Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 230412**
	Present:
- versus -	CARPIO, *J., Chairperson,* PERLAS-BERNABE, CAGUIOA, REYES, J. JR., and LAZARO-JAVIER, *JJ.*
TEAM ENERGY CORPORATION (formerly MIRANT PAGBILAO CORPORATION), Respondent.	**Promulgated:** 27 MAR 2019

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DECISION

REYES, J. JR., *J.*:

The Facts and the Case

Before this Court is a petition for review on *certiorari*[1] seeking to reverse and set aside the August 31, 2016 Decision[2] and the January 30, 2017 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1364 which affirmed the May 29, 2015 and September 9, 2015

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[1] *Rollo*, pp. 11-23.

[2] Penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban; id. at 30-46.

[3] Id. at 26-28.

Resolutions of the CTA Special First Division which reinstated the July 13, 2010 Decision of the CTA First Division in CTA Case No. 7617.

The facts, as found by the CTA *En Banc* are as follows:

> x x x Respondent is principally engaged in the business of power generation and the subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, Transfer Scheme.
>
> Respondent is also registered with the BIR as a VAT taxpayer in accordance with Section 107 of the National Internal Revenue Code of 1977 [now Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997)] with Tax Identification No. 001-726-870 as shown on its BIR Certificate of Registration bearing RDO Control No. 96-600-002498.
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> x x x x
>
> On December 17, 2004, respondent filed with the BIR Audit Information, Tax Exemption and Incentives Division an Application for Effective Zero-Rate for the supply of electricity to the NPC for the period January 1, 2005 to December 31, 2005, which was subsequently approved.
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> Respondent filed with the BIR its Quarterly VAT Returns for the first three quarters of 2005 on April 25, 2005, July 26, 2005, and October 25, 2005, respectively. Respondent also filed its Monthly VAT Declaration for the month of October 2005 on November 21, 2005, which was subsequently amended on May 24, 2006. These VAT Returns reflected, among others, the following entries:

Exhibit	Period Covered	Zero-Rated Sales/Receipts	Taxable Sales	Output VAT	Input VAT
"C"	1st Qtr-2005	₱3,044,160,148.16	₱1,397,107.80	₱139,710.78	₱16,803,760.82
"D"	2nd Qtr-2005	3,038,281,557.57	1,241,576.30	124,157.63	32,097,482.29
"E"	3rd Qtr-2005	3,125,371,667.08	452,411.64	45,241.16	16,937,644.73
"G" (amended)	October 2005		910,949.50	91,094.95	14,297,363.76
	Total	₱9,207,813,372.81	₱4,002,045.24	₱400,204.52	₱80,136,251.60

> On December 20, 2006, petitioner filed an administrative claim for cash refund or issuance of tax credit certificate corresponding to the input VAT reported in its Quarterly VAT Returns for the first three quarters of 2005 and Monthly VAT Declaration for October 2005 in the amount of [₱]80,136,251.60.
>
> Due to petitioner's inaction on its claim, respondent filed a Petition for Review before the Court in Division on April 18, 2007, docketed as CTA Case No. 7617.
>
> In her *Answer* filed on May 25, 2007, petitioner interposed the following Special and Affirmative Defenses:
>
> (1) The alleged claim for refund is subject to administrative investigation/examination;

(2) Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law;

(3) Respondent failed to prove compliance with: (a) the registration requirements of a value-added taxpayer; (b) the invoicing and accounting requirements for VAT-registered persons; (c) the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code of 1997, as amended; (d) the submission of complete documents in support of the administrative claim pursuant to Section 112 (D). Respondent likewise failed to prove that the input taxes paid were attributable to zero-rated sales, used in the course of its trade or business, and have not been applied against any output tax and that the claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code of 1997, as amended; (e) the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code, as amended.

(4) The burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit; and,

(5) Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

During trial, respondent presented documentary and testimonial evidence. The exhibits enumerated in respondent's Formal Offer of Evidence were admitted in the Resolution dated January 29, 2009. Petitioner, on the other hand, waived her right to present evidence.

The case was submitted for Decision on July 13, 2009.

On July 13, 2010, the Court in Division issued a Decision partially granting respondent's Petition, the dispositive portion of which reads:

> **WHEREFORE,** the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **SEVENTY-NINE MILLION ONE HUNDRED EIGHTY-FIVE THOUSAND SIX HUNDRED SEVENTEEN AND 33/100 PESOS (P79,185,617.33)** in favor of petitioner, representing petitioner's unutilized input VAT, attributable to its effectively zero-rated sales of power generation services to NPC for the period covering January 1, 2005 to October 31, 2005.

