551 Phil. 519

THIRD DIVISION

[G.R. Nos. 141104 & 148763, June 08, 2007]

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court are the consolidated cases involving the unsuccessful claims of herein petitioner Atlas Consolidated Mining and Development Corporation (petitioner corporation) for the refund/credit of the input Value Added Tax (VAT) on its purchases of capital goods and on its zero-rated sales in the taxable quarters of the years 1990 and 1992, the denial of which by the Court of Tax Appeals (CTA), was affirmed by the Court of Appeals.

Petitioner corporation is engaged in the business of mining, production, and sale of various mineral products, such as gold, pyrite, and copper concentrates. It is a VAT-registered taxpayer. It was initially issued VAT Registration No. 32-A-6-002224, dated 1 January 1988, but it had to register anew with the appropriate revenue district office (RDO) of the Bureau of Internal Revenue (BIR) when it moved its principal place of business, and it was re-issued VAT Registration No. 32-0-004622, dated 15 August 1990.[1]

G.R. No. 141104

Petitioner corporation filed with the BIR its VAT Return for the first quarter of 1992.[2] It alleged that it likewise filed with the BIR the corresponding application for the refund/credit of its input VAT on its purchases of capital goods and on its zero-rated sales in the amount of P26,030,460.00.[3] When its application for refund/credit remained unresolved by the BIR, petitioner corporation filed on 20 April 1994 its Petition for Review with the CTA, docketed as CTA Case No. 5102. Asserting that it was a "zero-rated VAT person," it prayed that the CTA order herein respondent Commissioner of Internal Revenue (respondent Commissioner) to refund/credit petitioner corporation with the amount of P26,030,460.00, representing the input VAT it had paid for the first quarter of

1992. The respondent Commissioner opposed and sought the dismissal of the petition for review of petitioner corporation for failure to state a cause of action. After due trial, the CTA promulgated its Decision[4] on 24 November 1997 with the following disposition –

> **WHEREFORE,** in view of the foregoing, the instant claim for refund is hereby **DENIED** on the ground of prescription, insufficiency of evidence and failure to comply with Section 230 of the Tax Code, as amended. Accordingly, the petition at bar is hereby **DISMISSED** for lack of merit.

The CTA denied the motion for reconsideration of petitioner corporation in a Resolution[5] dated 15 April 1998.

When the case was elevated to the Court of Appeals as CA-G.R. SP No. 47607, the appellate court, in its Decision,[6] dated 6 July 1999, dismissed the appeal of petitioner corporation, finding no reversible error in the CTA Decision, dated 24 November 1997. The subsequent motion for reconsideration of petitioner corporation was also denied by the Court of Appeals in its Resolution,[7] dated 14 December 1999.

Thus, petitioner corporation comes before this Court, *via* a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, assigning the following errors committed by the Court of Appeals –

I

> THE COURT OF APPEALS ERRED IN AFFIRMING THE REQUIREMENT OF REVENUE REGULATIONS NO. 2-88 THAT AT LEAST 70% OF THE SALES OF THE [BOARD OF INVESTMENTS (BOI)]-REGISTERED FIRM MUST CONSIST OF EXPORTS FOR ZERO-RATING TO APPLY.

II

> THE COURT OF APPEALS ERRED IN AFFIRMING THAT PETITIONER FAILED TO SUBMIT SUFFICIENT EVIDENCE SINCE FAILURE TO SUBMIT PHOTOCOPIES OF VAT INVOICES AND RECEIPTS IS NOT A FATAL DEFECT.

III

> THE COURT OF APPEALS ERRED IN RULING THAT THE JUDICIAL CLAIM WAS FILED BEYOND THE PRESCRIPTIVE PERIOD SINCE THE JUDICIAL CLAIM WAS FILED WITHIN TWO (2) YEARS FROM THE FILING OF THE VAT RETURN.

IV

THE COURT OF APPEALS ERRED IN NOT ORDERING CTA TO ALLOW THE RE-OPENING OF THE CASE FOR PETITIONER TO PRESENT ADDITIONAL EVIDENCE.[8]

G.R. No. 148763

G.R. No. 148763 involves almost the same set of facts as in G.R. No. 141104 presented above, except that it relates to the claims of petitioner corporation for refund/credit of input VAT on its purchases of capital goods and on its zero-rated sales made in the last three taxable quarters of 1990.

Petitioner corporation filed with the BIR its VAT Returns for the second, third, and fourth quarters of 1990, on 20 July 1990, 18 October 1990, and 20 January 1991, respectively. It submitted separate applications to the BIR for the refund/credit of the input VAT paid on its purchases of capital goods and on its zero-rated sales, the details of which are presented as follows –

Date of Application	Period Covered	Amount Applied For
21 August 1990	2nd Quarter, 1990	P 54,014,722.04
21 November 1990	3rd Quarter, 1990	75,304,774.77
19 February 1991	4th Quarter, 1990	43,829,766.10

When the BIR failed to act on its applications for refund/credit, petitioner corporation filed with the CTA the following petitions for review –

Date Filed	Period Covered	CTA Case No.
20 July 1992	2nd Quarter, 1990	4831
9 October 1992	3rd Quarter, 1990	4859
14 January 1993	4th Quarter, 1990	4944

which were eventually consolidated. The respondent Commissioner contested the foregoing Petitions and prayed for the dismissal thereof. The CTA ruled in favor of respondent Commissioner and in its Decision,[9] dated 30 October 1997, dismissed the Petitions mainly on the ground that the prescriptive periods for filing the same had expired. In a Resolution,[10] dated 15 January 1998, the CTA denied the motion for reconsideration

of petitioner corporation since the latter presented no new matter not already discussed in the court's prior Decision. In the same Resolution, the CTA also denied the alternative prayer of petitioner corporation for a new trial since it did not fall under any of the grounds cited under Section 1, Rule 37 of the Revised Rules of Court, and it was not supported by affidavits of merits required by Section 2 of the same Rule.

Petitioner corporation appealed its case to the Court of Appeals, where it was docketed as CA-G.R. SP No. 46718. On 15 September 2000, the Court of Appeals rendered its Decision,[11] finding that although petitioner corporation timely filed its Petitions for Review with the CTA, it still failed to substantiate its claims for the refund/credit of its input VAT for the last three quarters of 1990. In its Resolution,[12] dated 27 June 2001, the appellate court denied the motion for reconsideration of petitioner corporation, finding no cogent reason to reverse its previous Decision.

Aggrieved, petitioner corporation filed with this Court another Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, docketed as G.R. No. 148763, raising the following issues –

A.

> WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S CLAIM IS BARRED UNDER REVENUE REGULATIONS NOS. 2-88 AND 3-88 I.E., FOR FAILURE TO PTOVE [sic] THE 70% THRESHOLD FOR ZERO-RATING TO APPLY AND FOR FAILURE TO ESTABLISH THE FACTUAL BASIS FOR THE INSTANT CLAIM.

B.

> WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THERE IS NO BASIS TO GRANT PETITIONER'S MOTION FOR NEW TRIAL.

There being similarity of parties, subject matter, and issues, G.R. Nos. 141104 and 148763 were consolidated pursuant to a Resolution, dated 4 September 2006, issued by this Court. The ruling of this Court in these cases hinges on how it will resolve the following key issues: (1) prescription of the claims of petitioner corporation for input VAT refund/credit; (2) validity and applicability of Revenue Regulations No. 2-88 imposing upon petitioner corporation, as a requirement for the VAT zero-rating of its sales, the burden of proving that the buyer companies were not just BOI-registered but also exporting 70% of their total annual production; (3) sufficiency of evidence presented by petitioner corporation to establish that it is indeed entitled to input VAT refund/credit; and (4) legal ground for

granting the motion of petitioner corporation for re-opening of its cases or holding of new trial before the CTA so it could be given the opportunity to present the required evidence.

Prescription

The prescriptive period for filing an application for tax refund/credit of input VAT on zero-rated sales made in 1990 and 1992 was governed by Section 106(b) and (c) of the Tax Code of 1977, as amended, which provided that –

> SEC. 106. *Refunds or tax credits of input tax.* – x x x.
>
> (b) *Zero-rated or effectively zero-rated sales.* – Any person, except those covered by paragraph (a) above, whose sales are zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.
>
> x x x x
>
> (e) *Period within which refund of input taxes may be made by the Commissioner.* – The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c) as the case may be.

By a plain reading of the foregoing provision, the two-year prescriptive period for filing the application for refund/credit of input VAT on zero-rated sales shall be determined from the close of the quarter when such sales were made.

Petitioner contends, however, that the said two-year prescriptive period should be counted, not from the close of the quarter when the zero-rated sales were made, but from the date of filing of the quarterly VAT return and payment of the tax due 20 days thereafter, in accordance with Section 110(b) of the Tax Code of 1977, as amended, quoted as follows –

> SEC. 110. *Return and payment of value-added tax.* – x x x.
>
> (b) *Time for filing of return and payment of tax.* – The return shall be filed and the tax paid within 20 days following the end of each quarter specifically prescribed for a VAT-registered person under regulations to be promulgated by the Secretary of Finance: *Provided, however,* That any person whose registration is cancelled in accordance with paragraph (e) of Section 107 shall

file a return within 20 days from the cancellation of such registration.

It is already well-settled that the two-year prescriptive period for instituting a suit or proceeding for recovery of corporate income tax erroneously or illegally paid under Section 230[13] of the Tax Code of 1977, as amended, was to be counted from the filing of the final adjustment return. This Court already set out in *ACCRA Investments Corporation v. Court of Appeals,*[14] the rationale for such a rule, thus –

> Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of *Commissioner of Internal Revenue v. Asia Australia Express, Ltd.* (G.R. No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund.
>
> Considering that ACCRAIN filed its claim for refund as early as December 29, 1983 with the respondent Commissioner who failed to take any action thereon and considering further that the non-resolution of its claim for refund with the said Commissioner prompted ACCRAIN to reiterate its claim before the Court of Tax Appeals through a petition for review on April 13, 1984, the respondent appellate court manifestly committed a reversible error in affirming the holding of the tax court that ACCRAIN's claim for refund was barred by prescription.
>
> It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The "date of payment", therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982.

In another case, *Commissioner of Internal Revenue v. TMX Sales, Inc.,*[15] this Court further expounded on the same matter –

> A re-examination of the aforesaid minute resolution of the Court in the *Pacific Procon* case is warranted under the circumstances to lay down a categorical

pronouncement on the question as to when the two-year prescriptive period in cases of quarterly corporate income tax commences to run. A full-blown decision in this regard is rendered more imperative in the light of the reversal by the Court of Tax Appeals in the instant case of its previous ruling in the *Pacific Procon* case.

Section 292 (now Section 230) of the National Internal Revenue Code should be interpreted in relation to the other provisions of the Tax Code in order to give effect the legislative intent and to avoid an application of the law which may lead to inconvenience and absurdity. In the case of People vs. Rivera (59 Phil. 236 [1933]), this Court stated that statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. *INTERPRETATIO TALIS IN AMBIGUIS SEMPER FRIENDA EST, UT EVITATUR INCONVENIENS ET ABSURDUM*. Where there is ambiguity, such interpretation as will avoid inconvenience and absurdity is to be adopted. Furthermore, courts must give effect to the general legislative intent that can be discovered from or is unraveled by the four corners of the statute, and in order to discover said intent, the whole statute, and not only a particular provision thereof, should be considered. (*Manila Lodge No. 761, et al. vs. Court of Appeals, et al.* 73 SCRA 162 [1976) Every section, provision or clause of the statute must be expounded by reference to each other in order to arrive at the effect contemplated by the legislature. The intention of the legislator must be ascertained from the whole text of the law and every part of the act is to be taken into view. (*Chartered Bank vs. Imperial,* 48 Phil. 931 [1921]; *Lopez vs. El Hoger Filipino,* 47 Phil. 249, cited in *Aboitiz Shipping Corporation vs. City of Cebu,* 13 SCRA 449 [1965]).

Thus, in resolving the instant case, it is necessary that we consider not only Section 292 (now Section 230) of the National Internal Revenue Code but also the other provisions of the Tax Code, particularly Sections 84, 85 (now both incorporated as Section 68), Section 86 (now Section 70) and Section 87 (now Section 69) on Quarterly Corporate Income Tax Payment and Section 321 (now Section 232) on keeping of books of accounts. All these provisions of the Tax Code should be harmonized with each other.

x x x x

Therefore, the filing of a quarterly income tax returns required in Section 85 (now Section 68) and implemented per BIR Form 1702-Q and payment of quarterly income tax should only be considered mere installments of the annual tax due. These quarterly tax payments which are computed based on the

> cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. This is reinforced by Section 87 (now Section 69) which provides for the filing of adjustment returns and final payment of income tax. Consequently, the two-year prescriptive period provided in Section 292 (now Section 230) of the Tax Code should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax.
>
> In the case of *Collector of Internal Revenue vs. Antonio Prieto* (2 SCRA 1007 [1961]), this Court held that when a tax is paid in installments, the prescriptive period of two years provided in Section 306 (Section 292) of the National Internal Revenue Code should be counted from the date of the final payment. This ruling is reiterated in *Commissioner of Internal Revenue vs. Carlos Palanca* (18 SCRA 496 [1966]), wherein this Court stated that where the tax account was paid on installment, the computation of the two-year prescriptive period under Section 306 (Section 292) of the Tax Code, should be from the date of the last installment.
>
> In the instant case, TMX Sales, Inc. filed a suit for a refund on March 14, 1984. Since the two-year prescriptive period should be counted from the filing of the Adjustment Return on April 15,1982, TMX Sales, Inc. is not yet barred by prescription.

The very same reasons set forth in the afore-cited cases concerning the two-year prescriptive period for claims for refund of illegally or erroneously collected income tax may also apply to the Petitions at bar involving the same prescriptive period for claims for refund/credit of input VAT on zero-rated sales.

It is true that unlike corporate income tax, which is reported and paid on installment every quarter, but is eventually subjected to a final adjustment at the end of the taxable year, VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year. However, it is also equally true that until and unless the VAT-registered taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just how much input VAT[16] the taxpayer may apply against its output VAT;[17] how much output VAT it is due to pay for the quarter or how much excess input VAT it may carry-over to the following quarter; or how much of its input VAT it may claim as refund/credit. It should be recalled that not only may a VAT-registered taxpayer directly apply against his output VAT due the input VAT it had paid on its importation or local purchases of goods and services during the quarter; the taxpayer is also given the option to either (1) carry over any excess input VAT to the succeeding quarters for application against its future output VAT liabilities, or (2) file an application

for refund or issuance of a tax credit certificate covering the amount of such input VAT.[18] Hence, even in the absence of a final adjustment return, the determination of any output VAT payable necessarily requires that the VAT-registered taxpayer make adjustments in its VAT return every quarter, taking into consideration the input VAT which are creditable for the present quarter or had been carried over from the previous quarters.

Moreover, when claiming refund/credit, the VAT-registered taxpayer must be able to establish that it does have refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities – information which are supposed to be reflected in the taxpayer's VAT returns. Thus, an application for refund/credit must be accompanied by copies of the taxpayer's VAT return/s for the taxable quarter/s concerned.

Lastly, although the taxpayer's refundable or creditable input VAT may not be considered as illegally or erroneously collected, its refund/credit is a privilege extended to qualified and registered taxpayers by the very VAT system adopted by the Legislature. Such input VAT, the same as any illegally or erroneously collected national internal revenue tax, consists of monetary amounts which are currently in the hands of the government but must rightfully be returned to the taxpayer. Therefore, whether claiming refund/credit of illegally or erroneously collected national internal revenue tax, or input VAT, the taxpayer must be given equal opportunity for filing and pursuing its claim.

For the foregoing reasons, it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter. Having established thus, the relevant dates in the instant cases are summarized and reproduced below –

Period Covered	Date of Filing (Return w/ BIR)	Date of Filing (Application w/ BIR)	Date of Filing (Case w/ CTA)
2nd Quarter, 1990	20 July 1990	21 August 1990	20 July 1992
3rd Quarter, 1990	18 October 1990	21 November 1990	9 October 1992
4th Quarter, 1990	20 January 1991	19 February 1991	14 January 1993
1st Quarter, 1992	20 April 1992	--	20 April 1994

The above table readily shows that the administrative and judicial claims of petitioner corporation for refund of its input VAT on its zero-rated sales for the last three quarters of 1990 were all filed within the prescriptive period.

However, the same cannot be said for the claim of petitioner corporation for refund of its input VAT on its zero-rated sales for the first quarter of 1992. Even though it may seem that petitioner corporation filed in time its judicial claim with the CTA, there is no showing that it had previously filed an administrative claim with the BIR. Section 106(e) of the Tax Code of 1977, as amended, explicitly provided that no refund of input VAT shall be allowed unless the VAT-registered taxpayer filed an application for refund with respondent Commissioner within the two-year prescriptive period. The application of petitioner corporation for refund/credit of its input VAT for the first quarter of 1992 was not only unsigned by its supposed authorized representative, Ma. Paz R. Semilla, Manager-Finance and Treasury, but it was not dated, stamped, and initialed by the BIR official who purportedly received the same. The CTA, in its Decision,[19] dated 24 November 1997, in CTA Case No. 5102, made the following observations –

> This Court, likewise, rejects any probative value of the Application for Tax Credit/Refund of VAT Paid (BIR Form No. 2552) [Exhibit "B"] formally offered in evidence by the petitioner on account of the fact that it does not bear the BIR stamp showing the date when such application was filed together with the signature or initial of the receiving officer of respondent's Bureau. Worse still, it does not show the date of application and the signature of a certain Ma. Paz R. Semilla indicated in the form who appears to be petitioner's authorized filer.
>
> A review of the records reveal that the original of the aforecited application was lost during the time petitioner transferred its office (TSN, p. 6, Hearing of December 9, 1994). Attempt was made to prove that petitioner exerted efforts to recover the original copy, but to no avail. Despite this, however, We observe that petitioner completely failed to establish the missing dates and signatures abovementioned. On this score, said application has no probative value in demonstrating the fact of its filing within two years after the [filing of the VAT return for the quarter] when petitioner's sales of goods were made as prescribed under Section 106(b) of the Tax Code. We believe thus that petitioner failed to file an application for refund in due form and within the legal period set by law at the administrative level. Hence, the case at bar has failed to satisfy the requirement on the prior filing of an application for refund with the respondent before the commencement of a judicial claim for refund, as prescribed under Section 230 of the Tax Code. This fact constitutes another one of the many reasons for not granting petitioner's judicial claim.

As pointed out by the CTA, in serious doubt is not only the fact of whether petitioner corporation timely filed its administrative claim for refund of its input VAT for the first quarter of 1992, but also whether petitioner corporation actually filed such administrative claim in the first place. For failing to prove that it had earlier filed with the BIR an application for refund/credit of its input VAT for the first quarter of 1992, within the period prescribed by law, then the case instituted by petitioner corporation with the CTA for the refund/credit of the very same tax cannot prosper.

Revenue Regulations No. 2-88 and the 70% export requirement

Under Section 100(a) of the Tax Code of 1977, as amended, a 10% VAT was imposed on the gross selling price or gross value in money of goods sold, bartered or exchanged. Yet, the same provision subjected the following sales made by VAT-registered persons to 0% VAT –

> (1) Export sales; and
>
> (2) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero-rate.
>
> "Export Sales" means the sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales. "Foreign currency denominated sales", means sales to nonresidents of goods assembled or manufactured in the Philippines, for delivery to residents in the Philippines and paid for in convertible foreign currency remitted through the banking system in the Philippines.

These are termed zero-rated sales. 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.[20]

Petitioner corporation questions the validity of Revenue Regulations No. 2-88 averring that the said regulations imposed additional requirements, not found in the law itself, for the zero-rating of its sales to Philippine Smelting and Refining Corporation (PASAR) and Philippine Phosphate, Inc. (PHILPHOS), both of which are registered not only with the BOI, but also with the then Export Processing Zone Authority (EPZA).[21]

The contentious provisions of Revenue Regulations No. 2-88 read –

> SEC. 2. *Zero-rating.* – (a) Sales of raw materials to BOI-registered exporters. – Sales of raw materials to export-oriented BOI-registered enterprises whose export sales, under rules and regulations of the Board of Investments, exceed seventy percent (70%) of total annual production, shall be subject to zero-rate under the following conditions:
>
> > "(1) The seller shall file an application with the BIR, ATTN.: Division, applying for zero-rating for each and every separate buyer, in accordance with Section 8(d) of Revenue Regulations No. 5-87. The application should be accompanied with a favorable recommendation from the Board of Investments."
> >
> > "(2) The raw materials sold are to be used exclusively by the buyer in the manufacture, processing or repacking of his own registered export product;
> >
> > "(3) The words "Zero-Rated Sales" shall be prominently indicated in the sales invoice. The exporter (buyer) can no longer claim from the Bureau of Internal Revenue or any other government office tax credits on their zero-rated purchases;
>
> (b) Sales of raw materials to foreign buyer. – Sales of raw materials to a nonresident foreign buyer for delivery to a resident local export-oriented BOI-registered enterprise to be used in manufacturing, processing or repacking of the said buyer's goods and paid for in foreign currency, inwardly remitted in accordance with Central Bank rules and regulations shall be subject to zero-rate.

It is the position of the respondent Commissioner, affirmed by the CTA and the Court of Appeals, that Section 2 of Revenue Regulations No. 2-88 should be applied in the cases at bar; and to be entitled to the zero-rating of its sales to PASAR and PHILPHOS, petitioner corporation, as a VAT-registered seller, must be able to prove not only that PASAR and PHILPHOS are BOI-registered corporations, but also that more than 70% of the total annual production of these corporations are actually exported. Revenue Regulations No. 2-88 merely echoed the requirement imposed by the BOI on export-oriented corporations registered with it.

While this Court is not prepared to strike down the validity of Revenue Regulations No. 2-88, it finds that its application must be limited and placed in the proper context. Note that Section 2 of Revenue Regulations No. 2-88 referred only to the zero-rated sales of raw materials to export-oriented BOI-registered enterprises whose export sales, under BOI rules and regulations, should exceed seventy percent (70%) of their total annual

production.

Section 2 of Revenue Regulations No. 2-88, should not have been applied to the zero-rating of the sales made by petitioner corporation to PASAR and PHILPHOS. At the onset, it must be emphasized that PASAR and PHILPHOS, in addition to being registered with the BOI, were also registered with the EPZA and located within an export-processing zone. Petitioner corporation does not claim that its sales to PASAR and PHILPHOS are zero-rated on the basis that said sales were made to export-oriented BOI-registered corporations, but rather, on the basis that the sales were made to EPZA-registered enterprises operating within export processing zones. Although sales to export-oriented BOI-registered enterprises and sales to EPZA-registered enterprises located within export processing zones were both deemed export sales, which, under Section 100(a) of the Tax Code of 1977, as amended, shall be subject to 0% VAT distinction must be made between these two types of sales because each may have different substantiation requirements.

The Tax Code of 1977, as amended, gave a limited definition of export sales, to wit: "The sale and shipment or exportation of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, or foreign currency denominated sales." Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987 - which, in the years concerned (*i.e.,* 1990 and 1992), governed enterprises registered with both the BOI and EPZA, provided a more comprehensive definition of export sales, as quoted below:

> "ART. 23. "Export sales" shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates of similar commercial documents: Provided, further, That without actual exportation the following shall be considered constructively exported for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: Provided, further, That

> export sales of registered export trader may include commission income; and Provided, finally, That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.
>
> Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government and paid for in convertible foreign currency inwardly remitted through the Philippine banking systems shall also be considered export sales. (Underscoring ours.)

The afore-cited provision of the Omnibus Investments Code of 1987 recognizes as export sales the sales of export products to another producer or to an export trader, provided that the export products are actually exported. For purposes of VAT zero-rating, such producer or export trader must be registered with the BOI and is required to actually export more than 70% of its annual production.

Without actual exportation, Article 23 of the Omnibus Investments Code of 1987 also considers constructive exportation as export sales. Among other types of constructive exportation specifically identified by the said provision are sales to export processing zones. Sales to export processing zones are subjected to special tax treatment. Article 77 of the same Code establishes the tax treatment of goods or merchandise brought into the export processing zones. Of particular relevance herein is paragraph 2, which provides that "Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction."

Such tax treatment of goods brought into the export processing zones are only consistent with the Destination Principle and Cross Border Doctrine to which the Philippine VAT system adheres. According to the Destination Principle,[22] goods and services are taxed only in the country where these are consumed. In connection with the said principle, the Cross Border Doctrine[23] mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT, while those destined for use or consumption within the Philippines shall be imposed with 10% VAT.[24] Export processing zones[25] are to be managed as a separate customs territory from the rest of the Philippines and, thus, for tax purposes, are effectively considered as foreign territory. For this reason, sales by persons from the Philippine customs territory to those inside the export processing zones are already taxed as exports.

Plainly, sales to enterprises operating within the export processing zones are export sales,

which, under the Tax Code of 1977, as amended, were subject to 0% VAT. It is on this ground that petitioner corporation is claiming refund/credit of the input VAT on its zero-rated sales to PASAR and PHILPHOS.

The distinction made by this Court in the preceding paragraphs between the zero-rated sales to export-oriented BOI-registered enterprises and zero-rated sales to EPZA-registered enterprises operating within export processing zones is actually supported by subsequent development in tax laws and regulations. In Revenue Regulations No. 7-95, the Consolidated VAT Regulations, as amended,[26] the BIR defined with more precision what are zero-rated export sales –

> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
>
> (2) The sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
>
> (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 upon accreditation as such under the provisions of the Export Development Act (R.A. 7844) and its implementing rules and regulations;
>
> (4) Sale of gold to the *Bangko Sentral ng Pilipinas* (BSP); and
>
> (5) Those considered export sales under Articles 23 and 77 of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws, e.g. Republic Act No. 7227, otherwise known as the Bases Conversion and Development Act of 1992.

The Tax Code of 1997, as amended,[27] later adopted the foregoing definition of export

sales, which are subject to 0% VAT.

This Court then reiterates its conclusion that Section 2 of Revenue Regulations No. 2-88, which applied to zero-rated export sales to export-oriented BOI-registered enterprises, should not be applied to the applications for refund/credit of input VAT filed by petitioner corporation since it based its applications on the zero-rating of export sales to enterprises registered with the EPZA and located within export processing zones.

Sufficiency of evidence

There can be no dispute that the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund, but once it has submitted all the required documents, it is the function of the BIR to assess these documents with purposeful dispatch.[28] It therefore falls upon herein petitioner corporation to first establish that its sales qualify for VAT zero-rating under the existing laws (legal basis), and then to present sufficient evidence that said sales were actually made and resulted in refundable or creditable input VAT in the amount being claimed (factual basis).

It would initially appear that the applications for refund/credit filed by petitioner corporation cover only input VAT on its purportedly zero-rated sales to PASAR and PHILPHOS; however, a more thorough perusal of its applications, VAT returns, pleadings, and other records of these cases would reveal that it is also claiming refund/credit of its input VAT on purchases of capital goods and sales of gold to the Central Bank of the Philippines (CBP).

This Court finds that the claims for refund/credit of input VAT of petitioner corporation have sufficient legal bases.

As has been extensively discussed herein, Section 106(b)(2), in relation to Section 100(a)(2) of the Tax Code of 1977, as amended, allowed the refund/credit of input VAT on export sales to enterprises operating within export processing zones and registered with the EPZA, since such export sales were deemed to be effectively zero-rated sales.[29] The fact that PASAR and PHILPHOS, to whom petitioner corporation sold its products, were operating inside an export processing zone and duly registered with EPZA, was never raised as an issue herein. Moreover, the same fact was already judicially recognized in the case *Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue*.[30] Section 106(c) of the same Code likewise permitted a VAT-registered taxpayer to apply for refund/credit of the input VAT paid on capital goods imported or locally purchased to the extent that such input VAT has not been applied against its output VAT. Meanwhile, the effective zero-rating of sales of gold to the CBP from 1989 to 1991[31] was already affirmed by this Court in *Commissioner of Internal Revenue v. Benguet Corporation*,[32]

wherein it ruled that –

> At the time when the subject transactions were consummated, the prevailing BIR regulations relied upon by respondent ordained that gold sales to the Central Bank were zero-rated. The BIR interpreted Sec. 100 of the NIRC in relation to Sec. 2 of E.O. No. 581 s. 1980 which prescribed that gold sold to the Central Bank shall be considered export and therefore shall be subject to the export and premium duties. In coming out with this interpretation, the BIR also considered Sec. 169 of Central Bank Circular No. 960 which states that all sales of gold to the Central Bank are considered constructive exports. x x x.

This Court now comes to the question of whether petitioner corporation has sufficiently established the factual bases for its applications for refund/credit of input VAT. It is in this regard that petitioner corporation has failed, both in the administrative and judicial level.

Applications for refund/credit of input VAT with the BIR must comply with the appropriate revenue regulations. As this Court has already ruled, Revenue Regulations No. 2-88 is not relevant to the applications for refund/credit of input VAT filed by petitioner corporation; nonetheless, the said applications must have been in accordance with Revenue Regulations No. 3-88, amending Section 16 of Revenue Regulations No. 5-87, which provided as follows –

> SECTION 16. Refunds or tax credits of input tax. –
>
> x x x x
>
> (c) *Claims for tax credits/refunds.* – Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
>
> A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:
>
> x x x x
>
> "3. Effectively zero-rated sale of goods and services.
>
> "i) photo copy of approved application for zero-rate if filing for the first

time.

"ii) sales invoice or receipt showing name of the person or entity to whom the sale of goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered.

"iii) evidence of actual receipt of goods or services.

"4. Purchase of capital goods.

"i) original copy of invoice or receipt showing the date of purchase, purchase price, amount of value-added tax paid and description of the capital equipment locally purchased.

"ii) with respect to capital equipment imported, the photo copy of import entry document for internal revenue tax purposes and the confirmation receipt issued by the Bureau of Customs for the payment of the value-added tax.

"5. In applicable cases,

where the applicant's zero-rated transactions are regulated by certain government agencies, a statement therefrom showing the amount and description of sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold, and date of transaction shall also be submitted.

In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

Where the applicant is engaged in zero-rated and other taxable and exempt sales of goods and services, and the VAT paid (inputs) on purchases of goods and services cannot be directly attributed to any of the aforementioned transactions, the following formula shall be used to determine the creditable or refundable input tax for zero-rated sale:

$$\frac{\text{Amount of Zero-rated Sale}}{\text{Total Sales}} \times$$

Total Amount of Input Taxes

= Amount Creditable/Refundable

In case the application for refund/credit of input VAT was denied or remained unacted upon by the BIR, and before the lapse of the two-year prescriptive period, the taxpayer-applicant may already file a Petition for Review before the CTA. If the taxpayer's claim is supported by voluminous documents, such as receipts, invoices, vouchers or long accounts, their presentation before the CTA shall be governed by CTA Circular No. 1-95, as amended, reproduced in full below –

> In the interest of speedy administration of justice, the Court hereby promulgates the following rules governing the presentation of voluminous documents and/or long accounts, such as receipts, invoices and vouchers, as evidence to establish certain facts pursuant to Section 3(c), Rule 130 of the Rules of Court and the doctrine enunciated in *Compania Maritima vs. Allied Free Workers Union (77 SCRA 24)*, as well as Section 8 of Republic Act No. 1125:
>
> 1. The party who desires to introduce as evidence such voluminous documents must, after motion and approval by the Court, present:
> (a) a Summary containing, among others, a chronological listing of the numbers, dates and amounts covered by the invoices or receipts and the amount/s of tax paid; and (b) a Certification of an independent Certified Public Accountant attesting to the correctness of the contents of the summary after making an examination, evaluation and audit of the voluminous receipts and invoices. The name of the accountant or partner of the firm in charge must be stated in the motion so that he/she can be commissioned by the Court to conduct the audit and, thereafter, testify in Court relative to such summary and certification pursuant to Rule 32 of the Rules of Court.
>
> 2. The method of individual presentation of each and every receipt, invoice or account for marking, identification and comparison with the originals thereof need not be done before the Court or Clerk of Court anymore after the introduction of the summary and CPA certification. It is enough that the receipts, invoices, vouchers or other documents covering the said accounts or payments to be introduced in evidence must be pre-marked by the party concerned and submitted to the Court in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. Likewise, the originals of the voluminous receipts, invoices or accounts must be ready for verification and comparison in case doubt on the authenticity thereof is

raised during the hearing or resolution of the formal offer of evidence.

Since CTA Cases No. 4831, 4859, 4944,[33] and 5102,[34] were still pending before the CTA when the said Circular was issued, then petitioner corporation must have complied therewith during the course of the trial of the said cases.

In *Commissioner of Internal Revenue v. Manila Mining Corporation,*[35] this Court denied the claim of therein respondent, Manila Mining Corporation, for refund of the input VAT on its supposed zero-rated sales of gold to the CBP because it was unable to substantiate its claim. In the same case, this Court emphasized the importance of complying with the substantiation requirements for claiming refund/credit of input VAT on zero-rated sales, to wit –

> For a judicial claim for refund to prosper, however, respondent must not only prove that it is a VAT registered entity and that it filed its claims within the prescriptive period. *It must* ***substantiate*** *the input VAT paid by purchase* ***invoices*** *or* ***official receipts****.*
>
> This respondent failed to do.
>
> Revenue Regulations No. 3-88 amending Revenue Regulations No. 5-87 provides the requirements in claiming tax credits/refunds.
>
> x x x x
>
> Under Section 8 of RA1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.
>
> This Court thus notes with approval the following findings of the CTA:
>
> > x x x [S]ale of gold to the Central Bank should not be subject to the 10% VAT-output tax but this does not *ipso fact* mean that [the seller] is entitled to the amount of refund sought *as it is required by law to present evidence showing the input taxes it paid during the year in question*. What is being claimed in the instant petition is the refund of the input taxes paid by the herein petitioner on its purchase of goods and services. Hence, *it is necessary for the Petitioner to show proof that it had indeed paid the input taxes during the year 1991. In the case at bar, Petitioner failed to discharge this duty. It did not adduce in evidence the sales invoice,*

> *receipts or other documents showing the input value added tax on the purchase of goods and services.*
>
> x x x
>
> *Section 8 of Republic Act 1125 (An Act Creating* ***the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (trial de novo) where the parties must present their evidence accordingly*** *if they desire the Court to take such evidence into consideration.* (Emphasis and italics supplied)
>
> A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.
>
> A "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.
>
> These sales invoices or receipts issued by the supplier are necessary to substantiate the actual amount or quantity of goods sold and their selling price, and taken collectively are the best means to prove the input VAT payments.[36]

Although the foregoing decision focused only on the proof required for the applicant for refund/credit to establish the input VAT payments it had made on its purchases from suppliers, Revenue Regulations No. 3-88 also required it to present evidence proving actual zero-rated VAT sales to qualified buyers, such as (1) photocopy of the approved application for zero-rate if filing for the first time; (2) sales invoice or receipt showing the name of the person or entity to whom the goods or services were delivered, date of delivery, amount of consideration, and description of goods or services delivered; and (3) the evidence of actual receipt of goods or services.

Also worth noting in the same decision is the weight given by this Court to the certification by the independent certified public accountant (CPA), thus –

> Respondent contends, however, that the certification of the independent CPA attesting to the correctness of the contents of the summary of suppliers' invoices or receipts which were examined, evaluated and audited by said CPA in accordance with CTA Circular No. 1-95 as amended by CTA Circular No. 10-97 should substantiate its claims.
>
> There is nothing, however, in CTA Circular No. 1-95, as amended by CTA

Circular No. 10-97, which either expressly or impliedly suggests that summaries and schedules of input VAT payments, even if certified by an independent CPA, suffice as evidence of input VAT payments.

x x x x

The circular, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the Court. It does not relieve respondent of its imperative task of *pre-marking* photocopies of sales receipts and invoices and *submitting the same to the court* after the independent CPA shall have examined and compared them with the originals. Without presenting these pre-marked documents as evidence – from which the summary and schedules were based, the court cannot verify the authenticity and veracity of the independent auditor's conclusions.

There is, moreover, a need to subject these invoices or receipts to examination by the CTA in order to confirm whether they are VAT invoices. Under Section 21 of Revenue Regulation, No. 5-87, all purchases covered by invoices other than a VAT invoice shall not be entitled to a refund of input VAT.

x x x x

While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of the purchase receipts and/or invoices is not mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of the respondent's claims.

The records further show that respondent miserably failed to substantiate its claims for input VAT refund for the *first semester of 1991*. Except for the summary and schedules of input VAT payments prepared by respondent itself, no other evidence was adduced in support of its claim.

As for respondent's claim for input VAT refund for the *second semester of 1991*, it employed the services of Joaquin Cunanan & Co. on account of which it (Joaquin Cunanan & Co.) executed a certification that:

> We have examined the information shown below concerning the input tax payments made by the Makati Office of Manila Mining Corporation for the period from July 1 to December 31, 1991. Our

> examination included inspection of the pertinent suppliers' invoices and official receipts and such other auditing procedures as we considered necessary in the circumstances. x x x
>
> As the certification merely stated that it used "auditing procedures considered necessary" and not auditing procedures which are in accordance with generally accepted auditing principles and standards, and that the examination was made on "input tax payments by the Manila Mining Corporation," without specifying that the said input tax payments are attributable to the sales of gold to the Central Bank, this Court cannot rely thereon and regard it as sufficient proof of the respondent's input VAT payments for the second semester.[37]

As for the Petition in G.R. No. 141104, involving the input VAT of petitioner corporation on its zero-rated sales in the first quarter of 1992, this Court already found that the petitioner corporation failed to comply with Section 106(b) of the Tax Code of 1977, as amended, imposing the two-year prescriptive period for the filing of the application for refund/credit thereof. This bars the grant of the application for refund/credit, whether administratively or judicially, by express mandate of Section 106(e) of the same Code.

Granting *arguendo* that the application of petitioner corporation for the refund/credit of the input VAT on its zero-rated sales in the first quarter of 1992 was actually and timely filed, petitioner corporation still failed to present together with its application the required supporting documents, whether before the BIR or the CTA. As the Court of Appeals ruled –

> In actions involving claims for refund of taxes assessed and collected, the burden of proof rests on the taxpayer. As clearly discussed in the CTA's decision, petitioner failed to substantiate its claim for tax refunds. Thus:
>
> > "We note, however, that in the cases at bar, petitioner has relied totally on Revenue Regulations No. 2-88 in determining compliance with the documentary requirements for a successful refund or issuance of tax credit. Unmentioned is the applicable and specific amendment later introduced by Revenue Regulations No. 3-88 dated April 7, 1988 (issued barely after two months from the promulgation of Revenue Regulations No. 2-88 on February 15, 1988), which amended Section 16 of Revenue Regulations No. 5-87 on refunds or tax credits of input tax. x x x.
> >
> > x x x x
> >
> > "A thorough examination of the evidence submitted by the petitioner before this court reveals outright the failure to satisfy documentary

requirements laid down under the above-cited regulations. Specifically, petitioner was not able to present the following documents, to wit:

> "a) sales invoices or receipts;
>
> "b) purchase invoices or receipts;
>
> "c) evidence of actual receipt of goods;
>
> "d) BOI statement showing the amount and description of sale of goods, etc.
>
> "e) original or attested copies of invoice or receipt on capital equipment locally purchased; and
>
> "f) photocopy of import entry document and confirmation receipt on imported capital equipment.

"There is the need to examine the sales invoices or receipts in order to ascertain the actual amount or quantity of goods sold and their selling price. Without them, this Court cannot verify the correctness of petitioner's claim inasmuch as the regulations require that the input taxes being sought for refund should be limited to the portion that is directly and entirely attributable to the particular zero-rated transaction. In this instance, the best evidence of such transaction are the said sales invoices or receipts.

"Also, even if sales invoices are produced, there is the further need to submit evidence that such goods were actually received by the buyer, in this case, by CBP, Philp[h]os and PASAR.

x x x x

"Lastly, this Court cannot determine whether there were actual local and imported purchase of capital goods as well as domestic purchase of non-capital goods without the required purchase invoice or receipt, as the case may be, and confirmation receipts.

"There is, thus, the imperative need to submit before this Court the original or attested photocopies of petitioner's invoices or receipts, confirmation receipts and import entry documents in order that a full

ascertainment of the claimed amount may be achieved.

> "Petitioner should have taken the foresight to introduce in evidence all of the missing documents abovementioned. Cases filed before this Court are litigated *de novo*. This means that party litigants should endeavor to prove at the first instance every minute aspect of their cases strictly in accordance with the Rules of Court, most especially on documentary evidence." (pp. 37-42, Rollo)

Tax refunds are in the nature of tax exemptions. It is regarded as in derogation of the sovereign authority, and should be construed in *strictissimi juris* against the person or entity claiming the exemption. The taxpayer who claims for exemption must justify his claim by the clearest grant of organic or statute law and should not be permitted to stand on vague implications (Asiatic Petroleum Co. v. Llanes, 49 Phil. 466; Northern Phil. Tobacco Corp. v. Mun. of Agoo, La Union, 31 SCRA 304; Reagan v. Commissioner, 30 SCRA 968; Asturias Sugar Central, Inc. v. Commissioner of Customs, 29 SCRA 617; Davao Light and Power Co., Inc. v. Commissioner of Customs, 44 SCRA 122).

There is no cogent reason to fault the CTA's conclusion that the SGV's certificate is "self-destructive", as it finds comfort in the very SGV's stand, as follows:

> "It is our understanding that the above procedure are sufficient for the purpose of the Company. We make no presentation regarding the sufficiency of these procedures for such purpose. We did not compare the total of the input tax claimed each quarter against the pertinent VAT returns and books of accounts. The above procedures do not constitute an audit made in accordance with generally accepted auditing standards. Accordingly, we do not express an opinion on the company's claim for input VAT refund or credit. Had we performed additional procedures, or had we made an audit in accordance with generally accepted auditing standards, other matters might have come to our attention that we would have accordingly reported on."

The SGV's "disclaimer of opinion" carries much weight as it is petitioner's independent auditor. Indeed, SGV expressed that it "did not compare the total of the input tax claimed each quarter against the VAT returns and books of accounts."[38]

Moving on to the Petition in G.R. No. 148763, concerning the input VAT of petitioner corporation on its zero-rated sales in the second, third, and fourth quarters of 1990, the

appellate court likewise found that petitioner corporation failed to sufficiently establish its claims. Already disregarding the declarations made by the Court of Appeals on its erroneous application of Revenue Regulations No. 2-88, quoted hereunder is the rest of the findings of the appellate court after evaluating the evidence submitted in accordance with the requirements under Revenue Regulations No. 3-88 –

> The Secretary of Finance validly adopted Revenue Regulations [No.] x x x 3-98 pursuant to Sec. 245 of the National Internal Revenue Code, which recognized his power to "promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code." Thus, it is incumbent upon a taxpayer intending to file a claim for refund of input VATs or the issuance of a tax credit certificate with the BIR x x x to prove sales to such buyers as required by Revenue Regulations No. 3-98. Logically, the same evidence should be presented in support of an action to recover taxes which have been paid.
>
> x x x Neither has [herein petitioner corporation] presented sales invoices or receipts showing sales of gold, copper concentrates, and pyrite to the CBP, [PASAR], and [PHILPHOS], respectively, and the dates and amounts of the same, nor any evidence of actual receipt by the said buyers of the mineral products. It merely presented receipts of purchases from suppliers on which input VATs were allegedly paid. Thus, the Court of Tax Appeals correctly denied the claims for refund of input VATs or the issuance of tax credit certificates of petitioner [corporation]. Significantly, in the resolution, dated 7 June 2000, this Court directed the parties to file memoranda discussing, among others, the submission of proof for "its [petitioner's] sales of gold, copper concentrates, and pyrite to buyers." Nevertheless, the parties, including the petitioner, failed to address this issue, thereby necessitating the affirmance of the ruling of the Court of Tax Appeals on this point.[39]

This Court is, therefore, bound by the foregoing facts, as found by the appellate court, for well-settled is the general rule that the jurisdiction of this Court in cases brought before it from the Court of Appeals, by way of a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, is limited to reviewing or revising errors of law; findings of fact of the latter are conclusive.[40] This Court is not a trier of facts. It is not its function to review, examine and evaluate or weigh the probative value of the evidence presented.[41]

The distinction between a question of law and a question of fact is clear-cut. It has been held that "[t]here is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts."[42]

Whether petitioner corporation actually made zero-rated sales; whether it paid input VAT on these sales in the amount it had declared in its returns; whether all the input VAT subject of its applications for refund/credit can be attributed to its zero-rated sales; and whether it had not previously applied the input VAT against its output VAT liabilities, are all questions of fact which could only be answered after reviewing, examining, evaluating, or weighing the probative value of the evidence it presented, and which this Court does not have the jurisdiction to do in the present Petitions for Review on Certiorari under Rule 45 of the revised Rules of Court.

Granting that there are exceptions to the general rule, when this Court looked into questions of fact under particular circumstances,[43] none of these exist in the instant cases. The Court of Appeals, in both cases, found a dearth of evidence to support the claims for refund/credit of the input VAT of petitioner corporation, and the records bear out this finding. Petitioner corporation itself cannot dispute its non-compliance with the requirements set forth in Revenue Regulations No. 3-88 and CTA Circular No. 1-95, as amended. It concentrated its arguments on its assertion that the substantiation requirements under Revenue Regulations No. 2-88 should not have applied to it, while being conspicuously silent on the evidentiary requirements mandated by other relevant regulations.

Re-opening of cases/holding of new trial before the CTA

This Court now faces the final issue of whether the prayer of petitioner corporation for the re-opening of its cases or holding of new trial before the CTA for the reception of additional evidence, may be granted. Petitioner corporation prays that the Court exercise its discretion on the matter in its favor, consistent with the policy that rules of procedure be liberally construed in pursuance of substantive justice.

This Court, however, cannot grant the prayer of petitioner corporation.

An aggrieved party may file a motion for new trial or reconsideration of a judgment already rendered in accordance with Section 1, Rule 37 of the revised Rules of Court, which provides –

> SECTION 1. *Grounds of and period for filing motion for new trial or reconsideration.* – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has

probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move fore reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

In G.R. No. 148763, petitioner corporation attempts to justify its motion for the re-opening of its cases and/or holding of new trial before the CTA by contending that the "[f]ailure of its counsel to adduce the necessary evidence should be construed as excusable negligence or mistake which should constitute basis for such re-opening of trial as for a new trial, as counsel was of the belief that such evidence was rendered unnecessary by the presentation of unrebutted evidence indicating that respondent [Commissioner] has acknowledged the sale of [sic] PASAR and [PHILPHOS] to be zero-rated." [44] The CTA denied such motion on the ground that it was not accompanied by an affidavit of merit as required by Section 2, Rule 37 of the revised Rules of Court. The Court of Appeals affirmed the denial of the motion, but apart from this technical defect, it also found that there was no justification to grant the same.

On the matter of the denial of the motion of the petitioner corporation for the re-opening of its cases and/or holding of new trial based on the technicality that said motion was unaccompanied by an affidavit of merit, this Court rules in favor of the petitioner corporation. The facts which should otherwise be set forth in a separate affidavit of merit may, with equal effect, be alleged and incorporated in the motion itself; and this will be deemed a substantial compliance with the formal requirements of the law, provided, of course, that the movant, or other individual with personal knowledge of the facts, take oath as to the truth thereof, in effect converting the entire motion for new trial into an affidavit. [45] The motion of petitioner corporation was prepared and verified by its counsel, and since the ground for the motion was premised on said counsel's excusable negligence or mistake, then the obvious conclusion is that he had personal knowledge of the facts relating to such negligence or mistake. Hence, it can be said that the motion of petitioner corporation for the re-opening of its cases and/or holding of new trial was in substantial compliance with the formal requirements of the revised Rules of Court.

Even so, this Court finds no sufficient ground for granting the motion of petitioner corporation for the re-opening of its cases and/or holding of new trial.

In G.R. No. 141104, petitioner corporation invokes the Resolution,[46] dated 20 July 1998,

by the CTA in another case, CTA Case No. 5296, involving the claim of petitioner corporation for refund/credit of input VAT for the third quarter of 1993. The said Resolution allowed the re-opening of CTA Case No. 5296, earlier dismissed by the CTA, to give the petitioner corporation the opportunity to present the missing export documents.

The rule that the grant or denial of motions for new trial rests on the discretion of the trial court,[47] may likewise be extended to the CTA. When the denial of the motion rests upon the discretion of a lower court, this Court will not interfere with its exercise, unless there is proof of grave abuse thereof.[48]

That the CTA granted the motion for re-opening of one case for the presentation of additional evidence and, yet, deny a similar motion in another case filed by the same party, does not necessarily demonstrate grave abuse of discretion or arbitrariness on the part of the CTA. Although the cases involve identical parties, the causes of action and the evidence to support the same can very well be different. As can be gleaned from the Resolution, dated 20 July 1998, in CTA Case No. 5296, petitioner corporation was claiming refund/credit of the input VAT on its zero-rated sales, consisting of actual export sales, to Mitsubishi Metal Corporation in Tokyo, Japan. The CTA took into account the presentation by petitioner corporation of inward remittances of its export sales for the quarter involved, its Supply Contract with Mitsubishi Metal Corporation, its 1993 Annual Report showing its sales to the said foreign corporation, and its application for refund. In contrast, the present Petitions involve the claims of petitioner corporation for refund/credit of the input VAT on its purchases of capital goods and on its effectively zero-rated sales to CBP and EPZA-registered enterprises PASAR and PHILPHOS for the second, third, and fourth quarters of 1990 and first quarter of 1992. There being a difference as to the bases of the claims of petitioner corporation for refund/credit of input VAT in CTA Case No. 5926 and in the Petitions at bar, then, there are resulting variances as to the evidence required to support them.

Moreover, the very same Resolution, dated 20 July 1998, in CTA Case No. 5296, invoked by petitioner corporation, emphasizes that the decision of the CTA to allow petitioner corporation to present evidence "is applicable *pro hac vice* or in this occasion only as it is the finding of [the CTA] that petitioner [corporation] has established a few of the aforementioned *material points* regarding the possible existence of the export documents together with the prior and succeeding returns for the quarters involved, x x x" [Emphasis supplied.] Therefore, the CTA, in the present cases, cannot be bound by its ruling in CTA Case No. 5296, when these cases do not involve the exact same circumstances that compelled it to grant the motion of petitioner corporation for re-opening of CTA Case No. 5296.

Finally, assuming for the sake of argument that the non-presentation of the required documents was due to the fault of the counsel of petitioner corporation, this Court finds

that it does not constitute excusable negligence or mistake which would warrant the re-opening of the cases and/or holding of new trial.

Under Section 1, Rule 37 of the Revised Rules of Court, the "negligence" must be excusable and generally imputable to the party because if it is imputable to the counsel, it is binding on the client. To follow a contrary rule and allow a party to disown his counsel's conduct would render proceedings indefinite, tentative, and subject to re-opening by the mere subterfuge of replacing the counsel. What the aggrieved litigant should do is seek administrative sanctions against the erring counsel and not ask for the reversal of the court's ruling.[49]

As elucidated by this Court in another case,[50] the general rule is that the client is bound by the action of his counsel in the conduct of his case and he cannot therefore complain that the result of the litigation might have been otherwise had his counsel proceeded differently. It has been held time and again that blunders and mistakes made in the conduct of the proceedings in the trial court as a result of the ignorance, inexperience or incompetence of counsel do not qualify as a ground for new trial. If such were to be admitted as valid reasons for re-opening cases, there would never be an end to litigation so long as a new counsel could be employed to allege and show that the prior counsel had not been sufficiently diligent, experienced or learned.

Moreover, negligence, to be "excusable," must be one which ordinary diligence and prudence could not have guarded against.[51] Revenue Regulations No. 3-88, which was issued on 15 February 1988, had been in effect more than two years prior to the filing by petitioner corporation of its earliest application for refund/credit of input VAT involved herein on 21 August 1990. CTA Circular No. 1-95 was issued only on 25 January 1995, after petitioner corporation had filed its Petitions before the CTA, but still during the pendency of the cases of petitioner corporation before the tax court. The counsel of petitioner corporation does not allege ignorance of the foregoing administrative regulation and tax court circular, only that he no longer deemed it necessary to present the documents required therein because of the presentation of alleged unrebutted evidence of the zero-rated sales of petitioner corporation. It was a judgment call made by the counsel as to which evidence to present in support of his client's cause, later proved to be unwise, but not necessarily negligent.

Neither is there any merit in the contention of petitioner corporation that the non-presentation of the required documentary evidence was due to the excusable mistake of its counsel, a ground under Section 1, Rule 37 of the revised Rules of Court for the grant of a new trial. "Mistake," as it is referred to in the said rule, must be a mistake of fact, not of law, which relates to the case.[52] In the present case, the supposed mistake made by the counsel of petitioner corporation is one of law, for it was grounded on his interpretation

and evaluation that Revenue Regulations No. 3-88 and CTA Circular No. 1-95, as amended, did not apply to his client's cases and that there was no need to comply with the documentary requirements set forth therein. And although the counsel of petitioner corporation advocated an erroneous legal position, the effects thereof, which did not amount to a deprivation of his client's right to be heard, must bind petitioner corporation. The question is not whether petitioner corporation succeeded in establishing its interests, but whether it had the opportunity to present its side.[53]

Besides, litigation is a not a "trial and error" proceeding. A party who moves for a new trial on the ground of mistake must show that ordinary prudence could not have guarded against it. A new trial is not a refuge for the obstinate.[54] Ordinary prudence in these cases would have dictated the presentation of all available evidence that would have supported the claims for refund/credit of input VAT of petitioner corporation. Without sound legal basis, counsel for petitioner corporation concluded that Revenue Regulations No. 3-88, and later on, CTA Circular No. 1-95, as amended, did not apply to its client's claims. The obstinacy of petitioner corporation and its counsel is demonstrated in their failure, nay, refusal, to comply with the appropriate administrative regulations and tax court circular in pursuing the claims for refund/credit, now subject of G.R. Nos. 141104 and 148763, even though these were separately instituted in a span of more than two years. It is also evident in the failure of petitioner corporation to address the issue and to present additional evidence despite being given the opportunity to do so by the Court of Appeals. As pointed out by the appellate court, in its Decision, dated 15 September 2000, in CA-G.R. SP No. 46718 –

> x x x Significantly, in the resolution, dated 7 June 2000, this Court directed the parties to file memoranda discussing, among others, the submission of proof for "its [petitioner's] sales of gold, copper concentrates, and pyrite to buyers." Nevertheless, the parties, including the petitioner, failed to address this issue, thereby necessitating the affirmance of the ruling of the Court of Tax Appeals on this point.[55]

Summary

Hence, although this Court agreed with the petitioner corporation that the two-year prescriptive period for the filing of claims for refund/credit of input VAT must be counted from the date of filing of the quarterly VAT return, and that sales to EPZA-registered enterprises operating within economic processing zones were effectively zero-rated and were not covered by Revenue Regulations No. 2-88, it still denies the claims of petitioner corporation for refund of its input VAT on its purchases of capital goods and effectively zero-rated sales during the second, third, and fourth quarters of 1990 and the first quarter of 1992, for not being established and substantiated by appropriate and sufficient evidence. Petitioner corporation is also not entitled to the re-opening of its cases and/or holding of new trial since the non-presentation of the required documentary evidence before the BIR

and the CTA by its counsel does not constitute excusable negligence or mistake as contemplated in Section 1, Rule 37 of the revised Rules of Court.

WHEREFORE, premises considered, the instant Petitions for Review are hereby **DENIED**, and the Decisions, dated 6 July 1999 and 15 September 2000, of the Court of Appeals in CA-G.R. SP Nos. 47607 and 46718, respectively, are hereby **AFFIRMED**. Costs against petitioner.

Ynares-Santiago, (Chairperson), Austria-Martinez, and *Nachura, JJ.,* concur.

---

[1] *See Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* 376 Phil. 495, 508 (1999).

[2] Records (G.R. No. 141104), p. 4.

[3] Id. at 5.

[4] Penned by Presiding Judge Ernesto D. Acosta with Associate Judges Ramon O. De Veyra and Amancio Q. Saga, concurring; *rollo* (G.R. No. 141104), pp. 67-86.

[5] Penned by Presiding Judge Ernesto D. Acosta with Associate Judges Ramon O. de Veyra and Amancio Q. Saga, concurring; id. at 88-92.

[6] Penned by Associate Justice Artemon D. Luna with Associate Justices Conchita Carpio Morales (now an Associate Justice of the Supreme Court) and Bernardo P. Abesamis, concurring; id. at 32-42.

[7] Penned by Associate Justice Bernardo P. Abesamis with Associate Justices Conchita Carpio Morales (now an Associate Justice of the Supreme Court) and Bernardo Ll. Salas, concurring; id. at 44-45.

[8] *Rollo* (G.R. No. 141104), pp. 14-23.

[9] Penned by Presiding Judge Ernesto D. Acosta with Associate Judges Ramon O. de Veyra and Amancio Q. Saga, concurring; CA *rollo* (G.R. No. 148763), pp. 49-66.

[10] Id. at 67.

[11] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Quirino D. Abad-Santos, Jr. and Romeo A. Brawner, concurring; *rollo* (G.R. No. 148763) , pp. 37-46.

[12] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Buenaventura J. Guerrero and Romeo A. Brawner, concurring; id. at 48.

[13] SEC. 230. *Recovery of tax erroneously or illegally collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Forfeiture of refund. – A refund check or warrant issued in accordance with the pertinent provisions of this Code which shall remain unclaimed or uncashed within five (5) years from the date the said warrant or check was mailed or delivered shall be forfeited in favor of the government and the amount thereof shall revert to the General Fund.

[14] G.R. No. 96322, 20 December 1991, 204 SCRA 957, 963-964.

[15] G.R. No. 83736, 15 January 1992, 205 SCRA 184, 187-192.

[16] *Input VAT* means the value-added tax paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchases of goods or services from a VAT-registered person. (Section 104, Tax Code of 1977, as amended)

[17] *Output VAT* refers to VAT due on the sale of taxable goods or services by any person registered or required to register under Section 107 of the Tax Code of 1977, as amended (Section 104, Tax Code of 1977, as amended)

[18] See Section 104 of the Tax Code of 1977, as amended, on Tax Credits.

[19] Supra note 4 at 83-84.

[20] Section 8(a), Revenue Regulations No. 5-87; See also Sections 106(a) and (b) of the Tax Code of 1977, as amended.

[21] Now the Philippine Export Processing Zone Authority, under Republic Act No. 7916.

[22] *Commissioner of Internal Revenue v. Seagate Technology (Philippines),* G.R. No. 153866, 11 February 2005, 451 SCRA 133, 144.

[23] VICTOR A. DEOFERIO, JR. AND VICTORINO C. MAMALATEO, THE VALUE ADDED TAX IN THE PHILIPPINES, p. 422 (2000 Ed.).

[24] Now 12%, under the Tax Code of 1997, as amended by Republic Act No. 9337.

[25] Republic Act No. 7916, as amended, established what are called special economic zones (ECOZONES), referring to areas with highly developed or which have the potential to be developed into agro-industrial, tourist/recreational, commercial, banking, investment, and financial centers. An ECOZONE may contain any of the following: industrial estates (Ies), export processing zones (EPZs), free trade zones, and tourist/recreational centers. (Section 4)

[26] Section 4.100.2.

[27] Section 106(A)(2)(a). Republic Act No. 9337 amending the Tax Code of 1997 added a sixth paragraph, listing "The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations," also as export sales.

[28] *Philex Mining Corp. v. Commissioner of Internal Revenue,* 356 Phil. 189, 201-202 (1998).

[29] Under the Tax Code of 1977, as amended, sales to enterprises located within export processing zones and registered with EPZA were considered export sales by virtue of the Omnibus Investments Code, a special law. Thus, they were subjected to 0% VAT rate under Section 100(a) (2) of the Tax Code of 1977, as amended, and refund/credit of input VAT thereon was allowed under Section 106(b)(2) of the same Code on effectively zero-rated sales. Sales to EPZA enterprises were not yet directly recognized by the Tax Code of 1977, as amended, as export sales, the input VAT on which may be refunded/credited under a

separate provision, Section 106(b)(1). However, under the Tax Code of 1997, as amended, sales to enterprises within export processing zones are already explicitly recognized as zero-rated export sales in Section 106(A)(2)(a), the input VAT on which may be refunded/credited under Section 112(A), which now governs the refund/credit of input VAT on all zero-rated and effectively zero-rated sales. The Tax Code of 1997, as amended, already eliminated the separate paragraph on the refund/credit of input VAT on export sales.

[30] Supra note 1.

[31] Petitioner corporation applied for refund/credit of its input VAT on its sales of gold to the Central Bank of the Philippines (CBP) in the second, third, and fourth quarters of 1990, subject of the Petition in G.R. No. 148763.

[32] G.R. Nos. 134587 and 134588, 8 July 2005, 463 SCRA 28, 47.

[33] The Decision in these consolidated cases was promulgated only on 30 October 1997.

[34] The Decision in this case was promulgated only on 24 November 1997.

[35] G.R. No. 153204, 31 August 2005, 468 SCRA 571.

[36] Id. at 587-590.

[37] Id. at 590-594.

[38] Supra note 6 at 36-41.

[39] Supra note 11 at 43-45.

[40] *Sps. Rosario v. Court of Appeals,* 369 Phil. 729, 738 (1999).

[41] *Bautista v. Puyat Vinyl Products, Inc.,* 416 Phil. 305, 309 (2001).

[42] *Commissioner of Internal Revenue v. Court of Appeals,* 358 Phil. 562, 575 (1998).

[43] The following have been identified as exceptional circumstances: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the interference

made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. [*Sps. Sta. Maria v. Court of Appeals,* 349 Phil. 275, 282-283 (1998)].

[44] *Rollo* (G.R. No. 148763), p. 26.

[45] *Circle Financial Corporation v. Court of Appeals,* G.R. No. 77315, 22 April 1991, 196 SCRA 166, 171.

[46] Signed by Presiding Judge Ernesto D. Acosta and Associate Judges Amancio Q. Saga and Ramon O. de Veyra, *rollo,* 148-160 (G.R. No. 141104).

[47] *Baring v. Cabahug,* 127 Phil. 84, 86 (1967).

[48] *Galvez v. Court of Appeals,* 149 Phil. 377, 384-385 (1971); *Northern Luzon Transportation, Co., Inc. v. Sambrano,* 66 Phil. 60, 62-63 (1938).

[49] *Que v. Court of Appeals,* G.R. No. 150739, 18 August 2005, 467 SCRA 358, 369.

[50] *Rivera v. Court of Appeals,* 452 Phil. 1014, 1024-1025 (2003).

[51] *Insular Life Savings and Trust Company v. Runes, Jr.,* G.R. No. 152530, 12 August 2004, 436 SCRA 317, 324-325.

[52] Supra note 46.

[53] *Baring v. Cabahug,* supra note 47.

[54] *Viking Industrial Corporation v. Court of Appeals,* G.R. No. 143794, 13 July 2004, 434 SCRA 223, 231.

[55] Supra note 11 at 44-45.