REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1649** (CTA Case Nos. 8802 & 8842)
- versus -	
FILMINERA RESOURCES CORPORATION, *Respondent.*	

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FILMINERA RESOURCES CORPORATION, *Petitioner,*	**CTA EB No. 1653** (CTA Case Nos. 8802 & 8842)
	Present:
- versus -	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAR 19 2018 2:19 p.m.

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DECISION

***DEL ROSARIO, P.J.*:**

Before the Court *En Banc* are the consolidated Petitions for Review filed by the Commissioner of Internal Revenue and Filminera

Resources Corporation, docketed as CTA *En Banc* Nos. 1649 and 1653, respectively. The Petitions for Review assail the Decision dated January 11, 2017 and Resolution dated April 19, 2017 issued by the Third Division of this Court in CTA Case Nos. 8802 and 8842 entitled "*Filminera Resources Corporation vs. Commissioner of Internal Revenue*", which ordered the Commissioner of Internal Revenue to issue a Tax Credit Certificate in favor of Filminera Resources Corporation in the reduced amount of SIXTY FIVE MILLION FOUR HUNDRED FIFTY FIVE THOUSAND FIVE HUNDRED TWENTY TWO PESOS AND FIFTY EIGHT CENTAVOS (₱65,455,522.58) representing its unutilized excess input VAT attributable to its zero-rated sales for the Second (2nd) and Third (3rd) Quarters of Fiscal Year ("FY") ending June 30, 2012.

The dispositive portion of the assailed Decision and Resolution are as follows:

Decision dated January 11, 2017:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Filminera Resources Corporation in the reduced amount of **SIXTY FIVE MILLION FOUR HUNDRED FIFTY-FIVE THOUSAND FIVE HUNDRED TWENTY-TWO AND 58/100 PESOS (PHP65,455,522.58).**
>
> **SO ORDERED.**"

Resolution dated April 19, 2017:

> "**WHEREFORE**, petitioner's Omnibus Motion (For Partial Reconsideration and to Reopen Trial) and respondent's Motion for Reconsideration (Re: Decision Promulgated on January 11, 2017) are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Filminera Resources Corporation ("FRC") is a domestic corporation duly organized and existing under Philippine laws, with principal office at 3/F, Corinthian Plaza Condominium, 121 Paseo de Roxas, Makati City.

Its primary purpose is to carry on the business of "operating coal mines, and of prospecting, exploration and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all other kinds of ores, metals, and minerals, hydrocarbons, acids, and chemicals, and in the products and by-products of every kind and description and by whatsoever process, the same can be or may hereafter be produced; to purchase, lease, option, locate, or otherwise acquire, own, exchange, sell, or otherwise dispose of pledge, mortgage, deed in trust, hypothecate, and deal in mines, mining claims, mineral lands, coal lands, timber land, water and water rights, and other property both real and personal."[1]

The Commissioner of Internal Revenue ("CIR") is empowered to perform the duties of his office, including the duty to act upon claims for refund or issuance of tax credit certificate as provided by law, with office address at 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

THE FACTS

On July 5, 2007, FRC and Philippine Gold Processing and Refining Corp. ("PGPRC"), a corporation duly organized under Philippine laws, entered into an Ore Sales and Purchase Agreement, whereby FRC will exclusively sell its Pre-Production Ore and ROM Ore to PGPRC.[3]

FRC filed its Quarterly VAT Returns, detailed as follows:

QUARTER	PERIOD COVERED	DATE FILED	AMENDED	REFUND/ TCC CLAIMED	VAT PAYABLE/ (OVERPAYMENT)
Second[4]	Oct-Dec-11	25-Jan-12	No	Php -	Php (475,635,781.01)
Second[5]	Oct-Dec-11	28-Aug-12	Yes	58,518,649.42	(56,377,725.08)
Third[6]	Jan-Mar-12	24-Apr-12	No	67,283,137.43	(56,455,688.13)
Fourth[7]	Apr-Jun-12	25-Jul-12	Yes	76,333,107.78	(56,366,469.78)

On November 14, 2013, FRC filed its Application for Tax Credit/Refund, particularly for a TCC, covering the period October 1,

[1] Petition for Review, CTA EB No. 1653 Docket, pp. 7-8.
[2] Pre-Trial Order, CTA Case Nos. 8802 & 8842 Docket, pp. 1354-1355.
[3] Exhibit "P-4", CTA Case No. 8802 Docket, pp. 669-692.
[4] Exhibit "P-11", CTA Case No. 8802 Docket, pp. 1861-1867, with annexes.
[5] Exhibit "P-12", CTA Case No. 8802 Docket, pp. 1868-1872, with annexes.
[6] Exhibit "P-841", CTA Case No. 8802 Docket, pp. 1890-1893, with annexes.
[7] BIR Records, CTA Case No. 8842 Docket, pp. 114-119, with annexes.

2011 to December 31, 2011 (Second Quarter of FY 2012) in the amount of ₱58,518,649.42.[8]

On January 30, 2014, BIR received a Letter from FRC applying for a refund, particularly for a TCC, covering the period January 1, 2012 to March 31, 2012 (Third Quarter of FY 2012) in the amount of ₱67,283,137.43.[9]

Due to CIR's inaction on FRC's claims for refund, FRC filed two (2) separate Petitions for Review with the Court of Tax Appeals ("CTA"), docketed as follows:

1. **CTA Case No. 8802** filed on April 14, 2014, covering the Second Quarter of FY 2012;[10] and

2. **CTA Case No. 8842** filed on June 26, 2014, covering the Third Quarter of FY 2012.[11]

Upon motion of FRC, the two Petitions for Review were subsequently consolidated pursuant to the Court's Resolution dated November 24, 2014.[12]

After trial and submission of the required pleadings, the case was submitted for decision on March 15, 2016.[13]

As aforestated, the Court in Division rendered its assailed Decision on January 11, 2017, partially granting the consolidated Petitions for Review and ordering the CIR to issue a tax credit certificate (TCC) in favor of FRC in the amount of ₱65,455,522.58 representing its unutilized excess input VAT attributable to its zero-rated sales for the second and third quarters of FY ending June 30, 2012.

The Court in Division found that FRC is entitled to the issuance of a TCC, albeit at a reduced amount. The Court in Division stated that upon scrutiny of the supporting invoices and summaries of sales transactions, FRC's declared zero-rated sales/receipts in the amount of ₱1,338,053,276.08 is comprised of FRC's ore sales to PGPRC in the amount of ₱1,337,183,276.08 and revenues from lease of land to

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[8] Exhibit "P-8", CTA Case No. 8802 Docket, p. 746.
[9] BIR Records, CTA Case No. 8842, p. 154.
[10] CTA Case No. 8802 Docket, pp. 14-563.
[11] CTA Case No. 8842 Docket, pp. 6-810.
[12] CTA Case No. 8802 Docket, p. 1297.
[13] CTA Case No. 8802 Docket, p. 1983.

PGPRC in the amount of ₱870,000.00. The amount of ₱870,000.00 derived from lease of land to PGPRC cannot be considered as zero-rated export sales under Section 106(A)(2)(a) of the NIRC of 1997, as amended, and Section 4.106-5(a) of RR No. 16-05 and therefore should be disallowed.

Upon review of the ICPA Report, together with FRC's supporting documents, the Court in Division also found that certain input taxes should be disallowed for not being properly substantiated by VAT invoices or Official Receipts ("OR"), in accordance with Sections 110(A) and 113(A)(B) of the NIRC of 1997, as amended, as implemented by Sections 4.110-8 and 4.113-1 of RR No. 16-2005.

The Court in Division held that FRC's Quarterly VAT Returns for the subject periods of claim showed that it had no output tax liabilities against which the claimed input VAT may be applied or credited. Moreover, the claimed input VAT were not carried-over by FRC in the succeeding quarters since they were deducted as "VAT Refund/TCC claimed" from the total available input taxes in its Second and Third Quarterly VAT Returns for FY 2012.

In sum, the Court in Division ruled that FRC was entitled only to the properly substantiated amounts of ₱44,241,255.30 and ₱21,214,297.28 or in the total amount of ₱65,455,522.58.

On February 3, 2017, FRC filed an "Omnibus Motion (For Partial Reconsideration and to Reopen Trial)"; and on February 6, 2017, CIR filed his "Motion for Reconsideration (Re: Decision Promulgated On January 11, 2017)."

In a Resolution dated April 19, 2017, the Court in Division denied both motions for lack of merit

On May 9, 2017, CIR filed a "Motion for Extension of Time to File Petition for Review" praying for an additional fifteen (15) days from May 9, 2017 or until May 24, 2017 to file the Petition for Review.[14] CIR's motion was granted by the Court in a Minute Resolution dated May 12, 2017.[15]

On May 18, 2017, FRC filed a "Motion for Extension of Time to File Petition for Review" praying for an additional fifteen (15) days from

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[14] CTA EB No. 1649 Docket, pp. 1-4.
[15] CTA EB No. 1649 Docket, p. 5.

May 18, 2017 or until June 2, 2017 to file its Petition for Review.[16] FRC's motion was granted by the Court in a Minute Resolution dated May 22, 2017.[17]

On May 24, 2017, CIR filed the present "Petition for Review" before the Court *En Banc*, which was docketed as CTA EB No. 1649.[18]

On June 2, 2017, FRC filed the present "Petition for Review" before the Court *En Banc*, which was docketed as CTA EB No. 1653.[19]

CTA EB Nos. 1649 and 1653 were consolidated pursuant to the Court's Minute Resolution dated June 5, 2017.[20]

On July 21, 2017, FRC filed its "Comment (Re: Commissioner of Internal Revenue's Petition for Review dated May 22, 2017").[21]

However, as per Records Verification dated August 2, 2017, CIR failed to file his comment to FRC's Petition for Review.[22]

Both parties were ordered to submit their respective memoranda in the Court *En Banc*'s Resolution dated August 15, 2017.[23]

FRC filed his "Memorandum" through registered mail on October 17, 2017[24] and CIR filed his "Memorandum" on October 30, 2017.[25]

The case was submitted for decision on November 23, 2017,[26] hence, this decision.

FRC'S ARGUMENTS

FRC claims that the Court in Division erred in disallowing a portion of the refund for failure to comply with the invoicing requirements of the Tax Code. FRC insists that the supplier's failure to indicate the nature of service in the ORs does not mitigate the fact that

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[16] CTA EB No. 1653 Docket, pp. 1-5.
[17] CTA EB No. 1653 Docket, pp. 6.
[18] CTA EB No. 1649 Docket, pp. 6-47.
[19] CTA EB No. 1653 Docket, pp. 7-62.
[20] CTA EB No. 1649 Docket, p. 48.
[21] CTA EB No. 1649 Docket, pp. 52-62.
[22] CTA EB No. 1649 Docket, p. 63.
[23] CTA EB No. 1649 Docket, pp. 65-67.
[24] CTA EB No. 1649 Docket, pp. 77-108, 110-139.
[25] CTA EB No. 1649 Docket, pp. 140-144.
[26] Resolution dated November 23, 2017, CTA EB No. 1649 Docket, pp. 146-147.

it paid input VAT on its purchases. Moreover, the lack of signature of the supplier's authorized representative in the ORs does not invalidate the ORs nor does the error of FRC's suppliers in issuing a TIN-V OR invalidate FRC's claim for refund of excess input VAT. In sum, FRC maintains that it should not be penalized for its supplier's errors and non-compliance with invoicing requirements.

FRC also alleges that the corresponding input VAT on the purchase of service from Bradley Drilling Incorporated supported by OR No. 1590 should be allowed, considering that a readable copy was attached to its Omnibus Motion filed by registered mail on February 3, 2017.

FRC further claims that the Court in Division erred in denying its motion to re-open trial as it contradicts the principle that the ascertainment of truth takes precedence over strict application of procedural rules. Lastly, FRC asserts that it submitted complete documents in support of its administrative claim for refund contrary to the claim of the CIR in his Petition for Review.

CIR'S ARGUMENTS

CIR counters that FRC failed to submit relevant documents in the administrative level. Hence, FRC's administrative claim for refund should be considered as pro-forma or as if it was not filed at all pursuant to Revenue Memorandum Order No. 53-98.

CIR further argues that the determination of the amount of tax credit to be issued should be based on the supporting documents submitted by FRC, together with its application for refund; and that only the documents submitted during the filing of FRC's application for tax refund merits consideration by the Court pursuant to the principle that matters not preliminary raised in the administrative level cannot be raised for the first time upon appeal.

ISSUES

The pivotal issues involved in the present controversy revolve on:

1. Whether the Court in Division erred in partially granting FRC's claim and ordering CIR to issue a Tax Credit Certificate in favor of FRC in the amount of Sixty Five Million Four Hundred Fifty

Five Thousand Five Hundred Twenty Two Pesos and Fifty Eight Centavos (₱65,455,522.58), representing its unutilized excess input VAT attributable to its zero-rated sales for the Second (2nd) and Third (3rd) Quarters of FY ending June 30, 2012.

2. Whether the Court in Division erred in denying FRC's Motion to Re-Open Trial to allow FRC to present supplemental evidence for purposes of complying with the Court in Division's documentary requirements.

RULING OF THE COURT *EN BANC*

Timeliness of the Petitions for Review

At the outset, the Court *En Banc* shall look into the timeliness of the parties' respective Petitions for Review in order to determine if the Court *En Banc* has acquired jurisdiction to entertain the same.

Sections 3 and 4, Rule 8 of the Revised Rules of the CTA ("RRCTA") provides:

> **"RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> **SEC. 3.** *Who may appeal; period to file petition. –*
>
> xxx xxx xxx
>
> (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 <u>within fifteen days from receipt of a copy of the questioned decision or resolution</u>.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs **<u>before the expiration of the reglementary period herein fixed</u>, the Court may grant an additional period not exceeding fifteen days** from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)
>
> xxx xxx xxx
>
> **SEC. 4.** *Where to appeal; mode of appeal. –*

xxx xxx xxx

> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal." (Emphases supplied)

Based on the foregoing provisions, a party litigant may appeal the Court in Division's Resolution on a Motion for Reconsideration by filing a Petition for Review with the Court *En Banc* **within fifteen (15) days from receipt of a copy of the questioned resolution**.

The Court *En Banc*, however, may grant an additional period not exceeding fifteen (15) days from the expiration of the original period, **provided the party files the proper motion before the expiration of the original period to file the said Petition for Review.**

Records reveal that CIR received the assailed Resolution on **April 24, 2017**. Therefore, the CIR had until **May 9, 2017** to file the Petition for Review. On May 9, 2017, CIR filed a "Motion for Extension of Time to File Petition for Review" praying for an additional fifteen (15) days from May 9, 2017 or until **May 24, 2017** to file the Petition for Review.[27] CIR's motion was granted by the Court in a Minute Resolution dated May 12, 2017.[28]

On **May 24, 2017**, CIR *timely* filed the present "Petition for Review" before the Court *En Banc*, which was docketed as CTA EB No. 1649.[29]

On the other hand, a close perusal of the records shows that FRC received the assailed Resolution on **May 2, 2017**, and ***not on May 3, 2017*** **as alleged in its "Motion for Extension of Time to File Petition for Review" and its "Petition for Review."** For ease of reference, the stamp received for Notice of Resolution pertaining to the assailed Resolution of the Court in Division[30] is reproduced below:

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[27] CTA EB No. 1649 Docket, pp. 1-4.
[28] CTA EB No. 1649 Docket, p. 5.
[29] CTA EB No. 1649 Docket, pp. 6-47.
[30] CTA Case No. 8802 Docket, p. 2213.

14-000131-0067

CTA Form No. 8

SALVADOR LLANILLO & BERNARDO
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DATE: 5/2/17
TIME: 9:22pm
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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CTA CASE NOS. 8802 & 8842

OFFICE OF THE SOLICITOR GENERAL
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BY:

FILMINERA RESOURCES CORPORATION,
Petitioner,

\- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

BUREAU OF INTERNAL REVENUE
BIR-NOS-LITIGATION DIVISION
RECEIVED
APR 24 2017
BY:

The Solicitor General
Office of the Solicitor General
134 Amorsolo St., Legaspi Village
Makati City

Atty. Cornelio Chito M. Dela Peña
Atty. Maria Haidee Lourdes C. Organo
Bureau of Internal Revenue
Litigation Division, Room 703
BIR National Office Building
BIR Road, Diliman, Quezon City

Atty. Jerome Joseph B. Amaldo
Atty. Maricon Z. Maralit-Soriano
Atty. Iris Katrine M. Exchaure
Salvador Llanillo & Bernardo
Units 815-816, 8/F, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue, 1226 Makati City

GREETINGS:

You are notified by these presents that on the 19th day of April 2017, a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, April 20, 2017.

Atty. Amelia Dolores B. Castillo-Esquivel
Executive Clerk of Court II

Having received the assailed Resolution on May 2, 2017, FRC had fifteen (15) days therefrom or until **May 17, 2017** to file the Petition for Review or a motion for extension of time to file the same.

FRC filed its "Motion for Extension of Time to File Petition for Review", however, only on **May 18, 2017**, **or one (1) day beyond the prescribed period of fifteen (15) days provided under the RRCTA.** In said motion, FRC prayed for an additional fifteen (15) days from May 18, 2017 or until June 2, 2017 to file its Petition for Review.[31] The Court granted FRC's motion in a Minute Resolution dated May 22, 2017, **subject to the condition that the said motion for extension was filed on time**.[32]

Considering FRC filed its motion for extension beyond the prescribed period, and that FRC eventually filed its Petition for Review before the Court *En Banc*, docketed as CTA EB No. 1653[33], only on **June 2, 2017**, said **Petition for Review was indeed belatedly filed.**

In *Apex Mining Co., Inc. vs. Commissioner of Internal Revenue and Court of Appeals*,[34] the Supreme Court emphasized that the right to file an appeal granted to party litigants is statutory and strict compliance therewith is not only mandatory, but jurisdictional:

> "To stress, **the right to appeal is merely statutory and one who seeks to avail of it must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays.** Moreover, the **perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory.** And, just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party has the correlative right to enjoy the finality of a decision in his favor." (Boldfacing supplied)

While the assailed Decision and Resolution of the Court in Division have become final and executory with regard to FRC, the Court *En Banc* is deprived of its jurisdiction to take cognizance of FRC's Petition for Review; hence, it has no other recourse but to dismiss the same.

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[31] CTA EB No. 1653 Docket, pp. 1-5.
[32] CTA EB No. 1653 Docket, p. 6.
[33] CTA EB No. 1653 Docket, pp. 7-62.
[34] G.R. No. 122472, October 20, 2005.

CIR's Petition is devoid of merit

CIR claims that FRC failed to submit relevant documents thereby making its administrative claim pro-forma, or as if no administrative claim was filed at all pursuant to RMO No. 53-98.

CIR's contention must fail.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, [35] the Supreme Court, citing *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation),*[36] reiterated that RMO 53-98 does not require the submission of each and every document enumerated in the "Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities" as the taxpayer is only required to submit those which are applicable to it:

> "As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present **upon audit of their tax liabilities**. **Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are *actually* complete to support a claim for tax credit or refund of excess unutilized excess VAT**. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*:
>
> > **'The CIR's reliance on RMO 53-98 is misplaced.** There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT**. The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities** x x x.' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'

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[35] G.R. No. 207112, December 8, 2015.
[36] G.R. No. 205055, July 18, 2014.

> Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition.'

> As explained earlier and underlined in *Team Sual* above, **taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required.** Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.

> Indeed, **a taxpayer's failure [to comply] with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT**. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court." (Emphases supplied)

In this case, record is bereft of anything that would show that CIR sent a written notice requiring respondent to submit additional documents. Truth to tell, the CIR cannot validly rely on non-submission of documents as basis to deny the claimed refund when he himself is to blame in not informing FRC about the need to submit additional documents in the administrative level. Otherwise stated, FRC's failure to submit all the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT.

Anent CIR's claim that the determination of the amount of tax credit to be issued should be based on the supporting documents submitted in the application for refund, and that only the documents submitted during the filing of respondent's application for refund merits consideration by the Court, the same is bereft of merit. *Pilipinas Total* emphasized that when an administrative claim was not acted upon by the CIR, there is actually no decision for the CTA to review on appeal. Thus, the taxpayer - - as FRC herein - - may prove every minute aspect of its claim by presenting and offering its evidence before the CTA which, in turn, may consider and give credence thereto:

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> "Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, **the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim**." (Emphases supplied)

All told, the Court *En Banc* finds no cogent reason to reverse or set aside the assailed Decision and Resolution.

WHEREFORE, in light of the foregoing, FRC's "Petition for Review" filed on June 2, 2017 is hereby **DISMISSED** for lack of jurisdiction while CIR's "Petition for Review" filed on May 24, 2017 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated January 11, 2017 and Resolution dated April 19, 2017 issued by the CTA Third Division in CTA Case Nos. 8802 and 8842 are **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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