SO ORDERED.

On August 5, 2010, petitioner filed a "Motion for Reconsideration (Re: Decision promulgated 13 July 2010)."

On November 26, 2010, the Court in Division issued an Amended Decision which granted petitioner's Motion for Reconsideration, reversed and set aside the Decision dated July 13, 2010, and dismissed the Petition for Review for having been filed prematurely.

On December 17, 2010, respondent filed a "Petition for Review" before the Court *En Banc* docketed as CTA *En Banc* Case No. 706.

In a Resolution dated May 2, 2011, the Court *En Banc* denied due course to respondent's Petition for Review for lack of merit. Respondent filed a "Motion for Reconsideration" on May 24, 2011[,] assailing the 2 May 2011 Resolution, but the same was denied in the Court *En Banc's* Resolution dated July 15, 2011[,] for lack of merit.

On September 8, 2011, respondent filed a "Motion to Admit Attached Petition for Review on [*Certiorari*]" before the Supreme Court. The Supreme Court Third Division issued a Resolution on November 28, 2011 granting respondent's Motion.

On January 13, 2014, the Supreme Court issued a Decision granting respondent's Petition for Review on *Certiorari*, reversing and setting aside the May 2, 2011 and July 15, 2011 Resolutions issued by the Court *En Banc* in CTA EB No. 706, and remanding the case to this Court for the proper determination of the refundable amount. The Court in Division received the Notice of Judgment and Decision from the Supreme Court on February 26, 2014. The dispositive portion of the Supreme Court's Decision reads:

> WHEREFORE, the foregoing considered, the instant Petition for Review on [*Certiorari*] is hereby GRANTED. The May 2, 2011 and the July 15, 2011 Resolutions of the Court of Tax Appeals [*En Banc*] in CTA EB Case No. 706 are REVERSED and SET ASIDE. Let this case be remanded to the Court of Tax Appeals for the proper determination of the refundable amount.
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> SO ORDERED.

The said Supreme Court Decision became final and executory on March 10, 2014[,] and was recorded in the Book of Entries of Judgments by the Deputy Clerk of Court & Chief, Judicial Records Office of the Supreme Court. The Court received the Entry of Judgement on July 15, 2014.

On January 9, 2015, respondent filed a "Manifestation with Motion for Reinstatement of the 13 July 2010 Decision of the Court of Tax Appeals."

On May 29, 2015, the Court in Division issued a Resolution granting respondent's Motion for Reinstatement and reinstated the July 13, 2010 Decision of the Court in Division. Petitioner posted a

> "Motion for Reconsideration (re: Resolution dated 29 May 2015)" on June 23, 2015.
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> On September 9, 2015, the Court in Division denied petitioner's Motion for Reconsideration.
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> On October 16, 2015, which is within the extended period, petitioner Commissioner of Internal Revenue [CIR] filed the present Petition for Review before the Court *En Banc*. Respondent filed its "Comment/Opposition (To: Petitioner's Petition for Review dated 16 October 2015)" on February 19, 2016.[4]

On August 31, 2016, the CTA *En Banc* rendered a Decision, the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing, petitioner Commissioner of Internal Revenue's *Petition for Review* is **DENIED.** The assailed Resolutions dated May 29, 2015 and September 9, 2015 reinstating the July 13, 2010 Decision of the Court Special First Division in CTA Case No. 7617 are **AFFIRMED.**
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> **SO ORDERED**.[5]

It held that the failure of the respondent to present its Certificate of Compliance (COC) is not fatal to its claim for refund of unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the period covering January 1, 2005 to October 31, 2005 because its claim for refund is not based on Republic Act (R.A.) No. 9136 or the Electric Power Industry Reform Act (EPIRA) but on Section 108(B)(3) of the 1997 NIRC, as amended (Tax Code). According to the CTA *En Banc*, Section 108(B)(3) of the Tax Code allows zero-rating of services rendered to persons or entities whose exemption under special law effectively subjects the supply of such services to zero-rate. It is undisputed that the respondent is principally engaged in the business of power generation and subsequent sale thereof, to NPC under a Build, Operate, Transfer Scheme, and that it actually generated receipts from power generation services rendered to NPC. Thus, such sale of power generation services to NPC qualifies for zero-rating under Section 108(B)(3) of the Tax Code since NPC is an entity enjoying exemption from payment of all taxes pursuant to Section 13 of R.A. No. 6395,[6] as amended by Section 10 of Presidential

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4 *Rollo*, pp. 31-36.

5 Id. at 45.

6 AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION. Approved on September 10, 1971.

Decree No. 938[7] (Section 13 of the NPC Chapter). Since NPC is exempt from the payment of all taxes including VAT, respondent should be allowed to claim a refund or credit of its unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the period covering January 1, 2005 to October 31, 2005 pursuant to Section 108 (B)(3) of the Tax Code, despite the absence of a COC.

The Court, also found to be bereft of merit, the claim of the petitioner that the respondent filed its judicial claim prematurely as it did not exhaust administrative remedies when it failed to submit complete supporting documents for its administrative claim. It held that the set of documents enumerated in Revenue Memorandum Order No. 53-98 (RMO 53-98) is not a requirement for a grant of refund of input tax as it is merely a checklist of documents to be submitted by a taxpayer in relation to an audit of tax liabilities. Moreover, the petitioner had the obligation to inform the taxpayer that the documents submitted were incomplete, and to require it to submit additional documents. Since the petitioner did not send any written notice to the respondent requiring it to submit additional documents, petitioner can no longer validly argue that the judicial claim was premature on account of alleged non-submission of complete documents in the administrative level.

Petitioner moved for reconsideration, but the same was denied in a Resolution dated January 30, 2017.

Issue Presented

Hence, the present petition on the ground that the CTA *En Banc* erred in reinstating the Decision of the CTA dated July 13, 2010, which ordered the petitioner to refund or, in the alternative, issue a tax credit certificate in the amount of ₱79,185,617.33 in favor of the respondent.

Arguments of the Parties

Petitioner did not agree with the CTA that respondent need not secure a COC before it may be entitled to a refund on the ground that its claim for a refund is anchored on Section 108(B)(3) of the Tax Code and not under the EPIRA. He argued that before VAT registered persons may be considered to be subject to zero percent (0%) rate of VAT on its sale of services under Section 108(B)(3), it is imperative that it be authorized and qualified under the law to render such services. Thus, a generation company supplying services to the NPC must prove that it has complied with all the relevant regulatory requirements under the law, including the

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[7] FURTHER AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SIXTY-THREE HUNDRED NINETY-FIVE ENTITLED, "ACT ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION," AS AMENDED BY PRESIDENTIAL DECREES NOS. 380, 395 AND 758. Approved on May 27, 1976.

EPIRA. It is clear from Section 4 of the EPIRA as well as Sections 1 and 4 (a) of Rule 5 of its Implementing Rules and Regulations, that before an entity may engage in the business of generation of electricity, the ERC must authorize it to carry out such operations and issue in its favor a COC. Otherwise, it cannot be considered as a generation company as contemplated under the law. Since respondent miserably failed to prove its authority to operate as a generation company, as defined by the EPIRA, by presenting its COC from the ERC, it has no vested right or legal basis to claim for a refund of excess and/or unutilized input VAT attributable to its zero-rated sales of power generation services under Section 108(B)(3) of the Tax Code.[8]

Petitioner also stood pat on its claim that the judicial claim for refund that was filed by the respondent was filed prematurely for its failure to exhaust administrative remedies. He explained that as part of every taxpayer's duty to exhaust administrative remedies, the law requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue (BIR) before the 120-day audit period shall apply, and before the taxpayer can avail of judicial remedies provided by law. Given that the respondent failed to substantiate its administrative claim with documents that would prove its entitlement to tax refund, or credit, its judicial claim for refund must, perforce, be denied.[9]

Respondent, on the other hand, reiterated that its claim for refund of unutilized input VAT attributable to its zero-rated sales of electricity to NPC is based on Section 108(B)(3) of the Tax Code in relation to Section 13 of the NPC Charter, and not the EPIRA. Given NPC's exemption from all direct and indirect taxes as provided in its Charter and applying Section 108(B)(3) of the Tax Code, the only conclusion that can be drawn is that respondent's sale of power generation services to NPC are subject to VAT zero-rating. Respondent also contended that there is nothing in Section 112(A), in relation to Section 108(B)(3) of the Tax Code and Section 13 of the NPC Charter which requires the respondent to qualify as a "generation company" under the EPIRA before its sale of services to NPC may be subject to VAT zero-rating. The Tax Code provision on VAT zero-rating only provides that for an entity to be subject to VAT zero-rated treatment, its services must be rendered to entities which are tax exempt under special laws or international agreements to which the Philippines is a signatory. Simply put, the basis for the VAT zero-rated treatment of the supplier, respondent in this case, is the tax exemption of NPC, the purchaser of services, and not the qualification of the supplier itself.[10]

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[8] Id. at 14-16, 18-21.
[9] Id. at 16-17.
[10] Id. at 63-69.

Furthermore, the respondent averred that contrary to the claim of the petitioner, it submitted the complete supporting documents to the BIR to support its administrative claim on December 20, 2006. Had there been documents it did not submit, petitioner failed to specifically point out what document was not submitted. Petitioner's failure to inform the respondent of the need to submit additional documents, bars the former from validly arguing that the judicial claim was premature on account of the alleged non-submission of complete documents. Moreover, in a judicial claim due to the inaction of the petitioner, the CTA may consider all evidence presented including those that may not have been submitted, to the petitioner.[11]

Ruling of the Court

Respondent's failure to submit a Certificate of Compliance issued by the Energy Regulatory Commission does not disqualify it from claiming a tax refund or tax credit

Petitioner's argument against the grant of tax refund or tax credit in favor of the respondent is mainly hinged on respondent's lack of COC from the ERC. Petitioner insisted that without a COC, respondent may not be considered a generation company under the EPIRA, and therefore, its sales of generated power to the NPC may not be subject to zero percent VAT rate and enjoy the benefits under Section 108(B)(3) of the Tax Code as would entitle it to claim a tax refund or tax credit of its unutilized input VAT attributable to its sale of electricity to NPC. According to the petitioner, its assertion that COC is indispensable to a claim for refund finds support in the case decided by the CTA entitled, *Toledo Power Company v. Commissioner of Internal Revenue.*[12]

Petitioner's contention lacks merit.

Petitioner was less than truthful when he lifted only portions of the CTA Decision in *Toledo*[13] that were favorable to him. In the said case, while it may be true that the CTA ruled that the failure of Toledo to submit its approved COC from the ERC cannot qualify its sales of generated power for VAT zero-rating under the EPIRA, the same decision likewise granted Toledo's claim for refund of unutilized input VAT attributable to its sales of electricity to NPC under Section 108(B)(3) of the Tax Code. In short, the decision differentiated the requirements for a claim for refund under the EPIRA, and a claim for refund based on

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11 Id. at 69-75.

12 CTA Case No. 6961, Nov. 11, 2009.

13 Id.

Section 108(B)(3) of the Tax Code. In *Commissioner of Internal Revenue v. Toledo Power Company*[14] which affirmed the said CTA decision, this Court essentially held that the requirements of the EPIRA must be complied with only if the claim for refund is based on EPIRA. The pertinent portion of the decision reads:

> Now, as to the validity of TPC's claim, there is no question that TPC is entitled to a refund or credit of its unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the taxable year 2002 pursuant to Section 108 (B) (3) of the NIRC, as amended, in relation to Section 13 of the Revised Charter of the NPC, as amended. Hence, the only issue to be resolved is whether TPC is entitled to a refund of its unutilized input VAT attributable to its sales of electricity to CEBECO, ACMDC, and AFC.
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> x x x x
>
> Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4 (x) of the same law states that a generation company "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Corollarily, to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.
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> x x x x
>
> In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA.[15] (Citations omitted)

In the recent case of *Team Energy Corporation v. Commissioner of Internal Revenue*,[16] the Court likewise rejected the contention of the CIR that Team Energy is not entitled to tax refund or tax credit because it cannot qualify for VAT zero-rating for its failure to submit its ERC Registration and COC required under the EPIRA. In this case, the Court ruled:

> Here, considering that Team Energy's refund claim is premised on Section 108(B)(3) of the 1997 NIRC, in relation to NPC's charter, the requirements under the EPIRA are inapplicable. To qualify its

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14 774 Phil. 92 (2015).

15 Id. at 109-114.

16 G.R. Nos. 197663 and 197770, March 14, 2018.

> electricity sale to NPC as zero-rated, Team Energy needs only to show that it is a VAT-registered entity and that it has complied with the invoicing requirements under Section 108(B)(3) of the 1997 NIRC, in conjunction with Section 4,.108-1 of Revenue Regulations No. 7-95.[17]

Given that respondent in this case likewise anchors its claim for tax refund or tax credit under Section 108(B)(3) of the Tax Code, it cannot be required to comply with the requirements under the EPIRA before its sale of generated power to NPC should qualify for VAT zero-rating. Section 108(B)(3) of the Tax Code in relation to Section 13 of the NPC Charter, clearly provide that sale of electricity to NPC is effectively zero-rated for VAT purposes. The said provisions read:

> *Section 108(B)(3) of the Tax Code*
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> Sec. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –
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> x x x x
>
> (B) Transactions Subject to Zero Percent (0%) Rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
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> x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**. (Emphasis supplied)
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> *Section 13 of the NPC Charter,* as amended by Section 10 of P.D. No. 938 —
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> Sec. 13. Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities. – The Government shall be non-profit and shall devote all its return from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, **the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings**. (Emphasis supplied)

As correctly argued by the respondent, the basis for the VAT zero-rated treatment of the supplier is the tax exemption of the purchaser of

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[17] Id.

services, and not the qualification of the supplier itself, in order to relieve the tax-exempt purchaser from tax burden considering that it may not be able to offset or utilize any input tax passed on by its supplier of services, had the services it purchased been subject to VAT of 12%.[18]

It bears emphasis that effective zero-rating is not intended as a benefit to the person legally liable to pay the tax, such as the [respondent,] but to relieve certain exempt entities, such as the NPC, from the burden of indirect tax so as to encourage the development of particular industries. Before, as well as after, the adoption of the VAT, certain special laws were enacted for the benefit of various entities and international agreements were entered into by the Philippines with foreign governments and institutions exempting sale of goods or supply of services from indirect taxes at the level of their suppliers. Effective zero-rating was intended to relieve the exempt entity from being burdened with the indirect tax which is or which will be shifted to it had there been no exemption. In this case, respondent is being exempted from paying VAT on its purchases to relieve NPC of the burden of additional costs that respondent may shift to NPC by adding to the cost of the electricity sold to the latter.[19]

The judicial claim was not prematurely filed

Petitioner's argument that respondent's judicial claim for refund was prematurely filed for its failure to exhaust administrative remedies when it failed to submit complete supporting documents for its administrative claim, deserves scant consideration.

The authority of the CIR to require additional supporting documents necessary to determine the taxpayer's entitlement to a refund of input tax, and the consequences of the CIR's failure to inform the taxpayer of the need to submit additional documents for claims for tax refund, or credit filed prior to June 11, 2014, such as this case, had been settled in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[20] in this wise:

> To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to

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18 *Rollo*, pp. 65-66.
19 *San Roque Power Corp. v. Commissioner of Internal Revenue*, 620 Phil 554, 580 (2009).
20 774 Phil. 473 (2015).

> decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120[-]day period allowed to the CIR begins to run from the date of filing.[21]
>
> The alleged failure of Total Gas to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction. *First*, the 120-day period had commenced to run and the 120+30[-]day period was, in fact, complied with. As already discussed, it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120-day period. It must again be pointed out that *this in no way precludes the CIR from requiring additional documents necessary to decide the claim, or even denying the claim if the taxpayer fails to submit the additional documents requested.*
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> *Second,* the CIR sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents. As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents.[22]

Thus, as correctly found by the CTA *En Banc*:

> Upon perusal of the records, there is no showing that the CIR sent a written notice requiring respondent to submit additional documents – a process that is indispensable in computing the 120+30[-] day period. Thus, petitioner could no longer validly argue that the judicial claim was premature on account of alleged non-submission of complete documents as it is petitioner himself who fails to inform respondent about the need to submit additional documents in the administrative level.[23]

In fine, respondent is entitled to a refund or credit of its unutilized input VAT attributable to its effectively zero-rated sales of electricity to NPC for the period covering January 1, 2005 to October 31, 2005, pursuant to Section 108(B)(3) of the Tax Code, in relation to Section 13 of the NPC Charter.

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21 Id. at 495.

22 Id. at 502-503.

23 *Rollo*, p. 45.

WHEREFORE, premises considered, the petition is **DENIED.** The August 31, 2016 Decision and January 30, 2017 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 1364 are **AFFIRMED**.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

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

LUCAS P. BERSAMIN
Chief Justice