REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

TOTAL (PHILIPPINES) CORPORATION, *Petitioner,*	**CTA *EB* NO. 1153** (CTA Case No. 8253)
- *versus* -	Present: *Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 20 2016 1:50 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is petitioner's "Motion for Reconsideration" filed on November 16, 2015; with respondent's "Comment/Opposition (To Petitioner's Motion for Reconsideration)" (the "Comment") filed on February 26, 2016.

Petitioner, in its Motion for Reconsideration, prays that the Court *En Banc* reconsider and set aside its Decision dated October 14, 2015 (the "Assailed Decision"); and issue a new decision ordering respondent to refund or issue of a tax credit certificate ("TCC") in the amount of Php111,102,273.80 representing petitioner's unutilized input value-added tax ("VAT") related to zero-rated sales for the calendar year ("CY") 2009.

The dispositive portion of the Assailed Decision reads:

> **WHEREFORE,** premises considered, the Petition for Review filed by petitioner is hereby **DENIED**. The Court *En Banc* **AFFIRMS *IN TOTO*** the Decision of the Special First Division dated October 24, 2013, as well as the Resolution dated March 17, 2014.
>
> **SO ORDERED.**

Petitioner, in its Motion for Reconsideration, maintains that it is entitled to the refund or issuance of TCC for the following reasons:

1. Requiring petitioner to prove that the input VAT attributable to its zero-rated sales must exceed output VAT is to impose a requirement not provided by laws and jurisprudence, resulting in judicial legislation and a clear violation of petitioner's right to due process;

2. Petitioner is not required to prove input VAT carry over from previous quarters, this not being imposed by law;

3. Petitioner's output tax incurred during the year cannot be higher than the total amount of input tax if all available input tax is considered;

4. The Special First Division of the Honorable Court erred in ruling that a new trial is unwarranted; and

5. The Special Division of the Honorable Court should have considered the Import Entry and Internal Revenue Declarations ("IEIRDs"), supplier invoices, and official receipts (the "Additional Evidence").

On the other hand, respondent, in her Comment, argues that pursuant to *Section 110(B) of the 1997 National Internal Revenue Code ("1997 NIRC")*[1], petitioner cannot claim a refund if its output VAT exceeds its input tax. Moreover, respondent posits that petitioner is not required to prove the input VAT from previous quarters as there

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[1] Republic Act No. 8424, as amended (1997).

is no excess input VAT to speak of. Finally, respondent alleges that the documents petitioner seek to present is not in the nature of newly discovered evidence as the documents could have been produced and presented in Court during the trial, and that petitioner was given every opportunity to present all possible issues in court.

The Court *En Banc* finds the Motion for Reconsideration devoid of merit.

After a careful review of the grounds raised by petitioner in its Motion for Reconsideration as well as the counter arguments of respondent in her Comment, the Court *En Banc* finds no new matters or arguments which have not been considered in the Assailed Decision. Nevertheless, the Court *En Banc* will address the issues raised by the parties if only to reinforce the discussion in the Assailed Decision.

Petitioner argues that it can claim the input VAT from its zero-rated transactions regardless of the existence of input VAT and output VAT from its VATable transactions. The Court *En Banc* disagrees.

A reading of *Section 110(B)* in relation to *Section 112(A) of the 1997 NIRC* leads to the interpretation that input VAT from zero-rated transactions can be claimed for refund or issuance of TCC provided input VAT is greater than output VAT. The relevant provisions state:

> **Sec. 110.** ***Tax Credits.*** -
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> (B) **Excess Output or Input Tax.** - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, That <u>any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112</u>.
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> x x x x x x x x x
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> **Sec. 112.** ***Refunds or Tax Credits of Input Tax.*** -

> (A) **Zero-Rated or Effectively Zero-Rated Sales.** - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, <u>to the extent that such input tax has not been applied against output tax</u>; Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales; Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.[2]
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Verily, the general rule is that if at the end of a taxable quarter, the output VAT is greater than the input VAT, the taxpayer will have a VAT payable. On the other hand, if the input VAT is greater than the output VAT, the taxpayer may carry over the excess and unutilized input VAT to succeeding quarters or file a claim for refund or issuance of TCC.

As applied to a taxpayer engaged in zero-rated activities (who necessarily has an output VAT of zero) if the taxpayer engages solely in zero-rated transactions, or engages in both VATable and zero-rated transactions but the input VAT from its zero-rated transactions can be directly attributable to the said zero-rated activities, such taxpayer may file a claim for refund or issuance of TCC for its input VAT. If, however, the taxpayer engages in both VATable and zero-rated transactions, and the input VAT cannot be directly attributable to such zero-rated activities, the input VAT shall be allocated proportionately to the VATable and zero-rated activities.

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[2] Underscoring ours.

In the latter scenario where the taxpayer engages in both VATable and zero-rated activities but the input VAT cannot be directly attributable to such zero-rated activities, the taxpayer may only file a claim for refund or issuance of TCC if it has excess and unutilized input VAT, *i.e.*, its input VAT is greater than its output VAT. Necessarily, if the taxpayer has a VAT payable, it cannot be entitled to a refund or issuance of TCC even if the input VAT being claimed for refund or issuance of TCC is from zero-rated activities. Any input VAT from both VATable and zero-rated activities must be offset against any output VAT before it can be said that an excess input VAT exists. Indubitably, to grant a refund or issuance of TCC for alleged excess input VAT when there exists a VAT payable is purely detrimental to the State. Thus, the Court *En Banc* maintains its ruling that petitioner was not able to prove its entitlement to a refund or issuance of TCC for input VAT related to its zero-rated sales for CY 2009.

Meanwhile, petitioner argues that a new trial is warranted for the presentation of newly discovered evidence (*i.e.*, IEIRDs, supplier invoices, and official receipts). The Court *En Banc*, however, is not convinced that the evidence sought to be presented by petitioner is indeed newly discovered evidence. The alleged newly discovered evidence were already in existence and known to petitioner during trial. Even petitioner admits that the Additional Evidence were already available, petitioner only failed to produce original copies thereof.[3] Such evidence cannot thus be considered newly discovered evidence. As held by the Supreme Court in *Sy Ha v. Galang*[4],

> It will thus be seen that the evidence, both documentary and testimonial, which petitioners were allowed to present at the new trial, does not partake of the nature of a newly discovered evidence, because <u>it was already in existence and known to them at the time</u> of the investigation conducted by respondent immigration commissioner, as well as at the original hearing conducted before the trial court. Indeed, <u>it is not such an evidence, which petitioners could not, with reasonable diligence, have discovered and produced at the</u>

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[3] Paragraph 56 of the Motion for Reconsideration provides:

> 56. For the time being until the promulgation of the decision, petitioner exerted diligent efforts to locate and provide its own original copy of these documents. However, despite diligent efforts, Petitioner was not successful.

[4] G.R. No. L-18513, April 27, 1963, 7 SCRA 797.

> trial more so when it was intended to justify a new trial after the case was lost after the original hearing. For it is a well-known rule that forgotten evidence or one which intentionally or thru oversight was not offered at the trial of a case cannot be presented as newly discovered evidence to support a motion for new trial. . . .[5]

Finally, petitioner posits that in the interest of substantial justice, the Court should have considered the Additional Evidence. Suffice it to say that "the interest of substantial justice" will not save petitioner from its failure to exercise diligence in pursuing its case.

Petitioner was given the opportunity to properly present its case and substantiate its claim for refund or issuance of TCC. Its inability to do so during trial cannot compel the Court *En Banc* to consider the Additional Evidence in the interest of substantial justice.

The Supreme Court held in *Lazaro v. Court of Appeals* that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel the court to suspend procedural rules absent any showing that the same is an exceptionally meritorious case, thus:

> We must stress that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. "Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure, especially those prescribing the time within which certain acts must be done, "have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business, x x x The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice x x x. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions." Indeed, in no uncertain terms, the Court held that the said rules may be relaxed only in "exceptionally

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[5] Underscoring ours.

> meritorious cases." In this case, the CA and the private respondents failed to show that this case is one such exception.

Accordingly, the Court *En Banc* maintains that it correctly denied the Additional Evidence as the originals thereof were not formally offered.

From the foregoing, the Court *En Banc* finds no cogent reason to reverse and set aside the Assailed Decision.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
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

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen S—

MA. BELEN M. RINGPIS-LIBAN
Associate Justice