (*promulgation of the Aichi doctrine*).

Clearly, therefore, TPI's refund claim of unutilized input VAT for the third quarter of 2001 was denied for being prematurely filed with the CTA, while its refund claim of unutilized input VAT for the fourth quarter of 2001 may be entertained since it falls within the exception provided in the Court's most recent rulings.

With that settled, we now resolve the issue of whether TPI sufficiently complied with the invoicing requirements under the Tax Code with respect to the fourth quarter of 2001.

Section 113 (A), in relation to Section 237 of the Tax Code, provides:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons*. –
>
> (A) *Invoicing Requirements*. – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information shall be indicated in the invoice or receipt:
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> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
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> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes value-added tax.
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> x x x x
>
> SEC. 237. – *Issuance of Receipts or Sales of Commercial Invoices*. – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That in the case of sales, receipts or transfers in the amount of One hundred pesos (₱100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-

> added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipts shall further show the Taxpayer Identification Number (TIN) of the purchaser.

Section 4.108-1 of Revenue Regulations No. 7-95 states:

> Section 4.108-1. Invoicing Requirements – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
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> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration.[11]

In the present case, we agree with the CTA's findings that the words "zero-rated" appeared on the VAT invoices/official receipts presented by the TPI in support of its refund claim. Although the same was merely stamped and not pre-printed, the same is sufficient compliance with the law, since the imprinting of the word "zero-rated" was required merely to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other VAT provisions of the Tax Code.

Moreover, it is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[12]

In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue,*[13] the Court held that it accords the findings of fact by the CTA with the highest respect. It ruled that factual findings made by the CTA can

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[11] Underscoring supplied.

[12] *Commissioner of Internal Revenue v. Asian Transmission Corporation,* G.R. No. 179617, January 19, 2011, 640 SCRA 189, 200.

[13] 529 Phil. 785 (2006).

only be disturbed on appeal if they are supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.[14]

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED**. The Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue tax credit certificate in favor of Toledo Power, Inc. only for the fourth quarter of 2001. This case is hereby **REMANDED** to the Court of Tax Appeals for the proper computation of the refundable amount representing unutilized input VAT for the fourth quarter of 2001.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

I dissent consistent with my opinion in the San Miguel case

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

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[14] *Id.* at 794-795.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice