REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PHILIPPINE VENDING CORPORATION, INC., Petitioner,	**CTA CASE NO. 9785**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 15 2024 3:50 p.m.

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RESOLUTION

FERRER-FLORES, J.:

Submitted before this Court is petitioner's **Motion for Reconsideration** filed on February 8, 2024, without respondent's comment despite notice as per Records Verification Report dated April 1, 2024.

On January 18, 2024, the Court promulgated a Decision denying petitioner's claim for refund of unutilized input value-added tax (VAT) attributable to its zero-rated sales for taxable year 2016 for failure to present sufficient evidence to support its claim, the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

In its Motion, petitioner prays that the said Decision be reconsidered by imploring the Court to take a second and hard look on the conclusions reached therein based on the following arguments, *viz*:

1. The Court failed to take note of the proper due process requirement in Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, when it affirmed respondent's input VAT disallowance of ₱6,025,990.00.

Petitioner explains that its failure to submit invoices and official receipts to refute the said disallowance was due to respondent's utter neglect to indicate in its Letter dated January 29, 2018 which particular requirement imposed by the BIR was violated. Petitioner continues that by failing to apprise it of the reason why the said amount was disallowed, petitioner was not able to make an intelligent response to respondent's letter.

2. The Court erred when it upheld respondent's disallowance of input taxes amounting to ₱2,478,112.98 for petitioner's failure to provide Statements of Settlement of Duties and Taxes (SSDTs).

Petitioner contends that it actually submitted twenty-six (26) out of the thirty-six (36) transactions, which were deemed unsupported by the SSDTs. The said documents were attached to the Petition for Review as Annexes "K-1" to "K-24, which altogether amounts to ₱18,025,258.25. As such, petitioner maintains that it is entitled to input VAT amounting to ₱2,163,030.99.

3. The Court erred when it denied the input VAT on petitioner's purchases amounting to ₱20,064,864.19.

Petitioner points out that Nestlé Philippines, Inc. ("Nestlé") issued a certification in favor of petitioner, stating a total sale to petitioner in the amount of ₱528,377,235.50. Petitioner claims that the amount was substantiated by the corresponding accounts payable vouchers, purchase orders, goods receipts, and invoices from Nestlé which were formally offered as Exhibits "P-2-a to P-2-ail" and "P-2-aim to P-2-alb". Petitioner avers that the Bank of the Philippine Islands ("BPI") also issued a certification indicating therein the transfer of the said amount to Nestlé in 2016 for goods purchased. Thus, petitioner asserts that it sufficiently proved its purchases amounting to ₱20,064,864.19 from big ticket suppliers.

4. The Court erred when it upheld respondent's ruling that petitioner is liable for additional output VAT amounting to ₱8,058,122.36 on its sales to local customers due to its failure to provide certification from the Philippine Economic Zone Authority (PEZA).

Petitioner argues that the List of Operating Registered Enterprises it submitted should not be denied for being self-serving and without probative value, given that the same is subject to judicial notice; and, therefore, need not be proven, pursuant to Section 2, Rule 129 of the Rules of Evidence. Nonetheless, petitioner likewise insists that the said list of local customers have been issued their respective PEZA ERD Forms No. 97-01, which petitioner formally offered as Exhibits "P-4-b" to "P-4-c", purporting that each local customer is registered with PEZA.

5. The Court erred when it upheld respondent's ruling in denying petitioner's input tax amounting to ₱94,685,387.66.

Petitioner maintains that it had zero-rated or effectively zero-rated sales under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended. Petitioner contends that the Court erred in requiring the presentation of VAT zero-rated invoices since nowhere in the NIRC or the requisites enumerated by jurisprudence does it indicate that the presentation of invoices are required for the refund for VAT zero-rated sales.

After due consideration, the Court finds petitioner's Motion for Reconsideration bereft of merit.

For emphasis, the Court disallowed petitioner's claim for input VAT refund in the amount of ₱31,777,961.58 for taxable year 2016 because it fell short in establishing that its sales of goods qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended. Petitioner likewise failed to prove that its transactions are entitled to VAT zero-rating given the non-presentation of the sales invoices in support of its alleged zero-rated sales to PEZA-registered customers.

As such, the main issue in the present case boils down to whether petitioner complied with the requirements in claiming refund or tax credit of input taxes pursuant to Section 112(A) of the NIRC of 1997, as amended; particularly, the existence of zero-rated or effectively zero-rated sales to which the input taxes incurred may be attributed.

To reiterate, a claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes; (e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (g) for zero-rated sales under Sections 106(A)(2)(1) and (2), 106(B), and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (h) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and, (i) the claim is filed within two (2) years after the close of the taxable quarter when such sales were made.

In accordance therewith, this Court has consistently ruled that any claim for refund or tax credit of unutilized input VAT must be attributable to zero-rated or effectively zero-rated sales. This is clear in the provision of Section 112(A) of the NIRC of 1997, as amended, that the refund or tax credit of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales.

In the case of *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*,[1] the Supreme Court pronounced that any claim for refund or tax credit of unutilized input VAT must be clearly established by evidence showing the existence of zero-rated or effectively zero-rated sales to which the input VAT being refunded must be attributable, thus:

> **The petitioner did not competently establish its claim for refund or tax credit**. We agree with the CTA *En Banc* that the **<u>petitioner did not produce evidence showing that it had zero-rated sales for the four quarters of taxable year 2001</u>**. As the CTA *En Banc* precisely found, the petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity. Had there been zero-rated sales, it would have reported them in the returns. Indeed, **it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, or in the *de novo* litigation before the CTA in Division**. (Boldfacing and underscoring added)

Considering that petitioner did not produce evidence showing that it had zero-rated sales for the four (4) quarters of taxable year 2016, it did not competently establish its claim for refund or tax credit of input VAT. To borrow the words of the Supreme Court, petitioner carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned or in the *de novo* litigation before the Court of Tax Appeals (CTA) in Division.[2]

The Court further sees no merit in petitioner's argument that the PEZA List of Operating Registered Enterprises as of May 31, 2016, marked as Exhibits "P-5-a" to "P-5-ka", is subject to discretionary judicial notice under Section 2 of Rule 129 of the Rules of Court.

In the case of *Spouses Omar and Moshiera Latip vs. Rosalie Palaña Chua*,[3] the Supreme Court expounded on the nature of judicial notice, as follows:

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[1] G.R. No. 188260, November 13, 2013.
[2] As reiterated in *Maibarara Geothermal, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 250479, July 18, 2022.
[3] G.R. No. 177809, October 16, 2009.

Sections 1 and 2 of Rule 129 of the Rules of Court declare when the taking of judicial notice is mandatory or discretionary on the courts, thus:

> SECTION 1. *Judicial notice, when mandatory.* - A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.
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> SEC. 2. *Judicial notice, when discretionary.* - A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration or ought to be known to judges because of their judicial functions.

On this point, *State Prosecutors v. Muro* is instructive:

> I. The doctrine of judicial notice rests on the wisdom and discretion of the courts. **The power to take judicial notice is to be exercised by courts with caution; care must be taken that the requisite notoriety exists; and every reasonable doubt on the subject should be promptly resolved in the negative**.
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> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. **The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety**.
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> To say that a court will take judicial notice of a fact is merely another way of saying that the usual form of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. This is because the court assumes that the matter is so notorious that it will not be disputed. **But judicial notice is not judicial knowledge. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he is not authorized to make his individual knowledge of a fact, not generally or professionally known, the basis of his action**. Judicial cognizance is taken only of those matters which are 'commonly' known.
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> Things of 'common knowledge,' of which courts take judicial notice, may be matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and

> which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person.

Applying the foregoing, the PEZA List of Operating Registered Enterprises patently lacks the requisite for it to be of judicial notice to the Court, since the authentication requirement of said document is not authoritatively settled under Section 24[4] of the Rules of Court. Neither could it be considered as document of public knowledge, capable of unquestionable demonstration, or ought to be known to the judges because of their judicial functions, in order for the Court to take discretionary judicial notice of the said document. Furthermore, Section 3 of the same Rule[5] provides that a hearing is necessary before judicial notice of any matter may be taken by the court. This requirement of a hearing is needed so that the parties can be heard thereon if such matter is decisive of a material issue in the case.[6]

With regard to petitioner's arguments citing the attachments to its *Petition for Review*, it bears stressing that evidence not formally offered during trial cannot be used for, or against a party litigant by the trial court in deciding the merits of the case.[7] Evidence not formally offered has no probative value and must be excluded by the court.[8]

Lastly, as to petitioner's assertion that there is no reason for this Court to deny its claim, first, the law requires petitioner to prove each and every detail of its claim, second, a claim for tax credit or refund, as the instant case, should be treated like a tax exemption, which is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund by showing that he has strictly complied with the conditions for the grant of the tax refund or credit.[9] Obviously, petitioner failed to discharge this burden.

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[4] Section 24. *Proof of official record.* – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, xxx.

[5] Section 3. *Judicial Notice, when hearing necessary.* – During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgement or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

[6] *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010.

[7] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.

[8] *Republic of the Philippines vs. Fe Roa Gimenez and Ignacio B. Gimenez*, G.R. No. 174673, January 11, 2016.

[9] *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 184360 & 184361, February 19, 2014.

In this regard, the Supreme Court's pronouncement in the case of *Commissioner of Internal Revenue vs. Far East Bank & Trust Company*[10] that the entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove is instructive, to wit:

> Moreover, the **fact that petitioner failed to present any evidence or to refute the evidence presented by respondent does not *ipso facto* entitle the respondent to a tax refund**. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, **the burden establishing the factual basis of a claim for refund rests on the taxpayer**.
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> **[T]he taxpayer must still present substantial evidence to prove his claim for refund. As we have said, there is no automatic grant of a tax refund**. (Boldfacing supplied)

Considering that cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases. With petitioner having failed

to do so in the present case, the instant motion must perforce be denied. The Court no longer deems it necessary to resolve other issues posed by petitioner.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised in petitioner's *Motion for Reconsideration*, the Court finds no compelling reason to reverse or modify the Decision promulgated on January 18, 2024.

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

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

We Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[10] G.R. No. 173854, March 15, 2010.