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right and title to the property. In contrast, the petitioners did not present any proof of their better title other than their copy of the reconstituted certificate of title. Such proof was not enough, because the registration of a piece of land under the Torrens system did not create or vest title, such registration not being a mode of acquiring ownership. The petitioners need to be reminded that a certificate of title is merely an evidence of ownership or title over the particular property described therein. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.[25]

WHEREFORE, the petition for review on *certiorari* is denied, and the decision dated January 28, 2002 is affirmed.

The petitioners are ordered to pay the costs of suit.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Leonardo-de Castro, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 157594. March 9, 2010]

TOSHIBA INFORMATION EQUIPMENT (PHILS.), INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

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[25] *Heirs of Clement Ermac v. Heirs of Vicente Ermac*, G.R. No. 149679, May 30, 2003, 403 SCRA 291, 298.

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SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; THE LIBERAL INTERPRETATION AND APPLICATION OF RULES APPLY ONLY IN PROPER CASES OF DEMONSTRABLE MERIT AND UNDER JUSTIFIABLE CAUSES AND CIRCUMSTANCES.— It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings. The Court cannot simply grant the plea of the CIR that the procedural rules be relaxed based on the general averment of the interest of substantive justice. It should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. Procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows a relaxation in the application of the rules, it never intends to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice.

2. ID.; CIVIL PROCEDURE; PRE-TRIAL; DEFINED.— Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. It has been hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century."

3. ID.; ID.; ID.; NATURE AND PURPOSE THEREOF.—The nature and purpose of a pre-trial have been laid down in Rule 18, Section 2 of the Rules of Court: SECTION 2. *Nature and purpose*. – The pre-trial is mandatory. The court shall consider: (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution; **(b) The simplification**

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of the issues; (c) The necessity or desirability of amendments to the pleadings; **(d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;** (e) The limitation of the number of witnesses; (f) The advisability of a preliminary reference of issues to a commissioner; (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist; (h) The advisability or necessity of suspending the proceedings; and (i) Such other matters as may aid in the prompt disposition of the action.

4. ID.; ID.; ID.; JUDICIAL ADMISSION; CONSTRUED.— The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof.

5. TAXATION; VALUE ADDED TAX (VAT); VAT EXEMPTION OF A PERSON DISTINGUISHED FROM VAT EXEMPTION OF A TRANSACTION.— At the outset, the Court establishes that there is a basic distinction in the VAT-exemption of a person and the VAT-exemption of a transaction – It would seem that petitioner CIR failed to differentiate between VAT-exempt transactions from VAT-exempt entities. In the case of *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, this Court already made such distinction – An exempt transaction, on the one hand, involves goods or services which, by their nature, are specifically listed in and expressly exempted from the VAT under the Tax Code, without regard to the tax status – VAT-exempt or not – of the party to the transaction… An exempt party, on the other hand, is a person or entity granted VAT exemption under the Tax Code, a special law or an international agreement to which the Philippines is a signatory, and by virtue of which its taxable transactions become exempt from VAT x x x.

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6. ID.; ID.; CROSS BORDER DOCTRINE; NO VAT SHALL BE IMPOSED TO FORM PART OF THE COST OF GOODS DESTINED FOR CONSUMPTION OUTSIDE THE TERRITORIAL BORDER OF THE TAXING AUTHORITY; EXPLAINED.— It is now a settled rule that based on the Cross Border Doctrine, PEZA-registered enterprises, such as Toshiba, are VAT-exempt and no VAT can be passed on to them. The Court explained in the *Toshiba case* that – PEZA-registered enterprise, which would necessarily be located within ECOZONES, are VAT-exempt entities, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory. x x x x The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT. Applying said doctrine to the sale of goods, properties, and services to and from the ECOZONES, the BIR issued Revenue Memorandum Circular (RMC) No. 74-99, on 15 October 1999. Of particular interest to the present Petition is Section 3 thereof, which reads – SECTION 3. **Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise.** – (1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended: (a) **Sale of goods (*i.e.*, merchandise).** – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code. (b) **Sale of service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998. (2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, *e.g.*, Service Establishments

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which are subject to taxes under the NIRC rather than the 5% special tax regime: (a) **Sale of goods (*i.e.*, merchandise).** – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code. (b) **Sale of Service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998. (3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. No. 7916 and the "Cross Border Doctrine" of the VAT system. This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular. Indubitably, no output VAT may be passed on to an ECOZONE enterprise since it is a VAT-exempt entity. x x x.

7. ID.; ID.; CLAIM FOR TAX CREDIT OR REFUND OF VAT-REGISTERED SELLER WHO MADE ZERO-RATED SALES; EXPLAINED.— A VAT-registered seller of goods and/or services who made zero-rated sales can claim tax credit or refund of the input VAT paid on its purchases of goods, properties, or services relative to such zero-rated sales, in accordance with Section 4.102-2 of Revenue Regulations No. 7-95, which provides – Sec. 4.102-2. *Zero-rating.* – (a) *In general.* - A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result

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in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations. The BIR, as late as July 15, 2003, when it issued RMC No. 42-2003, accepted applications for credit/ refund of input VAT on purchases prior to RMC No. 74-99, filed by PEZA-registered enterprises which availed themselves of the income tax holiday. The BIR answered Question Q-5(1) of RMC No. 42-2003 in this wise – Q-5: Under Revenue Memorandum Circular (RMC) No. 74-99, purchases by PEZA-registered firms automatically qualify as zero-rated without seeking prior approval from the BIR effective October 1999. 1) Will the OSS-DOF Center **still accept applications from PEZA-registered claimants** who were allegedly billed VAT by their suppliers before and during the effectivity of the RMC by issuing VAT invoices/receipts? x x x A-5(1): If the PEZA-registered enterprise is paying the 5% preferential tax in lieu of all other taxes, the said PEZA-registered taxpayer cannot claim TCC or refund for the VAT paid on purchases. However, **if the taxpayer is availing of the income tax holiday, it can claim VAT credit** provided: a. The taxpayer-claimant is **VAT-registered**; b. Purchases are evidenced by **VAT invoices or receipts**, whichever is applicable, with shifted VAT to the purchaser **prior to the implementation of RMC No. 74-99**; and c. The **supplier issues a sworn statement** under penalties of perjury that it shifted the VAT and declared the sales to the PEZA-registered purchaser as taxable sales in its VAT returns. For invoices/receipts issued upon the effectivity of RMC No. 74-99, the claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA-registration, should be denied.

8. REMEDIAL LAW; APPEALS; FINDINGS AND CONCLUSIONS OF THE COURT OF TAX APPEALS; ACCORDED HIGHEST RESPECT BY THE SUPREME COURT; EXCEPTION.— The Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abuse or improvident exercise of authority. In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*,

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this Court more explicitly pronounced – Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service Inc. v. Court of Appeals* [G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446], 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.

APPEARANCES OF COUNSEL

Agan & Montenegro Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, petitioner Toshiba Information Equipment (Philippines), Inc. (Toshiba) seeks the reversal and setting aside of (1) the Decision[2] dated August 29, 2002 of the Court of Appeals in CA-G.R. SP No. 63047, which found that Toshiba was not entitled to the credit/refund of its unutilized input Value-Added Tax (VAT) payments attributable to its export sales, because it was a tax-exempt entity and its export sales were VAT-exempt transactions; and (2) the Resolution[3] dated

[1] *Rollo*, pp. 11-32.

[2] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Buenaventura J. Guerrero and Perlita J. Tria Tirona, concurring; *rollo*, pp. 35-52.

[3] *Id.* at 54-55.

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February 19, 2003 of the appellate court in the same case, which denied the Motion for Reconsideration of Toshiba. The herein assailed judgment of the Court of Appeals reversed and set aside the Decision[4] dated October 16, 2000 of the Court of Tax Appeals (CTA) in CTA Case No. 5762 granting the claim for credit/refund of Toshiba in the amount of ₱1,385,282.08.

Toshiba is a domestic corporation principally engaged in the business of manufacturing and exporting of electric machinery, equipment systems, accessories, parts, components, materials and goods of all kinds, including those relating to office automation and information technology and all types of computer hardware and software, such as but not limited to HDD-CD-ROM and personal computer printed circuit board.[5] It is registered with the Philippine Economic Zone Authority (PEZA) as an Economic Zone (ECOZONE) export enterprise in the Laguna Technopark, Inc., as evidenced by Certificate of Registration No. 95-99 dated September 27, 1995.[6] It is also registered with Regional District Office No. 57 of the Bureau of Internal Revenue (BIR) in San Pedro, Laguna, as a VAT-taxpayer with Taxpayer Identification No. (TIN) 004-739-137.[7]

In its VAT returns for the first and second quarters of 1997,[8] filed on April 14, 1997 and July 21, 1997, respectively, Toshiba declared input VAT payments on its domestic purchases of taxable goods and services in the aggregate sum of ₱3,875,139.65,[9] with no zero-rated sales. Toshiba subsequently submitted to the BIR on July 23, 1997 its amended VAT returns for the first and second quarters of 1997,[10] reporting the same amount of

[4] Penned by Associate Judge Amancio Q. Saga with Presiding Judge Ernesto D. Acosta and Associate Judge Ramon O. De Veyra, concurring; *rollo,* pp. 83-92.

[5] *Rollo,* p. 12.

[6] Exhibit "A", Folder of Exhibits "A-I" of Toshiba.

[7] Records, p. 7.

[8] Exhibits "B" and "C", Folder of Exhibits "A-I" of Toshiba.

[9] Toshiba declared ₱3,320,034.44 and ₱555,105.21 of input VAT payments for the first and second quarters or 1997, respectively.

[10] Exhibits "B-1" and "C-1", Folder of Exhibits "A-I" of Toshiba.

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input VAT payments but, this time, with zero-rated sales totaling ₱7,494,677,000.00.[11]

On March 30, 1999, Toshiba filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF One-Stop Shop) two separate applications for tax credit/refund[12] of its unutilized input VAT payments for the first half of 1997 in the total amount of ₱3,685,446.73.[13]

The next day, on March 31, 1999, Toshiba likewise filed with the CTA a Petition for Review[14] to toll the running of the two-year prescriptive period under Section 230 of the Tax Code of 1977,[15] as amended.[16] In said Petition, docketed as CTA Case No. 5762, Toshiba prayed that –

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[11] Toshiba reported ₱2,083,305,000.00 and ₱5,411,372,000.00 of zero-rated sales for the first and second quarters of 1997, respectively.

[12] Records, pp. 10-13.

[13] Toshiba claimed in its applications for refund/credit ₱3,268,682.34 and ₱416,764.39 of local input VAT for the first and second quarters of 1997, respectively.

[14] Records, pp. 1-5.

[15] Republic Act No. 8424, otherwise known as the Tax Code of 1997, took effect only on January 1, 1998. Prior to said date, Presidential Decree No. 1158, otherwise known as the Tax Code of 1977, as amended, was in effect. According to Section 230 of the Tax Code of 1977, as amended:

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

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

[16] As amended by Republic Act No. 7716, bearing the title "An Act Restructuring the Value Added Tax (VAT) System, Widening its Tax Base

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[A]fter due hearing, judgment be rendered ordering [herein respondent Commissioner of Internal Revenue (CIR)] to refund or issue to [Toshiba] a tax refund/tax credit certificate in the amount of ₱3,875,139.65 representing unutilized input taxes paid on its purchase of taxable goods and services for the period January 1 to June 30, 1997.[17]

The Commissioner of Internal Revenue (CIR) opposed the claim for tax refund/credit of Toshiba, setting up the following special and affirmative defenses in his Answer[18] –

5. [Toshiba's] alleged claim for refund/tax credit is subject to administrative routinary investigation/examination by [CIR's] Bureau;

6. [Toshiba] failed miserably to show that the total amount of ₱3,875,139.65 claimed as VAT input taxes, were erroneously or illegally collected, or that the same are properly documented;

7. Taxes paid and collected are presumed to have been made in accordance with law; hence, not refundable;

8. In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

9. It is incumbent upon [Toshiba] to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code;

10. Well-established is the rule that claims for refund/tax credit are construed in *strictissimi juris* against the taxpayer as it partakes the nature of exemption from tax.[19]

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and Enhancing its Administration and for These Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, As Amended, and For Other Purposes."

[17] Records, p. 5.

[18] *Id.* at 20-22.

[19] *Id.* at 21.

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Upon being advised by the CTA,[20] Toshiba and the CIR filed a Joint Stipulation of Facts and Issues,[21] wherein the opposing parties "agreed and admitted" that –

1. [Toshiba] is a duly registered value-added tax entity in accordance with Section 107 of the Tax Code, as amended.

2. [Toshiba] is subject to zero percent (0%) value-added tax on its export sales in accordance with then Section 100(a)(2)(A) of the Tax Code, as amended.

3. [Toshiba] filed its quarterly VAT returns for the first two quarters of 1997 within the legally prescribed period.

xxx xxx xxx

7. [Toshiba] is subject to zero percent (0%) value-added tax on its export sales.

8. [Toshiba] has duly filed the instant Petition for Review within the two-year prescriptive period prescribed by then Section 230 of the Tax Code.[22]

In the same pleading, Toshiba and the CIR jointly submitted the following issues for determination by the CTA –

Whether or not [Toshiba] has incurred input taxes in the amount of ₱3,875,139.65 for the period January 1 to June 30, 1997 which are directly attributable to its export sales[.]

Whether or not the input taxes incurred by [Toshiba] for the period January 1 to June 30, 1997 have not been carried over to the succeeding quarters[.]

Whether or not input taxes incurred by [Toshiba] for the first two quarters of 1997 have not been offset against any output tax[.]

Whether or not input taxes incurred by [Toshiba] for the first two quarters of 1997 are properly substantiated by official receipts and invoices.[23]

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[20] *Id.* at 33.

[21] *Id.* at 34-35.

[22] *Id.*

[23] *Id.* at 35.

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During the trial before the CTA, Toshiba presented documentary evidence in support of its claim for tax credit/ refund, while the CIR did not present any evidence at all.

With both parties waiving the right to submit their respective memoranda, the CTA rendered its Decision in CTA Case No. 5762 on October 16, 2000 favoring Toshiba. According to the CTA, the CIR himself admitted that the export sales of Toshiba were subject to zero percent (0%) VAT based on Section 100(a)(2)(A)(i) of the Tax Code of 1977, as amended. Toshiba could then claim tax credit or refund of input VAT paid on its purchases of goods, properties, or services, directly attributable to such zero-rated sales, in accordance with Section 4.102-2 of Revenue Regulations No. 7-95. The CTA, though, reduced the amount to be credited or refunded to Toshiba to ₱1,385,292.02.

The dispositive portion of the October 16, 2000 Decision of the CTA fully reads –

WHEREFORE, [Toshiba's] claim for refund of unutilized input VAT payments is hereby **GRANTED** but in a reduced amount of ₱1,385,282.08 computed as follows:

	1st Quarter	2nd Quarter	Total
Amount of claimed input taxes filed with the DOF One Stop Shop Center	₱3,268,682.34	₱416,764.39	₱3,685,446.73
Less: 1) Input taxes not properly supported by VAT invoices and official receipts			
a. Per SGV's verification (Exh. I)	₱ 242,491.45	₱154,391.13	₱396,882.58
b. Per this court's further verification (Annex A)	₱1,852,437.65	₱35,108.00	₱1,887,545.65
2) 1998 4th qtr. Output VAT liability applied against the			

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claimed input taxes			
Subtotal	15,736.42		15,736.42
Amount Refundable	₱2,110,665.52	₱189,499.13	₱2,300,164.65
	₱1,158,016.82	₱227,265.26	₱1,385,282.08

Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** to [Toshiba] or in the alternative, ISSUE a TAX CREDIT CERTIFICATE in the amount of ₱1,385,282.08 representing unutilized input taxes paid by [Toshiba] on its purchases of taxable goods and services for the period January 1 to June 30, 1997.[24]

Both Toshiba and the CIR sought reconsideration of the foregoing CTA Decision.

Toshiba asserted in its Motion for Reconsideration[25] that it had presented proper substantiation for the ₱1,887,545.65 input VAT disallowed by the CTA.

The CIR, on the other hand, argued in his Motion for Reconsideration[26] that Toshiba was not entitled to the credit/refund of its input VAT payments because as a PEZA-registered ECOZONE export enterprise, Toshiba was not subject to VAT. The CIR invoked the following statutory and regulatory provisions—

Section 24 of Republic Act No. 7916[27]

SECTION 24. *Exemption from Taxes Under the National Internal Revenue Code*. – Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. x x x.

Section 103(q) of the Tax Code of 1977, as amended

Sec. 103. *Exempt transactions*. – The following shall be exempt from the value-added tax:

[24] *Id.* at 91-92.

[25] *Id.* at 99-100.

[26] *Id.* at 89-95.

[27] Otherwise known as The Special Economic Zone Act of 1995, as amended by Republic Act No. 8748.

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(q) Transactions which are exempt under special laws, except those granted under Presidential Decree Nos. 66, 529, 972, 1491, and 1950, and non-electric cooperatives under Republic Act No. 6938, or international agreements to which the Philippines is a signatory.

Section 4.103-1 of Revenue Regulations No. 7-95

SEC. 4.103-1. *Exemptions.* – (A) *In general.* – An exemption means that the sale of goods or properties and/or services and the use or lease of properties is not subject to VAT (output tax) and the seller is not allowed any tax credit on VAT (input tax) previously paid.

The person making the exempt sale of goods, properties or services shall not bill any output tax to his customers because the said transaction is not subject to VAT. On the other hand, a VAT-registered purchaser of VAT-exempt goods, properties or services which are exempt from VAT is not entitled to any input tax on such purchase despite the issuance of a VAT invoice or receipt.

The CIR contended that under Section 24 of Republic Act No. 7916, a special law, all businesses and establishments within the ECOZONE were to remit to the government five percent (5%) of their gross income earned within the zone, in lieu of all taxes, including VAT. This placed Toshiba within the ambit of Section 103(q) of the Tax Code of 1977, as amended, which exempted from VAT the transactions that were exempted under special laws. Following Section 4.103-1(A) of Revenue Regulations No. 7-95, the VAT-exemption of Toshiba meant that its sale of goods was not subject to output VAT and Toshiba as seller was not allowed any tax credit on the input VAT it had previously paid.

On January 17, 2001, the CTA issued a Resolution[28] denying both Motions for Reconsideration of Toshiba and the CIR.

The CTA took note that the pieces of evidence referred to by Toshiba in its Motion for Reconsideration were insufficient substantiation, being mere schedules of input VAT payments it

[28] Signed by Presiding Judge Ernesto D. Acosta and Associate Judges Amancio Q. Saga and Ramon O. de Veyra. *Rollo*, pp. 103-106.

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had purportedly paid for the first and second quarters of 1997. While the CTA gives credence to the report of its commissioned certified public accountant (CPA), it does not render its decision based on the findings of the said CPA alone. The CTA has its own CPA and the tax court itself conducts an investigation/ examination of the documents presented. The CTA stood by its earlier disallowance of the amount of ₱1,887,545.65 as tax credit/refund because it was not supported by VAT invoices and/or official receipts.

The CTA refused to consider the argument that Toshiba was not entitled to a tax credit/refund under Section 24 of Republic Act No. 7916 because it was only raised by the CIR for the first time in his Motion for Reconsideration. Also, contrary to the assertions of the CIR, the CTA held that Section 23, and not Section 24, of Republic Act No. 7916, applied to Toshiba. According to Section 23 of Republic Act No. 7916 –

> SECTION 23. *Fiscal Incentives*. – Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.
>
> Furthermore, tax credits for exporters using local materials as inputs shall enjoy the benefits provided for in the Export Development Act of 1994.

Among the fiscal incentives granted to PEZA-registered enterprises by the Omnibus Investments Code of 1987 was the income tax holiday, to wit –

> Art. 39. *Incentives to Registered Enterprises*. – All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:
>
> (a) *Income Tax Holiday*. —
>
> (1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the national government. Subject to such guidelines as may be prescribed by the Board, the

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income tax exemption will be extended for another year in each of the following cases:

(i) The project meets the prescribed ratio of capital equipment to number of workers set by the Board;

(ii) Utilization of indigenous raw materials at rates set by the Board;

(iii) The net foreign exchange savings or earnings amount to at least US$500,000.00 annually during the first three (3) years of operation.

The preceding paragraph notwithstanding, no registered pioneer firm may avail of this incentive for a period exceeding eight (8) years.

(2) For a period of three (3) years from commercial operation, registered expanding firms shall be entitled to an exemption from income taxes levied by the National Government proportionate to their expansion under such terms and conditions as the Board may determine: *Provided, however*, That during the period within which this incentive is availed of by the expanding firm it shall not be entitled to additional deduction for incremental labor expense.

(3) The provision of Article 7(14) notwithstanding, registered firms shall not be entitled to any extension of this incentive.

The CTA pointed out that Toshiba availed itself of the income tax holiday under the Omnibus Investments Code of 1987, so Toshiba was exempt only from income tax but not from other taxes such as VAT. As a result, Toshiba was liable for output VAT on its export sales, but at zero percent (0%) rate, and entitled to the credit/refund of the input VAT paid on its purchases of goods and services relative to such zero-rated export sales.

Unsatisfied, the CIR filed a Petition for Review[29] with the Court of Appeals, docketed as CA-G.R. SP No. 63047.

In its Decision dated August 29, 2002, the Court of Appeals granted the appeal of the CIR, and reversed and set aside the Decision dated October 16, 2000 and the Resolution dated January 17, 2001 of the CTA. The appellate court ruled that

[29] *Rollo*, pp. 107-118.

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Toshiba was not entitled to the refund of its alleged unused input VAT payments because it was a tax-exempt entity under Section 24 of Republic Act No. 7916. As a PEZA-registered corporation, Toshiba was liable for remitting to the national government the five percent (5%) preferential rate on its gross income earned within the ECOZONE, in lieu of all other national and local taxes, including VAT.

The Court of Appeals further adjudged that the export sales of Toshiba were VAT-exempt, not zero-rated, transactions. The appellate court found that the Answer filed by the CIR in CTA Case No. 5762 did not contain any admission that the export sales of Toshiba were zero-rated transactions under Section 100(a)(2)(A) of the Tax Code of 1977, as amended. At the least, what was admitted by the CIR in said Answer was that the Tax Code provisions cited in the Petition for Review of Toshiba in CTA Case No. 5762 were correct. As to the Joint Stipulation of Facts and Issues filed by the parties in CTA Case No. 5762, which stated that Toshiba was subject to zero percent (0%) VAT on its export sales, the appellate court declared that the CIR signed the said pleading through palpable mistake. This palpable mistake in the stipulation of facts should not be taken against the CIR, for to do otherwise would result in suppressing the truth through falsehood. In addition, the State could not be put in estoppel by the mistakes or errors of its officials or agents.

Given that Toshiba was a tax-exempt entity under Republic Act No. 7916, a special law, the Court of Appeals concluded that the export sales of Toshiba were VAT-exempt transactions under Section 109(q) of the Tax Code of 1997, formerly Section 103(q) of the Tax Code of 1977. Therefore, Toshiba could not claim refund of its input VAT payments on its domestic purchases of goods and services.

The Court of Appeals decreed at the end of its August 29, 2002 Decision—

> WHEREFORE, premises considered, the appealed decision of the Court of Tax Appeals in CTA Case No. 5762, is hereby REVERSED and SET ASIDE, and a new one is hereby rendered finding [Toshiba], being a tax exempt entity under R.A. No. 7916, not entitled to refund

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the VAT payments made in its domestic purchases of goods and services.[30]

Toshiba filed a Motion for Reconsideration[31] of the aforementioned Decision, anchored on the following arguments: (a) the CIR never raised as an issue before the CTA that Toshiba was tax-exempt under Section 24 of Republic Act No. 7916; (b) Section 24 of Republic Act No. 7916, subjecting the gross income earned by a PEZA-registered enterprise within the ECOZONE to a preferential rate of five percent (5%), in lieu of all taxes, did not apply to Toshiba, which availed itself of the income tax holiday under Section 23 of the same statute; (c) the conclusion of the CTA that the export sales of Toshiba were zero-rated was supported by substantial evidence, other than the admission of the CIR in the Joint Stipulation of Facts and Issues; and (d) the judgment of the CTA granting the refund of the input VAT payments was supported by substantial evidence and should not have been set aside by the Court of Appeals.

In a Resolution dated February 19, 2003, the Court of Appeals denied the Motion for Reconsideration of Toshiba since the arguments presented therein were mere reiterations of those already passed upon and found to be without merit by the appellate court in its earlier Decision. The Court of Appeals, however, mentioned that it was incorrect for Toshiba to say that the issue of the applicability of Section 24 of Republic Act No. 7916 was only raised for the first time on appeal before the appellate court. The said issue was adequately raised by the CIR in his Motion for Reconsideration before the CTA, and was even ruled upon by the tax court.

Hence, Toshiba filed the instant Petition for Review with the following assignment of errors –

5.1 THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT [TOSHIBA], BEING A PEZA-REGISTERED ENTERPRISE, IS EXEMPT FROM VAT UNDER SECTION 24 OF R.A. 7916, AND FURTHER HOLDING THAT [TOSHIBA'S] EXPORT

[30] *Id.* at 52.

[31] *Id.* at 147-163.

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SALES ARE EXEMPT TRANSACTIONS UNDER SECTION 109 OF THE TAX CODE.

5.2 THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO DISMISS OUTRIGHT AND GAVE DUE COURSE TO [CIR'S] PETITION NOTWITHSTANDING [CIR'S] FAILURE TO ADEQUATELY RAISE IN ISSUE DURING THE TRIAL IN THE COURT OF TAX APPEALS THE APPLICABILITY OF SECTION 24 OF R.A. 7916 TO [TOSHIBA'S] CLAIM FOR REFUND.

5.3 THE HONORABLE COURT OF APPEALS ERRED WHEN [IT] RULED THAT THE COURT OF TAX APPEALS' FINDINGS, WITH REGARD [TOSHIBA'S] EXPORT SALES BEING ZERO RATED SALES FOR VAT PURPOSES, WERE BASED MERELY ON THE ADMISSIONS MADE BY [CIR'S] COUNSEL AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

5.4 THE HONORABLE COURT OF APPEALS ERRED WHEN IT REVERSED THE DECISION OF THE COURT OF TAX APPEALS GRANTING [TOSHIBA'S] CLAIM FOR REFUND[;][32]

and the following prayer –

WHEREFORE, premises considered, Petitioner TOSHIBA INFORMATION EQUIPMENT (PHILS.), INC. most respectfully prays that the decision and resolution of the Honorable Court of Appeals, reversing the decision of the CTA in CTA Case No. 5762, be set aside and further prays that a new one be rendered AFFIRMING AND UPHOLDING the Decision of the CTA promulgated on October 16, 2000 in CTA Case No. 5762.

Other reliefs, which the Honorable Court may deem just and equitable under the circumstances, are likewise prayed for.[33]

The Petition is impressed with merit.

The CIR did not timely raise before the CTA the issues on the VAT-exemptions of Toshiba and its export sales.

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[32] *Id.* at 17-18.

[33] *Id.* at 30.

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Upon the failure of the CIR to timely plead and prove before the CTA the defenses or objections that Toshiba was VAT-exempt under Section 24 of Republic Act No. 7916, and that its export sales were VAT-exempt transactions under Section 103(q) of the Tax Code of 1977, as amended, the CIR is deemed to have waived the same.

During the pendency of CTA Case No. 5762, the proceedings before the CTA were governed by the Rules of the Court of Tax Appeals,[34] while the Rules of Court were applied suppletorily.[35]

Rule 9, Section 1 of the Rules of Court provides:

SECTION 1. *Defenses and objections not pleaded.* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the

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[34] The RCTA was promulgated on September 10, 1955, following the enactment on June 16, 1954 of Republic Act No. 1125, otherwise known as An Act Creating the Court of Appeals. Republic Act No. 9282, which was enacted on March 30, 2004, amended Republic Act No. 1125 by expanding the jurisdiction of the CTA, elevating the same to the level of a collegiate court with special jurisdiction, and enlarging its membership. Accordingly, the Court approved on November 25, 2005 the Revised Rules of the Court of Tax Appeals (RRCTA). Thereafter, Republic Act No. 9503, which was enacted on June 12, 2008, further amended Republic Act No. 1125 by enlarging the organization structure of the CTA. As a result, the Court approved on September 16, 2008 the amendments to the 2005 RRCTA.

[35] Rule 16 of the RCTA is reproduced in full below:

RULE 16

APPLICABILITY OF THE RULES OF THE COURT OF FIRST INSTANCE

SECTION 1. The provisions of the Rules of Court applicable to proceedings before the Courts of First Instance shall, insofar as they may not be inconsistent with the provisions of Republic Act No. 1125 and of these rules, be applicable to cases pending before this Court, except that, in any case pending before it, the Court may, in the exercise of its discretion, fix a shorter period for the filing of pleadings and papers.

Under Batas Pambansa Blg. 129, otherwise known as The Judiciary Reorganization Act of 1980, the Court of First Instance became the Regional Trial Court.

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pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

The CIR did not argue straight away in his Answer in CTA Case No. 5762 that Toshiba had no right to the credit/refund of its input VAT payments because the latter was VAT-exempt and its export sales were VAT-exempt transactions. The Pre-Trial Brief[36] of the CIR was equally bereft of such allegations or arguments. The CIR passed up the opportunity to prove the supposed VAT-exemptions of Toshiba and its export sales when the CIR chose not to present any evidence at all during the trial before the CTA.[37] He missed another opportunity to present the said issues before the CTA when he waived the submission of a Memorandum.[38] The CIR had waited until the CTA already rendered its Decision dated October 16, 2000 in CTA Case No. 5762, which granted the claim for credit/refund of Toshiba, before asserting in his Motion for Reconsideration that Toshiba was VAT-exempt and its export sales were VAT-exempt transactions.

The CIR did not offer any explanation as to why he did not argue the VAT-exemptions of Toshiba and its export sales before and during the trial held by the CTA, only doing so in his Motion for Reconsideration of the adverse CTA judgment. Surely, said defenses or objections were already available to the CIR when the CIR filed his Answer to the Petition for Review of Toshiba in CTA Case No. 5762.

It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings.[39] The Court cannot

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[36] Records, pp. 29-32.

[37] Resolution dated May 10, 2000, signed by Presiding Judge Ernesto D. Acosta and Associate Judges Amancio Q. Saga and Ramon O. de Veyra; *id.* at 72.

[38] *Rollo,* p. 85.

[39] *Director of Lands v. Court of Appeals*, 363 Phil. 117, 128 (1999).

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simply grant the plea of the CIR that the procedural rules be relaxed based on the general averment of the interest of substantive justice. It should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action.[40] Procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows a relaxation in the application of the rules, it never intends to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice.[41]

The CIR judicially admitted that Toshiba was VAT-registered and its export sales were subject to VAT at zero percent (0%) rate.

More importantly, the arguments of the CIR that Toshiba was VAT-exempt and the latter's export sales were VAT-exempt transactions are inconsistent with the explicit admissions of the CIR in the Joint Stipulation of Facts and Issues (Joint Stipulation) that Toshiba was a registered VAT entity and that it was subject to zero percent (0%) VAT on its export sales.

The Joint Stipulation was executed and submitted by Toshiba and the CIR upon being advised to do so by the CTA at the end of the pre-trial conference held on June 23, 1999.[42] The approval

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[40] *Commissioner of Internal Revenue v. A. Soriano Corporation*, 334 Phil. 965, 972 (1997).

[41] *Land Bank of the Philippines v. Natividad*, 497 Phil. 738, 744-745 (2005).

[42] Records, p. 33.

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of the Joint Stipulation by the CTA, in its Resolution[43] dated July 12, 1999, marked the culmination of the pre-trial process in CTA Case No. 5762.

Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. It has been hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century."[44]

The nature and purpose of a pre-trial have been laid down in Rule 18, Section 2 of the Rules of Court:

SECTION 2. *Nature and purpose*. – The pre-trial is mandatory. The court shall consider:

(a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;

(b) The simplification of the issues;

(c) The necessity or desirability of amendments to the pleadings;

(d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

(e) The limitation of the number of witnesses;

(f) The advisability of a preliminary reference of issues to a commissioner;

(g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;

(h) The advisability or necessity of suspending the proceedings; and

(i) Such other matters as may aid in the prompt disposition of the action. (Emphasis ours.)

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[43] Signed by Presiding Judge Ernesto D. Acosta and Associate Judges Amancio Q. Saga and Ramon O. De Veyra, *id.* at 36.

[44] *Tiu v. Middleton*, 369 Phil. 829, 835 (1999).

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The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission.[45] Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof.[46]

In the instant case, among the facts expressly admitted by the CIR and Toshiba in their CTA-approved Joint Stipulation are that Toshiba "is a duly registered value-added tax entity in accordance with Section 107 of the Tax Code, as amended[,]"[47] that "is subject to zero percent (0%) value-added tax on its export sales in accordance with then Section 100(a)(2)(A) of the Tax Code, as amended."[48] The CIR was bound by these admissions, which he could not eventually contradict in his Motion for Reconsideration of the CTA Decision dated October 16, 2000, by arguing that Toshiba was actually a VAT-exempt entity and its export sales were VAT-exempt transactions. Obviously, Toshiba could not have been **subject to VAT** and **exempt from VAT** at the same time. Similarly, the export sales of Toshiba could not have been **subject to zero percent (0%) VAT** and **exempt from VAT** as well.

The CIR cannot escape the binding effect of his judicial admissions.

The Court disagrees with the Court of Appeals when it ruled in its Decision dated August 29, 2002 that the CIR could not be bound by his admissions in the Joint Stipulation because (1)

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[45] *SCC Chemicals Corporation v. Court of Appeals*, 405 Phil. 514, 522-523 (2001).

[46] *Garcia v. Court of Appeals*, 327 Phil. 1097, 1113 (1996).

[47] Records, p. 34.

[48] *Id.*

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the said admissions were "made through palpable mistake"[49] which, if countenanced, "would result in falsehood, unfairness and injustice";[50] and (2) the State could not be put in estoppel by the mistakes of its officials or agents. This ruling of the Court of Appeals is rooted in its conclusion that a "palpable mistake" had been committed by the CIR in the signing of the Joint Stipulation. However, this Court finds no evidence of the commission of a mistake, much more, of a palpable one.

The CIR does not deny that his counsel, Atty. Joselito F. Biazon, Revenue Attorney II of the BIR, signed the Joint Stipulation, together with the counsel of Toshiba, Atty. Patricia B. Bisda. Considering the presumption of regularity in the performance of official duty,[51] Atty. Biazon is presumed to have read, studied, and understood the contents of the Joint Stipulation before he signed the same. It rests on the CIR to present evidence to the contrary.

Yet, the Court observes that the CIR himself never alleged in his Motion for Reconsideration of the CTA Decision dated October 16, 2000, nor in his Petition for Review before the Court of Appeals, that Atty. Biazon committed a mistake in signing the Joint Stipulation. Since the CIR did not make such an allegation, neither did he present any proof in support thereof. The CIR began to aver the existence of a palpable mistake only after the Court of Appeals made such a declaration in its Decision dated August 29, 2002.

Despite the absence of allegation and evidence by the CIR, the Court of Appeals, on its own, concluded that the admissions of the CIR in the Joint Stipulation were due to a palpable mistake based on the following deduction –

> Scrutinizing the Answer filed by [the CIR], we rule that the Joint Stipulation of Facts and Issues signed by [the CIR] was made through palpable mistake. Quoting paragraph 4 of its Answer, [the CIR] states:

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[49] *Rollo,* p. 49.

[50] *Id.* at 51.

[51] Rule 131, Section 3(m) of the Rules of Court.

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"4. He ADMITS the allegations contained in paragraph 5 of the petition only insofar as the cited provisions of Tax Code is concerned, but SPECIFICALLY DENIES the rest of the allegations therein for being mere opinions, arguments or gratuitous assertions on the part of [Toshiba] and/or because they are mere erroneous conclusions or interpretations of the quoted law involved, the truth of the matter being those stated hereunder

xxx xxx xxx"

And paragraph 5 of the petition for review filed by [Toshiba] before the CTA states:

"5. Petitioner is subject to zero percent (0%) value-added tax on its export sales in accordance with then Section 100(a)(2)(A) of the Tax Code x x x.

xxx xxx xxx"

As we see it, nothing in said Answer did [the CIR] admit that the export sales of [Toshiba] were indeed zero-rated transactions. At the least, what was admitted only by [the CIR] concerning paragraph 4 of his Answer, is the fact that the provisions of the Tax Code, as cited by [Toshiba] in its petition for review filed before the CTA were correct.[52]

The Court of Appeals provided no explanation as to why the admissions of the CIR in his Answer in CTA Case No. 5762 deserved more weight and credence than those he made in the Joint Stipulation. The appellate court failed to appreciate that the CIR, through counsel, Atty. Biazon, also signed the Joint Stipulation; and that absent evidence to the contrary, Atty. Biazon is presumed to have signed the Joint Stipulation willingly and knowingly, in the regular performance of his official duties. Additionally, the Joint Stipulation[53] of Toshiba and the CIR was a more recent pleading than the Answer[54] of the CIR. It was submitted by the parties after the pre-trial conference held by the CTA, and subsequently approved by the tax court. If

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[52] *Rollo,* pp. 49-50.

[53] Filed by the parties on July 7, 1999.

[54] Filed by the CIR on May 11, 1999.

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there was any discrepancy between the admissions of the CIR in his Answer and in the Joint Stipulation, the more logical and reasonable explanation would be that the CIR changed his mind or conceded some points to Toshiba during the pre-trial conference which immediately preceded the execution of the Joint Stipulation. To automatically construe that the discrepancy was the result of a palpable mistake is a wide leap which this Court is not prepared to take without substantial basis.

The judicial admissions of the CIR in the Joint Stipulation are not intrinsically false, wrong, or illegal, and are consistent with the ruling on the VAT treatment of PEZA-registered enterprises in the previous Toshiba case.

There is no basis for believing that to bind the CIR to his judicial admissions in the Joint Stipulation – that Toshiba was a VAT-registered entity and its export sales were zero-rated VAT transactions – would result in "falsehood, unfairness and injustice." The judicial admissions of the CIR are not intrinsically false, wrong, or illegal. On the contrary, they are consistent with the ruling of this Court in a previous case involving the same parties, *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc.*[55] (*Toshiba case*), explaining the VAT treatment of PEZA-registered enterprises.

In the *Toshiba case*, Toshiba sought the refund of its unutilized input VAT **on its purchase of capital goods and services** for the first and second quarters of 1996, based on Section 106(b) of the Tax Code of 1977, as amended.[56] In the Petition at bar,

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[55] G.R. No. 150154, August 9, 2005, 466 SCRA 211, 230-231.

[56] SEC. 106. *Refunds or tax credits of creditable input tax.* –

xxx xxx xxx

(b) *Capital goods.* – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

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Toshiba is claiming refund of its unutilized input VAT **on its local purchase of goods and services which are attributable to its export sales** for the first and second quarters of 1997, pursuant to Section 106(a), in relation to Section 100(a)(1)(A)(i) of the Tax Code of 1977, as amended, which read –

SEC. 106. *Refunds or tax credits of creditable input tax*. – (a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 100(a)(2)(A)(i),(ii) and (b) and Section 102(b)(1) and (2), the acceptable foreign currency exchange proceeds thereof has been duly accounted for in accordance with the regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties of services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume sales.

SEC. 100. *Value-added tax on sale of goods or properties*. – (a) *Rate and base of tax*. – x x x

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to 0%:

(A) Export sales. – The term "export sales" means:

(i) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipnas (BSP).

Despite the difference in the legal bases for the claims for credit/refund in the *Toshiba case* and the case at bar, the CIR

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raised the very same defense or objection in both – that Toshiba and its transactions were VAT-exempt. Hence, the ruling of the Court in the former case is relevant to the present case.

At the outset, the Court establishes that there is a basic distinction in the VAT-exemption of a person and the VAT-exemption of a transaction —

> It would seem that petitioner CIR failed to differentiate between VAT-exempt transactions from VAT-exempt entities. In the case of *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, this Court already made such distinction —
>
> > An exempt transaction, on the one hand, involves goods or services which, by their nature, are specifically listed in and expressly exempted from the VAT under the Tax Code, without regard to the tax status – VAT-exempt or not – of the party to the transaction…
> >
> > An exempt party, on the other hand, is a person or entity granted VAT exemption under the Tax Code, a special law or an international agreement to which the Philippines is a signatory, and by virtue of which its taxable transactions become exempt from VAT x x x.[57]

In effect, the CIR is opposing the claim for credit/refund of input VAT of Toshiba on two grounds: (1) that Toshiba was a VAT-exempt entity; and (2) that its export sales were VAT-exempt transactions.

It is now a settled rule that based on the Cross Border Doctrine, PEZA-registered enterprises, such as Toshiba, are VAT-exempt and no VAT can be passed on to them. The Court explained in the *Toshiba case* that —

> PEZA-registered enterprise, which would necessarily be located within ECOZONES, are VAT-exempt entities, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, because of Section 8 of

[57] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc.*, *supra* note 55 at 222-223, citing *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 335 (2005).

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the same statute which establishes the fiction that ECOZONES are foreign territory.

xxx xxx xxx

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.

Applying said doctrine to the sale of goods, properties, and services to and from the ECOZONES, the BIR issued Revenue Memorandum Circular (RMC) No. 74-99, on 15 October 1999. Of particular interest to the present Petition is Section 3 thereof, which reads –

> SECTION 3. **Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise.** –
>
> (1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:
>
> (a) **Sale of goods (*i.e.*, merchandise).** – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.
>
> (b) **Sale of service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.
>
> (2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, *e.g.*, Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:
>
> (a) **Sale of goods (*i.e.*, merchandise).** – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec.

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23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code.

(b) **Sale of Service.** – This shall be treated subject to zero percent (0%) VAT under the "cross border doctrine" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. No. 7916 and the "Cross Border Doctrine" of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular.

Indubitably, no output VAT may be passed on to an ECOZONE enterprise since it is a VAT-exempt entity. x x x.[58]

The Court, nevertheless, noted in the *Toshiba case* that the rule which considers any sale by a supplier from the Customs Territory to a PEZA-registered enterprise as export sale, which should not be burdened by output VAT, was only clearly established on **October 15, 1999**, upon the issuance by the BIR of **RMC No. 74-99**. Prior to October 15, 1999, whether

[58] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc., id.* at 223-226.

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a PEZA-registered enterprise was exempt or subject to VAT depended on the type of fiscal incentives availed of by the said enterprise.[59] The old rule, then followed by the BIR, and recognized and affirmed by the CTA, the Court of Appeals, and this Court, was described as follows —

> According to the old rule, Section 23 of Rep. Act No. 7916, as amended, gives the PEZA-registered enterprise the option to choose between two sets of fiscal incentives: (a) The five percent (5%) preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and (b) the income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.
>
> The five percent (5%) preferential tax rate on gross income under Rep. Act No. 7916, as amended, is in lieu of all taxes. Except for real property taxes, no other national or local tax may be imposed on a PEZA-registered enterprise availing of this particular fiscal incentive, not even an indirect tax like VAT.
>
> Alternatively, Book VI of Exec. Order No. 226, as amended, grants income tax holiday to registered pioneer and non-pioneer enterprises for six-year and four-year periods, respectively. Those availing of this incentive are exempt only from income tax, but shall be subject to all other taxes, including the ten percent (10%) VAT.
>
> This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory. It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. Again, for emphasis, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives: (1) If the PEZA-registered enterprise chose the five percent (5%) preferential tax on its gross income, in lieu of all taxes, as provided by Rep. Act No. 7916, as amended, then it would be VAT-exempt; (2) If the PEZA-registered enterprise availed of the income tax holiday under Exec. Order No. 226, as amended, it shall be subject to VAT at ten percent (10%). Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration;

[59] *Id.* at 229-230.

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and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as a VAT-exempt entity.[60]

To recall, Toshiba is herein claiming the refund of unutilized input VAT payments on its local purchases of goods and services attributable to its export sales for the **first and second quarters of 1997**. Such export sales took place **before October 15, 1999**, when the old rule on the VAT treatment of PEZA-registered enterprises still applied. Under this old rule, it was not only possible, but even acceptable, for Toshiba, availing itself of the income tax holiday option under Section 23 of Republic Act No. 7916, in relation to Section 39 of the Omnibus Investments Code of 1987, to be subject to VAT, both indirectly (as purchaser to whom the seller shifts the VAT burden) and directly (as seller whose sales were subject to VAT, either at ten percent [10%] or zero percent [0%]).

A VAT-registered seller of goods and/or services who made zero-rated sales can claim tax credit or refund of the input VAT paid on its purchases of goods, properties, or services relative to such zero-rated sales, in accordance with Section 4.102-2 of Revenue Regulations No. 7-95, which provides —

> Sec. 4.102-2. *Zero-rating*. – (a) *In general*. — A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.

The BIR, as late as July 15, 2003, when it issued RMC No. 42-2003, accepted applications for credit/refund of input VAT on purchases prior to RMC No. 74-99, filed by PEZA-registered enterprises which availed themselves of the income tax holiday. The BIR answered Question Q-5(1) of RMC No. 42-2003 in this wise —

> Q-5: Under Revenue Memorandum Circular (RMC) No. 74-99, purchases by PEZA-registered firms automatically qualify

[60] *Id.* at 230-231.

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as zero-rated without seeking prior approval from the BIR effective October 1999.

1) Will the OSS-DOF Center **still accept applications from PEZA-registered claimants** who were allegedly billed VAT by their suppliers before and during the effectivity of the RMC by issuing VAT invoices/receipts?

xxx xxx xxx

A-5(1): If the PEZA-registered enterprise is paying the 5% preferential tax in lieu of all other taxes, the said PEZA-registered taxpayer cannot claim TCC or refund for the VAT paid on purchases. However, **if the taxpayer is availing of the income tax holiday, it can claim VAT credit** provided:

a. The taxpayer-claimant is **VAT-registered**;

b. Purchases are evidenced by **VAT invoices or receipts**, whichever is applicable, with shifted VAT to the purchaser **prior to the implementation of RMC No. 74-99**; and

c. The **supplier issues a sworn statement** under penalties of perjury that it shifted the VAT and declared the sales to the PEZA-registered purchaser as taxable sales in its VAT returns.

For invoices/receipts issued upon the effectivity of RMC No. 74-99, the claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA-registration, should be denied. (Emphases ours.)

Consequently, the CIR cannot herein insist that all PEZA-registered enterprises are VAT-exempt in every instance. RMC No. 42-2003 contains an express acknowledgement by the BIR that prior to RMC No. 74-99, there were PEZA-registered enterprises liable for VAT and entitled to credit/refund of input VAT paid under certain conditions.

This Court already rejected in the *Toshiba case* the argument that sale transactions of a PEZA-registered enterprise were VAT-exempt under Section 103(q) of the Tax Code of 1977, as amended, ratiocinating that —

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Section 103(q) of the Tax Code of 1977, as amended, relied upon by petitioner CIR, relates to VAT-exempt transactions. These are transactions exempted from VAT by special laws or international agreements to which the Philippines is a signatory. Since such transactions are not subject to VAT, the sellers cannot pass on any output VAT to the purchasers of goods, properties, or services, and they may not claim tax credit/refund of the input VAT they had paid thereon.

Section 103(q) of the Tax Code of 1977, as amended, cannot apply to transactions of respondent Toshiba because although the said section recognizes that transactions covered by special laws may be exempt from VAT, the very same section provides that those falling under Presidential Decree No. 66 are not. **Presidential Decree No. 66, creating the Export Processing Zone Authority (EPZA), is the precursor of Rep. Act No. 7916, as amended, under which the EPZA evolved into the PEZA. Consequently, the exception of Presidential Decree No. 66 from Section 103(q) of the Tax Code of 1977, as amended, extends likewise to Rep. Act No. 7916, as amended.**[61] (Emphasis ours.)

In light of the judicial admissions of Toshiba, the CTA correctly confined itself to the other factual issues submitted for resolution by the parties.

In accord with the admitted facts – that Toshiba was a VAT-registered entity and that its export sales were zero-rated transactions – the stated issues in the Joint Stipulation were limited to other factual matters, particularly, on the compliance by Toshiba with the rest of the requirements for credit/refund of input VAT on zero-rated transactions. Thus, during trial, Toshiba concentrated on presenting evidence to establish that it incurred ₱3,875,139.65 of input VAT for the first and second quarters of 1997 which were directly attributable to its export sales; that said amount of input VAT were not carried over to the succeeding quarters; that said amount of input VAT has not been applied or offset against any output VAT liability; and

[61] *Id.* at 223.

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that said amount of input VAT was properly substantiated by official receipts and invoices.

After what truly appears to be an exhaustive review of the evidence presented by Toshiba, the CTA made the following findings –

(1) The amended quarterly VAT returns of Toshiba for 1997 showed that it made no other sales, except zero-rated export sales, for the entire year, in the sum of ₱2,083,305,000.00 for the first quarter and ₱5,411,372,000.00 for the second quarter. That being the case, all input VAT allegedly incurred by Toshiba for the first two quarters of 1997, in the amount of ₱3,875,139.65, was directly attributable to its zero-rated sales for the same period.

(2) Toshiba did carry-over the ₱3,875,139.65 input VAT it reportedly incurred during the first two quarters of 1997 to succeeding quarters, until the first quarter of 1999. Despite the carry-over of the subject input VAT of ₱3,875,139.65, the claim of Toshiba was not affected because it later on deducted the said amount as "VAT Refund/TCC Claimed" from its total available input VAT of ₱6,841,468.17 for the first quarter of 1999.

(3) Still, the CTA could not allow the credit/refund of the total input VAT of ₱3,875,139.65 being claimed by Toshiba because not all of said amount was actually incurred by the company and duly substantiated by invoices and official receipts. From the **₱3,875,139.65** claim, the CTA **deducted** the amounts of (a) **₱189,692.92**, which was in excess of the ₱3,685,446.23 input VAT Toshiba originally claimed in its application for credit/refund filed with the DOF One-Stop Shop; (b) **₱396,882.58**, which SGV & Co., the commissioned CPA, disallowed for being improperly substantiated, *i.e.*, supported only by provisional acknowledgement receipts, or by documents other than official receipts, or not supported by TIN or TIN VAT or by any document at all; (c) **₱1,887,545.65**, which the CTA itself verified as not being substantiated in accordance with Section 4.104-5[62] of

[62] SECTION 4.104-5. *Substantiation of claims for input tax credit.* – (a) Input taxes shall be allowed only if the domestic purchase of goods, properties

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Revenue Regulations No. 7-95, in relation to Sections 108[63] and 238[64] of the Tax Code of 1977, as amended; and (d)

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or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Sections 108(a) and 237 of the Code. Input tax on purchases of real property should be supported by a copy of the public instrument, *i.e.*, deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.

A cash register machine tape issued to a VAT-registered buyer by a VAT-registered seller from a machine duly registered with the BIR in lieu of the regular sales invoice, shall constitute valid proof of substantiation of tax credit only if the name and TIN of the purchaser is indicated in the receipt and authenticated by a duly authorized representative of the seller.

(b) Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods.

(c) Presumptive input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(d) Input tax on "deemed sale" transactions shall be substantiated with the required invoices.

(e) Input tax from payments made to non-residents shall be supported by a copy of the VAT declaration/return filed by the resident licensee/lessee in behalf of the non-resident licensor/lessor evidencing remittance of the VAT due.

[63] SEC. 108. *Invoicing and accounting requirements for VAT-registered persons.* – (a) *Invoicing requirements.* – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 238, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

(b) *Accounting requirements.* – Notwithstanding the provision of Section 223, all persons subject to the value-added tax under Sections 100 and 102 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

[64] SEC. 238. *Issuance of receipts or sales or commercial invoices.* – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at ₱25.00 or more, issue duly

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₱15,736.42, which Toshiba already applied to its output VAT liability for the fourth quarter of 1998.

(4) Ultimately, Toshiba was entitled to the credit/refund of unutilized input VAT payments attributable to its zero-rated sales in the amounts of ₱1,158,016.82 and ₱227,265.26, for the first and second quarters of 1997, respectively, or in the total amount of **₱1,385,282.08**.

Since the aforementioned findings of fact of the CTA are borne by substantial evidence on record, unrefuted by the CIR, and untouched by the Court of Appeals, they are given utmost respect by this Court.

The Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject unless there has been an abuse or improvident exercise of authority.[65] In *Barcelon, Roxas*

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registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That in the case of sales, receipts or transfers in the amount of ₱100.00 or more, or, regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer, or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required the invoice or receipt shall further show the taxpayer's identification number of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of 3 years from the close of the taxable year in which such invoice or receipt was issued while the duplicate shall be kept and preserved by the issuer, also in his place of business for a like period.

The Commissioner may, in meritorious cases exempt any person subject to an internal revenue tax from compliance with the provisions of this section.

[65] *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625, 640 (2005).

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Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,[66] this Court more explicitly pronounced –

> Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service Inc. v. Court of Appeals* [G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446], 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.

WHEREFORE, the assailed Decision dated August 29, 2002 and the Resolution dated February 19, 2003 of the Court of Appeals in CA-G.R. SP No. 63047 are *REVERSED* and *SET ASIDE*, and the Decision dated October 16, 2000 of the Court of Tax Appeals in CTA Case No. 5762 is *REINSTATED*. Respondent Commissioner of Internal Revenue is *ORDERED* to *REFUND* or, in the alternative, to *ISSUE* a *TAX CREDIT CERTIFICATE* in favor of petitioner Toshiba Information Equipment (Phils.), Inc. in the amount of ₱1,385,282.08, representing the latter's unutilized input VAT payments for the first and second quarters of 1997. No pronouncement as to costs.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio Morales, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[66] G.R. No. 150764, August 7, 2006, 498 SCRA 126, 135-136.