Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

CHEVRON HOLDINGS, INC., [formerly CALTEX (ASIA) LIMITED], Petitioner,	**CTA EB No. 1146** (CTA Case No. 8064)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 11 2015 3:30 p.m.

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RESOLUTION

CASANOVA, *J.*:

Submitted for consideration is petitioner's **Motion for Reconsideration with Motion to Admit Formal Offer of Attached Exhibits** filed on May 14, 2015, without respondent's comment as per Records Verification dated July 20, 2015.

In its Motion, petitioner moves that the Court *En Banc* reconsider the Decision[1] promulgated on April 14, 2015, by admitting its Formal Offer of Attached Exhibits and, afterwards, granting its claim for refund and/or the issuance of tax credit certificate in the amount of ₱177,337,492.52 allegedly representing its unutilized input value-added

[1] CTA *En Banc* Rollo (Vol. I), pp. 160-183

tax (VAT) for the taxable period covering January 1, 2008 to December 31, 2008.

Petitioner argues that, while it concedes that it carries the burden of proving its entitlement to the amount claimed for refund, it, however, submits that the Court *En Banc,* likewise, has the concommitant burden of giving the taxpayer every opportunity to establish the merits of its case. Thus, it urges the Court *En Banc* to relax the rules of evidence and to allow it to present additional proof to substantiate its claim *via* a formal offer of exhibits.

In this regard, petitioner raises the following grounds[2] in support of its Motion, to wit:

> I.
> The Supreme Court has affirmed the propriety of admitting evidence introduced after trial on ground that the Court of Tax Appeals is not bound by technical rules of procedure and is mandated to liberally construe its rules to attain justice and ascertain the amounts claimed in refund cases.
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> II.
> The Supreme Court has ruled that detailed proof of the truthfulness of each and every item in a tax return is not required and that the grant of refund is founded on the assumption that the tax return is valid.
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> III.
> In BIR Ruling No. [DA-(VAT-081) 519-09], the BIR held that if the VAT is not billed separately, the selling price stated in the sales document shall be deemed to be inclusive of VAT.

Anent the first ground, petitioner mainly cites the case of *Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue*[3] ("Philippine Phosphate" case) as a judicial precedent, wherein the Supreme Court sided with the taxpayer and confirmed that the reasons cited in support of the prayer to submit additional evidence were excusable thereby warranting a new trial.

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[2] Grounds in Support of the Motion, Motion for Reconsideration with Motion to Admit Formal Offer of Attached Exhibits, CTA *En Banc* Rollo (Vol. II), p. 195
[3] G.R. No. 141973, June 28, 2005

With regard to the second ground, petitioner relied on the case of *Filinvest Development Corporation vs. Commissioner of Internal Revenue*[4] ("Filinvest Development" case), wherein the Supreme Court ruled that the burden of assailing the veracity of a tax return lies with the Bureau of Internal Revenue (BIR) and, in the absence of dispute, the facts stated in the returns are presumed valid, true and correct. As such, petitioner argues that since respondent failed to impugn the integrity of the 2007 4th Quarter VAT Return, it then believed that it need not further substantiate the same because of the presumption that the facts stated on the return are true and correct.

As to the third ground, petitioner asserts that in [DA-(VAT-081) 519-09] dated September 9, 2009, the BIR, despite the enactment of Republic Act (RA) No. 9337[5], nonetheless, invoked Revenue Regulations (RR) No. 8-99[6], therefore, maintaining the position that if the VAT is not billed separately, the selling price stated in the sales document shall be deemed to be inclusive of VAT.

After due considerations of the arguments advanced by petitioner, *We* find no merit in the instant **Motion for Reconsideration**.

The Supreme Court has affirmed the propriety of admitting evidence introduced after trial on ground that the Court of Tax Appeals is not bound by technical rules of procedure and is mandated to liberally construe its rules to attain justice and ascertain the amounts claimed in refund cases.

While *We* agree in the premise that the Supreme Court has, on numerous occasions, allowed the admission of evidence introduced after trial on ground of substantial justice and equity, unfortunately, however, such is not applicable in the present case.

[4] G.R. No. 146941, August 9, 2007

[5] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, which took effect on July 1, 2005

[6] Provides penalties for violation of the requirement that output tax on sale of goods and services should not be separately indicated in the sales invoice or official receipt, dated May 11, 1999

A further reading of the *Philippine Phosphate case* reveals that the denial of the claim for refund therein was due to Philippine Phosphate's failure to comply with CTA Circular No. 1-95[7]. The Court then requires a claimant, who seeks to offer evidence involving voluminous documents, to present a summary containing the total amounts of the tax account or tax paid for the period involved, and a chronological or numerical list of the numbers, dates and amounts covered by the invoices or receipts; and, also, a certification of an independent Certified Public Accountant attesting to the correctness of the contents of the said summary. In reversing the appellate court, the Supreme Court justifies that:

> "Petitioner's entire claim for refund, however, was denied for petitioner's failure to present invoices allegedly in violation of CTA Circular No. 1-95. But nowhere in said Circular is it stated that invoices are required to be presented in claiming refunds. *x x x*
>
> Again, we find such reasoning to be erroneous. The certification of an independent CPA is **not another mandatory requirement under the Circular** which petitioner failed to comply with. **It is rather a requirement that must accompany the invoices should one decide to present invoices under the Circular**. Since petitioner did not present invoices, on the assumption that such were not necessary in this case, it logically did not present a certification because there was nothing to certify." *(Emphases Ours)*

Going back to the present case, *We* denied petitioner's claim not only for failure to prove its entitlement to refund but also for failing to comply with all the documentary and evidentiary requirements mandated by law, specifically, among others, that a VAT taxpayer shall for every sale, barter or exchange of services, issue a VAT official receipt which must contain certain information;[8] and that the input taxes must be substantiated and reported in the taxpayer's VAT Return.[9]

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[7] "CTA Rules Governing the Presentation of Voluminous Documents as Evidence Such as Receipts, Invoices and Vouchers", dated January 25, 1995

[8] Section 113 of the National Internal Revenue Code (NIRC) of 1997, as amended

[9] Section 4.110-8 of Revenue Regulations No. 16-2005

Moreover, in the *Philippine Phosphate Case*, it was already settled that the claimant therein was entitled to exemption from payment of excise taxes by virtue of its being an Economic Processing Zone Authority (EPZA) registered enterprise. Hence, the only issue remaining there was to determine the propriety of the amount claimed for refund. In connection with this, therein claimant believed in good faith that the presentation of invoices was not anymore necessary to prove its claim for refund since its previous claims, in CTA Case Nos. 4654, 4993 and 4994, were granted by the court without further need of presenting invoices,[10] thus:

> "Petitioner filed a motion for reconsideration alleging that it failed to submit invoices because **it thought that the presentation of said invoices was not necessary to prove the claim for refund, since petitioner's previous claims, in CTA Case Nos. 4654, 4993 and 4994**, involving similar facts, were granted by the CTA **even without the presentation of invoices.** *x x x" (Emphases Ours)*

Finding merit in the claimant's plea, the High Court explains that it cannot be said that the claimant did not act with ordinary prudence in claiming its refund since in light of the previous cases it filed with the CTA, the latter did not require invoices; and, further, in consideration of the non-mandatory nature of CTA Circular No. 1-95. Thus:

> "Petitioner's entire claim for refund, however, was denied for petitioner's failure to present invoices allegedly in violation of CTA Circular No. 1-95. But nowhere in said Circular is it stated that invoices are *required* to be presented in claiming refunds. *x x x*
>
> *x x x*
>
> The CTA also could not deny that in its previous decisions involving petitioner's claims for refund, invoices were not deemed necessary to grant such claims. It merely said that in said decisions, CTA Circular No. 1-95 was not

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[10] Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4993, July 16, 1996; Philippine Phosphate Fertilizer Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 4654, January 24, 1996; and Philippine Phosphate Fertilizer Corporation vs. The Honorable Commissioner of Customs, CTA Case No. 4994, August 4, 1995.

> yet in effect. **Since CTA Circular No. 1-95 did not make it mandatory to present invoices, coupled with the previous cases of petitioner where the certifications issued by Petron sufficed, it is understandable that petitioner did not think it necessary to present invoices and the accompanying certifications when it filed the present case for refund before the CTA.**"[11]

However, again, such is not the case with petitioner. There has already been a plethora of cases, explaining the mandatory nature of tax refunds and strict compliance with the substantiation requirements under tax laws and regulations.[12] In this jurisdiction, it has been held that tax refunds partake of the nature of the tax exemptions and, therefore, cannot be allowed unless granted in the most explicit and categorical language. Revenue statutes are substantive laws and in no sense must their application be equated with that of remedial laws. As well said in a prior case, revenue laws are not intended to be liberally construed. Considering that taxes are the lifeblood of the government and in Holmes's memorable metaphor, the price we pay for civilization, tax laws must be faithfully and strictly implemented.[13]

On the final note, *We*, again bear emphasis that 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.[14]

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[11] *Supra* No. 3

[12] Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 183531, March 25, 2015; Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation), G.R. No. 194105, February 5, 2014; Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. No. 193301, March 11, 2013; Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al., G.R. No.173425, January 22, 2013; Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 179961, January 31, 2011; Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) vs. Commissioner of Internal Revenue, G.R. No. 178090, February 8, 2010; Commissioner of Internal Revenue vs. Seagate Technology (Philippines), G.R. No. 153866, February 11, 2005

[13] Commissioner of Internal Revenue vs. Rosemarie Acosta, et. al., G.R. No. 154068, August 3, 2007; *citing* Froehlich & Kuttner vs.The Insular Collector of Customs, G.R. Nos. L-5600 and 5602, March 2, 1911

[14] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526, March 16, 2007

The Supreme Court has ruled that detailed proof of the truthfulness of each and every item in a tax return is not required and that the grant of refund is founded on the assumption that the tax return is valid.

Likewise, petitioner's reliance in the doctrine enunciated in the *Filinvest Development case* is misguided. There are numerous differences in the cited case with the present case.

First, in the *Filinvest Development case,* what was involved was a claim for refund representing the claimant's excess creditable withholding taxes for taxable years 1994, 1995, and 1996. While, on the other hand, the present case involves a claim for refund representing petitioner's claim for accumulated and unutilized input VAT for taxable year 2008.

Second, in the *Filinvest Development case,* the appellate court held that the claimant failed to prove that it is entitled to the refund, even after being acknowledged of having complied with the requirements to sustain a claim for tax refund.[15] In the present case, petitioner failed to prove that it is entitled to the refund precisely by not complying with all the documentary and evidentiary requirements.[16] Indubitably, the Court *En Banc* cannot base its decision on mere implication or inference, claims must be verified and allegations must be proven.

Third, in the *Filinvest Development case,* after knowing the reason for the denial of its claim for refund, the claimant attached a copy of its 1997 Income Tax Return in its Motion for Reconsideration. In reversing the Court of Appeals, the Supreme Court held that the appellate court committed a reversible error in failing to consider the said Return for it **clearly showed** that petitioner suffered a net loss. Thus:

> "More important, a copy of the Final Adjustment Return for 1990 was attached to petitioner's Motion for Reconsideration filed before the CTA. A final adjustment return shows whether a corporation incurred a loss or

[15] *Supra* No. 4; *citing* F. Jacinto Group, Inc. vs. CIR CTA Case No. 4971, April 5, 1995; Citibank N.A. vs. Court of Appeals, et. al., G.R. No. 107434, October 10, 1997

[16] Sections 108 (B)(2), 110 (A), 112 (A), and 113 (A) and (B) of the NIRC of 1997, as amended, in relation to Section 4.110-8 of Revenue Regulations No. 16-2005

> gained a profit during the taxable year. **In this case, that Return clearly showed that petitioner incurred P52,480,173 as net loss in 1990.** Clearly, it could not have applied the amount in dispute as a tax credit. Again, the BIR did not controvert the veracity of the said return. It did not even file an opposition to petitioner's Motion and the 1990 Final Adjustment Return attached thereto." *(Emphasis Ours)*

While, in the present case, ever since the CTA Special Third Division's Decision[17] dated October 14, 2013, Resolution[18] dated March 11, 2014, and until the assailed *En Banc* Decision dated April 14, 2015 the Court stresses that each one of the documents presented by petitioner, **standing alone**, is inadequate to prove that the recipient of the services rendered by petitioner is not doing business in the Philippines and that said entity is located outside the Philippines when the services were performed.[19] Thus, failing to comply with one of the requirements needed for its claim to prosper. On appeal, *We* even quoted with emphasis the Court *a quo*'s exhaustive explanation in answering the issue at hand. Thus:

> "**Albeit the Court accedes to petitioner's stance** that for a taxpayer's sale of services to be considered zero-rated it only needs to prove that the recipients of petitioner's services are: [1] not doing business in the Philippines; and [2] located outside the Philippines when the services were performed, regardless of whether the customer is engaged in business or not; **still the Court cannot sustain petitioner's urging that the *SEC Certificates of Non-Registration* standing alone are sufficient proof that the recipients of petitioner's services are not doing business in the Philippines and are located outside the Philippines.**"[20]

All told, presentation of the tax return is material. While presentation of the Return alone may, on certain occasions, suffice in claims for refund of creditable withholding tax, the same cannot be said in claims for refund of zero-rated VAT. The law itself necessitates

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[17] Annex "A", Petition for Review, CTA *En Banc* Rollo (Vol. I), pp. 50-86
[18] Annex "B", *Ibid.*, pp. 87-102
[19] Pages 22-23 of the Division Decision dated October 14, 2013, CTA En Banc Rollo (Vol. I), pp. 71-72
[20] Page 13 of the *En Banc* Decision, CTA *En Banc* Rollo (Vol. I), p. 172; *citing* Par. 1, page 6 of the Division Resolution dated March 11, 2014, CTA *En Banc* Rollo (Vol. I), p. 92

compliance with the substantiation requirements. Although it is true that the CTA is not strictly governed by technical rules of evidence,[21] the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of a taxpayer's claims.[22]

In BIR Ruling No. [DA-(VAT-081) 519-09], the BIR held that if the VAT is not billed separately, the selling price stated in the sales documents shall be deemed to be inclusive of VAT.

With regard to this issue, *We* adopt the ruling in the CTA *En Banc* case entitled, *Chevron Holdings [formerly Caltex (Asia) Limited] vs. Commissioner of Internal Revenue,* CTA EB No. 940 (CTA Case Nos. 7776 & 7813), promulgated on October 28, 2014. *We* held there that:

> "Petitioner recognizes that the law states that VAT should be indicated as a separate item under Republic Act No. 9337, but cites Revenue Regulation ('RR') No. 16-2005 which deems the selling price to be inclusive of VAT if not billed separately, and BIR Ruling [DA-(VAT- 081) 519-09] which also deems the selling price to be inclusive of VAT if not billed separately.
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> However, the provision which petitioner cites in RR No. 16- 2005, which was also the basis in BIR Ruling [DA-(VAT-081) 519-09] states that:
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>> 'SECTION 4.106-4. Meaning of the Term 'Gross Selling Price'. - The term 'gross selling price' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding VAT. The excise tax, if any, on such goods or properties shall form part of the gross selling price.

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[21] Section 8, R.A. No. 1125

[22] Kepco Philippines Corp. vs. Commissioner of Internal Revenue, G.R. No. 181858, November 24, 2010

> In the case of sale, barter or exchange of real property subject to VAT, gross selling price shall mean the consideration stated in the sales document or the fair market value whichever is higher. The term 'fair market value' shall mean whichever is the higher of: 1) the fair market value as determined by the Commissioner (zonal value), or 2) the fair market value as shown in schedule of values of the Provincial and City Assessors (real property tax declaration). However, in the absence of zonal value, gross selling price refers to the market value shown in the latest real property tax declaration or the consideration, whichever is higher. If the gross selling price is based on the zonal value or market value of the property, the zonal or market value shall be deemed inclusive of VAT. If the VAT is not billed separately, the selling price stated in the sales document shall be deemed to be inclusive of VAT.'

> It is clear from the quoted portion of RR No. 16-2005 that the provision petitioner cited only pertains to sale, barter or exchange of real property subject to VAT. Thus, the Court *En Banc* cannot accept petitioner's theory and therefore must uphold the disallowance of Php24,598,395.58. The law is clear in that the amount of tax shall be shown as a separate item in the invoice or receipt." *(Citations Omitted)*

That having been settled *We* shall now proceed to petitioner's **Motion to Admit Formal Offer of Attached Exhibits.** *We,* likewise, find no merit in the same.

Section 34,[23] Rule 132 of the Rules of Court is explicit, any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.[24] A formal offer is necessary since judges are required to base their findings of fact and judgment only— and strictly—upon the evidence offered by the parties at the trial. To allow a party to attach

[23] "**SEC. 34.** ***Offer of evidence.*** — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."
[24] Landingin vs. Republic, G.R. No. 164948, June 27, 2006; Pigao vs. Rabanillo, G.R. No. 150712, May 2, 2006

any document to his pleading and then expect the court to consider it as evidence may draw unwarranted consequences. The opposing party will be deprived of his chance to examine the document and object to its admissibility.[25]

In the case of *Westmont Investment Corporation vs. Amos P. Francia, Jr., et al.,*[26] the Supreme Court held that:

> "A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court. **Evidence not formally offered during the trial cannot be used for or against a party litigant. Neither may it be taken into account on appeal.**
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> The rule on formal offer of evidence is not a trivial matter. Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered shall be excluded and rejected.
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> Prescinding therefrom, the very glaring conclusion is that all the documents attached in the motion for reconsideration of the decision of the trial court and all the documents attached in the defendant-appellant's brief filed by defendant-appellant Wincorp **cannot be given any probative weight or credit for the sole reason that the said documents were not formally offered as evidence in the trial court because to consider them at this stage will deny the other parties the right to rebut them.**" *(Emphases Ours)*

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[25] Emeritu C. Barut vs. People of the Philippines, G.R. No. 167454, September 24, 2014
[26] G.R. No. 194128, December 7, 2011

In view of the foregoing, *We* find no cogent justification to disturb the findings and conclusions reached by Court *En Banc* in the Decision dated April 14, 2015.

WHEREFORE, petitioner's Motion for Reconsideration with Motion to Admit Formal Offer of Attached Exhibits is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice