REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2255** (CTA Case No. 9480)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
VESTAS SERVICES PHILIPPINES, INC., Respondent.	Promulgated: JAN 25 2022 1:50p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] ("Assailed Decision") dated September 20, 2019 and Resolution[2] ("Assailed Resolution") dated February 13, 2020 of the Court of Tax Appeals Second Division ("Second Division"), partially granting Petitioner's claim for refund or issuance of a Tax Credit Certificate ("TCC") amounting to Php134,298,376.32, representing unutilized excess input value-added tax ("VAT") attributable to its zero-rated sales/receipts for the second quarter of calendar year 2014.

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1 Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr. and Jean Marie A. Bacorro-Villena concurring. Docket, pp. 1438-1463.

2 *Id.*, pp. 1481-1483.

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) and principally charged with the implementation, enforcement, and collection of internal revenue taxes in the Philippines, inclusive of the power to grant and/or deny, among others, the administrative application for the issuance of tax refunds/tax credits in accordance with law.[3]

Respondent Vestas Services Philippines, Inc. (VSPI) is a domestic corporation engaged in the business of installation and construction services (except contracts for the construction of locally funded public works and contracts for the construction of defense related structures), including entering into subcontracting arrangements, and service of wind power systems (*i.e.*, Wind Turbine Generators, Spare Parts, and activities related thereto). It also acts as a business development and information technology center that provides services to its affiliates in the Asia Pacific Region. Respondent is registered with the Bureau of Internal Revenue ("BIR") for VAT purposes, with Certificate of Registration No. OCN 9RC0000382508.[4]

The Facts

The facts as found by the Second Division are as follows:

> "[Respondent] states that for the second quarter of CY 2014, VSPI's income was sourced from the following transactions:
>
> 1) Engineering, Procurement and Construction (EPC) Contract with EDC Burgos Wind Power Corporation (EDC), a Renewable Energy Developer (RE Developer) of wind energy resources, located in the Municipality of Burgos, Province of Ilocos Norte;
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> 2) Intercompany Service Agreement with Vestas Wind Systems A/S (Vestas Denmark), a non-resident foreign corporation not doing business in the Philippines; and
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> 3) Sublease Agreement with Bayview Technologies, Inc. (Bayview), a Cagayan Special Economic Zone and Freeport enterprise currently registered with the Cagayan Economic Zone Authority (CEZA)

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3 Rollo, Petition for Review, The Parties, p. 6.
4 Docket, pp. 1438-1439.

Moreover, [Respondent] reported zero-rated sales for the second quarter of CY 2014 as follows:

Client	Amount
EDC	[Php]2,035,150,294.24
Vestas Denmark	62,659,044.87
Bayview	4,094,204.34
TOTAL	**[Php]2,101,903,543.45**

[Respondent] also avers that a portion of the zero-rated sales reported constituted accrued revenue and that it did not report any VATable or VAT-exempt sales or receipts for the second quarter of 2014.

VSFI imported and/or purchased goods and services in the amount of [Php]1,673,531,238.66, for which it paid input VAT in the amount of [Php]200,823,748.64.

VSPI filed with Revenue District Office (RDO) No. 50 of the BIR a claim for refund of its excess and/or unutilized creditable input VAT for the taxable period covering April 2, 2014 to June 30, 2014, with supporting documents on June 30, 2016.

The BIR issued a letter dated July 25, 2016 denying the administrative claim for refund.

Hence, [Respondent] filed a Petition for Review with the Court of Tax Appeals (CTA) on October 7, 2016."[5]

The Ruling of the Second Division

On September 20, 2019, the Second Division promulgated the Assailed Decision partially granting the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, [Petitioner] is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of [Respondent] in the amount of [Php]134,298,376.32 representing unutilized excess input VAT attributable to its zero-rated sales/receipts for 2nd Quarter of CY 2014.

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5 *Id.*, pp. 1439-1440.

SO ORDERED."[6]

Aggrieved, Petitioner filed *via* registered mail a "Motion for Reconsideration"[7] on October 08, 2019, which the Second Division denied in the Assailed Resolution on February 13, 2020, to wit:

> "**WHEREFORE,** [Petitioner's] **Motion [for] Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[8]

The Proceedings in the Court of Tax Appeals En Banc

On March 13, 2020, Petitioner filed a "Motion for Extension of Time to File Petition for Review"[9], praying for an extension of thirty (30) days from March 14, 2020 within which to file his petition.

On June 01, 2020, a Minute Resolution[10] was issued granting Petitioner until July 01, 2020 within which to file his petition.

On July 01, 2020, Petitioner filed *via* registered mail the present "Petition for Review"[11].

On October 28, 2020, the Court issued a Resolution[12] which directed Respondent to file its comment on the Petition for Review within ten (10) days from notice.

On November 27, 2020, Respondent filed his "Comment/Opposition (to the undated Petition for Review)"[13]. Thus, on January 29, 2021, a Resolution[14] was issued submitting the instant case for decision.

Assignment of Errors

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6 *Id.*, p. 1462.
7 *Id.*, pp. 1464-1467.
8 *Id.*, p. 1483.
9 Rollo, pp. 1-3. Record shows that Petitioner received the Assailed Resolution on February 28, 2020; Docket, p. 1480.
10 *Id.*, p. 4.
11 *Id.*, pp. 5-14.
12 *Id.*, pp. 83-84.
13 *Id.*, pp. 93-109.
14 *Id.*, pp. 194-195.

Petitioner raises the following grounds in support of his petition:

1) The Second Division of the Honorable Court erred in ruling that Respondent is entitled to partial refund and ordering Petitioner to refund or issue a TCC in favor of Respondent in the amount of Php134,298,376.32; and

2) The Second Division of the Honorable Court erred in ruling that proof of actual remittance to the BIR of the withheld taxes and testimonial evidence of the payors and withholding agents is not required.[15]

The Arguments of Parties

Petitioner asserts that Respondent failed to satisfy the requisite that it is engaged in zero-rated or effectively zero-rated sales. According to Petitioner, by entering into the Service Agreement with Respondent, Vestas Wind Systems A/S ("VWS") clearly intended to establish a continuous business in the Philippines. In other words, Respondent is actually an instrumentality by which VWS engages in business in the Philippines. Consequently, services rendered by Respondent to VWS cannot qualify for VAT zero-rating.

Moreover, Petitioner avers that the court is bound by the BIR's denial of the refund claim by reason of Respondent's failure to submit complete documents at the time of filing of its administrative claim. Petitioner argues as well that the evidence presented by Petitioner, *i.e.,* the certificates of creditable withholding taxes ("CWT") withheld, which were accomplished by its withholding agents, showing the amount deducted and withheld from Petitioner's income in support of the tax refund, does not constitute conclusive evidence of payment and remittance to the BIR. He also claims that Respondent failed to present the various payors and withholding agents in order to establish the fact of withholding and remittances made.

Lastly, Petitioner contends that the exhibits of Respondent should not be given any probative value for being hearsay evidence. In particular, any probative weight given to Respondent's witness testimony, Mr. Jasper E. Monteras, should have been limited only to those facts which he has personal knowledge. Thus, it was incumbent on the part of Respondent to present the signatories of the subject tax returns, service agreements and certificates or any person who had a hand in the preparation thereof to support Respondent's allegations.

On the other hand, Respondent declares that Petitioner cannot raise new issues on appeal which will violate the former's due process rights. According to

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[15] *Id.*, pp. 10-14.

Respondent, issues which were not raised in the proceedings before the lower court are barred by estoppel.

Respondent asseverates that even if these new arguments can be considered, the same are without merit and do not warrant the reversal of the Assailed Decision and Assailed Resolution for the following reasons:

1) VWS is a non-resident foreign corporation doing business outside the Philippines which is duly supported by evidence;

2) Withholding and remittance of CWT are not relevant in a judicial claim for refund of unutilized input VAT;

3) Mr. Monteras' testimony during the trial is admissible and not hearsay; and

4) The court is not bound by the administrative denial of Respondent's claim for refund, for the cases filed in the Court of Tax Appeals are litigated *de novo*.

<u>The Ruling of the Court</u>

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration", on February 13, 2020. Petitioner received said Resolution on February 28, 2020.[16] Pursuant to Rule 4, Section 2(a)(1)[17] in relation to Rule 8, Section 3(b)[18] of the Revised Rules of the Court of Tax

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16 Docket, p.851.

17 **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
>
> xxx xxx xxx
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

18 **Sec. 3.** *Who may appeal; period to file petition.* — x x x

> (b) 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. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the

Appeals[19] ("RRCTA"), Petitioner had fifteen (15) days from date of receipt of the resolution or until March 14, 2020 within which to file his petition for review.

On March 13, 2020, Petitioner filed a "Motion for Extension of Time to File Petition for Review", praying for an extension of thirty (30) days from March 14, 2020 within which to file his petition. On June 01, 2020, a Minute Resolution was issued granting Petitioner until July 01, 2020 within which to file his petition.

On July 01, 2020, Petitioner timely filed *via* registered mail the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

The services rendered by Respondent to its customer VWS qualifies for VAT zero rating

Section 108(B)(2)[20] of the National Internal Revenue Code ("NIRC") of 1997, as amended, provides that the recipient of services is doing business outside the Philippines.[21] Petitioner claims however that Respondent is actually an instrumentality by which VWS engages business in the Philippines.

Petitioner is mistaken for two reasons.

First, the Second Division, through its thorough examination of the evidence presented, ruled that VWS is a non-resident foreign corporation doing business outside the Philippines. This pronouncement was supported by documentary evidence, as follows: (1) Certificate of Non-Registration of Company issued by the Securities and Exchange Commission (SEC), (2)

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expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

19 A.M. No. 05-11-07-CTA, November 22, 2005.

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

xxx xxx xxx

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

xxx xxx xxx

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

21 Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007.

Consularized Articles of Association, (3) Certificate of Tax Residency issued by the Central Customs and Tax Administration of Denmark, and (4) Company Extract from the Danish Business Authority.[22]

It is settled that findings of fact by the Court of Tax Appeals in Division are generally accorded great weight and are not to be disturbed without any showing of grave abuse of discretion, considering that the members of the Division are in the best position to analyze the documents presented by the parties.[23]

Second, VWS and Respondent are two distinct corporate entities separately registered in two (2) different countries, Denmark and Philippines. Although VWS is one of the shareholders of Respondent, it is a fundamental principle of corporation law that "a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected."[24]

Indeed, Section 3(d) of Republic Act ("R.A.") No. 7042[25], as amended by R.A. No. 8179[26], or the Foreign Investments Act of 1991, specifies that being a shareholder in a domestic corporation does not equate to "doing business" in the Philippines, to wit:

> "**Section 3. *Definitions.*** - As used in this Act:
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> xxx xxx xxx
>
> d) The praise 'doing business' shall include soliciting orders, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of,

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22 Docket, Decision dated September 20, 2019, p. 1455.

23 Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation), G.R. No. 188016, January 14, 2015 *citing* Sea-Land Service Inc. v. Court of Appeals, G.R. No. 122605, April 30, 2001.

24 Pacific Rehouse Corporation v. Court of Appeals and Export and Industry Bank, Inc., G.R. Nos. 199687 & 201537, March 24, 2014 *citing* Concept Builders, Inc. v. National Labor Relations Commission, GG.R. No. 108734, May 29, 1996.

25 An Act To Promote Foreign Investments, Prescribe The Procedures For Registering Enterprises Doing Business In The Philippines, And For Other Purposes, June 13, 1991.

26 An Act To Further Liberalize Foreign Investments, Amending For The Purpose Republic Act No. 7042, And For Other Purposes, March 28, 1996.

commercial gain or of the purpose and object of the business organization: *Provided, however,* That **the phrase 'doing business' shall <u>not</u> be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor**; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account[.]"[27]

Considerably, Petitioner's insistence for this court to disregard the separate juridical personality of a corporation should not be permitted. In the case of *California Manufacturing Company, Inc. v. Advanced Technology System, Inc.* [28], the Supreme Court ruled that in order for the doctrine of piercing the corporate veil to apply, the wrongdoing must be established clearly and convincingly, thus:

"Any piercing of the corporate veil must be done with caution. As the CA had correctly observed, it must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. Moreover, the wrongdoing must be clearly and convincingly established. *Sarona v. NLRC* instructs, thus:

> Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.
>
> **The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as**

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[27] *Emphasis and underscoring supplied.*
[28] G.R. No. 202454, April 25, 2017.

to make it merely an instrumentality, agency, conduit or adjunct of another corporation."[29]

In the case at bar, Petitioner merely relied on the Service Agreement[30] executed between VWS and Respondent on April 16, 2010 in claiming that Respondent is an instrumentality of VWS without doing any further investigation. Accordingly, Petitioner failed to present clear and convincing evidence that Respondent is an alter ego of VWS. Hence, the doctrine of piercing the corporate veil cannot be applied.

The CTA is not limited by the evidence presented in the administrative claim

Citing *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[31] ("*Pilipinas Total*"), Petitioner alleges that the taxpayer is barred from submitting additional documents with the CTA after he or she filed his or her administrative case with the BIR.

Petitioner's contention is without merit.

Section 2(a), Rule 12 of the RRCTA allows the court to receive evidence during the trial of cases, as follows:

> "**SEC. 2.** *Power of the Court to receive evidence.* – The Court may receive evidence in the following cases:
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> (a) In all cases falling within the original jurisdiction of the Court in Division pursuant to Section 3, Rule 4 of these Rules; and
>
> (b) In appeals in both civil and criminal cases where the Court grants a new trial pursuant to Section 2, Rule 53 and Section 12, Rule 124 of the Rules of Court."

Furthermore, it has been repeatedly declared by this court that the failure to submit documents in the administrative level is not fatal to the case in the judicial level, as such are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial. The 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

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29 *Emphasis supplied.*
30 Docket, Exhibit "P-11", pp. 681-700.
31 G.R. No. 207112, December 08, 2015.

that the true and correct amount of the tax to be collected, may be determined and decided.[32]

The Supreme Court, in the case of *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*[33], likewise held that "cases filed in the CTA are litigated *de novo*" and that "the CTA may give credence to all evidence presented by [the taxpayer], including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance."

For this reason, the only conclusion is that Petitioner erroneously interpreted the ruling laid down in *Pilipinas Total.* A reading of the paragraphs cited by Petitioner in its "Petition for Review" reveals that the Supreme Court did not intend to overturn the established precedent acknowledging the court's power to receive and evaluate evidence submitted before it. In lieu thereof, what was being declared in *Pilipinas Total* is that if an administrative claim was denied by the BIR due to failure to submit complete documents despite notice or request, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the exact document before the Court of Tax Appeals.

In the present case, no notification or request for additional documents was made by Petitioner. Hence, the cited provision does not apply.

The issues on withholding and remittance of CWT are not relevant in the refund of unutilized input VAT

Nothing in Section 112(A)[34] of the NIRC of 1997, as amended, requires a taxpayer-claimant to prove the actual remittance of taxes withheld, in order to grant a refund of unutilized input VAT.

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[32] *See* Collector of Internal Revenue v. Batangas Transportation Company and Laguna-Tayabas Bus Company, G.R. No. L-9692, January 06, 1958.

[33] G.R. No. 231581, April 10, 2019.

[34] **SEC. 112. *Refunds or Tax Credits of Input Tax.*** -
(A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

Section 4.112-1(a)[35] of Revenue Regulations No. 16-2005[36], as amended, which implements Section 112(A) of the NIRC of 1997, as amended, does not impose the said requirement as well.

The Court *En Banc* echoes the Second Division's declaration on the matter:

> "As previously held in the Decision assailed by [Petitioner], only the following requisites must be established in order to be entitled to refund or issuance of tax credit, *viz.*:
>
> 1. the taxpayer-claimant must be VAT-registered;
> 2. there must be zero-rated or effectively zero-rated sales;
> 3. that input taxes were incurred or paid;
> 4. that such input taxes are attributable to zero-rated or effectively zero-rated sales;
> 5. that the input taxes have not been applied against output taxes during and in the succeeding quarters; and
> 6. the claim for refund was filed within the prescriptive period [both] in the administrative and judicial levels."[37]

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35 **SEC. 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.* –**
(a) Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services
A VAT-registered person whose sales of goods, properties or services are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate/refund of input tax attributable to such sales. The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. The application should be filed within two (2) years after the close of the taxable quarter when such sales were made.
In case of zero-rated sales under Secs. 106(A)(2)(a)(1) and (2), and Sec. 106(A)(2)(b) and Secs. 108(B)(1) and (2) of the Tax Code, the payments for the sales must have been made in acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations.
Where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable (including sales subject to final withholding VAT) or exempt sales of goods, properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, only the proportionate share of input taxes allocated to zero-rated or effectively zero-rated sales can be claimed for refund or issuance of a tax credit certificate.
In the case of a person engaged in the transport of passenger and cargo by air or sea vessels from the Philippines to a foreign country, the input taxes shall be allocated ratably between his zero-rated sales and non-zero-rated sales (sales subject to regular rate, subject to final VAT withholding and VAT-exempt sales).

36 Consolidated Value-Added Tax Regulations of 2005, September 01, 2005.

37 Docket, Resolution dated February 13, 2020, pp. 1482-1483.

The Second Division did not err in admitting the testimony of Mr. Monteras

Section 36 of Rule 132 of the Rules of Court on Evidence provides when objections to evidence may be made:

> "**Section 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 unless a different period is allowed by the court.
>
> In any case, the grounds for the objections must be specified. (36a)"

Evidence introduced without objection becomes part of the record of the case and all the parties are amenable to any favorable or unfavorable effects resulting from it.[38] In the case at bar, Petitioner did not raise any objection to the testimony of Mr. Monteras as well as the documentary exhibits presented.[39] Nor did Petitioner filed a motion for reconsideration to the Resolutions dated August 15, 2018 and September 17, 2018, issued by the court *a quo* resolving Respondent's formal offer of evidence. Petitioner, by his failure to timely object on the admissibility of the said testimony cannot now question the same.

Considering this, We find no cogent reason to reverse or modify the assailed Decision and assailed Resolution of the Second Division.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**. The Decision dated September 20, 2019 and the Resolution dated February 13, 2020 of the Second Division in the case docketed as CTA Case No. 9480 are **AFFIRMED**.

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[38] People of the Philippines v. Elpedio Surio, G.R. No. L-30249, April 30, 1974.
[39] Docket, Comment of Petitioner's Formal Offer of Evidence, pp. 1361-1363.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice