Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 202922**
	Present:
- versus -	SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN,* PERLAS-BERNABE, and CAGUIOA, *JJ.*
SEMIRARA MINING CORPORATION, Respondent.	Promulgated: **JUN 19 2017**

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DECISION

CAGUIOA, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Commissioner of Internal Revenue (CIR), assailing the Decision dated April 23, 2012[2] and Resolution dated July 26, 2012[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 793, which granted the claim of respondent Semirara Mining Corporation (SMC) for refund or issuance of tax credit of final value-added tax (VAT) it erroneously paid in connection with its sales of coal for the period covering July 1, 2006 to December 31, 2006.

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* Designated additional member per Raffle dated June 19, 2017 vice Associate Justice Mariano C. Del Castillo.

1 *Rollo,* pp. 8-25.

2 Id. at 29-34. Penned by Associate Justice Amelia R. Cotangco-Manalastas with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino and Cielito N. Mindaro-Grulla concurring; Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, and Olga Palanca-Enriquez were on wellness leave.

3 Id. at 36-38. Penned by Associate Justice Amelia R. Cotangco-Manalastas with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Cielito N. Mindaro-Grulla concurring; Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy, took no part.

Facts

SMC is a duly registered and existing domestic corporation, registered with the Bureau of Internal Revenue (BIR) as a non-VAT enterprise engaged in coal mining business.[4] It conducts business by virtue of Presidential Decree (PD) No. 972,[5] otherwise known as the "Coal Development Act of 1976."[6]

On June 8, 1983, Semirara Coal Corporation (SCC) executed a Coal Operating Contract[7] (COC) with the Ministry of Energy (now Department of Energy) through the Bureau of Energy Development. The term of the COC is until the year 2012.[8] In 2002, SCC changed its corporate name to SMC, the herein petitioner.[9]

As a coal mine operator, SMC sells its coal production, under the COC, to various customers, among which is the National Power Corporation (NPC), a government-owned and controlled corporation, in accordance with the duly executed Coal Supply Agreement dated May 19, 1995.[10]

SMC has been selling coal to NPC for years without paying VAT pursuant to the exemption granted under Section 16 of PD No. 972.[11] However, after Republic Act (RA) No. 9337,[12] which amended certain provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, took effect on July 1, 2005,[13] NPC started to withhold a tax of five percent (5%) representing the final withholding VAT on SMC's coal billings pursuant to Section 114(C)[14] of the same law, on the belief that the sale of coal by SMC was no longer exempt from VAT.[15]

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4 Id. at 30.

5 PROMULGATING AN ACT TO PROMOTE AN ACCELERATED EXPLORATION, DEVELOPMENT, EXPLOITATION, PRODUCTION AND UTILIZATION OF COAL, July 28, 1976.

6 *Rollo*, p. 101.

7 Exhibit "E," Petitioner's Formal Offer of Evidence.

8 Exhibit "D," id.

9 *Rollo*, p. 102.

10 Id.

11 Id. at 103.

12 AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, May 24, 2005.

13 Stated as November 1, 2005 in the CTA Division's Decision; *rollo*, p. 104.

14 SEC. 114. *Return and Payment of Value-added Tax.*—

x x x x

(C) *Withholding of Value-added Tax.*—The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or -controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof: *Provided*, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent.

The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made.

15 *Rollo*, p. 104.

In view thereof, SMC requested for a BIR pronouncement sustaining its position that its sale of coal to NPC was still exempt from VAT notwithstanding RA No. 9337, which the BIR granted through BIR Ruling No. 006-2007.[16]

Consequently, on May 21, 2007, January 21, 2008, and January 29, 2008, SMC filed with the BIR Large Taxpayers Division, Revenue District Office No. 121-Quexon City, letters with supporting documents requesting for a refund or issuance of a tax credit certificate (TCC) in the total amount of ₱77,253,245.39, representing the final withholding VAT withheld by NPC on its coal billing for the period of July 1, 2006 to December 31, 2006.[17]

Due to the CIR's inaction, SMC filed on August 8 and November 10, 2008 its petitions for review with the CTA Division, docketed as CTA Case No. 7822 and 7849.[18] In a Resolution dated January 27, 2009, the CTA Division consolidated CTA Case Nos. 7822 and 7849.[19]

