REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

ORICA PHILIPPINES, INC, Petitioner,	**CTA EB No. 2336** (CTA Case No. 9717)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAY 3 1 2022 9:27 a.m.

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review (RE: Honorable Court of Tax Appeals – First Division's Decision dated 04 February 2020 and Resolution dated 01 September 2020)*[1] filed on October 12, 2020 by petitioner, Orica Philippines, Inc., against respondent, Commissioner of Internal Revenue (CIR), praying that: (1) the Court *En Banc* give due course to the instant *Petition for Review*; (2) the *Decision* dated February 4, 2020, and the *Resolution* dated September 1, 2020, rendered by the First Division of this Court be reversed; (3) petitioner's claim for refund and/or issuance of tax credit certificate (TCC) in the aggregate amount of ₱14,957,902.88,

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[1] EB Docket, pp. 7 to 25.

representing its excess and unutilized input value-added tax (VAT) credits for the 3rd quarter of fiscal year (FY) ending September 30, 2015 be granted; and (4) respondent be ordered to refund the aforementioned amount in favor of petitioner; or in the alternative, remand the case to the First Division of this Court for the reopening of petitioner's case and/or further proceedings. The dispositive portions of the assailed *Decision* and *Resolution* respectively read:

***Decision* dated February 4, 2020:**

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> Accordingly, petitioner's claim for refund for alleged excess input VAT attributable to its export sales for the third quarter of fiscal year (FY) 2015 ended September 30, 2015, or the period from April 1, 2015 to June 30, 2015 in the total amount of P14,957,902.88 is **DENIED**.
>
> **SO ORDERED.**"

***Resolution* dated September 1, 2020:**

> "**WHEREFORE**, premises considered, the *Motion for Reconsideration and to Take Judicial Notice (re: 04 February 2020 Resolution of the Honorable Court of Tax Appeals –First Division)* is **DENIED** for lack of merit.
>
> Accordingly, the Decision of the Court in the above-captioned case dated February 4, 2020, is hereby **AFFIRMED**.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is a corporation registered with the Philippine Securities and Exchange Commission. It is registered as a taxpayer with Taxpayer's Identification Number 000-059-661-000.

On the other hand, respondent is authorized to decide, approve and grant applications for refund and/or issue tax credit representing a taxpayer's excess internal revenue tax payments.

On June 30, 2017, petitioner filed an Application for Tax Credits / Refunds (BIR Form No. 1914) with the Bureau of Internal Revenue (BIR), covering the period April 1, 2015 to June 30, 2015 (3rd quarter of FY ending September 30, 2015) in the amount of ₱14,957,902.88, with the corresponding Checklist of Mandatory Requirements for Claims for VAT Credit/Refund and letter request dated June 13, 2015 for the refund of petitioner's excess/unutilized input tax credits for the covered period.

On October 18, 2017, petitioner received the undated letter signed by Teresita M. Angeles, OIC – Assistant Commissioner for the Large Taxpayers Service of the BIR, denying petitioner's claim for TCC for the 3rd quarter of FY ending September 30, 2015, representing excess/unutilized input VAT payments for the said period, for lack of factual and legal bases.

On November 17, 2017, petitioner filed a *Petition for Review*, docketed as CTA Case No. 9717 entitled *"Orica Philippines, Inc. v. Commissioner of Internal Revenue"*. The case was initially assigned to the Second Division of this Court.

On March 2, 2018, respondent filed his *Answer*, interposing special and affirmative defenses, *to wit*:

(a) Petitioner failed to submit supporting documents to prove entitlement to the claimed refund;

(b) The signatory of petitioner's amended return was not duly authorized to sign petitioner's return;

(c) Petitioner failed to submit a certification from the Bureau of Customs that it has not filed a similar claim covering the same period, pursuant to Revenue Memorandum Order No. 53-98;

(d) Petitioner failed to fully account its sales official receipts/invoices vis-à-vis sale per VAT returns;

(e) Petitioner failed to submit complete bank credit memos/advice to prove inward receipts of foreign currency for export sales and reconciliation of export sales and dollar remittance;

(f) Petitioner failed to submit original invoices/official receipts;

(g) Petitioner has outstanding tax liabilities; thus, the issuance of a TCC cannot be given due course until the delinquency assessments have been resolved/paid; and

(h) The jurisdiction of the Court of Tax Appeals (CTA) shifts from a trial court to an appellate tribunal in cases where an administrative claim for refund has been denied. Considering that a decision has been rendered denying petitioner's claim for refund for failure to substantiate its claim, petitioner cannot present documents it did not submit at the administrative level.

After the Pre-Trial Conference held on April 12, 2018, the parties submitted their *Joint Stipulation of Facts and Issues (JSFI)* on April 27, 2018. On May 7, 2018, the *Pre-Trial Order* was issued, approving the *JSFI* and deeming the Pre-Trial terminated.

During trial, petitioner presented documentary and testimonial evidence. Petitioner presented the following witnesses: (1) Jesson Cortes, petitioner's Tax Analyst; (2) Mikhail J. Escoto, and (3) Ranier C. Matriano, both Senior Consultants of Isla Lipana & Co.'s Tax Department; and (4) Emmanuel Y. Mendoza, the Court-commissioned Independent Certified Public Accountant (ICPA).

On July 16, 2018, petitioner filed its *Formal Offer of Evidence with Manifestations*. Upon the resolution thereof, petitioner rested its case.

Respondent likewise presented documentary and testimonial evidence. Respondent presented his lone witness, Edalyn Naty Dayacap, Revenue Officer III of the BIR.

In the *Order* dated September 25, 2018, the instant case was transferred to the First Division of this Court.

On October 2, 2018, respondent filed his *Respondent's Formal Offer of Evidence*. Upon the resolution thereof, respondent rested his case.

In the *Resolution* dated December 11, 2018, the Court in Division, among other things, gave the parties a period of thirty (30) days from notice to file their respective memoranda.

After the filing of respondent's *Memorandum* on January 9, 2019, and petitioner's *Memorandum* on February 4, 2019, CTA Case No. 9717 was submitted for decision in the *Resolution* dated February 11, 2019.

On February 4, 2020, the Court in Division rendered the assailed *Decision*[2] denying petitioner's *Petition for Review* for lack of merit.

Dissatisfied with the Court in Division's *Decision*, petitioner filed a *Motion for Reconsideration and to Take Judicial Notice (Re: 04 February 2020 Resolution [sic] of the Honorable Court of Tax Appeals – First Division)*[3] on February 20, 2021, praying that the Court in Division: (1) give due course to the *Motion for Reconsideration and to Take Judicial Notice*, and allow petitioner to present additional evidence, or in the alternative, order the reopening of the case for purposes of allowing petitioner to present Teresa S. Gonzales (Ms. Gonzales) to testify on matters raised/explained in the judicial claim docketed as CTA Case No. 9843, and allow petitioner to present and offer the pieces of evidence deemed lacking per the February 4, 2020 *Decision*; (2) reverse the assailed February 4, 2020 *Decision*; and (3) grant petitioner's claim for refund in the amount of ₱14,957,902.88, representing unutilized input VAT attributable to its export sales for the 3rd quarter of FY ending September 30, 2015 or the period April 1, 2015 to June 30, 2015.

In the *Resolution*[4] dated March 11, 2020, the Court in Division directed respondent to file his *Comment* or *Opposition* to petitioner's *Motion for Reconsideration and to Take Judicial Notice (Re: 04 February 2020 Resolution [sic] of the Honorable Court of Tax Appeals – First Division)* within ten (10) days from notice.

On July 20, 2020, respondent filed a *Motion to Admit Attached Comment*[5] with attached *Comment/Opposition (On Petitioner's Motion for Reconsideration dated 20 February 2020).*[6]

[2] EB Docket, pp. 31 to 69; Division Docket (CTA Case No. 9717), pp. 458 to 496.
[3] Division Docket (CTA Case No. 9717), pp. 497 to 511.
[4] Division Docket (CTA Case No. 9717), p. 514.
[5] Division Docket (CTA Case No. 9717), pp. 516 to 520.
[6] Division Docket (CTA Case No. 9717), pp. 522 to 535.

In the assailed *Resolution*[7] dated September 1, 2020, the Court in Division denied petitioner's *Motion for Reconsideration and to Take Judicial Notice (Re: 04 February 2020 Resolution [sic] of the Honorable Court of Tax Appeals – First Division)* for lack of merit.

Meanwhile, in the *Resolution*[8] dated September 14, 2020, respondent's *Motion to Admit Attached Comment* with attached *Comment/Opposition (On Petitioner's Motion for Reconsideration dated 20 February 2020)* was rendered moot.

Thus, on October 12, 2020, petitioner filed the instant *Petition for Review (RE: Honorable Court of Tax Appeals – First Division's Decision dated 04 February 2020 and Resolution dated 01 September 2020)*[9] docketed as CTA EB No. 2336.

In the *Resolution*[10] dated December 1, 2020, the Court *En Banc* gave petitioner ten (10) days from notice to submit its proof of service relative to the instant *Petition for Review (RE: Honorable Court of Tax Appeals – First Division's Decision dated 04 February 2020 and Resolution dated 01 September 2020).*

On December 16, 2020, petitioner filed its *Compliance (to the 01 December 2020 Resolution of the Honorable Court of Tax Appeals – En Banc).*[11]

In the *Resolution*[12] dated January 12, 2021, the Court *En Banc* noted petitioner's *Compliance (to the 01 December 2020 Resolution of the Honorable Court of Tax Appeals – En Banc)*, and directed respondent to file his *Comment* within ten (10) days from notice. On February 3, 2021, respondent filed his *Comment /Opposition.*[13]

On March 9, 2021, the Court *En Banc* issued the *Resolution*[14] submitting the case for decision. Hence, this *Decision.*

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[7] EB Docket, pp. 70 to 78; Division Docket (CTA Case No. 9717), pp. 539 to 547.
[8] Division Docket (CTA Case No. 9717), p. 548.
[9] EB Docket, pp. 7 to 25.
[10] EB Docket, pp. 146 to 147.
[11] EB Docket, pp. 148 to 149.
[12] EB Docket, pp. 170 to 171.
[13] EB Docket, pp. 172 to 184.
[14] EB Docket, pp. 187 to 188.

ISSUES

Petitioner raises the following issues[15] for resolution of the Court *En Banc*, *to wit*:

a) Whether the Court in Division erred in not granting petitioner's motion to allow the reopening of the case for purposes of presenting and offering the pieces of evidence deemed lacking per the *Decision* dated February 4, 2020.

b) Whether the Court in Division erred in dismissing petitioner's claim for refund of its excess and/or unutilized input VAT amounting to ₱14,957,902.88, representing its excess and unutilized input VAT credits for the 3rd quarter of FY ending September 20, 2015.

Petitioner's arguments:

Petitioner argues that it cannot be faulted when it relied in good faith on the ICPA's representation that its zero-rated sales were all supported by the bills of lading and/or export declarations. Had petitioner known that the marked exhibits by the ICPA were mere invoices and without the subject bills of lading and/or export declarations, then petitioner could have relayed such inaccuracies to the ICPA for correction and proper marking.

Allegedly, its reliance on the ICPA Report constitutes excusable negligence. Considering the sheer volume of documents that needed to be presented before the Court in Division, petitioner commissioned an ICPA; thus, it had every reason to believe that the statements in the ICPA Report are correct and accurate. Petitioner asserts that it could not have guarded or anticipated that the ICPA Report would contain inconsistencies.

Petitioner also claims that it was able to prove that the excess input taxes were not applied against any output VAT liability. As reflected in its VAT Returns for the 3rd quarter of FY 2015 to the 2nd quarter of FY 2016, the subject input taxes were not applied against any output VAT liabilities. This conclusion that the amount claimed for

[15] EB Docket, pp. 10 to 11.

refund was not subsequently applied against any output tax liability was also affirmed by the ICPA.

Likewise, petitioner points out that in the testimony of Ms. Gonzales in CTA Case No. 9843, she exhaustively testified as to the detailed composition of the adjustment showing that the amount sought to be refunded was removed from the total input tax credits carried over to the subsequent periods. Thus, considering the materiality of Ms. Gonzales' testimony in resolving the issue in the instant case, petitioner claims that the Court *En Banc* should take judicial notice of Ms. Gonzales' testimony, or in the alternative, allow the reopening and remanding of the case to the Court in Division to allow Ms. Gonzales to testify on matters raised/explained in CTA Case No. 9843. Petitioner asserts that it deserves the opportunity to present Ms. Gonzales' testimony so that there will be no miscarriage of justice on mere technicality.

Respondent's counter-arguments:

Respondent counter-argues that reopening of trial is not available to petitioner at this point considering that a motion to reopen trial may be availed of only before judgment is rendered. Respondent insists that petitioner has no ground to ask for such reopening.

Respondent also points out that petitioner's reliance on the ICPA Report cannot be considered as done in good faith because had petitioner exercised due diligence, it would have found the inaccuracies in the ICPA Report.

Respondent further asserts that the Court *En Banc* cannot take judicial notice of Ms. Gonzales' testimony in CTA Case No. 9843 because cases filed before the CTA are to be tried *de novo*. Moreover, respondent claims that it would be deprived of its right to cross-examine the witness should the Court *En Banc* take judicial notice of Ms. Gonzales' testimony.

Meanwhile, respondent avers that petitioner is not entitled to the refund claimed because it did not submit a complete/accurate account of its 3rd quarter VAT Return for FY 2015. Allegedly, petitioner failed to do the following: to submit original sales invoice/receipts; to fully account sales official receipts/invoices vis-à-vis sale per VAT returns; to submit complete bank credit memos/advice; and to comply with invoicing requirements.

As the claimant, petitioner has the burden of proof to establish the factual basis of its claim because tax refunds, like tax exemptions, are construed strictly against the taxpayer.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is unmeritorious.

The Court in Division did not err in denying petitioner's motion to allow the reopening of CTA Case No. 9717.

Petitioner claims that it should not be faulted when it relied in good faith on the ICPA's representation that its zero-rated sales were all supported by the bills of lading and/or export declarations. Thus, petitioner prays for the reopening of the case in order for it to present the pieces of evidence which the Court in Division deemed lacking in the *Decision* dated February 4, 2020.

Petitioner's motion to allow the reopening of the CTA Case No. 9717 was correctly denied by the Court in Division.

A motion to reopen trial may only be availed of **<u>before judgment</u>**, as elucidated by the Supreme Court in *Ramon J. Alegre v. Hon. Manuel T. Reyes, etc., and the People of the Philippines,*[16] *to wit*:

> "For one thing, **a motion to reopen may properly be presented only after either or both parties have formally offered, and closed their evidence, but <u>before judgment</u>**. On the other hand, a motion for new trial is proper only after rendition or promulgation of judgment.
>
> For another, a motion for reopening, unlike a motion for new trial, is not specifically mentioned and prescribed as a remedy by the Rules of Court. There is no specific provision in the Rules of Court governing motions to reopen. It is albeit a recognized procedural recourse or

[16] G.R. No. L-56923, May 9, 1988.

> device, deriving validity and acceptance from long, established usage.
>
> A motion for new trial in civil or criminal actions may be applied for and granted only upon specific, well-defined grounds, set forth respectively in Rules 37 (Section 1) and 121 (Section 2). On the other hand, **the reopening of a case for the reception of additional evidence after a case has been submitted for decision but <u>before judgment</u> is actually rendered** is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court; and **its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown**. A brief review of precedents treating of the matter of reopening a trial provides a clearer insight into the nature of the remedy, and is not inutile at this point." *(Emphasis and underscoring supplied)*

In the instant case, petitioner prayed for the reopening of CTA Case No. 9717 to present the bills of lading and/or airway bills, omitted invoices, and correct Board of Investment certifications that were cited but omitted by the ICPA, and to present Ms. Gonzales in order to testify on matters raised/explained in CTA Case No. 9843, only **<u>after</u>** the Court in Division had rendered the *Decision* dated February 4, 2020.

Considering that the Court in Division already rendered a decision, petitioner could no longer avail of the remedy of reopening the case. Neither can the Court in Division's denial of petitioner's motion to allow the reopening of the case be reviewed on appeal, absent any showing that there was clear abuse on the part of the Court in Division when it denied said motion.

Petitioner's reliance on the ICPA Report is not excusable negligence.

Meanwhile, even if the Court *En Banc* were to treat petitioner's motion to allow reopening of the case as a motion for new trial, the same must still be denied. /M

Section 5, Rule 15 of the Revised Rules of the CTA (RRCTA) enumerates the grounds for a motion for new trial as follows:

> "SEC 5. *Grounds of motion for new trial.* — A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
>
> (a) Fraud, accident, mistake or **excusable negligence which ordinary prudence could not have guarded against** and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result." *(Emphasis supplied)*

In the instant case, petitioner claims that its reliance on the ICPA Report constitutes excusable negligence. Petitioner manifests that it honestly believed that it exercised the due diligence required under the current circumstances. Considering the sheer volume of documents that needed to be presented before the Court in Division, petitioner commissioned an ICPA; thus, it had every reason to believe that the statements in the ICPA Report are correct and accurate. Petitioner asserts that if it were to cross reference each marking of the ICPA with every single document, it would, in effect, be conducting the very task for which the ICPA was commissioned.

We are unconvinced.

Excusable negligence is one which ordinary diligence and prudence could not have guarded against.[17] In this case, petitioner failed to exercise even ordinary diligence as it relied entirely on the ICPA's representations. Petitioner admitted that it *"afforded too much weight to the statements by the ICPA in his report and in doing so might have became [sic] lenient in conducting its own independent evaluation of the documents submitted and marked by the ICPA".*[18]

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[17] *Lui Enterprises, Inc. v. Zuellig Pharma Corporation and the Philippine Bank of Communications*, G.R. No. 193494, March 7, 2014.

[18] Paragraph 7 of the *Motion for Reconsideration and to Take Judicial Notice (Re: 04 February 2020 Resolution [sic] of the Honorable Court of Tax Appeals – First Division)* Division Docket (CTA Case No. 9717), p. 500.

Contrary to petitioner's claim that it *"is not bound to review the correctness of the contents of the Report of the ICPA"*,[19] it is in fact incumbent upon petitioner to review the ICPA Report considering that the findings and conclusions of the ICPA may be challenged by the parties.[20]

There being no excusable negligence on the part of petitioner, it cannot avail of the remedy of a new trial.

The Court En Banc cannot take judicial notice of the testimony of Teresa S. Gonzales regarding matters raised/explained in CTA Case No. 9843.

Petitioner argues that considering the materiality of Ms. Gonzales' testimony in CTA Case No. 9843 in resolving the issue in the instant case, the Court *En Banc* should take judicial notice of Ms. Gonzales' testimony so that there will be no miscarriage of justice on mere technicality.

Petitioner is mistaken.

Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them. Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support.[21]

Section 3 of Rule 129 of the Revised Rules of Court provides:

> "SECTION 2. *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

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[19] Paragraph 9 of the *Motion for Reconsideration and to Take Judicial Notice (Re: 04 February 2020 Resolution [sic] of the Honorable Court of Tax Appeals – First Division)* Division Docket (CTA Case No. 9717), p. 500.
[20] Section 3, Rule 13 of the RRCTA.
[21] *Fernando U. Juan v. Roberto U. Juan (substituted by his son Jeffrey C. Juan) and Laundromatic Corporation*, G.R. No. 221732, August 23, 2017.

SECTION 3. *Judicial notice, when hearing necessary.* — During the pre-trial and the trial, the court *motu proprio* or upon motion, shall hear the parties on the propriety of taking judicial notice of any matter.

Before judgment or on appeal, the court *motu proprio* or upon motion, may take judicial notice of any matter and shall hear the parties thereon if such matter is decisive of a material issue in the case."

In the instant case, while Ms. Gonzales' testimony in CTA Case No. 9843 may possibly affect the resolution of the issue at hand, the Court *En Banc* must still exercise its power to take judicial notice with caution.

In *Expertravel & Tours, Inc. v. Court of Appeals and Korean Airlines,*[22] (*Expertravel* case) the Supreme Court laid down the three material requisites of matters of judicial notice, *to wit*:

"Generally speaking, **matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety.** Hence, it can be said that **judicial notice is limited to facts evidenced by public records and facts of general notoriety**. Moreover, **a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable**."[23] *(Emphasis supplied)*

It can be gleaned from the foregoing that in order for the Court *En Banc* to take judicial notice of a certain matter, the same must be: (1) one of common and general knowledge; (2) well and authoritatively settled and not doubtful or uncertain; and (3) known to

[22] G.R. No. 152392, May 26, 2005.
[23] Italics by the Supreme Court.

be within the limits of the jurisdiction of the Court *En Banc*. Again, the guide in determining what facts may be assumed to be judicially known is that of notoriety.

In the instant case, the testimony of Ms. Gonzales in CTA Case No. 9843 failed to satisfy the first two material requisites laid down by the Supreme Court in the *Expertravel* case. Ms. Gonzales' testimony is not one of common and general knowledge, and not well and authoritatively settled.

Moreover, the general rule is that courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge. However, this rule is subject to the exception that **in the absence of objection** and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of the case filed in its archives as read into the records of a case pending before it, when with the knowledge of the opposing party, reference is made to it, by name and number or in some other manner by which it is sufficiently designated. Thus, **for said exception to apply, the party concerned must be given an opportunity to object before the court could take judicial notice of any record pertaining to other cases pending before it**.[24]

Thus, while Ms. Gonzales' testimony in CTA Case No. 9843 is material in resolving the issue in the instant case, the Court *En Banc* cannot take judicial notice thereof considering that the same failed to satisfy all three material requisites laid down by the Supreme Court in the *Expertravel* case, and that respondent objected to the Court *En Banc's* taking judicial notice thereof.

The Court in Division did not err in dismissing petitioner's claim for refund of its excess and/or unutilized input VAT amounting to ₱14,957,902.88, representing its excess and unutilized input VAT credits for the 3rd quarter of FY ending September 20, 2015.

[24] *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.

In the *Decision* dated February 4, 2020, the Court in Division discussed petitioner's compliance with the following requisites in order for a taxpayer to be entitled to the refund of, or issuance of a TCC for, unutilized/excess input VAT attributable to zero-rated or effectively zero-rated sales, *to wit*:

1. The taxpayer is VAT-registered;
2. The claim for refund was filed within the prescriptive period;
3. There must be zero-rated or effectively zero-rated sales;
4. Input taxes were incurred or paid;
5. Such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. The input taxes were not applied against any output VAT liability.

In the instant *Petition*, petitioner puts in issue the Court in Division's finding that petitioner failed to comply with the 6th requisite, *i.e.*, petitioner failed to prove that the excess input taxes were not applied against any output VAT liability.

According to petitioner, it was able to satisfactorily prove that the excess input taxes were not applied against any output VAT liability.

Petitioner explains that as reflected in its VAT Returns for the 3rd quarter of FY 2015 to the 2nd quarter of FY 2016, the subject input taxes were not applied against any output VAT liabilities as follows:

		Q3 FY 2015 (Exhibit "P-29-1")	Q4 FY 2015 (Exhibit "P-29-2")	Q1 FY 2016 (Exhibit "P-29-3")	Q2 FY 2016 (Exhibit "P-29-4")
Output Tax Due (Line 19B)		32,749,470.24	36,834,414.68	37,534,347.86	32,843,801.46
Input Tax Carried Over from Previous Period (Line 20A)		183,927,735.75	**198,907,971.71**	**92,961,961.39**	**72,899,462.91**
Add:	Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter (Line 20B)	-	620,198.24	1,047,511.17	1,208,601.99
Add:	Current Transactions (Line 21)				
	Purchase of Capital Goods exceeding P1Million (Line 21D)	642,531.32	503,807.14	271,714.28	590,228.56
	Domestic Purchases of Goods Other than Capital Goods (Line 21F)	4,086,657.65	6,133,812.42	5,015,075.90	8,810,638.87
	Importation of Goods Other than Capital Goods (Line 21H)	35,781,735.29	27,590,055.29	27,778,976.11	44,655,837.00
	Domestic Purchases of Services (Line 21J)	7,158,529.16	5,261,104.40	7,593,039.41	10,253,628.06
	Services Rendered by Non-residents (Line 21L)	680,451.02	856,055.91	791,583.97	764,090.74
Total Available Input Tax (Line 22)		232,277,640.19	239,873,005.11	135,459,862.23	139,182,488.13
Less:	Deductions from Input Tax (Line 23)				
	Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period (Line 23A)	620,198.24	1,047,511.17	1,208,601.99	1,949,287.88

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VAT Refund/TCC Claimed (Line 23D)	**14,957,902.88**	26,008,544.96	23,817,449.47	-
Total (Line 23F)	15,578,101.12	27,056,056.13	25,026,051.46	1,949,287.88
Total Available Input Tax (Line 24 = Line 22 Less Line 23F)	216,699,539.07	212,816,948.98	110,433,810.77	137,233,200.25
Net VAT Payable/Total Amount Payable (Overpayment) (Line 25/29 = Line 19B less Line 24)	**(183,950,068.83)**	**(175,982,534.30)**	**(72,899,462.91)**	(104,389,398.79)
Difference between Line 25/29 of the current quarter against Line 20A of the next quarter	**14,957,902.88***	**(83,020,572.91)****		

*The ₱14,957,902.88 amount of VAT refund was inadvertently added back to the input tax carried over to the next period.

**This is composed of the P14,957,902.88 amount of VAT refund was correctly removed from input tax carried over to the next period together and the ₱68,062,670.03 unsupported input tax from previous periods.

Based on the table above, petitioner argues that the amount of ₱14,957,902.88 sought to be refunded was correctly removed from the total available input tax in the Amended Quarterly VAT return of the 3rd quarter of FY 2015. Consequently, the amount of input tax to be carried over to the next period should be ₱183,950,068.83.

While the input tax credits from the previous period in the Amended Quarterly VAT Return of the 4th quarter of FY 2015 shows an amount of ₱198,907,971.71 instead of ₱183,950,068.83, or a difference of ₱14,957,902.88, petitioner claims that the difference pertains to the amount sought to be refunded which was inadvertently added to the input tax credits carried over from the previous period.

Meanwhile, petitioner points out that for the input tax credits to be carried over to the next period, the Amended Quarterly VAT Return for the 4th quarter of FY 2015 shows an amount of ₱175,982,534.30. However, the amount of input tax credits carried over in the Amended Quarterly VAT Return for the 1st quarter of FY 2016 was only ₱92,961,961.30.

Petitioner claims that as explained by the ICPA, ₱83,020,572.91 (₱175,982,534.30 less ₱92,961,961.39) worth of input tax was removed from the ₱175,982,534.30 ending balance of the input tax credits to be carried over to the succeeding period. According to the ICPA, the ₱83,020,572.91 is composed of the ₱14,957,902.88 sought to be refunded plus ₱68,062,670.03 unsupported input taxes incurred from the 4th quarter of FY 2015 to the 1st quarter of FY 2016. Thus, petitioner argues that the input VAT of ₱14,957,902.88 sought to be refunded was correctly removed from the total input tax credits carried over to the subsequent periods and was not, and could not be, applied against any output VAT liabilities.

Petitioner's argument is specious.

While the ₱83,020,572.91 worth of input tax which was removed from the ₱175,982,534.30 ending balance of the input tax credits to be carried over to the succeeding period is large enough to include the ₱14,957,902.88 sought to be refunded, the input tax credits carried over in the Amended Quarterly VAT Return for the 1st quarter of FY 2016 in the amount of ₱92,961,961.39 is also large enough to still include the ₱14,957,902.88 sought to be refunded, and consequently be applied to the output VAT liability in the said quarter and the succeeding taxable quarters.

The ICPA Report states that the ICPA had *"verified that the input VAT being claimed for refund in the amount of ₱14,957,902.88 that was deducted from the total available input VAT in 3rd Quarter of 2015 was then added back in the 4th VAT Return. The same was subsequently deducted from the 1st Quarter of 2016"*. In Table 10.1 of the ICPA Report, it is stated that the ₱83,020,572.91 is composed of the ₱14,957,902.88 sought to be refunded plus the ₱68,062,670.03 which was deducted from the input VAT to be carried over from the 4th quarter of 2015 to the 1st quarter of 2016. However, in the same table, and with reference to the ₱68,062,670.03, it is stated that *"no supporting documents were presented to us"*. Without showing the breakdown of the ₱68,062,670.03, it can easily be claimed that said amount, together with the ₱14,957,902.88 sought to be refunded, comprises the ₱83,020,572.91 which was removed from the ₱175,982,534.30.

We quote with approval the Court in Division's ruling in the *Decision* dated February 4, 2020 that there is no certainty that the ₱14,957,902.88 sought to be refunded was not carried over to the subsequent periods and could not be applied against any output VAT liabilities, *to wit*:

> "Moreover, even if the Amended First Quarterly VAT Return for FY 2016 reflected a lower amount of ₱92,961,961.39 as *"Input Tax Carried Over from Previous Period"* than the Tax Overpayment of ₱175,982,534.30 from the previous Amended Fourth Quarterly VAT Return for FY 2015, still, **it cannot be ascertained whether the difference thereof in the amount of ₱83,020,572.91**

[initials]

> **(₱175,982,534.30 less ₱92,961,961.39), which was not included in the amount carried forward, actually includes the claimed amount of ₱14,957,902.88. Hence, the subject claim may still form part of the ₱92,961,961.39 carried over to the first quarter of FY 2016 and, consequently, be applied to the output VAT liability in the said quarter and the succeeding taxable quarters.**" *(Emphasis supplied)*

On the other hand, while Ms. Gonzales, in her testimony in CTA Case No. 9843, was able to sufficiently explain the detailed composition of the ₱83,020,572.91 (which actually includes the ₱14,957,902.88 sought to be refunded), the same cannot be considered by the Court *En Banc* because Ms. Gonzales' testimony was not admitted to form part of the records of the case. Moreover, as discussed above, the case can no longer be reopened in order for petitioner to present Ms. Gonzales in order to testify on matters raised/explained in CTA Case No. 9843, and neither can the Court *En Banc* take judicial notice of Ms. Gonzales' testimony in CTA Case No. 9843.

The Court *En Banc* is mindful that there are indeed instances when the courts may relax rules of procedure. It is an accepted tenet that rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure.[25]

However, the relaxation of the rules is not warranted in this case because the testimony of Ms. Gonzales falls under the purview of forgotten evidence, which was explained by the Supreme Court in *Office of the Ombudsman, represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel*,[26] as follows:

> "As it is, the additional evidence offered by Coronel amount to no more than "forgotten" evidence, the belated uncovering of which would not have justified a reconsideration of the case. **Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and**

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[25] *Ma. Rosario Suarez v. Judge Martin S. Villarama, Jr., et al.*, G.R. No. 124512, June 27, 2006.
[26] G.R. No. 164460, June 27, 2006.

> **offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings.** A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence." *(Emphasis and underscoring supplied)*

In view of the foregoing, We find no cogent reason to vacate the assailed *Decision* and *Resolution*.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit.

The *Decision* dated February 4, 2020 and the *Resolution* dated September 1, 2020 rendered by the First Division of this Court in CTA Case No. 9717 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ORICA PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2336
(CTA Case No. 9717)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and,*
CUI-DAVID, *JJ.*

Promulgated:

MAY 31 2022 9:27a.m.

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my esteemed colleague, Associate Justice Erlinda P. Uy, while I concur with the majority's affirmation of the First Division's denial of petitioner Orica Philippines, Inc.'s (**petitioner**'s/**OPI**'s) motion to reopen the case to submit additional evidence [*i.e.*, bills of lading and/or export declarations to prove that the goods were exported and the testimony of its witness, Teresa S. Gonzales (**Gonzales**), as to the detailed composition of the ₱83,020,572.91 adjustment that includes the subject ₱14,957,902.88 value-added tax (**VAT**) refund claim], I take exception to the *ponencia*'s conclusion that petitioner failed to comply with the ***6th requisite*** for the grant of an input VAT refund or tax credit under Section 112(A)[1] of

1 **SEC. 112**. *Refunds or Tax Credits of Input Tax.* —
(A) *Zero-Rated or Effectively Zero-Rated Sales.* — ...

the National Internal Revenue Code (**NIRC**) of 1997, as amended, *i.e.*, that the input taxes were not applied against any output VAT liability.

The *ponencia* echoed the First Division's ruling that even if the Amended Quarterly VAT Return for the 1st quarter of the fiscal year (**FY**) 2016[2] reflected a lower amount of ₱92,961,961.39 as "Input Tax Carried Over from Previous Period (Line 20A)" compared to the Tax Overpayment of ₱175,982,534.30 from the previous Amended Quarterly VAT Return for the 4th quarter of FY 2015[3], still, it cannot be ascertained whether the difference thereof in the amount of ₱83,020,572.91 (₱175,982,534.30 less ₱92,961,961.39), which was not included in the amount carried forward, actually includes the claimed amount of ₱14,957,902.88. Hence, the subject claim may still form part of the ₱92,961,961.39 carried over to the 1st quarter of FY 2016 and, consequently, be applied to the output VAT liability in the said quarter and the succeeding taxable quarters."

I respectfully beg to differ.

I submit that petitioner has satisfactorily established compliance with the said *6th requisite* as the inadvertent carry over of the claimed input VAT was subsequently corrected and there is enough evidence to confirm that such claim for refund was not, and could not be, applied against any output VAT liabilities in the succeeding taxable periods.

THE CLAIMED INPUT VALUE-ADDED TAX (VAT) WAS NOT APPLIED AGAINST ANY OUTPUT VAT LIABILITY IN THE SUCCEEDING TAXABLE QUARTERS.

The records of the case show that the subject claim for refund of ₱14,957,902.88 no longer formed part of the excess input VAT (tax overpayment) of ₱92,961,961.39 as of the 1st quarter of FY 2016. Even as the claimed input VAT of ₱14,957,902.88 was inadvertently added by petitioner to the input tax credits carried over from the previous period in its succeeding Amended Quarterly VAT Return for the 4th quarter of FY 2015[4], such error was nevertheless corrected in the Amended Quarterly VAT Return for the 1st quarter of FY 2016[5], as can be deduced from the table below:

[2] ICPA Exhibit "P-29-3", CD.
[3] ICPA Exhibit "P-29-2", CD.
[4] Id.
[5] Supra at note 2.

	3rd Quarter of FY 2015	4th Quarter of FY 2015	1st Quarter of FY 2016	2nd Quarter of FY 2016
ICPA Exhibit No.	"P-29-1"	"P-29-2"	"P-29-3"	"P-29-4"
Output Tax Due (Line 19B)	**₱32,749,470.24**	**₱36,834,414.68**	**₱37,534,347.86**	**₱32,843,801.46**
Less: Allowable Input Tax (Line 20)				
Input Tax Carried Over from Previous Period (Line 20A)	₱183,927,735.75	₱198,907,971.71	₱92,961,961.39	₱72,899,462.91
Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter (Line 20B)	-	620,198.24	1,047,511.17	1,208,601.99
Add: Current Transactions (Line 21)				
Purchases of Capital Goods exceeding P1Million (Line 21D)	₱642,531.32	₱503,807.14	₱271,714.28	₱590,228.56
Domestic Purchases of Goods Other than Capital Goods (Line 21F)	4,086,657.65	6,133,812.42	5,015,075.90	8,810,638.87
Importation of Goods Other than Capital Goods (Line 21H)	35,781,735.29	27,590,055.29	27,778,976.11	44,655,837.00
Domestic Purchases of Services (Line 21J)	7,158,529.16	5,261,104.40	7,593,039.41	10,253,628.06
Services Rendered by Non-Residents (Line 21L)	680,451.02	856,055.91	791,583.97	764,090.74
Total Available Input Tax (Line 22)	**₱232,277,640.19**	**₱239,873,005.11**	**₱135,459,862.23**	**₱139,182,488.13**
Less: Deductions from Input Tax (Line 23)				
Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period (Line 23A)	₱620,198.24	₱1,047,511.17	₱1,208,601.99	₱1,949,287.88
VAT Refund/TCC Claimed (Line 23D)	14,957,902.88	26,008,544.96	23,817,449.47	-
Total (Line 23F)	**₱15,578,101.12**	**₱27,056,056.13**	**₱25,026,051.46**	**₱1,949,287.88**
Total Allowable Input Tax (Line 24)	**₱216,699,539.07**	**₱212,816,948.98**	**₱110,433,810.77**	**₱137,233,200.25**
Net VAT Payable / Total Amount Payable (Overpayment) (Line 25/29)	**(₱183,950,068.83)**	**(₱175,982,534.30)**	**(₱72,899,462.91)**	**(₱104,389,398.79)**

Based on the foregoing and as confirmed in the Independent Certified Public Accountant (**ICPA**) Report[6], the difference between the amount of tax overpayment in Line 25/29 of the Amended Quarterly VAT Return for the 3rd quarter of FY 2015[7] of ₱183,950,068.83 and the amount of input tax carried over from the previous period in Line 20A of the Amended Quarterly VAT Return for the 4th quarter of FY 2015[8] of ₱198,907,971.71 corresponds to the amount claimed for refund of ₱14,957,902.88 (previously deducted from the total available input tax in the 3rd quarter of FY 2015). On the other hand, the difference between the amount of tax overpayment in Line 25/29 of the Amended Quarterly VAT Return for the 4th quarter of FY 2015[9] of ₱175,982,534.30 and the amount of input tax carried over from the previous period in Line 20A of the Amended Quarterly VAT Return for the 1st quarter of FY 2016[10] of ₱92,961,961.39 pertains to the ₱83,020,572.91 catch-up

6 Exhibit "P-51", Separate Folder and CD.
7 ICPA Exhibit "P-29-1", CD.
8 Supra at note 3.
9 Supra at note 3.
10 Supra at note 2.

adjustment, inclusive of the amount claimed for refund of ₱14,957,902.88 that was inadvertently carried over to the 4th quarter of FY 2015. Evidently, such inadvertent carry over was subsequently corrected, and, it can thus be said that the amount thereof subject of petitioner's present claim for refund was not utilized or applied against output VAT liabilities on the succeeding taxable periods.

Additionally, the Court-commissioned ICPA testified, through his Judicial Affidavit dated 14 June 2018[11], that the claimed input VAT refund of ₱14,957,902.88 formed part of the catch-up adjustment that reduced the amount of input tax carried over from the previous period in Line 20A of the Amended Quarterly VAT Return for the 1st quarter of FY 2016[12], to wit:

> ...
>
> 33. Q: You mentioned that the excess ₱14,957,902.88 were applied for refund, were you able to ascertain if the amount applied for refund remained to be unutilized against the subsequent period's output VAT liabilities?
>
> A: Yes. As stated in ***pages 8 to 13*** of my report —
>
> "5. We also verified that the total excess and unutilized input tax of ₱14,957,902.88 for the 3rd quarter of FY 2015 (***Exhibit P-29-1***) was not carried over to the succeeding periods, which is from the 4th quarter of FY 2015 that was amended on September 29, 2017 to the 2nd quarter of FY 2018 (***Exhibits P-29-2 to P-29-12***) despite the error made in 4th quarter of FY 2015. The amount of input VAT carried over stating 1st quarter of FY 2016 was corrected when the Petitioner amended all returns from 1st quarter of FY 2016 onwards. Thus, the above mentioned amount of input VAT was not utilized or applied against output VAT liabilities on the succeeding periods. Details are presented from Table 8 to Table 19.
>
> ...
>
> 35. Q: How much input VAT credits maybe (sic) refunded to Petitioner?
>
> A: ...
>
> I have also verified that the input VAT being claimed for refund in the amount of ₱14,957,902.88 that was deducted from the total available input VAT in third quarter of 2015, although was added back to the fourth quarter VAT return of 2015, was subsequently deducted from the first quarter of FY 2016. For the details, kindly see **table 10.1** of my report.
>
> ...

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11 Exhibit "P-52", Judicial Affidavit of Emmanuel Y. Mendoza, Division Docket, pp. 265-285.
12 Supra at note 2.

Aside from the fact that the differences noted above were properly accounted for and that the inadvertent carry over was duly corrected, it can be said that the claimed input VAT of ₱14,957,902.88 no longer formed part of the ₱92,961,961.39 carried over to the 1st quarter of FY 2016, and, as such, was not applied against any output VAT liability given that the "Total Allowable Input Tax (Line 24)" is significantly higher than the "Output Tax Due (Line 19B)" and the total available input tax from current transactions is more than enough to cover the output tax due in the 4th quarter of FY 2015 and the succeeding quarters, as shown below:

	4th Quarter of FY 2015	1st Quarter of FY 2016	2nd Quarter of FY 2016
ICPA Exhibit No.	"P-29-2"	"P-29-3"	"P-29-4"
Total Allowable Input Tax (Line 24)	**₱212,816,948.98**	**₱110,433,810.77**	**₱137,233,200.25**
Output Tax Due (Line 19B)	**36,834,414.68**	**37,534,347.86**	**32,843,801.46**
Total Available Input Tax from Current Purchases	**40,344,835.16**	**41,450,389.67**	**65,074,423.23**
Purchases of Capital Goods exceeding P1Million (Line 21D)	503,807.14	271,714.28	590,228.56
Domestic Purchases of Goods Other than Capital Goods (Line 21F)	6,133,812.42	5,015,075.90	8,810,638.87
Importation of Goods Other than Capital Goods (Line 21H)	27,590,055.29	27,778,976.11	44,655,837.00
Domestic Purchases of Services (Line 21J)	5,261,104.40	7,593,039.41	10,253,628.06
Services Rendered by Non-Residents (Line 21L)	856,055.91	791,583.97	764,090.74

It is for the reasons above that, in my humble opinion, petitioner was able to prove by preponderance of evidence that the claimed input VAT remained unutilized or was never applied against any output VAT liability in the succeeding taxable quarters (*i.e.*, 4th quarter of FY 2015 onwards).

A claim for tax credit or refund, arising out of zero-rated transactions, is essentially based on excess payment, and only a preponderance of evidence is needed to grant such claim.[13] While tax refund, being in the nature of tax exemption, is construed strictly against the taxpayer, **this principle should not be interpreted to alter the quantum of evidence necessary in civil cases**, that is — from preponderance of evidence to proof beyond reasonable doubt.[14]

COMPUTATION OF THE REFUNDABLE AMOUNT DUE TO PETITIONER.

Since petitioner has complied with the all the requisites (including the aforesaid ***6th*** and ***last requisite*** — that its excess input VAT was not

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13 *See Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, 19 October 2011.

14 Presiding Justice Roman G. Del Rosario's Concurring and Dissenting Opinion in CTA EB Case No. 2249, entitled *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*, and CTA EB Case Nos. 2144 & 2156, entitled *San Miguel Brewery, Inc. v. Commissioner of Internal Revenue*.

applied against any output VAT liability in the next taxable quarters) for entitlement to the refund or issuance of a tax credit certificate (**TCC**), a computation of the refundable amount due to petitioner is in order.

Accordingly, petitioner should be entitled to the amount of ₱873,803.91, representing its excess and unutilized input VAT attributable to its valid zero-rated sales arising from domestic sales of goods to Board of Investments (**BOI**)-registered companies for the 3rd quarter of FY 2015, determined as follows:

Valid Zero-Rated Sales	₱149,996,700.98
Divided by Total Sales for the Period of Claim	655,539,178.56
Multiplied by the Valid Excess Input VAT	3,818,835.32
Excess Input VAT attributable to Valid Zero-Rated Sales	**₱873,803.91**

All told, I **VOTE** to **PARTIALLY GRANT** the Petition for Review. Respondent Commissioner of Internal Revenue (**CIR**) should be ordered to refund in favor of petitioner Orica Philippines, Inc. the amount of ₱873,803.91, representing petitioner's excess and unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of FY ended 30 September 2015.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice