REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

IBEX PHILIPPINES, INC., Petitioner,	**CTA EB NO. 1834** **(CTA Case No. 9002)**
	Present:
-versus-	Del Rosario, *P.J.,* Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, *and* Modesto-San Pedro, *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 05 2019 3:56 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review filed by Ibex Philippines, Inc. (Ibex) under Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court which seek the reversal of the following:

1. January 5, 2018 Decision[1] of the CTA Third Division[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund in favor of petitioner Ibex Philippines, Inc. the amount of **Fifty-Eight Thousand Nine Hundred Fifty-Six Pesos and Sixty-Five Centavos (Php58,956.65)** representing the latter's unutilized input value-added tax

[1] Annex A, Petition for Review, Rollo, pp. 36-56.
[2] Penned by J. Lovell R. Bautista with the concurrence of J. Esperanza R. Fabon-Victorino and J. Ma. Belen M. Ringpis-Liban.

arising from its zero-rated sales for the third and fourth quarters of calendar year 2012.

SO ORDERED."

2. March 20, 2018 Resolution[3] denying herein petitioner's Motion for Reconsideration of for lack of merit.

THE FACTS

The facts, quoted from the January 5, 2018 Decision and condensed from the records, are as follows:

Petitioner Ibex (formerly TRG Philippines, Inc.) is a domestic corporation duly organized and existing under the laws of the Philippines with registered address at the 8th Floor Hanston Building, Don Francisco Ortigas Jr. Road, Ortigas Center, Pasig City.[4]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed CIR with office address at the Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City.[5]

On January 6, 2006, the Board of Investments (BOI) issued Certificate of Registration No. 2006-05 in favor of Ibex as a New IT Export Service Firm in the Field of Operation of a Call Center.[6]

For the third and fourth quarters of Calendar Year (CY) 2012, Ibex filed with the BIR its Quarterly VAT Returns (BIR Form No. 2550-Q), which reflected the following entries:[7]

Taxable Quarter	Output Tax Due	Total Allowable Input Tax	Net VAT Payable (Overpayment)	Tax Credits / Payments	Total Amount Payable (Overpayment)
Third (Original)	-	₱13,338,841.56	(₱13,338,841.56)	-	(₱13,338,841.56)
Third (Amended)	-	13,338,841.56	(13,338,841.56)	-	(13,338,841.56)
Fourth (Original)	-	14,565,768.02	(14,565,768.02)	-	(14,565,768.02)
Fourth (Amended)	-	14,565,768.02	(14,565,768.02)	-	(14,565,768.02)

On September 30, 2014, Ibex filed with the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914) for the third and fourth quarters of CY 2012 in the amount of ₱2,485,892.92.

[3] Annex B, Petition for Review, Rollo, pp. 57-60.
[4] January 5, 2018 Decision, Rollo, p. 38.
[5] *Id.* at p. 39.
[6] *Id.*
[7] *Id.*

CTA Third Division Proceedings

On February 27, 2015, alleging the CIR's inaction on its administrative claim for refund, Ibex filed a Petition for Review with the Court *a quo.*

On April 30, 2015, the CIR filed his Answer (Petition for Review, February 27, 2015) alleging that it is imperative for Ibex to prove compliance with the relevant requisites in order to validly claim a tax refund.

On June 22, 2015, the CIR filed his Pre-Trial Brief and Ibex filed its Pre-Trial Brief on June 26, 2015. Thereafter, a pre-trial conference was held on June 30, 2015. Together, the parties filed the Joint Stipulation of Facts on July 10, 2015, which was approved by the Court in a Pre-Trial Order dated July 28, 2015.[8]

During trial, Ibex presented the following witnesses: (1) Mr. Joel S. Aldaya, the Accounting Supervisor of Ibex; and, (2) Mr. Franklin R. Casedo, the Court-commissioned Independent Certified Public Accountant (ICPA) for the case.[9]

