REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9957

Members:

BACORRO-VILLENA, *Acting Chairperson,*
CUI-DAVID, *JJ.*

Promulgated:
NOV 03 2022 9:02 AM

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RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Partial Reconsideration (Re: Decision promulgated 3 June 2022)"[1] (**MPR**) filed on 14 June 2022, with petitioner Oceanagold (Philippines), Inc.'s (**petitioner**'s/**OPI**'s) "Comment [Re: Motion for Partial Reconsideration dated June [3], 2022]"[2] (**Comment**) filed on 08 July 2022. It seeks the reversal of this Court's Decision dated 03 June 2022[3] (**assailed Decision**) in the above-captioned case which partially granted petitioner's claim for refund. The assailed Decision reads:

> ...
>
> **WHEREFORE,** the foregoing premises considered, the Petition for Review filed by petitioner Oceanagold (Philippines), Inc. on 23 October 2018 is hereby **PARTIALLY GRANTED.** Accordingly,

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1 Division Docket, Volume IV, pp. 1657-1672.
2 Id., pp. 1676-1692.
3 Id., pp. 1624-1656.

respondent Commissioner of Internal Revenue is hereby **ORDERED** to issue a **REFUND** or **TAX CREDIT CERTIFICATE** in the amount of **₱23,596,992.30** in favor of petitioner.

SO ORDERED.

...

In the instant motion, respondent argues that this Court should have limited its review to only those documents submitted by petitioner at the administrative level. Respondent contends that in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[4] (**Total Gas**), although the Supreme Court ruled that cases before the Court of Tax Appeals (**CTA**) are litigated *de novo*, the same should only apply to appeals from the CIR's inaction. Otherwise, the taxpayer must prove that it fully substantiated its claim at the administrative level. Moreover, respondent contends further that among the input tax claimed by petitioner, only those purchases attributable directly to the end product for sale should be considered creditable.

Petitioner, on the other hand, in its Comment filed on 08 July 2022, maintains that proceedings before the Court are litigated *de novo* regardless of the nature of the respondent's denial. Therefore, it is within this Court's power to receive and consider evidence beyond those submitted in the administrative level. As regards this Court's computation of its creditable input tax, petitioner echoes this Court's findings.

We resolve.

After a careful review of the records and the parties' arguments, the Court finds the instant motion bereft of merit.

Firstly, respondent's arguments are a mere rehash of those previously raised before the Court. Secondly, respondent's insistence that petitioner failed to supply the former with certain documents presented in Court at the administrative level without specification as to which documents respondent is referring to, gives no reason for this Court to review the relevance of the evidence already admitted.

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4 G.R. No. 207112, 08 December 2015.

A review of the records would show that in respondent's Comment[5] to petitioner's Formal Offer of Evidence[6] (**FOE**), the former expressed that it had no objection to the admission of petitioner's exhibits, to wit:

> ...
>
> 2. Respondent, through undersigned counsel, by way of Comment on petitioner's Formal Offer of Evidence, respectfully states that he has no objection to the admission of petitioner's enumerated exhibits, but only as to the manner they were identified in open court and subject to the condition that the same have faithfully complied with the necessity of comparison with the original documents...[7]
>
> ...

Respondent's belated attack on the admissibility and materiality of petitioner's evidence, which came only after promulgation of a decision, appears to be an afterthought. Although respondent had raised previously the issue on petitioner's failure to submit complete documents at the administrative level in its Answer, respondent failed to substantiate the same. The testimony of respondent's sole witness Revenue Officer (**RO**) Leo-Gibbs C. Tapiru[8] (**Tapiru**) only states that petitioner's claim for refund was denied since the total deductions claimed (by petitioner) exceeded its claim for value-added tax (**VAT**) refund. Nothing in his testimony harps at petitioner's supposed failure to furnish the Bureau of Internal Revenue (**BIR**) with complete documents as the basis of its claim's denial. It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence.[9]

Moreover, even assuming arguendo that petitioner failed to supply the BIR with the documents needed, respondent must specify which of petitioner's documents shown in court were not submitted at the administrative level. Such bare allegations leave the Court little if none to go on. In *Philippine National Bank v. Hon. Jose G. Paneda, et al.*[10], the Supreme Court ruled, thusly:

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5 Division Docket, Volume III, pp. 1447-1449.
6 Id., pp. 951-982.
7 Supra at note 5.
8 Judicial affidavit of Leo-Gibbs C. Tapiru, Division Docket, Volume I, pp. 162-167.
9 *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistic Systems, Inc.*, G.R. No. 214406, 06 February 2017.
10 G.R.149236, 14 February 2007.

> ...
> **Indeed, in the cases where a motion for reconsideration was held to be *pro forma*, the motion was so held because (1) it was a second motion for reconsideration, or (2) it did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence, or (3) it failed to substantiate the alleged errors, or (4) it merely alleged that the decision in question was contrary to law, or (5) the adverse party was not given notice thereof. ...**"[11]
> ...

Lastly, respondent's reliance on *Total Gas*[12] is misplaced. In said case, the Supreme Court ruled, thusly:

> ...
> ...**If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim.** It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.[13]
> ...

As gleaned from the foregoing decision, a taxpayer is barred in court from presenting evidence that it <u>failed to produce before the BIR despite the latter's request.</u> The records of this case show that on 28 June 2018, petitioner filed an administrative claim for refund[14] of unutilized input VAT amounting to ₱54,431,590.09. Thereafter, on

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11 Emphasis and italics in the original text.
12 Supra at note 3.
13 Emphasis supplied.
14 Exhibit "38", Division Docket, Volume III, pp. 1358-1364.

25 September 2018, petitioner received a Letter[15] denying its application for refund.

Clearly, there was no request of documents from the BIR prior to ruling on petitioner's claim for refund. A review of the denial reveals that petitioner's administrative claim was denied based on the BIR's appreciation of the facts and law and *not* on petitioner's failure to submit documents as respondent suggests. To be clear, a taxpayer's claim for refund may be denied outright for its failure to submit documentary requirements however, denial on such ground must be preceded by a request from the BIR to produce said documents.

WHEREFORE, the foregoing considered, respondent's "Motion for Partial Reconsideration (Re: Decision promulgated 3 June 2022)" filed on 14 June 2022 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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15 Exhibit "P-40", id., pp. 1367-1368.