

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**NPC ALLIANCE
CORPORATION, represented
by Renato B. Magadia, Vice-
Chairman of the Board,**

Petitioner,

-versus-

**COMMISSIONER OF
CUSTOMS,**

Respondent.

CTA EB NO. 2649

(CTA Case No. 7742)

Present:

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

Promulgated:

APR 18 2024

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D E C I S I O N

ANGELES, J.:

Before the Court *En Banc* is a *Petition for Review*,¹ filed by NPC Alliance Corporation, seeking to set aside the Decision and Resolution, dated October 20, 2021 and June 6, 2022, respectively, in CTA Case No. 7742, which denied petitioner's appeal for failure to state the specific material date of its receipt of the decision of the Commissioner of Customs (respondent COC) in order for the Court to determine the timeliness of the filing of the petition and for lack of merit.

Petitioner also seeks the release of the subject importations for immediate re-exportation to Aggreko Singapore Pte. Ltd.

¹ EB Docket, Vol. 1, pp. 81-117.

FACTS

The CTA Division narrated the facts, as follows:

Petitioner NPC Alliance Corporation is a corporation duly organized and existing under Philippine laws with principal place of business in Mariveles, Bataan. It is engaged primarily in the processing of ethylene, the prime ingredient in the production of polyethylene. It is a joint venture entered into between the National Petrochemical Corporation International of Iran, a government-owned corporation, and Polymax Stroke Metro Alliance of the Philippines, Incorporated, to re-commission and restart the commercial operations of the polyethylene plant in Mariveles, Bataan.

Respondent Commissioner of Customs (COC) is the chief official of the Bureau of Customs (BOC), vested by law with authority to approve, modify or reverse the action or decision of the Collector of Customs in relation to forfeiture cases.

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In the year 2007, three (3) shipments of generator sets, transformers and accessories appear to have been consigned to herein petitioner, the details of which are summarized below:

Shipment	Arrival	Bill of Lading	Invoice	Import Entry	Particulars
First	April 10, 2007	APLU 057249171	20070410-NPCA-01 and 20070410-NPCA-02	2007C1679	8x20' Container Vans etc. Eight packages of generator sets and transformers
Second	April 17, 2007	16	20070417-NPCA-01 and 20070417-NPCA-02	2007C2171	10x20' Diesel Generator Sets c/w Accessories
Third	April 29, 2007	APLU 057250755	20070429-NPCA-01 & 20070429-02	2007C2170	8x20' Container Vans etc. Eight packages of generator sets and transformers

The first shipment was subjected to an **Alert Order No. A/OC/20070420-101** issued by then COC Napoleon L. Morales (*COC Morales*) on **April 10, 2007**, directing Rico Reyes (*Reyes*), the representative of the Office of the COC at the Port of Subic, to witness the 100% examination to be conducted by the assigned Customs Examiner on suspicion of misdeclaration/undervaluation. Pursuant thereto, Reyes submitted a **Memorandum and a Discrepancy Report** to COC Morales on April 23, 2007 with his findings that there was a **98% undervaluation** with respect to the five (5) generator sets and a **99% undervaluation** with respect to the three (3) transformers, and recommended the immediate issuance of a Warrant of Seizure and Detention (**WSD**) against the subject shipment for violation of Section 2503 of the Tariff and Customs Code of the Philippines (TCCP), as amended. On April 27, 2007, the Office of the COC, through Atty. James F. Enriquez, Chief of Staff, issued a 1st Indorsement, forwarding to the District Collector, Port of Subic, the Memorandum of Reyes for the Collector's information and appropriate action, with a notation therein that the Office of the COC concurs with the recommendation for the issuance of a WSD. Consequently, on April 29, 2007, District Collector Marietta D. Zamoranos (*Collector Zamoranos*) issued a **WSD**,

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under **Subic Seizure Identification No. 2007-22**, for the said shipment.

Alert Order No. A/OC/20070420-102 was also issued on **April 20, 2007** by then COC Morales for the second shipment, directing Reyes to witness the 100% examination to be conducted by the assigned Customs Examiner, again, on suspicion of undervaluation/misdeclaration.

On May 10, 2007, Mr. Karim Khatami, Chief Finance Officer (Mr. Khatami) of the petitioner, wrote a letter to the Secretary of Finance requesting that the twenty-six (26) generator sets covered by the aforementioned three (3) shipments be considered as conditionally-free importations pursuant to Sec. 105(i) of the TCCP, as amended, considering that they will be used for "**exhibition**" for seventeen (17) weeks at the Polyethylene Plant of the petitioner at Mariveles, Bataan, and will be returned to the country of origin after they have served their purpose. Notably, petitioner's first shipment was included in its May 10, 2007 application despite the subsistence of the aforesaid WSD.

In reply to the letter of Mr. Khatami, the Department of Finance (DOF), through Atty. Eleazar C. Cesista, Head, Revenue Express Lane, issued a **1st Indorsement dated May 10, 2007** to the COC with the opinion that the twenty-six (26) generator sets "*may be released pursuant to the provisions of Section 105(i) of the Tariff and Customs Code, as amended, upon giving of a bond in an amount equal to one and one-half (1 1/2) times the ascertained duties, taxes and other charges, conditioned for the exportation thereof within two (2) months from the date of acceptance of the import entry or in default thereof, the payment of the corresponding duties, taxes and other charges due thereon, subject to CAO No. 7-72 and pertinent import laws, rules and regulations, subject further to One Hundred Percent (100%) examination by the Bureau.*" On the 2nd page of the aforesaid DOF 1st Indorsement, there appears a remark: "*Original Copies of Documents required in the last paragraph have been presented and verified to be authentic.*" In addition, the 2nd page thereof also contains a 2nd Indorsement from the [COC] dated May 11, 2007, with the signature of Atty. Talek J. Pablo, Chief, TED-OCOM, right below the words "*Continue processing,*" referring to the Collector of Customs, Port of Subic, the said DOF 1st Indorsement, for appropriate action.

In pursuance of the Alert Order for the second shipment, Reyes submitted a Memorandum on May 15, 2007 for the COC recommending that the *7x20' Container Vans Nos. 0005240; 0005253; 0005255; 0054220; 0054270; 0054370; GEER5420; stc. 7 units Cummins KTA50G3 power generators set with serial nos. 25271246; 25270539; 25270541; 25272252; 25272338; 25272452; 25272249; and 3x20' Container Vans Nos. SKYU2980176; SKYU2980073; SKYU2980319, stc. Assorted generator parts, be released to the petitioner as these articles are covered by the 1st Indorsement of the DOF dated May 10, 2007.* Reyes also recommended that the last three enumerated articles be exported back to Aggreko per 1st Indorsement of the DOF

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dated 11 July 2006 and covered by a re-export bond which will export on 29 May 2007.

Eventually, the three (3) shipments were released to petitioner.

Subsequently, Collector Zamoranos issued **another WSD dated June 26, 2007**, under **Subic Seizure Identification No. 2007-22-A, for the first shipment** of 8x20' container vans. The 3rd and 4th WHEREAS clause of the said WSD stated:

"WHEREAS, pursuant to Section 2301 of the TCCP, in relation to existing jurisprudence, this Office recommended to the Commissioner of Customs the release of the subject shipments pending seizure proceedings upon posting of bond, the urgency of the release thereof having been sufficiently justified and guaranty posted;

WHEREAS, pending the final approval thereof, it was reported that the subject shipment was irregularly released.

On July 18, 2007, Collector Zamoranos issued an **Order lifting the WSD in connection with Subic Seizure Identification No. 2007-22 and 2007-22-A**. Collector Zamoranos stated that, based on available evidence presented by petitioner, there was no irregular release of the shipment and all indications reveal that the articles are being used as exhibits if only to demonstrate that the plant could run on a self-generated power to supply the electricity requirements of the petrochemical facility project, and that the articles are to be re-exported after the exhibition/demonstration pursuant to the recommendation of the DOF under 1st Indorsement dated May 10, 2007.

On **19 July 2007**, District Collector Zamoranos wrote a letter to Mr. Karim Khatami, Chief Finance Officer of the petitioner, advising the latter to immediately pay the duties and taxes due on the generator sets, or in the alternative, to re-export the same inasmuch as the period granted to petitioner, as provided in the 1st Indorsement of the DOF dated 10 May 2007, has lapsed without the extension earlier filed being approved by DOF.

On **23 July 2007**, Director Jairus D. Paguntalan of the CIIS, Manila, issued a 1st Indorsement dated 23 July 2007, relative to the 12 July 2007 Memorandum of Aris De Guzman, recommending to the District Collector of Customs, Port of Subic, the **issuance of a WSD against the whole shipment** of 19x20 container vans for violation of Section 2530(f) and (l) (3, 4 and 5) of the TCCP, as amended.

On **July 31, 2007**, District Collector Zamoranos issued a **WSD under Subic Seizure Identification No. 2007-25**, for the twenty-six (26) generator sets as **no re-exportation** of the subject shipments nor the payment of the corresponding duties and taxes thereon have been made despite the lapse of the period of the

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conditionally-free release of subject shipments, under Section 105(i) of the TCCP, pursuant to the 1st Indorsement of the DOF dated 10 May 2007.

Also, on July 31, 2007, Undersecretary Gaudencio A. Mendoza, Jr. of the Legal and Revenue Operations Group, DOF, issued a Memorandum for the COC, stressing the following: *"(1) The shipments must be proceeded against in accordance with law. The tax privilege issued under the aforesaid 1st Indorsement dated May 10, 2007 ceases to be valid and effective **upon a showing that there was no "exhibition" at all** – which appears to be so in this case – **or upon a showing of any breach of any of the conditions for the grant of the privilege or upon the commission of any violation of the TCCP, as amended.** This Office cannot and will not countenance any fraud or misrepresentation on the part of the importer or any party acting on behalf of the owner/importer. Neither should the privilege under the questioned 1st Indorsement dated May 10, 2007 be allowed to be used in any manner or form as an excuse or justification for any customs violation committed. (2) The shipments are now under seizure and forfeiture proceedings. This being so, the case is now under the original exclusive jurisdiction of the Bureau of Customs, which must do what it has to do under the law without any interference from any office. This must be firmly exercised. This includes the determination of all questions and issues affecting the disposition of the property proceeded against in the seizure and forfeiture proceedings. This is a long-settled doctrine.*

On August 3, 2007, COC Morales issued a 2nd Indorsement forwarding to the District Collector, Port of Subic, for her information and appropriate action, the Memorandum dated 31 July 2007 of Undersecretary Gaudencio A. Mendoza, Jr., LROG, DOF, relative to the importation of generator sets consigned to the petitioner, inviting attention to the information that the same shipments are **now under seizure and forfeiture proceedings** falling within the original exclusive jurisdiction of the BOC, and therefore, the said shipment must be proceeded against in accordance with law without any interference from any office.

On August 6, 2007, petitioner, through its counsel, wrote a Letter to Collector Zamoranos stating that it is presently estimating the taxes due on the generator sets and once a computation is finalized, it will send a representative to pay the same. It likewise requested to **hold in abeyance the seizure** of the generator sets for at least one (1) week from receipt of the said Letter.

On August 8, 2007, Mr. Khatami wrote a Letter to the COC informing the latter that they are considering the possibility of posting a cash bond during the pendency of the seizure proceedings. This Letter was referred by the COC to the District Collector.

In an Order dated August 24, 2007, Collector Zamoranos stated that **petitioner's request to secure the release of the shipments for its urgent and legitimate use, particularly to provide power supply for the recommissioning of their petro-chemical plant** and to be allowed to post cash bond, may be

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given due course, subject to the approval of the COC with the computed cash bond.

In an undated 1st Indorsement, Collector Zamoranos forwarded to COC Morales records of **S.I. No. 2007-25** and recommended the approval of **petitioner's request for the release of the shipments pending seizure proceedings** pursuant to Section 2301 of the TCCP, with cash bond of P50,177,565.25.

Petitioner wrote another letter to Collector Zamoranos reiterating its intention to settle the duties and taxes due on the shipments subject to **SI 2007-25**, as expressed in its Manifestation and Motion to Pay the Customs Tax and Duties Due to the Diesel Generator Sets filed with the Hearing Officer on August 28, 2007, and requested for a detailed computation or breakdown of the customs tax and duties.

On 10 September 2007, COC Morales issued a 2nd Indorsement to the District Collector, Port of Subic, informing the latter that they are **treating the Letter** of the petitioner dated 06 September 2007 reiterating its intention **to settle the customs duties and taxes due on the shipments subject of the seizure proceedings as a motion to withdraw its offer to post a cash bond** for the provisional release of the diesel generator sets.

In a Letter dated **October 4, 2007**, Collector Zamoranos informed Mr. Khatami that they are **enforcing the WSD against the shipments and shall take physical custody** of the generators on October 8, 2007, and that the offer for the payment of duties and taxes is a matter to be threshed out during the hearing on the seizure proceedings and [the offer] has in fact been submitted to the Hearing Officer.

On December 3, 2007, Collector Zamoranos rendered a Decision, the dispositive portion of which reads as follows:

“Wherefore, premises considered, and by virtue of the powers vested in this office, the subject shipments having violated Section 2530(f) and (l) (3, 4 & 5), TCCP, as amended, are hereby decreed FORFEITED in favor of the Government to be disposed in the manner provided for by law.

So ordered.”

On December 18, 2007, petitioner appealed the Decision of the District Collector to the COC.

On February 21, 2008, COC affirmed the Decision of Collector Zamoranos, the dispositive portion of which reads as follows:

“Wherefore, premises considered, by virtue of the authority vested in me by law, it is hereby ordered and decreed that the subject importations be FORFEITED

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in favor of the government for violation of Section 2530 paragraph (f) and (1-3, 4, 5) of the Tariff and Customs Code of the Philippines, as amended. Accordingly, let the subject importations be as it is hereby ordered AUCTIONED within thirty (30) days from receipt by the Claimant of a copy of this Decision.

Let copies of this Order be furnished all parties and offices concerned for their information and guidance.

SO ORDERED.”² (*Emphasis in the original*)

Dissatisfied, petitioner filed a Petition for Review with the CTA on March 28, 2008, docketed as CTA Case No. 7742.

The case proceeded to trial, with both petitioner and respondent presenting their respective cases.³ However, on April 24, 2017, after petitioner presented Rannier A. Espino on rebuttal, the CTA Division ordered that the entire records of the case be forwarded to the Supreme Court, as directed, in line with the pending case docketed as G.R. No. 200489.⁴ The trial of the case was suspended until further order.

In the Resolution dated August 8, 2018, the Supreme Court denied the petition docketed as G.R. No. 200489.⁵ With the Supreme Court’s Entry of Judgment in G.R. No. 200489,⁶ the case records were forwarded back to the CTA Division for further proceedings, until it was submitted for decision on December 9, 2020.

On October 20, 2021, the assailed Decision was promulgated, which states:

In sum, the present Petition for Review must be dismissed for petitioner’s failure to indicate the date of its receipt of the assailed Decision of the Commissioner of Customs. Nonetheless, even assuming that petitioner timely filed its Petition for Review, the same would suffer the same consequence as this Court finds that fraud attended the importation of this case and petitioner violated the condition of its conditionally-free importation thereby warranting the forfeiture of the shipments pursuant to Section 2530(f) and (1)(3)(4) of the TCCP, as amended. Thus, there is no cogent reason to disturb the decision of the Commissioner of Customs affirming the forfeiture of petitioner’s shipments.

WHEREFORE, premises considered, the Petition for Review of the petitioner filed on March 28, 2008 is **DENIED**, for failure to

² Division Decision, EB Docket, Vol. 1, pp. 124-132.