On March 29, 2016, Ibex filed its Formal Offer of Evidence wherein it offered Exhibits "P-1," "P-1-a" to "P-1-c," "P-1-1" to "P-1-4," "P-1-4-a," "P-1-5," "P-1-5-a," "P-1-6," "P-1-10" to "P-1-17," "P-2," "P-2-a," "P-3," "P-3-a," "P-3-b," "P-4-1-1" to "P-4-1-7," "P-4-2-1" to "P-4-2-8," "P-4-3," "P-4-4-1" to "P-4-4-4," "P-4-5-1" to "P-4-5-3," "P-4-6" to "P-4-8," "P-4-9-1" to "P-4-9-2," "P-4-10-1" to "P-4-10-2," "P-4-11" to "P-4-14," "P-4-15-1" to "P-4-15-20," "P-4-15-21" to "P-4-15-34," "P-6," "P-6-a," "P-6-b," and "P-14-16-1" to "P-14-16-5." The CIR did not file his comment on Ibex's Formal Offer of Evidence despite notice. In Resolutions dated May 13, 2016 and July 20, 2016, the Court admitted all the pieces of evidence offered by Ibex.[10]

On the other hand, the CIR manifested that he would not be presenting any evidence.[11]

On February 16, 2017, Ibex filed its Memorandum. The CIR, however, did not file his memorandum despite notice.[12]

On February 24, 2017, the Court *a quo* finally issued a Resolution submitting the case for decision.[13]

On January 5, 2018, the Court *a quo* rendered a decision which partially granted the petition and ordered the respondent CIR to refund, out of Two

[8] *Id.* at p. 40.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.* at 40-41.
[13] *Id.* at 41.

Million Four Hundred Eight-Five Thousand Eight Hundred Ninety-Two Pesos and Ninety-Two Centavos (₱2,485,892.92), the amount of Fifty-Eight Thousand Nine Hundred Fifty-Six Pesos and Sixty-Five Centavos (₱58,956.65) representing the latter's unutilized input value-added tax arising from its zero-rated sales for the 3rd and 4th quarters of CY 2012.

On March 20, 2018, the Court denied the Motion for Reconsideration of Ibex for lack of merit.

CTA En Banc Proceedings

On April 17, 2018, Ibex filed a Motion for Extension of Time (To file Petition for Review) and prayed for an extension of fifteen (15) days from April 17, 2018, or until May 2, 2018, within which to file the Petition for Review.[14]

The Court *En Banc*, in a Minute Resolution dated April 18, 2018, granted herein petitioner Ibex a final and non-extendible period of fifteen (15) days from April 17, 2018, or until May 2, 2018, within which to file its Petition for Review.[15]

Accordingly, on May 2, 2018, Ibex filed the instant Petition for Review.[16]

In a May 25, 2018 Resolution, the Court *En Banc* ordered respondent CIR to file his comment[17] with which it failed to comply.[18]

In an August 9, 2018 Resolution, the Court submitted the case for decision.[19]

THE ISSUE

As a lone assignment of error,[20] petitioner Ibex states that the CTA Third Division erred in disallowing its VAT zero-rated sales to its client, BPO Solutions, Inc., and insists that Exhibit P-4-7[21] is sufficient to establish that BPO Solutions, Inc. is a non-resident foreign corporation under Section 108(B)(2) of the National Internal Revenue Code of 1997, as amended (1997 NIRC). gc

[14] Rollo, pp. 1-4.
[15] Rollo, p. 8-A.
[16] Rollo, pp. 9-32.
[17] Rollo, pp. 90-91.
[18] July 24, 2018 Records Verification, Rollo, p. 92.
[19] Rollo, pp. 94-95.
[20] Petition for Review, Rollo, p. 18.
[21] Please see Folder 1of 3, Exhibits to the Report of the Independent Certified Public Accountant; Petition for Review, Rollo, pp. 18-30.

THIS COURT'S RULING

We resolve to deny the petition and uphold the assailed decision of the CTA Third Division.

It bears emphasis that what is at issue in this case is evidentiary in nature. More importantly, as the Supreme Court *En Banc* held, the initial reception and appreciation of evidence are functions that are best left to the trial courts.[22]

In this case, on account of inconsistency or non-submission of documentary evidence, the trial court disallowed Ibex's zero-rated sales to two of its three clients, namely:[23]

1. TRG BPO Solutions;[24]
2. Ibex Global Solutions (Philippines) Inc. [*formerly* TRG Global Solutions (Philippines), Inc.]; *and*
3. Square Trade.[25]

To summarize, the CTA Third Division explained in detail the following reasons for the disallowance of the zero-rated sales to *TRG BPO Solutions* and to *Square Trade*:

Ibex Clients / Purchasers	**Evidence Presented / Evaluated**	**CTA Third Division Findings**
1. TRG BPO Solutions	▪ US State of Delaware Certification of the *copy* of the Certificate of Incorporation / Exhibit P-4-7. No copy of the Certificate of Incorporation was attached to the authentication, however.[26] ▪ Philippine SEC Certificate of Non-Registration / Exhibit P-4-8[27]	▪ The court noted an *inconsistency* in the names of the corporation. While US State of Delaware Certification of the *copy* of the Certificate of Incorporation / Exhibit P-4-7 showed the corporate name as "*BPO Solutions Inc.*", Philippine SEC Certificate of Non-Registration / Exhibit P-4-8 showed a different name "*TRG BPO Solutions, Inc.*"

[22] *Crisanto M. Aala, et al. v. Hon. Rey T. Uy, et al.*, G.R. No. 202781, January 10, 2017.
[23] January 5, 2018 Decision, Rollo, p. 46.
[24] *Id.* at pp 48-49.
[25] *Id.* at p. 49.
[26] Please see Folder 1of 3, Exhibits to the Report of the Independent Certified Public Accountant.
[27] Please see Folder 1of 3, Exhibits to the Report of the Independent Certified Public Accountant.

		▪ US State of Delaware Certification of the *copy* of the Certificate of Incorporation / Exhibit P-4-7 was also *not* authenticated despite being executed outside the Philippine jurisdiction.[28] ▪ US State of Delaware Certification of the *copy* of the Certificate of Incorporation / Exhibit P-4-7 was not offered and admitted as part of Ibex's evidence.
2. Square Trade		▪ Ibex failed to prove that the services sold to Square Trade consisted of services "other than processing, manufacturing or repackaging of goods" under Section 108(B)(2) of the 1997 NIRC, as amended.[29] ▪ Ibex also failed to prove that Square Trade is non-resident foreign corporation doing business outside the Philippines.[30]

Accordingly, out of the total zero-rated sales of ₱243,411,391.00 declared by Ibex, the trial court considered *only the sales rendered to TRG Global Solutions (Philippines), Inc. in the amount of ₱8,232,916.51* for VAT zero-rating, broken down as follows:[31]

[28] March 20, 2018 Resolution, Rollo, pp. 59-60.
[29] January 5, 2018 Decision, Rollo, p. 49.
[30] *Id.*
[31] *Id.* at p. 51.

Date	Name of Customer	Revenue (US$)	Forex Rate	Revenue (PhP)
3rd Quarter 2012				
7/31/2012	TRG Global Solutions (Philippines)	30,000.00	41.89	₱ 1,256,700.00
8/31/2012	TRG Global Solutions (Philippines)	30,000.00	42.06	1,261,800.00
9/31/2012	TRG Global Solutions (Philippines)	30,000.00	41.73	1,251,900.00
	Total 3rd Quarter			**₱ 3,770,400.00**
4th Quarter 2012				
10/31/2012	TRG Global Solutions (Philippines)	30,000.00	41.43	₱ 1,242,900.00
11/31/2012	TRG Global Solutions (Philippines)	30,000.00	41.11	1,233,300.00
12/31/2012	TRG Global Solutions (Philippines)	48,423.12	41.02	1,986,316.51
	Total 4th Quarter			**₱ 4,462,516.51**
	Total Zero-rated Sales			**₱ 8,232,916.51**

The Court a quo concluded that:

"Since petitioner's reported sales for the third and fourth quarters of CY 2012 were all zero-rated amounting to Php243,411,391.00, the total input VAT of Php2,485,892.92 is entirely attributable thereto. However, out of the Php1,743,090.58 valid input VAT, only Php58,956.65 is attributable to the valid zero-rated sales of Php8,232,916.51, computed as follows:[32]

Input VAT per Claim		Php2,485,892.92
Less:		
Disallowed Input VAT		
Third Quarter	384,494.47	
Fourth Quarter	358,307.87	742,802.34
Valid Input VAT		1,743,090.58
Divide By:		
Valid Zero-Rated Sales	8,232,916.51	3.38231%
Total Zero-Rated Sales	243,411,391.00	
Excess Substantiated Input VAT		**Php58,956.65**

First, the Court notes that petitioner failed to discuss the disallowance pertaining to Ibex's sales to Square Trade[33] and merely focused its appeal on the disallowance of the sales to TRG BPO Solutions.[34] With respect to this issue, therefore, the Court *a quo*'s decision which remains uncontested has become final. Jc

[32] *Id.* at p. 54.
[33] *Id.* at p. 49.
[34] Petition for Review, Rollo, pp. 18-30.

Second, on the issue of the US State of Delaware Certification of the *copy* of the Certificate of Incorporation or Exhibit P-4-7,[35] we note that this document consisting of only one (1) page *merely certifies* that the "ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF 'BPO SOLUTIONS, INC.' FILED IN THIS OFFICE OF THE THIRD DAY OF MARCH, A.D. 2010, AT 1 O'CLOCK P.M.":

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Delaware PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "BPO SOLUTIONS, INC.", FILED IN THIS OFFICE ON THE THIRD DAY OF MARCH, A.D. 2010, AT 1 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

Jeffrey W. Bullock, Secretary of State

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AUTHENTICATION: 7845540

DATE: 03-03-10

Exhibit P-4-7 only serves to authenticate the Certificate of Incorporation of "*BPO Solutions, Inc.*". The Certificate of Incorporation was, unfortunately, *not attached* to the exhibit, contrary to petitioner's statement. Aside from a general statement that Certificate of Incorporation of "*BPO Solutions Inc.*" was offered and admitted, Ibex has been unable to point to a particular record or folder where this document can be found.

[35] Please see Folder 1of 3, Exhibits to the Report of the Independent Certified Public Accountant.

Upon a careful review of the records, it has come to light that the actual document itself containing the incorporation of "*BPO Solutions, Inc.*" in the U.S. State of Delaware was, without doubt, *not* offered in evidence. The Certificate of Incorporation from the U.S. State of Delaware, which according to Exhibit P-4-7 was attached to it, was in fact *excluded* from those exhibits submitted to the court.[36]

In other words, the actual proof that should have established that "*BPO Solutions, Inc.*" was a U.S. corporation engaged in business outside the Philippines and, thus, considered as a non-resident foreign corporation under Section 108(B)(2) of the 1997 NIRC, as amended,[37] was never offered in evidence.

When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself.[38] Under the best evidence rule, the authentication found in Exhibit P-4-7 cannot substitute for the document being authenticated, i.e. Certificate of Incorporation.

Third, even if assuming that the Court were to overlook the deficiency of Exhibit P-4-7, there is another issue that has not been addressed on appeal and which the assailed decision also underscored: the discrepancy in the names of the corporation stated in the certifications.[39]

Specifically, the Philippine SEC Certificate of Non-Registration / Exhibit P-4-8[40] does not help clarify the identity of the corporation that Ibex claims to be its non-resident client doing business in the U.S: "*BPO Solutions,*

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[36] See May 13, 2016 Resolution, Division Docket, Vol. 2, p. 709.

[37] Section 108(B)(2) of the 1997 NIRC, as amended, provides that sale of services consisting of those other than "processing, manufacturing or repacking goods" to non-resident foreign corporations, doing business outside the Philippines is subject to zero (0%) percent VAT:

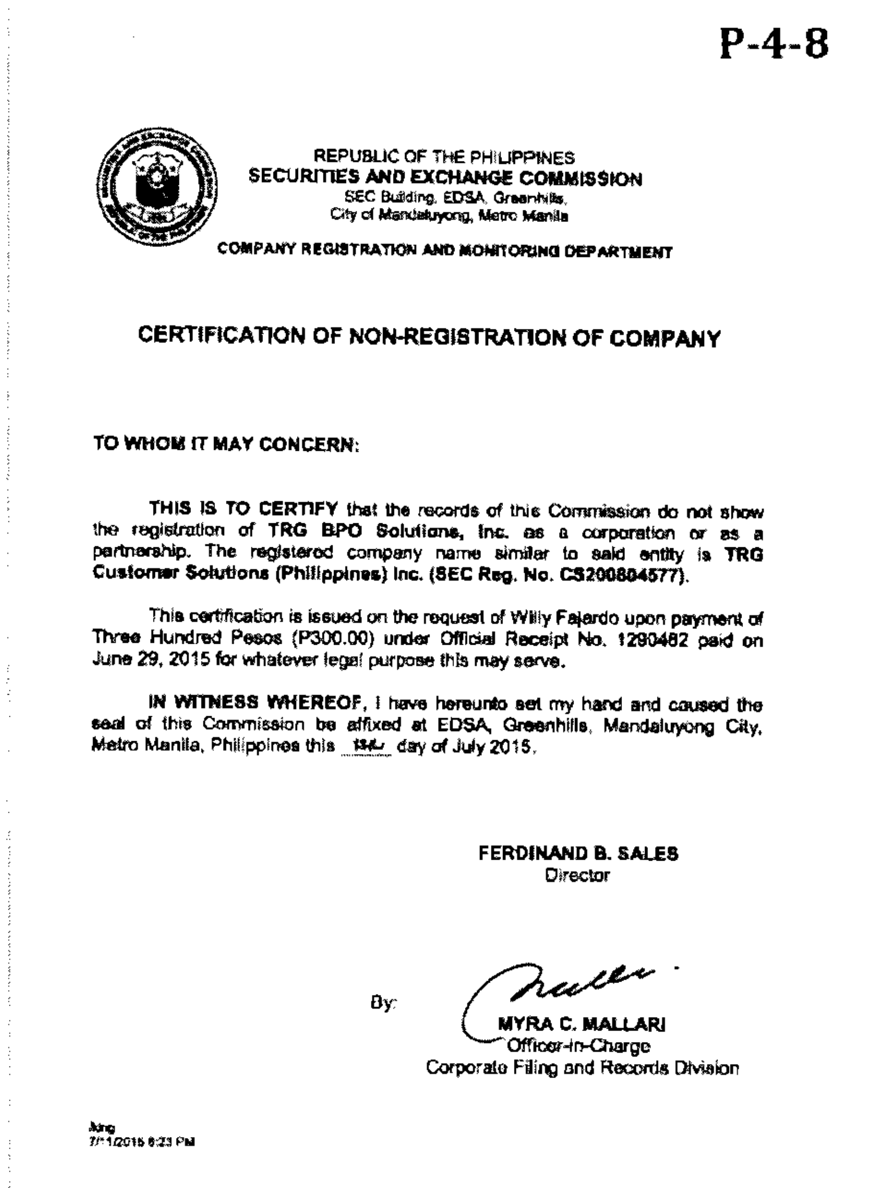
> "**Section 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.-*
>
> xxx xxx xxx
>
> B. *Transactions Subject to Zero Percent (0%) Rate.-* The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) <u>Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);</u>
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate" (*underscoring supplied*)

[38] Section 3, Rule 130 of the Rules of Court.

[39] January 5, 2018 Decision, Rollo, p. 49.

[40] Please see Folder 1of 3, Exhibits to the Report of the Independent Certified Public Accountant.

Inc." Exhibit P-4-8 would have served as an additional evidence to prove the fact that "*BPO Solutions, Inc.*" is *not* registered as a corporation or partnership here in the Philippines and, thus, a non-resident foreign corporation. But as pointed out in the assailed decision, however, it provides a certification for a different corporation "*TRG BPO Solutions, Inc.*". A copy of Exhibit P-4-8 is reproduced below for reference:



P-4-8

REPUBLIC OF THE PHILIPPINES
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills,
City of Mandaluyong, Metro Manila

COMPANY REGISTRATION AND MONITORING DEPARTMENT

CERTIFICATION OF NON-REGISTRATION OF COMPANY

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that the records of this Commission do not show the registration of **TRG BPO Solutions, Inc.** as a corporation or as a partnership. The registered company name similar to said entity is **TRG Customer Solutions (Philippines) Inc. (SEC Reg. No. CS200804577).**

This certification is issued on the request of Willy Fajardo upon payment of Three Hundred Pesos (P300.00) under Official Receipt No. 1290482 paid on June 29, 2015 for whatever legal purpose this may serve.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of this Commission be affixed at EDSA, Greenhills, Mandaluyong City, Metro Manila, Philippines this 1st day of July 2015.

FERDINAND B. SALES
Director

By:

MYRA C. MALLARI
Officer-in-Charge
Corporate Filing and Records Division

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Exhibit P-4-8 only heightens further the doubt in the Court's mind of whether Ibex's client is *truly* a non-resident foreign corporation whose sales to it are qualified for zero-rating under Section 108(B)(2) of the 1997 NIRC, as amended.

More significantly, Ibex made no attempt to reconcile these conflicting certifications between Exhibit P-4-7 and Exhibit P-4-8. No explanation was provided on record to harmonize the two official certifications from

Philippine and U.S. jurisdictions on supposedly the same non-resident foreign corporation.

Fourth, the Court also verified the Exhibit P-4-7 authentication for "*BPO Solutions, Inc.*" online through the website "corp.delaware.gov/authver.shtml" as requested in the petition.[41] Ibex argues that the online search result will unquestionably demonstrate the fact of incorporation of "*BPO Solutions, Inc.*".

The Court disagrees.

Both Exhibits P-4-7 (*BPO Solutions, Inc.*) and Exhibit P-4-8 (*TRG BPO Solutions, Inc.*) were offered to prove that its "sales of services for the claim period were (1) rendered to BPO Solutions, Inc., a non-resident foreign corporation incorporated in and with principal office or resident in the United States and is engaged in business conducted outside the Philippines".[42] Insofar as these two documents do not tie up with each other only demonstrate that questions on the status of "*BPO Solutions, Inc.*" remain unanswered. In the absence of any explanation for this discrepancy from Ibex, the Court will not disturb the findings of the trial court.

Finally, while the petitioner implores the liberal application of the rules of evidence to serve the interest of justice and truth,[43] the Court is also not unaware of the principle that tax refund cases are construed strictly against the taxpayer. Relevant to the disposition of the evidentiary nature of the issue in this case is *Coca-Cola Bottlers Philippines, Inc. v Commissioner of Internal Revenue*,[44] where the Supreme Court denied a VAT claim for refund and reiterated the same guiding principle in this wise:

> "On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, 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. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. 44 Thus, in view of petitioner's failure to prove, to the satisfaction of the Court, its entitlement to the grant of tax refund or issuance of tax credit of input VAT in the amount of ₱123,459,647.70 it inadvertently failed to include in its VAT Return, the Court deems it necessary to deny the same." (*underscoring supplied*)

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[41] Petition for Review, Rollo, pp. 26-27.
[42] Formal Offer of Evidence, Division Docket, Vol. 2, pp. 562-563.
[43] Petition for Review, Rollo, pp. 28-30.
[44] G.R. No. 222428, February 19, 2018.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The January 5, 2018 Decision and the March 20, 2018 Resolution are hereby **AFFIRMED.**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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