REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TOLEDO POWER COMPANY, Petitioner,	**CTA EB NO. 1359** **(CTA Case No. 8403)**
	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: DEC 12 2017 4:16 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

For resolution by the Court *En Banc* are the following: the July 5, 2017 Motion for Reconsideration of petitioner Toledo Power Company (Toledo); the Opposition filed by respondent within the extension prayed for on August 25, 2017; and, the Reply filed by petitioner on September 7, 2017.

Petitioner's Motion for Reconsideration seeks reconsideration of the Court's May 25, 2017 Decision, the dispositive portion for which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the April 16, 2015 Decision and the September 2, 2015 Resolution are hereby affirmed.
>
> **SO ORDERED.**"

In essence, petitioner asks the court to relax the application of the rules of procedure and allow it to present the documents that were not previously marked and identified and, thereafter, offered as evidence.

The motion is bereft of merit.

Once again, it bears emphasis that the counsels had numerous opportunities to ensure that the merits of the refund claim are adequately tried in the court below. This was pointed out in the assailed decision, which the counsels have not denied and, accordingly, deserves reiteration:

- August 28, 2012, submission of original report of the Independent Certified Public Accountant (ICPA);
- September 28, 2012, submission of the revised ICPA report;
- October 3, 2012, submission of ICPA's judicial affidavit;
- October 24, 2012, submission of the final ICPA report;
- November 9, 2012, submission of ICPA's judicial affidavit;
- November 12, 2012, completion of ICPA's direct testimony;
- April 24, 2013, hearing for the presentation of additional evidence;
- June 11, 2013, filing of Toledo's Formal Offer of Evidence.

Considering the number of documents that were excluded from the Formal Offer of Evidence and other than passing on the responsibility to the ICPA about the omission, counsels have not provided justification that would convince the court to deviate from the rules.

The Supreme Court has already ruled that evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. *Neither may it be taken into account on appeal*. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected.[1]

After carefully considering the arguments restated by both parties, the Court remains unconvinced that it should disturb the holdings of both this court and the court *a quo*.

WHEREFORE, premises considered, Toledo's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

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[1] *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice