Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **November 18, 2020** *which reads as follows:*

"G.R. No. 247341 — TOTAL (PHILIPPINES) CORPORATION, *petitioner versus* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

After reviewing the Petition and its annexes, inclusive of the Decision[1] dated October 25, 2018 and Resolution[2] dated May 20, 2019 of the Court of Tax Appeals (CTA) *en banc* in CTA EB No. 1603, the Court resolves to **DENY** the petition for failure of petitioner to sufficiently show that the CTA *en banc* committed any reversible error in the challenged Decision and Resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction.

For a taxpayer to validly claim a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales pursuant to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended,[3] it bears stressing that the following requirements must be complied with: (1) the taxpayer-claimant is VAT registered; (2) the taxpayer-claimant is engaged in

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1 *Rollo*, pp. 96-108. Penned by Associate Justice Esperanza R. Fabon-Victorino with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Cielito N. Mindaro Grulla, Erlinda P. Uy, Ma. Belen Ringpis-Liban, and Catherine T. Manahan concurring.

2 Id. at 51-53.

3 The relevant portion of the provision reads:

> Sec. 112. *Refunds of Tax Credits of Input Tax.* —
> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x[.]

zero-rated or effectively zero-rated sales; (3) there are creditable input taxes due or paid attributable to the zero-rated or effectively zero-rated sales; (4) this input tax has not been applied against the output tax; and (5) the application and the claim for a refund have been filed within the prescribed period.[4]

In the instant case, the core of the issue is the presence of the fourth requisite, that is, whether the valid input VAT attributable to petitioner's zero-rated sales has not been applied against its output VAT liability.

Contrary to petitioner's claim that there is no law or regulation requiring that input VAT must first be proven to exceed output VAT for a claim of refund to prosper, there are Section 110(A) and (B) and Section 112 of the NIRC, as amended, to contend with. In this regard, the CTA is correct that Section 110(A) and (B) of the NIRC, as amended, must be read in relation to Section 112 of the same Code. The law is clear on the matter for claiming a refund of excess input tax attributable to zero-rated sales, as it thus provides:

> **SEC. 110.** ***Tax Credits.*** —
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> x x x x
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> > ***(B) Excess Output or Input Tax.*** — If at the end of any taxable quarter **the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person**. If the **input tax exceeds the output tax**, the excess shall be carried over to the succeeding quarter or quarters. *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, **subject to the provisions of Section 112.**
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> x x x x
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> **SEC. 112.** ***Refunds or Tax Credits of Input Tax.*** —
>
> > ***(A) Zero-rated or Effectively Zero-rated Sales.*** — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax

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4 *Commissioner of Internal Revenue v. Toledo Power Co.*, G.R. Nos. 195175 & 199645, August 10, 2015, 765 SCRA 511, 516; See also *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007, 522 SCRA 657, 685-686.

> credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, **to the extent that such input tax has not been applied against output tax**: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> x x x x
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> *(C) Period within which Refund or Tax Credit of Input Taxes shall be Made.* - **In proper cases**, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof[.] (Emphasis supplied)

Thus, Section 110(B) of the NIRC, as amended, when taken together with Section 112 of the NIRC, as amended, shows that a taxpayer must have excess input VAT amount to cover its output VAT liability for the pertinent period or periods to apply for a refund. In other words, a taxpayer claiming for a refund of its unutilized input VAT from zero-rated transactions must show that it has an excess input VAT over the output VAT. Moreover, a closer reading of Section 112(A) of the NIRC, as amended, shows that the excess or unutilized input VAT from zero-rated transactions may be refunded or credited to other internal revenue taxes to the extent that it has not been applied against the output tax. Section 112(A) is further confined by Section 112(C) which uses the phrase "in proper cases." On this subject, the Court quotes with approval the CTA *en banc*'s disquisition on the matter:

> The phrase *"in proper cases"* under Section 112(C) qualifies the granting of refund under Section 112(A). Thus, it is not only when the input VAT is attributable to zero-rated sales and that the subject amount has not been applied against the output VAT that the claim for refund/TCC may be granted, it must likewise be "proper" or appropriate under the obtaining circumstances.
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> On the basis of the evidence presented, the Court in Division found that the output VAT liability of petitioner is more than its input VAT credits for the fourth quarter of taxable year 2006 x x x.
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> x x x x
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> The first sentence of Section 110(B) is plain that *"if at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person."* Thus, **it is "improper" or inappropriate, if not highly irregular, to grant the claim for refund/tax credit for input VAT in favor of petitioner when it has still unpaid output VAT for TY 2006.**[5]

Based on the foregoing, a taxpayer applying for a refund of its excess or unutilized input VAT for zero-rated transactions must comply with the requirement that its input tax has not been applied against the output tax and such application is "proper" as provided for in Section 112 of the NIRC, as amended.

The determination of the fourth requisite is a purely factual issue and the CTA has the jurisdiction to determine compliance therewith.[6] As ruled by the CTA in this case, petitioner's properly substantiated input VAT for the fourth quarter of 2006 amounted to ₱594,510,839.75 which is less than the amount of its output VAT liability of ₱722,903,477.94. Plainly, petitioner failed to satisfy the fourth requisite in a claim for refund under Section 112 of the NIRC, as amended, that is, the input tax has not been applied against the output tax because its input VAT is not enough to cover its output VAT liability. As such, no refund or issuance of tax credit certificate may be issued in favor of petitioner since it still has an unpaid output VAT liability and there is no excess input VAT to speak of.

On the basis thereof, this Court has discussed the possible situations that may arise in the determination of the VAT payable of a taxpayer in *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*,[7] *viz.*:

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5 *Rollo*, pp. 105-106. Emphasis supplied.

6 See *Commissioner of Internal Revenue v. Toledo Power Co.*, G.R. Nos. 195175 & 199645, August 10, 2015, supra note 4 at 516.

7 G.R. No. 153866, February 11, 2005, 451 SCRA 132.

> If at the end of a taxable quarter the output taxes charged by a seller are equal to the input taxes passed on by the suppliers, no payment is required. It is when the output taxes exceed the input taxes that the excess has to be paid. If, however, the input taxes exceed the output taxes, the excess shall be carried over to the succeeding quarter or quarters. **Should the input taxes result from zero-rated or effectively zero-rated transactions** or from the acquisition of capital goods, **any excess over the output taxes shall instead be refunded to the taxpayer or credited against other internal revenue taxes.**[8]

The first situation is when the output tax is equal to the input tax, in which case no VAT is required to be paid. The second situation is when the output tax exceeds the input tax, whereby the excess has to be paid by the taxpayer. The third situation is when the input tax exceeds the output tax, thus necessitating a refund or the carry-over of the excess to the succeeding period or periods. Remarkably, in the third scenario, the input tax amount has to be greater than the output tax amount to be entitled to a refund.

To further support its claim for refund, petitioner argues that there is no requirement to substantiate input VAT carried over from previous periods such that its input VAT carried over from the previous quarter in the amount of ₱411,598,506.73 should be applied against its output VAT. This argument fails to persuade this Court.

Time and again, tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[9] Aside from this, the pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[10] Accordingly, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[11]

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8 Id. at 142-143. Emphasis supplied.

9 *Eastern Telecommunications Phils. Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015, 754 SCRA 369, 381.

10 *Kepco Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011, 641 SCRA 70, 86, citing *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 456 SCRA 150, 163.

11 *Eastern Telecommunications Phils. Inc. v. Commissioner of Internal Revenue*, supra note 9 at 379.

Pursuant to Section 110(A)(1)[12] of the NIRC, as amended, any input VAT shall be creditable against the output tax only if the same is evidenced by a VAT invoice or official receipt issued in accordance with Section 113(A)[13] of the NIRC, as amended. In relation to a taxpayer who fails to present VAT invoices or official receipts to substantiate its accumulated input tax carry-over, such amount cannot likewise be credited against its output VAT liability. As pointed out by the CTA, petitioner failed to present VAT invoices or official receipts to prove the existence of its input tax carried over from the previous quarter. Consequently, petitioner's input tax carry-over cannot be credited against its output VAT liability.

All told, this Court finds no reason to reverse and set aside the assailed CTA *en banc*'s Decision and Resolution. This Court will not set aside lightly the conclusion reached by the CTA which, by the very nature of its function, is dedicated exclusively to the consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[14] In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.[15]

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12 The relevant provision reads:
Sec. 110. *Tax Credits.* —
(A) *Creditable Input Tax.* — (1) Any input tax **evidenced by a VAT invoice or official receipt issued in accordance with Section 113** hereof on the following transactions shall be creditable against the output tax[.] (Emphasis supplied)

13 The relevant provision reads:
Sec. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
(A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

14 *Sea-Land Service, Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446, citing *Cyanamid Philippines, Inc. v. Court of Appeals*, G.R. No. 108067, January 20, 2000, 322 SCRA 639.

15 *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006, 498 SCRA 126, 136.

SO ORDERED." ***Carandang, J., on official leave.***

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
91

DU-BALADAD AND ASSOCIATES
Counsel for Petitioner
20th Floor, Chatham House Building
Valero cor. Rufino Streets
Salcedo Village, 1227 Makati City

Court of Tax Appeals
National Government Center
Diliman, 1101 Quezon City
(CTA EB No. 1603)
(CTA Case No. 7855)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

LITIGATION DIVISION
BUREAU OF INTERNAL REVENUE
Room 703, BIR National Office Building
Agham Road, Diliman
1101 Quezon City

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