Ruling of the CTA Division

On March 28, 2011, the CTA Division rendered its Decision[20] granting SMC's refund claim for erroneously paid final VAT withheld by NPC.[21] The CTA Division found that SMC is exempt from VAT pursuant to Section 109(K) of the National Internal Revenue Code (NIRC) of 1997, as amended by RA No. 9337, in relation to Section 16 of PD No. 972.[22] The CTA Division also found that SMC timely filed its administrative and judicial claims[23] and submitted relevant documents in support thereof.[24] Thus, the dispositive portion of the CTA Division's Decision reads as follows:

> **WHEREFORE**, premises considered, the instant Petitions for Review are hereby **GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P77,253,245.39, representing the erroneously paid final VAT withheld by the National Power Corporation and remitted to the Bureau of Internal Revenue in connection with its sales of coal for the period covering July 1, 2006 to December 31, 2006.
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> **SO ORDERED.**[25]

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16 Id. at 30.
17 Id. at 105.
18 Id. at 57-87.
19 Id. at 107.
20 Id. at 100-127. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy concurring.
21 Id. at 126.
22 Id. at 125.
23 Id. at 113.
24 Id. at 122.
25 Id. at 126.

The CIR moved for reconsideration but this was denied by the CTA Division in a Resolution[26] dated June 3, 2011.

Undaunted, the CIR filed a Petition for Review[27] with the CTA *En Banc*, docketed as CTA EB No. 793.

Ruling of the CTA *En Banc*

In the assailed Decision,[28] the CTA *En Banc* dismissed the CIR's petition for lack of merit.[29] The CTA *En Banc* noted that the CIR's arguments were a mere rehash of its previous arguments already raised before, discussed and resolved by the CTA Division; thus, it found no reason to disturb the CTA Division's finding that SMC is entitled to the claimed VAT refund.[30]

On July 26, 2012, the CTA *En Banc* issued the assailed Resolution[31] denying the CIR's motion for reconsideration[32] for lack of merit.

Hence, the instant petition raising the following issues:

> [WHETHER THE CTA] ERRED IN HOLDING THAT [SMC] IS ENTITLED TO A TAX CREDIT/REFUND DESPITE THE LATTER'S FAILURE TO SUBMIT REQUISITE DOCUMENTS TO THE BIR.
>
> [WHETHER THE CTA] ERRED IN HOLDING THAT THE TRANSACTION OF SALE OR IMPORTATION OF COAL IS EXEMPT FROM VAT.[33]

The CIR argues that the provision which grants tax exemption to SMC under Section 109(e) of the NIRC of 1997, as amended, was withdrawn by the legislature when RA No. 9337 was passed deleting the "sale or importation of coal and natural gas, in whatever form or state"[34] from the list of transactions exempt from VAT.[35]

The CIR further claims that the CTA erroneously approved SMC's claim for tax refund/credit because the latter failed to submit complete documents in support of its administrative claim for refund. According to the CIR, SMC's administrative claim for tax refund is *pro forma* because SMC failed to submit the list of documents (required to support an application for

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26 Id. at 129-132. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta concurring; Associate Justice Erlinda P. Uy was on leave.
27 Id. at 133-142.
28 Supra note 2.
29 Id. at 33.
30 Id. at 31.
31 Supra note 3.
32 Id. at 39-45.
33 Id. at 14-15.
34 Id. at 21.
35 Id. at 20-22.

a tax refund) enumerated under Revenue Memorandum Order (RMO) No. 53-98; consequently, the instant judicial appeal is without foundation and should suffer the same fate.[36]

For its part, SMC insists that its sales of coal to NPC is exempt from VAT under RA No. 9337 in relation to PD No. 972. According to SMC, RA No. 9337 did not withdraw the tax exemption granted by PD No. 972 and incorporated into SMC's coal operating contract, considering that Section 109(K) of the NIRC of 1997, as amended by RA No. 9337, expressly recognizes that transactions which are exempt under special laws are also exempt from VAT. SMC further claims that RA No. 9337 could not have impliedly repealed PD No. 972 because no irreconcilable inconsistency and repugnancy exists between the two laws and that the general repealing clause in RA No. 9337 does not prevail over specific provisions of PD No. 972. Finally, SMC asserts that both its administrative and judicial claims for refund were supported by documentary evidence; that the CTA, after evaluating all evidence it had submitted, concluded that SMC had sufficiently substantiated its claim for VAT refund.[37]

The Court's Ruling

The Petition lacks merit.

Tax exemptions under PD No. 972.

Contrary to the CIR's contention, SMC's claim for VAT exemption is anchored not on the paragraph deleted by RA No. 9337 from the list of VAT exempt transactions under Section 109 of the NIRC of 1997, as amended, but on the tax incentives granted to operators of COCs executed pursuant to PD No. 972.

The COC implements the declared state policy in PD No. 972 to "accelerate the exploration, development, exploitation, production and utilization of the country's coal resources"[38] through the "participation of the private sector with sufficient capital, technical and managerial resources,"[39] who shall undertake to perform all coal operations and provide all necessary services, technology and financing in connection therewith.[40] In furtherance of this policy, Section 16 of PD No. 972 provides various incentives to COC operators, including tax exemptions, to wit:

> SEC. 16. *Incentives to Operators.*—The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives:

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36 Id. at 15-20.
37 Comment dated December 28, 2012, id. at 163-176.
38 PD No. 972, Sec. 2.
39 Id., Fourth WHEREAS Clause.
40 Exhibit "E," Petitioner's Formal Offer of Evidence, p. 9; see also PD No. 972, Sec. 9.

a) **Exemption from all taxes except income tax**;

b) Exemption from payment of tariff duties and compensating tax on importation of machinery and equipment and spare parts and materials required for the coal operations subject to the following conditions:[41]

As VAT is one of the national internal revenue taxes, it falls within the tax exemptions provided under PD No. 972.

Section 16 of PD No. 972 was, in turn, incorporated in the terms and conditions of SMC's COC, to wit:

SECTION V – RIGHTS AND OBLIGATIONS OF THE PARTIES

x x x x

5.2 The OPERATOR shall have the following rights:

a) Exemption from all taxes (national and local) except income tax; [42]

The Court agrees with the CTA that the tax exemption provided under Section 16 of PD No. 972 was **not** revoked, withdrawn or repealed – expressly or impliedly – by Congress with the enactment of RA No. 9337.

It is a fundamental rule in statutory construction that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect.[43] A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion.[44] The repealing clause of RA No. 9337, a general law, did not provide for the express repeal of PD No. 972, a special law. Section 24 of RA No. 9337 pertinently reads:

SEC. 24. *Repealing Clause*.—The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:

(A) Section 13 of R.A. No. 6395 on the exemption from value-added tax of the National Power Corporation (NPC);

(B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and

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41 Emphasis supplied.
42 Exhibit "E," Petitioner's Formal Offer of Evidence, pp. 9, 11; emphasis supplied.
43 *Commissioner of Internal Revenue v. Secretary of Justice*, G.R. No. 177387, November 9, 2016, p. 9.
44 Id.

> (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.

Had Congress intended to withdraw or revoke the tax exemptions under PD No. 972, it would have explicitly mentioned Section 16 of PD No. 972, in the same way that it specifically mentioned Section 13 of RA No. 6395 and Section 6, paragraph 5 of RA No. 9136, as among the laws repealed by RA No. 9337.

The CTA also correctly ruled that RA No. 9337 could not have impliedly repealed PD No. 972. In *Mecano v. Commission on Audit*,[45] the Court extensively discussed how repeals by implication operate, to wit:

> There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict. The later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.
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> Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot [be] enforced without nullifying the other.[46]

Comparing the two laws, it is apparent that neither kind of implied repeal exists in this case. RA No. 9337 does not cover the whole subject matter of PD No. 972 and could not have been intended to substitute the same. There is also no irreconcilable inconsistency or repugnancy between the two laws. While under RA No. 9337, the "sale or importation of coal and natural gas, in whatever form or state" was deleted from the list of VAT exempt transactions, Section 7 of the same law reads:

> SEC. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:
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> "SEC. 109. *Exempt Transactions.*—(1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
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> x x x x
>
> "(K) **Transactions which are exempt** under international agreements to which the Philippines is a signatory or **under special laws**, except those under Presidential Decree No. 529;[47]

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45 290-A Phil. 272 (1992).
46 Id. at 280-281. Citations omitted.
47 Emphasis supplied.

Verily, as things stand, SMC is exempt from the payment of VAT on the sale of coal produced under its COC, because Section 16(a) of PD No. 972, a special law, grants SMC exemption from all national taxes except income tax. Accordingly, SMC is entitled to claim for a refund of the 5% final VAT erroneously withheld on SMC's coal billings and remitted by NPC to the BIR.

Notably, the BIR validated SMC's VAT exemption under PD No. 972 through BIR Ruling No. 006-2007,[48] which provides:

> Be that as it may, since the tax exemption on the sale of coal products is premised on PD 972 which is a special law, and which Section 109(k) of the Tax Code, as amended so specifically provides to be the basis of the VAT exemption, the same shall apply to coal produced by SMC pursuant to the COC. In short, the imposition of VAT on the transaction which burden may be passed on the seller of the product/services to its buyer is not the same with exempting the transaction itself from VAT, as contemplated under PD 972.
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> In view of the foregoing, this office hereby rules that since the main object of the COC for which the tax exemption was granted is the active exploration, development and production of coal resources, SMC's sales of coal produced by virtue of a COC with EDB remain exempt from VAT pursuant to Section 109(k) of the Tax Code, as amended by R.A. 9337, in relation to PD 972, as amended.[49]

Submission of supporting documents prescribed under RMO No. 53-98.

The CIR insists that SMC's claim for VAT refund should be denied for failure to submit, at the administrative level, the required supporting documents prescribed under RMO No. 53-98.

The issue of whether non-submission of the documents enumerated under RMO No. 53-98 at the administrative level is fatal to the taxpayer's judicial claim for VAT refund is not novel. In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[50] the Court, sitting *En banc*, ruled:

> Anent RMO No. 53-98, the CTA Division found that the said order provided a checklist of documents for the BIR to consider in granting claims for refund, and served as a guide for the courts in determining whether the taxpayer had submitted complete supporting documents.
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> This should also be corrected.
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> To quote RMO No. 53-98:

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48 Exhibit "I," Petitioner's Formal Offer of Evidence.
49 Id. at 11.
50 G.R. No. 207112, December 8, 2015, 776 SCRA 395.

REVENUE MEMORANDUM ORDER NO. 53-98

SUBJECT: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

TO: All Internal Revenue Officers, Employees and Others Concerned

I. *BACKGROUND*

It has been observed that for the same kind of tax audit case, Revenue Officers differ in their request for requirements from taxpayers as well as in the attachments to the dockets resulting to tremendous complaints from taxpayers and confusion among tax auditors and reviewers.

For equity and uniformity, this Bureau comes up with a prescribed list of requirements from taxpayers, per kind of tax, as well as of the internally prepared reporting requirements, all of which comprise a complete tax docket.

II. *OBJECTIVE*

This order is issued to:

a. Identify the documents to be required from a taxpayer during audit, according to particular kind of tax; and

b. Identify the different audit reporting requirements to be prepared, submitted and attached to a tax audit docket.

III. *LIST OF REQUIREMENTS PER TAX TYPE*

Income Tax/Withholding Tax
— Annex A (3 pages)

Value-Added Tax
— Annex B (2 pages)
— Annex B-1 (5 pages)

x x x x

As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are *actually* complete to support a claim for tax credit or refund of excess unutilized excess VAT. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*:

> The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 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."
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> Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA EB's finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time.
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> x x x x
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> As explained earlier and underlined in *Team Sual* above, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.
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> **Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.**[51]

The CTA found that SMC submitted various documents in support of its claim for VAT refund and a scrutiny thereof proved that NPC indeed erroneously withheld and remitted to the BIR a final withholding VAT, in

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[51] Id. at 421-424; Emphasis and underscoring in the original omitted; emphasis supplied.

the amount of ₱77,253,245.39, on its gross payments for coal purchases from SMC for the third and fourth quarters of 2006.[52] Settled is the rule that the Court will not lightly set aside the factual conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[53] In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue,*[54] this Court ruled that:

> Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. x x x this Court recognizes that the Court of Tax Appeals, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.[55]

There is no reason for this Court to depart from this well-entrenched principle, since the CTA did not abuse its authority or committed gross error in granting SMC's refund claim.

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED.** The Decision dated April 23, 2012 and the Resolution dated July 26, 2012 of the CTA *En Banc* in CTA EB No. 793 are hereby **AFFIRMED.**

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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52 *Rollo,* p. 124.
53 *Bonifacio Water Corp. v. The Commissioner of Internal Revenue*, 714 Phil. 413, 426 (2013).
54 529 Phil. 785 (2006).
55 Id. at 794-795; citations omitted.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice