REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

TOLEDO POWER COMPANY, Petitioner,	C.T.A. CASE No. 8403
- versus -	Members: BAUTISTA, *Chairperson* FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 2 2015 4:04 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

For resolution is petitioner's *Motion for Reconsideration/New Trial*[1] filed through registered mail on May 5, 2015, assailing the Decision[2] dated April 16, 2015, denying its claim for refund or issuance of a tax credit certificate in the amount of Php24,412,203.00, allegedly representing its unutilized input VAT attributable to zero-rated sales for the fourth (4th) quarter of taxable year 2009.

Petitioner complains the disallowance of its input VAT in the aggregate amount of Php38,437,707.15 saying that contrary to the Court's finding the said amount was properly substantiated by VAT invoices or Official Receipts as prescribed under Sections 110(A) and 113(A) and (B) of the 1997 Tax Code, as amended, in relation to Sections 4.110-8, and 4.113-1 of Revenue Regulations (RR) No. 16-2005, as amended. Petitioner likewise rejects the Court's finding that for the fourth quarter of 2009, it has only Php15,617,165.61 properly substantiated input taxes which are not even

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[1] Docket, pp. 2157-2167.
[2] Docket, pp. 2115-2136.

sufficient to offset its output taxes for the same quarter, hence, there is no excess input VAT which may be subject of a claim for refund/tax credit under Section 112 of the Tax Code.

Petitioner claims that -

A. There was a mistake on the representation of the commissioned Independent Certified Public Accountant (ICPA) that all the necessary supporting documents had been photocopied and submitted to the Honorable Court;

B. The input tax on petitioner's purchases supported by TIN-V registered invoice/official receipts should be allowed;

C. The input tax on petitioner's purchases from Synergized Macro Solutions, Inc. (SMS), Cool Slot Specialist, San-Vic Agro Builders, Inc., and Deluxe Sales & Ind. Co., are within the period of claim; and

D. The input tax on petitioner's purchases of goods from Tiger Machinery & Industrial Corporation is duly supported with a proper invoice.

Petitioner claims that the Court erred when it disallowed input taxes amounting to P3,049,976.00 on the ground that the Import Entry and Internal Revenue Declaration (IEIRD) marked as Exhibits CCC-7 to CCC-11 and CCC-13 do not bear machine validation. According to petitioner, the said IEIRDs actually bear proper machine validation only that the ICPA failed to photocopy and submit the dorsal portion of the same where the machine validation may be viewed.

Petitioner cannot also accept the disallowance of the input taxes from its domestic purchases of goods from Pilipinas Shell Petroleum Corporation (PSPC), on the ground that the invoices covering such transactions were not duly registered with the BIR. Petitioner claims that the said invoices were duly registered with the BIR as indicated on either page 2 or succeeding pages of the invoices. However, the ICPA submitted to the Court only the first pages of the invoices *sans* the second or the succeeding pages showing PSPC's BIR permit to issue system generated invoices.

Petitioner avers that it relied on the ICPA's representation that all faithful reproductions of the IEIRDs and PSPC invoices were submitted to the Court. For this reason, it is asking for a new trial for the presentation of PSPC's complete invoices, Authority to Print (ATP) and Permit to Use Computerized Accounting System to prove that the invoices issued by PSPC are duly registered with the BIR.

Petitioner attached to its Motion for Reconsideration/New Trial the Affidavits of Merit separately executed by its Assistant Vice President Editha C. Encarnacion[3] and ICPA Joseph Cedric V. Calica[4], the invoices issued by PSPC to petitioner for taxable year 2009 marked as Exhibits BBB-376 to BBB-377, BBB-379, BBB-386 to BBB-421, BBB-424 to BBB-442, BBB-464 to BBB-466, BBB-554 to BBB-606, BBB-609 to BBB-652 and BBB-674; copies of IEIRDs pertaining to petitioner's importations from Sun Machinery and Trading, Inc., Fuji Trading Co. Ltd., Universal Vibration Services LLC, and PT Tambang Aminto Sejahtera, marked as Exhibits CCC-7, CCC-8, CCC-10 and CCC-11, respectively, and a copy of PSPC's Permit to Use Computerized Accounting System for taxable year 2009.

Respondent vehemently objects to the grant of a new trial in favor of petitioner contending that the documents which the latter endeavors to present are neither newly discovered nor unavailable at the time of trial. Moreover, the grounds relied upon by petitioner is not among the grounds for the grant of new trial provided in Section 1 of Rule 37 of the Rules of Civil Procedure. Petitioner's alleged erroneous reliance on the representation made by the ICPA is misplaced for it is not the mistake contemplated by the law but rather a clear case of negligence on its part which should not be countenanced.

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[3] Annex "A", docket, pp. 2169-2170.
[4] Annex "B", docket, pp. 2171-2172.

THE COURT'S RULING

Petitioner unequivocally admits the lapses committed but shares the blame for its fate with the ICPA who allegedly made representation in his Report that faithful reproduction of the IEIRDs and PSPC invoices and official receipts were submitted to the Court. As a measure, petitioner prays for a new trial for the presentation of additional documents attached to its Motion for Reconsideration/New Trial in support of its claim for refund/tax credit.

Clear as a day that petitioner failed to substantiate its claim for refund/tax credit. Petitioner cannot attribute the lapses to its reliance to the alleged flawed representation made by the ICPA for it was itself who engineered the production, presentation and offer of its evidence, both testimonial and documentary. Petitioner held the rein and was virtually in control of the flow of the proceedings insofar as substantiation of its claim was concerned. Note that every litigant is expected to scrupulously examine all the documents that he submits and/or files with the Court. In this regard, petitioner utterly failed.

It must also be stressed that blunders and mistakes committed during the conduct of the proceeding due to the negligence, ignorance, incompetence, or inexperience of counsel do not qualify as ground for new trial provided under Section 1 of Rule 37 of the Rules of Civil Procedure. The "mistake" allowed under the cited provision is one which ordinary prudence could not have guarded against.[5] This is certainly not obtaining in the present case.

It is also axiomatic that the negligence of counsel binds the client. Client should take the initiative of periodically checking the progress of his case so that he could take timely steps to protect his interest.[6] Thus, petitioner is bound by the mistake or negligence of its counsel, as it ought to be aware of the actions taken by the latter. It was its duty to ensure that all the documents are presented and to assiduously review each of them. It was petitioner's duty

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[5] *Viking Industrial Corp. vs. Court of Appeals*, G.R. No. 143794, July 13, 2004.
[6] *Macondray & Co., Inc. vs. Provident Insurance Corporation*, G.R. No. 154305, December 9, 2004.

to detect patent lapses during the trial that would adversely affect its cause. Under the circumstances, petitioner has only itself to blame.

Significantly, petitioner had been given more than sufficient time and opportunity to complete its presentation of evidence. The record speaks for itself. The witness proposed to be recalled for the new trial ICPA Joseph Cedric V. Calica was twice presented solely for the purpose of identifying the documents subject of his audit. Thereafter, petitioner rested only to ask for the reopening of the case for presentation of additional documents which the Court accommodated. On the scheduled hearing for reception of the proposed additional evidence on April 24, 2013, petitioner moved to reset to which respondent strongly objected. On June 11, 2013, petitioner filed a Motion to Admit Formal Offer of Exhibits which the Court granted per Resolution dated July 17, 2013. On August 12, 2013, petitioner filed a Manifestation with Supplemental Formal Offer of Exhibits which the Court admitted and considered in the resolution of the incident as indicated in the Resolution of October 14, 2013. On November 6, 2013, petitioner filed Motion for Reconsideration as some of its exhibits were denied admission. Six (6) days thereafter, petitioner filed a Supplemental Motion for Reconsideration with attached Judicial Affidavit of ICPA Joseph Cedric V. Calica which the Court again admitted and considered in its Resolution dated January 22, 2014 admitting petitioner's Exhibits BBB-53, BBB-162, BBB-369, BBB-797, BBB-1017, BBB-1151, HHH-1 and BOI certificate of Carmen Copper Corporation for the year 2009 marked as Exhibit XXX. Obvious from the foregoing that petitioner and its counsel failed to exercise utmost care and had been lackadaisical in handling their case filed on December 28, 2011. It has been ruled that the negligence of counsel binds the client.[7]

Indeed, to allow petitioner a new trial, after it has been given more than ample time to prove its claim for refund/tax credit is to set a bad precedent.

Not to be forgotten is the basic principle that tax refunds in relation to VAT are in the nature of exemptions

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[7] Megaland Resources & Development Corporation v. C.E. Construction Corporation, 258 SCRA 622.

which are not favored and never presumed. It is in fact strictly construed against the taxpayer-claimant, like petitioner, who must not only point to the specific statute authorizing it but must also be able to prove its entitlement to it. In the case of *Panasonic Communications Imaging Corporation v. CIR*[8], the Supreme Court held, thus:

> x x x statutes that grant tax exemptions are considered *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to VAT are in the nature of such exemptions. The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.

Under the same principle, the pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[9] Thus, a taxpayer-claimant such as petitioner must prove during the presentation of evidence in chief that it is entitled to the remedy prayed. Petitioner has the full and ultimate responsibility to make sure that every piece of evidence is presented, duly marked and formally offered in evidence. The flimsy excuse that it heavily relied on the ICPA Report is simply unacceptable.

On petitioner's invocation of liberal interpretation of the rules of procedure, suffice it to say that concomitant to such invocation is an effort on its part to adequately explain its failure to abide by the rules.[10] Thus, anyone who seeks exemption from the application of the rule has the burden of proving the existence of exceptionally meritorious reason warranting such departure.[11] Apparently, petitioner missed this point.

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[8] GR. No. 1778090, February 8, 2010, 612 SCRA 28.
[9] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.
[10] *Enriquez v. Enriquez*, 505 Phil. 193, 201 (2005).
[11] *Id.*

On the complained disallowances, the Court reiterates that petitioner's input VAT in the aggregate amount of Php38,437,707.17 were disallowed as they were not properly substantiated by VAT invoices or official receipts as prescribed under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-2005, as amended.

In its *motion*, petitioner claims, that contrary to the Court's observation, the input taxes on its importation of goods other than capital goods and the input taxes on its domestic purchases from PSPC were properly substantiated by VAT invoices or official receipts as shown in the attached documentary exhibits. However, the said exhibits (i.e., IEIRDs and PSPC invoices) were not formally offered and admitted in evidence. To consider these exhibits at this point is to violate Section 34, Rule 132 of the Rules of Court which provides that "the court shall consider no evidence which has not been formally offered." The provision was explained by the Supreme Court in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*,[12] in this wise:

> ". . . the Rules of Court, which is suppletory in quasi-judicial proceedings, particularly Sec. 34 of Rule 132, Revised Rules on Evidence, is clear that **no evidence which has not been formally offered shall be considered**. Thus, where the pertinent invoices or receipts purportedly evidencing the VAT paid by Atlas were not submitted, the courts a quo evidently could not determine the veracity of the input VAT Atlas has paid. Moreover, when Atlas likewise failed to submit pertinent export documents to prove actual export sales with due certification from accredited banks on the export proceeds in foreign currency with the corresponding conversion rate into Philippine currency,

[12] G.R. No. 159490, February 18, 2008.

> the courts a quo likewise could not determine the veracity of the export sales as indicated in Atlas' amended VAT return." (*Emphases supplied*)

Corollary to the forgoing is Section 8 of Republic Act No. 1125, describing this Court as a court of record. Hence, cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases.[13] Indubitably, no evidentiary value can be given to the pieces of evidence submitted by petitioner attached to the instant *motion*, as the rules on documentary evidence require that these documents must be formally offered before this Court.[14]

Anent petitioner's argument that an invoice or official receipt bearing the word TIN-V is a valid supporting document in claiming VAT refund, citing the doctrine laid down in *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,*[15] petitioner failed to consider that in the said case, the claim for refund was for the period April 1, 1998 to June 30, 1998, thus covered by the applicable provisions of the old Tax Code and the pertinent Revenue Regulations. In other words, at that time, Section 113 of the old Tax Code was not yet amended by Republic Act No. 9337, which was enacted in 2005.

The present case is for taxable year 2009, thus, governed by the provisions of the NIRC of 1997, as amended by Republic Act No. 9337. As it is presently worded, the requirements under Section 113 and the provisions of Section 4.113-1 of RR No. 16-2005, as amended, are clearly mandatory. Petitioner's failure to satisfy the requirements as provided justifies the said disallowance.

Finally, on petitioner's claim that the input tax on its purchases from Synergized Macro Solutions, Inc., Cool Slot Specialist, San-Vic Agro Builders, Inc., and Deluxe Sales & Ind. Co. in the aggregate amount of Php22,247.45 are within the period of claim; and that the input tax from

[13] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.
[14] *Id.*
[15] G.R. No. 166732, April 27, 2007.

purchases of goods from Tiger Machinery & Industrial Corporation amounting to Php114,542.40, is duly supported with a proper invoice, suffice it to say that even if the said amounts are allowed, petitioner's properly substantiated input taxes for the fourth quarter of taxable year 2009 are still insufficient to offset its output taxes for the same quarter. As earlier observed by the Court, there is still no excess input VAT which may be the subject of a claim for refund.

WHEREFORE, the *Motion for Reconsideration/New Trial* filed by petitioner Toledo Power Company is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice