REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NOKIA (PHILIPPINES), INC., Petitioner,	**CTA EB NO. 1824** (CTA Case No. 8876)
- versus -	Present: Del Rosario, *PJ*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 16 2019 3:09 p.m.

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D E C I S I O N

CASTAÑEDA, JR., *J.*:

This Petition for Review seeks to reverse and set aside the Decision[1] dated October 10, 2017 and the Resolution[2] dated March 19, 2018, respectively, of the CTA Third (3rd) Division.

For easy reference, the dispositive portion of the assailed Decision reads:

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1 Penned by Associate Justice Esperanza R. Fabon-Victorino, with retired Associate Justice Lovell R. Bautista and Associate Justice Ma. Belen M. Ringpis-Liban concurring, Court in Division Docket, pp. 799-814.
2 Court in Division Docket, pp. 833-835.

"**WHEREFORE**, the Petition for Review dated August 20, 2014 filed by Nokia (Philippines), Inc. is **DENIED**, for insufficiency of evidence.

SO ORDERED."[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

"**WHEREFORE**, petitioner's Motion for Reconsideration dated October 27, 2017 is **DENIED**, for lack of merit.

SO ORDERED."[4]

THE FACTS

The following are the facts as found by the Court in Division:

"Petitioner is a domestic corporation engaged in the business of providing marketing support and other services to its parent company, Nokia Corporation (Finland). Petitioner's principal office is at the 40th Floor, Philamlife Tower, 8767 Paseo de Roxas Street, Salcedo Village, Makati City.

On the other hand, respondent is the Commissioner of Internal Revenue (CIR) vested with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue (BIR). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for TY 2012 on the following dates:

Taxable Quarter	VAT Return	Date Filed
1st	Original	April 24, 2012
	Amended	May 4, 2012
2nd	Original	July 24, 2012
3rd	Original	October 25, 2012
4th	Original	January 25, 2013

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3 See Note 1, p. 813.
4 See Note 2, p. 835.

	Amended	November 13, 2013

On March 27, 2014, petitioner filed its administrative claim for refund or issuance of TCC for its alleged unutilized/unclaimed excess input VAT for the four quarters of TY 2012.

On August 22, 2014, petitioner filed before the Court the instant Petition for Review.

On October 27, 2014, respondent filed his Answer, invoking the tenet that tax refunds are construed against the claimant since taxes are essential to the existence of the government. Therefore, petitioner has the burden of proof to establish not only entitlement to the refund sought, but must substantiate its claim by sufficient documentary evidence and compliance with the procedural requirements under existing laws, regulations, and jurisprudence.

A pre-trial conference was conducted, thereafter a Pre-Trial Order was issued terminating the pre-trial proceeding.

To substantiate its allegation in the Petition for Review, petitioner presented Attorney J. Carlito M. Montenegro, Richard A. Baliola, and the Court-commissioned Independent Certified Public Accountant (ICPA) Glenn Ian D. Villanueva.

Attorney J. Carlito M. Montenegro is petitioner's external counsel for tax matters. As such, he filed an administrative claim for refund/TCC with the BIR on March 27, 2014 for petitioner's unutilized input VAT for TY 2012 in the amount of P24,937,342.42. Attached to the Petition as supporting documents were petitioner's four Quarterly VAT Returns and amendments for the pertinent year, Summary List of Sales, Summary List of Domestic Purchases, and Summary List of Importations. The Quarterly VAT Returns were filed through the E-filing system of the BIR, hence had no receiving stamps. The 120 days pursuant to Section 112 of the NIRC for respondent to act on the claim lapsed without any action on the part of respondent prompting petitioner to elevate its claim to the Court.

While petitioner could have credited its input VAT credits for TY 2012 against its output VAT liability for the subsequent quarters, it opted to file the instant claim for refund. This intention is apparent as petitioner's input VAT credits remained unutilized as shown in its Quarterly VAT Returns and amendments thereof. In petitioner's Amended 4th Quarter VAT Return for TY 2013, the input VAT subject of the claim for refund was removed or deducted from the inventory of input tax available.

Petitioner's revenue and tax analyst **Richard A. Baliola** testified that he helps in the preparation and filing of tax returns and payment of taxes with the BIR for petitioner and ensures that the latter is compliant with all pertinent accounting and tax laws and regulations.

He assisted in the preparation and compilation of the documents necessary for the filing of the administrative and judicial claims for the subject refund.

That petitioner has excess and unutilized input VAT for TY 2012 as shown in its Quarterly VAT Returns for the said TY. The said input VAT was not credited against any output VAT as indicated in petitioner's Quarterly VAT Returns for the succeeding TY 2013. The 4th Quarter VAT Return for 2013 also removed or deducted from the inventory of input tax available the amount of input tax subject of refund.

Petitioner had zero-rated sales during the TY 2012 because it rendered marketing and support services to Nokia Corporation (Finland), and Nokia Sales International Oy pursuant to existing service contracts, for which services petitioner was paid by the two companies. The services rendered were performed entirely in the Philippines.

Both companies are located and domiciled in Finland, as evidenced by documents from the pertinent government authority of the said country. However, the documents pertaining to Nokia Sales International Oy bear the petitioner's new name Microsoft Mobile Sales International Oy. However, the witness Baliola admitted that he is unaware if the two foreign corporations conduct business in the Philippines or if they have customers in the Philippines.

The Court-commissioned ICPA, **Glenn Ian D. Villanueva** testified that he evaluated and audited petitioner's documents pertaining to its claim for refund of unutilized input VAT from domestic purchases and importations of goods attributable to zero-rated sales for TY 2012. Thereafter, he submitted to the Court a Final Report of his findings. His audit shows that the amount of the claim substantiated by supporting documents for TY 2012 and allocable to zero-rated sales is P2,146,741.43. However, if petitioner can present further authentication of the documents pertaining to its importation, the additional amount of input taxes that can be claimed for refund will be P6,136,383.47 for a total of P8,283,124.90.

After Formal Offer of Evidences (sic), petitioner rested its case.

On the other hand, counsel for respondent manifested that he has no evidence to present. Hence, the case was submitted for decision."[5]

On October 10, 2017 and March 19, 2018, the Court in Division issued the assailed Decision and Resolution, respectively.

On April 6, 2018, petitioner filed the instant Petition for Review.[6] On June 21, 2018, respondent filed his Comment/Opposition.[7] On July 6, 2018, the Court *En Banc* issued a Resolution[8] requiring the parties to submit their memoranda.

On August 14, 2018, respondent filed a Manifestation[9] stating that he adopts his Comment as his memorandum. Likewise, on September 25, 2018, petitioner filed a Manifestation[10] stating that it adopts its arguments in its Petition as its memorandum.

On October 24, 2018,[11] the Court *En Banc* issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUE

After considering the issues presented by the parties, the same can be simplified into whether petitioner was able to prove that it is a VAT-registered entity and hence, entitled to its claim for refund or tax credit.

THE RULING

The Court *En Banc* denies the instant Petition for Review.

Petitioner failed to prove that it is a VAT-registered entity gc

5 See Note 1, pp. 799-803.
6 Court *En Banc* Docket, pp. 1-15.
7 Court *En Banc* Docket, pp. 51-56.
8 Court *En Banc* Docket, pp. 59-60.
9 Court *En Banc* Docket, pp. 61-62.
10 Court *En Banc* Docket, pp. 66-67.
11 Court *En Banc* Docket, pp. 69-70.

In ruling against petitioner, the Court in Division succinctly found that:

> "Per the foregoing provisions and prevailing jurisprudence, to be entitled to a TCC or refund of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be present:
>
> (1) The taxpayer is VAT-registered;
> (2) The taxpayer is engaged in zero-rated or effectively zero-rated sales;
> (3) The input taxes are due or paid;
> (4) The input taxes are not transitional input taxes;
> (5) The input taxes have not been applied against output taxes during and in the succeeding quarters;
> (6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
> (7) For zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
> (8) Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
> (9) The claim is filed within two years after the close of the taxable quarter when such sales were made.
>
> xxx xxx xxx
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> To prove that it is a VAT-registered taxpayer, petitioner offered in evidence a certified true copy of BIR Certificate of Registration. However, since petitioner failed to have it identified by any of its witnesses as indicated in the Resolution dated March 7, 2016, it was denied admission.
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> Moreover, the said BIR Certificate of Registration was never testified to by any of petitioner's witnesses. The Judicial Affidavits of Attorney J. Carlito M. Montenegro, Richard A. Baliola, and ICPA Glenn Ian D. Villanueva, did not mention or refer to the said BIR Certificate of Registration in their respective declarations. Not even a hint was volunteered by the named witnesses to indicate that petitioner is a VAT-registered taxpayer.

The said Exhibit P-34 does not even appear in the Minutes of the hearing during which petitioner's witnesses were presented, to wit: on May 18, 2015 for Attorney Montenegro, on June 22, 2015 for Richard A. Baliola, and on September 21, 2015 for the ICPA. It was not listed as among the documents identified by the witnesses during their presentation.

Worse, petitioner failed to rectify this flaw effectively allowing the ruling to lapse into finality. The Rules of Court is pregnant with remedies available to petitioner under the circumstances. But nay, in its motion for reconsideration of the Resolution dated March 7, 2016, petitioner simply prayed that the said BIR Certificate of Registration be admitted as part of its evidence in chief without having it identified by a competent witness. Precisely, the Court denied petitioner's motion for reconsideration and consequently, the admission of Exhibit P-34 in the Resolution dated April 14, 2016, pointing out that the document was denied admission as it was not identified during the trial.

On August 18, 2016, petitioner filed its Memorandum to which it allegedly attached a 'Re-issued Certified True Copy of its BIR Certificate of Registration.' But per examination of the pleading, no such document was attached to the said Memorandum.

On September 5, 2016, petitioner filed a Motion (For Leave to Submit and to Admit Re-Issued Certified True Copy of Exh. P-34). In its Motion, petitioner again prayed for the admission as its Exhibit P-34, the alleged Re-issued Certified True Copy of its BIR Certificate of Registration claimed as Annex C of its Memorandum. Petitioner insists that Exhibit P-34 should be admitted in evidence as it is a faithful reproduction of the original document. Besides, as a public record that cannot be removed from the office of its custodian and is covered by the rule on irremovability of public records, the said document is admissible in evidence.

Again, petitioner missed the point. Exhibit P-34 was not admitted since it was not identified by a competent witness during the trial on the merits. It does not even appear in any of the Judicial Affidavits executed and identified by petitioner's witnesses, precisely it is not found in the minutes of the proceedings during which petitioner's witnesses were presented on the witness stand.

Thus, the submission of an alleged certified true copy of its BIR Registration without the required identification thereof will not cure the defect in the said document. Incidentally, the copy of Exhibit P-34 attached to the Motion (For Leave to Submit and to Admit Re-Issued Certified True Copy of Exh. P-34) is not even a certified true copy of the purported document but a mere color-printed scanned copy.

Let it be stressed that only documents duly identified by a competent witness and formally offered in evidence will merit admission for the consideration and evaluation by the Court. It is also elementary that the court shall consider no evidence which has not been formally offered. Unless and until presented and admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight. Note that judgments must be based on the evidence presented before the court.

Further, the Motion (For Leave to Submit and to Admit Re-Issued Certified True Copy of Exh. P-34) is effectively a second motion for reconsideration which is a prohibited pleading.

In the case of *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, the Supreme Court expounded on the reason behind the principle in this wise:

> The denial of a motion for reconsideration is final. It means that the Court will no longer entertain and consider further arguments or submissions from the parties respecting the correctness of its decision or resolution. It signifies that, in the Court's considered view, nothing more is left to be discussed, clarified or done in the case since all issues raised have been passed upon and definitely resolved. Any other issue which could and should have been raised is deemed waived and is no longer available as ground for a second motion. A denial with finality underscores that the case is considered closed. Thus, as a rule, a second motion for reconsideration is a prohibited pleading. The Court stressed in *Ortigas and Company Limited Partnership v. Velasco*:

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> A **second motion for reconsideration is forbidden** except for extraordinarily persuasive reasons, and only upon express leave first obtained.

> It is true that procedural rules may be relaxed in the interest of substantial justice. They are not, however, to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. They are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial proceedings. Thus, procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudicing a party's substantive rights. Like all rules, they are required to be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of negative consequences commensurate with the degree of thoughtlessness in not complying with the prescribed procedure.

Thus, the Motion (For Leave to Submit and to Admit Re-Issued Certified True Copy of Exh. P-34) was denied by the Court in the Resolution dated October 14, 2016.

Note that what one cannot do directly, he cannot do indirectly. x x x No one is allowed to do indirectly what he is prohibited to do directly.

There is no denying that the Supreme Court relaxed the application of Section 34, Rule 132 of the Rules of Court by allowing the admission of evidence not formally offered. To be admissible, however, two essential conditions must concur: *first*, the same must have been duly identified by testimony duly recorded and, *second*, it must have been incorporated in the records of the case. Being an exception, the same may only be applied when there is strict compliance with the requisites mentioned above; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail. Unarguably, the conditions cited are not attendant in the present case.

This Court in a previous case had already stressed that the presentation of evidence to prove that a taxpayer is a VAT-registered entity is not a mere procedural technicality which may be easily disregarded, to wit:

> While it is true the CTA is not governed *strictly* by technical rules of evidence, as rules of procedure are not ends in themselves and are primarily intended as tools in the administration of justice, Philex's **presentation of evidence to prove that it is a VAT-registered entity is not a mere procedural technicality which may be easily disregarded considering that being a VAT-registered entity is one of the essential requisites that need to be proven to be entitled to a VAT refund/tax credit.**
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> Philex likewise posits that the Court in Division erred in not taking judicial notice of the earlier decisions on Philex's other similar claims for VAT refund wherein it was found that Philex is a VAT-registered entity. On the other hand, the CIR counter-argues that it is not mandatory for this Court to take judicial notice that Philex is a VAT-registered entity.
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> Philex's position is unmeritorious.
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> As earlier pointed out, cases filed before the CTA are litigated *de novo* and as such, party-litigants must prove every minute aspect of their cases. In this regard, the Court *En Banc* finds that the Court in Division cannot be faulted for its refusal to take judicial notice of the alleged consistent finding of this Court in earlier cases involving the same parties that Philex is a VAT-registered entity. *(Emphasis supplied)*

The Court therefore finds that petitioner failed to establish that it is a VAT-registered entity. Absent this requisite, discussion on the other requirements is unwarranted."[12]

Petitioner argues that considering respondent's failure to specifically deny that it is a VAT-registered entity, such fact is deemed admitted by the pleadings. Alternatively, petitioner argues that its Certificate of VAT Registration is an actionable document. Hence, considering respondent's

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12 See Note 1. pp. 805-813.

failure to specifically deny it under oath, its genuineness and due execution should be deemed admitted.

After careful analysis of the foregoing, the Court *En Banc* finds petitioner's arguments untenable.

It is incumbent upon petitioner to prove its affirmative allegation that it is a VAT-registered entity by competent evidence

Prefatorily, the Court *En Banc* is constrained to emphasize the oft-repeated but neglected doctrine that "[T]ax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit".[13] Corollary to this doctrine is the equally basic rule of evidence that each party must prove its affirmative allegation.[14]

In *Jesus G. Reyes v. Glaucoma Research Foundation, Inc. et al.*,[15] the Supreme Court elaborated on the above-rule, as follows:

> "It is a basic rule of evidence that each party must prove his affirmative allegation. If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent. The test for determining on whom the burden of proof lies is found in the result of an inquiry as to which party would be successful if no evidence of such matters were given."[16]

Guided by the said principles, it is imperative upon petitioner to prove, on the strength of its own evidence, its affirmative allegation that it is a VAT-registered entity. The burden to prove entitlement to a claim for refund or tax credit lies with petitioner.

In the instant case, the Court *En Banc* agrees with the Court in Division that petitioner failed to discharge this burden. Indeed, a review of the records shows that petitioner's proof of VAT registration was not identified by any of its witnesses which proved fatal to its claim. Thus, the

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13 *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
14 *Commissioner of Internal Revenue v. Traders Royal Bank*, G.R. No. 167134, March 18, 2015.
15 G.R. No. 189255, June 17, 2015.
16 Id., citing *Lopez v. Bodega City (Video-Disco Kitchen of the Phils.) and/or Torres-Yap*, 558 Phil. 666, 673 (2007).

Court in Division was correct in denying the admission of petitioner's evidence.

Meanwhile, petitioner cannot rely on the general denial made by respondent in his Answer. The obvious reason is the fact that should respondent make such specific denial, *i.e.*, that petitioner has no certificate of VAT registration, he will still be under no obligation to prove such negative averment. Stated otherwise, the burden to prove its affirmative allegation that it is a VAT-registered entity still lies with petitioner, and not on the respondent who has no means to prove a negative fact that petitioner is not VAT-registered.

Petitioner's alleged Certificate of VAT Registration is not an actionable document

Finally, the Court *En Banc* shall resolve whether petitioner's alleged Certificate of VAT Registration is an actionable document.

Section 7, Rule 8 of the Revised Rules of Court provides:

> "**SEC. 7.** *Action or defense based on document.* – Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading."

In *Fernando Medical Enterprises, Inc. v. Wesleyan University Philippines, Inc.*,[17] the Supreme Court laid down the rules on actionable document, as follows:

> "In the case of a written instrument or document upon which an action or defense is based, which is also known as the actionable document, the pleader of such document is required either to set forth the substance of such instrument or document in the pleading, and to attach the original or a copy thereof to the pleading as an exhibit, which shall then be deemed to be a part of the pleading, or to set forth a copy in the pleading. The adverse party is deemed to admit the genuineness and due execution of the actionable document unless he specifically denies them under oath, and sets forth what he claims to be the

17 G.R. No. 207970, January 20, 2016.

facts, but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused."

In the instant case, while petitioner attached an alleged copy of the VAT Certificate of Registration, it failed to: (1) set forth the substance of such instrument or document in the pleading; or (2) set forth a copy in the pleading. Thus, said document cannot be considered an actionable document.

Considering the foregoing, the Court *En Banc* sees no cogent reason to reverse the assailed Decision and Resolution of the CTA Third (3^{rd}) Division.

WHEREFORE, the instant Petition for Review is **DENIED**. Accordingly, the assailed Decision dated October 10, 2017 and the assailed Resolution dated March 19, 2018 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join PJ's Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I join the Dissenting Opinion of PJ)
MARIA ROWENA MODESTO-SAN PEDRO
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

NOKIA (PHILIPPINES), INC., *Petitioner,*	**CTA EB NO. 1824** (CTA Case No. 8876)
	Present:
- *versus* -	Del Rosario, P.J., Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 16 2019 3:09 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I submit that the Court may admit Exhibit P-34 (petitioner's Certificate of Registration (BIR Form No. 2303) No. Ocn 8RC0000019384 issued by the Bureau of Internal Revenue (BIR), Large Taxpayers Division on January 1, 1997)[1] in evidence and consider the same in determining petitioner's entitlement to its claim for refund or issuance of tax credit certificate.

In the recent case of *Filminera Resources Corporation vs. Commissioner of Internal Revenue*,[2] the Supreme Court, citing *BPI-*

[1] Annex F, Petition for Review in CTA Case No. 8876, Division Docket, Vol. 1, p. 36; Exhibit P-34, Division Docket, Vol. 2, p. 658; Annex C, petitioner's Motion (For Leave to Submit and To Admit Re-Issued Certified True Copy of Exh. P-34), Division Docket, Vol. 1, p. 768.
[2] G.R. No. 233581, March 11, 2019.

Family Savings Bank vs. Court of Appeals[3] and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*,[4] accorded probative value to the amended BIR Form No. 2550Q which was attached to Filminera Resources Corporation's Motion for Reconsideration, albeit the same was not identified by any of its witnesses during trial, *viz.*:

> "A careful scrutiny of Exhibit "P-19" shows that there is nothing indicated on the spaces provided for "VAT refund/TCC claimed," thus, it could not serve the very purpose of offering the said exhibit, and consequently, it was the basis of the CTA Division in denying the claim. **However, upon the presentation of the amended form which was attached as Annex "P-1" in petitioner's Motion for Reconsideration, it became clear and evident that it was the form that petitioner was referring to in its Formal Offer of Evidence. Therefore, we see no reason to deprive petitioner of what is rightfully theirs only because the aforesaid amended BIR Form was belatedly submitted.**
>
> This is not to say that we should overlook the government's right to due process by allowing the admission of the document without petitioner having formally offered the same and without giving the CIR the chance to examine its due execution and authenticity. In admitting Annex "P-1", **We bear in mind that this form was submitted to the BIR thru its electronic filing and payment system (eFPS), thus, it has every opportunity to verify through the system the veracity of the attached document.**" (Boldfacing supplied)

While Exhibit P-34 was issued by the BIR, **respondent's counsel had every opportunity to verify the veracity of said document**. Instead, respondent, in its Comment to petitioner's Formal Offer of Evidence, "interposed no objection to the admission of petitioner's enumerated exhibits, but only as to the manner they were identified in open court and subject to the condition that they have faithfully complied with the necessity of comparison with the original documents xxx."

During authentication in court, a witness positively testifies that a document presented as evidence is genuine and has been duly executed or that the document is neither spurious nor counterfeit nor executed by mistake or under duress.[5] The nature of documents as either public or private determines how the documents may be presented as evidence in court. A public document is *self-authenticating and requires no further authentication in order to be presented as evidence in court*. In contrast, a private document requires

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[3] G.R. No. 122480, April 12, 2000.
[4] 625 Phil. 644 (2010).
[5] *Salas v. Sta. Mesa Market Corporation*, G.R. No. 157766, July 12, 2007.

authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court.[6]

There is no denying that Exhibit P-34, being a public document, is admissible in evidence notwithstanding that it was not identified by any of petitioner's witnesses during trial. A public document is admissible in evidence even without further proof of its due execution and genuineness. Stated otherwise, Exhibit P-34 is self-authenticating; thus, petitioner is not actually required to have it identified by its witness to prove its genuineness and due execution

Finally, records show that respondent was given the opportunity to examine Exhibit P-34 at the Commissioner's Hearing held on January 14, 2016 during which respondent's counsel manifested that Exhibit P-34 is a faithful reproduction of the original. Hence, respondent was not deprived of the opportunity to examine the aforesaid document.

In light of the foregoing, I submit that Exhibit P-34 must be admitted in evidence for the purpose for which it was offered, that is, to prove that petitioner is a VAT-registered entity, and should be considered in determining petitioner's entitlement to its claim for refund or tax credit.

All told, I **VOTE** to: (i) **GRANT** the Petition for Review; and, (ii) **REMAND** the case to the Court in Division which shall make a complete determination of whether petitioner has complied with the requirements for refund of unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the four (4) quarters of the year 2012 and the refundable amount to which it is entitled, if any.

ROMAN G. DEL ROSARIO
Presiding Justice

[6] *Patula v. People*, G.R. No. 164457, April 11, 2012.