REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

HALLIBURTON WORLDWIDE LIMITED - PHILIPPINE BRANCH, *Petitioner,*	**CTA *EB* NO. 2022** *(CTA Case No. 9449)*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	
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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2042** *(CTA Case No. 9449)*
	Present:
-versus-	**DEL ROSARIO, P.J.,** **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
HALLIBURTON WORLDWIDE LIMITED - PHILIPPINE BRANCH, *Respondent.*	Promulgated: OCT 29 2020 2:46 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

For resolution are the consolidated Petitions for Review, respectively, filed by Halliburton Worldwide Limited – Philippine Branch (hereinafter referred to as "HWL")[1] and posted by the Commissioner of Internal Revenue ("CIR"),[2] both on 21 March 2019, under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***.[3] Both parties seek the modification of the Decision, promulgated on 18 October 2018, and Resolution, dated 14 February 2019, by the Special Second Division ("Court in Division") partially granting HWL's claim for refund or issuance of a Tax Credit Certificate ("TCC") in the amount of ₱844,194.90, representing its unutilized excess input value-added tax ("VAT") for taxable year 2014 attributable to its zero-rated sales/receipts.

The Parties

HWL is a foreign corporation organized and existing under and by virtue of the laws of Cayman Islands. It is duly licensed to do business in the Philippines through its Philippine Branch by virtue of a License to Do Business issued by the Securities and Exchange Commission ("SEC") on 8 August 2013. It holds office at the Pearlbank Center, 146 Valero Street, Salcedo Village, Makati City.

It is authorized to engaged in the business of providing oilfield services and products, such as well completion, drilling, cementing, logging, well testing, perforating, production testing and workover, stimulation services and licensing of software and consulting services, and providing oilfield equipment and technology to the oil and gas industries, among others.

The CIR is the chief of the Bureau of Internal Revenue ("BIR") who is vested, among others, with the authority to act on and approve claims for refund or tax credit as provided for by law. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City

The Facts

During taxable year 2014, HWL rendered services to duly registered renewable energy ("RE") developers, namely, Energy Development Corporation ("EDC") and Maibarara Geothermal, Inc. ("MGI"), and sold goods to its non-resident affiliates doing business outside the Philippines, specifically to Halliburton Energy Services ("HES") and Halliburton GMB.[4] Due to these transactions, HWL earned zero-rated sales and receipts in the total amount of ₱142,756,779.47 broken down, as follows:

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[1] Petition for Review, *EB* No. 2022, *Rollo*, pp. 7-72, with annexes.
[2] Petition for Review, *EB* No. 2042 *Rollo*, pp. 5-66 with annexes.
[3] A.M. No. 05-11-07-CTA, 22 November 2005.
[4] Decision, *EB* No. 2022 *Rollo*, pp. 35-64; Decision, *EB* No. 2042 *Rollo*, pp. 19-48.

CY 2014	Sales of Services to RE Developers		Export sales to non-resident foreign affiliates	
	EDC	MGI	HES	Halliburton GMB
First Quarter	₱ 90,008,608.38	-	-	₱ 239,284.12
Second Quarter	33,605,430.20	-	₱ 464,007.36	-
Third Quarter	-	-	4,149,189.57	24,781.27
Fourth Quarter	-	₱14,257,580.18	7,898.39	-
Total	**₱123,614,038.58**	**₱14,257,580.18**	**₱ 4,621,095.32**	**₱ 264,065.39**

During the same period, HWL allegedly incurred input VAT in the aggregate amount of ₱12,541,359.18. Included in the said amount is HWL's input VAT attributable to its zero-rated receipts from RE developers and export sales to its non-resident affiliates in the amount of ₱5,204,533.07.[5]

On this note, HWL filed with the BIR an Application for Tax Refunds ("BIR Form No. 1914") on 30 March 2016 requesting refund or issuance of TCC of its alleged unutilized input VAT for taxable year 2014 in the total amount of ₱5,204,533.07 (hereinafter referred to as "administrative claim").[6]

Alleging inaction on the part of the BIR to attend to its administrative claim for refund/TCC, HWL filed the original Petition for Review on 26 August 2016 (hereinafter referred to as "judicial claim").[7]

On 18 October 2018, the Court in Division rendered the assailed Decision, partially granting HWL's judicial claim for refund/TCC in the amount of ₱844,194.90.[8] The dispositive portion of the said Decision is hereby quoted, to wit:

> "**WHEREFORE**, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.**
>
> Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **EIGHT HUNDRED FORTY FOUR THOUSAND ONE HUNDRED NINETY FOUR and 90/100 PESOS** (Php 844,194.90), representing its unutilized excess input VAT for the four taxable quarters of CY 2014 which is attributable to its zero rated sales/receipts for the same period.
>
> **SO ORDERED.**" ℓ

[5] *Ibid.*
[6] *Ibid.*
[7] *Ibid.*
[8] *Ibid.*

In the assailed Decision, the Court in Division ruled that out of the total zero-rated sales and receipts declared by HWL amounting to ₱142,756,779.47, it was only able to substantiate its zero-rated receipts from RE developers totaling to ₱137,871,618.76. The Court in Division explained that HWL failed to support the remaining ₱4,885,160.71 representing its zero-rated sales to its affiliates with competent evidence (*i.e.* sales invoices compliant with the invoicing requirements mandated by the National Internal Revenue Code of 1997, as amended (hereinafter referred to as the "Tax Code"), and bills of lading or airway bills), hence warranting the disallowance of the said amount.

As for HWL's claimed input VAT, the Court in Division disallowed a total of ₱10,633,311.04 for its failure to meet the invoicing and substantiation requirements under the Tax Code. Out of the total disallowed input VAT, ₱9,668,175.09 was invalidated by the Court in Division because HWL failed to offer in evidence the payment confirmation receipts corresponding to BIR Form No. 1600 of these transactions. In conclusion, the Court in Division only granted HWL a partial refund/TCC of ₱844,194.90.

Aggrieved, HWL posted its Omnibus Motion (1) For Partial Reconsideration (Re: Decision dated October 18, 2018); and (2) For Reopening of Trial ("Omnibus Motion") on 6 November 2018.[9] Meanwhile, the CIR posted his Motion for Partial Reconsideration on 6 November 2018.[10] In response to the CIR's Motion for Partial Reconsideration, HWL filed a Comment/Opposition (Re: CIR's Motion for Reconsideration dated November 5, 2018) on 7 January 2019.

However, both Motions were subsequently denied by the Court in Division in its assailed Resolution, dated 14 February 2019, for lack of merit.[11] Both parties received their respective copies of the assailed Resolution on 19 February 2019.

Thereafter, the parties filed their Motions for Extension of Time to File Petition for Review which were, respectively, filed on 6 March 2019 by HWL[12] and on 5 March 2019 by the CIR.[13] The parties each requested for an additional period of fifteen (15) days or until 21 March 2019 to file their respective Petitions for Review. Both Motions were granted by the Court *En Banc*.[14]

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[9] Resolution dated 14 February 2019, *EB* No. 2022 *Rollo*, pp. 66-72; Resolution dated 14 February 2019, *EB* No. 2042 *Rollo*, pp. 50-56.
[10] *Ibid.*
[11] *Ibid.*
[12] Motion for Extension of Time to File Petition for Review, *EB* No. 2022 *Rollo*, pp. 1-5.
[13] Motion for Extension of Time to File Petition for Review, *EB* No. 2042 *Rollo*, pp. 1-4.
[14] Minute Resolution dated 13 March 2019, *EB* No. 2022 Rollo, p. 6; Minute Resolution dated 4 April 2019, *EB* No. 2042 Rollo, p. 67.

On 21 March 2019, the parties, respectively, filed their Petitions for Review.[15] The Petition for Review filed by HWL was docketed as CTA *EB* No. 2022 and that of the CIR as CTA *EB* No. 2042. Subsequently, CTA *EB* No. 2042 was consolidated with CTA *EB* No. 2022 on 5 April 2019.[16]

On 11 June 2019, HWL filed its Comment (Re: Petition for Review dated March 19, 2019)[17] which was well within the extended period granted by the Court *En Banc*.[18] The CIR failed to file his Comment to HWL's Petition for Review per the Court's Records Verification Report dated 27 June 2019.[19]

On 11 July 2019, the Court promulgated a Resolution ordering the parties to file their respective Memoranda.[20]

HWL filed its Memorandum[21] on 16 September 2019 which was within the extended period granted by the Court *En Banc*.[22] The CIR did not file his Memorandum.[23]

Considering the same, the Court *En Banc* in a Resolution,[24] dated 14 November 2019, submitted the instant Petitions for Review for resolution. Hence this Decision.

The Issues

HWL raises the following main and corollary issues for the Court *En Banc*'s resolution:[25]

> WHETHER THE COURT IN DIVISION ERRED IN HOLDING THAT HWL IS ONLY ENTITLED TO CLAIM THE AMOUNT ₱844,194.90 REPRESENTING ITS VAT REFUND/TCC FOR TAXABLE YEAR 2014.

[15] Petition for Review, *EB* No. 2022, *Rollo*, pp. 7-72, with annexes; Petition for Review, *EB* No. 2042 *Rollo*, pp. 5-66 with annexes.
[16] Minute Resolution dated 5 April 2019, *EB* No. 2022 *Rollo*, p. 73.
[17] Comment (Re: Petition for Review dated March 19, 2019), *EB* No. 2022 *Rollo*, pp. 139-149.
[18] Minute Resolution dated 29 May 2019, *EB* No. 2022 *Rollo*, p. 138.
[19] Records Verification Report dated 27 June 2019, *EB* No. 2022 *Rollo*, p. 150.
[20] Resolution dated 11 July 2019, *EB* No. 2022 *Rollo*, pp. 152-153.
[21] Memorandum, *EB* No. 2022 *Rollo*, pp. 161-195.
[22] Minute Resolution dated 23 August 2019, *EB* No. 2022 *Rollo*, p. 160.
[23] Records Verification Report dated 2 October 2019, *EB* No. 2022 *Rollo*, p. 196.
[24] Resolution dated 14 November 2019, *EB* No. 2020 *Rollo*, pp. 198-199.
[25] Petition for Review, *EB* No. 2022, *Rollo*, pp. 7-72, with annexes.

A) WHETHER BIR FORM NO. 1600 CONSTITUTES SUFFICIENT DOCUMENTARY SUBSTANTIATION OF THE INPUT VAT ON SERVICES RENDERED BY NON-RESIDENT.

B) WHETHER HWL SHOULD BE ALLOWED TO PRESENT ADDITIONAL EVIDENCE AS SUBSTANTIAL JUSTICE, EQUITY, AND FAIR PLAY TAKE PRECEDENCE OVER TECHNICALITIES AND LEGALISMS

C) WHETHER THE PAYMENT CONFIRMATION RECEIPTS, WHICH WERE ATTACHED TO HWL'S OMNIBUS MOTION, FORMS PART OF THE RECORDS OF THE CASE; AND

D) WHETHER CLAIMS FOR REFUND, LIKE ANY OTHER ORDINARY CIVIL CASE, NECESSITATE ONLY PREPONDERANCE OF EVIDENCE FOR ITS APPROBATION.

Meanwhile, the CIR advances the following issue for the Court *En Banc's* consideration:[26]

WHETHER THE COURT IN DIVISION ERRED IN DENYING THE CIR'S MOTION FOR PARTIAL RECONSIDERATION.

Arguments of the Parties

HWL's Arguments[27]

HWL argues that the Court in Division erred in disallowing its input VAT on the services it received from non-residents amounting to ₱9,668,175.09 for failure to present the payment confirmation receipts corresponding to its BIR Form No. 1600. It explains that the duly filed BIR Form No. 1600 already constitutes sufficient evidence to substantiate its claim for refund.

[26] Petition for Review, *EB* No. 2042 *Rollo*, pp. 5-66 with annexes.
[27] Memorandum, *EB* No. 2022 *Rollo*, pp. 161-195.

However, assuming *arguendo* that the payment confirmation receipts are required to validly prosecute a VAT refund/credit claim, it explains that these documents were attached to its Omnibus Motion and, therefore, should have been considered by the Court in Division in resolving the instant case since the same were already part of the case records.

HWL pleads for the Court *En Banc* to set aside technical rules of procedure and consider the payment confirmation receipts attached to the Omnibus Motion, or in the alternative, for the Court *En Banc* to allow the reopening of trial so that it can present the payment confirmation receipts in evidence. HWL explains that the reopening of trial is a justifiable remedy to ensure that paramount interest of justice will be served and for the court to prevent the miscarriage of justice.

CIR's Arguments[28]

Referring to the disallowed portion of HWL's zero-rated sales/receipts in the amount of ₱4,885,160.71, the CIR argues that the Court *En Banc* should determine the corresponding output VAT liability on the said sales/receipts and offset it to the amount of refund/TCC that HWL is entitled on receiving. The CIR explains that imposing output VAT on the disallowed zero-rated sales/receipts is not tantamount to the court making an assessment against HWL but only so that it can determine if HWL is still entitled to any excess or unutilized input VAT.

Lastly, the CIR raises that the Court in Division erred in ruling that HWL is entitled to a partial refund/TCC in the amount of ₱844,194.90. He explains that the sales invoices and official receipts it presented did not meet the invoicing requirements laid down under the Tax Code and relevant implementing RRs.

HWL's Counter-Arguments[29]

HWL insists that the arguments raised by the CIR are flawed. It explains that although the Court in Division ruled that a portion of its VAT zero-rated sales in the amount of ₱4,885,160.71 should be disallowed for failure to substantiate the same with competent evidence, it does not mean that it should be subjected to VAT. It argues that to accede to the view of the CIR would lead to a situation where the court would be making presumptions as to the nature of these transactions and, resultantly, asking the same to issue a deficiency tax assessment against HWL which is tantamount to infringing its right to due process.

[28] Petition for Review, *EB* No. 2042 *Rollo*, pp. 5-66 with annexes.
[29] Memorandum, *EB* No. 2022 *Rollo*, pp. 161-195.

However, assuming that the Court *En Banc* can rule on the corresponding output VAT of its disallowed zero-rated sales, HWL opines that it has enough input VAT attributable to its exempt sales that may be offset to cover the output VAT liability.

As for the CIR's argument that it is not entitled to the granted claim of ₱844,194.90, HWL argues that the findings of the Court in Division was supported by evidence which was never refuted or objected to by the CIR. It also points out that the allegations of the CIR are couched on general assertions and, thus, insufficient to overturn the assailed Decision and Resolution. Hence, based on these grounds, the Court *En Banc* should dismiss the Petition for Review filed by the CIR for lack of merit.

The Ruling of the Court En Banc

After reviewing the records and considering the arguments of both parties, the Court *En Banc* deems it proper to reverse the assailed Decision and Resolution in favor of the CIR.

The BIR Form No. 1600 without the payment confirmation receipt is insufficient to prove HWL's entitlement to the input VAT being claimed.

HWL argues that the duly filed BIR Form No. 1600 constitutes sufficient evidence to substantiate its claim for its alleged unutilized input VAT refund/TCC. HWL cites ***RR No. 8-02***,[30] and ***RR No. 16-05***,[31] to bolster its claim. Specific portions of the said RRs are hereby quoted, to wit:

> "REVENUE REGULATIONS NO. 08-02
>
> SECTION 3. Clarification of the Mode of Remittance of VAT Due from Non-residents. — Sec. 4.110-3 of RR 7-95, as amended, is hereby amended to read as follows:
>
> Sec. 4.110-3. Withholding of Creditable and Final Value-Added Tax. —
>
> xxx xxx xxx

[30] Amending Further Pertinent Provisions of Revenue Regulations No. 7-95, as amended, with respect to the Time of Filing of Quarterly VAT Returns; Contents and Submission of Quarterly Total of Monthly Sales and Purchases Per Supplier or Customer, and Providing for the Penalties and Effect of Non-Submission Thereof; and Clarifying Further the Mode of Remittance of VAT Due From Non-Residents, 13 June 2002.
[31] Consolidated Value-Added Tax Regulations of 2005, 1 September 2005.

(b) Withholding of Final VAT. — The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs), as well as private corporations, individuals, estates and trust, whether large or non-large taxpayers, shall withhold ten percent (10%) VAT with respect to the following payments:

(1) Lease or use of properties or property rights owned by non-residents;

(2) Services rendered to local insurance companies, with respect to reinsurance premiums payable to non-residents; and

(3) Other services rendered in the Philippines by non-residents.

In remitting the VAT withheld, whether creditable or final, the withholding agent shall use BIR Form No. 1600-Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld.

The **VAT withheld and paid for the non-resident recipient (remitted using BIR Form No. 1600)**, which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, **may be claimed as input tax by said VAT-registered withholding agent upon filing his own VAT Return**, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. **The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT**. xxx"

"REVENUE REGULATIONS NO. 16-05

SECTION 4.110-8. *Substantiation of Input Tax Credits*. —

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

xxx xxx xxx

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) **<u>shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor</u>**.

xxx xxx xxx

SECTION 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* —

xxx xxx xxx

(b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold ten percent (10%) VAT with respect to the following payments:

(1) Lease or use of properties or property rights owned by non-residents;

(2) Services rendered to local insurance companies, with respect to reinsurance premiums payable to non-residents; and

(3) Other services rendered in the Philippines by non-residents.

In remitting VAT withheld, the withholding agent shall use BIR Form No. 1600 Remittance Return of VAT and Other Percentage Taxes Withheld.

VAT withheld and paid for the non-resident recipient (remitted using BIR Form No. 1600), which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, may be claimed as input tax by said VAT-registered withholding agent upon filing his own VAT Return, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT. xxx"[32]

HWL heavily relies on the portion of the RRs stating that "[t]he duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT" in cases where the recipient of income is a non-resident.

The interpretation of HWL is mistaken.

A close reading of the RRs show that a taxpayer, in claiming refund/TCC for its unutilized input VAT, must prove, among other requisites, that it was able to remit or pay the VAT being claimed. This is evident in the highlighted portions of the aforementioned provisions. Hence, the portion of the RRs relied upon by the HWL should not be read in isolation but with reference to every part of the said RRs.

To the Court *En Banc*'s mind, the statement relied upon by HWL in the RRs refers to BIR Form No. 1600 which is either machine validated as to payment, or at the very least is supported by a deposit slip or payment slip

[32] Emphasis supplied.

issued by the BIR's Authorized Agent Bank ("AAB"), or payment confirmation receipt or Electronic Filing and Payment System ("eFPS") Payment Details generated by the eFPS facility of the BIR. Without this, a taxpayer will not be able to prove its entitlement to the VAT refund/credit being claimed.

This conclusion is consistent with ***Section 110 of the Tax Code***, which states:

> SEC. 110. Tax Credits. -
>
> (A) Creditable Input Tax. –
>
> (1) Any **input tax evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
> (i) For sale; or
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
> (iii) For use as supplies in the course of business; or
> (iv) For use as materials supplied in the sale of service; or
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> **<u>(b) Purchase of services on which a value-added tax has been actually paid</u>**.
>
> (2) The input tax on domestic purchase of goods or importation of goods or properties by a VAT-registered person shall be creditable:
>
> (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> (b) **To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs**.
>
> xxx xxx xxx
>
> (3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:
>
> (a) Total input tax which can be directly attributed to transactions subject to value-added tax; and
>
> (b) A ratable portion of any input tax which cannot be directly attributed to either activity.
>
> **The term "input tax" means the <u>value-added tax due from or paid by a VAT-registered person</u> in the course of his trade or business on importation of goods or local purchase of goods or services,**

> **including lease or use of property, from a VAT-registered person.** xxx"[33]

As can be gleaned from the above-quoted provision, the proof of payment of the input VAT is essential to successfully prosecute a VAT refund/credit claim, since failure to prove the positive act of paying the VAT means that there is no input VAT to speak of. Hence, the arguments raised by HWL is contrary to the mandate of the Tax Code which the Court *En Banc* cannot accede to.

The payment confirmation receipts attached to HWL's Omnibus Motion cannot be treated as evidence since the same, at the very least, were not identified by a witness.

As a rule, the court is mandated to only consider evidence which has been formally offered by the parties. The rationale behind this rule is to enable the court to know the purpose of the evidence being presented, and to allow the opposing party to examine the evidence and to object to its admissibility. A formal offer is necessary so that the court can make the proper determination on which pieces of evidence it will rely upon in rendering its decision. Furthermore, the formally offered and admitted pieces of evidence would facilitate the appellate court in rendering decisions since it is not required to review documents not previously scrutinized by the trial court.[34]

Concededly, the Supreme Court in the case of ***Heirs of Mabborang, et. al. v. Mabborang ("Mabborang")***[35] discussed an exception to the said rule, to wit:

> "Section 34, Rule 132 of the Rules of Court provides that "the court shall consider no evidence which has not been formally offered." This is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. Also, it allows opposing parties to examine the evidence and object to its admissibility. A formal offer is necessary because judges are mandated to rest their findings of facts and judgment strictly and only upon the evidence offered by the parties at trial. Consequently, review by the appellate court is facilitated for it will not be required to review documents not previously scrutinized by the trial court. Hence, strict adherence to this basic procedural rule is required, lest evidence cannot be assigned any evidentiary weight or value:

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[33] Emphasis supplied.
[34] Heirs of Mabborang, et. al. v. Mabborang, G.R. No. 182805, 22 April 2015.
[35] *Id.*

> Thus, **<u>the trial court is bound to consider only the testimonial evidence presented and exclude the documents not offered</u>**. **<u>Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence cannot in any manner be treated as evidence</u>**. Neither can such unrecognized proof be assigned any evidentiary weight and value. It must be stressed that there is a significant distinction between identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while the latter is done only when the party rests its case. The mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence. It must be emphasized that 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.
>
> **<u>In certain instances, however, this Court has relaxed the procedural rule and allowed the trial court to consider evidence not formally offered on the condition that the following requisites are present: (1) the evidence must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case</u>**."[36]

Based on the foregoing case, the court is allowed to consider pieces of evidence not formally offered if the party was able to prove that the same were ***identified by a witness*** and ***had been incorporated in the records of the case***. The court will not admit the evidence without the party proving to have satisfied both requisites.

In this case, HWL argues that the Court in Division erred in not admitting the payment confirmation receipts. It claims that the said pieces of evidence were attached to its Omnibus Motion making the same part of the records of the case which the CTA is duty bound not to ignore.

The argument of HWL lacks merit.

It is without question that the payment confirmation receipts were not formally offered into evidence. HWL merely relies on the fact that the said documents were attached to the Omnibus Motion making the same part of the records of the case. However, based on ***Mabborang***, above, the pieces of evidence, if not formally offered, may only be considered in evidence if the same were identified by the party's witness and were incorporated in the records of the case.

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[36] Emphasis supplied.

A close scrutiny of the judicial affidavits of HWL's witnesses proves that they were not able to identify the payment confirmation receipts. Hence, based on this reason, the Court in Division did not err in not considering the said documents in the rendition of the assailed Decision and Resolution.

The Court in Division did not err in denying HWL's Omnibus Motion praying for the reopening of trial.

The records show that petitioner prayed for the reopening of trial for the first time in its Omnibus Motion, filed on 6 November 2018, which was already after the Court in Division promulgated the assailed Decision on 18 October 2018.

In ***Agulto v. CA***,[37] the Supreme Court differentiated the remedy of a Motion to Reopen Trial vis-a-vis a Motion for New Trial, to wit:

> A distinction should be made between a Motion for New Trial and a Motion to Reopen Trial.
>
> A Motion for New Trial **may be filed after judgment but within the period for perfecting an appeal** (Sec. 1, Rule 37, Rules of Court).
>
> A Motion to Reopen Trial **may be presented only after either or both parties have formally offered and closed their evidence, but before judgment.** There is no specific provision in the Rules of Court for motions to reopen trial. It is albeit a recognized procedural recourse or devise, deriving validity and acceptance from long established usage. The reopening of a case for the reception of further evidence before judgment is not the granting of a new trial (Alegre vs. Reyes, 161 SCRA 226).

Considering that HWL's Omnibus Motion was filed after the promulgation of the assailed Decision, following ***Agulto***, the Court *En Banc* will treat the Omnibus Motion praying for the reopening of trial as a Motion for New Trial.

Section 1, Rule 37 of the Rules of Court provides for the grounds of a Motion for New Trial, to wit:

> "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**:

[37] G.R. No. L-52728, 17 January 1990.

> (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
>
> (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.**
>
> 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."[38]

Based on the foregoing provisions, a Motion for New Trial may only be granted if the case falls under any of the following circumstances: (a) if there is fraud, accident, mistake or excusable negligence impairing the rights of the aggrieved party; or (b) on account of newly discovered evidence.

Unfortunately, in this case, HWL failed to justify that it falls under any of the circumstances mentioned. At this instance, the Court *En Banc* echoes the assailed Resolution, to wit:

> "It is well-established that a motion to re-open the case like a motion for new trial may be granted only upon specific, well-defined grounds, set forth in the Rules. Petitioner did not mention any circumstance that would justify the grant of re-opening a case for reception of additional evidence. Neither did petitioner attach any document required under the Rules of Court that is inherent in a motion for new trial.
>
> xxx xxx xxx
>
> Based on the foregoing provisions of the Rules of Court, petitioner failed to comply with the requirements for establishing its cause that would enable this Court to determine the merits of its motion to re-open the case. Besides, the payment confirmation receipts do not constitute newly-discovered evidence. Petitioner should have presented these together with BIR Form 1600."

HWL justifies its prayer for new trial on the basis of "paramount interest of justice", citing the case of ***Cabarles v. Hon. Maceda***.[39] However, the said jurisprudence is not applicable in this case since the same speaks of a Motion for Reopening of Trial and not a Motion for New Trial.

As discussed above, a Motion for Reopening of Trial is a procedural remedy not found under the Rules of Civil Procedure but may be granted by the court in certain instances to promote the interest of justice. This is not the

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[38] Emphasis supplied.
[39] G.R. No. 161330, 20 February 2007.

case with a Motion for New Trial which is granted based on two fixed grounds provided under ***Section 1, Rule 37 of the Rules of Court***.

Hence, given the aforementioned grounds, the Court *En Banc* sees no cogent reason to grant HWL a new trial.

<u>HWL failed to prove that the services it rendered to RE developers qualify for VAT zero-rating.</u>

Even assuming that the Court *En Banc* grants the Petition for Review of HWL and considers the payment confirmation receipts in resolving the instant case, the instant Petition would still fail since HWL failed to prove with sufficient evidence that the services it rendered to EDC and MGI qualify as VAT zero-rating.

In this case, HWL alleges that its sale of services to EDC and MGI are VAT zero-rated invoking ***Section 15(g), Chapter VII of RA No. 9513***[40] as implemented by ***Part III, Rule 5, Section 13(G)(b) of Department Circular No. DC2009-05-0008 (hereinafter referred to as "IRR")***[41] issued by the Department of Energy ("DOE") both are hereby quoted, to wit:

> "Section 15. *Incentives for Renewable Energy Projects and Activities*. – RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
>
> xxx xxx xxx
>
> (g) Zero Percent Value-Added Tax Rate. – The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.
>
> **All RE Developers shall be <u>entitled to zero-rated value added tax</u> on its <u>purchases</u> of local supply of goods, properties and <u>services</u> <u>needed for the development, construction and installation of its plant facilities</u>.**

[40] An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes (Renewable Energy Act of 2008), 16 December 2008.
[41] Rules and Regulations Implementing Republic Act No. 9513, 25 May 2009.

This provision shall **also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power,** including but not limited to the services performed by subcontractors and/or contractors."[42]

PART III. INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES

RULE 5. GENERAL INCENTIVES AND PRIVILEGES FOR RENEWABLE ENERGY DEVELOPMENT

SEC.13. Fiscal Incentives for Renewable Energy Projects and Activities

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

xxx xxx xxx

G. *Zero Percent Value-Added Tax Rate*

The **following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT)**, pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

xxx xxx xxx

(b) Purchase of local goods, properties and services **needed for the development, construction, and installation of the plant facilities** of RE Developers; and

(c) **Whole process of exploration and development of RE sources up to its conversion into power,** including, but not limited to, the services performed by subcontractors and/or contractors.

Based on the foregoing provisions, all RE Developers are entitled to VAT zero-rating on its purchases of local goods, properties and services needed for the development, construction and installation of its plant facilities. Furthermore, the law declares that the VAT zero-rating privilege applies to the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to the services performed by subcontractors and/or contractors.

In order for a RE developer to enjoy the aforementioned incentives, ***Section 26, Chapter VII of RA No. 9513*** imposes on the RE developer the obligation to secure a certification from the DOE, and other requirements to be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives mentioned in RA No. 9513.

[42] Emphasis supplied.

These additional documentary requirements are found under ***Part III, Rule 5, Section 18 of the IRR***, to wit:

> "SECTION 18. Conditions for Availment of Incentives and Other Privileges. —
>
> A. Registration/Accreditation with the DOE
>
> **For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the DOE, through the Renewable Energy Management Bureau (REMB). The following certifications shall be issued:**
>
> (1) **DOE Certificate of Registration — issued to an RE Developer holding a valid RE Service/Operating Contract.**
>
> For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.
>
> The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.
>
> Any investment added to existing RE projects shall be subject to prior approval by the DOE.
>
> (2) DOE Certificate of Accreditation — issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.
>
> **B. Registration with the Board of Investments (BOI)**
>
> The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.
>
> **To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.**
>
> The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.
>
> **C. Certificate of Endorsement by the DOE**
>
> **RE Developers**, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives

> provided for in the Act only after securing a **<u>Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis</u>**.
>
> The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; Provided, That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.
>
> xxx xxx xxx
>
> RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment who comply with the above requirements shall be deemed in good standing and shall therefore be qualified to avail of the incentives as provided for in the Act and this IRR.

Thus, in order for a sale transaction to an RE Developer qualify for VAT zero-rating as contemplated under RA No. 9513 and the IRR, the taxpayer must be able to present the following documents of the RE developer:

1. DOE Certificate of Registration;
2. Registration with the Board of Investments ("BOI"); and
3. Certificate of Endorsement by the DOE.

The IRR is clear that the aforementioned documents must all be shown in order for the RE Developer's purchases of local goods, properties, and services needed for the development, construction, and installation of its plant facilities be treated as VAT zero-rated.

Here, HWL was only able to present in evidence EDC and MGI's DOE Certificate of Registration.[43] However, there is no showing that EDC and MGI were both registered with the BOI and were issued Certificates of Endorsement by the DOE. On this score, HWL failed to prove that the services it rendered to EDC and MGI qualify for VAT zero-rating.

Having failed to prove that its sales of services are VAT zero-rated the instant VAT refund/credit claim must be denied.

[43] Exhibits "P-14" to "P-19", Court in Division Docket Vol. I, pp. 509-514.

<u>The Court *En Banc* cannot impose VAT on HWL's sale of goods and services that were not proven to have qualified for VAT zero-rating.</u>

On the other hand, the CIR insists for the Court *En Banc* to subject HWL's sale of services, that do not qualify as VAT zero-rated, to twelve percent (12%) output VAT.

The contention is without merit.

As pointed-out in the case of ***SMI-ED Philippines Technology, Inc. v. CIR***,[44] the question of tax deficiency is distinct and unrelated to the question of a taxpayer's entitlement to refund. "Tax deficiencies should be subject to assessment procedures and the rules of prescription. The court cannot be expected to perform the BIR's duties whenever it fails to do so either through neglect or oversight. Neither can court processes be used as a tool to circumvent laws protecting the rights of taxpayers."

To adopt the view of the CIR will be tantamount to the Court *En Banc* making an assessment against HWL, which is clearly beyond its power as mandated under the Tax Code and jurisprudence. Basic is the rule that the power to assess a taxpayer strictly belongs to the CIR and not to the courts. The case of ***CIR v. Toledo Power Co.***,[45] illustrates this point, to wit:

> **"Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT**, especially if the period to assess had already prescribed. **As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period.**"[46]

As for the allegation of the CIR that HWL failed to comply with the invoicing requirements under the Tax Code, the Court *En Banc* deems it unnecessary to discuss this issue considering the ruling of the Court *En Banc* finding that HWL is not entitled to the VAT refund/TCC being claimed.

This Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption, and not only is the law construed in *strictissimi juris* against the taxpayer, but the

[44] G.R. No. 175410, 12 November 2014.
[45] Commissioner of Internal Revenue v. Toledo Power Company, G.R. Nos. 196415 & 196451, 2 December 2015.
[46] Emphasis supplied.

pieces of evidence presented entitling a taxpayer to an exemption is likewise *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[47]

In view of petitioner's failure to prove, to the satisfaction of the Court *En Banc*, its entitlement to the VAT refund/credit claim prayed for, the same denies the instant Petition for Review filed by HWL and reverses the assailed Decision and Resolution promulgated by the Court in Division.

WHEREFORE, premises considered, the Petition for Review filed by Halliburton Worldwide Limited – Philippine Branch, docketed as CTA *EB* Case No. 2022 is hereby **DENIED** for lack of merit.

Meanwhile the Petition for Review filed by the Commissioner of Internal Revenue, docketed as CTA *EB* Case No. 2042, is hereby **GRANTED.**

Accordingly, the Decision, promulgated on 18 October 2018, and the Resolution, dated 14 February 2019, by the CTA Special Second Division are hereby **REVERSED** and **SET ASIDE** for Halliburton Worldwide Limited – Philippine Branch's failure to prove its entitlement to the VAT refund or Tax Credit Certificate being claimed.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[47] Coco-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222428, 19 February 2018

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

ON LEAVE

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

C E R T I F I C A T I O N

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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice