REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*EN BANC*

**MARUBENI PHILIPPINES CORPORATION,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB No. 1548**
**(CTA Case No. 7223)**

x-----------------------------------------------x

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

-versus-

**MARUBENI PHILIPPINES CORPORATION,**
Respondent.

**CTA EB No. 1554**
**(CTA Case No. 7223)**

**Present:**
Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:
APR 0 2 2018 1:15 p.m.

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## DECISION

**CASTAÑEDA, JR., *J.* :**

Before the CTA *En Banc* are the Petitions for Review filed by petitioner Marubeni Philippines Corporation ("Marubeni") on November 21, 2016 docketed as CTA EB No. 1548 and filed by petitioner Commissioner of Internal Revenue ("CIR") on November 21, 2016 docketed as CTA EB No. 1554. Both petitions assail the Amended Decision[1] dated April 21, 2016 and Resolution[2] dated October 19, 2016 promulgated by the Special First Division ("Court in Division") of this Court in CTA Case No. 7223, entitled *"Marubeni Philippines Corporation v. Commissioner of Internal Revenue,"* which partially granted Marubeni's claim for tax refund/tax credit in the reduced amount of P134,662.95, representing its excess and unutilized input taxes attributable to zero-rated sales for the four taxable quarters of 2003. The assailed Amended Decision and Resolution, which affirmed the CTA Special First Division's Decision dated December 15, 2009,[3] were the result of the granting of Marubeni's Petition for Review in CTA EB Case No. 799[4] then remanding of the case to the Court in Division for further proceedings to determine Marubeni's entitlement to the relief sought.

The <u>dispositive portion of the April 21, 2016 Amended Decision</u> reads:

> **WHEREFORE**, premises considered, the Decision dated December 15, 2009 issued by the Special First Division of this Court, ordering the refund or issuance of tax credit certificate in favor of petitioner in the amount of **ONE HUNDRED THIRTY FOUR THOUSAND SIX HUNDRED SIXTY TWO PESOS and 95/100 (P134,662.95)**, representing petitioner's unutilized excess input taxes attributable to its zero-rated sales for the four taxable quarters of 2003, is **AFFIRMED.**
>
> **SO ORDERED.**

The <u>dispositive portion of the October 19, 2016 Resolution</u> reads:

> **WHEREFORE**, finding no compelling reason to reverse the ruling of the Court in the Amended Decision dated April 21, 2016, respondent's **Motion for Partial Reconsideration** and petitioner's **Motion for Partial Reconsideration** (Re: Amended Decision dated April 21, 2016) are hereby **DENIED** for lack of merit.

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[1] Penned by Associate Justice (AJ) Caesar A. Casanova and concurred in by AJ Lovell R. Bautista.
[2] *Id.*
[3] CTA Division Docket, Vol. I, pp.663-688; Penned by AJ Cesar A. Casanova and concurred in by AJ Lovell R. Bautista. Presiding Justice (now retired) Ernesto D. Acosta, dissented.
[4] *Marubeni Philippines Corporation v. Commissioner of Internal Revenue*, dated June 19, 2013, penned by AJ Esperanza R. Fabon-Victorino and concurred in by AJ Juanito C. Castañeda, Jr., AJ Lovell R. Bautista, AJ Erlinda P. Uy, AJ Cielito N. Mindaro-Grulla, AJ (now retired) Amelia R. Cotangco-Manalastas, and AJ Ma. Belen M. Ringpis-Liban. AJ Caesar A. Casanova with Dissenting Opinion. Presiding Justice Roman G. Del Rosario, Inhibited.

**SO ORDERED.**

## THE FACTS

The facts of the case as found by the CTA Special First Division, as stated in the December 15, 2009 Decision:[5]

> Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office located at the 9th Floor, L.V. Locsin Building, Ayala Avenue corner Makati Avenue, Makati City. It is primarily engaged in the business of buying, selling, distributing, marketing at wholesale insofar as may be permitted by law, all kinds of goods, commodities, wares and merchandise of every kind and description, and to enter into all kinds of contracts for the export, import, purchase, acquisition, sale at wholesale and other disposition for its own account as the principal or in representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchant, factors or agents, upon consignment of all kinds of goods, wares, merchandise or products whether natural or artificial. As such, it is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code of 1997 (the "Tax Code"), with Taxpayer Identification No. 004-519-222-000 and BIR Certificate of Registration bearing RDO Control No. 8RC0000015925.
>
> Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.
>
> For the period beginning the first quarter to the fourth quarter of 2003, petitioner filed with the BIR, its original Quarterly VAT Returns (BIR Form No. 2550Q), and amended Quarterly VAT Returns within the period provided under the Tax Code, as follows: *yz*

[5] Division Docket, Vol. I, pp. 663- 667; "Petitioner" refers to Marubeni, while" respondent" refers to CIR.

| Period | Original Return | Exhibit | Amended Return | Exhibit |
|---|---|---|---|---|
| 1st Quarter | April 23, 2003 | B/B-1 | October 17, 2003 (1st) | C |
| | | | April 14, 2005 (2nd) | D |
| | | | October 10, 2005 (3rd) | U |
| 2nd Quarter | July 25, 2003 | E/E-1 | October 17, 2003 (1st) | F |
| | | | April 14, 2005 (2nd) | G/G-1 |
| | | | October 10, 2005 (3rd) | V |
| 3rd Quarter | October 27, 2003 | H/H-1 | April 14, 2005 (1st) | I/I-1 |
| | | | October 10, 2005 (2nd) | W |
| 4th Quarter | January 26, 2004 | J/J-1 | April 14, 2005 (1st) | K/K-1 |
| | | | October 10, 2005 (2nd) | X |

In its amended Quarterly VAT Returns for the four quarters of 2003, petitioner reflected VAT zero-rated sales in the amount of P166,957,052.16, taxable sales in the amount of P13,419,573.81 with the corresponding output VAT of P1,341,957.39 and excess input VAT of P11,167,802.09, broken down as follows:

| **Period** | **Zero-Rated Sales** | **Taxable Sales** | **Output VAT** | **Input VAT** | **Excess Input VAT** |
|---|---|---|---|---|---|
| 1st Quarter | P30,757,850.52 | P11,251,123.63 | P1,125,112.36 | P2,749,892.90 | P1,624,780.54 |
| 2nd Quarter | 30,135,727.65 | 531,105.42 | 53,110.55 | 2,487,476.72 | 2,434,366.17 |
| 3rd Quarter | 37,609,307.49 | 477,469.09 | 47,746.91 | 3,073,509.10 | 3,025,762.19 |
| 4th Quarter | 68,454,166.50 | 1,159,875.67 | 115,987.57 | 4,198,880.76 | 4,082,893.19 |
| **Total** | **P166,957,052.16** | **P13,419,573.81** | **P1,341,957.39** | **P12,509,759.48** | **P11,167,802.09** |

On April 20, 2005, petitioner filed a letter with the BIR requesting for the refund or issuance of a tax credit certificate in the amount of P11,139,650.19 out of the total excess input VAT of P11,167,802.09 reported in its VAT return for the four quarters of 2003. The claimed amount of P11,139,650.19 allegedly represents unutilized excess input VAT attributable to petitioner's zero-rated sales and capital goods purchased for the four quarters of 2003.

Due to respondent's inaction on its claim, petitioner filed the instant Petition for Review before this Court on April 21, 2005.

Respondent, in his Answer to the Petition for Review, interposed the following Special and Affirmative Defenses:

> 4. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of P11,139,650.19, as alleged unutilized input VAT paid on its domestic purchases of goods and services for the period January 1, 2003 to December 31, 2003 were not fully substantiated/documented;
>
> 7. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;
>
> 8. Petitioner's sales of goods and services to various alleged clients do not qualify as zero-rate VAT;
>
> 9. 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;
>
> 10. Claims for refund are construed strictly against the claimant for the same partake 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).***

To buttress its claim, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, was declared to have waived his right to present evidence. With the admission of petitioner's Memorandum, sans respondent's Memorandum, the case was submitted for decision on December 24, 2008.

Subsequent to these facts, we quote the narration of events as stated in the assailed April 21, 2016 Amended Decision:

> On December 15, 2009, this Court promulgated the Decision which partially granted petitioner's Petition for Review in the amount of P134,662.95, representing petitioner's unutilized excess input taxes attributable to zero-rated sales for the four taxable quarters of 2003.
>
> On March 14, 2011, an Amended Decision was promulgated which reversed and set aside this Court's Decision dated December 15, 2009 and dismissed petitioner's Petition for Review for having been prematurely filed.
>
> The Court *En Banc* recognized in the said Decision the Supreme Court's ruling in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*
>
> On July 11, 2013, respondent filed a Motion for Reconsideration, which was denied by the Court *En Banc* in the Resolution dated December 2, 2013.
>
> On February 3, 2014, respondent filed a Petition for Review on *Certiorari* with the Supreme Court, which was subsequently denied in the Resolution dated July 23, 2014.
>
> On September 15, 2014, the Supreme Court's Resolution dated July 23, 2014 became final and executory.
>
> Pursuant to the Court *En Banc's* Decision dated June 19, 2013 remanding the case to the Court in Division for the resolution on the merits of petitioner's Motion for Reconsideration filed on January 19, 2010 and Supplemental Motion for Reconsideration (With Motion for Leave of Court to Submit Supplemental Evidence) filed on February 22, 2010, the Special First Division of this Court issued a Resolution dated June 15, 2015, setting the case for hearing for the reception of petitioner's additional documentary evidence. Petitioner, however, manifested that it will no longer present additional evidence in support of its claim for refund of its unutilized and excess input VAT for the four quarters of 2003. Petitioner also submitted the case for decision of this Court.

Respondent filed her Supplemental Memorandum on September 18, 2015 while petitioner merely adopted its Memorandum submitted in this case. Hence, the case was submitted for decision on October 6, 2015.

In the Amended Decision dated April 21, 2016, the Special First Division affirmed the Decision dated December 15, 2009 issued by the Special First Division of this court, ordering the refund or issuance of tax credit certificate in favor of Marubeni in the amount of ONE HUNDRED THIRTY FOUR THOUSAND SIX HUNDRED SIXTY TWO PESOS and 95/100 (P134,662.95), representing petitioner's unutilized excess input taxes attributable to its zero-rated sales for the four taxable quarters of 2003.

In a Resolution dated October 19, 2016, the CTA Special First Division found no compelling reason to reverse the ruling of the Court in the Amended Decision dated April 21, 2016. CIR's Motion for Partial Reconsideration and Marubeni's Motion for Partial Reconsideration (Re: Amended Decision dated April 21, 2016) were denied for lack of merit.

Both parties were dissatisfied, Marubeni on the denied portion of the claim and CIR on the allowed portion of the claim.

The Petitions for Review in these consolidated cases were timely filed by the parties on November 21, 2016.[6]

On November 25, 2016, CTA EB No. 1554 was consolidated with CTA EB No. 1548, the case bearing the lower docket number.

On January 25, 2017, respondents in the consolidated cases were ordered to file their respective Comments.[7] Marubeni filed motions to extend the filing of the Comment.[8] Within the period granted by the Court, Marubeni filed its "Comment (To the Commissioner of Internal Revenue's Petition for Review)" on March 15, 2017.[9] On the other hand, CIR failed to file Comment on the Petition for Review in CTA EB No. 1548.[10]

On April 3, 2017, the above-captioned consolidated cases were submitted for decision.

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[6] CTA EB Nos. 1548 & 1554 Docket *(Rollo)*, pp .6-7. November 19, 2016 (due date of the extension) fell on a Saturday, thus, the next working day is November 21, 2016 (Monday); CTA EB No. 1554, pp. 2, 5, and 52. November 20, 2016 (due date of the extension) fell on a Sunday, thus, the next working day is November 21, 2016 (Monday).
[7] *Rollo*, pp. 60-61.
[8] *Id.*, pp. 62-64 and pp. 67-69.
[9] *Id*, p. 90.
[10] *Id.*, pp. 87 and 90.

## ISSUES

### CTA EB No. 1548

Marubeni submits that the CTA-Division gravely erred in partially denying a substantial amount of its total claim for input VAT refund for the four quarters of CY 2003. Marubeni assigns the following errors committed by the CTA-Division in its assailed Amended Decision and Resolution:

1. The CTA-Division gravely erred in not finding that the presentation by Petitioner and the CTA-Division's admission in evidence of the bills of lading *(Exhibits WWW-1 to WWW-12, XXX-1 to XXX-12, YYY-1 to YYY-12, ZZZ-1 to ZZZ-12)* formally offered by Petitioner in its Supplemental Formal Offer of Evidence and Second Supplemental Formal Offer of Evidence filed on August 6, 2010 and September 13, 2010, respectively, together with Petitioner's other documentary evidence, proves Petitioner's sufficient compliance with RMC No. 42-2003 for the purpose of establishing its offsetting arrangement with Marubeni-Tokyo;

2. The CTA-Division gravely erred in not ruling that the Tax Code and jurisprudence both allow the presentation of VAT invoices to prove zero-rated sales of services for purposes of claiming a refund of unutilized input tax; and

3. The CTA-Division gravely erred in not finding that Petitioner's Mutual Account Ledger *(Exhibits NNN-74 to NNN-114)* provide sufficient information regarding the amounts of Petitioner's foreign currency remittances from its export sales and sales commissions earned from export sales and services rendered to Marubeni-Tokyo and affiliates during CY 2003.

Based on the foregoing, **the issue** in this petition is **WHETHER THE SPECIAL FIRST DIVISION ERRED IN PARTIALLY DENYING A SUBSTANTIAL PORTION OF ITS CLAIM FOR INPUT VAT REFUND FOR THE FOUR QUARTERS OF CY 2003.**

### CTA EB No. 1554

**CIR's Assignment of Error:**

THE SPECIAL FIRST DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT IS PARTIALLY ENTITLED TO ITS CLAIM FOR TAX REFUND/TAX CREDIT IN THE AMOUNT OF P134,662.95, REPRESENTING ITS UNUTILIZED AND EXCESS INPUT TAXES ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE FOUR TAXABLE QUARTERS OF 2003

In this petition, the **issue** is **WHETHER OR NOT THE SPECIAL FIRST DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT IS PARTIALLY ENTITLED TO ITS CLAIM FOR TAX REFUND/TAX CREDIT IN THE AMOUNT OF P134,662.95, REPRESENTING ITS UNUTILIZED AND EXCESS INPUT TAXES ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE FOUR TAXABLE QUARTERS OF 2003.**

## THIS COURT'S RULING

The petitions are denied.

A careful review of the issues and arguments raised by Marubeni and CIR reveal that these are mere reiterations of what have been considered and passed upon by the Court in Division in the assailed Amended Decision dated April 21, 2016, and Resolution dated October 19, 2016.

The taxable year involved in this case is 2003, which is prior to the effectivity of Republic Act (RA) 9337[11].

Pertinent to this case are Sections 110(B) and 112 of the 1997 National Internal Revenue Code (NIRC), which state:

> SEC. 110. *Tax Credits.* —
>
> xxx xxx xxx
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the

[11] "*AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES,*" which took effect on November 1, 2005.

purchases of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

Sec. 112. *Refunds or Tax Credits of Input Tax.*[12] —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

(B) *Capital Goods.* — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2)

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[12] RA 9337 amended Section 112 to read:

Sec. 112. Refunds or Tax Credits of Input Tax. —

(A) Zero-Rated or Effectively Zero-Rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

(B) Cancellation of VAT Registration. — . . .

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

(D) Manner of Giving Refund. — . . .

years after the close of the taxable quarter when the importation or purchase was made.

(C) *Cancellation of VAT Registration.* — xxx xxx xxx

(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

(E) *Manner of Giving Refund.* — xxx xxx xxx

Based on Section 112 (A) of the 1997 NIRC, the following requisites must be complied with by the taxpayer in order to be entitled to a refund/tax credit of unutilized excess input VAT attributable to zero-rated or effectively zero rated sales:

1. there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

Requisites (4) and (5), are complied with by Marubeni as discussed in the December 15, 2009 Decision in this case.[13] Moreover, the Supreme Court has already ruled with finality[14] on the timeliness of the filing of the judicial claim with the CTA in its Resolution dated July 23, 2004 in G.R. No. 210326 *(Commissioner of Internal Revenue v. Marubeni Philippines Corporation)*.[15] Marubeni's judicial claim filed on April 21, 2005 with the CTA, or only one day after it filed its administrative claim with the CIR on

[13] December 15, 2009 Decision in this case, pp. 24-25.
[14] Entry of Judgment dated September 15, 2014, Division Docket, Vol. II, p. 1335.
[15] Division Docket, Vol. II, pp. 1325-1329.

April 20, 2005 is exempted from the strict application of the 120-day mandatory period under Section 112[16] of the 1997 National Internal Revenue Code (NIRC) because the filing of the petition for review is within the window period created in the case *Commissioner of Internal Revenue v. San Roque Power Corporation*[17] (*San Roque* case).

As regards requisites 1 to 3, as found by the Court in Division, Marubeni's total substantiated zero-rated sales amounts only to P1,827,105.36,[18] out of the total of P166,957,052.16.[19]

Also, the Court in Division found that the substantiated input VAT claim is P134,662.95[20] out of the total input VAT claim of P11,139,650.20[21] which is attributable to petitioner's substantiated zero-rated sales and capital goods purchased for taxable year 2003 is refundable. In this case, the Court in Division found the amount of P69,954.55 representing unutilized excess input VAT on capital goods purchased for the year 2003 to be valid pursuant to Section 112 (B) of the 1997 NIRC.[22]

It is a "well-established rule that tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government. This is because taxes are the lifeblood of the nation. Thus, the burden of proof is upon the claimant of the tax refund to prove the factual basis of his claim."[23]

In this case, CIR waived its right to present evidence. However, it does not follow that the taxpayer is already entitled to its claim. The burden is on the taxpayer to prove its entitlement to the refund. Pertinent to this is the case *Commissioner of Internal Revenue v. Far East Bank & Trust Company,*[24] wherein the Supreme Court emphasized that the failure of the CIR to present any evidence or to refute the evidence presented by the taxpayer does not *ipso facto* entitle the taxpayer to a tax refund. The burden

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[16] Sec. 112(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

[17] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.
[18] December 15, 2009 Decision in this case, p. 18
[19] December 15, 2009 Decision in this case, p.8; Exhibit "RR-4", Independent CPA Report Volume I, pp. 10 and 12.
[20] Decision dated December 15, 2009, pp. 23-24, Division Docket, pp. 685-686.
[21] Decision dated Dec. 15, 2009 in this case, p. 19, citing Exhibit "RR-4", Independent CPA Report Volume I, p. 7.
[22] December 15, 2009 Decision in this case, pp. 22-23.
[23] *Eastern Telecommunications Phils., Inc. v. Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012, citing *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, 500 Phil 149, 163 (2005).
[24] G.R. No. 173854, March 15, 2010; Citations Omitted.

is on the taxpayer to prove its entitlement to the refund. Pertinent portions of the said Decision reads:

> **"The burden is on the taxpayer to prove its entitlement to the refund.**
>
> Moreover, **the fact that the petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.**
>
> And while the petitioner has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. **The taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund.**
>
> Hence, for failing to prove its entitlement to a tax refund, respondent's claim must be denied. Since tax refunds partake of the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer, **evidence in support of a claim must likewise be *strictissimi* scrutinized and duly proven.** *(Emphases Supplied.)*

It is worthy to mention that the documents in this case were analyzed by the CTA Special First Division several times, *i.e.* in the December 15, 2009 Decision, April 21, 2016 Amended Decision, and October 19, 2016 Resolution. When the case was remanded pursuant to the Court *En Banc's* Decision dated June 19, 2013, Marubeni manifested that it will no longer present additional evidence in support of its claim for refund of its unutilized and excess input VAT for the four quarters of 2003.

<u>CTA EB No. 1548</u>

***Offsetting arrangement was not established***

Marubeni alleges that the presentation of the sales invoices, export declarations, bank credit advices, bank statements, mutual account ledgers, *fc* and bills of lading is sufficient to prove that its export sales are qualified for VAT zero-rating as its offsetting arrangement with Marubeni-Tokyo complies with the provisions of Revenue Memorandum Circular (RMC) No. 42-2003.

Pertinent to this is Q-8 & A-8 of Revenue Memorandum Circular (RMC) No. 42-2003[25] enumerates the documents required in an offsetting arrangement, as follows:

> Q-8: With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?
>
> A-8: In the case of offsetting arrangements, the following documents **should** be required:
>
> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
> b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
> c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
> d. Documents or correspondence regarding offsetting arrangements;
> e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
> f. Documents to prove actual export of goods;
> g. Documents to prove that the sales are zero-rated sales. *(Emphasis Supplied).* 

[25] Subject: "Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters," July 15, 2003.

In order to bolster its claim, Marubeni reiterates the findings of the ICPA in this case with regard to the VAT zero-rated transactions between Marubeni and Marubeni-Tokyo:

> 'We gathered the Mutual Account Ledger (Exhibit NNN-74 to NNN-114) of Marubeni and have noted the following:
>
> > •The following transactions with Marubeni-Tokyo are recorded in its Mutual Account ledger both in peso and in dollar amount, using the average foreign exchange rate per month from the Philippine Dealing System:
>
> a. Rubber protectors sold to Marubeni-Tokyo, which are purchased exclusively from Orion Rubber Manufacturing Corporation, **as evidenced by Marubeni's invoices.**
>
> b. Handling commission earned by Marubeni acting in a representative capacity as merchandise broker, indentor, commission, merchant and fact or agent of Marubeni-Tokyo or its affiliated companies. This is **supported by a service agreement** entered between Marubeni and Marubeni Tokyo on December 16, 1997 which remains in force unless terminated by either party.
>
> c. Other commission from research and exploration services rendered by Marubeni for the projects of Marubeni-Tokyo, which is **supported by service agreement** per project or department unit of Marubeni-Tokyo.
>
> d. Reimbursable expenses advanced by Marubeni, such as but not limited to expenses incurred during meetings with Marubeni-Tokyo clients, expenses of Marubeni-Tokyo employees visiting the country and travel advances of Mr. T. Goto.
>
> Thus, offsetting of receivables and payables is done in Marubeni's Mutual Account Ledger. No official receipts are issued by Marubeni to Marubeni-Tokyo.
>
> Export sales amounting to Php101,939,439.49 (Annex H) are **supported by sales invoices** duly stamped with the phrase 'zero-rated sales', and export declarations."

The Court in Division exhaustively discussed that Marubeni failed to establish the offsetting arrangement as stated in the assailed Amended Decision,[26] and We reiterate: Jr

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[26] Assailed Amended Decision, pp. 7-11.

This Court disagrees with petitioner simply because petitioner **misunderstood provision "a" under A-8 of RMC No. 42-2003.**

The phrase "import documents which created liability accounts in favor of the foreign parent or affiliated company" means that the liability should be in favor or to the benefit of the foreign parent company or its affiliates, and therefore, at the expense or liability of petitioner.

From the foregoing, it can be gleaned that the main purpose of provision **"A-8.a" of RMC No. 42-2003** is to prove that the offsetting arrangement is actually in place, by proving that petitioner has payables to the foreign parent or its affiliates against which petitioner's receivables (i.e., from its sale of goods and services to Marubeni-Tokyo) were offset. Hence, the sales invoices issued by petitioner to Marubeni-Tokyo are not the proper documents to prove the existence of its payables to Marubeni-Tokyo.

Xxx xxx xxx

It must be noted that the Service Agreement provides that petitioner will render services to Marubeni Tokyo or its affiliates and through which petitioner will earn a cost-plus commission income, hence, a receivable on the part of petitioner.

Therefore, the same is not sufficient to support the requirement set forth under **A-8.b of RMC 42-2003.** It is clear that what is required is the presentation of other contracts that bring about liabilities which are offset against receivables from export sales. Clearly, the provision pertains to payables of petitioner owed to Marubeni Tokyo that will be offset against the receivables arising from its direct exports and commission income, and not the other way around.

Finally, petitioner also alleged that it was able to present documents that would establish the *"evidence of proceeds of loans in case the claimant has received loans or advances from the foreign company"* or **requirement "c" under A-8 of the same RMC**, through the Mutual Account Ledger containing the balances from the offsetting arrangement between petitioner and Marubeni-Tokyo. Petitioner averred that the said balances also contained the details of the reimbursable expenses

> advanced by petitioner in behalf of Marubeni Tokyo and affiliates.
>
> According to the Court-commissioned ICPA, the balance at the end of the month shown in the **Mutual Account Ledger** is paid by Marubeni Tokyo on the following month in acceptable foreign currency proceeds which is in US dollars. **The balance at the end of the month represents the amount after the offsetting of amounts of intercompany accounts receivables and payables of the two companies.** Monthly Mutual Account Balance Remittance Advice is faxed to Marubeni indicating Marubeni Tokyo's remittance of the outstanding balance from the previous month.
>
> This Court cannot subscribe to the foregoing contentions.
>
> It should be emphasized that the amount of foreign currency remittances was the **net amount of all transactions** with Marubeni Tokyo which included not only the receivables arising from export sales of goods and commission income but also advances and reimbursements made by petitioner for Marubeni Tokyo. **Given that there were no transaction flows, nor supporting schedules and reconciliations presented, it was not possible for the Court to determine the amount of export sales and handling commission income that were actually paid for in foreign currency or its equivalent (i.e., offsetting).** Hence, we find no probative value on the documents that were provided to this Court, and the burden of proof is not extinguished.
>
> In summary, petitioner's direct export sales to Marubeni Tokyo in the amount of P101,939,439.49 does not qualify for VAT zero-rating for petitioner's failure to establish its offsetting arrangement with Marubeni Tokyo in compliance with the provisions of RMC No. 42-2003. *(Emphases Supplied).*

Based on the foregoing discussion and by analyzing the requisites for offsetting in RMC No. 42-2003, the Court in Division did not err in ruling that Marubeni's direct export sales to Marubeni Tokyo in the amount of P101,939,439.49 does not qualify for VAT zero-rating for petitioner's failure to establish its offsetting arrangement with Marubeni Tokyo in compliance with the provisions of RMC No. 42-2003.

With respect to Marubeni's Mutual Account Ledger (Exhibits NNN-74 to NNN-114), a portion of of Exhibit "NNN-114" is reproduced below:

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General Ledger (2003/02)

| Doc. No.<br>Remark | Ex.Rate | Doc. Type | Curr Code | Dr Amt.<br>Frgn Curr. | CR Amt.<br>Frgn Curr. | Balance<br>Frgn Curr. |
|---|---|---|---|---|---|---|
| CIBI-MONDEMYSAN/MONDENISS | 55.58 | | USD1 | 31.67 | | 390,123.89 |
| 2000000272 | | QK | | 28,191.84 | | 21,706,976.11 |
| OVERSEAS HEALTH INSURANCE | 55.58 | | USD1 | 507.23 | | 390,631.12 |
| 2000000273 | | QK | | 19,681.99 | | 21,726,658.10 |
| 19/JUL/01 TO 30/SEP/03 GU | 55.58 | | USD1 | 354.12 | | 390,985.24 |
| 2000000274 | | QK | | 3,563.79 | | 21,730,221.89 |
| INTEREST FOR DEC 03 | 55.58 | | USD1 | 64.12 | | 391,049.36 |
| Curr TTL. | | | | 63,718,578.74 | 41,988,356.85 | 21,730,221.89 |
| | 55.57 | | USD1 | 1,159,797.52 | 768,748.16 | 391,049.36 |
| S-AC TTL. | | | | 63,718,578.74 | 41,988,356.85 | 21,730,221.89 |
| A/C TTL. | | | | 63,718,578.74 | 41,988,356.85 | 21,730,221.89 |

A perusal of the above exhibit shows, among others, that the Mutual Account Ledger is a record of transactions wherein the document no. with remarks [known only to them], exchange rate, currency, debit and credit, as well as the balance, which was net of all transactions, are written. We agree with the finding of the Special First Division that, "Given that there were no transaction flows, nor supporting schedules and reconciliations presented, it was not possible for the Court to determine the amount of export sales and handling commission income that were actually paid for in foreign currency or its equivalent (i.e., offsetting)."

Anent the bills of lading (*Exhibits WWW-1 to WWW-12, XXX-1 to XXX-12, YYY-1 to YYY-12, ZZZ-1 to ZZZ-12)* formally offered by Marubeni in its Supplemental Formal Offer of Evidence and Second Supplemental Formal Offer of Evidence filed on August 6, 2010 and September 13, 2010, respectively, together with Marubeni's other documentary evidence, the Court in Division ruled that the presentation of the bills of lading does not alter the December 15, 2009 Decision of the Special First Division because Marubeni failed to meet the requirements to prove the offsetting arrangement with Marubeni-Tokyo, and We reiterate:

> According to Ms. Peret, the total amount of petitioner's export/zero-rated sales covered by the bills of lading is P101,939,439.49, as shown in the Summary of Export/Zero-Rated Sales for CY 2003 (Annex "H" of the ICPA report).
>
> However, it should be noted at this point that, the presentation of the bills of lading does not, in any way, alter the

initial Decision of the Special First Division of this Court on December 15, 2009 because petitioner was not able to meet the requirements to prove its offsetting arrangement pursuant to Revenue Memorandum Circular (RMC) No. 42-2003, as will be discussed in the succeeding paragraphs.

In order for export sales to qualify for VAT zero-rating, the Special First Division ruled that based on "Section 106(A)(2)(a)(1) of the Tax Code,[27] in relation to Section 113 (A) of the 1997 NIRC and Section 4.108-1 of Revenue Regulations No. 7-95, any person claiming VAT zero-rated direct export sales **must present at least three (3) types of documents**, to wit: a) the sales invoice as proof of sale of goods; b) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services."[28]

In this case, Marubeni complied with (a) and (b) documents, but failed to satisfy the last requirement. Hence, the Court in Division did not err in disallowing the amount of P101,939,439.49 reported as direct export sales to Marubeni Tokyo provisions of RMC No. 42-2003.

***VAT Official Receipt to prove zero-rated sales of services***

Marubeni also alleges that the Tax Code and jurisprudence allow the presentation of VAT invoices to prove zero-rated sales of services for purposes of claiming a refund of unutilized input tax. Marubeni cited the case *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue.*[29]

The allegation is bereft of merit.

The Court in Division has already answered the same by citing the more recent case of *AT & T Communication Services Philippines, Inc. v. Commissioner of Internal Revenue.*[30] In this case, the SC emphasized that

[27] SEC. 106. Value-Added Tax on Sale of Goods or Properties. —
"(A) Rate and Base of Tax. — . . .
xxx xxx xxx
"(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
"(a) Export Sales. — The term 'export sales' means:
"(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

[28] December 15, 2009 Decision, p.9.
[29] G.R. No. 182364, August 3, 2010.
[30] G.R. No. 185969, November 19, 2014.

"even prior to the enactment of R.A. No. 9337, which clearly delineates the invoice and official receipt, our Tax Code has already made the distinction...The legislature separately categorized VAT on sale of goods from VAT on sale of services, not only by its treatment with regard to tax but also with respect to substantiation requirements. Having been grouped under Section 108, its subparagraphs, (A) to (C),[31] and Section 106, its subparagraphs (A) to (D),[32] have significant relations with each other." This case involves taxable year 2003, which is the same taxable year in the case at hand.

In the case of *Takenaka Corp.-Philippine Branch v. Commissioner of Internal Revenue,*[33] the Supreme Court (SC) ruled that "the CTA did not err in denying the claim for refund on the ground that the petitioner had not established its zero-rated sales of services to PIATCO through the presentation of official receipts." The lone issue in this case is whether or not the sales invoices presented by the petitioner were sufficient as evidence to prove its zero-rated sale of services to Philippine Air Terminal Co., Inc. (PIATCO), thereby entitling it to claim the refund of its excess input VAT for taxable year 2002. The SC denied the petition, and reiterated the distinction between *receipt* and an *invoice* as discussed in *Northern Mindanao Power Corporation v. Commissioner of Internal Revenue,*[34] as follows:

> "Nonetheless, the CTA did not err in denying the claim for refund on the ground that the petitioner had not established its zero-rated sales of services to PIATCO through the presentation of official receipts. In this regard, as evidence of an administrative claim for tax refund or tax credit, there is a certain distinction between a *receipt* and an *invoice*. The Court has reiterated the distinction in *Northern Mindanao Power Corporation v. Commissioner of Internal Revenue,*[35] in this wise:
>
>> Section 113 of the NIRC of 1997 provides that a VAT invoice is necessary for every sale, barter or exchange of goods or properties, while a VAT official receipt properly pertains to every lease of goods or

[31] SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
xxx xxx xxx
(C) Determination of the Tax — The tax shall be computed by multiplying the total amount indicated in the **official receipt** by one-eleventh (1/11). (Emphasis supplied)
[32] SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* —
xxx xxx xxx
(D) Determination of the Tax. —
(1)The tax shall be computed by multiplying the total amount indicated in the **invoice** by one-eleventh (1/11). (Emphasis supplied)
[33] G.R. No. 193321, October 19, 2016.
[34] G.R. No. 185115, February 18, 2005.
[35] G.R. No. 185115, February 18, 2015, 750 SCRA 733.

properties; as well as to every sale, barter or exchange of services.

The Court has in fact distinguished an invoice from a receipt in *Commissioner of Internal Revenue v. Manila Mining Corporation:*

**A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.**

**A "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.**

A VAT invoice is the seller's best proof of the sale of goods or services to the buyer, while a VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. A VAT invoice and a VAT receipt should not be confused and made to refer to one and the same thing. Certainly, neither does the law intend the two to be used alternatively. (Bold underscoring supplied for emphasis)"

Applying the above jurisprudence in this case, We agree that "as aptly held by the First Division of this Court in its December 15, 2009 Decision, without VAT official receipts, petitioner's reported collected commissions from non-residents in the amount of P39,475,267.97 and commissions from PEZA entities in the amount of P687,626.92 cannot qualify for VAT zero-rating."[36]

CTA EB No. 1554

As correctly stressed by CIR, tax refunds are in the nature of exemption, thus, Marubeni's claim for refund is strictly construed against it for the same partakes the nature of tax exemption.

[36] Assailed Amended Decision, p. 14.

CIR argues that Marubeni's invoices and official receipts in support of its claimed input VAT refund in the amount of P134,662.95, representing its unutilized and excess input taxes attributable to its zero-rated sales for taxable year 2003, which was subsequently granted by the Special First Division, failed to comply with the mandatory invoicing requirements under Sections 110(A), 113 (A)(B) and 237 of the 1997 Tax Code in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations No. 16-05 and Revenue Memorandum Circular No. 42-2003.

The contention is bereft of merit.

The Court in Division found that with respect to the amount of P134,662.95, the invoicing requirements were complied with by Marubeni. We quote with approval the discussion of the CTA First Division in the assailed Resolution dated October 19, 2016, as follows:

> xxx xxx xxx As regards the amount of P134,662.95, petitioner **complied with the invoicing requirements set forth under the law and regulations applicable to the instant case,** *i.e.*, Section 106(A)(2)(a)(1)[37] of the NIRC of 1997, in relation to Section 113 A)[38] of the same Code and Section 4. 108-1[39] of RR No. 7-95. *(Emphasis Supplied).*

CIR also alleges that Marubeni's documentary exhibits (*i.e.* purchase invoices, invoices, official receipts, Airway Bills, Bills of Lading, bank Credit Advice and Certificate of Bank Remittances) which are presented in court as evidence to support its judicial claim for input VAT refund are hearsay evidence, hence, inadmissible as evidence in this case. CIR states

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[37] SECTION 106. Value-added Tax on Sale of Goods or Properties. —
(A) Rate and Base of Tax. — xxx xxx
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) Export Sales. — The term 'export sales' means:
"(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
[38] SECTION 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —
"(A) Invoicing Requirements. — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
"(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
"(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
[39] Section 4.108-1 of Revenue Regulations No. 7-95 states:
Section 4.108-1. Invoicing Requirements. — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

that the witnesses presented by Marubeni have no personal knowledge on the issuance of its documentary exhibits, such as, invoices, official receipts, Airway Bills, Bills of lading, Bank Credit Advice and Certificate of Bank Remittances, which are prepared by another person other than the said witnesses of Marubeni.

In its Comment, Marubeni submits, among others, that its documentary evidence complied with invoicing and accounting requirements under the Tax Code and the applicable regulations; that its documentary evidence are composed of entries made in the course of business and are therefore exempt from the hearsay rule; that CIR is already estopped from objecting to the admissibility of Marubeni's documentary evidence for failing to raise his objections in a timely manner; and that its documentary evidence were duly identified, examined, verified, and certified by the Court-commissioned ICPA as faithful reproductions of their originals.

CIR's argument is bereft of merit.

In the June 3, 2008 Resolution of Marubeni's Formal Offer of Evidence, it is clear that CIR did not file a comment/opposition.[40] It is now late for CIR to object to the admissibility of the documentary exhibits. As regards the probative value of the invoices, We reiterate the discussion of the Court in Division in the assailed Resolution, as follows:

> In the case of *Seaoil Petroleum Corporation vs. Autocorp Group and Paul Y. Rodriguez,*[41] the Supreme Court recognized the probative value of invoices and other commercial documents, as follows:
>
> > 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.

[40] Division Docket, Vol. I, p. 604.
[41] G.R. No. 164326, October 17, 2008.

Also, the Court takes into consideration the service of the Independent Certified Public Accountant (ICPA) who conducted an independent special audit and examination of various receipts, invoices and other supporting documents of petitioner. The ICPA certified that the documents are faithful reproduction of the original.

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[42] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

Based on the foregoing discussions, We find no reversible error to disturb the assailed Amended Decision and Resolution of the CTA Special First Division.

**WHEREFORE,** premises considered, the Petition for Review filed by Marubeni Philippines Corporation in CTA EB No. 1548, and the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1554, are **DENIED** for lack of merit. Accordingly, the April 21, 2016 Amended Decision and the October 19, 2016 Resolution of the Special First Division in CTA Case No. 7223 are **AFFIRMED.**

**SO ORDERED.**

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

**WE CONCUR:**

(Inhibited)
**ROMAN G. DEL ROSARIO**
Presiding Justice

[42]G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
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