REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MAXIMA MACHINERIES, INC., *Petitioner,*	**CTA *EB* NO. 2054** *(CTA Case No. 9210)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 11 2020 3:57 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under ***Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals[3] (RRCTA)***, asking the Court *En Banc* to *(1)* vacate the Court of Tax Appeals (CTA) Special Second Division (Court in Division)'s denial of its Petition for Review and Motion for Reconsideration, and issue a new Decision declaring its entitlement for the

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[1] *Rollo*, pp. 1-76, with annexes.

[2] "SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review."

[3] *A.M. No. 05-11-07-CTA*, November 22, 2005.

issuance of tax credit certificates (TCC)s from excess unutilized input value-added tax (VAT) for the period from 1 April 2013 to 30 June 2013 amounting to Php18,246,358.35; or *(2)* remand the case to the Court in Division for a New Trial for the continuance of the audit and verification of the documents pertaining to the validity of the input tax carry-over from the previous periods.[4]

The Parties[5]

Petitioner, Maxima Machineries, Inc., is a domestic corporation duly organized under and by virtue of the laws of the Philippines, with principal address at 871 Quezon Avenue, Brgy. Sta. Cruz, Quezon City. It is a VAT-registered taxpayer with Tax Identification Number 006-618-023-000. Its primary purpose is:

> "To buy, sell, barter, trade, lease out, manufacture, import, export or otherwise acquire, dispose of, and deal with any kind of goods, wares, and merchandise such as spare parts or replacement parts and/or complete assemblies of agricultural, industrial or commercial machineries, automobiles, buses, trucks, tractors or other motor vehicles and/or related machineries and equipment of every kind and description and to carry on such business as manufacturers, wholesaler, importers and exporters, except the manufacture of food, drugs and cosmetics. xxx"

Respondent, Commissioner of Internal Revenue (CIR), is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the ***1997 National Internal Revenue Code, as amended (1997 NIRC)*** or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On 22 July 2013, petitioner filed with the BIR its Quarterly VAT Return for the period covering 1 April 2013 to 30 June 2013 [first quarter of fiscal year (FY) ending 31 March 2014].[6] Petitioner claims that it made zero-rated sales amounting to Php260,115,930.50, and that for the current period, it made domestic purchases of goods other than capital goods and domestic purchases of services in the total amount of Php893,497,256.47, from which it generated

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[4] See Prayer in the Petition for Review; *Rollo*, p. 19.
[5] See The Facts in the Decision; Records, Vol. 3, p. 1419.
[6] See The Facts in the Decision; Records, Vol. 3, p. 1419.

input taxes in the total amount of Php107,219,670.78.[7] Petitioner also avers that for the period from 1 April 2013 to 30 June 2013, its accumulated excess input VAT credit from its domestic purchases of goods other than capital goods, importation of goods other than capital goods, and domestic purchases of services that is allocated to its VAT zero-rated transactions is in the aggregate amount of Php22,242,848.81, which had not been applied against output tax in the succeeding quarters/years.[8]

On 30 June 2015, petitioner filed with the BIR, through the Large Taxpayers Service-Regular LT Audit Division I, an administrative claim for the issuance of a TCC, in the aggregate amount of Php22,242,848.81, representing excess input VAT that is allocable to its VAT zero-rated sales for the first quarter of FY 2014.[9]

With the allegation that respondent did not act on its administrative application for refund or tax credit, and with the expiration of the one hundred and twenty (120)-day period on 28 October 2015 under ***Section 112(C) of the 1997 NIRC***, petitioner filed a Petition for Review with the Court *a quo* on 27 November 2015.[10]

On 30 January 2019, the assailed Decision[11] was promulgated, the dispositive portion of which reads, as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED**."[12]

Aggrieved, petitioner filed its Motion for Reconsideration and/or New Trial[13] on 15 February 2019; to which respondent submitted its Opposition (Re: Motion for Reconsideration and/or New Trial)[14] on 8 March 2019.

On 5 April 2019, the Court in Division promulgated the assailed Resolution[15], the dispositive portion of which states:

> "**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration and/ or New Trial is **DENIED** for lack of merit.

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[7] See The Facts in the Decision; Records, Vol. 3, p. 1419.
[8] See The Facts in the Decision; Records, Vol. 3, p. 1420.
[9] See The Facts in the Decision; Records, Vol. 3, p. 1420.
[10] See The Facts in the Decision; Records, Vol. 3, p. 1420.
[11] Records, Vol. 3, pp. 1418-1455.
[12] Records, Vol. 3, p. 1454; emphases retained.
[13] Records, Vol. 3, pp. 1456-1744, with annexes.
[14] Records, Vol. 3, pp. 1747-1754.
[15] Records, Vol. 4, pp. 1756-1767.

SO ORDERED."[16]

Unsatisfied with the actions of the Court in Division, petitioner filed the instant Petition for Review[17] on 30 April 2019.

With the submission of respondent's Comment (Re: Petition for Review)[18] on 16 July 2019, the case was submitted for decision on 5 July 2019.[19] Hence, this Decision.

The Assigned Error[20]

WHETHER THE COURT IN DIVISION ERRED IN APPLYING THE INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES OF PHP18,246,358.35 FOR THE PERIOD FROM 1 APRIL 2013 TO 30 JUNE 2013 (FIRST QUARTER OF FY ENDING 31 MARCH 2014) AGAINST ITS OUTPUT VAT LIABILITY FOR THE SAME PERIOD, INSTEAD OF APPLYING THE INPUT VAT CARRIED OVER FROM THE PREVIOUS PERIODS, WHICH WAS NOT SUSTAINED IN THE ASSAILED DECISION AND RESOLUTION FOR LACK OF MERIT.

Arguments of the Parties

Petitioner's Arguments[21]

Petitioner avers that the Court in Division incorrectly denied its claim for refund on the ground that it has no excess input VAT available for refund; that its input VAT attributable to VATable sales should not be applied against its output liability considering that it has sufficient input VAT carried over from previous periods that can be applied against its output VAT liability; and that it has presented sufficient evidence that it has input tax carried over from the previous period, and the burden of evidence has now shifted to the BIR to show that petitioner's input tax carried over from the previous period does not exist or is not valid.

It claims that by presenting its Quarterly VAT return for the 1st Quarter of FY 2014, petitioner has established a presumption that its input tax carried over from the previous period and the deferred tax on capital goods in excess

[16] Records, Vol. 4, p. 1767.
[17] *Rollo*, pp. 1-76, with annexes.
[18] *Rollo*, pp. 87-95.
[19] See Resolution; *Rollo*, pp. 85-86.
[20] See Statement of the Issue in the Petition for Review; *Rollo*, p. 11.
[21] See petitioner's Discussion in the Petition for Review; *Rollo*, pp. 11-19.

of Php1Million from previous quarters are valid and existing; that the input tax carried over from previous quarters is not an issue, but that the issue is limited only to the allocation of the input VAT arising from purchases of goods and services between VAT and zero-rated sales; and that the Court in Division effectively amended the issue in the present case.

Lastly, in the ICPA Report, it was stated that if they had more time, they could provide a more comprehensive report. Hence, petitioner is requesting for the Court *En Banc* to remand the case to the Court in Division for the continuance of the audit of the ICPA.

Respondent's Arguments[22]

Respondent counters that since the issue is petitioner's entitlement to a refund, and that it is settled that claims for refund are in the nature of tax exemptions and are construed *strictissimi juris* against the claimant, petitioner must prove entitlement to the refund sought.

As to petitioner's request to remand the case to the Court in Division, respondent posits that it was given more than ample opportunity to properly ventilate its case.

The Ruling of the Court En Banc

A reading of the assailed Decision and Resolution would show that the issues raised by petitioner were all passed upon by the Court in Division. Accordingly, the Court *En Banc* finds no merit in the instant Petition for Review, and sees no ample justification to reverse the Court in Division's findings.

The Court in Division correctly declared that petitioner is not entitled to the refund sought.

In the assailed Decision, the Court in Division stated that to be entitled to a refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, it is imperative to prove that:

1. the taxpayer is VAT-registered;[23]

[22] See Comment (Re: Petition for Review); *Rollo*, pp. 87-92.
[23] Section 112(A) of the 1997 NIRC.

2. the claim for refund was filed within the prescriptive period both in the administrative[24] and judicial[25] levels;
3. there must be zero-rated or effectively zero-rated sales;[26]
4. input taxes were incurred or paid;[27]
5. the input taxes due or paid were attributable to zero-rated sales or effectively zero-rated sales;[28] and
6. the input taxes were not applied against any output VAT liability.[29]

The relevant provisions are ***Sections 110 and 112 of the 1997 NIRC***, *viz.*:

> "SECTION 110. Tax Credits. —
>
> (A) Creditable Input Tax. —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
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> xxx xxx xxx
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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 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."[30]
>
> "SECTION 112. Refunds or Tax Credits of Input Tax. —
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> (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, to the extent that such input tax has not been applied against output tax: 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

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[24] Section 112(A) of the 1997 NIRC.
[25] Section 112(C) of the 1997 NIRC.
[26] Section 112(A) of the 1997 NIRC.
[27] Section 112(A) of the 1997 NIRC.
[28] Section 112(A) of the 1997 NIRC.
[29] Section 110 of the 1997 NIRC.
[30] Underscoring ours.

> 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."[31]

The Court in Division found petitioner compliant with the first to third requisites.

As to the fourth and fifth, the Court in Division ruled that input taxes attributable to zero-rated sales or effectively zero-rated sales were actually incurred. It was, however, unable to determine the amount of actual zero-rated sales due to petitioner's failure to attribute its Total Input VAT to VAT Sales, Sales to the Government, and Zero-rated Sales, based on the evidence provided by petitioner. Consequently, the Court in Division correctly allocated the total valid input VAT of Php86,892,747.20 proportionately on the basis of the volume of sales, pursuant to ***Section 112(A) of the 1997 NIRC***, as follows:

Substantiated Input VAT attributable to:

VAT Sales to private entities (a/d x Php86,892,747.20)	67,446,877.12
Sales to Government (b/d x Php86,892,747.20)	1,199,511.25
Zero-Rated Sales (c/d x Php86,892,747.20)	18,246,358.83
Total	**86,892,747.20**

As to the sixth requisite, as indicated in ***Section 112(A) of the 1997 NIRC***, it is the excess of the input VAT attributable to zero-rated sales (Php18,246,358.83) over the output VAT which should be refunded to the taxpayer.

Accordingly, when the Court in Division deducted Php67,446,877.12 attributed to VAT Sales to Private Entities and Php18,246,358.83 attributed to zero-rated Sales from the Output VAT liability, there was an Output VAT still due in the amount of Php26,911,526.52. Clearly, there is nothing to refund at this point.

Adjusted Output VAT liability	112,604,762.47
Less: Input VAT attributable to VAT able sales to private entities	67,446,877.12
Net Output VAT Payable	45,157,885.35
Less: Input VAT attributable to zero-rated sales	18,246,358.83
Net Output VAT Still Due	**26,911,526.52**

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[31] Underscoring ours.

However, petitioner avers that its "Input Tax Carried Over from the Previous Period" in the amount of Php331,752,463.44 and the deferred tax on capital goods in excess of Php1Million from previous quarters in the amount of Php3,317,356.48 or the aggregate amount of Php335,069,819.92 may be credited against its output tax due on its VATable sales for the instant period of claim.

While petitioner's Quarterly VAT return for the 1st quarter of FY 2014 reflected the amount of Php331,752,463.4447 as "Input Tax Carried Over from Previous Period," the Court in Division found that petitioner failed to fully substantiate the same. Likewise, based on the ICPA Report, out of the reported input VAT amount of Php586,724,287.23, only the input VAT on importation in the amount of Php406,653,353.9248 was verified. Even if it is assumed that the latter amount was a valid input VAT attributable to VATable sales to private entities and zero-rated sales, it is still not enough to cover petitioner's reported output VAT on VATable sales to private entities for the same period in the aggregate amount of Php466,422,198.3049, thereby resulting in net output VAT payable of Php59,768,844.38 (Php466,422,198.30 less Php406,653,353.92).

With petitioner failing to prove that it has excess input VAT carried over from the previous period, the input tax carry-over of Php331,752,463.44 cannot be validly applied against petitioner's output tax. Hence, its claim for refund still has no leg to stand on.

As correctly held by the Court in Division in the assailed Decision:

> "Verily, in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year. Consequently, there being no excess input VAT which may be the subject of a claim for refund or issuance of tax credit certificate, the instant claim must be denied."

Petitioner should be reminded that in claims for refund, the taxpayer must present all documentary and evidentiary requirements. In ***Sitel Philippines Corporation v. CIR***[32], it was held that:

> "In *Western Mindanao Power Corp. v. Commissioner of Internal Revenue*, the Court ruled that <u>in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of</u>

[32] G.R. No. 201326, 8 February 2017.

> the claim under substantive law, he must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit and compliance with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them. The NIRC requires that the creditable input VAT should be evidenced by a VAT invoice or official receipt, which may only be considered as such when the TIN-VAT is printed thereon, as required by Section 4.108-1 of RR 7-95."[33]

The Court in Division was correct in finding that there is no excess input VAT which may be the subject of a claim for refund, even if this was not put in issue by the parties.

As already discussed, with regard to petitioner's claim that it has "Input Tax Carried Over from Previous Period," the Court *En Banc* finds no valid reason to reverse the Court in Division's findings that petitioner failed to fully substantiate the same, which thus cannot be validly applied against petitioner's output tax pursuant to ***Section 110(A)*** in relation to ***Section 110(B) of the 1997 NIRC***.

Petitioner argues that since it has presented sufficient evidence that it has input tax carried over from the previous period, the burden of evidence has now shifted to the BIR to show that petitioner's input tax carried over from the previous period does not exist or is not valid. As discussed previously, however, petitioner failed to present the needed evidence that it has input tax carried over from the previous period. Secondly, the Court *En Banc* would like to remind petitioner that claims for refunds are construed *strictissimi juris* against the taxpayer. In the latest case of the Supreme Court, ***Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue***[34], it had the opportunity to explain, as follows:

> "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. 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

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[33] Underscoring ours.
[34] G.R. No. 222428, 19 February 2018.

VAT in the amount of P123,459,647.70 it inadvertently failed to include in its VAT Return, the Court deems it necessary to deny the same."[35]

The Court *En Banc* likewise finds no legal basis for petitioner's argument that since the Court in Division looked into the validity of the input VAT carry-over from the previous period, it effectively amended the issue in the case. As already discussed, to be entitled to a refund of unutilized input VAT attributable to zero-rated sales, the taxpayer must show that the input taxes were not applied against any output VAT liability. Therefore, absent compliance with the sixth requisite, petitioner's claim must fail.

Moreover, under ***Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals***[36], the Court in Division has jurisdiction to review the decisions of the CIR in cases involving refunds. Included therein is the power to determine the proper amount to be refunded, based on the evidence presented. Moreover, the validity of the input VAT carry-over from the previous period is interwoven with the sixth requisite, *i.e.* "that the input taxes were not applied against any output VAT liability."

The Court in Division properly denied petitioner's Motion for New Trial.

As to the Motion for New Trial, the Court in Division held that the Motion and the affidavits attached thereto show that the same was neither based on fraud, accident, mistake or excusable negligence, nor based on newly discovered evidence. The allegations in the affidavits failed to convince the Court in Division that there is a valid ground for granting a new trial. It found that the additional documentary evidence constitutes "forgotten" evidence which petitioner intends to present only after obtaining an unfavorable decision.

The Court *En Banc* agrees with the Court in Division. In ***Tumag v. Court of Appeals, et. al.***[37], the Supreme Court explained the difference between newly discovered evidence and forgotten evidence:

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[35] Underscoring ours.
[36] "SECTION 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;"
[37] G.R. No. 82072, 17 April 1989.

"Newly discovered evidence, under prevailing jurisprudence, need not be newly created evidence; newly discovered evidence in other words, may and does commonly refer to evidence already in existence prior or during the trial but which could not have been secured and presented during the trial despite reasonable diligence on the part of the litigant offering it or his counsel. Newly discovered evidence, again, is not limited to evidence which, though already in existence before or during trial was not known to the offering litigant. So-called "forgotten" evidence may, upon the other hand, be seen to refer to evidence already in existence or available before or during trial, which was known to and obtainable by the party offering it and, which could have been presented and offered in a seasonable manner were it not for the oversight or forgetfullness of such party or his counsel."

In order that a particular piece of evidence may be properly regarded as "newly discovered" for purposes of a grant of new trial, what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it; what it essential is, rather, that the offering party had exercised reasonable diligence in seeking to locate such evidence before or during trial but had nonetheless failed to secure it. Thus, a party who, prior to the trial had, no means of knowing that a specific piece of evidence existed and was in fact obtainable, can scarcely be charged with lack of diligence. It is commonplace to observe that the term "diligence" is a relative and variable one, not capable of exact definition and the contents of which must depend entirely on the particular configuration of facts obtaining in each case."[38]

Forgotten evidence cannot be the basis of a Motion for New Trial, as discussed by the Supreme Court in the case of ***Sy Ha, et. al. v. Galang, et. al.***[39], to wit:

"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 it was already in existence and known to them at the time of the investigation conducted by respondent immigration commissioner, as well as at the original hearing conducted before the trial court. Indeed, it is not such an evidence, which petitioners could not, with reasonable diligence, have discovered and produced at the 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. xxx"

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[38] Underscoring ours.
[39] G.R. No. L-18513, 27 April 1963.

Further, in ***Sindophil, Inc. v. Republic of the Philippines***[40], the Highest Tribunal explained ***Section 5, Rule 30 of the Revised Rules on Civil Procedure*** on the order of trial, in the following manner:

> "Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.
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> A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence; but where the evidence is rebuttal in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of newly discovered evidence, the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party may avail of the remedy of certiorari."

It cannot be denied, then, that the failure of petitioner to present its VAT invoices or official receipts to prove the existence of the "Input Tax Carried Over from Previous Period" does not warrant a new trial since the said invoices and receipts were already in existence or available before or during the trial; known to and obtainable by petitioner; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight of petitioner or counsel.

Having no valid basis for the Motion for New Trial, the Court in Division was correct in denying the same.

The Court *En Banc* finds no cogent reason to remand the case to the Court in Division for the continuance of audit by the ICPA.

In the ICPA Report, it was stated that if they had more time, they could provide a more comprehensive report. Hence, petitioner is requesting for the Court *En Banc* to remand the case to the Court in Division for the continuance of the audit of the ICPA.

The Court *En Banc* finds no reason to remand the case to the Court in Division.

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[40] G.R. No. 204594, 7 November 2018, citing *Republic v. Sandiganbayan*, G.R. No. 152375, 16 December 2011.

Section 3, Rule 13 of the RRCTA provides, thus:

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

The ICPA Report is only persuasive in nature and not conclusive upon the Court. In the case at bar, the Court in Division partially considered the findings of the ICPA but included its own findings and computations. Therefore, while the ICPA may not have had enough time to study the documents to submit a more comprehensive report, the Court in Division had ample opportunity to analyze the documents and come up with its own findings. Accordingly, there is no need to remand the case to the Court in Division.

WHEREFORE, the instant Petition for Review filed by Maxima Machineries, Inc. is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 30 January 2019 and the Resolution dated 5 April 2019 promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
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

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
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

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