REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

M+W PHILIPPINES, INC.,
Petitioner,

C.T.A. EB NO. 1056
(C.T.A. Case No.8159)

- versus -

Present:
DEL ROSARIO, *PJ*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 07 2015
11:00 a.m.

x- -x

DECISION

Fabon-Victorino, J.:

In this *Petition for Review*[1], petitioner M+W Philippines, Inc. seeks to reverse and set aside the (1) the Decision[2] dated April 30, 2013 promulgated by Court in Division in CTA Case No. 8159, which denied for insufficiency of evidence its claim for refund of unutilized input value-added tax (VAT) on domestic purchases of goods and services attributable to effectively zero-rated sales for the four quarters of 2009 amounting to Php9,222,659.29; and (2) the Resolution[3] dated August 12, 2013, which denied its *Motion for Reconsideration* of the assailed Decision.

[1] *En Banc* docket, pp. 1-15.
[2] *En Banc* docket, pp. 28-52.
[3] *En Banc* Docket, pp. 53-55.

THE FACTUAL ANTECEDENTS

We start with the factual antecedents, as narrated by the Court in Division in the assailed Decision, thus:

> Petitioner M+W Philippines, Inc. is a corporation organized and existing under Philippine law, with principal office address at 10th Floor, DPC Place Building, 2322 Chino Roces Avenue, Makati City. On July 2, 1998, it was registered with the Securities and Exchange Commission (SEC) as "MEISSNER+WURST (PHILIPPINES), INC.", with SEC Registration No. A199808678, but changed its name to "M+W Zander (Phil), Inc.", and finally to "M+W Philippines, Inc."
>
> It is primarily engaged in the business of design systems and construction consultancy, as well as construction management services for clean production facilities in the electronic, pharmaceutical, and food and allied industries. It is likewise registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer's Identification Number (TIN) 005-620-002-000.
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> Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of her office, including, among others, the power to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> In the year 2009, petitioner rendered its services only to Texas Instruments Philippines, Inc. (TIPI), which services involved the design and construction of clean room facilities. TIPI is a PEZA-registered Ecozone Export Enterprise, with Registration Certificate No. 01-010 dated March 1, 2001, as amended on June 7,

2007, and was issued a VAT-zero certification by PEZA for the year 2009.

Petitioner filed its Quarterly VAT Returns for the four quarters of 2009 with the BIR, through the Electronic Filing and Payment System (EFPS). In the said Returns, petitioner declared zero-rated sales amounting to P319,106,704.62, domestic purchases of goods and services of P76,855,493.97, and excess input VAT of P9,222,659.28, detailed as follows:

EXH	ZERO-RATED SALES/RECEIPTS	DOMESTIC PURCHASES OF GOODS AND SERVICES	OUTPUT VAT	INPUT VAT	EXCESS INPUT VAT
A	P28,800,280.36	P17,703,684.20	P0.00	P2,124,442.10	P2,124,442.10
B	145,292,193.31	15,356,926.55	0.00	1,842,831.19	1,842,831.19
C	31,674,064.29	26,065,789.71	0.00	3,127,894.77	3,127,894.77
D	113,340,166.66	17,729,093.51	0.00	2,127,491.22	2,127,491.22
	P319,106,704.62	P76,855,493.97	P0.00	P9,222,659.28	P9,222,659.28

On April 30, 2010, petitioner filed with respondent, through the BIR Revenue District Office (RDO) No. 48-Makati City, an administrative claim for issuance of tax credit certificate in the amount of P9,222,659.29, representing alleged unutilized input VAT for the period covering the four quarters of taxable year 2009.

Due to respondent's inaction on the said administrative claim, petitioner filed with this Court a Petition for Review on September 24, 2010, praying that judgment be rendered granting its claim for the refund or the issuance of tax credit certificate in the amount of P9,222,659.29, representing its alleged excess input VAT payments attributable to its effectively zero-rated sales for taxable year 2009.

In her Answer dated November 16, 2010, respondent interposed the following Special and Affirmative Defenses:

> "6. She reiterates and repleads the preceding paragraphs

of this answer as part of her Special and Affirmative Defenses.

7. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau.

8. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

9. Petitioner's claim for refund or issuance of tax credit certificate in the amount of P9,222,659.29, as alleged unutilized input VAT paid domestic purchases of goods and services attributable to its effectively zero-rated sales for the 1st, 2nd, 3rd, and 4th quarters of taxable year 2009 were not fully substantiated by proper documents, such as sales invoices, official receipts and others.

10. In an action for, refund/credit, the burden of proof is on the petitioner to establish its right to claimed *(sic)* refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

11. Petitioner's sales of goods and services to various alleged clients do not qualify as effectively zero-rate VAT.

12. The amount subject of the claim for refund of petitioner do not pertain in full to its input VAT paid domestic purchases of goods and services attributable to its effectively zero-rated sales for

> the 1st, 2nd, 3rd and 4th quarters of taxable year 2009.
>
> 13. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.
>
> 14. Petitioner failed to comply with the conditions/requirements under Section 112(A)(B)(C) of the 1997 Tax Code.
>
> 15. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
>
> 16. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

On September 12, 2011, upon Motion of counsel for petitioner, this Court appointed Ms. Maria Gracia L. Morfe as Independent Certified Public Accountant (CPA).

During trial, petitioner presented as witnesses Maria Gracia L. Morfe, the Court's duly commissioned Independent CPA; and Diego Domo Dreu, its Chief Finance Officer. Thereafter, petitioner filed its Formal Offer of Exhibits on January 13, 2012, offering Exhibits "A" to "OO",

> inclusive of its sub-markings; which this Court admitted in the Resolutions dated February 14, 2012 18 and April 13, 2012.
>
> On the other hand, respondent presented Revenue Officer Rene R. Tabtab as her lone witness. Subsequently, she filed her Formal Offer of Evidence on June 18, 2012, offering in evidence Exhibits "1" to "6"; which this Court admitted in the Resolution dated July 17, 2012.
>
> On September 19, 2012, this case was submitted for decision, considering petitioner's Memorandum filed on August 22, 2012 and respondent's Memorandum posted by mail on August 22, 2012, which was received by this Court on September 5, 2012. (*Citations omitted*)

On April 30, 2013, the Court in Division rendered the assailed Decision denying the *Petition* for insufficiency of evidence. While convinced that petitioner was able to substantiate the amount of Php1,524,259.85 by VAT invoices and receipts - of which only the input VAT of Php1,429,321.16 is attributable to the substantiated zero-rated sales, the Court in Division nonetheless denied petitioner's *Petition for Review* for the latter's failure to prove that the said amount was not carried over and applied to its output VAT liability for the succeeding quarters/years. The Court in Division explained that since petitioner did not submit its VAT returns for the succeeding quarters of 2010, it cannot verify with certainty whether the claimed input VAT was carried over or applied against any output VAT in 2010 or in the succeeding quarters.

On May 22, 2013, petitioner moved to reconsider[4] the ruling of the Court in Division arguing, among others, that the amount of input VAT claim for the four (4) quarters of taxable year 2009 was not applied against any output VAT in the succeeding years. Petitioner volunteered to present true copies of its quarterly VAT returns for the four (4) quarters of taxable year 2010 to the first quarter of 2013.

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[4] Division docket, pp. 665-678.

On the matter, respondent countered through her *Comment/Opposition (To Petitioner's Motion for Reconsideration)*[5] filed on July 1, 2013 that the Court in Division was correct in denying petitioner's claimed unutilized input VAT refund. This is so because petitioner clearly failed to submit its VAT returns for the succeeding quarters of 2010 which would show with certainty that the claimed input VAT were not utilized or carried over as credit to the subsequent quarters. Respondent likewise rejected petitioner's intention to present additional evidence arguing that the proposed additional documents are not newly discovered evidence, but mere "forgotten evidence" which do not justify a reopening of the case.

On July 17, 2013, petitioner filed a *Motion for Leave of Court to Submit Additional Evidence,*[6] with attached Quarterly VAT Returns for the four (4) quarters of taxable year 2010 to the first quarter of 2013.

On August 12, 2013, finding no reason to disturb the assailed Decision, the Court in Division issued the assailed Resolution denying petitioner's *Motion for Reconsideration,* for lack of merit. The said denial mooted petitioner's *Motion for Leave of Court to Submit Additional Evidence* filed by petitioner.

Hence, this *Petition for Review* filed on September 13, 2013, raising the lone issue of:

> **"Whether or not Petitioner is entitled to refund or issuance of a tax credit certificate in the aggregate amount of Nine Million Two Hundred Twenty-Two Thousand Six Hundred Fifty-Nine & 29/100 Pesos (Php9,222,659.29), representing alleged unutilized input VAT payments on its domestic purchases of goods and services attributable to its effectively zero-**

[5] Division docket, pp. 687-699.
[6] Division docket, pp. 701-703.

rated sales for the four quarters of taxable year 2009."

Petitioner insists that it is entitled to refund or issuance of tax credit certificate of the subject unutilized input VAT as it was able to comply with all the requirements for refund of input VAT attributable to its effectively zero-rated sales, to wit: (1) its claim for refund was filed within the two-year prescriptive period; (2) its input taxes for the four quarters of taxable year 2009 amounting to Php9,222,659.29 pertains to zero-rated sales of goods and services; (3) input taxes amounting to Php9,222,659.29 were incurred and paid by petitioner for the four quarters of the taxable year 2009; and (4) the input VAT paid on its domestic purchases of goods and services for taxable year 2009 attributable to effectively zero-rated sales was not applied against any output VAT liability.

For petitioner, it is lamentable that a very substantial amount of input VAT - a total of Php6,502,280.79 - were disallowed due to its supplier of goods and services' failure to separately show the amount of VAT in their receipts/invoices issued to it. It points out that prior to the enactment of Republic Act (RA) No. 9337, VAT was being billed as part of the selling price and sellers were specifically prohibited from showing the amount of VAT as a separate item. This practice of not indicating separately the amount of VAT in the receipt/invoice is not so abhorrent and patently unlawful, that it should unduly prejudice taxpayer-claimants. Besides, it would be patently unjust to gravely penalize petitioner for the acts/omissions of its suppliers.

Further, the claimed input taxes of Php9,222,659.29 was deducted from its accumulated input VAT on the Second Quarter of 2010, the quarter when it filed its administrative claim for refund. In its Quarterly VAT Return for the Second Quarter of 2010, it is obvious that its accumulated input VAT of Php84,261,237.85 was reduced to Php75,038,578.56. A certified true copy of the said quarterly VAT return was submitted to the Court in Division as an attachment to its *Motion for Leave of Court to Submit Additional Evidence* dated July 11, 2013. According to petitioner, it asked for leave of court to submit the said quarterly VAT return as no hearing was held for its *Motion for Reconsideration* filed on May 22, 2013, during which it would submit the said quarterly VAT returns. In the interest of substantial justice, Court *En Banc* may take cognizance of the evidence already in its custody, specifically the alleged certified true copy of the Quarterly VAT Return for the Second Quarter of 2010, to prove that the subject input taxes were deducted from its accumulated input VAT and were not utilized against any output VAT.

In its *Comment/Opposition (To Petitioner's Petition for Review)* [7] filed on November 25, 2013, respondent is convinced that no error was committed when the Court in Division disallowed petitioner's claimed input VAT in the amount of Php7,228,595.53 given that the supporting invoices and official receipts for purchases of goods and services were issued in blatant violation of the mandatory invoicing requirements under Sections 110(A), 113(A) and 237 of the 1997 NIRC, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations No. 16-2005.

The failure of petitioner to submit its VAT returns for the succeeding quarters of 2010 evidencing that it deducted the claimed input taxes from its accumulated input VAT as of the quarter when it opted to file a claim likewise justifies the Court's denial of the claim for refund.

Moreover, petitioner failed to comply with Section 34, Rule 132 of the Revised Rules on Evidence, as the additional documents it sought to present in this case - *i.e.* Quarterly VAT Returns for the four quarters of 2010 - were not presented and formally offered in evidence during the trial. For respondent, said documents are considered "forgotten evidence", which cannot be legally considered and admitted as evidence at this point by the Court *En Banc*.

Finally, respondent stresses that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed

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[7] *En Banc* docket, pp. 150-163.

strictissimi juris against the person or entity claiming the exemption.[8]

<u>RULING OF THE COURT *EN BANC*</u>

The instant petition is bereft of merit.

Clear as a day that the issue raised by petitioner have already been passed upon and discussed at length by the Court in Division. In fact, the arguments it raised are but a rehash of the arguments set forth before the Court in Division providing no compelling reason to reverse and set aside neither the assailed Decision nor Resolution issued by the Court in Division.

So as not to reinvent the wheel and at the same time put petitioner's mind to rest, *We* quote with approval the relevant portion of the assailed Decision of Court in Division's, to wit:

> Anent the issue of prescription, Section 112 (A) of the NIRC of 1997 requires that the taxpayer's application for refund or tax credit of unutilized or excess input VAT attributable to zero-rated or effectively zero-rated sales must be made within two years after the close of the taxable quarter when such sales were made.
>
> In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly SOUTHERN ENERGY QUEZON, INC.)*, the Supreme Court held that:
>
> xxx xxx xxx

[8] *Asiatic Petroleum Co. vs. Llanes*, 49 Phil. 466; *Northern Phil. Tobacco Corp. vs. Mun. of Agoo, La Union*, 31 SCRA 304; *Reagan vs. Commissioner*, 30 SCRA 968; *Austrias Sugar Central, Inc. vs. Commissioner of Customs*, 29 SCRA 617.

Based on the above-quoted provision of law and jurisprudence, the counting of the two-year prescriptive period for the filing of a claim for refund or tax credit of input VAT on zero-rated sales is reckoned not from the date of filing of the corresponding Quarterly VAT Return and payment of the tax but from the close of the taxable quarter when the pertinent sale or transaction was made.

The present claim pertains to input VAT on zero-rated sales incurred during the first to fourth quarters of taxable year 2009. Petitioner had until the following dates to file its administrative claim for refund or issuance of tax credit certificate:

PERIOD COVERED	CLOSE OF THE TAXABLE QUARTER	LAST DAY TO FILE ADMINISTRATIVE CLAIM	DATE OF FILING OF ADMINISTRATIVE CLAIM
January to March 2009	March 31, 2009	March 31, 2011	April 30, 2010
April to June 2009	June 30, 2009	June 30, 2011	
July to September 2009	September 30, 2009	September 30, 2011	
October to December 2009	December 31, 2009	December 31, 2011	

In the instant case, petitioner's administrative claim for the refund of its unutilized input VAT payments attributable to its zero-rated sales, covering the first to fourth quarters of taxable year 2009 in the aggregate amount of P9,222,659.29, was filed well within the two-year prescriptive period outlined in the above table.

The Court will now proceed to determine whether petitioner's judicial claim was timely filed pursuant to Section 112 (C) of the NIRC of 1997, as amended, which provides that:

xxx xxx xxx

Respondent has 120 days from the date of submission of the complete documents in support of the application for tax refund within which to grant or deny the claim. In case of full or partial denial by the BIR Commissioner, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the BIR Commissioner. However, if after the 120-day period the Commissioner fails to act on the application for tax refund, the remedy of the taxpayer is to appeal the inaction of the Commissioner to the CTA within 30 days.

Records indicate that petitioner filed its administrative claim on April 30, 2010. Counting from April 30, 2010, respondent had until August 28, 2010 to act upon the said administrative claim and petitioner had until September 27, 2010 to file its judicial claim.

In this case, petitioner filed the instant Petition for Review on September 24, 2010, or within 30 days after the lapse of the said 120-day period on August 28, 2010.

Anent respondent's argument that petitioner prematurely filed the instant judicial claim since it did not submit documents in support of its claim for refund, suffice it to say that the law has granted the taxpayer an option to elevate the matter to this Court in case of inaction on the part of respondent within the 30-day period from the expiration of the 120-day period. There is no condition provided under Section 112 (C) that respondent must receive supporting documents to act on the administrative claim.

If the submission of documents were meant to be a condition precedent for respondent's action on the administrative claim, which can easily be denied owing to lack of documents, the 120-day period provided by law will be rendered meaningless as there could be no end when the 120-day period will be reckoned because respondent would still be waiting for the submission of documents. This is particularly illustrated in the instant case where respondent's first action on the claim for refund is the Letter of Authority which was received by petitioner only on October 1, 2010, or already beyond the 120+30 day period under Section 112.

This Court will now go to petitioner's compliance with the other requisites.

Petitioner's Quarterly VAT Returns for the four quarters of 2009 reflected the following zero-rated sales/receipts in the amount of P319,106,704.62, broken down as follows:

EXHIBIT	**2009**	**ZERO-RATED SALES/RECEIPTS**
A	1st Quarter	P 28,800,280.36
B	2nd Quarter	145,292,193.31
C	3rd Quarter	31,674,064.29
D	4th Quarter	113,340,166.66
		P319,106,704.62

A scrutiny of petitioner's Summary of Official Receipts Issued, Summary of Sales Invoice Issued, and supporting VAT official receipts and sales invoices shows that out of the P319,106,704.62 treated by petitioner as zero-rated sales/receipts, only the amount of P317,135,821.30 (amount before the 2% withholding taxes) is duly covered by official receipts and related invoices. Below is the breakdown of the amount of P317,135,821.30:

OR Exh.	Inv. Exh.	Unit	Amount per Invoice	10% Retention	Gross Amount in Original Currency	2% Withholding Tax	Amount in Original Currency per OR / Net Amount	Rate	Gross Amount in Peso (Amount before 2% w/holding tax)
E		Peso			*16,512,283.01		16,512,283.01	1.000	P16,512,283.01
E-1		USD			*240,084.83		240,084.83	47.390	11,377,620.09
E-2		Peso	P130,203.00	13,020.30	117,182.70	2,604.06	114,578.64	1.000	117,182.70
E-3		USD			*1,387.17		1,387.17	47.809	66,319.21
E-4	F-3	Peso	P2,068,229.60	206,822.96	1,861,406.64	41,364.59	1,820,042.05	1.000	1,861,406.64
E-5	F-4	USD	$1,541,361.04	154,136.10	1,387,224.94	30,827.22	1,356,397.72	48.401	67,143,074.13
E-6		Peso			*412,429.34		412,429.34	1.000	412,429.34

E-7	F-2	Peso	P205,529.94	20,552.99	184,976.95	4,110.60	180,866.35	1.000	184,976.95
E-8	F-5,6	Peso	P3,396,368.96	339,636.90	3,056,732.06	67,927.38	2,988,804.68	1.000	3,056,732.06
E-9	F-7	USD	$1,531,982.94	153,198.29	1,378,784.65	30,639.66	1,348,144.99	47.727	65,805,254.80
E-10	F-8	Peso	P1,425,231.21	142,523.12	1,282,708.09	28,504.62	1,254,203.46	1.000	1,282,708.09
E-12		Peso			**5,497,223.53		5,497,223.53	1.000	5,497,223.53
E-13	F-15	USD	$697,000.00	69,700	627,300.00		627,300.00	48.197	30,233,978.10
E-14	F-16	Peso	P136,447.88		136,447.88	2,728.96	133,718.92	1.000	136,447.88
E-15	F-10	Peso	P137,403.82		137,403.82	2,748.08	134,655.74	1.000	137,403.82
E-17		Peso			*980,000.00		980,000.00	1.000	980,000.00
E-18		Peso			**4,815,818.87		4,815,818.87	1.000	4,815,818.87
E-19		Peso			**12,775,848.73		12,775,848.73	1.000	12,775,848.73
E-21	F-33	Peso	P90,824.19		90,824.19	1,816.48	89,007.71	1.000	90,824.19
E-22	F-35	Peso	P7,020,000.00	702,000.00	6,318,000.00	140,400.00	6,177,600.00	1.000	6,318,000.00
E-23	F-37	USD	$2,100,590.81	210,059.08	1,890,531.73	42,011.82	1,848,519.91	46.319	87,567,539.16
E-25	F-38	Peso	P847,500.00	84,750.00	762,750.00	16,950.00	745,800.00	1.000	762,750.00
								TOTAL	P317,135,821.30

*based on official receipt only as invoice is not available.
**based on official receipt because related invoices would not tally with said official receipt.

However, the amount of P17,904,712.35 pertained to petitioner's sales of services to Intel Tech. Phils., Inc., which is not shown to be situated in an Ecozone, as detailed below:

CUSTOMER	EXHIBIT	TOTAL
Intel Tech. Phils., Inc.	E	P 16,512,283.01
Intel Tech. Phils., Inc.	E-6	412,429.34
Intel Tech. Phils., Inc.	E-17	980,000.00
		P17,904,712.35

In view of lack of evidence, petitioner's sales of services to Intel Tech. Phils., Inc., in the aggregate amount of P17,904,712.35, is not subject to zero percent VAT; thus, should be disallowed from the reported zero-rated sales/receipts.

In other words, petitioner's total valid zero-rated sales/receipts amounted only to P299,231,108.95. Consequently, only the portion of the input VAT claim attributable to the substantiated zero-rated receipts of P299,231,108.95 will be considered for refund. The rate to be applied is based on the total declared amount of zero-rated receipts and is computed as follows:

Substantiated Zero-Rated Receipts	P 299,231,108.95

Divided by Total Declared Zero-Rated Receipts	319,106,704.62
Rate of Substantiated Zero-Rated Receipts	**93.7715%**

Having resolved that petitioner's sales of services to Texas Instruments Philippines, Inc. for the year 2009 in the amount of P299,231,108.95 qualify for VAT zero-rating under Section 108 (B) (3) of the NIRC of 1997, as amended, the Court now determines the amount of unutilized input VAT attributable thereto.

Petitioner reported in its Quarterly VAT Returns for the four quarters of year 2009 input taxes amounting to P9,222,659.28, broken down as follows:

EXH	2009	DOMESTIC PURCHASES OF GOODS OTHER THAN CG	DOMESTIC PURCHASES OF SERVICES	TOTAL INPUT VAT
A	1ST Quarter	P1,141,193.62	P983,248.48	P 2,124,442.10
B	2nd Quarter	1,121,931.12	720,900.07	1,842,831.19
C	3rd Quarter	580,080.01	2,547,814.76	3,127,894.77
D	4th Quarter	1,015,507.80	1,111,983.42	2,127,491.22
				P9,222,659.28

The Court-commissioned Independent CPA summarized the results of her verification on petitioner's claimed input VAT in the amount of P9,222,659.28, as follows:

EXHIBIT	ANNEXES	FINDINGS	AMOUNT OF INPUT VAT
GG	III	Summary of input VAT claims from purchases of domestic goods supported by certified true copies invoices	P613,702.02
HH	IV	Summary of input VAT claims from purchases of domestic services supported by certified true copies of official receipts	392,698.64
II	V	Summary of input VAT claims from purchases of domestic goods supported by original copies of sales invoices	1,107,196.35
JJ	VI	Summary of input VAT claims from purchases of domestic services supported by original copies of official receipts	6,744,740.51
KK	VII	Summary of input VAT claims from purchases of domestic services and/or goods that has no supporting documents	469,802.30
LL	VIII	Summary of input VAT claims based on schedule of input VAT that is negative amount and not supported by original	(105,482.14)

		copies of suppliers' official receipts or certified true copies but has negative input VAT claims	
			P9,222,657.68

Based on the foregoing Independent CPA's findings, input VAT totaling to P469,802.30 (under Annex VII) should be deducted from petitioner's input VAT claim for not being supported by any supporting document.

A further scrutiny of the said report and petitioner's supporting documents reveals that aside from the disallowance of P469,802.30, the input VAT of P7,228,595.53 should likewise be disallowed because either the supporting invoice or official receipt did not comply with the invoicing requirements under Sections 110 (A) and 113 (A) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05 or was dated outside the period of claim or the input tax was over-claimed by petitioner. The breakdown of P7,228,595.53 is attached as Annex A of this Decision.

Considering all the aforesaid disallowances, out of the total reported input VAT of P9,222,657.68 for the four quarters of 2009, only the amount of P1,524,259.85 is properly substantiated by VAT invoices or official receipts, as computed below:

	Input VAT Claim	P9,222,657.68
Less:	Disallowances	
	Per ICPA's findings	P469,802.30
	Per this Court's findings	7,228,595.53
	Total	P7,698,397.83
	Valid Input VAT Claim	**P1,524,259.85**

Petitioner did not report any output VAT liability in its Quarterly VAT Returns for the four quarters of 2009. Hence, the input VAT of P1,524,259.85 can be attributed to the entire zero-rated sales declared by petitioner in the amount of P319,106,704.62 and only the input VAT of P1,429,321.16 is attributable to the substantiated zero-rated sales of P299,231,108.95, as computed below:

Substantiated Input VAT	P1,524,259.85
Multiply by rate of substantiated zero-rated sales	93.7715%
Input VAT attributable to substantiated zero-rated sales	**P1,429,321.16**

Petitioner continuously carried over the claimed unutilized input VAT for each quarter of taxable year 2009 to the succeeding quarters of the same year. Thus, the entire input VAT claim of P9,222,659.29 (including the substantiated amount of P1,429,321.16) formed part of the P81,779,578.98 excess input VAT as of the end of the fourth quarter of 2009. Since petitioner did not submit its VAT returns for the succeeding quarters of 2010, this Court cannot verify with certainty whether or not the claimed input VAT was carried over or applied against any output VAT in 2010 or other succeeding quarters. Even though under Section 110 (B) of the NIRC of 1997, as amended, petitioner is allowed to carry over the excess of the input tax over the output tax of a given quarter to the next quarter, petitioner should have deducted the claimed input taxes from its accumulated input VAT as of the quarter when it opted to file a claim. Section 110 (C) of the NIRC of 1997, as amended provides thus:

xxx xxx xxx

The reason for the deduction is to assure that the claimed input VAT shall not be applied against any future output VAT liability.

Without convincing evidence that the subject input taxes were not utilized or carried over as credit to the subsequent quarters, this Court cannot grant

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen R. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

> petitioner's prayer. To grant petitioner's claim for refund, without proof of deduction of the corresponding amount, would be dangerous and tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government. (*Citations omitted*)

Anent petitioner's plea that the Court *En Banc* take cognizance of the evidence already in its custody, specifically the alleged certified true copy of the Quarterly VAT returns for the second quarter of 2010, suffice it to say that as a general rule, the Court shall consider no evidence which has not been formally offered. However, as an exception, evidence not formally offered may be considered if it is duly identified by testimony duly recorded, and is incorporated in the records of the case.[9] It is unfortunate however that this is not obtaining in the instant case.

A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer.[10] To stress, the taxpayer must present convincing evidence to substantiate a claim for refund. And for failure to present its VAT returns for the succeeding quarters of 2010, petitioner failed to discharge the burden of proving its right to the relief sought.

WHEREFORE, the instant *Petition for Review* filed by petitioner M+W Philippines, Inc. on September 13, 2013 is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[9] *Vda. De Oñate v. Court of Appeals*, G.R. No. 116149, 250 SCRA 283, November 23, 1995.
[10] *Insular Lumber Co. v. CTA*, 192 Phil. 221 (1981); *CIR v. Rio Tuba Nickel Mining Corp.*, G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 710.