REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

CARMEN COPPER CORPORATION, Petitioner,	**CTA EB NO. 2161** (CTA Case No. 9457)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** NOV 25 2020 3:59 p.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review*[1] filed on October 18, 2019 by petitioner, Carmen Copper Corporation, against respondent, Commissioner of Internal Revenue (CIR), praying to set aside the Decision dated July 23, 2019[2] and the Resolution dated September 19, 2019[3], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 9457, entitled *"Carmen Copper Corporation, Petitioner, versus Commissioner of Internal*

[1] EB Docket, pp. 1 to 31.

[2] Penned by Retired Associate Justice Cielito N. Mindaro-Grulla, and concurred by Associate Justice Juanito C. Castañeda, Jr., while Associate Justice Jean Marie A. Bacorro-Villena took no part., EB Docket, pp. 39 to 61.

[3] Penned by Retired Associate Justice Cielito N. Mindaro-Grulla, and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Jean Marie A. Bacorro-Villena, EB Docket, pp. 62 to 72.

Revenue", Respondent, the dispositive portions of which, respectively read as follows:

Decision dated July 23, 2019:

"**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED."

Resolution September 19, 2019:

"**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated 23 July 2919) is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with Securities and Exchange Commission (SEC) Registration No. CS200414509. Petitioner's office address is located at unit 502-P and 503-P, Five E-Com Center, Palm Coast Ave., corner Pacific Drive, Mall of Asia Complex, Pasay City, Philippines. It is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer under Certificate of Registration No. OCN8RC0000048993 dated October 5, 2004; and with the Board of Investments (BOI) as a "New Producer of Copper Concentrate" with non-pioneer status under Certificate of Registration No. 2006-158.

Petitioner is engaged in the business of mining ores and other mineral resources.

On the other hand, respondent is the duly appointed Commissioner of the BIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Return for the 1st quarter of taxable year (TY) 2014 on April 25, 2014[4]. On March 30, 2016, petitioner filed with the BIR Large Taxpayers Services - Excise Tax Division an administrative claim for refund of its alleged excess and unutilized input VAT payments for the 1st quarter of TY 2014 in the amount of ₱47,171,347.70.

On July 28, 2016, petitioner received a letter partially denying its claim for refund of its accumulated and unutilized input VAT for the first quarter of TY 2014. In the said letter, respondent informed petitioner that only the amount of ₱22,557,138.15 was recommended for the issuance of tax credit certificate.

In view of the lapse of the 120-day period and the partial denial of its administrative claims for refund, petitioner filed a *Petition for Review* with the Court in Division, entitled *"Carmen Copper Corporation, Petitioner, versus Commissioner of Internal Revenue"*, and docketed as CTA Case No. 9457, for the refund or issuance of TCC for its alleged excess and unutilized input VAT denied by the CIR for the first quarter of TY 2014 in the amount of ₱24,614,209.55.

On October 5, 2016, respondent filed his *Answer* in CTA Case No. 9457, raising special and affirmative defenses, among others, to wit: that petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the BIR and that the amount of ₱24,614,209.55 representing alleged unapplied input VAT payments for the first quarter of TY 2014 was not properly documented.

Allegedly, in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund /credit. Petitioner must show that it has complied with the provisions of Section 112 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit. Further, respondent argued that petitioner must prove that it paid the alleged VAT input taxes for the periods stated; that its sales of services is subject to VAT at zero percent (0%); and that its alleged unutilized input VAT has not been applied against any output tax liabilities both in the current or succeeding year. According to respondent, the claimant has the burden of proof to establish the factual basis of his claim for tax refund/credit.

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[4] Division Docket (CTA Case No. 9457) – Vol. I, p. 320.

After the pre-trial conference on February 2, 2017, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on March 6, 2017. This was approved and adopted by the Court in Division in the *Pre-Trial Order* issued on March 28, 2017, which also terminated the pre-trial.

Upon motion of petitioner, the Court in Division commissioned Emmanuel Y. Mendoza as the Independent Certified Public Accountant (ICPA) in CTA Case No. 9457.

During trial, petitioner presented the following witnesses: Fernando A. Rimando, its Chief Financial Officer; and Emmanuel Y. Mendoza, the Court-commissioned ICPA.

Petitioner filed its *Formal Offer of Evidence (with Motion to Re-mark Exhibits)* on August 24, 2017[5]. The Court in Division admitted petitioner's exhibits, except for Exhibits "P-1" and "P-36-12-440" for not being found in the records of the case.

Respondent presented Revenue Officer (RO) Dalisay Umlas as his sole witness. Thereafter, respondent filed his *Formal Offer of Evidence* on May 4, 2018. In the Resolution dated July 27, 2018, the Court in Division admitted all exhibits offered by the CIR.

Respondent filed his *Memorandum* on August 30, 2018; while petitioner filed its *Memorandum* on October 1, 2018. Hence, in the Resolution dated October 15, 2018, CTA Case No. 9457 was submitted for decision.

On July 23, 2019, the Court in Division rendered the assailed Decision[6] denying the *Petition for Review* in CTA Case No. 9457 for lack of merit.

On August 8, 2019, petitioner filed a *Motion for Reconsideration (Re: Decision dated 23 July 2019)*[7]. Respondent filed his *Opposition (Re: Motion for Reconsideration of the Decision dated 23 July 2019)*[8] on September 4, 2019.

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[5] Division Docket (CTA Case No. 9457) – Vol. II, pp 643 to 666.
[6] EB Docket, pp. 39 to 61; Division Docket (CTA Case No. 9457) – Vol. III, pp. 1264 to 1286.
[7] Division Docket (CTA Case No. 9457) – Vol. III, pp. 1289 to 1306.
[8] Division Docket (CTA Case No. 9457) – Vol. III, pp. 1323 to 1329.

In the Resolution[9] dated September 19, 2019, the Court in Division denied petitioner's *Motion for Reconsideration.*

Petitioner thereafter filed the instant *Petition for Review*[10] before the Court *En Banc* on October 18, 2019.

In the Resolution dated November 12, 2019,[11] respondent was directed to file his comment on the instant *Petition for Review* within ten (10) days from receipt thereof. On January 14, 2020, a *Records Verification Report*[12] was issued by the Judicial Records Division stating that respondent failed to file his comment.

On February 3, 2020, the instant case was deemed submitted for decision.[13] Hence, this Decision.

THE ISSUES

Petitioner raises the following grounds[14] in support of the instant *Petition for Review:*

(a) Petitioner's sales and the manner by which it paid for such sales, qualifies as a zero-rated VAT entity pursuant to Section 106(A)(2) of the Tax Code;

(b) Petitioner is entitled to a refund or credit of the rest of the excess and unutilized input VAT payments for the first quarter of TY 2014, which are directly attributable to its zero-rated revenues for the same period; and

(c) Petitioner was able to prove the existence of its zero-rated sales with sufficient documentary evidence.

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[9] EB Docket, pp. 62 to 72; Division Docket (CTA Case No. 9457) – Vol. III, pp. 1338 to 1348.
[10] EB Docket, pp. 1 to 31.
[11] EB Docket, pp. 85 to 86.
[12] EB Docket, p. 87.
[13] EB Docket, pp. 89 to 90.
[14] *Petition for Review,* EB Docket, p. 6.

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Petitioner's arguments:

Petitioner argues that its excess unutilized input VAT for the first quarter of taxable year 2014 (or the period from January 1, 2014 to March 31, 2014) is directly attributable to its zero-rated sales for the same period.

Further, petitioner submits that an examination of its books of accounts for TY 2014 and previous periods will readily show that the input tax it claimed on its purchases of capital goods substantially complies with the requirements under Section 110 of the Tax Code.

According to petitioner, it was able to prove the existence of its zero-rated sales with sufficient documentary evidence.

And in order to prove the existence of zero-rated sales, a taxpayer need only to prove the existence of three vital elements, namely (1) proof of sale; (2) proof of actual export; (3) proof of payment. Allegedly, a value to value reconciliation of the three documents is not required and that the exact value of the taxpayer's export sales is irrelevant for purposes of determining the amount of refund.

Allegedly, the Court in Division erred in not reopening the case for the submission of additional voluminous documentary evidence to properly address the issues identified in the assailed Decision.

Finally, petitioner asserts that the paramount consideration of the Court in deciding cases should be the ascertainment of truth and the just determination of every action; and that without the submission of the additional documents, this Court will be unable to determine the truth and to arrive at a just determination of the instant case.

THE COURT *EN BANC'S* RULING

In the assailed Decision, the Court in Division disallowed the entire zero-rated sales reported by petitioner for the 1st quarter of 2014 amounting to ₱3,514,604,334.74, for failure to comply with the substantiation and invoicing requirements under the law.

Petitioner failed to substantiate the Advances and Customer Charges deducted from the final sales invoice.

The Court in Division disallowed the following zero-rated sales as the amount of sales per schedule cannot be traced to the supporting VAT sales invoice and/or the amount of inward remittance:

Exhibit No.	Customer	Invoice No.	Date	Amount in US$	Amount in Php
Amount of sales per schedule cannot be traced to the supporting VAT sales invoice					
P-35-1 to 3	MRI Trading AG	5081	1/17/2014	469,636.04	20,551,273.21
Amount of sales per schedule cannot be traced to the supporting VAT sales invoice and the amount of inward remittance was deducted with Customer Charges without supporting documents					
P-35-22 to 25	MRI Trading AG	5173	3/31/2014	8,842,115.60	396,259,410.49
		5182	3/31/2014	9,038,904.81	405,078,519.12
Amount of inward remittance was deducted with Customer Charges without supporting documents					
P-35-6 to 8	Ocean Partner UK Limited	5159	2/27/2014	10,468,514.52	467,000,432.76
P-35-9 to 11	MRI Trading AG	5164	3/20/2014	9,236,956.50	412,476,292.36
P-35-12 to 14	MRI Trading AG	5165	3/28/2014	8,474,115.63	383,792,696.81
P-35-15 to 18	MRI Trading AG	5166	3/20/2014	9,185,257.97	410,489,178.51
		5167	3/20/2014	8,998,397.33	402,138,376.59
			TOTAL	**64,713,898.40**	**2,897,786,179.85**

According to petitioner, the difficulty in tracing the export sales to the relevant sales invoice/inward remittance was due to the variances resulting from the application of "Advances" and "Customers Charges". Allegedly, the said variances are the result of petitioner's practice of issuing a provisional invoice upon initial payment, and a final invoice upon the final settlement of the same, wherein the issuance of the provisional invoice and final invoice may or may not be made within the same taxable year.

In particular, petitioner claims that the "Advances" are due to the adjustments on account of market differences based on movements in the market prices between the issuance of the provisional invoice and the final invoice; while "Customers Charges" are the result of the initial price set by petitioner with its customers based on the agreed terms under the respective contracts.

We are not persuaded.

A perusal of the records of the case shows that petitioner failed to fully substantiate its allegations.

As regards the "Allowances", petitioner failed to establish before this Court how the adjustments were determined or computed. The record of the case is bereft of any evidence showing the alleged movement in market prices which resulted in the discrepancy between the reported export sales per schedule and the amount of sales shown per sales invoice.

Likewise, petitioner failed to substantiate the "Customers Charges". As found by the Court in Division, significant amounts of "Customers Charges" were deducted from the foreign currency inward remittances resulting to a discrepancy in the amount reported in the sales invoice and export documents. Based on the evidence presented, the Court cannot ascertain the veracity of these charges. The absence of supporting documents as to how these charges were computed is too glaring to be ignored. Such being the case, the Court *En Banc* finds that petitioner failed to establish that the payments made for the zero-rated sales reported during the 1st quarter of 2014, were indeed *"accounted for in accordance with the rules and regulations of the BSP"*.

It must be emphasized that it is basic under our rules of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[15]

Accordingly, the general averments of petitioner that the discrepancies in the amounts shown in the documents were due to the "Allowances" and "Customers Charges", without substantiating the same with corroborating evidence and supporting documents, will not warrant the reversal of the disallowances.

Petitioner failed to prove that sales to PASAR are subject to VAT zero-rating.

Petitioner argues that Philippine Associated Smelting & Refining Corporation (PASAR) is a corporation registered with the Philippine Economic Zone Authority (PEZA). As such, petitioner

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[15] *Virginia Real vs. Sisenando H. Belo*, G.R. No. 146224, January 26, 2007.

claims that all of its sales to PASAR are considered export sales subject to zero-rating. Further, petitioner asserts that the *BOI Certification* is sufficient evidence that it exported all of its copper concentrates, including those sold to PASAR.

We disagree.

Contrary to petitioner's allegation, it failed to establish that PASAR is a PEZA-registered entity. The *PEZA Certification*[16] dated January 4, 2013 issued to PASAR, which is attached to the instant *Petition for Review*, was not presented nor offered in evidence in CTA Case No. 9457. Hence, the same cannot be considered by the Court.

The rules of procedure and jurisprudence do not sanction the grant of evidentiary value to evidence which was not formally offered.[17] Further, an examination thereof shows that the same is a mere photocopy and thus cannot be given any probative value.

Nonetheless, even if We give credence to the attached *PEZA Certification*, the same is irrelevant to the instant case considering that the said Certificate is only valid for the year 2013, which is outside the subject period of claim in the instant case, *i.e. 1st quarter of 2014*.

Likewise, the *BOI Certification*[18] issued to petitioner is not sufficient to prove that its sales to PASAR is subject to zero-rated VAT. It must be emphasized that the said BOI Certification was issued "pursuant to the Guidelines on the issuance of BOI Certification per Revenue Memorandum Order (RMO) No. 9-2000 entitled *'Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100°/o Export Sales'* dated February 02, 2000".

A careful scrutiny of RMO No. 9-2000 shows that the BOI Certification is furnished by the BOI-registered buyers to its suppliers **as proof of authority for the supplier** to avail of the VAT zero-rating for its sales to said BOI-registered buyers.

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[16] Annex D, EB Docket, p. 74.
[17] *Jose R. Catacutan vs. People of the Philippines*, G.R. No. 175991, August 31, 2011.
[18] Exhibit "P-4", Division Docket (CTA Case No. 9457) – Vol. II, pp. 700 to 701.

Evidently, the *BOI Certification* issued to petitioner was **not** issued to attest to petitioner's export sales in connection with its claim for input VAT refund, but rather, the said *BOI Certification* mainly serves as authority for the suppliers of petitioner to avail of the VAT zero-rating on their sales to petitioner. Thus, the *BOI Certification* is not sufficient proof to establish that petitioner's sales to PASAR is subject to VAT zero-rating.

Moreover, as will be discussed momentarily, the sales invoices relative to petitioner's sales to PASAR are unreadable, further bolstering the disallowance of said sales.

Unreadable supporting sales invoices.

Aside from petitioner's failure to prove that PASAR is a PEZA-registered entity, the Court *a quo* also found that the dates in the sales invoices pertinent to its sales to PASAR are unreadable. As for the sales to MRI Trading AG, the Court in Division noted that the date and amount indicated in the relevant sales invoice are likewise unreadable. Details are as follows:

Exhibit No.	Customer	Invoice No.	Date	Amount in US$	Amount in Php
Sales supported with VAT sales invoice but DATE and AMOUNTS are unreadable					
P-35-26 to 38	MRI Trading AG	5080	-	(182,221.09)	(7,873,773.51)
Sales supported with VAT sales invoice but DATE is unreadable					
P-35-4 to 5	PASAR	5100	-	27,257.63	1,174,667.70
P-35-29 to 30	PASAR	5107		(220,310.56)	(9,537,244.07)
			TOTAL	**(375,274.02)**	**(16,236,349.88)**

According to petitioner, the foregoing unreadable sales invoices was due to inadvertence during the creation of the faithful reproductions of their original counterparts. To rectify this error, petitioner submitted the certified true copies of the said invoices which were attached to its *Motion for Reconsideration* filed before the Court in Division and to the instant *Petition for Review.*

However, the Court cannot give any evidentiary value to the said invoices considering that these were not offered in evidence during the trial of CTA Case No. 9457. It must be remembered that evidence not formally offered during the trial cannot be used for, or

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against a party litigant by the trial court in deciding the merits of the case.[19]

But even assuming *arguendo* that the said invoices are admissible as evidence, a perusal thereof shows that the amounts indicated therein cannot be traced to the export sales schedules. We quote with approval the findings of the Court in Division thereon in the assailed Resolution dated September 19, 2019,[20] as follows:

> "An examination of the readable copies however, discloses that the amounts therein do not match the amounts per export sales schedule as state in the assailed Decision. Neither did CCC account for any discrepancies arising from those invoices in the Reconciliation Schedule of Zero-Rated Sales vs Sales Invoices attached as Annex A in the Motion. In fact, the reconciliation did not even show any discrepancy arising from the disallowed zero-rated sales when compared to the corresponding attached copies of sales invoices."

Clearly, the failure of petitioner to sufficiently account for the discrepancies in the amount shown in the export sales schedule vis-à-vis the amounts in the sales invoice, is a valid ground to disallow the subject zero-rated sales. Accordingly, the Court sustains the Court in Division's findings of disallowance.

Petitioner's declared sales to Mitsui & Co. Ltd. has no proof of inward remittance.

In the assailed Decision, the Court in Division disallowed petitioner's reported sales to Mitsui & Co. Ltd. amounting to ₱633,054,504.77 or US$14,036,685.25, for its failure to show proof of the foreign currency inward remittance.

Petitioner, however, claims that the proof of inward remittance was inadvertently not included as part of the supporting documents, but the same was nonetheless verified by the ICPA and listed in the

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[19] *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, G.R. No. 195876, December 5, 2016

[20] EB Docket, p. 64.

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ICPA Report. Petitioner likewise attached the said *Certification*[21] dated June 13, 2017, issued by BDO as proof of the inward remittance.

The Court cannot give credence to the attached *Certification*, since it was not offered in evidence in CTA Case No. 9457. As discussed earlier, evidence not presented and formally offered in evidence cannot be given any probative value by this Court.

As regards petitioner's contention that the said document has been verified by the ICPA, hence should be considered by the Court, the same is specious.

Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that the findings and conclusions of the ICPA shall not be conclusive upon the Court, *to wit*:

> "SEC. 3. *Findings of independent CPA*. — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court**, which may, in whole or in part, adopt such findings and conclusions subject to verification." (Emphases supplied)

Based on the foregoing, the Court is not bound by the ICPA's findings and conclusions, although the Court may adopt the same, in whole or in part, upon verification thereof, as regards to its accuracy, veracity and merit. In other words, the Court must make its own determination apart from the findings and conclusions of the ICPA.

Further, even assuming that the attached *Certification* was offered and admitted by the Court in Division, the same fails to establish the inward remittance of petitioner's sales to Mitsui & Co. Ltd. An examination of the said *Certification* reveals that the amounts

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[21] Annex "M", EB Docket, p. 83.

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indicated therein do not tally with the reported zero-rated sales to Mitsui & Co. Ltd. Hence, the Court cannot ascertain whether the attached *Certification* actually pertain to the declared zero-rated sales of petitioner to Mitsui & Co. Ltd. for the 1st quarter of 2014.

Thus, in the absence of any compelling evidence to the contrary, We sustain the findings of disallowance by the Court in Division.

At this juncture, it must be stressed that the findings of fact by the Court in Division are **not** to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.[22]

Needless to state, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[23] Further, it bears emphasis that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[24]

In this case, petitioner failed to prove that it is entitled to the entire amount sought to be refunded in view of its failure to substantiate its zero-rated sales amounting to ₱3,514,604,334.74.

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[22] *Republic of the Philippines, represented by the Commissioner of Internal Revenue* v. *Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015 citing *Sea-Land Service, Inc.* v. *Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446. Refer also to *Rhombus Energy, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206362, August 1, 2018.

[23] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[24] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

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Accordingly, this Court finds no reason to deviate from the factual findings of the Court in Division.

The reopening of trial for the admission of new evidence is not proper.

Petitioner argues that the paramount consideration of this Court in deciding cases should be the ascertainment of truth and the just determination of every action. Allegedly, without the submission of the additional documents, this court will be unable to determine the truth and to arrive at a just determination of the case at bar; and that to disallow the presentation of the additional evidence for purposes of correcting evidence previously offered, would be to unjustly deprive petitioner of what it is legally due in the ordinary course of business.

The Court finds petitioner's arguments untenable.

In *Republic of the Philippines vs. Sandiganbayan (Fourth Division), et al.*,[25] the Supreme Court said:

> "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:
>
> > 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:
> >
> > xxx xxx xxx
> >
> > (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 [.] [emphases ours]

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[25] G.R. No. 152375, December 13, 2011.

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> **<u>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.</u> The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.**
>
> **<u>A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence</u>; 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." (Emphases and underscoring supplied.)

It is clear from the foregoing, that the 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. Further, when a party declares the completion of the presentation of his evidence, he is prevented from introducing further evidence, except in instances where the evidence is rebuttal in nature, or newly discovered evidence. The Court may thus allow a party-litigant to present rebuttal evidence or newly discovered evidence, even after the completion of the presentation of the party's evidence.

Relative thereto, in *Cabarles vs. Maceda*,[26] the Supreme Court clarified that the motion to reopen a case may be filed, even after promulgation but before finality of judgment, subject to certain conditions, to wit:

> "A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized procedural recourse, deriving validity and acceptance from long, established usage x x x
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> xxx xxx xxx

[26] G.R. No. 161330, February 20, 2007.

> Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, **the court, <u>for good reasons, in the furtherance of justice</u>, may allow <u>new evidence</u> upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears.** A motion to reopen may thus properly be presented only after either or both parties had formally offered and closed their evidence, but before judgment is rendered, and **<u>even after promulgation but before finality of judgment and the only controlling guideline governing a motion to reopen is the paramount interest of justice.</u>** This remedy of reopening a case was meant to prevent a miscarriage of justice." (Emphases and underscoring supplied)

Based on the foregoing, the Court may allow the presentation of additional evidence even after judgment but before finality of the case, for good reasons, and in the furtherance of justice.

In view of the foregoing jurisprudential pronouncements, a party's right to introduce further evidence is allowed (1) when the evidence is rebuttal in character, or is a newly discovered evidence upon the original case; (2) for good reasons; and (3) in the paramount interest of justice.

In this case, petitioner's prayer for the reopening of the case to submit additional evidence pertains to its original case, and not as rebuttal evidence. The additional evidence was primarily based on the findings of the Court in Division that it failed to properly substantiate its claim for refund through proper documentation. However, said additional evidence were not shown to be newly discovered evidence, and therefore, appropriately disallowed presentation by the Court in Division in CTA Case No. 9457.

To be considered as newly discovered evidence under the Rules of Court, the following requisites must be present: (a) the evidence was discovered after trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.[27]

Petitioner failed to discharge this burden. There is no showing that the evidence sought to be presented were not available during trial or that the same could not have been produced during trial with reasonable diligence. Also, petitioner failed to offer a plausible justification as to why the said pieces of evidence are being presented only after the assailed Decision was rendered. Moreover, a cursory examination of the list of evidence shows that these were already capable of being produced during trial in the Court *a quo*.

Evidently, said documents do not constitute newly discovered evidence, but merely forgotten evidence, which petitioner intends to present only after obtaining an unfavorable decision in the proceedings below.

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 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.[28]

To the mind of the Court *En Banc,* petitioner has not established any good reason why a decree reopening the case should be granted by this Court. The failure of petitioner to discharge the burden of proof to substantiate its claim for refund cannot be considered as a good reason to allow the re-opening of this case.

Additionally, respondent also failed to show that the paramount interest of justice would be served in granting its motion to reopen the case.

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[27] *Commissioner of Internal Revenue vs. A. Soriano Corp., et al.*, G.R. No. 113703, January 31, 1997.

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

It bears emphasis that petitioner was given every opportunity to present its case before the Court *a quo*. During trial, the Court in Division permitted petitioner to present its testimonial and documentary evidence and after which, petitioner was able to offer the same through its *Formal Offer of Evidence*[29] filed on August 24, 2017. The Court in Division then acted thereon and ruled on the admissibility and inadmissibility of petitioner's evidence as shown in the Resolution dated January 26, 2018.[30] Thus, petitioner cannot claim any injustice committed during the trial of the instant case.

More importantly, as already discussed earlier, even if the additional documents sought to be presented are considered by the Court *En Banc*, the same are inadequate to prove that petitioner's reported sales qualify for VAT zero-rating.

Hence, We sustain the Court in Division's ruling denying the reopening of the case for reception of additional evidence.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated July 23, 2019 and Resolution dated September 19, 2019, both rendered by the Court in Division in CTA Case No. 9457 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[29] Division Docket (CTA Case No. 9457) – Vol. II, pp 643 to 666.
[30] Docket (CTA Case No. 9457) — Vol. III, pp. 1187 to 1189.

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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.

ROMAN G. DEL ROSARIO
Presiding Justice