Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

LUZON HYDRO CORPORATION, Petitioner,	**G.R. No. 188260**
	Present:
- *versus* -	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 13 2013

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D E C I S I O N

BERSAMIN, *J.*:

This case involves a claim for refund or tax credit to cover petitioner Luzon Hydro Corporation's unutilized Input Value-Added Tax (VAT) worth ₱2,920,665.16 corresponding to the four quarters of taxable year 2001.

The Case

The petitioner brought this action in the Court of Tax Appeals (CTA) after the Commissioner of Internal Revenue (respondent) did not act on the claim (CTA Case No. 6669). The CTA 2nd Division denied the claim on May 2, 2008 on the ground that the petitioner did not prove that it had zero-rated sales for the four quarters of 2001.[1] The CTA *En Banc* denied the petitioner's motion for reconsideration, and affirmed the decision of the CTA 2nd Division through its decision dated May 5, 2009.[2] Hence, the petitioner appeals the decision of the CTA *En Banc*.

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[1] *Rollo*, pp. 84-96; penned by Associate Justice Erlinda P. Uy, with the concurrence of Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Olga Palanca-Enriquez (retired).

[2] Id. at 44-54; penned by Presiding Justice Ernesto D. Acosta (retired), with the concurrence of Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova, and Associate Justice Olga Palanca-Enriquez (retired).

Antecedents

The petitioner, a corporation duly organized under the laws of the Philippines, has been registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under Taxpayer Identification No. 004-266-526. It was formed as a consortium of several corporations, namely: Northern Mini Hydro Corporation, Aboitiz Equity Ventures, Inc., Ever Electrical Manufacturing, Inc. and Pacific Hydro Limited.

Pursuant to the Power Purchase Agreement entered into with the National Power Corporation (NPC), the electricity produced by the petitioner from its operation of the Bakun Hydroelectric Power Plant was to be sold exclusively to NPC.[3] Relative to its sale to NPC, the petitioner was granted by the BIR a certificate for Zero Rate for VAT purposes in the periods from January 1, 2000 to December 31, 2000; February 1, 2000 to December 31, 2000 (Certificate No. Z-162-2000); and from January 2, 2001 to December 31, 2001 (Certificate No. 2001-269).[4]

The petitioner alleged herein that it had incurred input VAT in the amount of ₱9,795,427.89 on its domestic purchases of goods and services used in its generation and sales of electricity to NPC in the four quarters of 2001;[5] and that it had declared the input VAT of ₱9,795,427.89 in its amended VAT returns for the four quarters on 2001, as follows:[6]

Exhibit	Date Filed	Period Covered	Input VAT (₱)
F	May 25, 2001	1st quarter- 2001	1,903,443.96
I	July 23, 2001	2nd quarter- 2001	2,166,051.96
L	July 23, 2002	3rd quarter- 2001	1,598,482.39
O	July 24, 2002	4th quarter- 2001	4,127,449.58
		Total	9,795,427.89

On November 26, 2001, the petitioner filed a written claim for refund or tax credit relative to its unutilized input VAT for the period from October 1999 to October 2001 aggregating ₱14,557,004.38.[7] Subsequently, on July 24, 2002, it amended the claim for refund or tax credit to cover the period from October 1999 to May 2002 for ₱20,609,047.56.[8]

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3 Id. at 85.
4 Id. at 86.
5 Id.
6 Id.
7 Id.
8 Id. at 87.

The BIR, through Revenue Examiner Felicidad Mangabat of Revenue District Office No. 2 in Vigan City, concluded an investigation, and made a recommendation in its report dated August 19, 2002 favorable to the petitioner's claim for the period from January 1, 2001 to December 31, 2001.[9]

Respondent Commissioner of Internal Revenue (Commissioner) did not ultimately act on the petitioner's claim despite the favorable recommendation. Hence, on April 14, 2003, the petitioner filed its petition for review in the CTA, praying for the refund or tax credit certificate (TCC) corresponding to the unutilized input VAT paid for the four quarters of 2001 totalling ₱9,795,427.88.[10]

Answering on May 29, 2003,[11] the Commissioner denied the claim, and raised the following special and affirmative defenses, to wit:

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> 7. The petitioner has failed to demonstrate that the taxes sought to be refunded were erroneously or illegally collected;
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> 8. In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;
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> 9. It is incumbent upon petitioner to show compliance with the provisions of Section 112 and Section 229, both of the National Internal Revenue Code, as amended;
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> 10. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such they are looked upon [with] disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121);
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> 11. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence, not refundable.[12]
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On October 30, 2003, the parties submitted a Joint Stipulation of Facts and Issues,[13] which the CTA in Division approved on November 10, 2003. The issues to be resolved were consequently the following:

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9 Id.
10 Id.
11 Id. at 67-69.
12 Id. at 68.
13 Id. at 70-74.

> 1. Whether or not the input value added tax being claimed by petitioner is supported by sufficient documentary evidence;
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> 2. Whether petitioner has excess and unutilized input VAT from its purchases of domestic goods and services, including capital goods in the amount of ₱9,795,427.88;
>
> 3. Whether or not the input VAT being claimed by petitioner is attributable to its zero-rated sale of electricity to the NPC;
>
> 4.Whether or not the operation of the Bakun Hydroelectric Power Plant is directly connected and attributable to the generation and sale of electricity to NPC, the sole business of petitioner; and
>
> 5. Whether or not the claim filed by the petitioner was filed within the reglementary period provided by law.[14]

While the case was pending hearing, the Commissioner, through the Assistant Commissioner for Assessment Services, informed the petitioner by the letter dated March 3, 2005 that its claim had been granted in the amount of ₱6,874,762.72, net of disallowances of ₱2,920,665.16. Accompanying the letter was the TCC for ₱6,874,762.72 (TCC No. 00002618).[15]

On May 3, 2005, the petitioner filed a Motion for Leave of Court to Amend Petition for Review in consideration of the partial grant of the claim through TCC No. 00002618. The CTA in Division granted the motion on May 11, 2005, and admitted the Amended Petition for Review, whereby the petitioner sought the refund or tax credit in the reduced amount of ₱2,920,665.16. The CTA in Division also directed the respondent to file a supplemental answer within ten days from notice.[16]

When no supplemental answer was filed within the period thus allowed, the CTA in Division treated the answer filed on May 16, 2003 as the Commissioner's answer to the Amended Petition for Review.[17]

Thereafter, the petitioner presented testimonial and documentary evidence to support its claim. On the other hand, the Commissioner submitted the case for decision based on the pleadings.[18] On May 2, 2007, the case was submitted for decision without the memorandum of the Commissioner.[19]

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14 Id. at 73-74.
15 Id. at 89.
16 Id.
17 Id.
18 Id.
19 Id.

Ruling of the CTA in Division

The CTA in Division promulgated its decision in favor of the respondent denying the petition for review, *viz*:

> In petitioner's VAT returns for the four quarters of 2001, no amount of zero-rated sales was declared. Likewise, petitioner did not submit any VAT official receipt of payments for services rendered to NPC. The only proof submitted by petitioner is a letter from Regional Director Rene Q. Aguas, Revenue Region No. 1, stating that the financial statements and annual income tax return constitute sufficient secondary proof of effectively zero-rated and that based on their examination and evaluation of the financial statements and annual income tax return of petitioner for taxable year 2000, it had annual gross receipts of PhP187,992,524.00. This Court cannot give credence to the said letter as it refers to taxable year 2000, while the instant case refers to taxable year 2001.
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> Without zero-rated sales for the four quarters of 2001, the input VAT payments of PhP9,795,427.88 (including the present claim of PhP2,920,665.16) allegedly attributable thereto cannot be refunded. It is clear under Section 112 (A) of the NIRC of 1997 that the refund/tax credit of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales.
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> For petitioner's non-compliance with the first requisite of proving that it had effectively zero-rated sales for the four quarters of 2001, the claimed unutilized input VAT payments of PhP 2,920,665.16 cannot be granted.
>
> **WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.[20]

On May 21, 2008, the petitioner moved to reconsider the decision of the CTA in Division.[21] However, the CTA in Division denied the petitioner's motion for reconsideration on September 5, 2008.[22]

Decision of the CTA *En Banc*

On October 17, 2008, the petitioner filed a petition for review in the CTA *En Banc* (CTA E.B No. 420), posing the main issue whether or not the CTA in Division erred in denying its claim for refund or tax credit upon a

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[20] Id. at 94-95.
[21] Id. at 97-114.
[22] Id. at 115-117.

finding that it had not established its having effectively zero-rated sales for the four quarters of 2001.

On May 5, 2009, the CTA *En Banc* promulgated the assailed decision affirming the Division, and denying the claim for refund or tax credit, stating:

> The other argument of petitioner that even if the tax credit certificate will not be used as evidence, it was able to prove that it has zero-rated sale as shown in its financial statements and income tax returns quoting the letter opinion of Regional Director Rene Q. Aguas that the statements and the return are considered sufficient to establish that it generated zero-rated sale of electricity is bereft of merit. As found by the Court *a quo*, the letter opinion refers to taxable year 2000, while the instant case covers taxable year 2001; hence, cannot be given credence. Even assuming for the sake of argument that the financial statements, the return and the letter opinion relates to 2001, the same could not be taken plainly as it is because there is still a need to produce the supporting documents proving the existence of such zero-rated sales, which is wanting in this case.
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> Considering that there are no zero-rated sales to speak of for taxable year 2001, petitioner is, therefore, not entitled to a refund of PhP2,920,665.16 input tax allegedly attributable thereto since it is basic requirement under Section 112 (A) of the NIRC that there should exists a zero-rated sales in order to be entitled to a refund of unutilized input tax.
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> It is settled that tax refunds, like tax exemptions, are construed strictly against the taxpayer and that the claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund. Failure in this regard, petitioner's claim must therefore, fail.
>
> **WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.[23]

On June 10, 2009, the CTA *En Banc* also denied the petitioner's motion for reconsideration.[24]

Issue

Aggrieved, the petitioner has appealed, urging as the lone issue: –

> WHETHER THE CTA EN BANC COMMITTED A REVERSIBLE ERROR IN AFFIRMING THE DECISION OF THE CTA.

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[23] Id. at 49-50.
[24] Id. at 52-54.

In its August 3, 2009 petition for review,[25] the petitioner has argued as follows:

> (1) Its sale of electricity to NPC was automatically zero-rated pursuant to Republic Act No. 9136 (EPIRA Law); hence, it need not prove that it had zero-rated sales in the period from January 1, 2001 to December 31, 2001 by the presentation of VAT official receipts that would contain all the necessary information required under Section 113 of the National Internal Revenue Code of 1997, as implemented by Section 4.108-1 of Revenue Regulations No. 7-95. Evidence of sale of electricity to NPC other than official receipts could prove zero-rated sales.
>
> (2) The TCC, once issued, constituted an administrative opinion that deserved consideration and respect by the CTA *En Banc*.
>
> (3) The CTA *En Banc* was devoid of any authority to determine the existence of the petitioner's zero-rated sales, inasmuch as that would constitute an encroachment on the powers granted to an administrative agency having expertise on the matter.
>
> (4) The CTA *En Banc* manifestly overlooked evidence not disputed by the parties and which, if properly considered, would justify a different conclusion.[26]

The petitioner has prayed for the reversal of the decision of the CTA *En Banc*, and for the remand of the case to the CTA for the reception of its VAT official receipts as newly discovered evidence. It has supported the latter relief prayed for by representing that the VAT official receipts had been misplaced by Edwin Tapay, its former Finance and Accounting Manager, but had been found only after the CTA *En Banc* has already affirmed the decision of the CTA in Division. In the alternative, it has asked that the Commissioner allow the claim for refund or tax credit of ₱2,920,665.16.

In the comment submitted on December 3, 2009,[27] the Commissioner has insisted that the petitioner's claim cannot be granted because it did not incur any zero-rated sale; that its failure to comply with the invoicing requirements on the documents supporting the sale of services to NPC resulted in the disallowance of its claim for the input tax; and the claim should also be denied for not being substantiated by appropriate and sufficient evidence.

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25 Id. at 9-40.
26 Id. at 18.
27 Id. at 281-303.

In its reply filed on February 4, 2010,[28] the petitioner reiterated its contention that it had established its claim for refund or tax credit; and that it should be allowed to present the official receipts in a new trial.

Ruling of the Court

The petition is without merit.

Section 112 of the National Internal Revenue Code 1997 provides:

> SEC. 112. Refunds or Tax Credits of Input Tax.--
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> (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 or 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.
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> x x x x

A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (*a*) the taxpayer is VAT-registered; (*b*) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (*c*) the input taxes are due or paid; (*d*) the input taxes are not transitional input taxes; (*e*) the input taxes have not been applied against output taxes during and in the succeeding quarters; (*f*) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (*g*) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (*h*) 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 on the basis of sales volume; and (*i*) the claim is

[28] Id. at 307-315.

filed within two years after the close of the taxable quarter when such sales were made.[29]

The petitioner did not competently establish its claim for refund or tax credit. We agree with the CTA *En Banc* that the petitioner did not produce evidence showing that it had zero-rated sales for the four quarters of taxable year 2001. As the CTA *En Banc* precisely found, the petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity. Had there been zero-rated sales, it would have reported them in the returns. Indeed, it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, or in the *de novo* litigation before the CTA in Division.[30]

Although the petitioner has correctly contended here that the sale of electricity by a power generation company like it should be subject to zero-rated VAT under Republic Act No. 9136,[31] its assertion that it need not prove its having actually made zero-rated sales of electricity by presenting the VAT official receipts and VAT returns cannot be upheld. It ought to be reminded that it could not be permitted to substitute such vital and material documents with secondary evidence like financial statements.

We further find to be lacking in substance and bereft of merit the petitioner's insistence that the CTA *En Banc* should not have disregarded the letter opinion by BIR Regional Director Rene Q. Aguas to the effect that its financial statements and its return were sufficient to establish that it had generated zero-rated sale of electricity. To recall, the CTA *En Banc* rejected

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[29] *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009, 605 SCRA 536,555.

[30] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007, 518 SCRA 425, 431.

[31] Section 6. Generation Sector. – Generation of electric power, a business affected with public interest, shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements.

the insistence because, *firstly*, the letter opinion referred to taxable year 2000 but this case related to taxable year 2001, and, *secondly*, even assuming for the sake of argument that the financial statements, the return and the letter opinion had related to taxable year 2001, they still could not be taken at face value for the purpose of approving the claim for refund or tax credit due to the need to produce the supporting documents proving the existence of the zero-rated sales, which did not happen here. In that respect, the CTA *En Banc* properly disregarded the letter opinion as irrelevant to the present claim of the petitioner.

We further see no reason to grant the prayer of the petitioner for the remand of this case to enable it to present before the CTA newly discovered evidence consisting in VAT official receipts.

Ordinarily, the concept of newly discovered evidence is applicable to litigations in which a litigant seeks a new trial or the re-opening of the case in the trial court. Seldom is the concept appropriate when the litigation is already on appeal, particularly in this Court. The absence of a specific rule on newly discovered evidence at this late stage of the proceedings is not without reason. The propriety of remanding the case for the purpose of enabling the CTA to receive newly discovered evidence would undo the decision already on appeal and require the examination of the pieces of newly discovered evidence, an act that the Court could not do by virtue of its not being a trier of facts. Verily, the Court has emphasized in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[32] that a judicial claim for tax refund or tax credit brought to the CTA is by no means an original action but an appeal by way of a petition for review of the taxpayer's unsuccessful administrative claim; hence, the taxpayer has to convince the CTA that the quasi-judicial agency *a quo* should not have denied the claim, and to do so the taxpayer should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA, including whatever was required for the successful prosecution of the administrative claim as the means of demonstrating to the CTA that its administrative claim should have been granted in the first place.

Nonetheless, on the proposition that we may relax the stringent rules of procedure for the sake of rendering justice, we still hold that the concept of newly discovered evidence may not apply herein. In order that newly discovered evidence may be a ground for allowing a new trial, it must be fairly shown that: (*a*) the evidence is discovered after the trial; (*b*) such

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[32] Supra note 29, at 430-431.

evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (*c*) such evidence is material, not merely cumulative, corroborative, or impeaching; and (*d*) such evidence is of such weight that it would probably change the judgment if admitted.[33]

The first two requisites are not attendant. To start with, the proposed evidence was plainly not newly discovered considering the petitioner's admission that its former Finance and Accounting Manager had misplaced the VAT official receipts. If that was true, the misplaced receipts were forgotten evidence. And, secondly, the receipts, had they truly existed, could have been sooner discovered and easily produced at the trial with the exercise of reasonable diligence. But the petitioner made no convincing demonstration that it had exercised reasonable diligence. The Court cannot accept its tender of such receipts and return now, for, indeed, the non-production of documents as vital and material as such receipts and return were to the success of its claim for refund or tax credit was improbable, as it goes against the sound business practice of safekeeping relevant documents precisely to ensure their future use to support an eventual substantial claim for refund or tax credit.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari* for its lack of merit; **AFFIRMS** the decision dated May 5, 2009 of the Court of Tax Appeals *En Banc*; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

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[33] *Custodio v. Sandiganbayan*, G.R. Nos. 96027-28, March 8, 2005, 453 SCRA 24, 33.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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