REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA - ROHQ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **9897**

Members:

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

Promulgated:
OCT 04 2022
4:30 p.m.

x - x

AMENDED DECISION

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

For the Court's resolution are the following:

1. Petitioner Procter & Gamble International Operations SA - ROHQ's (**petitioner**'s/**P&G**'s) "Motion for Reconsideration with Motion to Reopen Case"[1] (**MR**), filed *via* registered mail on 11 March 2022[2], without comment from respondent Commissioner of Internal Revenue (**respondent/CIR**) despite due notice[3]; and,

2. Respondent CIR's "Motion for Partial Reconsideration (to the Decision dated 19 January 2022)"[4] (**MPR**), filed *via* registered mail on 11 March 2022[5], with petitioner's "Comment (Re: Motion

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[1] Division Docket, Volume II, pp. 542-570.
[2] Received by the Court on 16 March 2022.
[3] *Per* Records Verification dated 19 April 2022, Division Docket, Volume II, p. 672.
[4] Id., pp. 642-651.
[5] Received by the Court on 21 March 2022.

for Partial Reconsideration dated March 11, 2022)"[6] (**Comment**), filed on 11 April 2022.

In both motions, the parties pray that the Court reconsider its Decision promulgated on 19 January 2022[7] (**assailed Decision**), partially granting petitioner's Petition for Review. The dispositive portion thereof reads:

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> **WHEREFORE**, premises considered, the Petition for Review filed on 27 July 2018 by petitioner Procter & Gamble International Operations SA - ROHQ is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **FIVE MILLION THREE HUNDRED FORTY NINE THOUSAND TWO HUNDRED FOURTEEN PESOS and SEVENTY-EIGHT CENTAVOS** (₱5,349,214.78), representing the excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the 3rd and 4th quarters of the fiscal year 2016.
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> **SO ORDERED.**
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> ...

As the records show, petitioner is seeking the refund or issuance of a tax credit certificate (**TCC**) in the total amount of ₱41,071,160.17, representing the excess and unutilized input value-added tax (**VAT**) on its domestic purchases of goods and services attributable to zero-rated sales for the 3rd and 4th quarters of the fiscal year (**FY**) 2016.

However, this Court only partially granted petitioner's claim for VAT refund or issuance of a TCC on the following grounds:

1. Disallowance of zero-rated sales to some of its non-resident foreign corporation (**NRFC**)-clients without Securities and Exchange Commission (**SEC**) Certificates of Non-Registration of Company to prove that they are foreign corporations;

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6 Division Docket, Volume II, pp. 673-683.

7 Id., Volume II, pp. 492-541.

2. Disallowance of zero-rated sales to some of its NRFC-clients without Articles of Incorporation/Certificates of Registration or other foreign registration documents to prove that they are not engaged in trade and business in the Philippines;

3. Disallowance of zero-rated sales due to discrepancies in names of some of its NRFC-clients as reflected in the pertinent SEC Certificates of Non-Registration of Company and/or foreign registration documents, and official receipts (**ORs**);

4. Disallowance of unreported zero-rated sales pertaining to unsubstantiated or unsupported adjustments to gross receipts for "Cross charges to/from affiliates" and "Reconciliation of inter-affiliate billings";

5. Disallowance of zero-rated sales to some of its NRFC-clients unsupported by Service Agreements to prove that the services were performed in the Philippines; and,

6. Disallowance of input VAT for failure to comply with the invoicing and/or substantiation requirements under the relevant provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and Revenue Regulations (**RR**) No. 16-2005.[8]

In its MR, petitioner refutes the **first** and **second grounds** by insisting that it presented sufficient evidence to establish that the service recipients are NRFCs engaged in business outside the Philippines.

First, petitioner claims that the Court erred in treating some of its NRFC-clients with SEC Certificates of Non-Registration of Company as separate and distinct entities from the other NRFCs with foreign registration documents, specifically:

1. P&G Distribution Morocco *vis-à-vis* P&G Distribution Morocco S.A.S.;
2. Procter & Gamble International Operations SA *vis-à-vis* Procter & Gamble International Operations SA Singapore Branch;

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[8] Consolidated Value Added Tax Regulations of 2005.

3. Procter & Gamble Korea, Inc. *vis-à-vis* Procter & Gamble Korea;
4. Procter & Gamble Europe SA *vis-à-vis* Procter & Gamble Europe SA Singapore Branch; and,
5. Procter & Gamble Taiwan Sales Limited *vis-à-vis* Procter & Gamble Export Operations SRL, Taiwan Branch.

Petitioner argues that each pair of the above-enumerated entities, although with different corporate names, is one and the same. Thus, the Court should not treat them separately and consider the SEC Certificates of Non-Registration of Company and foreign registration documents as referring to only one entity.

Second, petitioner claims that the Court failed to consider the other documents presented for the purpose of satisfying the ***2nd requirement*** (*i.e.*, that the recipient of the services must be performing business outside the Philippines) such as the authenticated affidavits from the authorized representatives of the NRFC-clients[9] (**Sworn Statements**), screenshots of the list of foreign affiliates in the US SEC Website[10], and Service Agreements between petitioner and each of its NRFC-clients. Absent any proof to the contrary, these documents should be deemed sufficient to establish that petitioner's clients are doing business outside the Philippines.

To support its claim, petitioner cites the ruling of the Court's First Division in *Procter & Gamble Asia, Pte. Ltd v. Commissioner of Internal Revenue*[11], wherein the Service Agreements were found sufficient to establish that therein petitioner rendered services to NRFC-clients that were not registered corporations in the Philippines and were not doing business in the Philippines. As for the screenshots, petitioner also cites the ruling of the Court's First Division in *Chevron Holdings, Inc. [formerly Caltex (Asia) Limited] v. Commissioner of Internal Revenue*[12], wherein printed screenshots from the US SEC website were accepted as proof in lieu of the Articles of Incorporation and/or Certificate of Registrations. Lastly, with regard to the Sworn Statements, petitioner asserts that these should be deemed sufficient

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9 Offered and admitted as Exhibits "**P-7**" to "**P-7.43**".
10 Offered and admitted as Exhibit "**P-10**".
11 CTA Case No. 8341, 24 February 2014.
12 CTA Case No. 8241, 11 August 2015.

to prove that its NRFC-clients are doing business outside the Philippines.

As to the **third ground**, petitioner submits that: (1) "P&G Prestige Godo Kaisha" was formerly known as "P&G Max Factor Godo Kaisha", and thus, it secured only one (1) SEC Certificate of Non-Registration of Company under the new name "P&G Prestige Godo Kaisha"; and, (2) "Procter & Gamble Technical Centres Limited" and "Procter & Gamble Technical Centers Ltd" are one and the same entity, the difference was merely due to a typographical error. Petitioner further manifests that should the Court grant its motion to reopen the case, it will present the previous SEC Certificate of Non-Registration of Company under the name "P&G Max Factor Good Kaisha."

As to the **fourth ground**, petitioner submits that there is no requirement under the law to provide the nature of receipts not subject of the refund claim. It is sufficient for petitioner to prove that it had zero-rated sales and that it incurred or paid input VAT thereto. The amounts actually received by the petitioner as indicated in the Certificate of Inward Remittance included other transactions which were not included in the amounts declared as zero-rated sales. Petitioner also points out that it presented a comparison of the amounts declared as zero-rated sales *per* ORs and the amounts received *per* Certificates of Inward Remittance.[13] The said comparison showed that the excess receipts pertained to reimbursable costs incurred by petitioner in the course of rendering services to its NRFC-clients. Such reimbursable costs are not considered as zero-rated sales. Further, should the Court grant its motion to reopen the case, petitioner intends to present a Schedule of Reconciliation of the export sales and dollar remittances to show the breakdown and nature of the amounts reflected in the Certificates of Inward Remittance *vis-à-vis* the ORs.

As to the **fifth ground**, petitioner contends that it submitted Service Agreements for "Procter & Gamble International Operations S.A.", which is the same as "Procter & Gamble International Operations SA Singapore Branch", and "Procter & Gamble Taiwan Sales Limited", which is the same as "Procter & Gamble Export Operations SARL, Taiwan Branch." In this regard, petitioner likewise submits that the

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[13] Offered and admitted as Exhibit "**P-16**".

Court failed to consider the nature of its business as a Regional Operating Headquarters (**ROHQ**). As such, it should be allowed to derive income within the Philippines through the performance of services that, logically, shall be performed in the Philippines following the rules on situs of taxation.

Lastly, petitioner moves for the reopening of the case for a new trial to present newly discovered evidence to prove that its affiliates are doing business outside the Philippines and to reconcile the excess receipts abovementioned. Petitioner submits that the admission of the supplemental pieces of evidence would substantially affect the reconsideration of the assailed Decision as petitioner will then be able to provide sufficient proof to establish its claim for VAT refund. Petitioner alleges that the supplemental pieces of evidence are newly discovered evidence, particularly the authenticated foreign registration documents and sworn statements that were secured only after trial.

As mentioned earlier, respondent failed to file his comment to petitioner's MR despite due notice.[14]

On the other hand, in his MPR, respondent reiterates the following arguments, as previously mentioned in his *Memorandum* filed on 27 November 2020[15]:

1. The instant petition must be dismissed for lack of jurisdiction as it was filed prematurely, *i.e.*, before the lapse of the 90-day period for respondent to act on the refund claim. Since it was only the Assistant Commissioner of Internal Revenue – Assessment Service (**ACIR-AS**) Erlinda Simple (**Simple**) who signed the VAT Refund Notice dated 19 June 2018[16] (**Denial Letter**), respondent has yet to rule on petitioner's claim for refund. Respondent insists that only a VAT refund notice signed by the CIR himself would prompt the counting of the prescriptive period;

2. Petitioner miserably failed to prove that it is entitled to VAT refund; and,

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14 Supra at note 3.
15 Memorandum for Respondent, Division Docket, Volume II, pp. 473-482.
16 Exhibit "P-12", id.

3. Petitioner's tax liability must be computed anew based on the findings of the Court and the same must be deducted from any refundable amount as held in *Air Canada v. Commissioner of Internal Revenue*[17] (**Air Canada**) and *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*[18] (**SMI-ED**).

In its Comment, petitioner asserts that it has timely filed its judicial claim for refund in accordance with Section 112(C)[19] of the NIRC of 1997, as amended, and Section 4.112-1(d)[20] of RR No. 16-2005, as amended by RR No. 13-2018.[21] Moreover, ACIR-AS Simple was authorized to sign the VAT refund notice on behalf of the CIR pursuant to Revenue Memorandum Circular (**RMC**) No. 17-2018.[22]

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17 G.R. No. 169507, 11 January 2016.

18 G.R. No. 175410, 12 November 2014.

19 **SEC. 112.** *Refunds or Tax Credits of Input Tax.* —

...

(C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

20 **SEC. 4.112-1.** ***Claims for Refund/Tax Credit Certificate of Input Tax.*** —

...

(d) Period within which refund or tax credit certificate/refund of input taxes shall be made

In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraph (a) above.

In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.

21 Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended.

22 Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN).

Petitioner also notes that, other than his general and overly sweeping statements, respondent did not point to any specific requisite that petitioner failed to prove or a particular piece of evidence that petitioner omitted to present in the course of trial that would show that it is not entitled to its refund claim.

Lastly, petitioner avers that *Air Canada* and *SMI-ED* cases apply to refund cases under Section 229[23] of NIRC of 1997, as amended. These do not apply in the instant petition as this involves a claim for refund of excess and unutilized input VAT under Section 112(C) of the same law. Moreover, petitioner claims that there is no legal and factual basis for respondent to deduct its findings of alleged VAT liability in the course of validating petitioner's claim for VAT refund. To do so would be violative of petitioner's right to due process.

We resolve below.

After careful consideration and evaluation of the parties' arguments in their respective motions, this Court finds partial merit in petitioner's MR but is constrained to deny respondent's MPR.

RESPONDENT'S MOTION FOR
PARTIAL RECONSIDERATION

Respondent's MPR merely contains a rehash of his earlier submissions that have already been thoroughly passed upon by this Court in the assailed Decision.

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[23] **SEC. 229**. *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 excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively 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 filed after the expiration of two (2) 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.

In *Licomcen Incorporated v. Foundation Specialists, Inc.*[24], the Supreme Court, citing *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[25], held that:

> ...
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> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, ... deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
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> ...

PETITIONER'S MOTION FOR RECONSIDERATION WITH MOTION TO REOPEN CASE

This Court finds partial merit in petitioner's contentions in the abovementioned grounds for disallowance of zero-rated sales as will be discussed below in *seriatim*.

First and Second Grounds:
Disallowance of Zero-Rated Sales for failure to establish both components of a client's NRFC status

With emphasis, this Court has consistently ruled that in order to prove that an NRFC is doing business outside the Philippines, the

24 G.R. No. 167022, 31 August 2007.
25 G.R. No. 109645, 04 March 1996.

taxpayer-claimant must present, at the very least, both the SEC Certificate of Non-Registration of Company and the proof of incorporation/association/business registration in a foreign country.

The foregoing documents are relevant and necessary because the SEC Certificate of Non-Registration of Company establishes that the service-recipient has no registered business in the Philippines and that it is not engaged in trade or business within the Philippines, while the foreign country's certificate/articles of incorporation/association will prove that the said service-recipient is indeed foreign, and determinative of whether the same service-recipient is engaged in business at all.

As found in the assailed Decision, some of petitioner's clients cannot be considered as NRFCs as it failed to present either the SEC Certificate of Non-Registration of Company or the proof of incorporation/association/business registration in a foreign country, as follows:

Registered Name of Client	**SEC Certification of Non-Registration**	**Consularized Company Registration**	**Sworn Statement from Authorized Representatives**
A. ***Supported only by SEC Certificates of Non-Registration of Company were submitted as evidence***			
GILLETTE PAKISTAN LIMITED	"P-5.44"	"P-6.42" (Denied Admission)[26]	"P-7.41"
P&G DISTRIBUTION MOROCCO	"P-5.2"	-	-
PROCTER & GAMBLE DISTRIBUTING (NEW ZEALAND) LTD	"P-5.13"	-	-
PROCTER & GAMBLE EGYPT DISTRIBUTION LTD.	"P-5.37"	-	-
PROCTER & GAMBLE EGYPT LTD.	"P-5.5"	-	-
PROCTER & GAMBLE EGYPT SUPPLIES LTD.	"P-5.38"	-	-
PROCTER & GAMBLE EUROPE SA SINGAPORE BRANCH	"P-5.26"	-	-
PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA SINGAPORE BRANCH	"P-5.32"	-	-
PROCTER & GAMBLE LEVANT S.A.L.	"P-5.9"	-	-
B. ***No SEC Certificate of Non-Registration of Company***			
P&G DISTRIBUTION MOROCCO S.A.S.	-	"P-6.38"	"P-7.32"

[26] The foreign client's consularized company registration (*i.e.*, Exhibit "P-6.42") was denied admission by the Court for failure of the document formally offered to correspond with the duly marked document in its Resolutions dated 10 September 2019 and 21 February 2020.

Registered Name of Client	SEC Certification of Non-Registration	Consularized Company Registration	Sworn Statement from Authorized Representatives
PROCTER & GAMBLE EUROPE SA	-	"P-6.21"	"P-7.21"
PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA	-	"P-6.27"	"P-7.27"
PROCTER & GAMBLE KOREA, INC.	-	-	-

As to petitioner's claim that some of its NRFC-clients with SEC Certificates of Non-Registration of Company are one and the same with the others found to be without SEC Certificates of Non-Registration of Company, the Court notes that there was no evidence presented other than petitioner's bare allegation to substantiate its claim that each of the following pairs of entities refer to only one entity: (1) "P&G Distribution Morocco" and "P&G Distribution Morocco S.A.S."; (2) "Procter & Gamble International Operations SA" and "Procter & Gamble International Operations SA Singapore Branch"; (3) "Procter & Gamble Korea, Inc." and "Procter & Gamble Korea"; and, (4) "Procter & Gamble Europe SA" and "Procter & Gamble Europe SA Singapore Branch". Thus, petitioner's allegation cannot be accorded credence for lack of evidentiary support.

Settled is the rule that bare allegations will not suffice without proof.[27] It is hornbook doctrine that mere allegations do not constitute proof. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[28] Needless to say, it is the duty of the person who asserts something to produce evidence in order to prove it — which, unfortunately, petitioner failed to do in this case.

