REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,	**CTA *EB* NO. 2067** *(CTA Case No. 9180)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
MACQUARIE OFFSHORE SERVICES PTY. LTD. - PHILIPPINE BRANCH, *Respondent.*	Promulgated: **OCT 29 2020** 4:02 p.m.

DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[2] asking the Court to reverse and set aside the Decision, promulgated on 6 November 2018, and Resolution, dated 3 May 2019, of the Court of Tax Appeals ("CTA") Special First Division ("Court in Division") only insofar as it partially granted respondent's claim for refund/tax credit in the reduced amount of ₱51,536,274.92 allegedly representing its unutilized input value-added tax ("VAT") attributable to its zero-rated receipts for taxable year ended 31 March 2014.

[1] Petition for Review, *Rollo*, pp. 5-81, with annexes.
[2] A.M. No. 05-11-07-CTA, 22 November 2005.

The Parties

Petitioner Commissioner of Internal Revenue ("CIR") is vested, under appropriate laws, the authority to act on and approve claims for refund or tax credit as provided for by law. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent Macquarie Offshore Services Pty. Ltd.- Philippine Branch is a foreign corporation organized and existing under the laws of Australia. It is duly licensed to do business in the Philippines by the Securities and Exchange Commission through its Regional Operating Headquarters ("ROHQ"). It holds office at the 29th Floor, Tower 1, The Enterprise Center, Ayala Avenue, Makati City. Respondent is also a VAT-registered entity.

The Facts

Respondent, as an ROHQ, provides qualifying services to its affiliates and related parties in the Asia-Pacific Region and other foreign markets. These qualifying services include application testing and monitoring, technology infrastructure, application development and support, and financial administration.[3]

During taxable year 2014, respondent rendered services to its sole foreign non-resident client, Macquarie Financial Holdings Limited ("MFHL"), and generated VAT zero-rated receipts in the total amount of ₱4,386,971,075.48,[4] broken down as follows:

TAXABLE YEAR 2014	VAT ZERO-RATED RECEIPTS
1st Quarter	₱ 885,752,256.26
2nd Quarter	1,448,664,049.63
3rd Quarter	752,109,656.90
4th Quarter	1,300,445,112.69
TOTAL	**₱ 4,386,971,075.48**

The services rendered by respondent to MFHL was pursuant to a Service Agreement executed on 1 April 2009. As found by the Court in Division, the services were rendered by respondent in the Philippines, paid in Australian Dollars ("AUD") inwardly remitted to the Philippines, and duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP").[5]

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[3] Decision, *Rollo*, pp. 21-76.
[4] Exhibits "P-5" to "P-8", Court in Division Docket, Vol. II, pp. 1194-1201.
[5] Decision, *Rollo*, pp. 21-76.

Likewise, during taxable year 2014, respondent incurred and paid input VAT arising from its domestic purchases of goods and services.[6]

On account of the foregoing, respondent filed its Quarterly VAT Returns,[7] as follows:

QUARTER	PERIOD COVERED	DATE FILED
1st	1 April to 30 June 2013	25 July 2013
2nd	1 July to 30 September 2013	24 October 2013
3rd	1 October to 31 December 2013	27 January 2014
4th	1 January to 31 March 2014	25 April 2014

On 26 June 2015, respondent filed an administrative application for issuance of a Tax Credit Certificate ("TCC")/refund of input VAT with the Bureau of Internal Revenue ("BIR") Revenue District Office ("RDO") No. 47.[8]

However, the BIR denied the administrative claim for refund/TCC on 29 September 2015. The Denial Letter was received by respondent on 5 October 2015.[9]

Aggrieved, respondent filed the original Petition for Review on 3 November 2015.[10]

On 6 November 2018, the Court in Division promulgated the assailed Decision which partially granted the original Petition for Review and ordered petitioner to refund or issue a TCC in favor of respondent in the amount of ₱51,536,274.92.[11] The dispositive portion is hereby quoted, to wit:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent CIR is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in the amount of **FIFTY-ONE MILLION FIVE HUNDRED THIRTY-SIX THOUSAND TWO HUNDRED SEVENTY-FOUR AND 92/100 PESOS (P51,536,274.92)**, representing petitioner's unutilized input VAT attributable to its zero-rated sales for FY ended March 31, 2014.
>
> **SO ORDERED.**"

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[6] *Ibid.*
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*

The assailed Decision prompted petitioner to file a Motion for Partial Reconsideration on 6 December 2018.[12] Likewise, respondent filed its Comment/Opposition (Re: BIR's Motion for Partial Reconsideration dated 26 November 2018) on 17 January 2019.[13]

On 3 May 2019, the Court in Division issued the assailed Resolution denying petitioner's Motion for Partial Reconsideration for lack of merit.[14] The said Resolution was received by petitioner on 15 May 2019.

Subsequently, petitioner filed a Motion for Extension of Time to File Petition for Review on 21 May 2019, asking the Court *En Banc* to grant him an additional period of fifteen (15) days to file his Petition for Review.[15] The Court *En Banc* granted the said Motion and gave petitioner until 14 June 2019 to file the same.[16]

Petitioner filed his Petition for Review on 13 June 2019.[17]

On 1 July 2019, the Court *En Banc* issued a Resolution ordering respondent to file its Comment.[18] Respondent filed its Comment/Opposition[19] on 24 July 2019, which was well within the extended period granted by the Court *En Banc*.[20]

Thereafter, on 22 August 2019, the Court *En Banc* issued a Resolution ordering the parties to file their respective Memoranda.[21]

Petitioner, on 30 September 2019, posted his Manifestation & Motion, stating that he intends his Petition for Review to stand as his Memorandum for this case.[22] As for respondent, it filed its Memorandum[23] on 8 October 2019, which was within the extended period granted by the Court *En Banc*.[24]

On 6 November 2019, the Court *En Banc* issued a Resolution submitting the case for decision.[25] Hence, this Decision.

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[12] Resolution, *Rollo*, pp. 78-81; Motion for Partial Reconsideration, Court in Division Docket, Vol. II, pp. 1863-1873.
[13] Comment/Opposition (Re: BIR's Motion for Partial Reconsideration dated 26 November 2018), Court in Division Docket, Vol. III, pp. 1876-1888.
[14] *Ibid.*
[15] Motion for Extension of Time to File Petition for Review, *Rollo*, pp. 1-3.
[16] Minute Resolution dated 23 May 2019, *Rollo*, p. 4.
[17] Petition for Review, *Rollo*, pp. 5-81, with annexes.
[18] Resolution dated 1 July 2019, *Rollo*, pp. 83-84.
[19] Comment/Opposition (Re: BIR's Petition for Review dated 10 June 2019), *Rollo*, p. 90-111.
[20] Minute Resolution dated 16 July 2019, *Rollo*, p. 89.
[21] Resolution dated 22 August 2019, *Rollo*, pp. 113-114.
[22] Manifestation & Motion, 7 October 2019, *Rollo*, pp. 120-122.
[23] Memorandum, *Rollo*, pp. 123-139.
[24] Minute Resolution dated 27 September 2019, *Rollo*, p. 119.
[25] Resolution dated 6 November 2019, *Rollo*, pp. 141-142.

The Issues

Petitioner raises the sole issue below for the Court *En Banc*'s resolution, to wit:

> WHETHER THE COURT IN DIVISION ERRED IN HOLDING THAT RESPONDENT IS PARTIALLY ENTITILED TO ITS CLAIM FOR TAX REFUND/TCC IN THE REDUCED AMOUNT OF ₱51,536,274.92, REPRESENTING RESPONDENT'S UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED RECEIPTS FOR TAXABLE YEAR ENDING 31 MARCH 2014.

Arguments of the Parties

Petitioner's Arguments[26]

Petitioner argues that the Court in Division erred in ruling that the respondent was able to prove that it has VAT zero-rated receipts amounting to ₱4,386,971,075.48. He insists that the service invoices, specifically, Exhibits P-25 to P-25-dd, P-28 to P-28-jj, P-31 to P-31-q and P-34 to P-34-gg; and official receipts, marked as Exhibits P-24 to P-24-a, P-26 to P-26-a, P-27 to P-27-b, P-30 to P-30-a, P-33 to P-33-c, and P-35-b failed to comply with the invoicing requirements under the National Internal Revenue Code of 1997, as amended (hereinafter referred to as the "Tax Code"). Petitioner alleges that the service invoices and official receipts were either: (1) dated outside the period of the claim; or (2) that the VAT was not separately shown on these documents; among others. For these reasons, petitioner opines that respondent's claim should be denied outright.

Likewise, petitioner insists that respondent's documentary exhibits, specifically, the Service Agreement it executed with MFHL, service invoices, official receipts, and certificates of inward remittance should be denied and not be relied upon by the Court for being hearsay evidence.[27] He explains that the aforementioned pieces of evidence were identified by witnesses, namely, respondent's Head of Finance Ms. Ailyn Perocho and Independent Certified Public Accountant ("ICPA") Katherine Constantino who both have no personal knowledge as to the fact of issuance and contents of the said documentary exhibits.

Finally, petitioner argues that a claim for refund should be strictly construed against respondent since it partakes of the nature of a tax exemption.

[26] Petition for Review, *Rollo*, pp. 5-81, with annexes.
[27] Currently referred to as "Lack of Firsthand Knowledge" under the New Rules on Evidence.

Hence, the burden of proof is with the respondent to convince the Court that it is entitled to the VAT refund/TCC being claimed.

Respondent's Arguments[28]

Respondent counters that the arguments raised by petitioner cannot be sustained. It explains that its rendition of services, which triggers the issuance of the service invoices, and its receipt of payment from its clients, which prompts the issuance of the official receipts, on most instances, don't fall under the same fiscal year. As such, it explains, it declares its gross receipts for VAT purposes on the same period as when it issues the official receipts to its clients.

It argues that it was able to submit to the Court in Division its Sales Summary which shows the entire breakdown of its claim for VAT refund/TCC. It opines that this Summary proves that it did not have any duplicate claims and that the service invoices and official receipts it issued during taxable year 2014 all matched. Hence, it argues that petitioner is incorrect to state that it is not entitled to the VAT refund/TCC being claimed.

As for its input VAT, respondent explains that the Court in Division had already gone through the evidence it submitted and had already concluded the same to be sufficient to prove its entitlement to the VAT refund/TCC being claimed. It argues that assuming the service invoices or official receipts are indeed defective, the burden of identifying the defective invoices or receipts lies with the petitioner. Considering that he failed to identify the said defective evidence, it opines that the Court *En Banc* should uphold the assailed Decision and Resolution.

As for the argument of petitioner questioning the admissibility of its evidence, respondent explains that the pieces of evidence it submitted are admissible for the following reasons: (a) that the Service Agreement it entered into with MFHL is a public document since it bears the Consular Certificate of Authentication issued by a consular official of the Philippines stationed in Australia, consistent with Section 24, Rule 132 of the Revised Rules on Evidence; (b) that the certificates of inward remittance were duly notarized and as such are considered public documents under Section 19, Rule 132 of the Revised Rules on Evidence; (c) that the service invoices and official receipts were identified by Ms. Ailyn Perocho who, as Head of respondent's Finance Department, have custody over the said documents and, therefore, has personal knowledge over the same; and (d) the documents identified by the ICPA were in relation to the report she executed pursuant to Section 2, Rule 13 of the RRCTA.

[28] Memorandum, *Rollo*, pp. 123-142.

Moreover, respondent argues that the hearsay rule applies only to evidence that cannot be tested by cross-examination, which is not applicable in this case since the petitioner had every opportunity to test the veracity of the evidence it presented. It also raises that even assuming the pieces of evidence are inadmissible for being hearsay, his objections should no longer be entertained by the court for failure to timely raise the same which is tantamount to petitioner's waiver of his objections.

Finally, although it agrees with petitioner that claims for refund are strictly construed against the taxpayer, respondent claims that it was able to prove that it is entitled to refund or issuance of TCC. It also insists that the arguments presented by petitioner in the instant Petition for Review are without factual or legal basis. Hence, the same must be denied.

The Ruling of the Court

After going through the arguments raised by the petitioner in the instant Petition for Review, the CTA *En Banc* finds no cogent reason to warrant the reversal of the assailed Decision and Resolution.

In the sale of services, the taxpayer is required to report its gross receipts for VAT purposes upon actual or constructive receipt of payment, irrespective of whether the service has already been rendered or not

It is undisputed that respondent is engaged in providing services to its clients as specified in its Certificate of Registration and License No. FS200805155, issued by the Securities and Exchange Commission, which authorizes the same to "engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication; and business development."[29]

Furthermore, the Service Agreement executed by respondent and MFHL proves that the former rendered the following services to the latter: application testing and monitoring, technology infrastructure support, application development and support, and financial administration.[30]

[29] Exhibit "P-1-c," Court in Division Docket, Vol. II, p. 1170.
[30] Exhibit "P-41," Court in Division Docket, Vol. III, pp. 1655-1669.

As such, since respondent was able to sufficiently prove that it is engaged in rendering services, the Tax Code provision relevant to it is ***Section 108 of the Tax Code*** which states:

> "SEC. 108. **Value-added Tax on Sale of Services** and Use or Lease of Properties. -
>
> (A) Rate and Base of Tax. - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
>
> xxx xxx xxx
>
> The term **'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.**"[31]

As can be observed from the foregoing definition of gross receipts, it is clear that a taxpayer is required to declare the same for VAT purposes only upon its actual or constructive receipt of the client's payment, irrespective of whether the service has already been performed or not.[32]

The concept of constructive receipt was further elaborated in ***Section 4.108-4 Revenue Regulation ("RR") No. 16-2005***,[33] as follows:

> "**Constructive receipt**" occurs when the **money consideration or its equivalent is placed at the control of the person who rendered the service without restrictions by the payor.** The following are examples of constructive receipts:
>
> (1) deposit in banks which are made available to the seller of services without restrictions;
>
> (2) issuance by the debtor of a notice to offset any debt or obligation and acceptance thereof by the seller as payment for services rendered; and
>
> (3) transfer of the amounts retained by the payor to the account of the contractor."[34]

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[31] Emphasis supplied.
[32] Northwind Power Development Corporation v. CIR, CTA *EB* Case Nos. 1132 &1141, 2 September 2015.
[33] Subject: Consolidated Value-Added Tax Regulation of 2005, 1 September 2005.
[34] Emphasis supplied.

Apropos, the Supreme Court in the case of ***Commissioner of Internal Revenue v. Manila Mining Corporation***[35] identified the official receipt as the document issued by the seller signifying its written acknowledgment of the ***fact of payment in money or other settlement*** made by its client or customer. Hence, it is the best evidence available to prove the fact of receipt of payment.

The aforementioned principles were also discussed by the Court *En Banc* in the case of ***Northwind Power Development Corporation v. Commissioner of Internal Revenue***,[36] to wit:

> The **value-added tax on sale of services accrues upon actual or constructive receipt of payment or consideration by the seller of service as evidenced by official receipts, regardless of whether or not the service have already been rendered.** To put it differently, **VAT should not be based on the income that must have been received but on the income that was actually received; although the taxable transaction is the past, present or future performance of service, the tax accrues only upon actual or constructive receipt of consideration. In this regard, the Court in Division correctly ruled that "as long as the amount of P7,775,084.14 is uncollected, the same cannot form part of petitioner's [NPDC] zero-rated sales." The same also holds true as regards the amount of P30,634,465.59.**[37]

Therefore, to check the veracity of petitioner's claims, the Court *En Banc* applied the foregoing principles in the case at bar and referred to the official receipts submitted by respondent to determine whether the VAT zero-rated receipts were correctly declared in the proper period, as mandated by ***Section 108 of the Tax Code***, to wit:

Exhibit	Official Receipt No.	Date	Period Covered	Quarter
P-24[38]	33	28 April 2013	1 April to 30 June 2013	1st
P-24-a[39]	34	21 June 2013		
P-27[40]	1001	30 July 2013	1 July to 30 September 2013	2nd
P-27-a[41]	1002	16 August 2013		
P-27-b[42]	1003	26 September 2013		
P-30[43]	1004	24 October 2013	1 October to 31 December 2013	3rd
P-30-a[44]	1005	18 November 2013		

[35] G.R. No. 153204, 31 August 2005.
[36] CTA *EB* Case Nos. 1132 &1141, 2 September 2015.
[37] Emphasis supplied.
[38] Court in Division Docket, Vol. III, p. 1455.
[39] *Id.*, p. 1456.
[40] *Id.*, p. 1490.
[41] *Id.*, p. 1491.
[42] *Id.*, p. 1492.
[43] *Id.*, p. 1531.
[44] *Id.*, p. 1532.

P-33[45]	1006	10 January 2014	1 January to 31 March 2014	4th
P-33-a[46]	1007	26 February 2014		
P-33-b[47]	1008	26 March 2014		
P-33-c[48]	1009	27 March 2014		

Consistent with the ruling of the Court in Division, the Court *En Banc* finds that the VAT zero-rated receipts of respondent were all correctly declared in the proper period for VAT purposes.

Hence, in view of the foregoing discussions, the Court *En Banc* sees no error in the findings of the Court in Division and, therefore, sustains the same.

Petitioner failed to prove that respondent did not comply with the invoicing requirements under the Tax Code.

Petitioner also asserts that respondent failed to comply with the invoicing requirements under the Tax Code and, therefore, urges the Court *En Banc* to deny the latter's VAT refund/credit claim.

The argument of petitioner is without merit.

Section 113 of the Tax Code provides for the invoicing requirements for VAT registered persons, to wit:

> "SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. -
>
> (A) Invoicing Requirements. - A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A **statement that the seller is a VAT-registered person**, followed by his **Taxpayer's Identification Number (TIN)**; and

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45 *Id.*, p. 1553.
46 *Id.*, p. 1554.
47 *Id.*, p. 1555.
48 *Id.*, p. 1556.

(2) The total amount which the purchaser pays or is obligated **to pay** to the seller with the indication that such amount includes the value-added tax. Provided, That:

xxx xxx xxx

(c) If the **sale is subject to zero percent (0%) value-added tax, the term <u>"zero-rated sale"</u> shall be written or printed prominently on the invoice or receipt.**

(3) The **<u>date of transaction, quantity, unit cost and description of the goods or properties or nature of the service</u>**; and

(4) **In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the <u>name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client</u>**."[49]

Implementing the aforementioned provision is ***Section 4.113 of RR No. 16-05***,[50] to wit:

"Sec. 4.113-1. Invoicing Requirements.-

(A) A Vat-registered person shall issue: -

xxx xxx xxx

(2) **A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.**

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoice/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. -The following information shall be indicated in VAT invoice or VAT official receipt:

(1) **A statement that the seller is a VAT-registered person, followed by his TIN**;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

xxx xxx xxx

[49] Emphasis supplied.
[50] Subject: Consolidated Value-Added Tax Regulations of 2005, 1 September 2005.

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(3) In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."[51]

The importance of complying with the aforementioned provisions was explained in ***Revenue Memorandum Circular ("RMC") No. 42-03***,[52] to wit:

> "Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?
>
> A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> **If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), <u>its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales.</u>** Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer."[53]

Based on the discussions above, it is vital for a taxpayer claiming VAT refund or TCC to prove that it had followed the invoicing requirements. Failure to comply with all the requirements will cause the denial of the taxpayer's VAT refund/TCC claim.

To prove its compliance with the invoicing requirements, respondent submitted several pieces of evidence including the official receipts and service invoices it issued during taxable year 2014. These documents were examined by the court-commissioned ICPA and was verified by the Court in Division to be in compliance with the said requirements.

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[51] Emphasis supplied.

[52] Subject: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters, 15 July 2013.

[53] Emphasis supplied.

Petitioner now asks the Court *En Banc* to take a second look at the official receipts and service invoices which he alleges were issued in violation of the invoicing requirements. Unfortunately, petitioner failed to cite both the specific official receipt/s and service invoice/s and the specific invoicing requirements respondent allegedly violated. In fact, the allegations in the instant Petition for Review are couched in the nature of general assignments of error which are not allowed under the Rules of Court and jurisprudence. The case of ***De Liano et. al. v. Hon. Court of Appeals***[54] emphasizes this point, to wit:

> "An assignment of errors in appellate procedure is an enumeration by appellant or plaintiff in error of the errors alleged to have been committed by the court below in the trial of the case upon which he seeks to obtain a reversal of the judgment or decree; it is in the nature of a pleading, and performs in the appellate court the same office as a declaration or complaint in a court of original jurisdiction. Such an assignment is appellant's complaint, or pleading, in the appellate court, and takes the place of a declaration or bill; an appeal without an assignment of errors would be similar to a suit without a complaint, bill, or declaration. The assignment is appellant's declaration or complaint against the trial judge, charging harmful error, and proof vel non of assignment is within the record on appeal.
>
> xxx xxx xxx
>
> **The object of such pleadings is to point out the specific errors claimed to have been committed by the court below, in order to enable the reviewing court and the opposing party to see on what points appellant or plaintiff in error intends to ask a reversal of the judgment or decree, and to limit discussion to those points.** The office of an assignment of errors is not to point out legal contentions, but only to inform the appellate court that appellant assigns as erroneous certain named rulings; the function of the assignment is to group and bring forward such of the exceptions previously noted in the case on appeal as appellant desires to preserve and present to the appellant.
>
> **It has been held that a general assignment of errors is unacceptable under the rules. Thus, a statement of the following tenor: that "the Court of First Instance of this City incurred error in rendering the judgment appealed from, for it is contrary to law and the weight of the evidence," was deemed insufficient. The appellant has to specify in what aspect of the law or the facts that the trial court erred.** The conclusion, therefore, is that the appellant must carefully formulate his assignment of errors. xxx"[55]

At any rate, the Court *En Banc* did take a second look at the official receipts and service invoices and did not find any defect as to the issuance of the same. Indeed, the official receipts and service invoices were all issued in compliance with the invoicing requirements. Hence, the Court *En Banc* affirms the findings of the Court in Division ruling that the respondent was able to sufficiently prove to having received VAT zero-rated receipts in the amount of ₱4,386,971,075.48.

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[54] G.R. No. 142316, 22 November 2001.

[55] Emphasis supplied.

<u>Respondent's documentary exhibits are admissible evidence</u>

Petitioner further argues that the documentary exhibits presented by respondent, specifically, the Service Agreement dated 1 April 2009, service invoices, VAT official receipts, and certificates of inward remittance, should be declared inadmissible since the witnesses who identified the same have no firsthand knowledge with regard to the authenticity and due execution of the said pieces of evidence.

The contention of the petitioner lacks merit.

Under the Revised Rules on Evidence, documentary evidence can either be classified as public or private. In order to be admissible in evidence, private documents generally need to be authenticated, while public documents do not require authentication.[56] The pertinent rules governing the authentication of private documents effective during the time of the filing of the original Petition for Review is found under ***Section 20, Rule 132 of the Revised Rules on Evidence*** which states:

> "Section 20. Proof of private document. — **Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either**:
>
> (a) **By anyone who saw the document executed or written**; or
>
> (b) **By evidence of the genuineness of the signature or handwriting of the maker**.
>
> Any other private document need only be identified as that which it is claimed to be. (21a)"[57]

As provided under the Revised Rules on Evidence, a private document may be authenticated by a person who witnessed the execution of the documentary evidence or a witness who can attest to the genuineness of the handwriting or signature of the maker of the document. Aside from this, the courts may also refer to another document, duly proven to be genuinely written or signed by the maker, and compare this to the said documentary evidence.[58]

Meanwhile, ***Section 19, Rule 132 of the Revised Rules on Evidence*** enumerates the type of public documents, to wit:

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[56] Heirs of Jose Marcial K. Ochoa v. G&S Transport Corporation, G.R. Nos. 170071 & 170125, 16 July 2012.
[57] Emphasis supplied.
[58] Section 22, Rule 132 of the Revised Rules on Evidence.

> Section 19. Classes of Documents. — For the purpose of their presentation in evidence, documents are either public or private.
>
> Public documents are:
>
> **(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;**
>
> **(b) Documents acknowledge before a notary public except last wills and testaments; and**
>
> (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.
>
> All other writings are private. (20a)[59]

Guided by the foregoing Rules, the Court *En Banc* shall now determine the veracity of petitioner's arguments.

First, petitioner posits that the Service Agreement entered into by respondent and MFHL is inadmissible since it was not duly authenticated. Petitioner's argument lacks merit.

In ***Landingin v. Republic of the Philippines***,[60] the Supreme Court ruled that a document duly acknowledged and authenticated in a foreign country in accordance with ***Section 2 of Act No. 2103***[61] will be treated similarly to a notarized document in the Philippines and be considered a public document without the need of further authentication; such can thus be considered admissible in evidence. The pertinent portion of the Decision is hereby quoted, as follows:

> Petitioner failed to offer in evidence Pagbilao's Report and of the Joint Affidavit of Consent purportedly executed by her children; the authenticity of which she, likewise, failed to prove. The joint written consent of petitioner's children was notarized on January 16, 2002 in Guam, USA; **<u>for it to be treated by the Rules of Court in the same way as a document notarized in this country it needs to comply with Section 2 of Act No. 2103, which states</u>**:
>
> > Section 2. An **instrument or document acknowledged and authenticated in a foreign country shall be considered authentic if the acknowledgment and authentication are made in accordance** with the following requirements:

[59] Emphasis supplied.
[60] G.R. No. 164948, 27 June 2006.
[61] An Act Providing for the Acknowledgment and Authentication of Instruments and Documents without the Philippine Islands, 26 January 1912.

> (a) The acknowledgment shall be made before (1) **an ambassador, minister, secretary of legation, chargé d affaires, consul, vice-consul, or consular agent of the Republic of the Philippines, acting within the country or place to which he is accredited**, or (2) a notary public or officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done.
>
> (b) The person taking the acknowledgment shall **certify that the person acknowledging the instrument or document is known to him, and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.** In case the acknowledgment is made before a notary public or an officer mentioned in subdivision (2) of the preceding paragraph, the certificate of the notary public or the officer taking the acknowledgment shall be authenticated by an ambassador, minister, secretary of legation, chargé de affaires, consul, vice-consul, or consular agent of the Republic of the Philippines, acting within the country or place to which he is accredited. The officer making the authentication shall certify under his official seal that the person who took the acknowledgment was at the time duly authorized to act as notary public or that he was duly exercising the functions of the office by virtue of which he assumed to act, and that as such he had authority under the law to take acknowledgment of instruments or documents in the place where the acknowledgment was taken, and that his signature and seal, if any, are genuine.

> **As the alleged written consent of petitioner's legitimate children did not comply with the afore-cited law, the same can at best be treated by the Rules as a private document whose authenticity must be proved either by anyone who saw the document executed or written**; or by evidence of the genuineness of the signature or handwriting of the makers.

Applying the foregoing in this case, a close scrutiny of the Service Agreement proves that it was duly certified by Consul Marford M. Angeles of the Philippine Consulate General, Sydney, Australia and authenticated by his seal of office.[62] Moreover, the Authentication/Certification issued by Consul Marford M. Angeles satisfies all the requirements mandated under ***Section 2(b) of Act No. 2103***.

Considering that respondent was able to prove that the Service Agreement meets the requirements under ***Section 2 of Act No. 2103***, this Court rules that it is admissible in evidence.

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[62] Court in Division Docket, Vol. III, p. 1655-1669.

Second, the petitioner, likewise, insists that the certificates of inward remittance submitted by respondent should be declared inadmissible for failure to have them authenticated. The petitioner's contention is erroneous.

As correctly raised by respondent, the certificates of inward remittance are notarized documents and, thus, require no further authentication in order to be admissible in Court. As discussed above, a notarized document is a type of public document under ***Section 19(b), Rule 132 of the Revised Rules on Evidence.***

Third, petitioner points out that the service invoices and official receipts should be ruled as inadmissible since these documents were identified by witnesses, specifically, Ms. Ailyn Perocho and ICPA Katherine Constantino, who both have no personal knowledge of the fact of issuance and contents of the said documents. Again, the argument of petitioner is untenable.

Evidently, the service invoices and official receipts presented by respondent are not public documents as provided under ***Section 19, Rule 132 of the Revised Rules on Evidence***. Therefore, in order for these documents to be admissible in evidence, it must be duly authenticated by a competent witness who either: (a) saw the document being executed; or (b) is familiar with the handwriting or signature of the person who executed the documents.

After perusing the service invoices and official receipts, the Court *En Banc* found that these documents were either signed by respondent's witness Ailyn Perocho or by a certain Ms. Floridain Cezar, which was admitted by respondent's witness Ms. Ailyn Perocho in her Judicial Affidavit,[63] as follows:

> 68. Q: Ms. Witness, we noticed that these schedules pertain to official receipts and several service invoices. What are these official receipts and service invoices?
>
> A: The official receipts are issued by the Company to acknowledge the payments made by MFHL in a particular period. The service invoices are issued by the Company when it bills MFHL for services rendered during the relevant period.
>
> 69. Q: If shown you a copy of these official receipts and service invoices, would you be able to identify them?
>
> A: Yes, I would.
>
> xxx xxx xxx"

[63] Exhibit "P-63", Court in Division Docket, Vol. 1, pp. 333-369.

80. Q: We noticed, Ms. Witness, that at the bottom right portion of some of the official receipts and some of the service invoices, a signature appears above the name "Ailyn Perocho". Whose name and signature are these?

A: These are my name and signature.

81. Q: In the bottom right portion of the other official receipts and service invoices, a signature appears above the name "Floridain Cezar". Whose name and signature are these?

A: Those are the name and signature of Floridain Cezar, one of the company's Finance Managers. I have seen her sign documents before so I have become familiar with her signature."

Based on the quoted portion of the Judicial Affidavit, Ms. Ailyn Perocho acknowledged that the official receipts and service invoices were either issued and signed by her or by Ms. Floridain Cezar in her capacity as respondent's Finance Manager. Ms. Ailyn Perocho, likewise, was able to authenticate hers and Ms. Floridain Cezar's signature by stating that she has seen the latter sign documents before. On this account, there is no doubt that the authentication made by Ms. Ailyn Perocho was in accordance with ***Sections 20 and 22 of the Revised Rules on Evidence.***

Finally, albeit the Court *En Banc*'s ruling on the admissibility of respondent's pieces of evidence, this Court also finds the ruling of the Court in Division in the assailed Resolution worth echoing, to wit:

> "Let the CIR be reminded that basic is the rule that evidence not objected to may be deemed admitted and may be validly considered by the court in arriving at its judgment. This is true even if by its nature, the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time. Stated differently, once evidence is admitted without objection, even though not admissible under an objection, any further attempt to question its admissibility should accordingly be disregarded.
>
> Significantly, respondent's objection was registered way beyond the period provided under the rules. Section 36, Rule 132 of the Rules of Court states, among others, that in cases of a written formal offer of evidence, a party must interpose his objections, if any, within three (3) days after notice of the offer unless the Court prescribes a different period. A party's right to impugn the admissibility of evidence is a mere privilege which can be waived. Necessarily, the objection must be made at the earliest opportunity, lest silence when there is opportunity to speak may operate as a waiver of objections.
>
> Applying the foregoing, the CIR failed to comply with the afore-mentioned rule, thus making all documentary evidence party of this case, and all parties are considered amenable to any favorable or unfavorable effects resulting from said evidence.

> Consequently, the said documents should be deemed sufficient for purposes of proving petitioner's zero-rated sales for all quarters of FY ended in March 31, 2014."

Hence, as found by the Court in Division, it is too late in the day to question the admissibility of the pieces of evidence submitted by respondent considering that the right to impugn the same, being only a mere privilege, is already considered waived for failure of the petitioner to timely raise his supposed objections to the admissibility of said exhibits.

Respondent was able to prove with sufficient evidence that it is entitled to a partial refund or issuance of a TCC of its VAT refund/credit claim

As for the final argument raised by respondent, the Court *En Banc* is well aware that tax refunds are in the nature of a claim for exemption and, therefore, the law is construed in *strictissimi juris* against the taxpayer. Accordingly, the pieces of evidence presented entitling a taxpayer to an exemption must also be *strictissimi* scrutinized and must be duly proven.[64] In this case, respondent was able to prove with competent evidence its entitlement to a refund or issuance of a TCC.

Based on the aforementioned discussions, the Court *En Banc* finds the respondent to have sufficiently proven its entitlement to a refund or issuance of a TCC in the amount of ₱51,536,274.92, representing its unutilized and excess input VAT attributable to its zero-rated receipts for taxable year ended 31 March 2014.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision, promulgated on 6 November 2018, and Resolution, dated 3 May 2019, are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[64] Atlas Consolidated Mining and Development Corporation v. CIR, G.R. No. 159490, 18 February 2008.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

C E R T I F I C A T I O N

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