Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

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WNS GLOBAL SERVICES PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1188
(CTA Case No. 8219)

Present:

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

Promulgated:

APR 2 8 2015 3:50 p.m.

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DECISION

CASTAÑEDA, JR., *J*.:

Assailed in this petition for review are the Decision[1] dated May 2, 2013 and Resolution[2] dated June 2, 2014 of the Court of Tax Appeals-Special First Division (Court in Division) in CTA Case No. 8219 entitled *"WNS GLOBAL SERVICES PHILIPPINES, INC. -versus- COMMISSIONER OF INTERNAL REVENUE."*

The Court in Division denied petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱6,589,937.24 allegedly representing its unutilized input value-added tax (VAT) attributable to zero-rated sales for the second to the

[1] Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justice Erlinda P. Uy; *rollo*, pp. 44-62.
[2] Id. at 64-65.

fourth quarter of fiscal year ending March 31, 2009 on the ground of insufficiency of evidence.

The Facts

The antecedents which gave rise to this present recourse and as culled from the assailed Decision follow:

> Petitioner is a duly organized domestic corporation, with office address at the 15th floor 6750 Ayala Avenue, Makati City. It is engaged in the business of outsourced services through the medium of telephone, email and web-based interaction, as well as other I.T. enabled services, including outsourced back-office services, among others.
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> Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT enterprise, with BIR Certificate of Registration No. OCN 9RC0000296641 dated July 7, 2008. It is likewise registered with the Board of Investments (BOI) as an ICT Export Service Enterprise, with Certificate of Registration No. 2009-078.
>
> On the other hand, respondent Commissioner of the Bureau of Internal Revenue (BIR)[,] has the authority to implement and enforce the provisions of the National Internal Revenue Code and other tax laws, including the power to grant claims for refund of internal revenue taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> On July 31, 2010, petitioner entered into a service contract with WNS Global Services (UK) Limited and WNS North America, Inc. under which it shall provide IT-enabled services to them.
>
> For the second to the fourth quarter of fiscal year ended March 31, 2009 (July 2008 to March 2009), all of petitioner's sales of services were to WNS UK and WNS North America. Allegedly such sales were paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. These sales transactions were zero-rated pursuant to Section 108(B)(2) of the Tax Code, as amended, detailed as follows:

PERIOD	AMOUNT
Second Quarter	P9,535,775.05

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Third Quarter	P76,600,330.09
Fourth Quarter	P67,788,779.58

Within the same period, petitioner allegedly incurred and paid input VAT in the total amount of P6,589,937.24, which remains unutilized on account of its zero-rated sales. The unutilized amount is broken down as follows:

PERIOD	AMOUNT
2nd Quarter (July to September 2008)	P 184,980.75
3rd Quarter (October to December 2008)	P2,167,869.17
4th Quarter (January to March 2009)	P4,237,087.30
TOTAL	P6,589,937.24

On September 3, 2010, petitioner filed with the One-Stop-Shop Center of the Department of Finance (DOF) an administrative claim for refund or issuance of tax credit certificate (TCC) for the said unutilized input VAT attributable to zero-rated sales. To date, respondent has not acted on the said application for refund, prompting petitioner to seek judicial intervention via the instant Petition for Review filed on January 26, 2011.

In her Answer filed on March 4, 2011, respondent has put forward the following special and affirmative defenses:

5) Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;

6) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

7) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

8) It is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;

9) Petitioner's claim for refund or issuance of tax credit certificate in the amount of P6,589,937.24 as alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 2nd, 3rd and 4th Quarters of fiscal year 2008 was not fully substantiated by proper documents, such as sales invoices, official receipts and others.

10) In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law on Basic Taxation in the Philippines, 1st Edition, p. 206*);

11) Claims for refund are construed strictly against the claimant, 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 121*).

Respondent filed her Pre-Trial Brief on March 31, 2011, while petitioner, on April 5, 2011. On May 2, 2011, the Court approved the parties' Joint Stipulation of Facts filed on April 28, 2011[.]

Petitioner['s] first witness, **Gaudelia Villanueva** testified that she is petitioner's Vice President for Finance in charge of the supervision and preparation of its tax returns as well as filing of claims for tax refund with the BIR.

Per its Articles of Incorporation, petitioner is in the field of providing business process outsourcing and other IT related services and registered as such with the Securities and Exchange Commission (SEC). It is also registered with the BIR with Certificate of Registration dated July 7, 2008.

Petitioner is claiming for refund of unutilized input VAT attributable to zero-rated sales with non-resident foreign corporations for the period covering July 2008 to March 2009. This unutilized input VAT is indicated in petitioner's Monthly VAT Returns for the months of July, August, October, November of the year 2008, and January to February of 2009. In relation to the contention, the witness also presented petitioner's Quarterly VAT Returns for the periods covering July to September 2008, October to December 2008, January to March 2009, April to June 2009, July to September 2009 October to December 2009, and January to March 2010.

Petitioner is claiming for refund of P6,589,937.24, covering the period July 2008 to March 2009, broken down as follows:

PERIOD	AMOUNT
July to September 2008	P 184,980.00
October to December 2008	2,100,000.00
January to March 2009	4,200,000.00
TOTAL	P6,589,937.24

To establish that petitioner's clients were non-resident foreign corporations, Villanueva presented two SEC Certifications of Non-Registration of Company, one for WNS UK dated May 23, 2011, and the other for WNS North America dated May 20, 2011. Petitioner's transactions with WNS UK was covered by the Agreement dated July 31, 2010, while WNS North America by three (3) Agreements all dated July 31, 2010.

The Quarterly VAT Returns for April to June 2009, July to September 2009, October to December 2009, and January to March 2010 show that the accumulated input VAT for the subject fiscal year has not been utilized in the succeeding quarters. Since the sales of petitioner as shown in the Quarterly VAT are zero-rated, it follows that there is no output VAT upon which petitioner could apply its input VAT accumulated in the subject fiscal year.

On September 3, 2010, petitioner filed with the DOF One-Stop Shop (OSS) an administrative claim for refund of its unutilized input VAT through a letter dated August 26, 2010. Due to respondent's inaction, petitioner sought judicial intervention.

Gaudelia Villanueva added that although she had no participation in the preparation and actual filing of the subject tax returns for the Year 2009 having been employed as Vice- *gc*

President by petitioner only in 2010, nonetheless she was able to review them since all the financial documents of petitioner were turned over to her by her predecessor. Petitioner's business of process outsourcing is like a call center only that it includes data. For services rendered, petitioner is paid in US dollars through banks.

In corroboration with the foregoing declaration, petitioner's President and CEO Prabhakar Bisen testified that he was among the signatories in the Agreement dated July 31, 2010 with WNS UK, and in the three (3) Agreements all dated July 31, 2010, with WNS North America. He identified his actual signature as well as his digital signature appearing in said documents.

Court-commissioned Independent Certified Public Accountant (ICPA) **Emmanuel Y. Mendoza** submitted to the Court his Audit Report dated September 12, 2011, indicating that only P3,555,505.14 of the total input VAT of P6,589,742.03 is properly substantiated. He proposed the disallowance of the total amount of P3,034,236.89 on the following grounds:

	Item of claim	Amount	Observation by ICPA
1	input VAT on domestic purchase of services	P45,832.88	supported by documents other than ORs (i.e., job order slips, order slips, and statement of accounts)
2	input VAT on domestic purchases of goods	P3,791.03	supported by documents other than invoices (i.e., ORs and pro-forma invoices)
3	input VAT on domestic purchases of services	P265,132.65	supported by documents which are not issued under petitioner's name
4	input VAT on domestic purchases of capital goods	P2,790.16	supported by invoices/ORs which are not issued under petitioner's name
5	input VAT on domestic purchases of capital goods	P1,008.31	supported by VAT ORs but the corresponding invoices were not issued under petitioner's name
6	input VAT on domestic purchases of services	P18,000.00	supported only by photocopied ORs stamped with the words "Certified True Copy" by the supplier
7	input VAT on domestic purchases of goods	P2,216.57	supported only by photocopied invoices with the words "Certified True Copy" by the supplier.

8	input VAT on domestic purchases of services supported by VAT O[R]s	P26,333.08	higher than the same category of input VAT in the amount of P7,549.89 as stated in the Schedule prepared by petitioner.
9	input VAT on domestic purchases of goods	P18.00	supported by invoices with pre-printed TIN only
10	input VAT on domestic purchases of services	P3,750.00	supported by ORs with pre-printed Non-VAT/NV
11	input VAT on domestic purchases of goods	P1,029,185.13	supported by invoices with pre-printed Non-VAT/NV
12	input VAT on domestic purchases of services	P1,029,185.13	supported by VAT ORs dated after the period of the claim
13	input VAT on domestic purchases of goods	P89.73	supported by a document which contains unreadable details
14	input VAT on domestic purchases of services, goods, and capital goods	P1,654,167.25	have no available supporting documents

With the adverse findings of the ICPA, petitioner recalled Gaudelia Villanueva. She explained that there were really no ORs for the disallowed input VAT of P45,832.88 since only Job Order Slip from Fax Parcel Print and the Order Slip from Aling Tonya's Seafood Pulutan were issued by the vendors. As to the Statement of Account submitted in evidence, the said Statement of Account indicates Invoice No. MB09-001 which is the payment made by petitioner to Eastern Telecommunications. The 12% R-VAT is explicitly indicated in the Statement of Account.

The disallowed amount of P3,791.03 was paid in cash to Lightline Co. Inc., Gabriel Flower Shop, Everyday Convenience Stores, Inc., Landmark Corporation, Red Ribbon Bakeshop Inc., and Pasteleria Ilustrado Inc. for which only ORs were issued by the vendors.

Insofar as the amount of P2,790.16 is concerned, Villanueva admitted that the invoices issued by suppliers for the covered transactions were in the name of Advanced Contract Solutions (ACS). However, they were actually paid by petitioner in whose favor ORs were issued. All these were due to the joint-venture agreement between petitioner and ACS under which the latter provided petitioner with accounting and procurement services.

As to the disallowed amount of P1,654,167.25 on the ground that it was not substantiated by supporting documents, such was only due to petitioner following the accrual method of accounting. Out of the P1,654,167.25, the amount of P1,053,836.64 input VAT was recorded during the year-end accrual process which pertains to the March 2009 seat cost which was payable to ACS by virtue [of] their joint venture agreement. The invoices in the name of ACS were received and paid by petitioner in the succeeding fiscal year.

On the other hand, the original invoices and ORs for the disallowed amounts of P18,000.00 and P2,216.57 were lost hence, only photocopies stamped as "Certified True Copy" secured from suppliers were presented by petitioner.

Finally, Villanueva clarified while it is true that the disallowed amount of P1,029,185.13 was supported by ORs dated after the period of the claim, this was only due to time difference in the recognition or recording of input VAT. Petitioner records input taxes in its books upon billing or upon receipt of the invoices rather than upon payment of the purchases when the ORs issued.

On January 9, 2012, petitioner rested its case after it formally offered its evidence.

Atty. Villamor Ventura S. Plan, the executive director of DOF-OSS Center Inter-Agency Tax Credit and Duty Drawback Center, was first to take the witness stand for respondent. He testified that he manages the OSS Center which processes the application of taxpayers for tax credit and duty drawback. In a letter dated August 4, 2011, petitioner requested for the withdrawal of its administrative claim for refund of input VAT covering fiscal year 2009 subject of the instant Petition. He acknowledged receipt of such letter in a Letter dated August 8, 2011. On August 5, 2011, he issued a Certification dated February 1, 2012 to the effect that petitioner withdrew its claim for VAT Tax Credit for the period July 2008 to March 2009 in the amount of P6,589,937.2[4].

Atty. Ventura further testified that petitioner filed its administrative claim for refund on September 6, 2010. This prompted the OSS-Center to send a Letter of Authority (LOA) to petitioner on January 28, 2011. Such LOA was however not served due to petitioner's change of address. Thus, another LOA was issued and served upon petitioner on March 11, 2011. At that time, the instant Petition for Review was already filed. Be that as it may, the OSS-Center continued to process the administrative claim until petitioner withdrew it. *gz*

On the issue of whether the petitioner is entitled to a refund or issuance of tax credit certificate for its alleged unutilized input VAT amounting to a total of ₱6,589,937.24 for the second to fourth quarters of fiscal year ended March 31, 2009, the Court in Division held that while the administrative and judicial claim were timely filed under Section 112 of the NIRC, as amended, the petition will still be denied for petitioner's failure to satisfy the requisites laid down under Section 108(B)(2), *id.,* and in accordance with the Supreme Court's ruling in *Commissioner of Internal Revenue* v. *Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,*[3] particularly the third requisite that petitioner's recipients of services must be doing business outside the Philippines.

In so ruling, the court *a quo* concluded that for failure to offer sufficient proof that the petitioner's recipients of services are doing business outside the Philippines, its purported sales to WNS North America and WNS UK in the amount of ₱153,924,884.72 cannot qualify as a VAT zero-rated transaction. Thus, the Court held in its *fallo*:

> **WHEREFORE,** the Petition for Review filed by petitioner WNS Philippines, Inc., on January 26, 2011 is hereby **DENIED**, for insufficiency of evidence.
>
> **SO ORDERED.**[4]

On June 2, 2014, the Court in Division resolved to deny the motion for reconsideration apparently due to petitioner's lack of interest in the case. This premise was brought about by petitioner's non-compliance with the directive of the Court in Division dated March 12, 2014 ordering the petitioner to mark its additional documents before a Commissioner's hearing and subsequently file a supplemental formal offer of evidence. The Court in Division found that despite the opportunity given to mark its additional exhibits, petitioner opted to forego the same by not attending the said hearing. The dispositive portion of the assailed resolution is reproduced below:

> **WHEREFORE**, the Motion for Reconsideration dated May 30, 2013 filed by petitioner is **DENIED**, for lack of merit.
>
> **SO ORDERED.**[5]

On July 7, 2014, petitioner elevated its appeal by filing its petition for review before this Court.[6] Acting on the petition, on July 31, 2014, the Court ordered the

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[3] G.R. No. 153205, January 22, 2007.
[4] *Rollo*, p. 61.
[5] Id. at 65.
[6] Id. at 16-39.

respondent to file her comment on the petition within 10 days[7] but the latter failed to file the same.[8] On September 25, 2014, the Court gave due course to the petition and accordingly ordered both parties to submit their simultaneous memoranda within 30 days from receipt.[9]

On January 8, 2015, the Court considered this appeal as submitted for decision taking into consideration the memorandum filed by the petitioner and in the absence of respondent's memorandum despite due notice.

The Issues

Petitioner submits the following assignment of errors for our disposition to wit:

I.

THE SPECIAL 1ST DIVISION ERRED IN DISMISSING PETITIONER'S CLAIM FOR REFUND ON THE GROUND OF INSUFFICIENCY OF EVIDENCE SINCE PETITIONER PRESENTED SUFFICIENT EVIDENCE FOR THE GRANT OF ITS CLAIM.

II.

THE SPECIAL 1ST DIVISION ERRED IN DENYING PETITIONER'S *MOTION FOR RECONSIDERATION* DATED 30 MAY 2013 ON THE GROUND THAT PETITIONER APPEARS NO LONGER INTERESTED IN PURSUING THE SAME WHEN IT WAS NOT ABLE TO APPEAR AT THE COMMISSIONER'S HEARING NOR FILE ITS SUPPLEMENTAL OFFER OF EVIDENCE.

The Court's Ruling

The Petition is devoid of merit.

In relation to Section 112 of the National Internal Revenue Code, as amended,[10] Section 108(B)(2) of the same code, provides: *fe*

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[7] Id. at 198-199.
[8] Id. at 204.
[9] Id. at 206-207.
[10] SEC. 112. *Refunds or Tax Credits of Input Tax. –*

SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —

x x x x

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) x x x x

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration of which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

x x x x

In the case of *Commissioner of Internal Revenue* v. *Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[11] the Supreme Court clarified that for services rendered to be considered as VAT zero-rated under Section 108(B)(2) of the Tax Code of 1997, the following requisites must be satisfied: 1) The services must be other than processing, manufacturing or repacking of goods; 2) The payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and 3) The recipient of such services is doing business outside the Philippines. A pertinent portion of the Decision is quoted thus:

(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 and 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 nonzero-rated sales.

[11] Supra at note 3.

> The Tax Code not only requires that the services be other than 'processing, manufacturing or repacking of goods' and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP Rules. Another essential condition for qualification for zero-rating . . . . **is that the recipient of such services is doing business outside the Philippines. While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) where the listed services must be "for other persons doing business in the Philippines." The phrase "for other persons doing business outside the Philippines" not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term "services" appearing in the second paragraph of Section 102(b)**. In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines. (Boldfacing added)

Anent this third requisite, petitioner insists that WNS UK and WNS North America as recipient of services for VAT zero-rating purposes are non-resident corporations doing business outside the Philippines. In support of this proposition, petitioner relied not only from its SEC Certificates of Non-Registration but also on the testimony of Gaudelia Villanueva who attested that petitioner has existing service contracts with WNS UK and WNS North America. Petitioner postulated that aside from the SEC non-registration certificate, Villanueva's testimony and its service contracts constituted sufficient proof that it is a foreign corporation doing business abroad.

Petitioner further stressed that the ruling of the Supreme Court in *Accenture, Inc.,* v. *Commissioner of Internal Revenue*, finds no application except only when there is a need "[t]o adduce more proofs that what was considered...enough to establish the basis for the instant claim for refund."

We disagree.

In the case of *Bonifacio Water Corporation (formerly Bonifacio Vivendi Water Corporation,* v. *Commissioner of Internal Revenue*[12] citing *Western Mindanao Power Corporation* v. *Commissioner of Internal Revenue*, the Supreme Court held:

> Petitioner cannot raise the argument that, "non-compliance with the invoicing requirements under the 1997 NIRC, as amended, does not automatically result in the denial

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[12] G.R. No. 175142, July 22, 2013.

> of a claim for refund or tax credit when the same is supported by substantial evidence" and that, in civil cases such as claims for refund, strict compliance with technical rules of evidence is not required x x x **Taxpayers claiming for a refund or tax credit certificate must comply with the strict and mandatory invoicing and accounting requirements provided under the 1997 NIRC, as amended, and its implementing rules and regulations. Rules and regulations with regard to procedures are implemented not to be ignored or to be taken for granted, but are strictly adhered to for they are developed from the law itself.**
>
> From the foregoing, **it is clear that the petitioner must show satisfaction of all the documentary and evidentiary requirements before an administrative claim for refund or tax credit will be granted**. Perforce, the taxpayer claiming the refund must comply with the invoicing and accounting requirements mandated by the Tax Code, as well as revenue regulations implementing them. (Emphasis added)

Here, while the SEC Certificates of Non-Registration show that the entities named therein are not registered corporations/partnerships in the Philippines, **the same, however, do not prove that such entities are non-resident corporations doing business outside the Philippines.**[13] In the same vein, service agreements (or contracts) only indicate the names of petitioner's customers to whom petitioner renders services **but the same do not establish that such customers are non-resident foreign corporations doing business outside the Philippines.**[14] Thus, the Court in Division did not err when it ruled:

> It is unfortunate however that petitioner failed to comply with the third requisite. Petitioner failed to sufficiently establish that the recipient of the call center services, namely WNS UK and WNS North America, are doing business outside the Philippines. <u>The SEC Certificates of Non-Registration presented by petitioner merely show that the records of the SEC do not indicate the registration of the two companies as corporations or as partnerships</u>. In fine, the **Certifications do not prove in any way that such corporations are non-resident companies doing business outside the Philippines**. *Sans* more to establish compliance with the third requisite, it cannot safely be assumed that WNS UK and WNS North America are non-resident companies doing business outside the Philippines, an element explicitly required in the

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[13] *Chevron Holdings, Inc. [formerly Caltex (Asia) Limited]*, v. *Commissioner of Internal Revenue*, CTA Case No. 8241, August 14, 2013; *Sitel Philippines Corporation [formerly: Clientlogic Philippines, Inc.]*, v. *Commissioner of Internal Revenue*, CTA Case No. 7423, October 21, 2009.
[14] *Chevron*, Id.

> Burmeister case. Any judgment must be anchored on concrete and categorical evidence which is simply lacking in this instance. Conjectures and surmises cannot substitute for the facts, which must be established by evidence. (Emphasis added)

It is noteworthy that tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the petitioner to establish by sufficient and competent evidence, its entitlement to a claim for refund.[15] Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.[16] Thus, a Certification of Non-Registration of Corporation/Partnership on its own is deemed insufficient. As tax refunds are in the nature of tax exemptions, there is need to employ a stricter standard in determining whether the submissions filed by the taxpayer is enough to support his claim for refund or issuance of tax credit certificate.[17]

As to the second assignment of error, petitioner asserts that petitioner's non-appearance at the scheduled Commissioner's Hearing and the consequent failure to file its Supplemental Formal Offer of Evidence within the time given are excusable and should not be made as basis in holding that it is no longer interested in pursuing its motion for reconsideration. Petitioner's non-attendance was attributable to the inadequate notice sent by the Court considering that the date the petitioner received the resolution and the date of the scheduled Commissioner's Hearing are the same which is March 18, 2014.

Petitioner also claimed that if petitioner is given a chance to submit additional evidence, it would establish that WNS UK and WNS North America are indeed doing business outside the Philippines. Petitioner even added that considerations of substantial justice dictate that such additional evidence be admitted and considered in the proper determination of the merits of this case, and that its additional evidence should not be disregarded on mere technicalities.

We beg to differ.

Reopening of the case for purposes of admitting additional evidence is not merely rooted in the interest of substantial justice but also rests on the sound discretion of the Court. Therefore, the Court cannot simply bend the rules without justifiable grounds. As held in *Republic of the Philippines* v. *The Hon. Sandiganbayan*:[18]

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[15] *Philippine Geothermal, Inc.* v. *The Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005, 465 SCRA 308 citing *Commissioner of Internal Revenue* v. *Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436, 461.
[16] G.R. No. 173854, March 15, 2010.
[17] *Chevron Holdings, Inc. [formerly CALTEX (ASIA) LIMITED]* v. *Commissioner of Internal Revenue*, CTA EB No. 940, October 28, 2014.
[18] G.R. No. 159275, August 25, 2010, 629 SCRA 55.

> **Admission of additional evidence is addressed to the sound discretion of the trial court. Indeed, in the furtherance of justice, the court may grant the parties the opportunity to adduce additional evidence bearing upon the main issue in question**. The remedy for reopening a case for presenting additional proofs was meant to prevent a miscarriage of justice.
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> x x x x
>
> After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but it has been held, the court, for good reasons in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. So, generally, <u>additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered</u>. (Emphasis and Underscoring supplied)

In this case, the Court cannot subscribe to petitioner's assertions given that it had ample opportunity to present all its evidence during the trial of the case. In fact, petitioner was afforded additional opportunity to present further evidence after the decision of the Court in Division was rendered. While it is true that rules of procedure are not cast in stone, it is equally true that strict compliance with the Rules is indispensable for the prevention of delays and for the orderly and expeditious dispatch of judicial business.[19]

Finally, neither can we agree that the Supreme Court ruling in *Esguerra et al.,* v. *Holcim Philippines, Inc.*[20] which held that technical and procedural rules must give way because a deviation from the rigid enforcement of the rules will better serve the ends of justice. Instead, the ruling of the High Court in *Commissioner of Internal Revenue* v. *Acosta*,[21] is more *apropos*:

> ...**Revenue statutes are substantive laws and in no sense must their application be equated with that of remedial laws. As well said in a prior case, revenue laws are not intended to liberally construed**. Considering that taxes are the lifeblood of the government and in Holmes's

[19] *Lynx Industries Contractor Inc., et al.,* v. *Tala*, G.R. No. 164333, August 24, 2007.
[20] G.R. No. 182571, September 2, 2013.
[21] G.R. No. 154068, August 3, 2007, 529 SCRA 177.

memorable metaphor, the price we pay for civilization, tax laws must be faithfully and strictly implemented. (Emphasis added)

In sum, petitioner's failure to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund. As oft-repeated, 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 refund rests on the taxpayer.[22]

WHEREFORE, the petition is **DENIED** for lack of merit. The May 2, 2013 Decision and June 2, 2014 Resolution of the Court in Division in CTA Case No. 8219 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

(Concurs with the Dissenting Opinion of Presiding Justice Del Rosario)
ERLINDA P. UY
Associate Justice

(Concurs with the Dissenting Opinion of Presiding Justice Del Rosario)
CAESAR A. CASANOVA
Associate Justice

(With Separate Concurring Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

WNS GLOBAL SERVICES PHILIPPINES, INC., *Petitioner,*	**CTA EB CASE NO. 1188** (CTA Case No. 8219)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 28 2015 3:50 p.m.

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DISSENTING OPINION

DEL ROSARIO, PJ.:

In his *ponencia,* my esteemed and learned colleague, the Honorable Associate Justice Juanito C. Castañeda, Jr., denied the instant Petition for Review filed by WNS Global Services Philippines, Inc. (WGSPI) in CTA EB Case No. 1188 and affirmed the assailed Decision and Resolution issued by the Special First Division.

With all due respect, after a careful examination of the pertinent facts of the case, in relation to applicable laws and jurisprudence, I find it difficult to agree with the *ponente* that petitioner WGSPI was given ample opportunity to present further evidence after the decision of the Court in Division was rendered.

Settled is the rule that admission of additional evidence is addressed to the sound discretion of the trial court. Indeed, in the furtherance of justice, the court may grant the parties the opportunity to adduce additional evidence bearing upon the main issue in question. The remedy of reopening a case for presenting further proofs was meant to prevent a miscarriage of justice.[1]

In this case, records show that the Court in Division rendered the assailed Decision on May 2, 2013. On May 30, 2013, petitioner filed a Motion for Reconsideration of the assailed Decision. In the Resolution dated September 10, 2013, the Court in Division allowed petitioner to present additional evidence in the interest of substantial justice. In the Resolution dated January 6, 2014, the Court in Division granted petitioner's Motion for Leave to Take Deposition by written interrogatories and considered the judicial affidavits of Anil Patil and Michael Garber attached to the said motion as their respective direct testimonies taken through deposition. In the same Resolution, the Court in Division ordered respondent to file her written cross interrogatories of witnesses Anil Patil and Michael Garber. In the **Resolution dated March 12, 2014**, the Court in Division noted respondent's failure to file written cross interrogatories despite the opportunity granted and <u>**set the case** for Commissioner's Hearing on March 18, 2014 at 2:00 p.m. for the marking of petitioner's additional evidence</u>. In the same Resolution, the Court in Division required petitioner to submit a supplemental formal offer of evidence within ten (10) days from March 18, 2014. Unfortunately, **petitioner received the <u>Notice of Resolution dated March 12, 2014</u> on <u>March 18, 2014 at 1:17 in the afternoon or forty-three (43) minutes</u> before the scheduled Commissioner's Hearing.** As records disclosed, petitioner was unable to attend the said hearing and consequently failed to comply with the submission of the Supplemental Offer of Evidence which eventually led to the denial of its Motion for Reconsideration of the assailed Decision.

Due process of law is a constitutionally guaranteed right reserved to every litigant. Even the Republic as a litigant is entitled to this constitutional right, in the same manner and to the same extent that this right is guaranteed to private litigants. The essence of due process is the opportunity to be heard, logically preconditioned on prior notice, before judgment is rendered.[2]

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[1] *Republic of the Philippines vs. The Honorable Sandiganbayan, et al.,* G.R. No. 159275, August 25, 2010.

[2] *Republic of the Philippines vs. Hon.Ramon S. Caguioa, et al.,* G.R. No. 174385, February 20, 2013.

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Serving the Notice of Resolution on the same day of the scheduled commissioner's hearing does not appear to be reasonable for petitioner to have prepared and appear thereat. In truth, it was a valid expectation for petitioner to await a re-setting of the commissioner's hearing based on the premise that the Court in Division would have *motu proprio* noted the late service of the Notice of Resolution. As events turned out, the Court in Division did not reset the commissioner's hearing to another date for the marking of petitioner's additional evidence. Instead, on June 2, 2014, a Resolution was issued by the Court in Division denying petitioner's Motion for Reconsideration of the assailed Decision.

In the interest of substantial justice, the case must be remanded to the Court in Division for the reception of additional evidence.

In *Jorge Tiangco, et al. vs. Land Bank of the Philippines,*[3] the Supreme Court held that in rendering justice, courts have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around.

For all the foregoing, in the interest of justice, I vote to remand the case to the Special First Division for the reception of additional evidence as may be needed to determine whether WNS UK and WNS North America are doing business outside the Philippines.

ROMAN G. DEL ROSARIO
Presiding Justice

[3] G.R. No. 153998, October 6, 2010.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

WNS GLOBAL SRVICES PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 1188
(CTA CASE NO. 8219)

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

Promulgated:

APR 28 2015
3:50 p.m.

x- x

CONCURRING OPINION

***Fabon-Victorino, J.*:**

I concur with the *ponencia* of Honorable Senior Associate Justice Juanito C. Castaneda Jr.

It is not accurate to state that petitioner was not given ample opportunity to present further evidence to sufficiently establish that the recipient of the call center services, namely, WNS UK and WNS North America, are non-resident companies doing business outside the Philippines for the subject transactions to qualify for zero-rating under Section 108(B) of the Tax Code.

In fact, the Court in Division had been very lenient and generous to petitioner in terms of time and opportunity to prove its case.

In its Resolution dated September 10, 2013, the Court in Division allowed the reopening of the case for petitioner to adduce additional documents to prove that the recipients of its call center services are non-resident companies doing business outside the Philippines. This was albeit indications that the alleged additional evidence were neither newly discovered nor unavailable during the trial of the case.

The Court in Division bent further when petitioner, during the re-opening of the case, presented documents *sans* authentication by a competent witness in open court. To cure the defect, the Court in Division again granted petitioner another chance by allowing it to take depositions through written interrogatories of its witnesses Anil Patil and Michael Garber both of whom reside abroad.

Finally on March 12, 2014, the case was set for Commissioner's hearing for the marking of petitioner's additional evidence. However, petitioner failed to appear. Worse, petitioner failed to take any action to inform the Court of the reason for its counsel's non-appearance during the scheduled proceeding. Three (3) months thereafter, the Court denied petitioner's Motion for Reconsideration in the similarly assailed Resolution of June 2, 2014 concluding that petitioner had lost interest in pursuing the incident.

And now petitioner has the temerity to cry foul and faults the Court in Division for alleged belated service of notice of Commissioner's Hearing which allegedly prevented its counsel from attending the scheduled marking of exhibits.

But there are cracks in the curtain through which the truth reveals itself.

Petitioner admits in paragraph 21 of the instant Petition for Review that it received the originals/authenticated copies of the documents annexed to the Judicial Affidavits of Messrs. Patil and Garber only on June 16 & 23, 2014. The copies of these original documents were the additional evidence presented by petitioner during the reopening of the case, the originals of which were supposed to be marked during the Commissioner's hearing set on March 18, 2014.

In fine, even if the notice was received days ahead of the scheduled Commissioner's Hearing on March 18, 2014, it was impossible for petitioner to produce the originals of the additional documents for comparison before the Commissioner for it was made available only on June 16 & 23, 2014, or about three (3) months after the scheduled Commissioner's Hearing. Petitioner kept the Court in the dark about this fact and continued to keep mum for obvious reason.

What is revolting is petitioner's attempt to mislead the Court *En Banc* by claiming injustice through violation of due process because it was allegedly served notice on the same day the Commissioner's Hearing was set even as it reiterates in its Memorandum dated November 21, 2014 that it received the originals of its additional documents only on June 16 & 23, 2014. This should not be allowed lest a repeat in utter disregard of the rules and disrespect to the Court, not only by petitioner but by other litigants, is in the offing.

Moreover, it was erroneous if not too presumptuous on the part of petitioner to consider that the Court would *motu proprio* issue a resetting of the scheduled proceeding absent any information about the alleged belated receipt of the notice. With the advent of the latest technology, the Court is just a sigh away.

While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances.[1] Such twin requirements are certainly warranted in the case at bar.

[1] Gregorio De Leon, Doing Business As G.D.L. Marketing vs. Hercules Agro Industrial Corporation and/or Jesus Chua And Rumi Rungis Milk., G.R. No. 183239, June 02, 2014.

In view of the foregoing, I vote to **DENY** the instant Petition for Review, for utter lack of merit.

ESPERANZA R. FABON-VICTORINO
Associate Justice