REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>FIRST DIVISION</u>

SMARTMATIC - TIM CORPORATION, Petitioner,	**CTA CASE NO. 8643**
	Members:
- versus -	**DEL ROSARIO,** *P.J.,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 16 2016, 4:00 p.m.

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RESOLUTION

UY, *J.*:

This addresses petitioner's **Omnibus Motion A) For Reconsideration of the Decision dated 4 January 2016; B) To Permit the Presentation of Evidence with Respect to the Attached Documents; and C) To Admit into Evidence and Consider for Purposes of Resolving this Motion the Attached Documents**, filed on January 22, 2016, with respondent's **Comment/Opposition (To Smartmatic-TIM's Omnibus Motion)**, filed through registered mail on March 2, 2016, and received by the Court on March 9, 2016.

The Court shall first address the propriety of petitioner's prayer for presentation and admission of additional evidence. Petitioner seeks the presentation and admission of additional evidence to prove that: (1) the input VAT reflected in the 3rd quarter of fiscal year (FY) 2010 pertains to the sales made in the 4th quarter of FY 2010; and (2) that there were VAT invoices/official receipts which were not requested and included by the Independent Certified Public

Accountant (ICPA) in his ICPA report. Going by the nature of the relief sought by petitioner, the Court shall treat the same as a motion for new trial. We find applicable Sections 1 and 2, Rule 37 of the Rules of Court which provide:

> "**Section 1**. *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
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> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
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> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.
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> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.
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> **SEC. 2.** *Contents of motion for new trial or reconsideration and notice thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.
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> A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal."

Relative to these provisions are Sections 5 and 6, Rule 15 Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

SEC. 5. *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.

A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

SEC. 6. *Contents of motion for reconsideration or new trial and notice.* — The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which

> may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.
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> A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed *pro forma*, which shall not toll the reglementary period for appeal.

The rules allow the filing of a motion for new trial on the grounds of fraud, accident, mistake or excusable negligence; or of newly discovered evidence, in the manner provided for proof of motions.

An examination of the instant motion, however, shows that the same was neither based on fraud, accident, mistake or excusable negligence that would need affidavits of merit, nor based on newly discovered evidence which would require affidavits of witnesses.

In *Commissioner of Internal Revenue vs. A. Soriano Corporation, et al.,*[1] the High Court laid down the requisites for the grant of a motion for new trial on the ground of newly discovered evidence in this wise:

> "Section 5, Rule 13 of the Rules of the Court of Tax Appeals provides that the provisions of Rule 37 of the Rules of Court shall be applicable to motions for new trial before the Court of Tax Appeals. Under Section 1, Rule 37 of the Rules of Court, the requisites for newly discovered evidence as a ground for a new trial are: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment. All three requisites must characterize the evidence sought to be introduced at the new trial."

[1] G.R. No. 113703, January 31, 1997.

What is essential for a particular piece of evidence to be properly regarded as newly discovered is that the offering party exercised reasonable diligence in seeking to locate the evidence before or during the trial, but nonetheless failed to secure it. Thus, a party who knows of the existence of specific pieces of evidence cannot offer them as "newly discovered" without any explanation for not presenting them earlier.[2] It should be emphasized that the applicant for new trial has the burden of showing that the new evidence he seeks to present has complied with the requisites to justify the holding of a new trial.[3]

Here, petitioner failed to discharge its burden. The instant motion does not contain any evidence to show that the additional pieces of evidence sought to be introduced in this case were indeed discovered only after trial. Also, the instant motion does not offer a plausible justification as to why the said pieces of evidence are being presented only after trial. Absent such explanation, the Court cannot ascertain whether petitioner exercised reasonable diligence in producing the same at trial stage, but nonetheless failed to do so.

At this juncture, in the absence of any sufficient explanation from the petitioner, the Court would consider the additional evidence proffered by petitioner not as newly discovered evidence, but as forgotten evidence. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.[4]

Petitioner harks on a liberal application of the rules of procedure on the ground of substantial justice; and that the Court is not covered strictly by the rules of procedure so as to warrant the presentation and admission of its additional evidence.

It should be noted that compliance with the procedural rules is the general rule, and abandonment thereof should only be done in

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[2] *Office of the Ombudsman Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel,* G.R. No. 164460, June 27, 2006 citing *Tumang vs. Court of Appeals, et al.,* G.R. No. 82072, April 17, 1989.
[3] *Dinglasan, Jr. vs. Hon. Court of Appeals, et al.,* G.R. No. 145420, September 19, 2006.
[4] *Office of the Ombudsman Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel,* G.R. No. 164460, June 27, 2006.

the most exceptional circumstances.[5] It has been held that invocation of substantial justice is not a magical incantation that will automatically compel this Court to suspend procedural rules. Rules of procedure are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed.[6] In this case, the Court cannot apply a liberal application of the rules for lack of legal bases.

In light of the foregoing discussion, the Court resolves to deny the presentation and admission of petitioner's additional evidence.

Going into petitioner's motion seeking reconsideration of the assailed Decision[7], the dispositive portion of which reads:

> "**WHEREFORE**, all the foregoing considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.
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> **SO ORDERED**."[8]

Administrative claim for refund for the 3rd quarter of FY 2010 was belatedly filed.

In the assailed Decision, the Court denied petitioner's claim for refund of input value-added tax (VAT) for the 3rd quarter of FY 2010 based on the fact that its administrative claim was belatedly filed.

Petitioner posits that the administrative claim for refund of unutilized input VAT attributable to zero-rated sales should be filed within two (2) years from the close of the taxable quarter when the related sales were made. Petitioner points out that the input VAT reflected on the 3rd quarter of FY 2010 pertained to sales made in the 4th quarter of FY 2010.

It is undisputed that the administrative claim should be filed within two (2) years after the close of the taxable quarter when the

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[5] *Pilapil vs. Heirs of Maximino R. Briones,* G.R. No. 150175, February 5, 2007.
[6] *Cu-Unjieng vs. Court of Appeals,* G.R. No. 139596, January 24, 2006.
[7] Docket, Vol. II, pp. 742-765.
[8] Docket, Vol. II, pp. 764-765.

relevant sales were made. Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): xxx"

Applying the abovementioned provision on petitioner's claim for refund of unutilized input VAT attributable to zero-rated sales for the 3rd quarter of FY 2010, the last day to file the administrative claim should have been on March 31, 2012. As stipulated by the parties, petitioner's administrative claim for refund for the 3rd quarter of FY 2010 was belatedly filed on April 24, 2012[9] or twenty four (24) days late.

Now, petitioner claims that its input VAT refund, which allegedly relates to the sale made on May 10, 2010 (but which input VAT was reflected in petitioner's VAT return for the 3rd quarter of FY 2010), has not yet prescribed. Petitioner did not adduce sufficient evidence to prove that indeed the input VAT reflected on the 3rd quarter of FY 2010 pertained to sales made in the 4th quarter of the same year. The basic rule is that mere allegation is not evidence and is not equivalent to proof.[10] Thus, the Court will not disturb its previous findings absent any compelling evidence to the contrary.

The claim should be denied for failure to observe the substantiation/invoicing

[9] Par. 4. Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. I, p. 367.

[10] *Social Security Commission vs. Favila*, G.R. No. 170195, March 28, 2011.

requirements under the law and its implementing rules and regulations.

The Court did not consider the numerous invoices/official receipts for: (1) not containing a separate line item for the amount of VAT; (2) being undated; and (3) being dated outside the period of claim.

Petitioner posits that the NIRC do not require that input VAT from purchase of goods and services be evidenced by a VAT invoice and official receipts, respectively. According to petitioner, the NIRC made no distinction as to substantiation requirements; and that the NIRC provides that input VAT may be evidenced by VAT invoice or official receipt, without reference to the type of purchase they substantiate.

The Court disagrees.

The relevant portions of Section 113(A) and (B) of the NIRC of 1997, as amended, read as follows:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
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> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
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> (1) **A VAT invoice for every sale, barter or exchange of goods or properties**; and
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> (2) **A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.**
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> (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:
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> xxx xxx xxx
>
> (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**;

xxx xxx xxx

(3) The **date of transaction**, quantity, unit cost and description of the goods or properties or nature of the service; and

xxx xxx xxx"

It bears stressing that the requirements of having the amount of VAT as a separate item in the invoice or official receipt; and that an invoice or official receipt be dated, are couched in a mandatory language using the word "shall." Where a statute is in its mandatory form, the court has no power to distinguish between material and immaterial omission. What the law decrees must be obeyed.[11]

In the case of *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*,[12] the Supreme Court ruled that "in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit."[13] Relative to this is *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*,[14] wherein the taxpayer's claim for refund was denied when the invoicing requirements were not complied with, to wit:

"The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales. **A "VAT invoice" is an invoice that meets the requirements of Section 4.108-1 of RR 7-95**. Contrary to Microsoft's claim, RR 7-95 expressly states that "[A]ll purchases

[11] *Seriña vs. The Court of First Instance of Bukidnon*, L-28511, August 22, 1968.
[12] G.R. No. 181136, June 13, 2012.
[13] *Ibid.*
[14] G.R. No. 180173, April 6, 2011.

> covered by invoices other than a VAT invoice shall not give rise to any input tax." [15](Emphasis ours)

Meanwhile, in *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,*[16] the High Court differentiated a VAT invoice from a VAT official receipt in this wise:

> "Under the law, a *VAT invoice* is necessary for every sale, barter or exchange of goods or properties while a *VAT official receipt* properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. In *Commissioner of Internal Revenue v. Manila Mining Corporation,* the Court distinguished an invoice from a receipt, thus:
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>> 'A 'sales or commercial invoice' is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.
>>
>> A 'receipt' on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.'
>
> In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (*proof of transaction*), and the best means to prove the input VAT payments (*proof of payment*). Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same

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[15] *Ibid.*
[16] G.R. No. 181858, November 24, 2010.

thing. Certainly, neither does the law intend the two to be used alternatively."

As held in the above-cited case, a VAT invoice and VAT official receipt cannot be used interchangeably as the former pertains to sale, barter, exchange of goods or properties; while the latter pertains to sale, barter, exchange of services. Thus, contrary to petitioner's postulate, the two terms are not one and the same.

Guided by the foregoing precepts, to be considered a VAT invoice, the said invoice must comply with the provisions of Section 113 (A) and (B) of the NIRC of 1997, as amended. This is also equally true with respect to VAT official receipts. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt **shall not give rise to any input tax**.[17]

Petitioner submitted numerous official receipts/invoices[18] that do not contain a separate item for the VAT amount and undated official receipts[19]. For failure to comply with the mandatory invoicing requirements set forth under Section 113 (B)(2)(a) and (B)(3) of the NIRC of 1997, as amended, and as per Revenue Regulations (RR) No. 16-2005, the said invoices/receipts shall not give rise to any input tax.

As regards the receipt issued by Argo International Forwarders, Inc. (Exhibit "M-011.3"), only the word "April" was shown. The receipt does not contain the day and the year when such receipt was issued. To repeat, invoicing requirements under Section 113 of the NIRC of 1997, as amended, and RR 16-2005 must be faithfully complied with as discussed above. Thus, the said receipt cannot give rise to an input tax inasmuch as it failed to indicate the complete date of the said receipt.

With respect to the invoices/official receipts dated outside the period of claim, petitioner alleges that the related purchases were utilized for the provision of services in the 4th quarter of FY 2010. Bare allegations, unsubstantiated by evidence, are not equivalent to proof.[20] Without evidence of linkage, the Court cannot determine the

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[17] Par. (A)(2), Section 4.113-1, Revenue Regulations No. 16-2005.
[18] The list of official receipts/invoices is enumerated in the assailed Decision, Docket, Vol. II, pp. 757-762.
[19] The list of the official receipts/invoices is enumerated in the assailed Decision, Docket, Vol. II, p. 762.
[20] *Domingo vs. Robles,* G.R. No. 153743, March 18, 2005.

veracity of petitioner's allegations. Thus, the findings of disallowance thereof, in absence of any compelling evidence to the contrary, would not be disturbed by the Court.

Moreover, petitioner contends that it should not be faulted for the oversight of its seller; and that it is inequitable to penalize petitioner for the negligent omission committed by its supplier.

It is worth noting that the law requires all VAT-registered persons to strictly observe the invoicing requirements set forth under Section 113(A) and (B) of the NIRC of 1997, as amended, and the implementing rules. The law stands indifferent as to the persons who would or would not comply therewith. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[21] Thus, contrary to petitioner's contention, all VAT-registered persons, whether as buyer or seller are mandated to strictly follow the invoicing requirements prescribed by law and regulations.

Further, petitioner contends that its creditable input VAT in its VAT returns for the 3rd and 4th quarters of FY 2010 have not been utilized or applied against petitioner's output VAT; that due weight should be given to its Audited Financial Statements (AFS) for the years 2010 to 2012.

The said issue has been squarely addressed and thoroughly passed upon by the Court in the assailed Decision, to wit:

> "As evidenced by its Quarterly VAT Return for the 4th quarter of FY 2010, petitioner had no output tax liability against which the claimable input VAT of ₱1,412,776.75 may be applied or credited. Petitioner failed to show that its total claim for refund in the amount of ₱193,488,562.15, or at least its claim for the 4th quarter of FY 2010 in the amount ₱135,699,362.34, was not fully utilized in the succeeding periods.
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> Even though petitioner deducted the amount of ₱265,852,513.52 from the total allowable input tax of ₱304,422,739.08, it cannot be ascertained by this Court

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[21] *Bolos vs. Bolos,* G.R. No. 186400, October 20, 2010.

> whether or not the instant claim forms part of the said amount reflected as 'VAT Refund/TCC claimed' in the 4th quarter of FY 2012. Thus, there is a possibility that petitioner could have utilized the input VAT in the amount of ₱1,412,776.75 in the succeeding quarters."

Petitioner asserts that the input VAT asset figures in the AFS can be reconciled with the relevant VAT returns. It is a basic rule that he who alleges must prove what is alleged.[22] The burden lies with petitioner and not with the Court. As cases filed before the Court are litigated *de novo*, party-litigants should prove every minute aspect of their cases.[23]

As held in the case of *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*,[24] tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same. Thus:

> "An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.
>
> xxx xxx xxx
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> Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government."

In light of the foregoing discussions, the Court finds no cogent reason to depart from the assailed Decision.

WHEREFORE, premises considered, petitioner's **Omnibus Motion A) For Reconsideration of the Decision dated 4 January 2016; B) To Permit the Presentation of Evidence with Respect to the Attached Documents; and C) To Admit into Evidence and Consider for Purposes of Resolving this**

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[22] *Eastern Assurance and Surety Corporation vs. Con-Field Construction and Development Corporation,* G.R. No. 159731, April 22, 2008.

[23] *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

[24] G.R. No. 183531, March 25, 2015.

Motion the Attached Documents is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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