REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1903 (CTA CASE No. 9065)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY,
-versus-	FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and
NES GLOBAL TALENT LIMITED, *Respondent.*	MODESTO-SAN PEDRO, JJ.
	Promulgated: SEP 13 2019 3:36p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on November 15, 2018, of this Court *En Banc,* is a Petition for Review filed by petitioner Commissioner of Internal Revenue under *Section 11 of Republic Act No. 1125, as amended by Section 18 of Republic Act No. 9282[1], as further amended by Republic Act No. 9503,* seeking the reversal of the Decision dated 6 September 2017[2], Amended Decision dated 9 February 2018[3] and the Resolution dated July 20, 2018[4] rendered by

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[1] Section 11. Section 18 of the same Act is hereby amended as follows:

> "SEC. 18. Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
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> "A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc."

[2] Penned by Associate Justice Maria Belen M. Ringpis-Liban concurred in by Associate Justice Lovell R. Bautista. and Associate Justice Esperanza R. Fabon-Victorino, En Banc Docket, pp.22-41.
[3] *Id.,* pp.43-52.
[4] *Id.,* pp.54-57.

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the Third Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated 6 September 2017:

"**WHEREFORE,** premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** the amount of **P10,369,060.73**, representing petitioner's erroneously paid FWT for the months of November to December 2012 and April to July 2013.

SO ORDERED."

Amended Decision dated 9 February 2018:

"**WHEREFORE,** premises considered, petitioner's **Motion for Partial Reconsideration (of the Decision dated 6 September 2017)**, is **PARTIALLY GRANTED**; while respondent's **Motion for Partial Reconsideration, is DENIED** for lack of merit. Accordingly, the dispositive portion of the assailed Decision dated 6 September 2017 is hereby amended to read, as follows:

'**WHEREFORE,** premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** the amount of **P13,704,409.80**, representing petitioner's erroneously paid FWT for the months of November to December 2012 and April to July 2013, computed as follows:

Amount of FWT Claim		P 14,608,018.35
Less: Disallowances per the Court's Decision dated September 6, 2017	P 4,238,957.62	
Less: Reconsidered disallowance representing WTC due on the WTC shouldered by petitioner for compensation paid to assigned foreign employees	P 3,335,349.07	
Net Disallowances		P 903,608.55
Refundable Erroneously Paid FWT, as adjusted		**P 13,704,409.80**

SO ORDERED.'

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SO ORDERED."

Resolution dated July 20, 2018:

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED."

The following facts of the case as recited by the Court in Division in its Decision[5] and as established by evidence on record, read as follows:

"Petitioner (now respondent) NES Global Talent Limited (NES Global) is the Philippine Branch of NES Global Pte. Limited, a foreign company organized and existing under the laws of the Republic of Singapore, with office address at 115 Amoy Street, #03-03 Singapore 069935. NES Global Pte. Limited is duly licensed by the Securities and Exchange Commission (SEC) to establish its branch office in the Philippines under the name of petitioner, with License No. FS201215433 issued on September 6, 2012, to provide consulting services to the oil and gas industry. NES Global Pte. Limited is a registered taxpayer in the Philippines with Taxpayer Identification Number (TIN) 008-353-389-000. Its registered address is at Regus 9-F, Filinvest One Bldg., Northgate, Cyberzone, Filinvest City, Alabang.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the NIRC and other tax laws, rules and regulations, with office address

[5] Supra note 2.

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at the BIR National Office Building, Agham Road, Diliman, Quezon City.

NES Global Pte. Limited entered into a contract denominated as "Provision of Contractor Agency and Recruitment Services" with Inpex Australia Pty. Ltd. ("Inpex" for brevity), a company engaged in oil and gas operations in Australia, with address at Level 22, 100 St. Georges Terrace, Perth, Western Australia. The Contract provides that NES Global Pte. Limited will recruit and provide fully skilled, competent and experienced personnel for Inpex's Ichthys Gas Field Development Project. In particular, NES Global employees were assigned in the construction and assembly of portions of oil rigs for Inpex. The said contract commenced on September 1, 2012 and completed on September 1, 2016.

NES Global Pte. Limited entered into another contract with Fluor Daniel, Inc. - Philippines ("FDIP" for brevity) to provide specialist staff support solutions for its offshore high-level key positions. FDIP is a domestic corporation engaged in the business of providing specialty, technical and consultation services to foreign or domestic projects including the performance of any and all implementation works. FDIP's principal office address is at 3rd Floor, Asian Star Building, ASEAN Drive, Filinvest, Corporate City, Alabang, Muntinlupa City.

To perform its obligations under the contracts with Inpex and FDIP, NES Global Pte. Limited employed foreign and Filipino nationals. The foreign nationals were paid on a net day rate basis; while the Filipino nationals were paid on a gross rate basis.

Petitioner paid FWT for its employees at the rate of 15% and remitted the same to the BIR, pursuant to Section 25(E) of the National Internal Revenue Code of 1997, as amended, on the following dates:

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EXHIBIT REFERENCE	MONTH COVERED	DATE OF FILING OF RETURN/PAYMENT OF FWT	TOTAL FWT PAID
"P-1"; "P-2"	October 2012; November 2012; December 2012	June 26, 2013/ June 27, 2013	P 2,432,071.22
"P-3"; "P-4"	April 2013	June 10, 2013/ June 14, 2013	P 1,516,063.14
"P-5"; "P-6"	May 2013	June 10, 2013	P 1,702,557.14
"P-7"; "P-8"	June 2013	June 10, 2013	4,093,841.42
"P-9"; "P-10"	July 2013	August 12, 2013	4,863,484.74
Total			**14,608.018.35**
Unaccounted Difference			**.02**
Total Per Petition for Review			**P14,608,018.37**

Subsequently, petitioner subjected the same compensation of the same individuals to withholding tax on compensation (WTC) and paid correspondingly on the basis that the subject foreign and Filipino nationals are employees of petitioner.

On September 25,2014, petitioner filed its administrative claim for refund or issuance of a tax credit certificate (TCC) with Revenue District Office (RDO) No. 53B of the BIR

Due to respondent's inaction, petitioner filed the present Petition for Review on June 9, 2017.

Respondent filed his Answer through registered mail on July 24, 2015 and received by the Court on July 31, 2015, interposing the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES"

3. She reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses;

4. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.

5. In an action for refund/ credit, the burden of proof is upon petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim.

6. Petitioner's claim for refund/ issuance of tax credit in the amount of **Php14,608,018.37,** as alleged erroneously paid Final Withholding Taxes (FWT) for taxable years 2012 and 2013 were not duly substantiated by proper documentary evidence.

7. Petitioner failed to prove that the amount subject of its claim was remitted in full to the BIR.

8. Petitioner failed to comply with the requirements prescribed under Section 76 of the 1997 Tax Code.

9. Petitioner failed to comply with the requirements under *Sections 204 of the 1997 Tax Code in relation to Section 229 of the same Code.*

10. Claims for refund are construed strictly against herein petitioner for the same partakes the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."*

Petitioner filed its Reply on August 10, 2015."

After trial on the merits, the Court in Division directed both parties to submit their respective Memoranda. NES Global filed its Memorandum on September 7, 2016. On even date, the CIR, on the other hand, filed his Manifestation and Motion, stating that he is adopting all the factual and legal arguments and affirmative defenses in his Answer dated July 24, 2015 as his Memorandum in this case.

Thereafter, the case was considered submitted for decision. On September 6, 2017, the Court in Division rendered the assailed Decision which partially granted NES Global's claim for refund in the reduced amount of P10,369,060.73.

Consequently, both parties filed a Motion for Partial Reconsideration.

On February 9, 2018, the Court in Division amended its Decision which partially granted NES Global's motion and increased its claim for refund to P13,704,409.80, while the Court denied the CIR's motion. Aggrieved, the CIR filed a Motion for Reconsideration wherein the same was denied in a Resolution dated July 20, 2018. Hence, this Petition for Review was filed.

In the instant petition, the CIR maintains that respondent is not entitled to its claim for refund of alleged erroneously paid FWT for the months of November to December 2012 and April to July 2013.

We rule to DENY the Petition for Review.

In claims for refund, the dispute most often centers on the sufficiency of the documentary evidence to prove the said erroneously paid taxes and it is for this reason that petitioner disagrees with the assailed Decision which granted the claim for refund.

Claims for refund finds legal basis in Section 76 of the 1997 National Internal Revenue Code (NIRC), quoted hereunder for reference:

> "Section 76. Final Adjustment Return.- Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
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> (A) Pay the balance of the tax still due; or
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> (B) Carry over the excess credit; or

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> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry over and apply the excess quarterly income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

As implemented by Section 2.58.3 of Revenue Regulations (RR) No. 02-98, the requisites for claiming refund or Tax Credit Certificate are as follows:

1. The claim for refund must be filed with the Commissioner of Internal Revenue within the two-year prescriptive period from the date of payment of the tax, as prescribed under Section 204 (C), in relation to Section 229 of the 1997 NIRC, as amended;

2. It must be shown in the return of the recipient that the income payment received was declared as part of the gross income; and

3. The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

The above requisites have been affirmed and applied by a myriad of cases through the years but the types of evidence to prove compliance with said requisites have evolved as new issues arise largely due to the peculiar circumstances of each case brought before the courts.

In the instant petition, the CIR does not question the legal merits of the claim for refund but instead harps on the insufficiency of the evidence to prove compliance with some of the aforementioned requisites. In fact, no contrary evidence has been shown to disprove respondent's entitlement to the claim for refund.

First, petitioner questions the power of the Court to determine the proper category of tax applicable in this case in view of respondent's claim for refund.

Second, petitioner asserts that respondent failed to present its source documents such as disbursement books, related official receipts, sales invoices, reconciliation schedules to effectively show that the WTC forms part of the taxable compensation shouldered by respondent on behalf of its foreign employees for the year 2012 and 2013.

Likewise, petitioner CIR also contends that respondent failed to show adequate proof of actual remittance of the withheld taxes to the BIR. He insists that the act of withholding is different from the act of remitting the said taxes and that the best evidence of remittance is a certification from the BIR's Revenue Accounting Division showing the fact of remittance of the taxes supposedly withheld.

And lastly, the CIR challenges the evidentiary value of the documents offered by respondent, and belittles the probative weight of the testimony of respondent's Regional Finance Director, Mr. Lee Coleman, because he was not the signatory to the certifications presented in Court. It is petitioner's position that Mr. Coleman's testimony should have been limited to those facts of which he has personal knowledge. Thus, any attempt to verify the contents of the documents through him relegated to the category of hearsay evidence.

We elaborate. In citing the case of *Air Canada vs. Commissioner of Internal Revenue*[6], petitioner only emphasized what has already been exhaustively discussed by the Court in Division, We quote the relevant portion of the assailed Decision as follows:

> "It must be noted that this Court's jurisdiction to review respondent's denial or inaction on disputed assessments includes the authority to

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[6] G.R No. 169507, January 11, 2016.

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determine the proper taxes to be paid. In fact, it is incidental in determining whether there should be refund in this case.

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Moreover, in the case of Air Canada vs. Commissioner of Internal Revenure, the Supreme Court affirmed the ruling in *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue* and held that:

> 'Finally, we reject petitioner's contention that the Court of Tax Appeals erred in denying its claim for refund of erroneously paid Gross Philippine Billings tax on the ground that it is subject to income tax under Section 28(A)(1) of the National Internal Revenue Code because (a) it has not been assessed at all by the Bureau of Internal Revenue for any income tax liability; and (b) internal revenue taxes cannot be the subject of set-off or compensation, citing Republic v. Mambulao Lumber Co., et. aL and Francia v. Intermediate Appellate Court.'

In *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, we have ruled that '[i]n an action for the refund of taxes allegedly erroneously paid, the Court of Tax Appeals may determine whether there are taxes that should have been paid in lieu of the taxes paid.' The determination of the proper category of tax that should have been paid is incidental and necessary to resolve the issue of whether a refund should be granted. Thus: XXX XXX XXX

Hence, the Court of Tax Appeals properly denied petitioner's claim for refund of allegedly erroneously paid tax on its Gross Philippine Billings, on the ground that it was liable instead for the regular 32% tax on its taxable income received from sources within the Philippines. **<u>Its determination of petitioner's liability for the 32% regular income tax was made merely for the purpose of ascertaining petitioner's</u>**

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entitlement to a tax refund and not for imposing any deficiency tax." The issue of petitioner's claim for tax refund of Final Withholding Tax (FWT) is closely related with the issue of the proper taxes that are due from petitioner. Hence, in stating that petitioner is liable to WTC, however, this Court was not making an assessment. It was merely determining the proper category of tax that petitioner should have paid, in view of its claim that it erroneously paid FWT. (emphasis supplied)

To reiterate, the determination of the proper category of tax (WTC) that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner is entitled to a refund of FWT."

From the evidence adduced by respondent, the Court in Division was able to determine that indeed respondent subjected to WTC the WTC it initially shouldered for the compensation of its foreign employees for the subject period of claim. NES Global's Annualized Computation of WTC[7], in addition to the supporting computations attached as Annexes "A to F"[8], the WTC initially shouldered by respondent in 2012 and 2013 was added to the foreign employees' taxable compensation for the year 2013 in determining the total WTC due from the said employees for 2013. Thus, the WTC remitted by respondent in December 2013[9] included the WTC due on the WTC shouldered by respondent for 2012 and 2013.

The second argument of the CIR involves the alleged failure of NES Global to prove the fact of remittance of the taxes withheld to the BIR. The CIR maintains that the conclusive evidence of payment and remittance to the BIR is the certification from the BIR's Revenue Accounting Division. He further argues that the testimonies of the various payors and withholding agents are required to prove remittance, which respondent failed to do. The contention is bereft of merit.

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[7] Exhibit "P-42".
[8] NES Global's Motion for Partial Reconsideration, Division Docket, Volume II, pp. 729-734.
[9] Exhibits "P-47 and P-48".

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A withholding agent's bounden duty is to guarantee that the pertinent income taxes they withheld from the taxpayers are paid in favor of the government. On that account, the withholding agent only need to prove the fact of withholding and not the actual remittance to the BIR of the taxes withheld. As to what evidence may be presented to establish the fact of withholding, Section 58(B) and (C)[10] of the NIRC of 1997, as amended, highlights the withholding agents' responsibility to deduct and remit taxes due on their income payments by requiring them to submit annual information return, as well as provide the recipients of income written statements containing: a) the amount of income paid; b) the details of the person to whom such payment was made; and c) the specific details of the sums they deducted and withheld.

A revisit of the record reveals that NES Global presented its Annual Income Tax Return[11], BIR Forms 1601-C covering the months of November to December 2012 and April to July 2013[12], and an Annualized Computation of WTC. There is no doubt that the fact of withholding has been established. Notably, since these documents were duly signed and prepared under the penalties of perjury, the facts and figures appearing therein are presumed to be true and correct and may be taken at their face value.

Anent the evidentiary and probative value of the documents and testimony proffered, We agree with the ruling of the Court in Division that the persons who prepared the documents need not be presented in court to identify, describe and testify on these exhibits. The submitted documents obtained or secured from the BIR or the SEC are considered public documents, and as a public document, the rule on authentication does not apply. It is admissible in

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[10] SEC. 58. Returns and Payment of Taxes Withheld at Source. –

> (B) Statement of Income Payments Made and Taxes Withheld. -Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later than the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. Xxx
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> (C) Annual Information Return. - Every withholding agent required to deduct and withhold taxes under Section 57 shall submit to the Commissioner an annual information return containing the list of payees and income payments, amount of taxes withheld from each payee and such other pertinent information as may be required by the Commissioner. xxx (italics supplied)

[11] Exhibit "P-39".
[12] Exhibts "P-15" to "P-26"

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evidence without further proof of its "due execution and genuineness". Therefore, the persons who prepared the documents need not be presented in court to identify, describe and testify on these exhibits. To emphasize, We reiterate the Court in Division's ruling:

> "Exhibits "P-1" "P-30" "P-36-A" "P-37-A" and "P-37-B" pertain to the Bureau of Internal Revenue Form (BIR) No. 1601-F stamped received by the BIR on June 27, 2013, Letter dated September 25, 2014 addressed to BIR, Revenue District Office (RDO) No. 53-B, Agreement for Provision of Contractor Agency and Recruitment Services with INPEX Australia Pty. Ltd., Contracts of Services of Foreign Employees assigned to INPEX and/ or FDIP and Contracts of Service of Filipino Employees assigned to INPEX.
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> It must be noted that Mr. Lee Coleman has been the Regional Finance Director of petitioner since 2008. As a Regional Finance Director, his duties and responsibilities include supervising the preparation of the books of accounts, financial statements and tax returns of petitioner. Hence, he has acquired personal knowledge regarding the preparation and filing of the said documents and is competent to testify regarding the same.
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> Similarly, Mr. Glenn Ian D. Villanueva, a court-commissioned Independent Certified Public Accountant (ICPA), has a duty to examine and identify the relevant documents of petitioner in relation to its claim for refund or issuance of Tax Credit Certificate (TCC). For this reason and by virtue of his expertise, he can very well testify on the contents of the documents subject of his examination.
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> Furthermore, Exhibits "P-34", "P-35" and "P-36-B" pertain to petitioner's License to Transact Business in the Philippines, Certificate of Registration with the BIR and Amended Articles of Incorporation of Fluor Daniel Inc. - Philippines, are public documents since they are either notarized or records in the custody of government agencies such

as Securities and Exchange Commission (SEC) and BIR, which require no further authentication.

In the case of *Republic of the Philippines vs. Fe Roa Gimenez and Ignacio B. Gimenez*[13], the Court held that:

> 'Emphasizing the importance of the correct classification of documents, this court pronounced:
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> The nature of documents as either public or private determines how the documents may be presented as evidence in court. A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court. In contrast, a private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court.
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In *Salas v. Sta. Mesa Market Corporation*[14], this court discussed the difference between mere copies of audited financial statements submitted to the Bureau of Internal Revenue (BIR) and Securities and Exchange Commission (SEC), and certified true copies of audited financial statements obtained or secured from the BIR or the SEC which are public

[13] G.R. No. 174673, January 11, 2016.
[14] G.R. No. 157766, July 12, 2007.

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documents under Rule 132, Section 19(c) of the Revised Rules of Evidence:

> 'The documents in question were supposedly copies of the audited financial statements of SMMC. Financial statements (which include the balance sheet, income statement and statement of cash flow) show the fiscal condition of a particular entity within a specified period. The financial statements prepared by external auditors who are certified public accountants (like those presented by petitioner) are audited financial statements. Financial statements, whether audited or not, are, as [a] general rule, private documents. However, once financial statements are filed with a government office pursuant to a provision if law, they become public documents.'

Applying this in the case at bar, NES Global as claimant, though having a heavy burden of showing entitlement, need only prove preponderance of evidence in order to recover the erroneously paid taxes. It was able to present both testimonial and documentary evidence necessary to establish prima facie its right to the refund.

Furthermore, without the CIR showing contrary evidence other than a blanket statement that NES Global failed to discharge its burden in claiming a tax refund absent any logical argument or specific evidence to counter the same is unacceptable. This Court cannot give evidentiary value to mere speculations and conjectures without the necessary evidence or documents to support it.

Relying on the belief that the burden of proof to establish the factual basis or sufficiency and competency of the supporting documents of the claim for tax refund rests on NES Global is misplaced. This mindset ignores the rule that the CIR has an equally important responsibility of contradicting petitioner's claim by presenting proof readily on hand once the burden of evidence shifts to its side.

Accordingly, in the case of *Vitarich vs. Losin*[15], citing the explanation of the Supreme Court in *Jison vs. Court of Appeals*:

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> Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. **However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiffs prima facie case, otherwise, a verdict must be returned in favor of plaintiff**. *(emphasis supplied)*

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Indubitably, in a recent case of *Winebrenner and Inigo Insurance Brokers Inc. vs. Commisioner of Internal Revenue* [16] the Supreme Court held:

> "It must be emphasized that once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, **the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, that is, the CIR**. *(emphasis supplied)*

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We agree that "tax refunds or tax credits - just like tax exemptions - are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit".[17] "This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's

[15] Vitarich Corporation vs. Chona Losin, G.R. No. 181560, November 15, 2010.
[16] Winebrenner and Inigo Insurance Brokers Inc. v. CIR, G.R. No. 206526, January 28, 2015
[17] Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (now Team Energy Corporation), G.R. No. 180434, January 20, 2016.

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claim".[18] However, once the taxpayer was able to sufficiently prove its entitlement to a refund, it thus behooves the government to refund what the taxpayer is entitled to.

Given the circumstances at bar, the burden of proof of establishing the propriety of the claim for refund has been sufficiently discharged by NES Global. Hence, the grant of refund is proper.

Moreover, this Court maintains that substantial justice, equity and fair play take precedence over technicalities and legalisms. To deny the claim for refund where an erroneous collection of taxes clearly exists would be tantamount to unjust enrichment on the part of the government. Law and justice are inseparable, and we must keep them so. To be sure, there are some laws that, while generally valid, may seem arbitrary when applied in particular case because of its peculiar circumstances. Accordingly, it is the duty of this Court to find a balance between the word and the will, and to ensure that justice may be done even as the law is obeyed.

Under the premises, We find no cogent reason to deviate from the rulings of the Court in Division.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Decision dated 6 September 2017, Amended Decision dated 9 February 2018 and the Resolution dated July 20, 2018 rendered by the Third Division of this Court are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[18] Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No.206526, January 28, 2015.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice