REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

KEPCO ILIJAN CORPORATION, Petitioner,	**CTA CASE NO. 6966**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* *and* **UY,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 1 2 2021 8:52 AM

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court are the following:

1. petitioner's **Motion for Partial Reconsideration (of the Amended Decision dated 22 September 2020)** filed on October 9, 2020, without respondent's comment as per Records Verification Report dated January 4, 2021; and,

2. respondent's **Motion for Partial Reconsideration (Decision dated 22 September 2020)** filed on October 26, 2020, with petitioner's **Comment (on the Respondent's Motion for Partial Reconsideration of the Decision dated 22 September 2020)** filed on December 21, 2020.

On September 22, 2020, the Court promulgated an Amended Decision reinstating the Decision dated April 14, 2009 of the *former Second Division* of this Court in partially granting petitioner's claim for refund of its unutilized excess input value-added tax (VAT), the dispositive portion of which reads as follows:

"**WHEREFORE**, premises considered, We maintain and reiterate the ruling in this Court's Decision dated April 14, 2009, entitling petitioner only to the reduced amount of ₱23,389,050.05, representing unutilized excess input VAT attributable to its zero-rated sales of electricity to NPCfor the 2nd, 3rd, and 4th quarters of taxable year 2002.

Accordingly, petitioner's *Motion for Partial Reconsideration (Re: Decision dated April 14, 2009) [sic]* filed on April 30, 2009 is hereby **DENIED** for lack of merit.

[SO ORDERED.]'

Petitioner's Motion for Partial Reconsideration

In its Motion, petitioner recalls that the following reasons were given by the Court in arriving at the above Decision, *viz.*:

a. The claim for excess for excess input VAT in the amount of ₱1,740,640.93 has allegedly prescribed, as held by the Supreme Court in *Kepco Ilijan Corporation v. Commissioner of Internal Revenue*, G.R. No. 205185, September 26, 2018.

b. Petitioner failed to meet the substantiation and invoicing requirements as follows:

    i. Supporting invoices and official receipts representing ₱856,222.14 worth of input VAT, reflect 'TIN-V' instead of 'TIN-VAT;'
    ii. Official Receipts issued by Marsh Philippines, Inc. for the total input VAT of ₱12,990,949.32 do not bear the Petitioner's registered name, address, and TIN;
    iii. Official Receipts issued by Marsh Philippines, Inc. and Raytheon Ebasco Overseas Ltd., representing input VAT in the total amount of ₱19,235,421.78, do not bear the Petitioner's address and TIN; and,
    iv. Check vouchers supporting the input VAT claim of ₱14,476,468.00 are self-serving for being part of Petitioner's internal documents.

Petitioner now claims that it should not be faulted for the alleged failure to comply with the invoicing requirements pursuant to Revenue Regulations (RR) No. 07-95[1] since it is clear from Section 4.108-1 thereof that it is the seller's duty to indicate the required information in the invoices and receipts. Petitioner further asserts that the court-commissioned Independent Certified Public Accountant (ICPA) found that petitioner's evidence, upon examination and validation, were able to establish that the claimed input taxes validly came from the purchases it made.

Moreover, petitioner likewise reiterats that the "TIN-V" should be considered as equivalent to "TIN-VAT". Petitioner points out that Revenue Memorandum Circular (RMC) No. 63-91,[2] introduced the term "TIN-V" as the abbreviation of "TIN-VAT" registered. It continues that "TIN-V" does not show any confusion as to what type of internal revenue tax it represents since there is no other kind of national internal revenue tax that starts with the letter "V" save only for value-added tax. As such, petitioner claims that for all good reasons and bases it did not hesitate to accept purchase invoices and official receipts (ORs) reflecting "TIN-V" instead of "TIN-VAT." Petitioner again cites the case of *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*[3] (*"Intel case"* hereafter), wherein the Supreme Court held, among others, that failure to reflect or indicate in the invoices or receipts the "TIN-V" would not result in the outright denial of a claim for tax refund.

Lastly, petitioner insists that all the disallowed ORs and invoices were issued in its name. Petitioner explains that upon examination of the said receipts and invoices show that they were issued in the name of "KEPCO", which in this case could only mean to refer to petitioner, Kepco Ilijan Corporation.

This Court finds petitioner's Motion for Partial Reconsideration bereft of merit. Notably, the arguments proffered by petitioner in its Motion have already been addressed by the Court in the Amended Decision as well as in the Decision dated April 14, 2009.

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[1] SUBJECT: *Consolidated Value-Added Tax Regulations,* dated December 9, 1995.
[2] SUBJECT: *Issuance of the New TIN to Taxpayers and its Use on Documents/Receipts,* dated July 31, 1991.
[3] G.R. No. 166732, April 27, 2007.

To reiterate, proceedings before this Court are conducted *de novo.*[4] Party-litigants must prove every minute aspect of their claim. Bare allegations, unsubstantiated by evidence, are not equivalent to proof; in short, mere allegations are not evidence.[5] Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.[6]

In the present case, petitioner claims that it should not be faulted for failure to comply with the invoicing requirements pursuant to RR No. 07-95.

This Court holds otherwise.

With emphasis, the invoicing and substantiation requirements must be followed because it is the only way to determine the veracity of the taxpayer's claims.[7] Also, worthy is it to note that in Revenue Memorandum Circular (RMC) No. 42-03,[8] petitioner's question was answered in this wise, to wit:

> "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.
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> 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), 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. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the

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[4] *Commissioner of Customs v. Delgado Shipping Agency and the Court of Tax Appeals*, G.R. No. L-49298, April 26, 1990.

[5] *Ermelinda C. Manaloto, et al. v. Ismael Veloso III,* G.R. No. 171365, October 6, 2010.

[6] *Commissioner of Internal Revenue v. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.

[7] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.

[8] 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*, dated July 15, 2003.

> 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."

With regard to petitioner's assertion that the court-commissioned ICPA had already examined and validated its entitlement to the refundable amount, petitioner lose sight of the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi* juris against the taxpayer-claimant. The pieces of evidence presented entitling it to an exemption are also *strictissimi* scrutinized and must be duly proven.[9] Accordingly, this Court make its own determination and verification of the documentary evidence presented by the parties, including the correctness of respondent's findings (at the administrative level) and the conclusion reflected in the ICPA Report. After all, the said report is only persuasive in nature and not conclusive to the Court, as explicitly provided in Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

> "SEC. 3. Findings of independent CPA. — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with 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." *(Emphases supplied)*

As to the disallowed input taxes that were disallowed invoices and ORs due to issue of "TIN-V", petitioner citing the *Intel case* to bolster its claim that failure to indicate "TIN-VAT" in the invoices or receipts will not result in the outright denial of a claim for tax refund.

This Court is also not convinced.

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[9] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

As already explained by the Court in the assailed Amended Decision, the *Intel case* relied upon by petitioner is not applicable in the present case since the primary issue therein is the taxpayer's Authority To Print (ATP), to wit:

> "The appellate court's reliance on RMC No. 42-2003 is misplaced. The said Circular clarified, inter alia, that failure to comply with the invoicing requirements on the documents supporting the sale of goods and services would result in the disallowance of the claim for refund or issuance of a tax credit certificate of creditable input taxes. The said Circular mentioned as an example the failure to state the TIN of the taxpayer in the invoice or receipt. **However, in petitioner's case, the principal ground for the denial of its claim for refund or issuance of a tax credit certificate is its failure to reflect or indicate in its invoices the BIR authority to print. As earlier discussed, the BIR authority to print is not one of the items required by law to be reflected or indicated in the invoices or receipts**. x x x.
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> It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. Indeed, what is important with respect to the BIR authority to print is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered."

In the same vein, the pertinent portion of Section 4.108-1 of RR No. 07-95 states that, *"only VAT–registered persons are required to print their TIN followed by the word 'VAT' in their invoice or receipts and this shall be considered as a 'VAT' Invoice. All purchases covered by invoices other than 'VAT Invoice' shall not give rise to any input tax."*

Evidently, RR No. 07-95 specifically requires a VAT–registered person to imprint "TIN-VAT" on its invoices or receipts. Consequently, purchases supported by invoices or official receipts, wherein the "TIN-VAT" is not printed thereon, shall not give rise to any input VAT. *ge*

As such, the Court did not err when it denied the amount of ₱856,222.14, representing the input tax on petitioner's domestic purchases of goods and services supported by invoices/receipts with pre-printed "TIN-V". Considering that the subject invoice/ receipts are not imprinted with the taxpayer's TIN followed by the word VAT, these would not be considered as VAT invoices/official receipts and would not give rise to any creditable input VAT in favor of the petitioner.

With regard to the disallowed ORs and invoices that were issued in the name of "KEPCO" and not petitioner Kepco Ilijan Corporation, this Court maintains the reasons stated in the Amended Decision for their denial. Notably, the disallowed ORs and invoices were denied admission not only because they were issued in the name of "KEPCO", but also for other reasons such as, to wit:

> "Unfortunately, this Court finds petitioner's contentions untenable. After careful re-examination of the pieces of evidence presented by petitioner, the following are noted by this Court:
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> i. As to the input VAT claim amounting to ₱12,990,949.32, the official receipts issued by Marsh Philippines, Inc. to the petitioner do not bear the latter's registered name, address and TIN. Likewise, the sales invoices issued by Marsh Philippines, Inc. to the petitioner also do not bear the latter's TIN, and are not considered as proper supporting documents for purchases of services, which in this case, is payment of insurance premiums;
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> ii. As to the input VAT claim in the aggregate amount of ₱19,235,421.78, the official receipts issued by Marsh Philippines, Inc. and Raytheon Ebasco Overseas Ltd. in the amounts of US$2,617,138.84 and US$1,524,763.64, respectively, to the petitioner do not bear the latter's address and TIN; and,
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> iii. As to the input VAT claim in the total amount of ₱14,476,468.00, the check vouchers presented and prepared by petitioner itself, and being an internal document, is self-serving. The VAT indicated therein

> cannot be considered as sufficient proof that the VAT were actually paid and remitted to the BOC during taxable year 2002."[10]

It must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[11] By failing to do so, the Court correctly disallowed petitioner's input taxes that did not meet the required standard of invoicing and substantiation.

In view on the foregoing disquisitions, petitioner failed to convince the Court that the disallowances made on the zero-rated sales and input VAT in the assailed Amended Decision warrants reversal or any modification thereof. Thus, there being no cogent reason to reverse the ruling of the Court, the Amended Decision assailed by petitioner still stands.

That having been settled, the Court shall now proceed to respondent's Motion.

Respondent's Motion for Partial Reconsideration

In his Motion, respondent claims that the Court erred in giving due course to the present Petition for Review. He reiterates that in an action for tax refund, the burden of proof rests upon the taxpayer claimant to establish by competent evidence its entitlement thereto, and failure to adduce sufficient proof is fatal to the action for tax refund. Lastly, respondent emphasizes that basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.

On the other hand, in its Comment, petitioner points out that respondent's Motion is *pro forma* since it failed to state the specific findings and conclusions in the assailed Decision which are alleged to be not supported by evidence or contrary to law; thus, it did not toll the running of the period to file an appeal. Petitioner explains that other than the general sweeping claim that it was erroneous to give due course to the Petition for Review, nothing substantial was raised

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[10] Amended Decision, p. 16.
[11] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

to elucidate respondent's position as to how the Court supposedly erred in giving due course to the present Petition.

The Court likewise finds no merit in respondent's Motion for Partial Reconsideration.

Verily, a party adversely affected by a decision of a trial court may, within the period for taking an appeal, move for reconsideration thereof on the following grounds: (a) the damages awarded are excessive; (b) the evidence is insufficient to justify the decision; or (c) the decision is contrary to law.[12] Perforce, a motion for reconsideration interrupts the running of the period to appeal, unless the motion is deemed *pro forma*.

In the case of *Philippine National Bank v. Hon. Jose G. Paneda, et al.,*[13] the Supreme Court had the opportunity to discuss what makes a motion *pro forma*, to wit:

> "The Court is guided by the rulings in Coquilla v. Commission on Elections, to wit:
>
> 'x x x **The mere reiteration in a motion for reconsideration of the issues raised by the parties and passed upon by the court does not make a motion pro forma**; otherwise, the movant's remedy would not be a reconsideration of the decision but a new trial or some other remedy. But, as we have held in another case:
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> **Among the ends to which a motion for reconsideration is addressed, one is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence; and in doing so, the movant has to dwell of necessity upon the issues passed upon by the court**. If a motion for reconsideration may not discuss these issues, the consequence would be that after a decision is rendered, the losing party would be confined to filing only motions for reopening and new trial.

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[12] Section 1, Rule 37 of the Revised Rules of Court.

[13] G.R. No. 149236, February 14, 2007; citing *Teodulo M. Coquilla v. The Hon. Commission on Elections, et al.*, G.R. No. 151914, July 31, 2002.

> **Indeed, in the cases where a motion for reconsideration was held to be pro forma, the motion was so held because (1) it was a second motion for reconsideration, or (2) it did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence, or (3) it failed to substantiate the alleged errors, or (4) it merely alleged that the decision in question was contrary to law, or (5) the adverse party was not given notice thereof**. The 16-page motion for reconsideration filed by petitioner in the COMELEC *en banc* suffers from none of the foregoing defects, and it was error for the COMELEC *en banc* to rule that petitioner's motion for reconsideration was *pro forma* because the allegations raised therein are a mere 'rehash' of his earlier pleadings or did not raise 'new matters.' Hence, the filing of the motion suspended the running of the 30-day period to file the petition in this case, which, as earlier shown, was done within the reglementary period provided by law.' (Emphasis supplied)"

Apparently, a motion for reconsideration based on the foregoing grounds is deemed *pro forma* if the same does not specify the findings or conclusions in the judgment which are not supported by the evidence or contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.[14]

As correctly pointed out by petitioner, perusal of the present Motion shows that it is indeed *pro forma*. Respondent merely stated that the Court erred in giving due course to the Petition for Review without elaborating as to why and how the Court erred. He only made a general and sweeping statement without making express reference to the findings or conclusions which are not supported by the evidence or are contrary to law. Thus, this Court is constrained to deny respondent's Motion for being *pro forma*.

WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration (of the Amended Decision dated 22 September 2020) and respondent's Motion for Partial Reconsideration

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[14] Section 2, Rule 37 of the Revised Rules of Court.

(Decision dated 22 September 2020) are both **DENIED** for lack of merit

SO ORDERED.

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

I Concur:

ERLINDA P. UY
Associate Justice