REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PROCTER & GAMBLE ASIA, PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 7523 & 7556

Members:

UY, *Chairperson, and*
FABON-VICTORINO, *JJ.*

Promulgated:

NOV 22 2016 ; 3:00 p.m.

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RESOLUTION

UY, *J.*:

This resolves respondent's **Motion for Partial Reconsideration**, filed through registered mail on June 3, 2016 and received by the Court on June 17, 2016, with petitioner's **Comment/Opposition (Re: Respondent's Motion for Partial Reconsideration posted on June 3, 2016)**, filed on August 3, 2016.

Respondent Commissioner of Internal Revenue (CIR) seeks reconsideration of the Court's Amended Decision[1] dated May 17, 2016 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the

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[1] Docket (CTA Case No. 7523), pp. 3374-3396.

amount of **TWENTY MILLION THREE HUNDRED EIGHTY-EIGHT THOUSAND EIGHT HUNDRED EIGHTY-FOUR PESOS AND 24/100 (₱20,388,884.24)**, representing petitioner's unutilized input VAT for the periods July 1 to September 30, 2004 and October 1 to December 31, 2004.

SO ORDERED."

Respondent prays for this Court to review, re-evaluate and revisit the assailed Decision insofar as it partially granted petitioner's claim for refund of input Value-Added Tax (VAT) in the reduced amount of ₱20,388,884.24 for the periods July 1 to September 30, 2004 and October 1 to December 31, 2004. The following grounds are submitted for the Court's reconsideration:

a. petitioner's invoices and official receipts in support of its claimed unutilized input VAT failed to comply with the mandatory invoicing requirements under Sections 110(A), 113 (A)(B) and 237 of the National Internal Revenue Code (NIRC) of 1997, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05 and Revenue Memorandum Circular (RMC) No. 42-2003; and

b. petitioner's claim for refund is strictly construed against it for the same partakes the nature of tax exemption.

On the other hand, petitioner opposes the instant Motion and claims that it failed to raise matters substantially plausible or compellingly persuasive to warrant partial reconsideration of the assailed Decision considering that the present arguments are mere rehash, all of which have been considered and passed upon by this Court.

The Motion for Partial Reconsideration is bereft of merit.

The issue on substantiation requirements, *i.e.*, petitioner's invoices and official receipts in support of its claimed unutilized input VAT allegedly failed to comply with the mandatory invoicing requirements under the law and regulations, had been extensively discussed and passed upon in the assailed Decision. The Court made a thorough examination of petitioner's relevant supporting documents, and was convinced that petitioner was able to prove its entitlement to the claim for refund or issuance of tax credit certificate representing its unutilized input VAT for the periods July 1 to September 30, 2004 and October 1 to December 31, 2004, *but in the reduced amount of ₱20,388,884.24.* As regards this amount, petitioner complied with the invoicing requirements set forth under the law and regulations applicable to the instant case, *i.e.*, Section 110(A) of the NIRC of 1997, as amended, in relation to Section 113(A) of the same Code and Sections 4.104-1, 4.104-5, and 4.108-1 of RR No. 7-95.

As a result of the examination of petitioner's supporting documents, the Court ordered the refund of a portion which complied with the substantiation requirements while the non-compliant portion was denied. The Court squarely ruled the issue in this wise:

> "In support thereof, petitioner presented various VAT invoices and official receipts (ORs) which were all examined by the Independent CPA. In the Reports dated December 27, 2007 and August 15, 2008, the Independent CPA found unallowable input VAT credits in the amounts of ₱3,644,242.75 and ₱1,735,579.07 from the input VAT carried over from previous quarter (April 1, 2004 to June 30, 2004) and input VAT from current purchases (July 1, 2004 to December 31, 2004), respectively, or in the aggregate sum of ₱5,379,821.82, detailed as follows:

Findings/Exceptions	**Input VAT Claim**	**Reference**
Input VAT Carried Over from Previous Quarter (April 1, 2004 to June 30, 2004)		
Input VAT relating to purchases of goods which are not supported by invoices	₱ 948,003.21	Exhibit "FF, Annex "A"
Input VAT relating to importation of goods which are not covered by Import Entry and Internal Revenue Declarations	52,985.00	Exhibit "FF", Annex "A"
Input VAT relating to purchases of services which are not covered by official receipts	1,006,885.59	Exhibit "FF", Annex "B"
Input VAT relating to purchases of services which are supported by non-VAT official receipts	29,540.75	Exhibit "FF", Annex "C"
Input VAT relating to purchases of services which were paid outside the period covered by the claim	1,606,828.20	Exhibit "FF", Annex D
Subtotal	**₱ 3,644,242.75**	
Input VAT from Current Purchases (July 1, 2004 to December 31, 2004)		

Purchases of goods supported by non-VAT invoices	₱ 11,903.64	Exhibit "D", Annex "C"
Purchases of services supported by non-VAT official receipts	312,137.71	Exhibit "D", Annex "D"
Out of period purchases of goods	377,645.09	Exhibit "D", Annex "E"
Out of period purchases of services	175,872.99	Exhibit "D", Annex "F"
Out of period importation	60,757.74	Exhibit "D", Annex "G"
Purchases of goods not supported by invoices	31,568.65	Exhibit "D", Annex "H"
Purchases of services not supported by official receipts	673,181.47	Exhibit "D", Annex "I"
Importation not supported by an Import Entry and Internal Revenue Declaration	961.00	Exhibit "D", Annex "J"
Purchases of goods not made by P&G Asia Pte. Ltd.	69.00	Exhibit "D", Annex "K"
Purchases of services not made by P&G Asia Pte. Ltd.	1,818.18	Exhibit "D", Annex "L"
Importations where P&G Asia Pte. Ltd. is not the consignee or importer of record	43,713.78	Exhibit "D", Annex "M"
Purchases of goods covered by invoices not registered with the BIR	1,690.18	Exhibit "D", Annex "N"
Non-VAT transaction	44,259.64	Exhibit "D", Annex "O"
Subtotal	**₱ 1,735,579.07**	
Total	**₱ 5,379,821.82**	

Upon examination of the Independent CPA's disallowed input VAT, amounting to ₱5,379,821.82, due to failure to comply with the substantiation requirements prescribed under Sections 110(A) and 113(A) of the NIRC of 1997, as amended, and Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95, the Court finds the same to be proper.

Thus, out of petitioner's reported accumulated input VAT credits of ₱63,598,157.93, only the amount of ₱58,218,336.11 represents its valid input VAT, computed as follows:

Input VAT Carried-Over from Previous Quarter	₱	5,793,355.41
Input VAT from Current Purchases		
July to September 2004	₱	30,072,024.15
October to December 2004		27,732,778.37
Subtotal	₱	57,804,802.52
Total Accumulated Input VAT	₱	63,598,157.93
Less: Not Properly Substantiated Input VAT		5,379,821.82
Valid Input VAT	**₱**	**58,218,336.11**

Again, petitioner's supporting documents (invoices and official receipts) marked as Exhibits "I-1" to "I-334", "J-1" to "J-554" and "GG-1" to "GG-282" were examined and considered in arriving at the assailed Decision. In fact, not all input vat supported by invoices and official receipts were refunded. Out of the total accumulated input VAT credits of ₱63,598,157.93, a portion amounting to ₱5,379,821.82 was found invalid for lack of proper substantiation. Aside from the Court's findings of disallowances, and with only a general averment from respondent that petitioner did not comply with the substantiation requirements, no additional disallowances were found.

Thus, the Court will not disturb its previous findings absent any compelling evidence to the contrary.

Meanwhile, respondent insists that the documentary exhibits of petitioner should not have been given probative value for being hearsay evidence pursuant to Section 36, Rule 130 of the Rules of Court. Respondent further claims that petitioner's witness had no personal knowledge on the issuance of invoices and official receipts which were prepared by another person other than the witness.

This argument, however, is bereft of merit.

Based on records, respondent did not file any comment or opposition to petitioner's Formal Offer of Evidence, hence, the Court admitted Exhibits "I-1" to "I-334", "J-1" to "J-554" and "GG-1" to "GG-282".[2] Even assuming the invoices and official receipts are hearsay, nonetheless, they form part of the records of the case for failure of respondent to object as to the admissibility of these documents on the ground that they are hearsay.

We find applicable the rule that "failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence. When a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal. Because of a party's failure to timely object, the evidence becomes part of the evidence in the case. Thereafter, all the parties are considered bound by any outcome arising from the

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[2] Resolution dated November 14, 2008, docket (CTA Case Nos. 7523 & 7556), vol. II, pp. 1492-1493.

offer of evidence properly presented."[3] Moreover, the matters that were neither alleged in the pleadings nor raised during the proceedings cannot be ventilated for the first time on appeal and are barred by estoppel. If we allow the contrary, there would be a violation of the other party's right to due process and a conflict with the principle of fair play.[4]

With respect to the probative value of invoices and other commercial documents, the Supreme Court held in the case of *Seaoil Petroleum Corporation vs. Autocorp Group and Paul Y. Rodriguez*[5], that:

> "A sales invoice is a commercial document. Commercial documents or papers are those used by merchants or businessmen to promote or facilitate trade or credit transactions. Business forms, *e.g.,* order slip, delivery charge invoice and the like, are commonly recognized in ordinary commercial transactions as valid between the parties and, at the very least, they serve as an acknowledgment that a business transaction has in fact transpired. These documents are not mere scraps of paper bereft of probative value, but vital pieces of evidence of commercial transactions. They are written memorials of the details of the consummation of contracts."

Besides, the Court cannot simply disregard the findings of the Independent Certified Public Accountant (ICPA) who conducted an independent special audit and examination of various receipts, invoices and other supporting documents of petitioner. The ICPA certified that the documents are faithful reproduction of the original.

While it is true that the CTA is not strictly governed by technical rules of evidence[6], the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of petitioner's claims. The rule is that "tax refunds or tax credits — just like tax exemptions — are strictly construed against taxpayers, the latter having the burden to prove

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[3] *Advance Paper Corporation, et al. vs. Arma Traders Corporation, et al.,* G.R. No. 176897, December 11, 2013.
[4] *Commissioner of Internal Revenue vs. Puregold Duty Free, Inc.,* G.R. No. 202789, June 22, 2015.
[5] G.R. No. 164326, October 17, 2008.
[6] Section 8, Republic Act No. 1125.

strict compliance with the conditions for the grant of the tax refund or credit".[7] "This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim."[8]

Once the taxpayer was able to sufficiently prove its entitlement to a refund, it thus behooves the government to refund what the taxpayer is entitled to. "In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness."[9]

As ruled in the assailed Decision, petitioner sufficiently established its claim for tax refund/credit but only in the reduced amount of ₱20,388,884.24, representing its unutilized input VAT for the periods July 1 to September 30, 2004 and October 1 to December 31, 2004.

WHEREFORE, finding no compelling reason to reverse the ruling of the Court in the Amended Decision dated May 17, 2016, respondent's **Motion for Partial Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[7] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (now TeaM Energy Corporation),* G.R. No. 180434, January 20, 2016.

[8] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 206526, January 28, 2015.

[9] *Filinvest Development Corporation vs. Commissioner of Internal Revenue,* G.R., 146941, August 9, 2007.