Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

HEDCOR SIBULAN, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1751
(CTA Case No. 8014)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
OCT 09 2019
10:45 a.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves the petitioner's "Motion for Reconsideration (Re: Decision dated April 29, 2019)" assailing the Court *En Banc's* April 29, 2019 Decision, the dispositive portion of which states:

> *"**WHEREFORE**, premises considered, the Petition for Review docketed as CTA EB No. 1751 is **DENIED** for lack of merit. Accordingly, the Amended Decision dated August 15, 2017, rendered by the Special Third Division of this Court in CTA Case No. 8014, and its Resolution dated November 10, 2017 are **AFFIRMED**. No pronouncement as to costs.*
>
> ***SO ORDERED.***"

In assailing this Court's Decision, petitioner submits that the Court erred in denying petitioner's claim for refund based on the following grounds:

> *"5.1 The COC issued by the ERC is a procedural requirement under R.A. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), and the Rules and Regulations to Implement Republic Act No. 9136, Entitled "EPIRA" (the IRR) before petitioner may start commercial operation, and merely confirms the status of petitioner as a Generation Company;*
>
> *5.2 The COC is a mere certification; an official representation, that some act has been done, or some legal formality has been complied with; it gives information about or proof of something. Petitioner did not become a Generation Company by virtue of the issuance of the COC. It has been such at least (2) years prior to the actual issuance of the COC. The latter merely gives proof of Petitioner's status as a Generation Company;*
>
> *5.3 At the time of Petitioner's zero-rated sales in 2010, it already had a COC issued by the ERC. Thus, it is a power generation company that is entitled to start commercial operations within the meaning of Section 4.108-3, Revenue Regulations (Rev. Regs) No. 16-2005 and Section 4, IRR;*
>
> *5.4 Petitioner's non-submission of COC should not be deemed fatal to its claim for refund considering that Petitioner was able to present sufficient and uncontroverted evidence that it is a generation company engaged in zero-rated sales of power;*
>
> *5.5 In the interest of justice, this Court may take judicial notice of Petitioner's COC and ERC Registration;*
>
> *5.6 Unless reversed, the Amended Decision will cause irreparable economic injury not only to Petitioner but to the power generation industry in general."*

On June 10, 2019, the Court directed respondent CIR to file a Comment on the "Motion for Reconsideration (Re: Decision dated April 29, 2019)" within ten (10) days from receipt otherwise the motion shall be deemed submitted for resolution.

On August 7, 2019, respondent CIR filed its "Comment with Motion to Admit (On Petitioner's Motion for Reconsideration dated 20 May 2019)". Thereafter, pursuant to the Resolution dated September 2, 2019, the Motion To Admit was granted; the Comment was admitted and the "Motion for Reconsideration (Re: Decision dated April 29, 2019)" was submitted for resolution. Hence, this resolution.

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We resolve to deny petitioner's Motion for Reconsideration (Re: Decision dated April 29, 2019)".

After a careful examination of petitioner's motion for reconsideration, the Court finds that the issues and arguments raised in said motion had already been sufficiently passed upon and fully discussed not only by the Special Third Division's Amended Decision dated August 15, 2017 and Resolution dated November 10, 2017 but also by this Court *En Banc's* Decision dated April 29, 2019.

To reiterate, in the case of *Commissioner of Internal Revenue vs. Toledo Power Company*[1], the Supreme Court pointed the importance of the COC from the ERC to a generation company before it can qualify for VAT zero-rating and claim for refund. The Supreme Court instructively ruled as follows:

> *"Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4(x) of the same law states that a generation company "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Corollarily, to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.*
>
> *In this case, TPC failed to present a COC from the ERC during the trial. On partial reconsideration, TPC argued that there was no need for it to present a COC because the parties already stipulated in the JSFI that TPC is a generation company and that it became entitled to the rights under the EPIRA when it filed its application with the ERC on June 20, 2002.*
>
> *We find the arguments raised by TPC unavailing.*
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> *There is nothing in the JSFI to show that the parties agreed that TPC is a generation company under the EPIRA. The pertinent portions of the JSFI read:*

[1] G.R. Nos. 196415 and 195451, December 2, 2015.

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JOINTLY STIPULATED FACTS

1. [TPC] is principally engaged in the business of power generation and subsequent sale thereof to the [NPC, CEBECO, ACMDC, and AFC].

2. On 20 June 2002, petitioner filed an application with the Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance pursuant to the Implementing Rules and Regulations of the EPIRA.

xxx xxx xxx.

ADMITTED FACTS

xxx xxx xxx.

3. Effective 26 June 2001, sales of generated power by generation companies became VAT zero-rated by virtue of Section 4(x) in relation to Section 6 of the EPIRA and Rule 5, Section 6 of the Rules and Regulations to Implement the EPIRA.

Obviously, the parties did not stipulate that TPC is a generation company. They only stipulated that TPC is engaged in the business of power generation and that it filed an application with the ERC on June 20, 2002. However, being engaged in the business of power generation does not make TPC a generation company under the EPIRA. Neither did TPC's filing of an application for COC with the ERC automatically entitle TPC to the rights of a generation company under the EPIRA.

At this point, a distinction must be made between a generation facility and a generation company. A generation facility is defined under the EPIRA Rules and Regulations as "a facility for the production of electricity." While a generation company, as previously mentioned, "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Based on the foregoing definitions, what differentiates a generation facility from a generation company is that the latter is authorized by the ERC to operate, as evidenced by a COC.

Under the EPIRA, all new generation companies and existing generation facilities are required to obtain a COC from the ERC. New generation companies must show that they have complied with the requirements, standards, and guidelines of the ERC before they can operate. As for existing generation facilities, they must submit to the ERC an application for a COC together with the required documents within ninety (90) days from the effectivity of

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> *the EPIRA Rules and Regulations. Based on the documents submitted, the ERC will determine whether the applicant has complied with the standards and requirements for operating a generation company. If the applicant is found compliant, only then will the ERC issue a COC.*
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> *In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA."*

Clearly, all new generation companies and existing generation facilities are required to obtain a COC from the ERC under the EPIRA law. Evidently, failure to present a COC before the Courts is fatal to a taxpayer's claim. Thus, under the principle of *stare decisis* petitioner's assertions that (1) the COC is not a condition sine qua non before petitioner may be considered as a generation company; (2) failure to secure a COC prior to start of commercial operation attracts the applicable fines and penalties, and does not affect petitioner's qualification as a generation company; and (3) non-submission of COC should not be deemed fatal to its claim for refund considering that petitioner was able to present sufficient and uncontroverted evidence that it is a generation company engaged in zero-rated sales of power, lack merit.

No less than the Supreme Court in the *Toledo Case*[2] ruled that being engaged in the business of power generation does not make a corporation a generation company under the EPIRA law. Neither did the filing of an application for COC with the ERC automatically entitle a corporation to the rights of a generation company. Under the EPIRA law, all new generation companies and existing generation facilities are required to obtain a COC from the ERC. New generation companies must show that they have complied with the requirements, standards, and guidelines of the ERC before they can operate. As for existing generation facilities, they must submit to the ERC an

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[2] Ibid.

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application for a COC together with the required documents within ninety (90) days from the effectivity of the EPIRA Rules and Regulations. Based on the documents submitted, the ERC will determine whether the applicant has complied with the standards and requirements for operating a generation company. If the applicant is found compliant, only then will the ERC issue a COC and only then it qualifies for VAT zero-rating under the EPIRA.

In the present case petitioner did not present the COC from the ERC. Accordingly, absent the COC from the ERC, petitioner cannot qualify for VAT zero-rating under the EPIRA law.

The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the EPIRA Law in order to successfully pursue one's claim.[3]

The Court cannot just take cognizance of petitioner's alleged COC. Evidence allegedly presented and admitted by the court in a previous case cannot be adopted in a separate case pending before the same court without the same being offered and identified anew as the cases might involve similar parties before the Court's Division but do not cover the same claim. This Case involves a tax refund for calendar year 2007. Thus, we affirmed the Court in Division when it ruled that it will not consider any evidence which was not formally offered.

In addition, the COC from ERC is not among the matters which the law mandatorily requires the Court to take judicial notice of, without any introduction of evidence. In the case of Silkair (Singapore) Pte. Ltd. Vs. CIR[4], the Supreme Court ruled as follows:

> *"xxx, the documents are not among the matters which the law mandatorily requires the Court to take*

[3] Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 206526, January 28, 2015
[4] G.R. No. 184398, February 25, 2010.

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> *judicial notice of, without any introduction of evidence, as petitioner would have the CTA do. Section 1, Rule 129 of the Rules of Court reads:*
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> > *SECTION 1. Judicial notice, when mandatory. A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.*
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> *Neither could it be said that petitioners SEC Registration and operating permits from the CAB are documents which are of public knowledge, capable of unquestionable demonstration, or ought to be known to the judges because of their judicial functions, in order to allow the CTA to take discretionary judicial notice of the said documents."*

Evidently, the COC from ERC is not a document of public knowledge, capable of unquestionable demonstration, or ought to be known to the judges because of their judicial functions, in order to allow the Court in Division to take discretionary judicial notice.

Furthermore, it is settled jurisprudence that cases filed before this Court are litigated *de novo,* party litigants should prove every minute aspect of their cases. No evidentiary value can be given to a document as the rules on documentary evidence require that these documents must be formally offered during trial before this Court.[5] A party should present all its evidence at first instance and not by piecemeal to avoid injurious surprises to the other party. The reopening of a case for the reception of additional evidence after a case has been submitted for decision, rests entirely in the sound judicial discretion of a trial Court. In Alegre vs. Reyes, et al.[6] the Supreme Court instructively ruled as follows:

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[5] Dizon v. Court of Tax Appeals, G.R. No. 140944, April 30, 2008, 553 SCRA 111.
[6] Alegre vs. Reyes, et .al., G.R. No. L-56923, May 9, 1988.

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> *"xxx the reopening of a case for the reception of additional evidence **after a case has been submitted for decision but before judgment is actually rendered** is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown. (Emphasis supplied)"*

In this case, the Court already rendered its judgment. In fact, petitioner presented its evidence and rested its case with the CIR not presenting any evidence during trial and submitted the case for decision before this Division as early as 2012. A party should present all its evidence at the first instance and not by piecemeal when it suits the case.

An additional documentary evidence, which is already in existence or available before or during a trial; known to and obtainable by petitioner; and could have been presented and offered in a seasonable manner which petitioner seek to present only after obtaining an unfavorable decision cannot be allowed. It is a forgotten evidence. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice.[7]

Aside from the fact that petitioner failed to prove its qualification for VAT zero-rating under the EPIRA law, petitioner failed to prove that the claimed input tax was attributable to zero rated sales since at the time of refund there was no declared zero-rated sales.

We noted that on December 18, 2009, petitioner filed its administrative claim for refund/tax credit with RDO 115 for its alleged unutilized input VAT for the fourth quarter of calendar year 2007 and on December 29, 2009, petitioner filed a Petition for Review before the Court in Division. However, under the Section 112 (A) of the NIRC of 1997, as amended, any input tax attributable to zero-rated sales may at his option be refunded or credited against other internal revenue taxes within two (2) years after the close of the taxable quarter when the sales were made. Suffice it to say, at the time of the filing of its administrative claim for refund

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[7] Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel, G.R. No. 164460, June 27, 2006.

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and the judicial claim for refund by filing a Petition for Review before the Court in Division on December 29, 2009, no declared zero-rated sales exists, thus, non-compliance to the 4th requisite that the claimed input taxes be attributable to zero-rated or effectively zero-rated sales. Hence, We find that the Court in Division aptly ruled as follows"

> *"In addition, petitioner's Final Amended 4th Quarterly VAT Return for 2007 declared no zero-rated sales, it was only on March 2010 and the subsequent months that petitioner made its sale of generated power to its sole customer, DLPCI. Thus, the claimed input VAT was not attributable to petitioner's zero-rated sales."*

Having failed to qualify for VAT zero-rating under the EPIRA law and that the claimed input taxes are not attributable to zero-rated or effectively zero-rated sales, the court need not discuss the other requisites. Petitioner is not entitled to its claim for refund of the alleged unutilized input value-added tax (VAT) on purchases of goods and services for the fourth quarter of calendar year 2007.

In sum, We found that no substantial argument was raised to merit reconsideration of our Decision promulgated on April 29, 2019.

WHEREFORE, the "Motion for Reconsideration (Re: Decision dated April 29, 2019)" is **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
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
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice