REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PROCTER & GAMBLE ASIA, PTE. LTD., Petitioner,	**CTA CASE NO. 7683**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 03 2019 9:00 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is respondent's **Motion for Partial Reconsideration**, filed by registered mail on September 21, 2018 and received by this Court on October 2, 2018, with petitioner's **Comment/Opposition (Re: Respondent's Motion for Partial Reconsideration dated September 20, 2018)**, filed on October 29, 2018.

Respondent moves for the reconsideration of the Court's Amended Decision dated September 6, 2018 (assailed Amended Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱26,066,581.28** representing its unutilized excess input VAT attributable

to zero-rated sales/receipts for the periods of July 1, 2005 to September 30, 20015 and October 1, 2005 to December 31, 2005.

SO ORDERED."

In his motion, respondent argues that petitioner's invoices and official receipts failed to comply with the mandatory invoicing requirements under Sections 110(A), 113(A), (B), and 237 of the National Internal Revenue Code of 1997, as amended (Tax Code), in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05 and Revenue Memorandum Circular (RMC) No. 42-2003. Respondent avers that the invoices and official receipts which petitioner submitted do not indicate in full the required information under the said provisions, and hence, has no probative value and must be treated as immaterial and irrelevant.

On the other hand, petitioner contends that its invoices and official receipts were all examined, evaluated and considered by the Court in arriving at its Amended Decision. Petitioner stresses that not all input value-added tax (VAT) substantiated by invoices and official receipts were refunded to petitioner. Petitioner states that from the total accumulated input VAT credits of ₱53,624,427.14, the amount of ₱27,557,845.96 was ruled invalid by the Court in the absence of proper substantiation.

At the outset, the Court notes that respondent's motion shows that it merely repeats the arguments found in his supplemental memorandum. Moreover, he did not specifically indicate the invoices and official receipts which allegedly failed to comply with the mandatory invoicing requirements. Section 2, Rule 37 of the Rules of Court provides:

> "SEC. 2. *Contents of motion for new trial or reconsideration and notice thereof.* – The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.
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> xxx xxx xxx

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are 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." (*Underscoring supplied*)

As correctly observed by petitioner, the Court had already thoroughly examined petitioner's documentary evidence, and found that it was able to prove its entitlement to the refund claimed, but in a reduced amount. In the assailed Amended Decision, the Court noted several instances of non-compliance with the substantiation requirements, and as such, disallowed the same, to wit:

"Based on the ICPA report, the Court disallows the input VAT of ₱2,785,360.39 for non-compliance with the substantiation requirements under Section 4.104-5 in relation to Section 4.104-1 of Revenue Regulations No. 7-95. Below is the breakdown of the input taxes of ₱2,785,360.39:

xxx xxx xxx

In addition, the Court observed that certain invoices and official receipts supporting petitioner's input VAT claim for the months of November and December 2005 do not show the VAT component separately from the purchase amount, which is in violation of Section 113(B)(2)(a) of the NIRC of 1997, as amended by Republic Act No. 9337, which became effective on November 1, 2005, to wit:

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Therefore, the Court deems it proper to also disallow input VAT in the amount of ₱16,501,420.01 supported by VAT sales invoices and official receipts which are dated November 1, 2005 and onwards and do not separately indicate the amount of input VAT, tabulated hereunder: *jr* xxx xxx xxx

> Considering all the aforesaid disallowances, out of petitioner's reported input tax of ₱87,341,820.12 arising from current domestic purchases of capital goods, domestic purchases of goods other than capital goods and domestic purchases of services, only the amount of ₱44,134,162.27 represents petitioner's valid input VAT, computed as follows: xxx"

Respondent then argues that petitioner's documentary exhibits, such as invoices and official receipts, certifications of inward remittances, Securities and Exchange Commission (SEC) Certificate of Non-Registration, The Procter and Gamble Company and Subsidiaries Report to the U.S. Securities and Exchange Commission, Business Service Agreements, and credit notes, are hearsay evidence, since petitioner's witnesses who identified the said documentary evidence allegedly has no personal knowledge and participation in the preparation and execution of the same.

On the other hand, petitioner claims that the persons who testified about the documentary exhibits in order to explain their relevance to petitioner's claim and to corroborate their contents has personal knowledge of the transactions recorded in these documents given the nature of their duties and responsibilities. Moreover, petitioner maintains that the SEC certifications are entries in official records made in the performance of a duty by a public officer of the Philippines, and as such, are prima facie evidence of the facts stated therein. Petitioner also posits that since respondent failed to object to the exhibits' admissibility during trial, respondent has failed to impeach the probative value of these documents.

The Court notes that respondent first raised this allegation only in his supplemental memorandum filed on October 4, 2017. Any objection to petitioner's documentary evidence should have been raised by respondent within fifteen days (15) from receipt of petitioner's formal offer of evidence, as ordered[1] by the Court, pursuant to Section 36, Rule 132 of the Rules of Court. However, despite notice, respondent filed no comment or opposition to petitioner's formal offer of evidence.[2]

[1] Resolution dated June 16, 2009, docket, vol. III, p. 1558.
[2] Resolution dated September 8, 2009, docket, vol. III, pp. 1604-1605.

The rule is that evidence not objected to may be deemed admitted and may be validly considered by the court in arriving at its judgment. This is true even if by its nature, the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.[3]

Nevertheless, even assuming that respondent has timely registered his opposition to the admission of the subject exhibits, the Court finds respondent's arguments bereft of merit.

Under the rules on evidence, documents are either public or private. Private documents are those that do not fall under any of the enumerations in Section 19, Rule 132 of the Rules of Court. Section 20 of the same law, in turn, provides that before any private document is received in evidence, its due execution and authenticity must be proved either by anyone who saw the document executed or written, or by evidence of the genuineness of the signature or handwriting of the maker.[4]

During authentication in court, a witness positively testifies that a document presented as evidence is genuine and has been duly executed or that the document is neither spurious nor counterfeit nor executed by mistake or under duress.[5]

With regard to the invoices and official receipts, these have been meticulously examined and verified by the Court-commissioned Independent Certified Public Accountant (ICPA) pursuant to Section 5, Rule 12 and Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA). ICPA Katherine O. Constantino testified[6] that she performed the following procedures, among others:

> "B. <u>Verification of documents supporting the zero-rated sales of services and inward remittances of proceeds of the zero-rated sales of services:</u> *Ju*

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[3] *The Heirs of Marcelino Doronio vs. Heirs of Fortunato Doronio*, G.R. No. 169454, December 27, 2007.

[4] *Malayan Insurance Co., Inc. vs. Philippine Nails and Wires Corporation*, G.R. No. 138084, April 10, 2002.

[5] *Salas vs. Sta. Mesa Market Corporation and the Heirs of Domingo*, G.R. No. 157766, July 12, 2007.

[6] Judicial Affidavit of Katherine O. Constantino dated October 10, 2008, docket, vol. II, pp. 1112-1121; Minutes of the Hearing dated October 16, 2008 and November 13, 2008, docket, vol. II, pp. 1107 and 1123, respectively.

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4. Ascertained that the zero-rated sales of service for the 1st and 2nd quarters of FY June 2006 as per Petitioner prepared Schedule of Inward Remittances for the period July to September 2005 and October to December 2005 are equal to the total zero-rated sales/receipts declared in the Petitioner's amended quarterly VAT returns for the 1st and 2nd quarters of FY June 2006 covering the period July to December 2005.

5. Ascertained that the zero-rated sales of service were supported by zero-rated VAT official receipts.

6. Ascertained that the zero rated official receipts were dated within the claim period.

7. Ascertained that the zero-rated VAT official receipts were issued in the name of the customers.

8. Ascertained that the zero-rated VAT official receipts bore the BIR's authority to print.

9. Ascertained that the zero-rated VAT official receipts are original duplicate copies (i.e. second copy of the invoice set; the original copy was given to the customer).

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11. Compared the original copies of the supporting documents mentioned above with the photocopies to be submitted to this Honorable Court as pieces of evidence and checked if the said photocopies are faithful reproductions of the original copies we have examined.

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C. <u>Verification of documents supporting the local sales of services subject to the 10% VAT:</u>

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2. Verified if the services rendered to customers listed in the Petitioner prepared Schedule of Vatable Sales for the period July to September 2005 and for the period October to December 2005 are subject to 10% VAT. Verified the pertinent service agreements.

3. Ascertained that the taxable gross receipts and output tax for the 1st and 2nd quarters of FY June 2006 per Petitioner's schedule are equal to the total gross receipts and output tax declared in the Petitioner's amended quarterly VAT returns for the 1st and 2nd quarters of FY June 2006 covering the period July 1, 2005 to December 31, 2005.

4. Ascertained that Vatable sales of service were supported by VAT official receipts with pre-printed TIN followed by the word 'VAT'.

5. Ascertained that VAT official receipts were issued to the customer.

6. Ascertained that VAT official receipts were dated within the quarter of claim.

7. VAT official receipts bore the BIR's authority to print.

8. VAT official receipts are original duplicate copies (Second copy of the official receipt set. The original copies were given to the customers).

9. Output VAT was correctly computed.

10. We also compared the original copies of the supporting documents mentioned above with the

photocopies to be submitted to this Honorable Court as pieces of evidence and checked if the said photocopies are faithful reproductions of the original copies.

D. <u>Check of compliance with the substantiation requirements of the total input tax claim which include input tax attributable to the petitioner's zero-rated sales of services:</u>

xxx xxx xxx

3. We checked the documents supporting the said input VAT on goods and services and ascertained that:

   a. The details of the documents supporting the input VAT claim agree with the details in the schedule summaries prepared by the Petitioner.
   b. Domestic purchases of goods are supported by VAT invoices.
   c. Domestic purchases of services are supported by VAT official receipts.
   d. The relevant documents are issued in the name of the Petitioner.
   e. The relevant documents on file are the original copies.
   f. The relevant documents bear the BIR's authority to print.
   g. The input tax claimed were correctly computed.
   h. The input taxes are within the period of claim.

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5. We checked that the documents supporting the input taxes claimed by the Petitioner are original copies. We also compared the original copies of these documents with the photocopies presented during the hearing of the Petitioner's case to determine if the photocopies are faithful

reproductions of the original copies we have examined.

E. <u>Verification of the unutilized/unapplied input VAT on purchases of capital goods:</u>

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2. xxx For this purpose, we compared the total amount of input VAT on domestic purchases of capital goods indicated in the Petitioner's amended quarterly VAT return with the total amount of input VAT on Segregated schedule of Purchase of capital goods specifically by checking the documents supporting the said input taxes on capital goods and ascertained that:

a. The details of the documents supporting the input taxes on capital goods agree with the details in the Segregated Schedule of Purchases of Capital goods.
b. Domestic purchases of capital goods are supported by VAT invoices.
c. Domestic purchases of services forming part of the capital goods are supported by VAT official receipts.
d. The relevant documents were issued in the name of the Petitioner.
e. The relevant documents on file are the original copies
f. The relevant documents bear the BIR's authority to print.
g. The input taxes claimed were correctly computed.
h. The input taxes are within the period of claim.
i. The input taxes were actually paid on purchases of goods and services.
j. The input taxes claimed on capital goods were not capitalized as part of the asset or service purchased. For this purpose, we checked the Petitioner's system generated journal vouchers supporting the recording of purchases of capital goods.

k. The documents supporting the unutilized/unapplied input VAT on purchases of capital goods and services forming part of capital goods are original copies. We also compared the original copies of these documents with the photocopies presented during the hearing of the Petitioner's case to determine if the photocopies are faithful reproductions of the original copies we have examined.

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In the case of *Seaoil Petroleum Corporation vs. Autocorp Group and Rodriguez*[7], the Supreme Court held that commercial documents or papers are not mere scraps of paper bereft of probative value, but vital pieces of evidence of commercial transactions, *viz.*:

"xxx A sales invoice is a commercial document. Commercial documents or papers are those used by merchants or businessmen to promote or facilitate trade or credit transactions. Business forms, *e.g.*, order slip, delivery charge invoice and the like, are commonly recognized in ordinary commercial transactions as valid between the parties, and, at the very least they serve as an acknowledgment that a business transaction has in fact transpired. These documents are not mere scraps of paper bereft of probative value, but vital pieces of evidence of commercial transactions. They are written memorials of the details of the consummation of contracts."

Considering the ICPA's thorough examination of the documents and her testimony as to the circumstances of the said pieces of evidence, the subject documents cannot be considered hearsay.[8]

Furthermore, Section 22, Rule 132 of the Rules of Court provides that the handwriting of a person may be proved by a witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be

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[7] G.R. No. 164326, October 17, 2008.

[8] See *Commissioner of Internal Revenue vs. Sutherland Global Services Philippines, Inc.*, CTA EB No. 1596 (CTA Case No. 8558), February 19, 2018.

his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person.

In this case, the Court finds that Teresita O. Sugay has properly identified the certifications of inward remittances, considering that she is familiar with the signatories of the said documents.[9] A portion of her testimony is quoted below:

"Q1: What is your relation to the petitioner, Procter and Gamble Asia Pte. Ltd.?
A. The petitioner is one of the clients I serve since my employer is the depositary bank of the petitioner.

Q2: What is the name of your employer?
A. Citibank, N.A., Philippine Branch

Q3: What is the position or title you hold at Citibank?
A. I am the Director, CitiService and Client Delivery Head, Global Transaction Services Group.

Q4: What are your duties and responsibilities with regard to petitioner?
A. CitiService, which I head, handles all customer queries and requests of the petitioner.

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Q6. Would you know of any certification issued by Citibank regarding inward remittances in favor of the petitioner for the periods July 1, 2005 to September 30, 2005 and October 1 to December 31, 2005?
A. Yes. Citibank issued three (3) bank certifications confirming inward remittances in favor of the petitioner under USD Current Account No. 0/602585/026. One certification, dated September 18, 2007, is for the period July 1, 2005 to September 30, 2005 signed by CitiService Officer, Joni de Vera-Bautista, and the other two, dated

[9] Judicial Affidavits of Teresita O. Sugay dated March 31, 2008 and October 16, 2008, docket, vol. I, pp. 322-323 and vol. II, pp. 1128-1129, respectively; Minutes of the hearing dated April 3, 2008 and January 13, 2009, docket, vol. I, p. 331 and vol. II, p. 1134, respectively.

August 31, 2007 and September 17, 2007, are for the period October 1, 2005 to December 31, 2005 both signed by CitiService Officer, Gerardo Fajardo.

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Q8. You said earlier that CitiService Officer, Joni de Vera-Bautista, signed the Citibank Certification dated September 18, 2007. Would you know if the signature appearing in the said Certification (Exhibit 'FF') is her signature?
A. Yes. That is her signature.

Q9. How can you be sure that this is her signature?
A. <u>I am familiar with her signature as she is under my supervision, and I have authorized several documents signed by her.</u>

Q10. You also said earlier that CitiService Officer, Gerardo Fajardo, signed the Citibank Certifications dated August 31, 2007 and September 17, 2007. Would you know if the signatures appearing in the said Certifications (Exhibits 'GG' and 'GG-1') are his signature?
A. Yes. These are his signatures.

Q11. How can you be sure that these are his signatures?
A. <u>I am familiar with his signatures as he is under my supervision, and I have authorized several documents signed by him.</u>"

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Q3: Ms. Witness, would you know of any other certifications issued by Citibank in favor of petitioner?
A. Yes. Based on Citibank's records, Citibank recently issued two (2) additional bank certifications regarding inward remittances for the period October 1 to December 31, 2005 in favor of the petitioner.

Q4. Do you have a copy of these bank certifications? *Jr*

A. Yes. The Citibank Certification of inward remittances, dated June 13, 2008 for the period October 1 to December 31, 2005, and signed by CitiService Officer, Joni de Vera-Bautista, is hereto attached as ***Exhibit 'OO'*** and made an integral part of this affidavit.

The Citibank Certification of inward remittances, dated August 19, 2008, also for the period October 1 to December 31, 2005, and signed by CitiService Officer, Gerardo P. Fajardo, is likewise hereto attached as ***Exhibit 'FFF'*** and made an integral part of this affidavit.

Q5. You said earlier that CitiService Officer, Joni de Vera-Bautista, signed the Citibank Certification dated June 13, 2008. Would you know if the signature appearing in the said Certification (Exhibit 'OO') is her signature?
A. Yes. That is her signature.

Q6. How can you be sure that that is her signature?
A. <u>I am familiar with her signature as she is under my supervision, and I have authorized several documents signed by her.</u>

Q7. You also said earlier that CitiService Officer Gerardo Fajardo signed the Citibank Certification dated August 19, 2008. Would you know if the signature appearing in the said Certification (Exhibit 'FFF') is his signature?
A. Yes. That is his signature.

Q8. How can you be sure that that is his signature?
A. <u>I am familiar with his signature as he is under my supervision, and I have authorized several documents signed by him.</u>" (*Underscoring supplied*)

On the other hand, Sandeep Devgon, Associate Director of petitioner's Financial Services and Solutions department, testified that he implements the Business Service Agreements and has custody of the original copies thereof. He also testified that petitioner performed its obligations towards the other parties since the agreements are part of the ordinary and regular business transactions of petitioner with its affiliates. A portion of his testimony[10] is quoted below:

> "Q3. What are your primary duties and functions?
> A3. My primary functions are to coordinate / deliver to various affiliates the services of Financial Services and Solutions department, including Accounting and financial reporting services, Purchases to Payments and Banking Services. I am also the custodian of the Service Agreements of Petitioner.
>
> Q4. What is the nature of the Service Agreements that you are referring to?
> A4. These are the Service Agreements entered into by petitioner with its affiliates here and abroad. Petitioner, a regional operating headquarters, renders services to its affiliates
>
> Q5. As custodian of these Service Agreements, would you know how many service agreements the petitioner entered into with its affiliates which cover the claim for tax refund or tax credit for the period July 1, 2005 to December 31, 2005?
> A5. There are twenty-nine (29) service agreements.
>
> Q6. What can you say about the contents of these service agreements?
> A6. All the agreements are the same, except as to the periods of effectivity of said agreements, identity of the recipient parties (affiliates) to the agreement, and certain minor provisions. The contents of the Service Agreements are uniform in the sense that the terms, conditions, rights, and obligations of the parties are the same. For instance, all of these service agreements provide for the same kind and nature of service that shall be rendered by the petitioner to the other party including as to how said services are to be performed. These Service Agreements uniformly provide as to how service fees or consideration are to be determined and as

[10] Judicial Affidavit of Sandeep Devgon dated May 2, 2008, docket, vol. I, pp. 337-358; Minutes of the hearing dated May 8, 2008, docket, vol. I, p. 333.

to how payments thereof shall be made. Further, these agreements are made in the ordinary or regular course of business of the petitioner.

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Q10. Do you have evidence that will prove that the petitioner has Service Agreements with the affiliates you mentioned?
A10. Yes.

Q11. What is that evidence?
A11. I have in my custody original copies of twenty-nine (29) Service Agreements.

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Mr. Sandeep Devgon also identified the Procter and Gamble Company and Subsidiaries report to the U.S. Securities and Exchange Commission,[11] to wit:

"Q7. Do you have any other proof that the affiliates abroad of the petitioner you mentioned earlier are non-resident companies doing business outside the Philippines?
A7. Yes. The abovementioned affiliates are listed as Exhibit 21 of the Procter and Gamble Company and Subsidiaries report to the U.S. Securities and Exchange Commission. This report may be accessed by any interested party or the public at U.S. SEC website address http://www.sec.gov/Archives/edgar/data/80424/000095015207007152/I27490aexv21.htm.

Q8. Do you have any hardcopy of said report?
A8. Yes. Attached hereto and marked as ***Exhibit "VVV"*** and made an integral part hereof is the hardcopy of Exhibit 21 of the Annual Report filed by the Procter & Gamble Company with the United States Securities and Exchange Commission

[11] Judicial Affidavit of Sandeep Devgon dated March 20, 2009, docket, vol. II, pp. 1157-1163; Minutes of the hearing dated March 24, 2009, docket, vol. II, p. 1164.

> wherein almost all of the petitioner's affiliates to whom petitioner rendered services are shown. The Annual Report shows the names of the affiliates and their respective country of incorporation."

Considering that Mr. Devgon is the Associate Director of the Financial Services and Solutions department of petitioner, and coordinates and communicates with petitioner's affiliates, he has acquired personal knowledge regarding the foregoing documents and is competent to testify on the same.

On the other hand, the certificates of non-registration issued by the SEC are public documents, and as such, require no further authentication. It is settled that a public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court.[12]

Based on the foregoing, it is clear that petitioner's witnesses were able to sufficiently identify the documents alleged by respondent to be hearsay evidence.

Hence, the Court finds no cogent reason to modify or reverse the assailed Amended Decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

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

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[12] *Republic of the Philippines vs. Fe Roa Gimenez and Ignacio B. Gimenez*, G.R. No. 174673, January 11, 2016, citing *Patula vs. People of the Philippines*, G.R. No. 164457, April 11, 2012.

I CONCUR:

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice