REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

STEFANINI PHILIPPINES INC.,
Respondent.

CTA EB NO. 2864
(CTA Case No. 10226)

Present:

RINGPIS-LIBAN, *P.J.,*
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

MAR 0 2 2026 2:40pm

x - x

DECISION

FERRER-FLORES, J.:

Before this Court is a **Petition for Review** filed on February 29, 2024 by the **Commissioner of Internal Revenue (CIR/petitioner)** against **Stefanini Philippines Inc. (Stefanini/respondent)** seeking for the Court to partially reverse the Decision dated August 23, 2023 (assailed Decision)[1] and the Resolution dated January 26, 2024 (assailed Resolution),[2] both rendered by the Special First Division of this Court (Court in Division), which partially granted Stefanini's claim for refund of or issuance of tax credit certificate (TCC) for its alleged excess and unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters of calendar year (CY) 2017 amounting to **₱4,670,035.76.**

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[1] Penned by Associate Justice Marian Ivy Reyes-Fajardo with the concurrence of (Ret.) Associate Justice Catherine T. Manahan and with the Dissenting Opinion of (Ret.) Presiding Justice Roman G. Del Rosario; *Rollo*, pp. 32 to 66.

[2] *Rollo*, pp. 68 to 71.

The dispositive portions of the assailed Decision and Resolution read as follows:

Assailed Decision

> **WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the amount ₱4,670,035.76, representing its unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters of CY 2017.
>
> **SO ORDERED.**

Assailed Resolution

> **WHEREFORE**, in light of the foregoing considerations, respondent CIR's Motion for Partial Reconsideration of the Decision promulgated on August 23, 2023 is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE PARTIES[3]

Petitioner is the head of the Bureau of Internal Revenue (BIR) empowered to perform the duties of the office, including acting upon and approving claims for refund or tax credit. He holds office at the BIR National Office Building, Sen. Miriam Defensor-Santiago Ave. (formerly BIR Road), Diliman, Quezon City.

Respondent is a corporation organized under Philippine law, with registered office address at 3, 5 & 6/F iMET BPO, Metrobank Ave., Metropolitan Park, Roxas Blvd., Pasay City 1300.

THE ANTECEDENT FACTS

On September 26, 2019, Stefanini initiated its administrative claim for refund through the filing with the BIR of the Application for Tax Credits/Refunds (BIR Form No. 1914) with the letter of even date. Stefanini sought for the refund of ₱9,632,173.66 representing its excess input VAT arising from the third and fourth quarters of CY 2017, attributable to its zero-rated sale.

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[3] *Parties*, Petition for Review, *Rollo*, p. 8.

Thereafter, on November 18, 2019, Stefanini received the letter dated October 29, 2019 issued by the BIR, through Ms. Maria Luisa I. Belen, OIC-Assistant Commissioner (ACIR)-Assessment Service, denying its administrative claim for refund.

Hence, Stefanini filed its judicial claim before the Court in Division on December 16, 2019.

THE PROCEEDINGS BEFORE THE COURT IN DIVISION

As detailed in the assailed Decision, the proceedings before the Court in Division are as follows:[4]

> The CIR filed an Answer and submitted the BIR Records of the case on March 2, 2020 and July 28, 2020, respectively.
>
> After the parties' submission of their respective pre-trial briefs and the conduct of a pre-trial conference, the Court resolved to approve the parties' Joint Stipulation of Facts and Issues and issued a Pre-Trial Order dated February 3, 2021.
>
> During trial, the following persons testified for Stefanini Philippines: (1) Ms. Jeanina B. Pepito, petitioner's Finance Manager, and (2) Mr. Joseph Cedric V. Calica, the Court-commissioned Independent Certified Public Accountant (ICPA).
>
> The Report of the ICPA was submitted on December 4, 2020.
>
> Stefanini Philippines filed its Formal Offer of Evidence on February 10, 2021. While the CIR filed a Comment thereto, the Court expunged the same for being filed out of time. Consequently, the Court resolved to admit all exhibits offered by Stefanini Philippines.
>
> For its part, the CIR presented the testimony of Revenue Officer Dexter C. Bustillos. Subsequently, the Court also admitted all exhibits offered by the CIR.
>
> After the parties filed their respective Memoranda, the case was submitted for decision on August 23, 2022.

On August 23, 2023, the Court in Division rendered the assailed Decision partially granting Stefanini's *Petition for Review*.[5] In the assailed Decision, the Court found that Stefanini complied with the requisites for the refund/credit of input VAT, attributable to its zero-rated sales, to the extent of ₱4,670,035.76.

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[4] *Proceedings before the Court*, assailed Decision, *Rollo*, pp. 35 to 36; citations omitted.

[5] *Rollo*, pp. 32 to 66.

Aggrieved, the CIR filed his *Motion for Partial Reconsideration (Re: Decision dated 23 August 2023)*[6] on September 14, 2023, to which Stefanini filed its *Comment/Opposition [to Respondent's Motion for Reconsideration] (Re: Decision dated 23 August 2023)* on October 17, 2023.[7]

On January 26, 2024, the Court in Division promulgated the assailed Resolution, denying the CIR's *Motion for Partial Reconsideration* for lack of merit.[8]

Hence, the instant *Petition for Review*.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On February 12, 2024, the CIR filed a *Motion for Extension of Time to File Petition for Review* requesting for an additional period of 15 days from February 14, 2024, or until February 29, 2024, to file his Petition for Review.[9] The said motion was granted by the Court on February 14, 2024, subject to the condition that the motion for extension was filed on time.[10]

Thereafter, on February 29, 2024, the CIR filed the instant *Petition for Review*.[11]

In the Minute Resolution dated April 5, 2024, the Court ordered Stefanini to file its comment on the present *Petition for Review*.[12]

Stefanini Philippines filed its *Comment/Opposition (to Petition for Review dated February 23, 2024)*[13] on April 29, 2024.

On May 15, 2024, the case was submitted for decision.[14]

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6 Division Docket – Vol. III, pp. 1661 to 1674.
7 Division Docket – Vol. III, pp. 1678 to 1692.
8 *Rollo*, pp. 68 to 71.
9 *Rollo*, pp. 1 to 4.
10 *Rollo*, p. 6.
11 *Rollo*, pp. 7 to 24.
12 *Rollo*, p. 72.
13 *Rollo*, pp. 73 to 88.
14 Minute Resolution dated May 15, 2024, *Rollo*, p. 89.

THE ISSUES

In the instant *Petition for Review*, the CIR raised the following assignment of errors:

I. Whether the Court in Division erred in ruling that it can give weight to evidence not presented during the investigation done in the administrative level; and,

II. Whether the Court in Division erred in ruling that Stefanini Philippines is partially entitled to the refund sought.

THE ARGUMENTS

The CIR's arguments:

The CIR insists that, following *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[15] (Pilipinas Total Gas), since the CIR rendered a decision, the jurisdiction of this Court shifts from a trial court to an appellate court. The Court should confine itself whether the CIR's findings are consistent with law. According to the CIR, the Court in Division cannot consider or give weight to evidence not presented during the administrative proceedings, as Stefanini is already barred from submitting additional documents after the filing of its administrative claim.

The CIR argues that, notwithstanding the foregoing, Stefanini is still not entitled to the refund sought since its supporting documents were not in compliance with the requirements provided by law. Particularly, its receipts and invoices are not compliant with Section 113(B)(2)(c) of the National Internal revenue Code (NIRC) of 1997, as amended, and Section 4.113-1 of Revenue Regulations (RR) No. 16-2005,[16] which requires that the words "zero-rated sale" should be written or prominently printed on the invoice or receipt.

Stefanini's counter-arguments:

Respondent posits that arguments raised in the *Petition for Review* are mere rehash of those which have already been duly considered, thoroughly discussed and judiciously passed upon by the Court in Division in the assailed Decision and Resolution.

[15] G.R. No. 207112, December 8, 2015.
[16] SUBJECT: Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

Respondent maintains that cases filed before the Court of Tax Appeals (CTA) are litigated *de novo*; thus, the Court in Division correctly considered all pieces of evidence duly presented/identified, formally offered and admitted into evidence during the course of trial. According to respondent, *Pilipinas Total Gas* involves a different factual milieu such that the same is clearly inapplicable to the instant *Petition*.

THE RULING OF THE COURT *EN BANC*

The *Petition for Review* is bereft of merit.

The instant Petition for Review was timely filed; thus, the Court En Banc has jurisdiction over the case.

Section 11 of Republic Act (R.A.) No. 1125,[17] as amended by R.A. No. 9282,[18] provides that "[a] party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*".

Section 3(b) of Rule 8 of the Revised Rules of the CTA (RRCTA), which implements the above Section, provides that "[a] party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**."

Based on the foregoing, the CIR had 15 days from receipt of the assailed Resolution within which to file his Petition for Review.

Records show that the assailed Resolution of the Court in Division was received by the CIR, through the Office of the Solicitor General, on February 2, 2024;[19] thus, the CIR had 15 days therefrom, or until **February 17, 2024**, to file his Petition for Review.

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17 An Act Creating the Court of Tax Appeals (June 16, 1954).

18 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes (March 30, 2004).

19 Notice of Resolution dated January 29, 2024; Division Docket – Vol. III, p. 1695.

On February 12, 2024, the CIR filed a *Motion for Extension of Time To File Petition for Review*[20] seeking an additional period of 15 days from February 14, 2024, or until **February 29, 2024**, which was granted by this Court on February 14, 2024.[21]

Clearly, the instant *Petition for Review*[22] was timely filed on **February 29, 2024.**

The Court shall now proceed to the issues in the present petition.

The Court in Division did not err in ruling that it can give weight to evidence not presented during the investigation done in the administrative level.

The CIR argues that the Court in Division erred when documents not submitted in the administrative level but were presented before the Court were given weight in the determination of Stefanini's entitlement to its claim for refund. Stefanini counters that the Court aptly considered said documents as cases before it are litigated *de novo.*

We find for Stefanini.

Section 8 of R.A. No. 1125, as amended, provides:

> **Section 8.** *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

In *Commissioner of Internal Revenue vs. Manila Mining Corp.*[23] (Manila Mining), the Supreme Court expounded on the above provision, as follows:

> Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given

[20] *Rollo*, pp. 1 to 4.
[21] Minute Resolution dated February 14, 2024; *Rollo*, p. 6.
[22] *Rollo*, pp. 7 to 24.
[23] G.R. No. 153204, August 31, 2005.

> the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.
>
> This Court thus notes with approval the following findings of the CTA:
>
> xxx xxx xxx
>
>> Section 8 of Republic Act 1125 (An Act Creating the Court of Tax Appeals) provides categorically that **the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial *(trial de novo)* where the parties must present their evidence accordingly** if they desire the Court to take such evidence into consideration.

The CIR, nonetheless, insists that, since the CIR rendered a decision, the Court in Division's jurisdiction is merely appellate; hence, applying *Pilipinas Total Gas*, the Court should confine itself to whether the CIR's findings are consistent with law.

This argument fails to convince us.

In *Commissioner of Internal Revenue vs. Philippine Bank of Communications*,[24] the Supreme Court, citing *Manila Mining,* emphasized that, since the claim for tax refund or credit was litigated anew before the CTA, the latter's decision must be anchored exclusively on the evidence formally offered before the Court, notwithstanding any pieces of evidence submitted at the administrative level.

As such, the CIR's reliance on *Pilipinas Total Gas* is misplaced in view of Section 8 of R.A. No. 1125, as amended, which describes the CTA as a *court of record*, and in view of established jurisprudence holding that cases filed before the CTA are litigated *de novo*; thus, party litigants should prove every minute aspect of their case by **presenting, formally offering, and submitting to the Court all evidence required for the successful prosecution of their claims.**

Here, petitioner's claim for tax refund or credit was litigated *de novo* before the Court. Consequently, the Court's decision must be based solely on the evidence formally presented before it during trial, regardless of whether such documents were previously submitted or not to the CIR.

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24 G.R. No. 153204, August 31, 2005.

Applying this jurisprudence to the present case, the Court *En Banc* finds no reversible error in the Court in Division's reliance on evidence duly offered and admitted during trial.

It also bears to emphasize that, when Stefanini formally offered its evidence, the CIR did not file any timely opposition nor raise objection against specific documents which were allegedly not submitted in the administrative level. In fact, the CIR's comment to Stefanini's Formal Offer of Evidence was expunged from the record for being belatedly filed.[25]

It is basic in the rule of evidence that objection to evidence must be made after the evidence is formally offered.[26]

Section 35 of Rule 132 of the Rules of Court provides when to make an offer of evidence, to wit:

> SEC. 35. *When to make offer.* — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.
>
> Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.

On the other hand, Section 36 of the same Rule, provides when objection to the evidence offered shall be made:

> SEC. 36. *Objection.* — Objection to evidence offered orally must be made immediately after the offer is made.
>
> Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.
>
> An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.

Based on the foregoing, in case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made.[27]

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[25] Resolution dated May 24, 2021, Division Docket – Vol. III, p. 1485.
[26] *Westmont Investment Corp. vs. Francia, Jr.*, G.R. No. 194128, December 7, 2011.
[27] *Magsino vs. Magsino*, G.R. No. 205333, February 18, 2019.

Clearly, the Court in Division did not err in considering evidence presented, formally offered and duly admitted by the Court in accordance with the rules.

The Court did not err in ruling that Stefanini is partially entitled to the refund sought.

The CIR mainly anchors his argument, that Stefanini is not entitled to its claim for refund, on the submission of invoices and official receipts (ORs) which are not compliant with Section113(B)(2)(c) and (d) of the NIRC of 1997, as amended, and Section 4.113-1 of RR No. 16-2005,[28] which require that the words "zero-rated sale" should be written or prominently printed on the invoice or receipt.

The Court is not convinced.

Section 113 (B) of the NIRC of 1997, as amended, provides as follows:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (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: *Provided*, That:
>
> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
>
> (b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) value-added tax, **the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;**

[28] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, **the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components**, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, **That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated component of the sale**. *(Emphasis supplied)*

In the present case, the following requirements in Section 113(B)(2) of the NIRC of 1997, as amended, are relevant: *(1)* Subparagraph (c)—that the term "zero-rated" shall be written or printed prominently on the invoice or receipt; and, *(2)* Subparagraph (d) thereof—in instances of mixed transactions, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components ("breakdown requirement" for brevity). Note that the breakdown requirement did not provide for any writing/printing of the term "zero-rated" in case a single document is to be issued for mixed transactions.

The issue before Us is whether the ORs are compliant with the requirement under subparagraph (c) of Section 113(B)(2) of the NIRC of 1997, as amended.

Based on the examination by the Court in Division of the ORs submitted by Stefanini, it was found that the "amount collected was written and declared as "zero-rated sales" in the breakdown portion (left side) on the face of each official receipt. All collections are reflected clearly as zero-rated sales on the official receipts, in compliance with the applicable invoicing requirements and pursuant to applicable jurisprudence directing that the term "zero-rated sale" be written or printed prominently on the face thereof."

This Court agrees with the Court in Division. Upon scrutiny of the supporting ORs of Stefanini's zero-rated sales, the Court observes that the term "zero-rated" indeed appears in the breakdown portion of the ORs. Further, the amount of service fee in USD was clearly handwritten beside and aligning with the term "Zero Rated Sales" on the face of the OR. While it is true that the printing of a breakdown portion in the OR is in compliance with the breakdown requirement, it can also be said that the writing of the sales amount beside the term "Zero Rated Sales" is a substantial compliance with the requirement of writing/printing the term "zero-rated" on the receipt. To the Court's mind, with such presentation, there is no other conclusion to be drawn other than that the amount pertains to zero-rated sales. Hence, the Court affirms the conclusion of the Court in Division that Stefanini complied with the requirement under Section 113 of the NIRC of 1997, as amended.

All told, this Court *En Banc* finds no compelling reason to reverse the Court in Division's assailed Decision and Resolution.

ACCORDINGLY, the **Petition for Review** filed on February 29, 2024 is **DENIED** for lack of merit. In view thereof, the Decision dated August 23, 2023 and the Resolution dated January 26, 2024 in CTA Case No. 10226 are **AFFIRMED**.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

With due respect, please see Dissenting Opinion.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

With due respect, I join Justice Villena's DO
LANEE S. CUI-DAVID
Associate Justice

With due respect, please see my Dissenting Opinion
HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2864** (CTA Case No. 10226)
	Present:
- versus -	**RINGPIS-LIBAN,** ***P.J.,*** **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** ***JJ.***
STEFANINI PHILIPPINES, INC., Respondent.	Promulgated: MAR 02 2026 2:41

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DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my esteemed colleague, Associate Justice Corazon G. Ferrer-Flores, I register my dissent to the *ponencia*, as it fully denies the *Petition for Review* of petitioner Commissioner of Internal Revenue (**petitioner/CIR**) and, consequently, affirms *in toto* the Decision dated 23 August 2023[1] (**assailed Decision**) and Resolution dated 26 January 2024[2] (**assailed Resolution**), both promulgated by the Special First Division.

Respectfully, and as explained below, the Court *En Banc* should adjust the computation of the refundable amount of excess and unutilized input value-added tax (**VAT**) attributable to valid zero-rated sales to reduce the same to the extent of the amount attributable to the sales of service to "Stefanini NV/SA." Additionally, I espouse a different view as regards the computation of the refundable amount.

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1 *Rollo*, pp. 32-66.
2 Id., pp. 68-71.

Before addressing the computation of the refundable amount, I find it necessary to clarify a preliminary procedural issue, particularly as regards the supposition that the Court of Tax Appeals (**CTA**) may consider evidence presented at the judicial level without first ascertaining whether these were submitted at the administrative level only when the appeal arises from petitioner's inaction or failure to act on a refund claim as the case is being essentially decided in the first instance.

Foremost, the CIR's inaction or failure to act on a refund claim is not the only circumstance in which this Court may consider evidence presented at the judicial level without first determining whether such evidence was submitted during the administrative proceedings. It is worth considering that this Court may likewise do so when the CIR's adverse decision **fails to specify which particular pieces of evidence were not submitted at the administrative level and were allegedly the basis for denying the refund claim**. Moreover, if during trial the CIR does not indicate which of the documents offered in evidence had not been previously submitted, and raises no objection to their admission, the Court may properly admit and consider them.

I wish to emphasize that the essence of the ruling in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[3] (**Total Gas**), in relation to the CTA's authority to conduct a trial *de novo*, is that a taxpayer-claimant may not submit supporting documents in piecemeal — initially at the administrative level (before the CIR), and then belatedly at the judicial level (before CTA) — to cure deficiencies in the administrative claim. This principle is evident from the relevant discussion in *Total Gas*, to wit:

> ...
> [U]nder the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, **the taxpayer is barred from submitting additional documents after he has filed his administrative claim**.
> ...
>
> ... **[I]t is observed that the CIR made no effort to question the inadequacy of the documents submitted by Total Gas.** It neither gave notice to Total Gas that its documents were inadequate, nor ruled to deny its claim for failure to adequately substantiate its claim. Thus, for purposes of counting the 120-day period, it should be reckoned from August 28, 2008, the date when Total Gas made its "submission of complete documents to

[3] G.R. No. 207112, 08 December 2015.

support its application" for refund of excess unutilized input VAT. Consequently, counting from this later date, the BIR had 120 days to decide the claim or until December 26, 2008. With absolutely no action or notice on the part of the BIR for 120 days, Total Gas had 30 days or until January 25, 2009 to file its judicial claim.

...

... [T]axpayers **cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required.** Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.

Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.

At this point, it is worth emphasizing that the reckoning of the 120-day period from August 28, 2008 cannot be doubted. *First*, a review of the records of the case undubitably show that Total Gas filed its supporting documents on August 28, 2008, together with a transmittal letter bearing the same date. These documents were then *stamped* and *signed* as received by the appropriate officer of the BIR. *Second*, contrary to RMO No. 40-94, which mandates officials of the BIR to indicate the date of receipt of documents received by their office in every claim for refund or credit of VAT, the receiving officer failed to indicate the precise date and time when he received these documents. Clearly, the error is attributable to the BIR officials and should not prejudice Total Gas.

Third, it is observed that whether before the CTA or this Court, the BIR had never questioned the date it received the supporting documents filed by Total Gas, or the propriety of the filing thereof. In contrast to the continuous efforts of Total Gas to complete the necessary documents needed to support its application, all that was insisted by the CIR was that the reckoning period should be counted from the date Total Gas filed its application for refund of excess unutilized input VAT. There being no question as to whether these documents were actually received on August 28, 2008, this Court shall not, by way of conjecture, cast doubt on the truthfullness on such submission. *Finally*, in consonance with the presumption that a person acts in accordance with the ordinary course of business, it is presumed that such documents were received on the date stated therein.

> Verily, should there be any doubt on whether Total Gas filed its supporting documents on August 28, 2008, it is incumbent upon the CIR to allege and prove such assertion. As the saying goes, *contra preferentum.*
>
> **If only to settle any doubt, this Court is by no means setting a precedent by leaving it to the mercy of the taxpayer to determine when the 120-day reckoning period should begin to run by providing absolute discretion as to when he must comply with the mandate submitting complete documents in support of his claim. In addition to the limitations thoroughly discussed above, the peculiar circumstance applicable herein, as to relieve Total Gas from the application of the rule, is the obvious failure of the BIR to comply with the specific directive, under RMO 40-94, to stamp the date it received the supporting documents which Total Gas had submitted to the BIR for its consideration in the processing of its claim. The utter failure of the tax administrative agency to comply with this simple mandate to stamp the date it receive the documents submitted by Total Gas — should not in any manner prejudice the taxpayer by casting doubt as to *when* it was able to submit its complete documents for purposes of determining the 120-day period.**
>
> While it is still true a taxpayer must prove not only his entitlement to a refund but also his compliance with the procedural due process—it also true that when the law or rule mandates that a party or authority must comply with a specific obligation to perform an act for the benefit of another, the non-compliance thereof by the former should not operate to prejudice the latter, lest it render the nugatory the objective of the rule. Such is the situation in case at bar.[4]
>
> ...

From the foregoing, what is essential to note is that *Total Gas* does not impose a rigid prohibition against the consideration of additional evidence at the judicial level. Rather, it underscores the importance of fairness and procedural due process, both on the part of the taxpayer and the Bureau of Internal Revenue (**BIR**). The ruling recognizes that while the taxpayer must substantiate its claim with complete documents, the CIR likewise has a corresponding obligation to clearly identify deficiencies in the taxpayer's submission and to notify the taxpayer accordingly. Failure to do so cannot be used to the taxpayer's detriment.

Accordingly, when the CIR issues a blanket denial without specifying which documents are lacking or inadequate, and subsequently fails to object to the presentation of such documents during trial, it would be unjust to preclude the CTA from admitting and considering them. To adopt a contrary view would unduly elevate form over substance and would effectively shift

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4 Supra: Citation omitted, italics in the original text and emphasis in the original text and supplied.

the burden of procedural compliance entirely upon the taxpayer, even in situations where the lapse lies with the BIR.

Indeed, *Total Gas* teaches that the trial *de novo* character of proceedings before CTA remains intact, particularly when the CIR's actions — or inaction — fail to uphold the basic standards of fairness. It does not stand for the absolute exclusion of all evidence not previously submitted at the administrative level. On the contrary, it affirms that when the refund claim reaches judicial determination, this Court retains discretion to admit and weigh evidence, guided by the Rules of Court and the overarching goal of rendering a just decision based on the merits.

Thus, while parties must comply with procedural requirements, this Court must also ensure that procedural rules do not operate as instruments of injustice. When the CIR denies a claim without adequately informing the taxpayer of the supposed deficiencies and does not object to the belated submission of documents during trial, this Court should not penalize the taxpayer by rigidly applying evidentiary exclusions. To do so would contradict the very principle reaffirmed in *Total Gas* — that tax refund cases must be resolved with due regard for both legal standards and equitable considerations.

While *Total Gas* is not on all fours with the present case — having been decided under Revenue Memorandum Circular (**RMC**) No. 49-2003[5], which permitted requesting additional documents from taxpayers to substantiate their claims — whereas the present case falls under RMC No. 47-2019[6], which requires that a complete set of supporting documents must accompany the refund application at the administrative level, the core principle in *Total Gas* still applies. It remains incumbent upon the CIR to clearly identify which specific pieces of evidence were not submitted at the administrative level and to demonstrate that such omission served as the basis for the denial of the refund claim. Absent such showing and any objection to the admission thereof, this Court may properly consider the allegedly omitted evidence in its evaluation of the merits of the judicial claim.

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5 Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues 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-DOF) by Direct Exporters.

6 Revised Guidelines and Mandatory Requirements for the Processing and Grant of Value-Added Tax (VAT) Refund Claims within the 90-day Period Pursuant to Section 112 of the Tax Code of 1997, as Amended.

In this case, petitioner issued a Letter dated 29 October 2019[7] (**Denial Letter**), denying respondent's administrative claim for refund on the following grounds:

(1) **Disallowed input tax due to violation of the invoicing requirements**, pursuant to Section 113, in relation to Section 110(A), of the National Internal Revenue Code (**NIRC**) of 1997, as amended, with an itemized breakdown of the disallowed input tax on local purchases;

(2) **Disallowed input tax on out-of-period local purchases**, with an itemized breakdown thereof;

(3) **Disallowed input tax for non-compliance with item 4.3 of Annex A.1 of RMC No. 47-2019**, in relation to Revenue Memorandum Order (**RMO**) No. 16-2007, with an itemized breakdown of the disallowed input VAT on big-tickets;

(4) **Disallowed zero-rated sales for** failure to submit consularized or apostilled Certificate of Incorporation of the alleged nonresident foreign corporation (**NRFC**) clients, as well as the Billing Statements or Statements of Account or any other documents to support the official receipts (**ORs**) issued for the export sales of services, as required under item 3.2 of Annex A.1 of RMC No. 47-2019; and

(5) **Tax liabilities reflected in the Delinquency Verification Certificate** issued by the Collection Division, Revenue Region No. 8B, which is deemed tantamount to incomplete submission of documents in support of the refund claim, pursuant to Section I.4 and 5 of RMC No. 47-2019.

With respect to the 4th ground above, petitioner merely noted the following in relation to the requirement of establishing the NRFC status of its clients:

Customer	Certificate of Incorporation of NRFC Clients
Stefanini, Inc.	Apostilled Copy not Certified
Stefanini, NV	None
Stefanini, UK Ltd	Apostilled Copy not Certified
Stefanini, SARL	Apostilled Copy not Certified

[7] Exhibit "P-118", Division Docket, Volume II, pp. 658-666,with annexes.

Clearly from the foregoing — and as evidenced by the "Revised Checklist of Mandatory Requirements for Claims for VAT Refund"[8] — respondent submitted documents in support of its refund claim, although petitioner later deemed the submission incomplete in the Denial Letter. This should mean that the Court may only be precluded from considering evidence not submitted at the administrative level to the extent that such documents were specifically identified in the Denial Letter as absent, missing, or not found in the records (*i.e.*, the Certificate of Incorporation of "Stefanini, NV" indicated as "NONE," and the Billing Statements or Statements of Account supporting the ORs issued for export sales of services, described as "no copies ... were submitted"). Conversely, absent any other specific indication that respondent failed to submit documents to establish the remaining requisites for a successful refund claim, this Court may properly admit and consider such evidence in evaluating the merits of the judicial claim.

Notably, in the assailed Decision[9], the Special First Division treated respondent's sales of services to "Stefanini NV/SA", amounting to ₱15,475,200.00, as valid zero-rated sales when it recognized the NRFC status of "Stefanini NV/SA" by admitting in evidence the "Apostilled Certificate of Incorporation of Stefanini NV/SA dated 25 November 2020".[10] This, despite the fact that respondent did not submit said document to the BIR in support of its administrative claim. On this point — and only to this limited extent — the principle in *Total Gas* may be applied to preclude this Court from giving weight to a piece of evidence omitted at the administrative level and presented for the first time on appeal.

As regards petitioner's observation that no copies of the Billing Statements, Statements of Account, or any other documents were submitted to support the ORs issued for the export sales of services, it should be noted that such documents serve merely as corroborating evidence. Their absence may be inconsequential, as what is essential is the description of the transaction indicated in the ORs themselves.

Accordingly, as aforesaid, it is my considered view that the Court *En Banc* should adjust the computation of the refundable amount of excess and unutilized input VAT attributable to valid zero-rated sales to reduce the same to the extent of the amount attributable to the sales of service to "Stefanini NV/SA."

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8 Exhibit "R-2", BIR Records, p. 122.
9 Supra at note 1.
10 Exhibit "P-117", Division Docket, Volume II, pp. 654-657.

Furthermore, a recomputation of the refundable amount is warranted not only due to the decrease in valid zero-rated sales but also in light of the Supreme Court's pronouncements in *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[11] (**Chevron**). In *Chevron*, the Supreme Court set forth pivotal guidelines for computing the refundable excess and unutilized input VAT attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions. There, it held definitively that a VAT-registered taxpayer has two (2) options with respect to its input VAT attributable to zero-rated sales, it may: (1) charge the same against output VAT from VATable sales, and claim for refund or issuance of a Tax Credit Certificate (**TCC**) any unutilized or "excess" input VAT; or (2) claim the same for refund or issuance of a TCC in its entirety, *viz*:

> ...
> **[T]he input tax attributable to zero-rated sales may, <u>at the option of the VAT-registered taxpayer</u>, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must be stressed that **the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, the option is vested with the taxpayer-claimant. It goes without saying that **the CTA, and even the Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund. <u>The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes.</u>** These procedures find no basis in law and jurisprudence.
> ...

Clearly from the foregoing, a VAT-registered taxpayer has the discretion to decide whether to charge its input VAT attributable to zero-rated sales against output VAT. In this respect, the Court cannot impose its own methods for calculating the refund, such as compelling the crediting of input VAT against output VAT as a condition precedent to the refund or issuance of a TCC. This is especially true when the taxpayer-claimant opts to claim the input VAT attributable to zero-rated sales for a refund or issuance of a TCC in its entirety.

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[11] G.R. No. 215159, 05 July 2022; Citation omitted, emphasis in the original text and supplied and underscoring supplied.

Furthermore, regardless of which option the taxpayer-claimant chooses, the Supreme Court's ruling in *Chevron* clarifies that since the taxpayer-claimant is requesting a refund of unutilized or unused input VAT from zero-rated sales (as opposed to the "excess" creditable input VAT from the output VAT), this amount is inherently immediately refundable, given that there is no related output VAT to offset it against. Therefore, the CTA's proper preliminary step in determining the refundable excess and unutilized input VAT attributable to valid zero-rated sales should be computing the ratable portion of the taxpayer-claimant's input VAT allocable to zero-rated sales, assuming the input VAT cannot be directly attributed to zero-rated activities.

It is only when the taxpayer-claimant chooses the first option, *i.e.*, to charge the input VAT attributable to zero-rated sales against output VAT from VATable sales and claim for refund or issuance of a TCC any unutilized or "excess" input VAT that the Court may require the offsetting of such ratable portion of the taxpayer-claimant's input VAT attributable to zero-rated sales against "Output VAT Still Due" as a condition precedent to the refund or issuance of a TCC.

In this case, respondent credited its output VAT of ₱44,277.36 against its "Declared Input VAT" of ₱9,676,450.52 and applied for refund the remaining "Excess Input VAT" of ₱9,632,173.16. Clearly, respondent has chosen the **first option**.

Since respondent's declared input VAT allocated to 12% VATable sales in the amount of ₱9,940.50, is not enough to cover the output VAT due of ₱44,277.36, the declared input VAT attributable to declared zero-rated sales in the amount of ₱9,666,510.02, shall then be utilized against the output VAT still due of ₱34,336.86, resulting in an excess input VAT attributable to declared zero-rated sales in the amount of ₱9,632,173.16, computed as follows:

Total Declared Zero-Rated Sales *per* 3rd and 4th Quarterly VAT Returns for CY 2017	₱358,807,912.34
Divided by Total Declared Sales *per* 3rd and 4th Quarterly VAT Returns for CY 2017	359,176,890.35
Multiplied by Total Declared Input VAT *per* 3rd and 4th Quarterly VAT Returns for CY 2017	9,676,450.52
Declared Input VAT allocated to Declared Zero-Rated Sales	**₱9,666,510.02**

Total Declared 12% VATable Sales *per* 3rd and 4th Quarterly VAT Returns for CY 2017	₱368,978.01
Divided by Total Declared Sales *per* 3rd and 4th Quarterly VAT Returns for CY 2017	359,176,890.35
Multiplied by Total Declared Input VAT *per* 3rd and 4th Quarterly VAT Returns for CY 2017	9,676,450.52
Declared Input VAT allocated to Declared 12% VATable Sales	**₱9,940.50**

Output VAT due *per* 3rd and 4th Quarterly VAT Returns for CY 2017	₱44,277.36
Less: Declared Input VAT allocated to Declared 12% VATable Sales	9,940.50
Output VAT still due	**₱34,336.86**

Declared Input VAT attributable to Declared Zero-Rated Sales	₱9,666,510.02
Output VAT still due	34,336.86
Excess Input VAT attributable to Declared Zero-Rated Sales	**₱9,632,173.16**

However, since not all of respondent's input VAT is valid, this Court should determine whether respondent's valid input VAT is sufficient to cover its excess input VAT attributable to declared zero-rated sales, *viz:*

Excess Input VAT attributable to Declared Zero-Rated Sales (A)	₱9,632,173.16
Total Available Valid and Substantiated Input VAT (B)	5,596,590.06
Valid Available Input VAT attributable to Declared Zero-Rated Sales (A or B, whichever is lower)	**₱5,596,590.06**

Meanwhile, in relation to its zero-rated sales, considering that respondent's adjusted substantiated or valid zero-rated sales is only ₱267,703,117.97[12] (or 74.61% of its total declared zero-rated sales of ₱358,807,912.34), the "Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales" would be ₱39,221,737.44, computed as follows:

	3rd Quarter	4th Quarter	Total
Valid Available Input VAT attributable to Declared Zero-Rated Sales	₱2,825,276.77	₱2,771,313.29	₱5,596,590.06
Divided by Declared Zero-Rated Sales *per* 3rd and 4th Quarterly VAT Returns for CY 2017	122,765,262.34	236,042,650.00	358,807,912.34
Multiplied by Valid Zero-Rated Sales, as adjusted	122,765,262.34	144,937,855.63[13]	267,703,117.97
Refundable Excess and Unutilized Input VAT Attributable to Zero-Rated Sales	**₱2,825,276.77**	**₱1,701,676.39**	**₱4,526,953.16**

Having computed a refundable excess and unutilized input VAT attributable to valid zero-rated sales in the decreased amount of **₱4,526,953.16**, following the pronouncements in *Chevron*, and since this amount is well within the input VAT claim of ₱9,632,173.66 that remained

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[12] Valid Zero-Rated Sales *per* Assailed Decision of ₱283,178,317.97 less Sales of Services to Stefanini NV/SA of ₱15,475,200.00.

[13] Since the Sales of Services to Stefanini NV/SA of ₱15,475,200.00 were all made during the 4th Quarter of CY 2017, the entire amount was deducted from the Valid Zero-Rated Sales *per* Assailed Decision for the said period of ₱160,413,055.63.

unutilized until the same was deducted as part of the total "VAT Refund/TCC Claimed" in respondent's Quarterly VAT Return for the 4th Quarter of CY 2018[14] and the 2nd Quarter of CY 2019[15], respondent has sufficiently proven its entitlement to a refund or issuance of a TCC in the said reduced amount.

It is well established that claims for tax refund, like tax exemptions, are construed *strictissimi juris* against the taxpayer. However, when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the refund.[16]

With the foregoing, I vote to: (**i**) **PARTIALLY GRANT** the Petition for Review filed by petitioner Commissioner of Internal Revenue on 29 February 2024; and (**ii**) **AFFIRM with MODIFICATION** the Special First Division's assailed Decision dated 23 August 2023 and Resolution dated 26 January 2024.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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14 Exhibit "P-105", Division Docket, Volume I, pp. 484-485.

15 Exhibit "P-113", id., pp. 526-527.

16 *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*, supra at note 11, citing *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, 25 November 2009; *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 180043, 14 July 2009.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2864** (CTA Case No. 10226)
- *versus* -	Present: **RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
STEFANINI PHILIPPINES, INC., *Respondent.*	Promulgated: MAR 02 2026 2:45

x - x

DISSENTING OPINION

ANGELES, J.:

With due respect, I am constrained to withhold my concurrence from the pronouncement of the *ponencia,* which denies the instant *Petition for Review* for lack of merit, and affirms the Court in Division's ruling that: *(1)* it can give weight to evidence not presented during the investigation done in the administrative level;[1] and *(2)* respondent is partially entitled to the refund sought.[2]

I am, therefore, compelled to register my dissent, as the conclusions reached by the majority, in my considered view, depart from the settled principles governing the appellate jurisdiction of the Court of Tax Appeals (CTA) and the proper bounds of judicial review in claims for refund or tax credit.

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[1] *Decision*, p. 7.
[2] *Id.* at 10.

I now proceed to respectfully set forth the grounds for my dissent.

In unsuccessful administrative claims, the taxpayer must convince the CTA that the Commissioner of Internal Revenue (CIR) had no reason to deny the tax refund or credit claim based on the documents submitted at the administrative level.

In *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*[3] (*Atlas*), the Supreme Court has clarified that a judicial claim for refund or tax credit before the CTA is, ***first***, an **appeal** by way of petition for review of a previous, unsuccessful administrative claim, and ***second***, **litigated *de novo***, such that a petitioner must prove every aspect of its case **by presenting, formally offering, and submitting its evidence to the CTA**, *viz.*:

> Both courts correctly observed that petitioner never submitted any of the invoices or receipts required by the foregoing rules and held this omission to be fatal to its cause. Petitioner insists, however, that its failure to submit these documents should not have been held to bar the successful prosecution of its claims. Petitioner offers two propositions: (1) the documentary requirements imposed by Revenue Regulations 3-88 applied only to administrative claims for refund or tax credit and should have had no bearing in a judicial claim for refund in the CTA which was "entirely independent of and distinct from the administrative claim," and (2) the summary and certification of an independent certified public accountant required by CTA Circular 1-95(1) "constitute(d) the principal evidence" and rendered superfluous the submission of VAT invoices and receipts.
>
> Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. **<u>First</u>, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim.** Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any

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3 G.R. No. 145526, March 16, 2007 [Per J. Corona, First Division].

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reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. **__Second__, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA.** Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.[4] (Emphases and underscoring supplied; citations omitted)

__First nature of tax refund/credit proceeding before the CTA__: Appeal by way of petition for review of a previous, unsuccessful administrative claim.

With respect to the ***first*** point, this pertains to the CTA's jurisdiction, as conferred by law, over refund claims. Under Republic Act (R.A.) No. 1125,[5] the CTA was granted only appellate jurisdiction, and had no power to take cognizance of original actions. Although R.A. No. 9282[6] expanded the CTA's jurisdiction in 2004 to include original jurisdiction over certain actions, claims for refund have remained within its appellate jurisdiction. Thus:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> "a. **Exclusive __appellate__ jurisdiction to review by appeal**, as herein provided:
>
>> "1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, **__refunds__ of internal revenue taxes, fees or other charges, penalties in relation thereto**, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>>
>> "2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, **__refunds__ of internal revenue taxes, fees or other charges, penalties in relation thereto**, or other matters arising under the

4 *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007 [Per J. Corona, First Division].

5 An Act Creating the Court of Tax Appeals.

6 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), elevating its rank to the level of a Collegiate Court with Special Jurisdiction and enlarging its membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, otherwise known as the Law Creating the Court of Tax Appeals, and for other purposes.

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> National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; x x x (Emphases and underscoring supplied)

Meanwhile, Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that "[t]he power to decide disputed assessments, refunds of internal revenue taxes, . . . is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals." Verily, applications for refunds fall within the primary jurisdiction of the CIR, and the CTA may take cognizance of such claims only on an appellate basis. It follows that the CTA's authority is not unbounded and must be confined to the review of acts (decisions) or omissions (inactions) of the CIR rendered in the course of quasi-judicial proceedings.

On the other hand, a taxpayer seeking a refund or tax credit must demonstrate to the CTA, acting in its appellate capacity, that the CIR erred in denying the claim. This necessarily requires the taxpayer to rely solely on the documents submitted during the administrative proceedings, which formed the basis of such denial. In so doing, the taxpayer must satisfy the Supreme Court's mandate, as enunciated in *Atlas*, that its administrative claim for refund or tax credit must substantiate not only its entitlement under substantive law, but also its compliance with the requisite documentary and evidentiary requirements.

<u>Second nature of tax refund/credit proceeding before the CTA</u>: litigated de novo, requiring the petitioner-taxpayer to prove every aspect of its case by presenting, formally offering, and submitting its evidence to the CTA.

Anent the ***second*** point, the Supreme Court reaffirmed that cases filed before the CTA are litigated *de novo*, thereby requiring the taxpayer-claimant to prove every aspect of its case by presenting, formally offering, and submitting its evidence anew before the CTA. Indeed, a review of Philippine jurisprudence discloses that one of the earliest cases defined trial *de novo* as follows:

> A trial *de novo*, it has been said, means a *new trial* in the same manner, with the same effect, and upon the same issues as the case

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> was tried in the lower court, in accordance with the rules of practice in the appellate court.[7]

In a similar vein, the Supreme Court, in the exercise of its appellate jurisdiction, has elucidated that upon the perfection of an appeal, it may conduct a *de novo* review—making independent findings based on the same set of facts and circumstances that underpinned the decision of the lower court, to wit:

> By the methods of Appealing causes in force in these Islands, the Supreme Court may be called upon practically to try appeal causes de novo. In other words, this court may thus have presented to it all of the facts and circumstances presented to the lower court, and reaches its conclusions upon exactly the same facts upon which the lower court based its decision.[8]

Since the creation of the CTA in **1954**, the first instance in which the Supreme Court employed the concept of litigation *de novo* in tax cases, albeit in the context of an assessment, was in the **1958** case of *Collector of Internal Revenue v. Batangas Transportation Co.*:[9]

> x x x **that the hearing before the Court of Tax Appeals partakes of a trial *de novo* and the Tax Court is authorized to receive evidence, summon witnesses, and give both parties, the Government and the taxpayer, opportunity to present and argue their sides**, so that the true and correct amount of the tax to be collected may be determined and decided, whether resulting in the increase or reduction of the assessment appealed to it. x x x (Emphasis supplied)

Meanwhile, in the **1997** case of *Commissioner of Internal Revenue v. A. Soriano Corp.*,[10] the Supreme Court first applied the concept of trial *de novo* in a tax refund proceeding. In that case, however, the pivotal issue revolved around whether the evidence presented qualified as newly discovered evidence sufficient to warrant a trial *de novo*. Otherwise, such evidence would be deemed as "forgotten evidence," and, as such, could no longer be considered on appeal, *viz.*:

> It is evident that what the petitioner sought before the Court of Tax Appeals was actually a new trial on the ground of newly discovered evidence. Thus, as correctly put by ANSCOR in its Comment to the Petition, the resolution of the abovestated issue hinges on the

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[7] *Crisostomo v. Director of Prisons*, G.R. No. 17260, February 07, 1921 [Per J. Malcolm, *En Banc*]; citation omitted.
[8] *La Compañia General De Tabacos De Filipinas v. Trinchera*, G.R. No. 3368A, March 08, 1907 [Per J. Johnson, First Division].
[9] G.R. No. L-9692, January 06, 1958 [Per J. Montemayor, First Division].
[10] G.R. No. 113703, January 31, 1997 [Per J. Francisco, Third Division].

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> determination of the nature of the BIR report either as newly discovered evidence, warranting a *trial de novo*, or "forgotten evidence" which can no longer be considered on appeal. (Citation omitted)

Subsequently, in the **2005** refund case of *Commissioner of Internal Revenue v. Manila Mining Corp.*,[11] the Supreme Court began to relate the concept of litigation *de novo* to the nature of the CTA as a court of record.[12] In establishing such nexus, the Supreme Court ruled that the CTA cannot accord credence or probative value to documents not formally offered before it, regardless of their prior submission to the Bureau of Internal Revenue (BIR), because doing so would contravene its own procedural rules[13] (pre-marking and formal offering of evidence to the court). Absent adherence to these procedural safeguards, there would be no appropriate means by which the CTA could ascertain and verify the veracity of the parties' respective claims, which are brought before it for the adjudication of both factual and legal issues. Thus:

> Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.
>
> This Court thus notes with approval the following findings of the CTA:
>
>> ...[S]ale of gold to the Central Bank should not be subject to the 10% VAT-output tax but this does not *ipso facto* mean that [the seller] is entitled to the amount of refund sought <u>as it is required by law to present evidence showing the input taxes it paid during the year in question</u>. What is being claimed in the instant petition is the refund of the input taxes paid by the herein petitioner on its purchase of goods and services. Hence, <u>it is necessary for the Petitioner to show proof that it had indeed paid the said input taxes during the year 1991. In the case at bar, Petitioner failed to discharge this duty. It did not adduce in evidence the sales invoice, receipts or other documents showing the input value added tax on the purchase of goods and services</u>.

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[11] G.R. No. 153204, August 31, 2005 [Per J. Carpio Morales, Third Division].

[12] Republic Act No. 1125, Section 8 provides:

Section 8. *Court of record; seal; proceedings*. - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

[13] CTA Circular No. 1-95, as amended by CTA Circular No. 10-97.

xxx xxx xxx

> Section 8 of Republic Act 1125 (An Act Creating the Court of Tax Appeals) provides categorically that **the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (*trial de novo*) where the parties must present their evidence accordingly** if they desire the Court to take such evidence into consideration. (Emphasis and underscoring supplied; citations omitted)

At this juncture, what is clear is that litigated *de novo* does not mean that the case is tried anew without regard to the previous proceedings. Rather, it requires that the taxpayer-claimant must still present, formally offer, and submit its evidence to the CTA for the latter to consider, verify, and give probative value thereto. This procedural obligation is consistent not only with the nature of the CTA as a court of record, but also with the previously discussed point that its jurisdiction over refund claims is strictly appellate in nature.

To recall, the Supreme Court, in further expounding on the *de novo* nature of proceedings before the CTA, emphasized in the **2007** *Atlas* case that the taxpayer-claimant must submit evidence before the CTA that would have warranted the grant of its claim at the administrative level with the BIR. In other words, the **same** pieces of evidence presented before the BIR must be submitted, pre-marked, and formally offered to the CTA in accordance with the Revised Rules of the Court of Tax Appeals (RRCTA), in order to convince it that, based on such evidence, the CIR erred in denying the claim and should have granted it in the first place.

The ruling in *Atlas* is, therefore, instructive as to the **nature of judicial proceedings involving tax refunds or credits before the CTA**. It appears, however, that the question as to whether the submission of similar evidence to both the BIR and the CTA applies to cases where the CIR has or has not acted on the claim was not squarely addressed therein.

i. *In cases of **CIR inaction** on tax refund/credit claims, the CTA may consider evidence not previously submitted at the administrative level.*

In the **2014** refund case of *Commissioner of Internal Revenue v. Philippine National Bank* [PNB],[14] where the CIR failed to act on PNB's refund application, the Supreme Court refuted the CIR's contention that the certificate of withholding taxes should be disregarded on the ground that it was presented only before the CTA and not previously submitted to the BIR. The Supreme Court ruled that the CTA is not barred from admitting evidence, even if such evidence was not previously submitted at the administrative level, to wit:

> More importantly, the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. Cases filed in the Court of Tax Appeals are litigated *de novo*. Thus, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting . . . to the Court of Tax Appeals [all evidence] . . . required for the successful prosecution of [its] administrative claim." (Citations omitted)

At first glance, the wording of the foregoing may suggest that the Supreme Court has sanctioned the presentation of evidence before the CTA even if such evidence was not previously submitted to the BIR. However, it is crucial to note that this ruling was made within the specific context where the CIR had failed to act on the refund claim. The true intent of the Supreme Court, which limits this principle to cases of "inaction," was ultimately clarified in its *En Banc* decision in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[15] (*Pilipinas Total Gas*).

ii. ***ONLY in cases of CIR inaction** on tax refund/credit claims may the CTA consider evidence not previously submitted at the administrative level; **NOT where a decision has been rendered.***

In *Pilipinas Total Gas*, the CTA's appellate review arose from the CIR's inaction on the taxpayer's administrative claim for a refund of unutilized input VAT. Nevertheless, the Supreme Court has unequivocally solidified Philippine jurisprudence, not only with respect to cases of inaction, but also in addressing instances where the CIR has taken action and rendered adverse decisions on refund claims.

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[14] G.R. No. 180290, September 29, 2014 [Per J. Leonen, Second Division].
[15] G.R. No. 207112, December 08, 2015 [Per J. Mendoza, *En Banc*].

To fully comprehend the doctrine established in *Pilipinas Total Gas*, particularly with respect to the presentation of evidence before the CTA in refund claims, it is essential to examine the relevant Supreme Court ruling in its entirety, rather than in isolation, *viz.*:

> At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*, it was ruled –
>
> > ...First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. <u>In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.</u> Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.
>
> **A distinction must, thus, be made between <u>administrative cases appealed due to inaction</u> and <u>those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents</u>. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request**, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim**, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.

> In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. **Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim. (Emphases and underscoring supplied; citations omitted)

The Supreme Court, in its analysis, began by citing the *Atlas* case to establish the nature of proceedings involving refund and tax credit claims before the CTA, as discussed above. It then sought to distinguish between two (2) distinct situations: ***(1)*** administrative cases appealed due to inaction; and ***(2)*** cases dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. A careful reading of the relevant paragraph reveals that it does not elaborate on "administrative cases appealed due to inaction." Instead, the focus shifts to the *second* category, concerning cases "dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents." In light of the Revenue Memorandum Circular (RMC) No. 49-2003, which was applicable in *Pilipinas Total Gas*, the Supreme Court further subcategorized the aforementioned *second* scenario. These are:

(1) When an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents, despite notice or request; and

(2) When a judicial claim for a refund or tax credit in the CTA arises from an appeal of an unsuccessful administrative claim.

With respect to the ***first* subcategory**, the Supreme Court made it clear that the judicial claim is subject to outright dismissal. As for the ***second* subcategory**, the Supreme Court reiterated its ruling in *Atlas,* emphasizing that the taxpayer must demonstrate to the CTA why the CIR's denial of the administrative claim was erroneous. The Supreme Court's new pronouncement in this case is encapsulated in the final sentence of the above-cited second paragraph, which states: "*[c]onsequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.*" While it could be argued that this statement applies only to the *first* subcategory, which involves a notice or request from the CIR, it is clear that, within the two (2) primary scenarios the Supreme Court sought to distinguish, this falls under the "administrative cases dismissed due to the taxpayer's failure to submit supporting documents," rather than to "cases appealed due to inaction."

It is therefore of no moment that the phrase "*requested by the BIR*" qualifies the statement, as it does not alter the fact that, in the *second* scenario—where the judicial claim for refund or tax credit is an appeal of an unsuccessful administrative claim—the taxpayer-applicant is still obligated to present before the CTA the **same evidence** that would convince the latter that the CIR should have granted the refund or tax credit application in the first place. This again embodies the doctrines outlined in the earlier pronouncements discussed above, while also clarifying the ruling made in *Commissioner of Internal Revenue v. Philippine National Bank*.[16] In further elucidating the ruling therein, especially regarding the presentation of new and/or additional evidence before the CTA, the Supreme Court found it proper to apply this only to the *first* scenario, *i.e.*, to administrative cases appealed due to **inaction**. To reiterate:

> In the present case, however, Total Gas filed its judicial claim due to the **inaction of the BIR**. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, **the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance**. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim.[17] (Emphasis supplied; citation omitted)

Guided by the doctrine laid down in *Pilipinas Total Gas*, it is unequivocal that in cases involving inaction by the CIR, it is both logical and necessary for the taxpayer-claimant to present evidence before the CTA, including those not previously submitted to the CIR, in order to substantiate its claim for refund or tax credit. This is because, essentially, in such instances, there exists no actual ruling or decision by the CIR that is subject to appellate review. Consequently, the CTA acts not merely as a reviewing tribunal but, in effect, as a court of first instance, vested with the authority to receive and evaluate evidence anew. This principle is a necessary consequence of the CTA's appellate jurisdiction over "inaction" cases at the administrative level.

In contrast, as likewise clarified in *Pilipinas Total Gas,* such liberal reception of evidence does not extend to cases where the CIR

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[16] G.R. No. 180290, September 29. 2014 [Per J. Leonen, Second Division].
[17] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 08, 2015 [Per J. Mendoza, *En Banc*].

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has rendered a definitive ruling. In these situations, the CTA's review is confined to the record upon which the administrative decision was based. Neither of the above-mentioned rulings of the Supreme Court authorizes the CTA to consider documents or evidence not previously submitted at the administrative level where a formal decision has been issued by the CIR.

In the present controversy, it is undisputed that the CIR, through his OIC-ACIR, issued a decision[18] denying respondent Stefanini Philippines' claim for refund or tax credit on the ground of non-submission of the required documents under RMC No. 47-2019. Accordingly, and as extensively discussed above, the Court in Division is bound to resolve the case based on the evidence that were presented, pre-marked, formally offered, and submitted during trial, and which likewise formed the evidentiary foundation of the CIR's adverse ruling.

To rule otherwise would not only run afoul of the settled principle governing the appellate jurisdiction of the CTA, but would also effectively render inutile any decision rendered by the CIR. Such a view would reduce the administrative adjudication process to a mere formality, stripping it of its legal consequence. Worse still, it would emasculate the legal significance of taxpayer's notarized sworn certification that it had already submitted all supporting documents necessary for its refund or tax credit claim—transforming such certification into a mere self-serving assertion, devoid of any evidentiary weight.

More troubling, however, is the dangerous precedent that would arise: taxpayers may be inadvertently encouraged to file refund or tax credit claims accompanied by incomplete documentation solely to comply with the statutory two (2)-year period after the close of the taxable quarter when the sales were made, as provided under Section 112(A) of the NIRC of 1997, as amended, with the expectation that they may simply supplement such documents at the judicial level—documents that were either already in their possession or could have reasonably been submitted during the administrative proceedings. Such a practice would effectively circumvent the reglementary periods and undermine the finality and integrity of administrative review.

In fine, the Supreme Court, in a catena of cases, has consistently reaffirmed and applied the doctrine laid down in its *En Banc* pronouncement in *Pilipinas Total Gas*, particularly in cases involving inaction by the CIR on claims for refund or tax credit. However, as articulated also in *Pilipinas Total Gas*, a distinct approach must be

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[18] Division Docket – Vol. II, Exhibits "P-118" to "P-118-A-1."

adopted in the present case, where the CIR has, in fact, rendered a definitive ruling denying respondent's claim.

As aptly observed by the respondent, "x x x for the principle of *stare decisis* to apply, the relevant facts prevailing between or among the subject cases should substantially be the same, regardless of whether the parties and properties involved are the same,"[19] citing *Fort Bonifacio Development Corp. v. Commissioner of Internal Revenue*.[20] Here, the factual milieus differ materially from those in the aforementioned cases cited by the Court in Division, the respondent, and the *ponencia*. The CIR has already acted on the respondent's administrative claim, and it would be a flagrant disregard of justice and fairness to allow this Court to overturn the decision based on documents that were never presented to the CIR.

Indeed, it is high time that this Court, being a court of law, upholds what the Supreme Court has clearly and consistently delineated—the bounds of its appellate jurisdiction in tax refund or credit claims—distinguishing between cases where the CIR has acted and those where he has remained silent. To blur this line would be to set a perilous precedent: one wherein taxpayers may be emboldened to treat the administrative process as a mere perfunctory step—filing claims incompletely, only to litigate them fully for the first time before this Court. Such a result would be to the detriment of the BIR, whose efforts to modernize and improve its refund mechanisms, including the expedited processing of claims, the imposition of penalties on BIR officers who fail to act on the application, and the implementation of risk-based classifications, would be rendered inutile.

Based on the documents submitted at the administrative level, respondent failed to prove its entitlement to a refund or tax credit.

To recall, the CIR Decision[21] did not place in issue either the respondent's VAT registration or the timeliness of the filing of its administrative claim. These findings were acknowledged by the Court in Division,[22] and remain undisputed before the Court *En Banc*.[23]

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[19] EB Docket, p. 80.
[20] G.R. Nos. 175707, 180035 & 181092, November 19, 2014 [Per J. Leonardo-De Castro, First Division].
[21] Division Docket – Vol. II, Exhibits "P-118" to "P-118-A-1."
[22] EB Docket, pp. 39 and 46.
[23] *Id.* at 7-24; 73-88.

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As to the requisite that the taxpayer-claimant is engaged in zero-rated or effectively zero-rated sales, the Court in Division found that respondent Stefanini Philippines' sale of services to its non-resident foreign clients qualifies for zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.[24]

Verily, in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*,[25] the Supreme Court held that, "[f]or purposes of zero-rating under Section 108 (B) (2) of the NIRC of 1997, as amended, the claimant must establish the two [2] components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of ***both*** of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines."[26] While Securities and Exchange Commission (SEC) Certifications and client service agreements may adequately establish the *first* component (*i.e.,* that the client is a foreign corporation), they are insufficient on their own to prove the *second* (*i.e.,* that the client is not doing business in the Philippines).

In this regard, the Supreme Court emphasized that the absence of other corroborating documents (*e.g.,* duly authenticated articles of association/certificates of incorporation) issued by competent foreign authorities, is fatal to any claim for refund or issuance of a tax credit certificate on excess input VAT attributable to zero-rated sales.[27]

In the present case, the CIR, in its Decision,[28] categorically ruled that Stefanini Philippines failed to present the requisite proof to establish the non-resident foreign corporation (NRFC) status of its foreign clients in relation to its claimed zero-rated sales for the third and fourth quarters of 2017, *viz.*:

> "2. Review of sales and the corresponding supporting documents you have submitted revealed the following:
>
> a. You failed to submit consularized/apostilled Certificate of Incorporation of your non-resident foreign clients (NRFC) or the original or certified copy of the same to prove that they are doing business outside the Philippines pursuant to

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[24] *Id.* at 42.
[25] *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020 [Per J. Inting, Second Division].
[26] Citation omitted; emphasis supplied.
[27] *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020 [Per J. Inting, Second Division].
[28] Division Docket – Vol. II, Exhibits "P-118" to "P-118-A-1."

item 3.3 of Annex "A.1" of RMC No. 47-2019 in relation to Section 108 (B)(2) of the Tax Code, as amended.

Customer	Certificate of Incorporation of NRFC Clients
Stefanini, Inc.	Apostilled Copy not Certified
Stefanini, NV.	NONE
Stefaninin, UK Ltd	Apostilled Copy not Certified
Stefanini, SARL	Apostilled Copy not Certified"

When respondent elevated the matter to the CTA, it failed to directly challenge the findings of the BIR. It did not specify any errors in said findings, nor did it present any evidence that would invalidate the BIR's conclusions. Accordingly, the unrebutted Decision of OIC-ACIR is presumed to have been rendered in the regular performance of official duties,[29] with the presumption that the law was duly obeyed,[30] and that the OIC-ACIR exercised sound judgment in evaluating the facts and documents presented before her prior to issuing her ruling on respondent's application.

As a general rule, official acts of an authorized official enjoy the presumption of regularity, and the presumption may be overthrown only by evidence to the contrary. When an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly.[31]

In *Land Bank of the Philippines v. Spouses Rosa and Pedro Costo*,[32] the Supreme Court ruled, as follows:

> Verily, **factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence**. The Courts generally accord great respect, if not finality, to factual findings of administrative agencies, because of their special knowledge and expertise over matters falling under their jurisdiction. (Emphasis supplied; citations omitted)

Jurisprudence, particularly the rulings in *Atlas* and *Pilipinas Total Gas*, clearly mandates that in claims for refund or tax credit, the burden lies with the taxpayer-applicant to establish that the CIR had

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[29] Revised Rules on Evidence, Rule 131, Section 3(m).
[30] *Id.*, Section 3(ff).
[31] *Reyes, Jr. v. Belisario*, G.R. No. 154652, August 14, 2009 [Per J. Brion, Second Division].
[32] *Land Bank of the Phils. v. Spouses Costo*, G.R. No. 174647, December 05, 2012 [Per J. Peralta, Third Division].

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no valid basis to deny such a claim. Consequently, it is incumbent upon respondent Stefanini Philippines itself to adduce and formally offer before this Court all documents necessary to substantiate its entitlement to a refund or issuance of a tax credit certificate, as it cannot rely on whatever submissions made by the CIR.

Here, however, respondent merely submitted documents in support of its blanket assertion that it is entitled to a refund or tax credit.[33] Notably, there is no indication that the documents provided to this Court were also submitted at the administrative level. This Court cannot presume, much less ascertain with certainty, whether such documents were in fact presented to the BIR. Respondent cannot reasonably expect this Court to sift through the entirety of the BIR Records, previously marked as Exhibit "R-5,"[34] especially since these were never formally offered in evidence by the petitioner[35]—a fact duly noted by the respondent in its *Comment/Opposition (to Respondent's Formal Offer of Evidence with Manifestation)*.[36]

While the *ponencia* observes that, in view of petitioner CIR's failure to timely oppose or specifically object to certain documents allegedly not presented at the administrative level, the Court in Division committed no error in considering evidence that was formally offered and duly admitted in accordance with the rules,[37] I respectfully take a different view.

With due deference, admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[38]

Stated otherwise, the admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.[39]

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[33] Division Docket – Vol. I, pp. 6 to 13.
[34] Division Docket – BIR Records.
[35] Division Docket – Vol. III, pp. 1515 to 1518.
[36] *Id.* at 1523.
[37] *Decision*, pp. 9 to 10.
[38] *Lepanto Consolidated Mining Co. v. Dumapis*, G.R. No. 163210, August 13, 2008 [Per J. Austria-Martinez, Third Division].
[39] *Dela Llana v. Biong*, G.R. No. 182356, December 04, 2013 [Per J. Brion, Second Division].

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Accordingly, even assuming that the documents were properly admitted for lack of objection, they should not be accorded probative value insofar as they bear no relevance to the propriety of the administrative action under review, having not been submitted to the BIR. Evidence that was never considered by the CIR in resolving the administrative claim cannot be relied upon to uphold or overturn its determination without impermissibly distorting the proper scope of judicial review.

In this case, the Court in Division concluded that respondent Stefanini Philippines sufficiently proved the two (2) components of the NRFC status of its foreign clients.[40] This finding was anchored on SEC Certifications of Non-Registration and foreign incorporation documents presented during judicial proceedings,[41] without regard as to whether these had been previously submitted at the administrative level. As previously and extensively discussed, such an approach cannot be sustained. A review of the case records reveals that several of these documents were, in fact, issued or dated **after September 26, 2019**—the date Stefanini Philippines filed its administrative claim[42]—and thus could not have formed part of its submissions to the BIR.

<table>
<tr><th>Company Name</th><th>SEC Certification of Non-Registration of Company (Exhibit Ref)</th><th>Date of Issuance</th><th>Proof of Foreign Incorporation / Registration (Exhibit Ref)</th><th>Date of Issuance</th></tr>
<tr><td rowspan="2">Stefanini, Inc.</td><td rowspan="2">"P-57"[43]</td><td rowspan="2">August 14, 2020</td><td>"P-62"[44]</td><td>April 09, 2020</td></tr>
<tr><td>"P-62-A"[45]</td><td>April 09, 2020</td></tr>
<tr><td rowspan="3">Stefanini UK Ltd.</td><td rowspan="3">"P-58"[46]</td><td rowspan="3">August 14, 2020</td><td>"P-116"[47]</td><td>December 07, 2020</td></tr>
<tr><td>Accompanying apostille[48]</td><td>December 22, 2020</td></tr>
<tr><td>"P-68"[49]</td><td>Screenshot taken on</td></tr>
</table>

[40] EB Docket, p. 45.
[41] *Ibid.*
[42] *Id.* at 46.
[43] Division Docket – Vol. II, p. 1096.
[44] *Id.* at 1102.
[45] *Id.* at 1103.
[46] *Id.* at 1097.
[47] *Id.* at 652.
[48] *Id.* at 653; written in unofficial language.
[49] *Id.* at 1116.

				September 14, 2020
			"P-69"[50]	Screenshot taken on September 14, 2020
Stefanini Sàrl	"P-59"[51]	August 14, 2020	"P-65-1"[52]	October 07, 2020
			Accompanying apostille[53]	October 08, 2020
			"P-65-A-1"[54]	September 15, 2020
			Accompanying apostille[55]	September 29, 2020
			"P-72"[56]	Screenshot taken on September 14, 2020
			"P-73"[57]	Screenshot taken on September 14, 2020
			"P-74"[58]	Screenshot taken on September 14, 2020
Stefanini NV/SA	"P-60"[59]	August 14, 2020	"P-117"[60]	November 25, 2020
			Accompanying apostille[61]	December 02, 2020

Assuming *arguendo* that the exhibits sourced from the BIR records[62]—relied upon by the Court in Division[63] to establish the NRFC status of Stefanini Philippines' foreign clients—were duly submitted before both the BIR and CTA, a scrutiny of these documents discloses substantial defects that render them devoid of probative value, as elaborated below:

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50 *Id.* at 1117.
51 *Id.* at 1098.
52 *Id.* at 1111.
53 *Ibid.*; written in unofficial language.
54 *Id.* at 1112-1113.
55 *Id.* at 1113.
56 *Id.* at 1118.
57 *Id.* at 1119.
58 *Id.* at 1120.
59 *Id.* at 1099.
60 *Id.* at 654-656.
61 *Id.* at 657; written in unofficial language.
62 Exhibits "P-63," "P-63-A," "P-65," "P-65-A," "P-64," and "P-64-A."
63 EB Docket, p. 45.

Company Name	Proof of Foreign Incorporation/ Registration (*Exhibit Ref*)	Description of Document	BIR Records
Stefanini UK Ltd.	"P-63" to "P-63-A"[64]	The Companies Act 2006	p. 78
		Apostille	
Stefanini Sàrl	"P-65" to "P-65-A"[65]	*Registre Du Commerce Du Canton De Vaud*	pp. 82 to 83
		Apostille	
Sefanini NV/SA	"P-64" to "P64-A"[66]	Certificate of Incorporation issued by a Public Notary	pp. 80 to 81
		Apostille	

For Stefanini UK Ltd.

The document marked as Exhibit "P-63"[67] appears to be a Certification issued by the Registrar of Companies for England (CRCE) dated July 03, 2019, and executed by one Jane Hogarth. However, it suffers from a fatal defect in authentication, as required under the Revised Rules on Evidence. While it is ostensibly accompanied by an apostille, marked as Exhibit "P-63-A,"[68] the same is written in an unofficial language. Significantly, pursuant to Section 33, Rule 132 of the Revised Rules on Evidence, which applies suppletorily to the RRCTA,[69] documents not translated into either English or Filipino are inadmissible and devoid of any probative value:

> Section 33. *Documentary evidence in an unofficial language.* - Documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial.[70]

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64 Marked, offered, admitted in Resolution dated June 21, 2021; Division Docket – Vol. III, pp. 1488 to 1491.
65 *Ibid.*
66 EB Docket, p. 45.
67 Division Docket – BIR Records, p. 78.
68 *Id.* at back portion.
69 Revised Rules of the Court of Tax Appeals, Rule 1, Section 3.
70 Revised Rules on Evidence, Rule 132, Section 33.

Evidently, this Court cannot reasonably ascertain whether the apostille genuinely pertains to and authenticates the CRCE document. At most, it merely states that it authenticates a document signed by one "J Hogarth," without any conclusive basis to identify this individual as the same as "Jane Hogarth," who purportedly executed the CRCE. Such ambiguity precludes any definitive finding of proper authentication.

Notably, the CRCE itself bears a disclaimer disavowing the accuracy or completeness of its contents, located on its lower right-hand portion, which states:

> This certificate records the result of a search of the information registered by the Registrar. This information derives from filings accepted in good faith without verification. For this reason the Registrar cannot guarantee that the information on the register is accurate or complete.

Additionally, the new document submitted solely before this Court to prove that Stefanini UK Ltd. is not engaged in business in the Philippines, marked as Exhibit "P-116,"[71] is merely another CRCE, containing similar assertions as the earlier one, but issued this time by a certain Brian Campbell on December 07, 2020. This document suffers from the same evidentiary defect, as it is likewise accompanied by an apostille[72] written in an unofficial language, and therefore cannot be accorded any probative value.

For Stefanini Sàrl

In a similar vein, the documents marked as Exhibits "P-65"[73] and "P-65-A,"[74] denominated as the *Registre Du Commerce Du Canton De Vaud* and an accompanying apostille, respectively, are both written in an unofficial language. As such, these, too, are devoid of any weight or credibility before the Court.

It is also worth noting that the respondent was subsequently able to produce what appears to be a similar document written in English, marked as Exhibit "P-65-A-1."[75] However, this document was secured only on September 15, 2020—well after the filing of the administrative claim for refund or tax credit before the BIR—and thus could not have been considered at the administrative level.

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[71] Division Docket – BIR Records, p. 652.
[72] *Id.* at 653.
[73] *Id.* at 82-83.
[74] *Id.* at 82 (back portion).
[75] Division Docket – Vol. II, pp. 1112 to 1113.

For Stefanini NV/SA

In an attempt to establish that Stefanini NV/SA is not engaged in business in the Philippines, respondent submitted a Certificate of Incorporation and an accompanying apostille, marked as Exhibits "P-64"[76] and "P-64-A,"[77] respectively.

First, while Exhibits "P-64"[78] and "P-64-A"[79] were duly marked in the BIR Records, they were never formally offered in evidence by the respondent.[80] As a consequence, they were not admitted by the Court in Division in its Resolution dated June 21, 2021.[81]

Second, even assuming, solely for the sake of argument, that the Court in Division properly relied on said documents, the purported Certificate of Incorporation dated September 29, 2016 was issued by one Paul J. Maselis, identified as a Public Notary in Schaarbeek – Brussels. However, respondent failed to present competent proof of the applicable foreign law demonstrating that, under the laws of that jurisdiction, a notarial officer is vested with the authority to issue such a certificate.

Well-settled is the rule that foreign laws do not prove themselves in this jurisdiction, and Philippine courts may not take judicial notice thereof.[82] To be given probative weight, the foreign law invoked must be properly pleaded and proven in accordance with Sections 24 and 25 of the prevailing Rules on Evidence. Absent such proof, the doctrine of processual presumption applies, under which foreign law is presumed to be identical to Philippine law.[83] Applying this doctrine, this Court cannot accord probative value to the subject Certificate of Incorporation, as it was not issued by a regulatory body equivalent to the Philippines' SEC.

At any rate, the Certification of Incorporation fails to disclose even the most basic details regarding the nature of Stefanini NV/SA's business. It merely recites the various amendments to the Articles of Incorporation, registration with the Crossroad Bank for Enterprises, its registered office address, amount of subscribed capital and corresponding number of shares, and the appointment of two (2) directors.

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[76] Division Docket – BIR Records, pp. 80 to 81.
[77] *Id.* at 80 (back portion).
[78] Division Docket – BIR Records, pp. 80 to 81.
[79] *Id.* at 80 (back portion).
[80] Division Docket – Vol. II, pp. 978 to 1011.
[81] Division Docket – Vol. III, pp. 1488 to 1491.
[82] *Kucskar v. Sekito, Jr.*, G.R. No. 237449, December 02, 2020 [Per J. Lopez, Second Division].
[83] *Bison Management Corp. v. AAA*, G.R. No. 256540, 14 February 14, 2024 [Per J. Caguioa, Third Division].

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Third, the accompanying apostille suffers from the same fatal defect, as it is written in an unofficial language, which, again, cannot be given any probative weight by the Court.

Fourth, while the apostille is written in an unofficial language, it appears to have been dated "03/10/2016." It must be noted, however, that the Philippines only became a party to the Apostille Convention on May 14, 2019.[84] Prior to this date, certifications issued by foreign authorities, such as apostilles, were not recognized for purposes of authenticating public documents in this jurisdiction, unless further authenticated by the Philippine Embassy. As the apostille in question was executed before May 14, 2019, the appropriate certification from the Philippine diplomatic or consular post was still required pursuant to the prevailing Rules on Evidence governing proof of official records originating from foreign jurisdictions.

Finally, it is also notable that the Certificate of Incorporation refers only to "Stefanini," as opposed to the "Stefanini NV SA" indicated in the SEC Certificate of Non-Registration of Company, marked as Exhibit "P-60,"[85] which is the document relied upon to establish the entity's foreign nationality. Thus, the explanation provided by respondent's witness, Ms. Jeanina B. Pepito, in her *Judicial Affidavit* executed on September 18, 2020,[86] is unpersuasive:

> **32. Q: Ms. Witness, may I draw your attention to the apostilled Registration Statements of Stefanini and the corresponding Service Agreement, ORs and BIs which you identified. Based on these documents, it would appear that Petitioner likewise refers to Stefanini as Stefanini NV/SA. Why is this so?**
>
> **A:** Stefanini is a legal entity duly registered in Belgium. The term NV/SA as used in the Service Agreement, ORs and BIs is merely descriptive. It means that [it is] a public limited entity. While said term does not form part of Stefanini's corporate name, it is required to include NV/SA with its name in commercial dealings, such as contracts and other commercial documents.[87]

This explanation is inadequate, particularly in light of the subsequent Certificate of Incorporation dated November 25, 2020—issued by the same Notary Public, Paul J. Maselis, and marked as Exhibit "P-117"[88]—which explicitly bears the name "STEFANINI

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[84] Hague Apostille Convention (Convention of 05 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents).
[85] Division Docket – Vol. II, p. 1099.
[86] *Id.* at 118-138.
[87] *Id.* at 129.
[88] Division Docket – Vol. II, pp. 654 to 656.

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NV/SA." This belies respondent's claim and clearly shows that it was within its capacity to procure and submit a similar document at the administrative stage. Such failure may very well account for the CIR's finding that no Certificate of Incorporation bearing the name "Stefanini NV/SA" was submitted before the BIR,[89] notwithstanding the reference in the assailed Decision to the Certificate of Incorporation dated September 29, 2016 as part of the BIR Records.[90]

Evidently, even assuming *arguendo* that the documents referred to and culled from the BIR Records were duly presented at both the administrative and judicial levels, they suffer from fatal defects in form and/or substance, rendering them devoid of any probative value in proving that Stefanini UK Ltd., Stefanini Sàrl, and Stefanini NV/SA are not engaged in trade or business in the Philippines.

Accordingly, respondent's failure to establish, at the administrative level, the NRFC status of its foreign clients is fatal to its claim for refund or tax credit. This infirmity persists and is not cured by the subsequent submission of new and/or additional evidence before the Court in Division. In the faithful exercise of its appellate jurisdiction—as a court of law and of record—the CTA cannot accord probative value to documents: ***(1)*** that were not submitted to, and thus not considered by, the CIR in resolving the administrative claim; and ***(2)*** that, although re-submitted before the Court in Division, fail to comply with the requirements of a *de novo* proceeding, as mandated by the RRCTA.

Having thus determined that respondent Stefanini Philippines failed to substantiate that its foreign clients are non-resident entities not engaged in business in the Philippines, as required under Section 108(B)(2) of the NIRC of 1997, as amended, it necessarily follows that the respondent likewise failed to establish that its sales qualify as zero-rated sales (as the second requisite for entitlement to a tax refund or credit so requires).[91] In view of this finding, further discussion on respondent's compliance with the remaining requisites for a valid claim for refund or issuance of a tax credit certificate is rendered unnecessary.

Ultimately, it bears underscoring that claims for refund, partaking of the nature of tax exemptions, are strictly construed against the taxpayer. The burden of proof to establish entitlement to a

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89 *Id.*, Exhibits "P-118" to "P-118-A-1."
90 EB Docket, p. 45.
91 *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*, G.R. No. 215159, July 05, 2022 [Per J. M.V. Lopez, *En Banc*].

refund rests heavily upon the claimant.[92] It is, therefore, incumbent upon the taxpayer to discharge this burden at the earliest possible stage—at the administrative level—where the first opportunity to substantiate the claim arises. After all, a taxpayer-applicant cannot recklessly stake its entitlement to a refund or issuance of a tax credit certificate on mere speculation of administrative inaction, all while banking on the opportunity to later rectify its evidentiary shortcomings before this Court. Once the CIR has acted, the claim must stand or fall on the strength of the evidence timely and properly submitted at both the administrative and judicial stages.

All told, I vote to **GRANT** the *Petition for Review.*

HENRY S. ANGELES
Associate Justice

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[92] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, July 07, 2009 [Per J. Chico-Nazario, Third Division].