Concerning "Gillette Pakistan Limited", the "foreign corporation" status of which is evidenced by an SEC Certificate of Non-Registration of Company, the Sworn Statement[29] executed by its Chief Financial Officer and Company Secretary, Saad un Nabi Khan, will not suffice to establish that such a company is not doing business in the Philippines but in Pakistan. A perusal of the said Sworn Statement shows that it makes reference to the Certificate of Incorporation of "Interpak Shaving Products Ltd.", which, however, was denied admission for

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27 *Ma. Ana Consuelo A.S. Madrigal v. Department of Justice, et al.*, G.R. No. 168903, 18 June 2014.
28 *Government Service Insurance System v. Prudential Guarantee and Assurance, Inc., et al.*, G.R. No. 165585, 20 November 2013.
29 Exhibit "P-7.41", FOE, Folder 3.

failure to support its allegation that the discrepancy in the description of the document offered and submitted arose from the change in the name from "Interpak Shaving Products Ltd." to "Gilette Pakistan Limited". It thus follows that said Sworn Statement cannot be appreciated in lieu of the Certificate of Incorporation.

As for the screenshots of the list of foreign affiliates in the US SEC Website, this Court cannot give credence or probative value to the same considering that it merely enumerates the subsidiaries of The Procter & Gamble Company. It does not in any way confirm that petitioner's foreign clients therein listed are actually registered in the countries indicated in brackets. More importantly, said screenshots fail to establish that the said foreign clients are not doing business here in the Philippines.

Thus, this Court upholds the disallowance of zero-rated sales (1) with no SEC Certificate of Non-Registration of Company and (2) those supported only by SEC Certificates of Non-Registration of Company in the total amounts of **₱3,474,055.55** and **₱1,072,623,656.85**, respectively.

Third Ground:
Disallowance of Zero-Rated Sales due to discrepancies in the names of its NRFC-clients per registration documents and per ORs

With respect to the difference in the names reflected in the pertinent SEC Certificate of Non-Registration of Company, foreign registration documents and ORs issued to "P&G Prestige Godo Kaisha", formerly known as "P&G Max Factor Godo Kaisha", this Court notes that petitioner did not adduce any piece of evidence during trial to prove that "P&G Max Factor Godo Kaisha" is the former name of "P&G Prestige Godo Kaisha". As such, this Court must sustain the disallowance of the pertinent zero-rated sales to such entity in the total amount of **₱24,310,057.56**.

However, as to the other noted discrepancy in names referring to one and the same entity, *i.e.*, "Procter & Gamble Technical Centres Limited" and "Procter & Gamble Technical Centers Ltd", petitioner explains that it was merely due to a typographical error in the spelling of "Centres" as "Centers" and the abbreviation of "Limited" as "Ltd".

Having confirmed the nature of such discrepancy, this Court is inclined to reverse the disallowance of the pertinent zero-rated sales to such entity in the total amount of **₱41,161,463.41**.

Fourth Ground:
Disallowance of Zero-Rated Sales pertaining to unsubstantiated or unsupported adjustments to gross receipts for "Cross charges to/from affiliates" and "Reconciliation of inter-affiliate billings"

With regard to the amount received by petitioner in excess of the total amount of gross receipts supported with VAT ORs that allegedly pertains to "Cross charges to/from affiliates" and "Reconciliation of inter-affiliate billings" (*i.e.*, $1,250,071.07 equivalent to ₱58,633,020.95, as translated using the average of the monthly average BSP cross rates of Philippine Peso and US Dollar from January to June 2016), this Court reiterates its finding that petitioner failed to provide any supporting document for each of those adjustments. On this note, such excess receipts were treated as "unreported zero-rated sales" disallowed for purposes of determining the percentage of valid zero-rated sales (multiplied by the substantiated/valid input VAT attributable to zero-rated sales to arrive at the excess and unutilized input VAT attributable to valid zero-rated sales).

Accordingly, this Court affirms the disallowance of unreported zero-rated sales in the total amount of **₱58,633,020.95**.

Fifth Ground:
Disallowance of Zero-Rated Sales to NRFC-clients unsupported by Service Agreements

This Court is also unconvinced of petitioner's claim that, as an ROHQ, it is allowed to derive income within the Philippines through the performance of services that, logically, must necessarily be performed in the Philippines.

It must be noted that the issue as to whether or not petitioner performed services in the Philippines is a question of fact. Hence, it must be proven by specific evidence. Petitioner cannot merely rely on the provision that ROHQs are licensed to do business in the Philippines to prove a fact in issue. To the Court's mind, although it was shown that petitioner is an ROHQ, it is still necessary on its part to prove that its services were indeed performed in the Philippines.

Accordingly, the Court disallowed the sales of services to some of petitioner's NRFC-clients not only because it failed to present the pertinent Service Agreements but, more so, because it did not offer any other specific evidence to show that the services to such NRFC-clients were rendered in the Philippines. As stated, apart from petitioner's bare allegation, no other document was presented to infer that the qualifying services to such NRFC-clients (with no Service Agreements with petitioner) are to be rendered and performed by petitioner in the Philippines.

It must be emphasized that tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government. This is because taxes are the lifeblood of the nation.[30]

There is no compelling reason to allow presentation of supplemental evidence.

This Court finds no merit in petitioner's prayer to re-open the case and be allowed to present supplemental evidence.

The issue of re-opening of the trial and subsequent admission of evidence after the parties have already rested, is not novel. The ruling of the Supreme Court in *Wainwright Rivera v. Honorable Associate Justices of the Fourth Division, Sandiganbayan Rodolfo Palattao, et al.*[31] (**Rivera**) is enlightening:

> ...
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> ... **The Rules of Court does not contain any provision prohibiting the trial court from allowing a party to offer additional proofs on the evidence-in-chief or rebuttal evidence after it had rested its case, or even after the case has been submitted for decision <u>but before the rendition thereof</u>.**

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[30] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 168856, 29 August 2012.

[31] G.R. No. 157824, 17 January 2005; Citations omitted, emphasis and underscoring supplied.

> Neither does the Rules of Court contain a specific rule allowing the reopening of a case to allow a party to adduce additional proofs. However, the reopening of a case by the court either on its own motion or on motion of a party, allowing him or them to present additional proofs, is a recognized procedural recourse or device, deriving validity and acceptance from long-established usage. **The matter of the trial court's allowing the reopening of a case for additional proof by a party or by the parties is addressed to the court's discretion provided that, by reopening the case, the court does not commit a grave abuse of its discretion.** The trial court may allow the reopening of a case and the presentation of additional proofs for the orderly administration of justice or where evidence has been omitted by a party, through inadvertence or mistake, or oversight.
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> ...

Based on the foregoing, the Court, in its discretion, may allow the reopening of trial after the parties have rested the presentation of their evidence in chief, but *before* a decision is rendered, and provided that, by so doing, it does not commit grave abuse of discretion.

In *Republic of the Philippines v. Sandiganbayan (Fourth Division), et al.*[32] (**Republic**), the Supreme Court explained the basis for a motion to reopen a case to introduce further evidence, as follows:

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> The basis for a motion to reopen a case to introduce further evidence is Section 5, Rule 30 of the Rules of Court, which reads:
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> > Sec. 5. Order of trial. — Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
> >
> > x x x x
> >
> > (f) The parties may then respectively adduce rebutting evidence only, **unless** the court, for **good reasons and in the furtherance of justice**, permits them to **adduce evidence upon their original case**[.]

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[32] G.R. No. 152375, 13 December 2011; Citations omitted, emphasis and italics in the original text.

> Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.
>
> A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence; but where the evidence is *rebuttal* in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of *newly discovered evidence*, the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party *may* avail of the remedy of *certiorari*.
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> Largely, the exercise of the courts discretion under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the **attendant facts** — *i.e.*, on whether the evidence would qualify as a "good reason" and be in furtherance of the "interest of justice." ...
>
> In *Lopez v. Liboro*, we had occasion to make the following pronouncement:
>
>> After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. **So, generally, additional evidence is allowed** when it is newly discovered, or **where it has been omitted through inadvertence or mistake**, or where the purpose of the evidence is to correct evidence previously offered.
>>
>> ...
>
> ...

In *Republic*, the Supreme Court stressed the general rule that evidence may not be given piecemeal. However, when the attendant facts warrant the introduction of further evidence that would qualify as a good reason for reopening the case and would serve the interest of justice, the Court may allow the reception of additional evidence.

In this case, however, petitioner asked for the reopening of trial only after the Court had promulgated the Assailed Decision. Following the ruling in *Rivera*, there is no legal basis to grant petitioner's alternative prayer because the Court has already rendered a decision. Instead, We shall treat petitioner's MR as a Motion for New Trial.

In *Avelino C. Agulto v. Hon. Court of Appeals, et al.*[33], the Supreme Court distinguished the remedy of a Motion to Reopen Trial relative to a Motion for New Trial, to wit:

> ...
>
> A distinction should be made between a Motion for New Trial and a Motion to Reopen Trial.
>
> A Motion for New Trial **<u>may be filed *after* judgment but within the period for perfecting an appeal</u>** (Sec. 1, Rule 37, Rules of Court).
>
> A Motion to Reopen Trial **<u>may be presented only after either or both parties have formally offered and closed their evidence, but before judgment</u>**. There is no specific provision in the Rules of Court for motions to reopen trial. It is albeit a recognized procedural recourse or devise, deriving validity and acceptance from long established usage. The reopening of a case for the reception of further evidence before judgment is not the granting of a new trial (Alegre vs. Reyes, 161 SCRA 226).
>
> ...

Section 1, Rule 37 of the Rules of Court (**ROC**), as amended[34], provides for the grounds of a Motion for New Trial, to wit:

> ...
>
> Sec. 1. *Grounds of and Period for Filing Motion for New Trial or Reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
>
> (a) **Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights**; or
>
> (b) **Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at**

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33 G.R. No. L-52728, 17 January 1990; Emphasis and underscoring supplied, and italics in the original text.

34 2019 Amendments to the 1997 Rules of Civil Procedure (A.M. NO. 19-10-20-SC).

> **the trial, and which if presented would probably alter the result.**
>
> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.[35]
>
> ...

Based on the foregoing provisions, a Motion for New Trial may only be granted if the case falls under any of the following circumstances: (1) if there is fraud, accident, mistake or excusable negligence impairing the rights of the aggrieved party; or (2) on account of newly discovered evidence.

It is well-established that a Motion to Reopen Trial like a Motion for New Trial may be granted *only* upon specific, well-defined grounds set forth in the ROC, as amended. Unfortunately, petitioner did not mention any circumstance that would justify the reopening of the case for reception of additional evidence.

Here, the additional documents which petitioner asks the Court to consider and admit are neither newly discovered evidence nor omitted due to fraud, accident, mistake or excusable negligence. Certainly, by exercising reasonable diligence, it could have requested and offered in evidence the consularized or apostilled foreign registration documents, SEC Certificates of Non-Registration of Company and sworn statements from authorized representatives of its NRFC-clients and the Supplemental Sworn Statement of its witness, Trambulo, in support of its application for VAT refund. On this basis, the documents attached to petitioner's MR cannot be considered as newly discovered evidence but merely forgotten evidence.

Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. 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 and serves only to delay the

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[35] Emphasis supplied.

proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.[36]

Although Section 8[37] of Republic Act (**RA**) 1125[38], as amended, creating the CTA, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence and there are instances where the Court allows the reopening of trial even though judgment has already been rendered, still, We find that petitioner has not demonstrated any convincing reason for the Court to apply the technical rules liberally.

RECOMPUTATION OF THE REFUNDABLE AMOUNT DUE TO PETITIONER.

After taking into consideration the Court's findings above, petitioner's duly substantiated zero-rated sales for the 3rd and 4th quarters of FY 2016 amounted to ₱335,636,845.46, recomputed as follows:

Particulars		**3rd and 4th Quarters of FY 2016**
Zero-Rated Sales		₱1,444,423,146.01
Add: Unreported Zero-Rated Sales		58,633,020.95
Total Zero-Rated Sales		**₱1,503,056,166.96**
Less: *Disallowances*		
1) Zero-rated sales with **no** SEC Certificate of Non-Registration of Company[39]		
a. P&G DISTRIBUTION MOROCCO S.A.S.	₱2,175,218.43	
b. PROCTER & GAMBLE KOREA, INC.	1,298,837.12	3,474,055.55
2) Zero-rated sales supported **only** by SEC Certificates of Non-		

36 *Office of the Ombudsman v. Coronel*, G.R. No. 164460, 27 June 2006.

37 **SEC. 8**. *Court of record; seal; proceedings*. — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

38 AN ACT CREATING THE COURT OF TAX APPEALS.

39 No zero-rated sales to PROCTER & GAMBLE EUROPE SA and PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA.

Particulars		3rd and 4th Quarters of FY 2016
Registration of Company[40]		
a. PROCTER & GAMBLE EUROPE SA SINGAPORE BRANCH	₱948,102,528.19	
b. PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA SINGAPORE BRANCH	102,367,195.31	
c. PROCTER & GAMBLE LEVANT S.A.L.	39,621.46	
d. PROCTER & GAMBLE DISTRIBUTING (NEW ZEALAND) LTD.	3,220,521.26	
e. PROCTER & GAMBLE EGYPT DISTRIBUTION LTD.	145,537.70	
f. PROCTER & GAMBLE EGYPT LTD.	16,662,775.08	
g. PROCTER & GAMBLE EGYPT SUPPLIES LTD.	1,379,589.46	
h. GILLETTE PAKISTAN LTD.	705,888.39	1,072,623,656.85
3) Zero-Rated Sales with Discrepancy in the Names stated in the ORs		24,310,057.56[41]
4) Unreported Zero-Rated Sales		58,633,020.95
5) Not supported with Service Agreements[42]		
a. PROCTER & GAMBLE GULF FZE	₱197,622.53	
b. PROCTER & GAMBLE INTERNATIONAL OPERATIONS S.A. (WITH REGISTERED OFFICE AT P.O. BOX 33060, JEBEL ALI, DUBAI, UAE)	79,109.97	
c. PROCTER & GAMBLE PAKISTAN (PRIVATE) LIMITED	5,025,611.65	
d. PROCTER & GAMBLE TAIWAN SALES COMPANY LIMITED	2,818,588.00	
e. THE PROCTER & GAMBLE COMPANY	257,598.44	8,378,530.59
Total Disallowances		**₱1,167,419,321.50**[43]
Total Valid and Substantiated Zero-Rated Sales		**₱335,636,845.46**

40 No zero-rated sales to P&G DISTRIBUTION MOROCCO.

41 Excluding the zero-rated sales to zero-rated sales to PROCTER & GAMBLE TECHNICAL CENTRES LIMITED in the total amount of ₱41,161,463.41.

42 Zero-rated sales to GILLETTE PAKISTAN LTD of ₱705,888.39 is already disallowed under "2) Zero-rated sales supported only by SEC Certificates of Non-Registration of Company" and no zero-rated sales to PROCTER & GAMBLE KOREA.

43 Total Disallowances (*per* original computation) was reduced by the amount of ₱54,815,211.04, which was erroneously placed in the table for Item No. 5 - Not supported with Service Agreements.

Consequently, petitioner's excess and unutilized input VAT attributable to the valid zero-rated sales of ₱335,636,845.46 should be increased to ₱7,493,598.87, as determined below:

	3rd and 4th Quarters FY 2016
Total Zero-Rated Sales [A] Valid Zero-Rated Sales [B]	₱1,503,056,166.96 335,636,845.46
Percentage of Valid Zero-Rated Sales [C=B/A]	22.33%
Substantiated/Valid Input VAT [D] Less: Output VAT [E]	55,792,826.85 22,234,390.33
Substantiated/Valid Input VAT attributable to Zero-Rated Sales [F=D-E]	33,558,436.52
Excess and Unutilized Input VAT attributable to Valid Zero-Rated Sales [F x C]	**₱7,493,598.87**

All told, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC in the increased amount of **₱7,493,598.87**, representing the excess and unutilized input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of FY 2016 ended 30 June 2016.

WHEREFORE, premises considered, petitioner Procter & Gamble International Operations SA - ROHQ's Motion for Reconsideration with Motion to Reopen Case is hereby **PARTIALLY GRANTED**, while respondent Commissioner of Internal Revenue's Motion for Partial Reconsideration (to the Decision dated 19 January 2022) is hereby **DENIED** for lack of merit.

Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of Procter & Gamble International Operations SA-ROHQ in the amount of **SEVEN MILLION FOUR HUNDRED NINETY-THREE THOUSAND FIVE HUNDRED NINETY-EIGHT PESOS and EIGHTY-SEVEN CENTAVOS (₱7,493,598.87)**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of FY 2016 ended 30 June 2016.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice