SUMMARY OF SIGNIFICANT CTA DECISIONS (APRIL 2017)

LEPANTO CONSOLIDATED MINING COMPANY vs. HON. KIM J. HENARES, in her capacity as the COMMISSIONER O F INTERNAL REVENUE
CTA Case No. 9359

Facts:

On December 20, 2001, petitioner filed a Petition for Review Ex Abundanti Ad Cautelam with the Court to question the disallowance by the BIR, through respondent's predecessor, of petitioner's application for tax refund/credit for input tax payments for the first quarter of 2001.

Thereafter, petitioner filed another Petition for Review with the Court seeking to reverse the disallowance by the BIR, through respondent’s predecessor, of its application for tax refund/credit for its input tax payments for the second (2nd) quarter of 2001.

The Court granted Petitioner’s tax credit claim in the reduced amount of P424, 844.20.

Accordingly, respondent is ordered to issue a tax credit certificate in favor of the petitioner in the amount of P424, 844.20 representing unutilized input VAT on domestic purchases of goods and services for the first and second quarters of taxable year 2001.

On January 19, 2005 Petitioner filed a Motion for Reconsideration seeking the reversal of the above Decision but the same was denied.

Petitioner filed a Petition for Review and Motion for Reconsideration On January 4, 2006 and May 2, 2006 respectively with the Supreme Court but the same was likewise denied.

On May 26, 2016 Petitioner thereafter filed a petition for revival of judgement.

Respondent avers that in the Resolution promulgated on August 11, 2005 by the CTA En Banc, the Petition for Review filed by petitioner was dismissed for being filed out of time. As stated in the said Resolution, the Decision and the Resolution of the Court in Division have become final and executory. Thus, when petitioner filed the complaint for revival of judgment on March 26, 201621, it was already eleven (11) years from the finality of the judgment it sought to revive. Clearly, the statute of limitations had set in.

Petitioner argues that pursuant to Section 6 of Rule 39 of the Rules of Court in relation to paragraph 3 of Article 1144 of the Civil Code, it has ten (10) years from the finality of the Decision on June 23, 2006, or until June 23, 2016, within which to file the present action for revival of judgment. Since the present Petition was filed within the said period, petitioner is entitled to the revival of the decision. Petitioner maintains that its right of action to file the present Petition for Revival of Judgment accrued on June 23, 2006, the date when the Supreme Court's Resolution dated February 1, 2006 in G.R. No. 170814 became final and executory Thus, the 10-year prescriptive period is counted from June 23, 2006 and petitioner had until June 24, 2016 within which to file the present Petition.

ISSUE:

1. whether the revival of the Court's Decision dated December 15, 2004 in CTA Case Nos. 6368 and 6480 is proper.

2. whether the present Petition for Revival of Judgment is filed within the ten (10) year prescriptive period.

Held: 1. NO. An action for revival of judgment is governed by paragraph 3 of Article 1144, and Article 1152 of the Civil Code in relation to Section 6 of Rule 39 of the Rules of Court."

Articles 1144 and 1152 of the Civil Code state:

ART. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

ART. 1152. The period for prescription of actions to demand the fulfillment of obligation declared by a judgment commences from the time the judgment became final. (Emphasis supplied)

On the other hand, Section 6 of Rule 39 of the Rules of Court provides:

SEC. 6. Execution by motion or by independent action. - A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

Revival of judgment is based on the premise that the decision to be revived is already final and executory." Accordingly, in the present case, there is a need to inquire: (1) whether the Decision in CTA Case Nos. 6368 and 6480, the decision sought to be revived, has already become final and executory; and (2) if such decision has definitely become final and executory, what is the exact date of its finality.

In the present case, it was established that the CTA *En Banc* dismissed petitioner's appeal of the Court in Division's Decision in CTA Case Nos. 6368 and 6480 for having been filed beyond the reglementary period.

Accordingly, the CTA En Banc held that the Court in Division's Decision in CTA Nos. 6368 and 6480 had become final and executory. Consistent with the findings of the CTA En Banc in its Resolution dated August 11, 2005, this Court also finds that the Court in Division's Decision in CTA Case Nos. 6368 and 6480 became final and executory on April 22, 2005, after the lapse of the 15-day reglementary period to appeal. Petitioner's failure to file an appeal within the foregoing period due to its mistaken notion that it has thirty (30) days within which to file an appeal before the CTA En Banc, and which it expressly admitted in its Petition for

Review, rendered the Court in Division's Decision in CTA Case Nos. 6368 and 6480 final and executory.

2. in Laneita v. Magbanua this Court holds that the period of time covering the pendency of petitioner's Petition for Review on Certiorari before the Supreme Court, i.e., from the date of its filing on January 4, 2006 until the same was denied with finality on June 23, 2006, should be excluded in the computation of the prescriptive period. The filing of such petition before the Supreme Court effectively stayed the execution of the Court in Division's Decision in CTA Case Nos. 6368 and 6480.

Counting from April 22, 2005 (date of finality of the Court in Division's Decision) up until January 4, 2006 (date of filing of the Rule 45 Petition before the Supreme Court), a period of eight (8) months and thirteen (13) days had elapsed. On the other hand, from June 23, 2006 (date of finality of the denial of the Rule 45 Petition) up until May 26, 2016 (date of filing of the present Petition), a period of nine (9) years, eleven (11) months, and three (3) days had elapsed. Accordingly, a total of ten (10) years, seven (7) months, and sixteen (16) days had passed from date of finality of the decision sought to be revived until the filing of the present Petition for its revival. Considering that petitioner only has 10 years to revive, the present Petition for Revival of Judgment is clearly seven (7) months and sixteen (16) days late.

TAGANITO MINING CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE
CTA Case No. 9057

FACTS:

Petitioner filed with the BIR an application for tax credit/refund of excess input VAT, allegedly paid on its domestic purchases and importation of taxable goods and services and importation of goods including capital goods in accordance with Section 112 (A) and (B) in relation to Section 106 (A)(2)(a)(1) of the NIRC of 1997, as amended. Due to the inaction of the CIR, petitioner filed this petition.

Respondent avers that there is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise, the administrative body will have sufficient reason to deny the claim. As held by the Honorable Supreme Court in the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue. The failure of petitioner to submit documents supporting its claim for refund makes its administrative claim for refund proforma.

ISSUE:

Whether or not petitioner is entitled to the refund of its alleged excess VAT input taxes of 8,326,025.84.

HELD:

Under Section 3.4 of RMO 9-00, said Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner covering the period January 1, 2013 to December 31, 2013. On the basis of said Certification, no output tax should, therefore, be shifted by the local suppliers to petitioner. Thus, it follows that petitioner is not entitled to refund of input VAT from the said domestic purchases.

In instances when petitioner paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, petitioner's recourse is not against the government, but against the seller who shifted to it the output VAT.

The input taxes incurred or paid are attributable to zero-rated or effectively zero-rated sales; Petitioner has excess I unutilized input taxes.

Since petitioner's input VAT allocated to VATable sales in the amount of P100,227.82 is not enough to cover its output VAT liability for the taxable year 2013 in the amount of P4,999,846.88, the substantiated input VAT attributable to zero-rated sales in the amount of P7,875,218.05 shall be utilized against the remaining output VAT of P4,899,619.06. Thus, only the remaining input VAT of P2,975,598.99 can be attributed to the entire zero-rated sales declared by petitioner in the amount of P3,273,782,021.06 and only the input VAT of P2,863,631.56 is attributable to the valid zero-rated sales of P3,150,594,396.73Although the claimed input VAT was carried-over by petitioner in its Quarterly VAT Return for the first quarter of 2014, the same remained unutilized since it was deducted in the same Quarterly VAT Return, as "VAT Refund/TCC claimed" from the total available input tax of P94,812,41 1.49 Thus, the claimed input taxes for the taxable year 2013 could not have been carried-over/utilized in the succeeding second quarter of 2014. Petitioner is entitled for a refund in the reduced amount of P2, 863,631.56.

SONOMA SERVICES v. CIR CTA Case No. 9026

FACTS:

Sonoma filed its Annual Income Tax Return (ITR) for CY 2012 with the BIR, through the Electronic Filing and Payment System (EFPS), on April 13, 2013, indicating therein its option to claim for refund its excess and unutilized CWT for CY 2012, based on Section 58 & 76. BIR did not respond.
CIR argued that under Section 76 of the NIRC, once a taxpayer chooses the option to carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall then be allowed. Petitioner, therefore, must proved that it did not carry-over its 2012 alleged unutilized creditable withholding taxes to the succeeding taxable quarters/years, otherwise, petitioner is precluded from claiming a cash refund or for issuance of tax credit certificate its excess tax credit for taxable year 2012. He argued that in an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim.

ISSUE:

1. Whether or not petitioner's excess and unutilized CWT for CY 2012 in the amount of P4,880,190.40 are duly substantiated by documentary evidence.
2. Whether or not the income from which the CWTs being claimed for refund were withheld was reported as part of the revenues declared in petitioner's Annual ITR.
3. Whether or not petitioner exercised the option to carry- over its excess and unutilized CWT for CY 2012 to the succeeding taxable periods.
4. Whether or not petitioner filed its administrative and judicial claims for refund of excess and unutilized CWT for CY 2012 within the two-year prescriptive period provided under Sections 204(C) and 229, Tax Code.

DECISION:

Since petitioner marked the box corresponding to the option "To be Refunded'?" in its Annual Income Tax Return (ITR) for CY2012, the CWTs for CY 2012 may be a proper subject of a claim for refund pursuant to Section 76, NIRC.

The taxpayer must also satisfy certain requirements in addition to Section 76 in order to be entitled to a refund:

1. The claim for refund must be filed within 2-year prescriptive period (Sec. 204C and 229 of the Tax Code
2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholdingagent) to the payee, showing the amount paid and the amount of tax withheld therefrom
3. The income upon which the taxes were withheld must be included in the return of the recipient.

1st requirement

According to case law, the reckoning of the two-year prescriptive period for the filing of a claim for issuance of tax credit certificate or refund of excess income tax withheld, both in the administrative and judicial levels, commences from the date of filing of the Final Adjustment Return, because it is only when the adjustment return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.

In the instant case, records show that petitioner electronically filed its CY 2012 Annual ITR on April 13, 2013. Counting from third date, petitioner had until April 13, 2015 within which to file its administrative claim as well as its judicial claim for refund.

Thus, petitioners administrative claim for refund filed on September 11, 201431 and the subsequent appeal via a Petition for Review filed before this Court on April 10, 2015 are well within the two-year prescriptive period provided by law. Clearly, the first requisite has been complied with.

2nd requisite

Petitioner likewise complied with the second requisite. It presented the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307)32 duly issued to it by various withholding agents for CY 2012, reflecting CWTs in the total amount P4,880,190.40.

3rd requisite

The certificates show that the CWTs of P4,597,000.00 were withheld on management fees received by petitioner amounting to P30,780,000.00, which formed part of the income declared by petitioner in its Annual ITR and Audited Financial Statements (AFS) for CY 2012 amounting to P50,000,000.00, as evidenced by its official receipts", cash receipts book" and general ledger".

On the other hand, the CWTs of P283,190.40 were withheld on the income payments of P4,719,840.00 pertaining to the sale of properties and equipment.

Upon verification of petitioner's official receipts", general journal", cash receipts book" and general ledger", the Court finds that the gain realized from the said sale amounting to P1,703,234.65, as shown below, was included in the return of the petitioner as part of the "Other Taxable Income Not Subjected to Final Tax" amounting to P2,653,070.2540~

Sonoma was able to establish that the income related to the CWTs being claimed for refund was declared as part of the income in its 2012 Annual ITR, in compliance with the third requisite.

Sonoma has sufficiently proven its entitlement to a cash refund representing unutilized excess creditable withholding taxes for CY 2012 in the amount of P4,880,190.40.

Therefore, Sonoma Services is entitled to a refund.

EHS LENS PHILIPPINES, INC v. CIR; CTA Case No. 9014

FACTS:

On 2005, PEZA and PEOI-PEOCI entered into a Registration Agreement plus other Supplemental Agreements. On November 29, 2012, PEZA Certificate of Board Resolution No. 12-649 was issued stating that PEOI-PEOCI's PEZA Registration as an EEE will be cancelled effective thirty (30) days from the signing of the Registration Agreement of petitioner for the projects to be taken-over by EHS from PEOI-PEOCI and the transfer to EHS of all rights and obligations of PEOI-PEOCI under its Registration Agreement with PEZA dated March 14, 2005 and its Supplemental Agreements dated July 15, 2009, January 26, 2010, March 18, 2011 and December 9, 2011, which were approved, subject to EHS' signing of a Registration Agreement with PEZA and to certain terms and conditions.
EHS likewise entered into a Deed of Sale and Assignments with EPPI.

EPPI and PEOI-PEOCI both remitted to the BIR the corresponding VAT arising from its sales transactions with EHS. on February 1, 2013.

ISSUES:

WHETHER PETITIONER IS ENTITLED TO A REFUND OR THE ISSUANCE OF TCCS ALLEGEDLY REPRESENTING VAT ON PETITIONER'S PURCHASE OF PROPERTIES ON FEBRUARY 1, 2013.

DECISION:

This case is similar to ***Contex Corporation v. Commissioner of Internal Revenue***. Contex is also a domestic corporation, registered with the Subic Bay Metropolitan Authority as a Subic Bay Freeport Enterprise, pursuant to the provisions of RA No. 7227. As an SBMA- registered firm, it is exempt from all local and national internal revenue taxes except for preferential tax. It purchased various supplies and materials necessary in the conduct of its manufacturing business, and Contex was required to pay input VAT thereon. It thought it was exempt from VAT, so it filed administrative and judicial claims for refund.

The Supreme Court found that Contex' s VAT exemption under RA No. 7227 is limited to the VAT on which it is directly liable as a seller and hence, it cannot claim any refund or exemption for any input VAT it paid, if any, on its purchases of raw materials and supplies.

Even though Contex should not have been liable for the VAT passed on to it, Contex is not the proper party to claim such VAT refund. Citing Section 4.100-2 of Revenue Regulations No. 7-95, as amended, the Supreme Court explained that since the transaction is deemed a zero-rated sale, petitioner's supplier may claim an Input VAT credit with no corresponding Output VAT liability.

No Output VAT may be passed on to the petitioner. Rather, it is Contex's suppliers who are the proper parties to claim the tax credit and accordingly refund Contex for the VAT erroneously passed on to the latter.

Going back to the instant case for EHS, CTA finds that the doctrine in the Contex case can be applied to the case at bar. In both cases:

1. the taxpayer was charged by its suppliers for input VAT in its purchases,
2. the taxpayer's suppliers remitted the VAT to the BIR,
3. the taxpayer is claiming exemption from VAT, and
4. the taxpayer sought the refund of the VAT paid under Section 229 of the 1997 NIRC.

Therefore,EHS is not the proper entity to file the refund. Instead, it should be PEOI-PEOCI and EPPI who should have filed the same and from whom petitioner should have claimed reimbursement for the VAT erroneously paid.

BELLE CORPORATION v. CIR: CTA Case No. 8939

FACTS:

Belle Corporation owns 852,455,306 common shares of stocks in BBCC.

BBCC was dissolved so Belle Corporation received several of BBCC's remaining real properties as liquidating dividends by virtue of a Deed of Conveyance.

BIR issued BIR Ruling No. DA-316-2007 declaring that BBCC's transfer of real properties by way of liquidating dividends to its stockholders is not considered a sale of such assets for tax purposes, therefore, not liable for tax since there was no gain or loss realized.

Petitioner claimed that it is entitled to a refund or a tax credit certificate considering that the conveyance of real properties by BBCC in favor of petitioner as liquidating dividend may not be considered as a taxable sale or exchange of properties, and thus, not subject to capital gains tax."

Respondent avers that BBCC transferred several of its remaining real properties to petitioner as liquidating dividends. Respondent insists that this transaction is not a mere transfer or return of invested capital but an exchange of the reclaimed lots by BBCC with petitioner's surrender of shares of stocks. Respondent also stated that BBCC is the proper party NOT Belle Corporation who should file the claim for refund.

ISSUES:

1. Whether or not the transfer of real properties by BBCC to petitioner, by way of liquidating dividends, is subject to the six percent (6%) final withholding capital gains tax prescribed under Section 27(D)(5) of the Tax Code;

2. Whether or not petitioner is entitled to a refund and/ or issuance of tax credit certificates to recover the six percent (6%) final withholding capital gains tax it had erroneously remitted to the BIR pursuant to Sections 204(C) and 229 of the Tax Code; and

3. Whether or not petitioner is the proper party to claim for refund.

DECISION:

Timeliness of the Filing the Petition for Review

The settled rule is that both the claim for refund with the BIR and the subsequent appeal to this Court must be filed within the two (2)-year period from the date of payment of the tax, regardless of any supervening cause that may arise after the payment. Therefore, the date of payment of the tax is important for purposes of counting the two-year prescriptive period.

Records show that petitioner paid the capital gains tax from its receipt of real property by way of liquidating dividends from BBCC on November 28, 2012. From the said date, petitioner had two years or until November 28, 2014 within which to file its administrative and judicial claims for refund. In this case, petitioner filed its administrative claim for refund and/ or issuance of tax credit certificate on April 8,2014 and its judicial claim on November 28,2014. Hence, both administrative and judicial claims were filed within the two-year prescriptive period.

Legal interest of a withholding agent in a claim for refund and/ or issuance of TCC
The Court favored Belle Corporation. It cited CIR v. Smart Communications which stated that: *" Pursuant to [Sections 204(C) and 229 of the NIRC of 1997, as amended], the person entitled to claim a tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim"*

Belle Corporation, as a withholding agent, is a party in interest or a person having sufficient legal interest to bring a suit for issuance of tax credit certificate or refund of illegally or erroneously collected taxes. It is considered a "taxpayer" under the Tax Code since it is personally liable for the withholding tax and deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under the law; and as an agent of the taxpayer, its authority to file the necessary returns and to remit the tax withheld to the government necessarily includes the authority to file a claim for refund and/or issuance of tax credit certificate and to bring an action for recovery of such claim.

Entitlement to Refund
In order to be liable for payment of capital gains tax, one has to profit or gain from the sale, exchange or disposition of the real property.

Considering that the conveyance by BBCC in favor of petitioner was done in pursuance of BBCC's dissolution and considering further that the real property is conveyed as a liquidating dividend, the transaction is therefore not subject to capital gains tax.

Dominium Realty & Construction Corp. vs CIR
CTA Case No. 8887 (April 2017)

Facts:

Petitioner Dominium Realty is a corporation duly organized and existing under the laws of the Philippines, which is engaged in the business of construction, building and infrastructure works, land development, subdivisions etc. Petitioner together with Fortune Tobacco Corporation (FTC), Parity Packaging Corporation (PPC), Northern Tobacco Redrying Co. Inc. (NTRCI) and Orecla Realty, Inc. (ORI), transferred several parcels of land in favor of Fortune Landequities and Resources, Inc. (FLRI) in exchange for the latter's shares of stocks. Petitioner executed a Deed of Transfer in favor of FLRI, transferring its title and ownership over its four parcels of land, in exchange for FLRI's shares of stock. Also, petitioner together with FTC, Philip Morris Philippines, PPC and NTRCI, entered into a deed of transfer exchanging their assets and liabilities for the shares of stock of PMFTC.

Petitioner was assessed for deficiency income tax, VAT and documentary stamp tax for taxable year 2010 due to the exchanges mentioned above. Petitioner filed its administrative claim, and due to inaction of the BIR this case was filed before the CTA via Petition for Review.

Issue:

Whether or not the Petitioner's transfer of its four parcels of land to FLRI in exchange for the latter's common shares of stock is a tax-free exchange pursuant to the Tax Code?

Ruling:

No, Petitioner is not liable for the assessment. Hence, the court granted the petition.
Under Section 40 of the NIRC, "No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four persons, gains control of said corporation…"

Moreover, the court provides the requisites for the non-recognition of gain or loss: a. the transferee is a corporation; b. the transferee exchanges its shares of stock for property/ies of the transferor; c. the transfer is made by a person, acting alone or together with others, not exceeding four persons, and, d. as a result of the exchange the transferor, alone or together with others, not exceeding four, gains control of the transferee.

Here, petitioner clearly proves based on the Deed of Transfer it has executed, that it has transferred four parcels of land together with FTC, PPC, NTRCI and ORI, in exchange of for FLRI's shares of stock.

On the other hand, petitioner is not liable for the DST, since as provided under Section 174 of the NIRC, it is the transferee corporation not the transferor who is liable for such DST.

Bonifacio Gas Corp. v. CIR CTA Case No. 8794
April 12, 2017

Facts:

Bonifacio Gas Corp. (petitioner) was assessed for deficiency income taxes in the amount of P609,598.73 for the taxable year 2009, inclusive of 25% surcharge. Petitioner now argues the following:

1. The BIR's disallowance and corresponding deficiency tax assessment on "Provision for Doubtful Accounts" was limited only to P8,184 and not for the entire amount.
    a. Since the respondent only disallowed this amount due to failure to comply with the deductibility requirements, it is an admission per se that the rest which were not disallowed complied with said requirements.
2. While the output VAT in the sale of services to BCDA is subject to 12% VAT rate for its reporting purposes, the final and full liability of petitioner is limited only to 5% final VAT already withheld by BCDA.
3. Given the fact that the VAT liability of petitioner was reported and paid at 12% rate without the benefit of 5% final VAT withheld by BCDA, unjust enrichment on the part of the government already exists.
4. Petitioner should not be held liable to pay the surcharge, deficiency interest and delinquency interest.

Further, petitioner alleges that the amount of disallowance upheld by the Court should be limited only to the amount actually disallowed in the FAN as the latter has no power to assess as such power belongs to the BIR.

Issue:

Held:
The P8,184 amount pertaining to the disallowance was obtained by deducting the amount of P688,423 representing Reversal of Allowance for Impairment Loss from the claimed amount of P696,508 pertaining to the Provision for Doubtful Accounts. This Court finds this deduction erroneous as the 2 accounts are different transactions which should not be offset. The "provision for Doubtful Accounts" is an expense item while the "Reversal of Allowance for Impairment Loss" is an income item. To allow the offsetting would have the effect of allowing the bad debts to be automatically deducted from the gross income without complying with the requirements of deductibility.
The Court further found that petitioner failed to establish that it complied with the deductibility requirements with respect to the remaining bad debts of P696,508. Hence, this amount shall also be disallowed.

The case of CIR vs. TPI held that Section 228 of the Tax Code clearly states that the taxpayer shall be informed in writing of the facts and the law on which the assessment is made, otherwise the assessment shall be void. In view of the foregoing, the Court reconsiders its ruling in the assailed decision and limits the disallowance of the provision for doubtful accounts to the appealed amount of P8,184 as indicated in the FAN.

With regard to the issue pertaining to the output VAT on sale of services to BCDA, petitioner argues that it overpaid its output VAT liability. It maintains that there is an alleged unjust enrichment on the part of the government given that the VAT liability of the petitioner was reported and paid at 12% rate without the benefit of the 5% final VAT withheld by BCDA and that to further subject petitioner to a deficiency assessment would constitute excessive collection of taxes. The Court sustains its ruling that petitioner's treatment of 5% final VAT withheld as tax credit in its 2009 Annual ITR is erroneous. The Court already explained this matter in the assailed decision, to wit:

> The taxpayers shall declare the full 12% VAT on their gross sales to or receipts from the government under "Sales to Government" in the filing of the VAT returns. The standard input VAT of 7% shall be deducted therefrom leaving a net VAT payable of 5%, which is equivalent to the final VAT withheld. Thus, after deducting the 5% final VAT withheld by the government under 'VAT withheld on Sales to Government', there remains no amount of output VAT due on the sales to or receipts from the government.
>
> Applying the foregoing provisions to the instant case, the Court finds it proper that petitioner declared the full 12% VAT on its receipts from the BCDA, but finds erroneous petitioner's treatment with respect to the 5% final VAT withheld as tax credit in its 2009 Annual ITR.

With regard to petitioner's claim that it should not be liable to pay 25% surcharge and 20% delinquency interest as only the deficiency interest was imposed in the FAN and Formal Letter of Demand, the Court found said argument unmeritorious. The delinquency interest and surcharges were imposed as penalty for petitioner's failure to pay the amount assessed in the FAN within the period prescribed therein. As such, being a penalty, the same is necessarily imposed after the issuance of the FAN in case of non-payment of the amount assessed. Thus, it is impossible for respondent to indicate in the FAN the delinquency interest and surcharges imposed in the assailed decision.

DOHIE SHIPMANAGEMENT PHIIS. CORP vs. COMMISSIONER OF INTERNAL REVENUE and the ONE-STOP SHOP INTER- AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER OF THE DEPARTMENT OF FINANCE
CTA CASE NO. 8702

Facts:

Petitioner filed with respondent OSS-DOF (is a government office empowered to accept and process applications for tax credits and/or duty drawbacks) the applications for refund/tax credits of its unapplied input VAT for the four quarters of the year 2010. It was duly supported by documents.
On August 30, 2013, petitioner filed the instant Petition for Review citing inaction on the part of respondent CIR on its administrative claim for refund/tax credit.

In defense, CIR averred that the instant claim for refund is still subject to examination. That petitioner needs to prove the merits of its claim since claims for refund are strictly construed against the claimants.

The OSS-DOF takes a different direction by questioning the Court's jurisdiction over the case saying that petitioner failed to comply with the mandatory 120-day period under section 112 of the NIRC.

Per respondent OSS-DOF, the 120-day prescriptive period stopped running from the time petitioner was required to submit the Agreement Form indicting petitioner's concurrence with the result of the BIR audit on the administrative claim for refund/tax credit. Despite receipt of the letter dated March 13, 2013, petitioner failed to submit the required Agreement Form which effectively suspended the running of the 120- day period. It is therefore inaccurate to say that there was already inaction on the part of respondent CIR entitling petitioner to seek judicial intervention.

Even if the Court assumes jurisdiction over the case, the amount of the claim must be reduced for not all are attributable to petitioner's zero-rated transactions for the year 2010. Respondent OSS-DOF questions the purchases of services relative to the construction of a building which was completed only after 2010. It suspects that the building might be used in a manner not exclusively attributable to zero-rated transactions, hence, would not involve input VAT.

The court-commissioned Independent Certified Public Accountant (ICPA) Myra Celeste O. Oabalos who claimed that her audit revealed that Petitioner's sales for the year 2010 were all to DIOML, a non-resident foreign corporation not doing business in the Philippines and such transactions are VAT Zero-rated sale.

ISSUE:

1. whether the Court has jurisdiction over the present Petition.

2. Whether or not petitioner's sales during the taxable year 2010 qualify as zero-rated sales, or are subject to zero percent rate under Section 108(8)(2) of the Tax Code thus making the Petitioner entitled for a refund or issuance of a Tax credit for its input VAT which are directly attributable to its zero-rated sales for the year 2010.

Held: 1. No. that a taxpayer-claimant only had a limited period of thirty (30) days from the expiration of the 120-day period of inaction of the Commissioner of Internal Revenue (CIR) to file its judicial claim with the CTA, x x x. Failure to do so, the judicial claim shall prescribe or be considered as filed out of time. It has long been established that the CTA is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction. Hence, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim. Petitioner failed to file its claim on time hence, the Court has no jurisdiction over the case.

2. Under Section 112(A), a VAT-registered taxpayer whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the relevant sales were made, apply for refund or tax credit of its creditable input tax due or paid attributable to such sales. Jurisprudence however clarified that (1) only the administrative claim must be filed within the two-year prescriptive period; and (2) the two-year prescriptive period begins to run from the close of the taxable quarter when the relevant sales were made. It appears from the foregoing dates that petitioner seasonably filed its administrative claim for the four (4) quarters of the year 2010 on August 12, 2011.

However, April 12, 2013, the date when petitioner submitted complete supporting documents for its administrative claim could not be considered as the reckoning date for the 120-day period neither could it be considered in the computation of the 30-day period to appeal. Thus, even if petitioner filed its administrative claim on August 12, 2011, submission of complete documents in support of the application for refund/tax credit for the four quarters of 2010 should only be until March 31, 2012, June 30, 2012, September 30, 2012, and December 31, 2012. Respectively, or the very deadlines for the filing of the administrative claim for the year 2010. Therefore, April 12, 2013, - the date when petitioner completed its supporting documents - could not be the reckoning point for the 120-day period as the said date was already beyond the 2-year period for the filing of the administrative claim provided under Section 112(A) of the NIRC, as amended, and submission of complete documents. From the lapse of the 120-day period, petitioner had 30 days or until August 28, 2012, November 27, 2012, February 27, 2013, and May 30, 2013, respectively, to seek judicial review via a petition for review with this Court. Clearly, the instant Petition for Review was filed out of time on August 30, 2013 hence, Petitioner claim for refund or issuance of a Tax credit for its input VAT which are directly attributable to its zero-rated sales for the year 2010 cannot be granted.

Taganito Corporation v. CIR CTA Case No. 8680
April 24, 2017

Facts:

Both parties pray for reconsideration of the Decision promulgated by this Court on March 28, 2016, which says that CIR is ordered to refund the reduced amount of P1,997,381.93 to Taganito.

CIR argues that this Court erred when it partially granted Taganito's claim allegedly representing excess input VAT amortization on capital goods purchases exceeding P1 Million in year 2011 as the petitioner failed to submit complete documents to substantiate its administrative claim for refund as required by RMO 53-98. It further argues that Taganito failed to show that its purchases of non-capital goods and services were made in the course of its trade and business; that it failed to show that the said purchases were properly supported by VAT invoices and/or official receipts and other documents and that it also failed to prove that the input taxes of P2l,818,041.36 allegedly paid on its purchases of goods and services, were attributable to its zero- rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter.

Taganito now raised the following for this Court's consideration:

1. The advance deduction of petitioner's input taxes from its 2008 purchases prior to the year of claim does not disqualify the same from being refunded;

2. The evidence it has submitted to this Court are adequate to support its claims; and

3. Failure to exact full payment does not disqualify the sale as a zero-rated sale.

Issue:

WON the amount of P1,997,381.93 representing excess input VAT amortization on capital goods purchases exceeding P1M in the year 2011 should be refunded to Taganito Corporation. **Yes.**

Held:

Taganito's MR is partially granted while CIR's MR is denied.

With regard to CIR's allegation that Taganito failed to submit complete documents required under RMO No. 53-98, the same has already been discussed by this Court when it resolved in its assailed Decision. It is quoted below:

> 'The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC,RR 3-88 or RMO53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a 'Checklist of Documents to be submitted by a Taxpayer upon audit of his Tax Liabilities x x x' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR.

> Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable'.'

Further, the term "complete documents" should pertain to those that are necessary. Moreover, it is well-settled that in claims for VAT refund, the non-submission of complete supporting documents in the administrative level is not fatal to petitioner's judicial claim. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.

Thus, applying Section 112 (C) of the NIRC of 1997, as amended, to the instant petition, respondent should have acted petitioner's application for refund until June 30, 2013, the end of the 120-day period reckoned from March 2, 2013, the date when Taganito is deemed to have completed the submission of its supporting documents to CIR. Now, counting from June 30, 2013, Taganito had 30 days or until July 30, 2013, within which to appeal its claim for refund before this Court. Thus, the instant Petition was timely filed on July 30, 2013."

With regard to Taganito's zero-rated sales in 2012, the same was not substantiated. But it further presented additional documents when it was given another opportunity to do so. However, out of the total reported sales in the 2012 Quarterly VAT Returns amounting to P3,125,030,692.01, only the amount of P3,035,811,767.16 represents petitioner's valid zero-rated sales which shall be considered for the claim for refund.

The Court also held that the NIRC provides that the sale and actual shipment of goods from the Philippines to a foreign country is paid for in acceptable foreign currency or its equivalent in goods or services and accounted for in accordance with the rules of BSP. The term "paid for" connotes "collection". Thus, there is a necessity to go through the supporting Bank Credit Advice/Inward Remittance Certificates of the alleged export sales to ascertain foreign currency remittances from foreign customers.

Further, contrary to petitioner's argument, the Court did not disallow the "entire transaction" with DH Kingstone as a zero-rated sale. Nevertheless, even granting that insufficient inward remittances from the DH Kingstone transaction "can already constitute full payment", petitioner should still provide evidence that could convince the Court that the unpaid balance pertains to alleged charges made against such payment, or that the same was already waived, or that efforts made to collect the same was indeed unfruitful.

As such, the disallowed zero-rated sales from the exportation to DH Kingstone in 2011 amounting to P14,611.333.48 ($336,899.55) must be sustained. The above rationale also served as the basis for the disallowance of zero-rated sales in 2012 amounting to P16,738,230.28 ($396,628.73), as discussed earlier.

Further, the advance deduction of petitioner's input taxes from its 2008 purchases prior to the year of claim should disqualify the same from being refunded. Records show that the claimed input VAT on purchases of capital goods exceeding P1M in the year 2008 amounted to P34,131,592.29. The said amount was already included in the amount of P42,038,669.5422 deducted as VAT Refund/TCC Claimed (Line 23D) in the 2009 4th Quarterly VAT Return of petitioner. However, our examination of the documents results to a total disallowance of P6,097,710.99.

PHILIPPINE AIRLINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS
CTA CASE NO. 8495

FACTS:

Section 13 of PAL's franchise, PD No. 1590 provides for the conditions which airlines are required to comply with, in order to continue enjoying tax exemptions on their importation of petroleum products. Thereafter a letter of instruction withdrew PAL's tax exemption privilege with respect to its purchase of domestic petroleum products for use in its domestic operations.

However, on January 29, 2003, the BIR Commissioner issued BIR Ruling No. 001-2003, addressed to petitioner, to Philippine Airlines (PAL), to Cebu Air, Inc. (CAl), and to Pacific Airways Corporation, which states that the importations may not be given the same treatment as before as long as there is available domestic supply of petroleum products.

On the basis of BIR Ruling no. 001-2003, petitioner made the payments for the importations and corresponding payments under protest of the specific tax assessed by the collector of customs of the port of Batangas city.

Petitioner filed with District collector of Customs, port of Batangas City a formal written protest for the refund of the taxes. Petitioner alleges that the protest were not acted upon by respondent COC. To avoid the lapse of the 2 year prescriptive period, which to file a refund claim under Section 204(C) of the NIRC of 1997, it was constrained to file a written claim for refund for the specific taxes paid for both importations on May 17, 2012 with respondent CIR. Claiming inaction on the part of respondent CIR, petitioner flied with the Court its judicial claim via its Petition for Review.

ISSUE:

whether or not petitioner is entitled to a refund or issuance of a TCC equivalent to the amount of P137,099,144.00 representing excise taxes paid for the importation of Jet A-1 fuel for its domestic flight operations from April 2010 to June 2010.

HELD:

Subject to the Conditions Stated in Sec. 13 of PD 1590, PAL is Exempt from Taxes on Its Importations of Jet A-I Fuel.

For Sec 13 of PD 1590 to apply, the following conditions must be satisfied:

1. The basic corporate income tax or franchise tax, whichever is lower, must be paid, under the conditions set forth in Section 13 of PD No. 1590;

2. The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and

3. The articles, materials or supplies should not be locally availablein reasonable quantity, quality or pricy.

The first two requisites are fully satisfied, however, for the third one in the case of Jet Fuel for the year 2010, the Demand in the amount of 9,617 MB clearly exceeds the Total Local Available Supply of 6,680 MB. As the Jet-A1 fuel petitioner imported was not locally available in reasonable quantity, this gives rise for petitioner's entitlement to the tax exemption because it is sufficient for petitioner to be able to prove even just one qualification.

To require petitioner to prove the absence of all three conditions -- locally available supply in reasonable quantity, quality and price -- would result in an absurd situation wherein the airline would be constrained to purchase fuel locally while sacrificing one or another standard it holds its suppliers up to. For example, if petitioner was unable to establish that there is insufficient quantity of locally available supply, then it may be constrained to purchase aviation fuel locally despite the fact that it may not be at par with petitioner's standards when it comes to quality and may even be more expensive than importing.

Respondent Commissioner of Internal Revenue is ordered to refund or issue a tax credit certificate in favor of petitioner Philippine Airlines, Inc. In the amount of P137,099,144.00 representing excise taxes paid for petitioner's importations of Jet A-1 fuel for its domestic operations for the period April 2010 to June 2010.

<u>Manulife Data Services Inc. vs CIR</u>
<u>CTA Case No. 8482, 8513, 8560, 8611 (April 2017)</u>

Facts:

Petitioner is a foreign corporation duly registered with and authorized by the SEC to operate as a Regional Operating Headquarters (ROHQ). It is engaged in the business of providing qualifying services to its affiliates and related parties in the Asia-Pacific Region. Before the court are four consolidated petitions seeking for the refund or issuance of tax credit certificates for the CY 2010. Petitioner entered into various service agreements (administrative and BPO services) with the following, Manulife (International Limited), John Hancock Life Insurance Company (JHLIC), The Manufacturers Life Insurance Company (TMLIC), Manulife Insurance Berhad (MIB).

Issue:

Whether or not the Petitioner is entitled to the refund or issuance of tax credit certificate for its services rendered to non-residents corporations?

Ruling: CTA partially grants.

The court said that in order for the supply of services to be a zero-rated under Section 108 (B) (2) of the NIRC, the following requisites must be met:

a. The services by a VAT-registered person must be other than processing, manufacturing or repacking of goods;
b. The payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
c. The recipient of such services is doing business outside the Philippines.

The petitioner is a multinational company organized and existing under the laws of Bardados and has established and ROHQ in the Philippines. Pursuant to the various service agreements, petitioner provides its clients with administrative and BPO services, information technology, reports and support services etc., which clearly fall within the scope of services other than processing, manufacturing or repacking of goods. Further, the court said that the foreign currency remitted referred to Section 108 (B)(2) of the NIRC, must likewise be supported by VAT zero-rated official receipts. Petitioner presented its VAT zero-rated official receipts, VAT zero-rated invoices, Schedule of Sales, Citibank Customer's Advice Incoming Foreign Payment etc. which were examined by the ICPA. Petitioner's clients were all doing business outside the Philippines.

CIR v. NEWSPAPER PARAPHERNALIA, INC.
CTA EB No. 1425

FACTS:

Newspaper Paraphernalia received filed its Letter of Protest to the FAN on the ground that the assessment for deficiency VAT and IT for CY2007 has prescribed. CIR, in his Petition for Review, contends that Newspaper Paraphernalia, Inc filed its protest beyond the period required by Section 228 of the 1997 Tax Code, thus, making the assessment final, executory and unappealable to the CTA-En Bane. That, contrary to the findings of the CTA- Third Division, lack of jurisdiction over the subject matter is one of the exceptions under the Omnibus Motion Rule (Section 8, Rule 15 of the 1997 Rules of Court). CIR further contends that since Newspaper's tax returns were false returns, hence, the 10-year prescriptive period under Section 222(a) of the 1997 Tax Code shall apply in the instant case. Newspaper counters that CIR's assessment against Newspaper did not become final and executory for being a void assessment; that, CIR's claim of lack of jurisdiction has no basis as the assessment was in itself void; and, that the 10-year prescriptive period, in case of a false or fraudulent return with intent to evade tax or of failure to file a return, does not apply in the instant case.

ISSUE:

1. Whether or not CIR's assessment against Newspaper became final and executory
2. Whether or not the protest was filed beyond the period required by Section 228

DECISION:

According to Section 203, the three (3)-year period to assess internal revenue taxes commences from the date of actual filing of the return or from the last day prescribed by law for the filing of such return whichever comes later. Thus, if the return was filed earlier than the last day allowed by law, the period to assess shall be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

Newspaper's ITR is required to be filed and the payment is to be made on or before the 15th day of April. It's Amended Income Tax Return for taxable year 2007 was filed on July 10, 2008. Hence, counting from July 10, 2008, the date of actual filing of respondent's Amended Annual Income Tax Return, petitioner had until July 10, 2011 within which to assess respondent for deficiency income tax for taxable year 2007.

While the VAT Return must be filed quarterly within 25 days following the close of each taxable quarter prescribed for each taxpayer.

Records reveal that respondent filed its Quarterly VAT Returns covering all the four (4) quarters of taxable year 2007 on March 7, 2008, July 25, 2007, October 25, 2007 and January 25, 2008, respectively. Hence, petitioner had until April 25, 2010, July 25, 2010, October 25, 2010 and January 25, 2011 within which to assess respondent for deficiency VAT for the four (4) quarters of 2007. But, since the FAN, while dated June 6, 2011, was sent only on September 20, 2011 and actually received by respondent on September 22, 2011, clearly, the assessment was issued beyond the 3-year prescriptive period and, therefore, had already prescribed.

Since assessment is deemed made when notice to this effect is released, mailed or sent to the taxpayer, September 20, 2011 shall be considered as the date of assessment.

Looking into the last dates to assess on the table above, respondent's right to assess all the foregoing taxes had already prescribed

AIR LIQUIDE PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE
CTA EB No. 1377; CTA Case Nos. 8259 and 8296

FACTS:

In the course of Air Liquide Philippines operations, petitioner generates sales subject to value-added tax (VAT), VAT-exempt sales, and VAT zero- rated sales, by selling its products and rendering related services to various domestic entities, including corporations registered with the Philippine Economic Zone Authority (PEZA) under Republic Act (RA) No. 7916, as amended, with the Subic Bay Metropolitan Authority (SBMA) under RA No. 7227, as amended, and with the Board of Investments (BOI) under Executive Order (EO) No. 226, with whom petitioner deals with, pursuant to service agreements. As a corporation transacting business in the Philippines, petitioner pays the VAT passed on to it by its suppliers for its domestic purchases of supplies and services in addition to the VAT it pays for importing materials, thereby incurring input VAT pursuant to the Tax Code and RR No. 16-2005.
At the start of the first quarter of 2009, petitioner recorded an allowable input VAT in the amount of P184, 190,750.03 which was comprised of input VAT carried over from previous quarters and deferred input VAT. By the end of the second quarter of 2009 (start of the third quarter of 2009), petitioner recorded an allowable input VAT in the amount P191 ,908,928.75 which likewise was comprised of input VAT carried over from previous quarters and deferred input VAT.

Considering the availability of input VAT carried over from previous quarters, petitioner also carried-over the input VAT it incurred from the first and second quarters of 2009 to succeeding quarters, deducting them from any available output VAT, pursuant to the principle of "first in, first out" enunciated in RR No. 16-2005.

By the third quarter of 2009, however, petitioner’s carry-over input VAT had already grown considerably, and petitioner decided to claim the unutilized input VAT from the first quarter of 2009 as tax credit or for refund. Thus, petitioner indicated in its Amended Quarterly VAT Return for the third quarter of 2010 that it was claiming P10, 303, 119.23 for refund/tax credit, thereby taking out the amount from the bulk of input VAT to be carried-over to succeeding quarters.

Also, by the fourth quarter of 2010, petitioner decided to claim the unutilized input VAT from the second quarter of 2009 as tax credit or for refund by indicating in its Quarterly VAT Return for the fourth quarter of 2010 that it was claiming P8, 521,726.37 for refund/tax credit, thereby taking out the amount from the bulk of input VAT to be carried-over to succeeding quarters.

Combining both amounts, petitioner claims the total amount of P18,824,845.60, representing excess and unutilized input VAT from the first and second quarters of 2009 attributable to its VAT zero-rated sales.
Pursuant to the Tax Code and prevailing SIR regulations, petitioner filed its administrative applications for issuance of tax credit certificate/refund of excess input tax for the first and

second quarters of 2009, with the BIR's Large Taxpayers Audit and Investigation Division" (BIR-LTAID).
The Court in Division denied the consolidated petitions for lack of merit.

Issue:

1. whether the 3rd division erred when it denied the input VAT carried over from the previous quarter in the amount of P181, 171,453.02

2. Whether the denial for VAT refund in favor of petitioner is valid.

Held:

1. The Court in Division did not err when it disallowed the amount of input VAT carried over by petitioner from the previous quarter for failure to prove the same. As early as the year 2005, the Supreme Court, in Commissioner of Internal Revenue vs. Manila Mining Corporation, has already made the following pronouncements, to wit: "Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases.xxx"

The phrase "shall prove every minute aspect" includes proving not only the amount of input VAT for the period under consideration, but also the amount of input VAT carried over from the previous quarter, if any, since this latter aspect is greatly significant in determining whether the claimant is indeed entitled to the refund of the input VAT being sought.

2. The Court En Banc affirmed the decision of the Court in Division where it held that "the Court in Division denied the consolidated petitions for lack of merit. The Court in Division ruled, inter alia, that petitioner's properly substantiated input taxes for the first and second quarters of 2009 are not enough to cover its output taxes for the same period; and that while petitioner reflected in its Quarterly VAT Return for the first quarter of 2009 the amount of P181, 171,453.02 as "Input Tax Carried Over from Previous Quarter", petitioner failed to present VAT invoices or receipts to prove the existence of such amount."

Philippine Airlines v. CIR CTA EB No. 1363
April 5, 2017

Facts:

By virtue of PD 1590, Philippine Airlines was granted a franchise to operate transport services.

On Jan. 1, 2005, RA 9334 took effect. CIR Commissioner then ordered the implementation of Section 6 of such law and to immediately collect the excise tax due on the imported alcohol and tobacco products brought to Duty Free and Freeport zones. Thereafter, COC Commissioner issued a Customs Memorandum Order providing for the immediate collection at the pot of discharge of duties, taxes and other charges including excise tax due on all importations of alcohol and tobacco products destined for duty free shops and free-port zones pursuant to RA 9334 and BIR Regulation 12-2004.

PAL the contested the action in seeking to collect excise taxes and customs duties on its importation of cigarettes for use in its operations and to release the shipment immediately without condition or payment of excise tax.

PAL wrote to the BOC Commissioner that it is being required to pay excise tax, VAT, and customs duties as a condition before it could withdraw their goods.

Importations of assorted liquor and wine from January to April 2008 (first batch), which arrived at the NAIA and South Harbor, were assessed excise taxes amounting to P2,610,430.72 and were duly covered by Authority to Release Imported Goods (ATRIG). Likewise, importations for the second batch (May to July 2, 2008) were assessed excise taxes of P5,147,669 and were also covered by an ATRIG.

On December 11, 2008, PAL paid excise taxes for both batches amounting to P7,758,099.72, which is accompanied by a letter to the Chief Collection Division of the BOC stating therein that it is paying under protest.

On December 17, PAL filed before the District Collector of Customs of NAIA a protest against said assessment and collection in accordance with Section 2308 of the Tariff and Customs Code.

On March 5, 2009, PAL filed with the CIR its request for refund of the amounts P2,610,430.72 and P5,147,669 representing the excise taxes paid under protest alleging that the taxes collected from them were illegally collected.

On December 10, 2010, PAL filed the instant Petition for Review pursuant to Section 229 of the NIRC since the CIR has not acted upon its claim for refund.

The CIR and COC separately filed their answer and raised several special and affirmative defenses.

The parties then filed their Joint Stipulation of Facts and Issues and then a Pre-trial Order was issued by the Third Division terminating pre-trial and setting the date for the parties' presentation of evidence.

During trial, PAL presented several witnesses.

On June 2, 2015, it was held that despite PAL's exemption from the payment of excise taxes, PAL was not able to prove compliance with the requirements set forth by Section 13 of PD 1590. MR was also denied.

Hence, this Petition for Review.

PAL argues that the Court in Division erred in ruling that it is not entitled to the claim for refund as it has sufficiently proven that the commissary supplies are not locally available in reasonable quantity, quality, or price.

Issue:

WON the Court in Division erred.

Held: No. Tax refunds are in the nature of tax exemptions and so should be strictly construed. Thus, it is the claimant's burden to prove the factual basis of its claim. While we have sustained PAL's exemption from Section 13 of its franchise, it is imperative for PAL to show competent evidence that it has complied with the requirements of law.

Accordingly, an examination of the Judicial Affidavit of PAL's In-Flight Manager shows that PAL compared the prices of its imported wines and liquors with the pricelist ***only*** of a single local wine supplier, the Philippine Wine Merchant. Thus, this Court is led to conclude that no valid comparison can be made between the prices of the imported articled indicated in the sales invoices and prices reflected in the Philippine Wine Merchant Price List for the year 2008. Other that such price list and testimony of the witnesses, PAL had no other evidence to convince this Court that the articles imported are not locally available in reasonable quantity, quality, or price. Thus, there are no other reliable data left through which this Court may evaluate and verify that the cost of importing the subject wines, liquor, and cigarettes are indeed reasonably lower than purchasing them locally, other than the testimony of PAL's In-Flight Manager.

In sum, despite the exemption from payment of excise taxes, PAL was not able to prove compliance with the requirements set forth by Section 13 of PD 1590.

<u>Avon Manufacturing Inc. vs CIRCTA EB No. 1351</u>
<u>April 2017</u>

Facts:

Petitioner Avon is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the manufacture of cosmetic and personal care products, including perfumes, toilet waters, splash colognes, and body sprays. Petitioner purportedly paid the 20% excise tax imposed on perfumes and toilet waters under Section 150 of the NIRC. Petitioner fled its claim for refund due to erroneously collected excise tax. According to the petitioner, the splash colognes and body sprays should not be classified as “toilet waters” invoking RR No. 8-84; that since its splash colognes and body sprays contain essential oils of less than 3% weight, it should not be subject to tax under Section 150 of NIRC.

Issue:

Whether or not the CIR has in effect, supplanted the definition of “toilet waters” under RR No. 8-84 via the issuance of BIR Ruling No. 43-2000 and RMC No. 17-02.

Ruling:

No. Under RR No.8-84, “toilet waters” are scented alcoholic or non-alcoholic preparations primarily used as body fragrance containing essential oils more than 3% by weight and shall be subject to percentage tax on sales pursuant to Section 194 and 326 of 1977 NIRC. Further, several amendments happened and the same definition was carried over. However, the BIR issued a ruling, BIR Ruling No. 043-00, which classified that all other colognes, aside from being alcohol based, are likewise considered as toilet waters. Moreover, Section 150 of the 1997 NIRC, changed the tax imposition on sales, barter, exchange etc. of toilet waters from percentage tax to excise or ad valorem tax. The court said that since there is a change in the meaning of toilet waters introduced under the new tax code, therefore the previous definition under RR 8-84 can no longer be applicable. The deliberate selection in a statute of language differing from that of earlier subject indicates that a change of law was intended. As a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning, thus from the foregoing, the change of definition under Section 150 of the 1997 NIRC, which was later on substantiated by a BIR ruling, the definition of toilet water under the RR No.8-84 can no longer be applied. Hence, the petitioner’s splash colognes shall be subject to 20% excise tax.

<u>Fernandez Holding Inc. v. City of Davao CTA Case No. 162</u>
<u>April 6, 2017</u>

Facts:

This is a case for refund of erroneously and illegally collected local business tax for the first and second quarters of 2011 in the amount of P328,859.55, plus legal interest.

Petitioner Fernandez Holdings, Inc. has been a registered owner of 18,341,390 preferred shares of stock in San Miguel Corp. since 2009. The dividends earned by petitioner from its preferred shares of stock were deposited in a trust account which earned interest from money market placements.

In 2010, petitioner earned a total of Php139,221,650.65 from dividends on its SMC preferred shares and interest on its money market placements.

For the first half of 2011, respondent City of Davao demanded from petitioner payment for the 0.55% LBT on the dividends from petitioner's SMC preferred shares and on the interest from petitioner's money market placements in the aggregate amount of Php382,859.55.

On Sept 13, 2012, petitioner filed its administrative claim for refund or credit of erroneously collected LBT. Due to the alleged inaction of City of Davao on the administrative claim, petitioner filed a Petition with the RTC.

RTC dismissed the petition and held that petitioner's primary purpose, as indicated in its Amended Articles of Incorporation, is broad enough for petitioner to be considered as a financial intermediary.

Petitioner moved for reconsideration but the same was denied. Hence, this petition for review.

Petitioner’s basis for its argument is Section 133(a) of the 1991 LGC, which says that it is erroneous for respondents to collect the 0.55% LBT on the dividends and interest earned by a taxpayer which is not a bank or a financial institution.

Issue:

WON petitioner is entitled to a refund of .55% LBT collected on the dividends from petitioner’s SMC preferred shares and on the interest from petitioner’s money market placements for 2010. **Yes.**

Held:

The Court held that the petition is meritorious as the petitioner complied with the procedural requirements for its claim for refund or tax credit. Also noting that petitioner’s claim was timely made.

The Court also found that respondents' argument fails on two fronts under the exceptions to the revenue raising power of LGUs. First, petitioner is not a bank or other financial institution. While the 1991 LGC provides that LGUs cannot impose income tax on businesses within their jurisdiction, the imposition of LBT on banks and other financial institutions is the exception - i.e., LGUs may impose LBT on the income of banks and other financial institutions. Second, petitioner's SMC preferred shares are outside the scope of the taxing power of respondents, the same being owned by the government. The dividends and interest from money market placements are fruits of the

SMC preferred shares.

Furthermore, it cannot be said that petitioner is a non-banking financial intermediary subject to the 0.55% LBT on the dividends from its SMC preferred shares and on the interest from its money market placements for 2010. The records are bereft of any showing that petitioner's principal activities will qualify it as a financial intermediary, or a non-banking financial intermediary to be specific. Petitioner has no secondary license, it does not hold itself out as a financial intermediary, nor does it perform the functions of a financial intermediary on a regular and recurring basis.

Further, Section 22(W) 45 of the 1997 National Internal Revenue Code, as amended (1/1997 NIRC") requires non-bank financial intermediaries to secure authorization from the BSP to perform quasi banking activities. In the present case, however, respondent failed to present such BSP authorization.

Thus, based on the records, petitioner cannot be said to engage in activities characteristic of a non-bank financial intermediary. Accordingly, respondents erred in imposing the 0.55% LBT on petitioner’s dividend and interest income.

Meanwhile, even assuming petitioner is subject to LBT as a non-bank financial intermediary, petitioner's dividend and interest income are still exempt from the imposition of LBT as the dividends and interest from the SMC preferred shares are considered government property which should not be subjected to LBT under Section 133(0) of the 1991 LGC47.

Considering the SMC preferred shares belong to the government, the fruits from such property (i.e., dividends, interest from money market placements) likewise belong to the government’s" Thus, respondent improperly imposed LBT on the same. Following Section 133(0) of the 1991 LGC, the exercise of the taxing power of respondent shall not extend to the levy of taxes, fees, or charges of any kind on the National Government, its agencies and instrumentalities, and LGUs.

Having ruled that petitioner is not a bank or other financial institution, it cannot be said that the 0.55% LBT mandated by Section 69(j) of the Davao Revenue Code can be imposed on petitioner. Neither can the dividends and interest from the money market placements arising from the SMC preferred shares be subject to LBT as the same belongs to the government following the Supreme Court's pronouncements in COCOFED v. Republic. Accordingly, petitioner is entitled to the refund or credit of the erroneously or illegally collected LBT in the first and second quarters of 2011 on the dividends from petitioner's SMC preferred shares and on the interest from petitioner's money market placements for 2010.