³ Division Decision, EB Docket, Vol. 1, pp. 132-137.

⁴ Relating to the June 3, 2010 and August 6, 2010 Resolutions, which ordered the immediate release to petitioner of the subject generator sets in view of petitioner’s filing of new surety bond.

⁵ Division Docket, Vol. 10, pp. 4559-4567.

⁶ Division Docket, Vol. 10, p. 4570.

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comply with Section 2, Rule 42 of the Rules of Court and for lack of merit.

SO ORDERED.⁷

Petitioner's *Motion for Reconsideration* was likewise denied in the equally assailed Resolution dated June 6, 2022.⁸

On July 22, 2022, petitioner filed the instant *Petition for Review* before the CTA *En Banc*. On November 11, 2022, the Court received respondent's *Comment (On Petitioner's Petition for Review dated 14 July 2022)*,⁹ which was posted on November 7, 2022.

On January 5, 2023, the case was submitted for decision.¹⁰

ISSUES

Petitioner submits the following grounds in support of the *Petition*:

- I. The First Division erred in dismissing the *Petition for Review* on the basis of the petitioner's purported failure to allege and prove the date of its receipt of the COC's Decision;
- II. The First Division erred in ruling that petitioner was not denied due process in the proceedings before the District Collector; and
- III. The CTA First Division erred in affirming that fraud attended the importations subject of the case.¹¹

Petitioner's arguments

Petitioner states that it has sufficiently alleged and proved the date of its receipt of the respondent's decision; that it was denied its right to cross-examine witnesses in the proceedings before the District Collector, amounting to denial of due process; and, that the evidence on record do not show that fraud attended the importations of the subject case.

⁷ Division Decision dated October 20, 2021, EB Docket, Vol. 1, p. 185.

⁸ EB Docket, Vol. 1, pp. 189-192.

⁹ EB Docket, Vol. 2, pp. 780-812.

¹⁰ EB Docket, Vol. 2, pp. 832-833.

¹¹ *Petition for Review*, EB Docket, Vol. I, p. 93.

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Petitioner further avers that it did not undervalue the first shipment; that it did not intentionally misrepresent that its second shipment was an inward shipment from abroad; and, that the evidence on record show that the shipments were used for exhibition purposes only.

Respondent's counter-arguments

Respondent states that the perfection of an appeal within the period laid down by law is mandatory and jurisdictional; and, that petitioner failed to establish that its appeal before the CTA Division was filed within the period required by law.

Respondent further states that petitioner's arguments are mere rehash of its claims before the CTA Division. Nevertheless, respondent further addresses petitioner's assertions as follows: that there was no denial of due process in the proceedings before the District Collector because the parties were given the opportunity to present evidence and confront the witnesses against them; and, that petitioner committed fraud in its shipments.

RULING OF THE COURT

The Court *En Banc* finds the Petition for Review bereft of merit.

The Petition for Review before the Court *en banc* was timely filed.

Petitioner received a copy of the assailed Resolution, dated June 6, 2022, on June 22, 2022. Thus, petitioner had fifteen (15) days from such receipt, or until July 7, 2022, within which to file the subject Petition for Review, pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b).¹²

On July 7, 2022, petitioner filed a *Motion for Time to File Petition for Review Under Rule 43*, praying for an additional fifteen

¹² 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 within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, 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.

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(15) days from July 7, 2022, within which to file the petition for review, which was granted in the Minute Resolution,¹³ dated July 11, 2022.

On July 22, 2022, timely filed the instant Petition for Review.

There is no compelling reason to reverse or modify the findings of the CTA Division.

The CTA Division had no jurisdiction due to petitioner's failure to establish the timeliness of its appeal.

The CTA Division found that petitioner failed to adduce supporting evidence to show that the appeal was timely filed.¹⁴

Petitioner, in its Petition for Review, alleged the date of its receipt of the COC Decision, as follows:

03. That the Feb. 21, 2008 Decision of Customs Commissioner Napoleon L. Morales, affirming the Decision of District Collector Marietta D. Zamoranos dated December 3, 2007 ordering the forfeiture of the twenty six (26) sets of power generators that were the subject of Subic Seizure Identification No. 2007-25, was **received by petitioner on Feb. 28, 2008**; hence, this petition is filed within the thirty-day reglementary period set forth in Sec. 11 of R.A. 9282.¹⁵ (*emphasis supplied*)

To recall, Section 2, Rule 42 of the Rules of Court requires that the specific material dates shall be indicated in the Petition for Review for the purpose of showing that it was filed on time, and that the Petition for Review be accompanied, among others, with material portions of the record that would support petitioner's allegations.¹⁶

Petitioner failed to support its allegation of date of receipt by any material portion of the record or any other evidence. Thus, the CTA Division cannot properly determine the timeliness of the filing of appeal and correctly ruled that such is fatal to the Petition for Review.

On appeal before this Court *En Banc*, petitioner attached to its present Petition for Review a photocopy of a "Notice of

¹³ EB Docket, Vol. 1, p. 80.

¹⁴ Division Decision, EB Docket, p. 36.

¹⁵ Division Docket, Vol. I, pp. 1-2.

¹⁶ Division Resolution dated June 6, 2022, EB Docket, Vol. 1, p. 77.

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Decision/Order”, issued by the Bureau of Customs, Collection District XIII, Port of Subic, which was signed by Atty. Cesar T. Palaña, Chief, Law Division, in order to prove the timeliness of its Petition for Review before the CTA Division,¹⁷ allegedly showing that it received the assailed COC Decision on February 28, 2008, rendering the Petition for Review before the CTA Division timely filed on March 28, 2008.

However, the said photocopy of the “Notice of Decision/Order” cannot be given credence. Aside from said Notice being brought to the Court only upon appeal to the CTA *En Banc*, Section 34, Rule 132 of the Revised Rules of Evidence specifies that only evidence marked and formally offered in evidence may be admitted and considered by the Court in resolving the issues of a case. A formal offer of evidence is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial. To allow parties to attach any document to their pleadings and then expect the court to consider it as evidence, even without formal offer and admission, may draw unwarranted consequences.¹⁸

In *BPI-Family Savings Bank, Inc. v. Court of Appeals (BPI case)*,¹⁹ the Supreme Court held that the CTA committed reversible error in not considering the Final Adjustment Return, showing BPI’s net loss in 1990, which was merely attached to BPI’s Motion for Reconsideration before the CTA. However, unlike in the *BPI case*, the “Notice of Decision/Order” in the present case was not attached to petitioner’s Motion for Reconsideration filed before the CTA Division acting as a trial court, but was only attached **on appeal through the Petition for Review filed before the CTA *En Banc***. Thus, the factual circumstances of the *BPI case* are not on all fours with the instant case.

Even if the said “Notice of Decision/Order” is found in the Customs Records submitted to the CTA, it is not automatically considered as evidence since neither the Customs Records itself nor the “Notice of Decision/Order” was offered in evidence. The declaration in *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*,²⁰ is enlightening:

As a matter of fact, **even if the aforesaid documentary evidence was included as part of the BOC Records submitted before the CTA in compliance with a lawful order of the court, this does not permit the trial court to**

¹⁷ Petition for Review, Annex D, EB Docket, Vol. I, p. 233.

¹⁸ *Mandagan v. Jose M. Valero Corporation*, G.R. No. 215118, June 19, 2019, citing *Candido v. Court of Appeals*, 323 Phil. 95 (1996).

¹⁹ G.R. No. 122480, April 12, 2000.

²⁰ G.R. No. 195876, December 5, 2016.

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consider the same in view of the fact that the Rules prohibit it. The reasoning forwarded by the CTA in Division in its Resolution dated 24 February 2009, that the apparent purpose of the transmittal of the records is to enable it to appreciate and properly review the proceedings and findings before an administrative agency, is misplaced. **Unless any of the party formally offered in evidence** said Memorandum, **and accordingly, admitted by the court a quo, it cannot be considered as among the legal and factual bases in resolving the controversy presented before it.** (*emphasis supplied*)

To reiterate, for evidence to be considered, the same must be formally offered, pursuant to Section 34, Rule 132 of the Revised Rules on Evidence. Although in a long line of cases, the Court relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court, extreme caution is exercised in applying the exception to the rule.²¹

The evidence may be admitted provided the following requirements are present: (1) the same must have been duly identified by testimony duly recorded; and (2) the same 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.²²

In this case there is no showing that said “Notice of Decision/Order” was formally offered before the CTA Division acting as a trial court, nor did petitioner comply with the aforestated requisites to fall under the exception to the requirement of formal offer of evidence. Specifically, there is no showing that the “Notice of Decision/Order” found in the Customs Records had been duly identified by testimony duly recorded.

Based on the foregoing, the CTA Division properly ruled that petitioner failed to prove the timeliness of its appeal.

There is no denial of due process in the proceedings before the District Collector.

Petitioner argues that its right to due process was violated during the hearings before the District Collector. Petitioner asserts that it should have been given an opportunity to cross-examine the witness,

²¹ *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, citing *Vda. De Oñate v. Court of Appeals*, 320 Phil. 344 (1955); cited in *Commissioner of Internal Revenue v. Jerry Ocier*, G.R. No. 192023, November 21, 2018.

²² *Id.*

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Mr. De Guzman, who prepared the post clearance evaluation report stating that no exhibition was conducted at petitioner's site.

The records show that petitioner was notified of the scheduled hearings during the administrative proceedings and has attended the same. Petitioner was able to file letters, claims, motions, reply, and to raise arguments before the District Collector, Port of Subic.

Interestingly, it was due to the objections of petitioner's own counsel that resulted to the waiver of the presentation of respondent's witness at the administrative proceedings. During the hearing held on July 18, 2007, the counsel for petitioner raised serious objection to another postponement on the ground of the absence of respondent's counsel, Atty. Floro G. Calixihan, Jr., and his witness, Mr. Aris C. De Guzman. Consequently, Atty. Marietta D. Zamoranos, District Collector, Port of Subic, issued an Order declaring the respondent to have waived its right to present evidence and allowed the petitioner to present evidence *ex parte*. Pertinent portions of the said Order dated July 18, 2007,²³ reads:

On July 18, 2007, the Government Prosecutor and his witness failed to appear and considering the serious objection of the Consignee's counsel for another postponement an Order was issued declaring the prosecution to have waived its right to present evidence and considered its case rested.

Thereafter, Consignee was allowed to adduce its evidence *ex-parte*. It presented Ms. Rowena B. Farin as its lone witness and the following documents were marked as exhibits.

The above facts were also disclosed by petitioner in its Petition for Review filed before the CTA Division:

At the hearing on July 18, 2007, the prosecutor, Atty. Calixihan and his witness, Aris C. De Guzman, failed to appear despite notice and considering the serious objection of the consignee's counsel for another postponement, an Order was issued declaring the prosecution to have waived its right to present evidence and considered its case rested. Thereafter, the petitioner was allowed to adduce evidence *ex-parte*. Ms. Rowena B. Farin, was presented as witness, per authorization by the consignee. Her Affidavit served as her direct testimony and some documents were marked as exhibits.²⁴

Clearly, the failure to cross-examine respondent's witness, Mr. De Guzman, cannot be purely attributed to respondent's counsel (therein prosecutor) but was the result of counsel for petitioner's

²³ Exhibits "E", "E-8", and "E-9", Division Docket, Vol. I, p. 170.

²⁴ Paragraph 27, Petition for Review, Division Docket, Vol. I, p. 12.

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serious objection to the postponement of the hearing which was granted by the tribunal. The objection of petitioner's counsel, being part of due process, was sustained by the District Collector; and, thereafter, petitioner was allowed to adduce evidence *ex parte*.

Based on the foregoing, there was no denial of petitioner's right to due process.

Fraud has been established.

Petitioner maintains that it did not undervalue its first shipment nor did it intentionally misrepresent that its second shipment was an inward shipment from abroad. Petitioner further argues that the evidence on record show that the shipments were used for exhibition purposes only and that it relied in good faith on the declarations made by its customs broker.

The Court *En Banc* is unconvinced.

Petitioner's arguments are mere rehash of its arguments raised before the CTA Division, which have already been addressed and resolved in the assailed Division Decision and Resolution. This Court *En Banc* finds no cogent reason to deviate from the conclusions reached by the CTA Division, and therefore, holds that petitioner's importations were indeed tainted with fraud.

The following circumstances show that fraud attended the subject importations:

- (i) *The first shipment was undervalued when comparing the declared values in the Import Entry versus the genuine commercial invoices.*

The under-declaration of the value of the first importation can be clearly traced from the various documents presented by petitioner. As found by the CTA Division:

The evidence reveals that Import Entry No. 2007C1679 for the first shipment under Bill of Lading No. APLU057249171 indicates the total customs value of **US\$32,225**, which is way lower than the aggregate amount appearing in Invoice Nos. 20070410-NPCA-01 and 20070410-NPCA-02 presented by petitioner before this Court reflecting the amounts of **US\$1,045,000.00** and **US\$9,500.00**, respectively. Worst, the total customs value appearing in the said

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Import Entry is way (*sic*) much lower than the aggregate value of the first shipment amounting to **US\$1,615,000.00** based on the copies of invoices presented by petitioner before the DOF. xxx

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Records also disclose that petitioner did not offer any evidence to refute the issue of fake invoices and the underdeclaration made in the Import Entry. xxx

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Evidence on record overwhelmingly confirms that the first shipment of petitioner amounts to **US\$1,615,000.00** based on the invoices presented by petitioner before the DOF and as stated in the 1st Indorsement of DOF dated May 10, 2007; and that petitioner undervalued the said first shipment in its Import Entry by using fake invoices. xxx²⁵ (*emphasis in the original*)

Petitioner also raises, in the present petition, that it is justified in indicating the lower amount of US\$32,225.00 as the value of its first shipment, since the same is under lease agreement and not intended to be sold.²⁶ Petitioner, however, fails to realize that, by declaring such statement, it also admitted that it intentionally declared a lower value than the correct value of the shipment.

Evidently, there was intentional fraud in the under-valuation of the first shipment.

(ii) *The second shipment was a domestic shipment of articles previously imported duty-free, but petitioner submitted false invoices to make it appear that the articles arrived from Singapore.*

In the assailed Decision, the CTA Division ruled that the second shipment covered by Import Entry No. 2007C2171 does not match with the information contained in the Bill of Lading No. 16, with respect to the shipment's port of origin. **Bill of Lading No. 16** shows that the load port of the articles is "**San Jose, Mindoro**", while **Import Entry No. 2007C2171** shows "**Singapore**" as the country of origin.

²⁵ Division Decision, EB Docket, Vol. 1, pp. 160-161, 169, and 170.

²⁶ Paragraph 70 and 71, Petition for Review, EB Docket, pp. 105-106.

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Petitioner did not refute the said finding but invoked good faith in advancing that there was no intentional misrepresentation in stating that the second shipment originated from Singapore.

We disagree.

It is apparent that the port of origin stated in Import Entry No. 2007C2171 does not match with the port of origin stated in Bill of Lading No. 16. Falsification was committed here when petitioner provided false information as to the origin of the second shipment in order to benefit therefrom.

(iii) There was no exhibition that will exempt petitioner's importations from import duties.

The CTA Division affirmed that there was no exhibition conducted to warrant treating petitioner's importations as conditionally-free importations.

Section 105(i) of the TCCP, as amended, states:

SECTION 105. Conditionally-Free Importation. – The following articles shall be exempt from the payment of import duties upon compliance with the formalities prescribed in, or with, the regulations which shall be promulgated by the Commissioner of Customs with the approval of the Minister of Finance; Provided, **That any article sold, bartered, hired or used for purposes other than that they were intended for without prior payment of the duty, tax or other charges which would have been due and payable at the time of entry if the article had been entered without the benefit of this section, shall be subject to forfeiture and the importation shall constitute a fraudulent practice** against customs revenue punishable under Section Thirty-six hundred and two, as amended of this Code: Provided, further, That a sale pursuant to a judicial order or in liquidation of the estate of a deceased person shall not be subject to the preceding proviso, without prejudice to the payment of duties, taxes and other charges. Provided, finally, That the President may, upon recommendation of the Minister of Finance, suspend, disallow or completely withdraw, in whole or in part, any of the conditionally-free importation under this section:

- i. Articles used exclusively for public entertainment, and for display in public expositions, or **for exhibitions** or competition for prizes, and devices for projecting pictures and parts and appurtenances thereof, upon identification, examination and appraisal and the giving of a bond in an amount equal to one and one-half times the ascertained

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duties, taxes and other charges thereon, conditioned for exportation thereof or payment of the corresponding duties, taxes and other charges within six (6) months from the date of acceptance of the import entry; Provided, That the Collector of Customs may extend the time for exportation or payment of duties, taxes and other charges for a term not exceeding six (6) months from the expiration of the original period; and technical and scientific films when imported by technical, cultural and scientific institutions, and not to be exhibited for profit: Provided, further, That if any of the said films is exhibited for profit, the proceeds therefrom shall be subject to confiscation, in addition to the penalty provided under Section Thirty-six hundred and ten as amended, of this Code. (*Emphasis ours*)

The Court *En Banc* affirms the findings of the CTA Division that no actual exhibition of the imported generator sets occurred, as follows:

The three shipments of the petitioner which were approved as conditionally-free importation in the DOF's 1st Indorsement dated May 10, 2007, were supposedly intended for "***exhibition***" in its Bataan Polyethylene Plant located at the Petrochemical Complex, Batangas II, Mariveles, Bataan as clearly stated in the Affidavit of Use, executed by Karim Khatami, petitioner's Chief Finance Officer, attached to his Letter to the Secretary of DOF dated May 10, 2007, requesting approval for duty/tax-free importation of petitioner's shipments. The said Affidavit of Use and DOF's 1st Indorsement dated May 10, 2007 respectively read as follows:

Affidavit of Use

"NPC Alliance Corporation has engaged Aggreko International Projects Limited of Singapore to provide generators & accessories for seventeen (17) weeks **for Exhibition** in our Bataan Polyethylene Plant located at the Petrochemical Complex, Batangas II, Mariveles, Bataan."

DOF's 1st Indorsement dated May 10, 2007

"In view of the presentation of NPC ALLIANCE CORPORATION in its herein letter dated May 10, 2007 as well as the attached affidavit of Mr. Karim Khatami, Chief Finance Officer, the firm's shipment described hereunder:

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which will be used for exhibition purposes in the forthcoming "*Exhibition*" to be held at the PAFC Industrial Plant in Batangas II, Mariveles, Bataan for seventeen (17) weeks, may be released pursuant to the provisions of Section 105(i) of

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the Tariff and Customs Code, as amended, upon giving of a bond in an amount equal to one and one-half (1 ½) times the ascertained duties, taxes and other charges, conditioned for the exportation thereof within two (2) months from the date of acceptance of the import entry or in default thereof, the payment of the corresponding duties, taxes and other charges due thereon, subject to CAO No. 7-72 and pertinent import laws, rules and regulations, subject further to One Hundred Percent (100%) examination by the Bureau. *(Boldfacing & underscoring supplied)*

The supposed “exhibition” of the articles as contained in the letter application of the petitioner is the reason of the DOF’s indorsement to the COC to release the articles, free of import duties, pursuant to Section 105(i) of the TCCP, as amended, which states:

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Apropos, the DOF was correct in treating the articles consigned to petitioner as conditionally-free importation as the same was allegedly intended for “exhibition” purposes, as represented by petitioner. The condition imposed in the 1st Indorsement of the DOF for the giving of bond by the petitioner is also in consonance with the requirement stated in Section 105(i) of the TCCP, as amended.

To be sure, even if the shipments were released to the petitioner under Section 105(i) of the TCCP, as amended, the said articles remained under the jurisdiction of the BOC which has the authority to determine all questions touching on petitioner’s compliance with customs laws, since the articles were only released conditionally subject to the fulfillment of conditions specified in DOF’s 1st Indorsement dated May 10, 2007, ***to be used for “exhibition”; and, the posting of a bond conditioned for exportation of the articles within two (2) months from the date of acceptance of the import entry or in default thereof, the payment of the corresponding duties, taxes and other charges due thereon.*** It is trite that “[i]n order for an importation to be deemed terminated, the payment of the duties, taxes, fees and other charges of the item brought into the country must be in full. For as long as the importation has not been completed, the imported item remains under the jurisdiction of the BOC.

Petitioner asserts that the term “exhibition” is not defined in the TCCP, as amended, and, accordingly, it is susceptible to several interpretations. Albeit petitioner did not elaborate its understanding nor offer a definition of the term “exhibition”, petitioner could have in mind that the concept includes exhibition of the generator sets **for the commissioning and the start-up** of operations of its plant.

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Exhibition as understood by petitioner’s witnesses contemplates the commissioning of the generator sets and its actual use to start-up petitioner’s operation. The witness disclosed that **when the BOC employees tried to seize the generator sets,**

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the same were already being used for the start-up of its operations.

Although the TCCO does not state the definition of “exhibition” as succinctly put by petitioner, the Court, however, does not agree with petitioner that the term is susceptible of several interpretations. Contrary to petitioner’s stance, the term “exhibition” is clear, plain and unambiguous.

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The term “*exhibition*” should therefore be understood in its ordinary acceptation and signification, which is “*an act or instance of exhibiting*”, “*a public showing (as of works of art, objects of manufacture, or athletic skill)*”. Certainly, the concept of “exhibition” in its ordinary acceptation does not contemplate the use of the generator sets for the commissioning and start-up of operations.

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Thus, petitioner’s use of the imported articles, which is beyond the authority set forth in the 1st Indorsement of DOF dated May 10, 2007, is a violation of the condition of its conditionally-free importation under Section 105(i) of the TCCP, as amended.²⁷ (*Emphasis and underscoring in the original*)

To refute the above findings, petitioner cites Article I, Chapter I of the Istanbul Convention²⁸, as its basis for the temporary admission of its three (3) shipments under conditionally duty and tax-free importation. This is implemented by Customs Administrative Order (CAO) No. 02-2022. Under Article 2(1)(a) and (b) of Annex B-1 of the Istanbul Convention, and Section 11 of CAO No. 02-2022, the goods intended for display or demonstration at an event and goods intended for use in connection with the display of foreign products at an event shall be granted temporary admission under conditionally duty and tax-free goods.

However, CAO No. 2-2022 specifically states in Section 4 that its date of implementation is on April 17, 2022, while the importations involved in the herein case were made in 2007, thus, the same is inapplicable.

It is likewise reiterated that what has been proven was that the imported generator sets were used for petitioner’s emergency power requirements, and not for any exhibition or display at an event.

Based on all the foregoing, there is no cogent reason to disturb the findings of the CTA Division that petitioner failed to prove the

²⁷ Division Decision, EB Docket, Vol. 1, pp. 178-185.

²⁸ Convention on Temporary Admission, June 26, 1990.

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timeliness of its appeal, and, that petitioner violated the TCCP in several instances. It is, therefore, proper that the subject articles be forfeited.

WHEREFORE, the instant Petition for Review is **DENIED** for lack of merit. The Decision and Resolution, dated October 20, 2021 and June 6, 2022, respectively, in CTA Case No. 7742 are **AFFIRMED**.

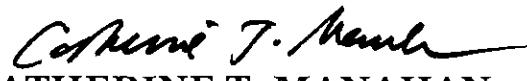
SO ORDERED.


HENRY S. ANGELES
Associate Justice

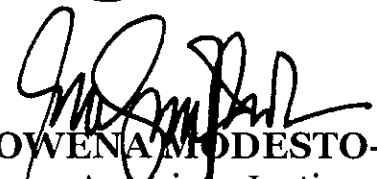
WE CONCUR:

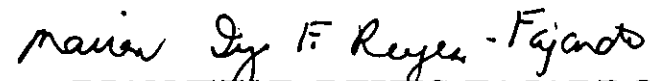

ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


(With Separate Opinion)
CORAZON G. FERRER-FLORES
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

NPC ALLIANCE CORPORATION,
represented by Renato B. Magadia,
Vice-Chairman of the Board,

Petitioner,

CTA EB NO. 2649
(CTA Case No. 7742)

Present:

- versus -

DEL ROSARIO, P.J.
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:

APR 18 2024

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SEPARATE OPINION

FERRER-FLORES, J.:

I join the majority in finding that the instant Petition for Review should be denied based on the lack of merit of the case. Nevertheless, I strongly believe that the Petition for Review was timely filed before the Court in Division.

In the Decision, the majority supported the view that petitioner failed to adduce supporting evidence to show that the appeal before the Court *a quo* was filed on time. The Notice of Decision/Order, attached to the present petition, to show proof of the timeliness of the filing was not considered because the same was not formally offered in evidence by petitioner. Likewise, the Supreme Court's pronouncement in the *BPI-Family Savings Bank vs. Court of Appeals (BPI case)*,¹ which allows a document not formally offered to arrive at a just determination of a controversy, was declared inapplicable because the document in that case was attached to the Motion for Reconsideration before the Court in

¹ G.R. No. 122480, April 12, 2000.

Division as compared to herein case which was attached to the Petition for Review before the Court *en banc*.

With all due respect, the Supreme Court in the said *BPI case* appreciated an income tax return which was not only attached to the Motion for Reconsideration filed before the Court in Division but was also attached in the Petition for Review filed before the Supreme Court. In granting the claim for refund of the petitioner, the Supreme Court ratiocinated:

More important, a copy of the Final Adjustment Return for 1990 was attached to petitioner's Motion for Reconsideration filed before the CTA. A final adjustment return shows whether a corporation incurred a loss or gained a profit during the taxable year. In this case, that Return clearly showed that petitioner incurred P52,480,173 as net loss in 1990. Clearly, it could not have applied the amount in dispute as a tax credit.

Again, the BIR did not controvert the veracity of the said return. It did not even file an opposition to petitioner's Motion and the 1990 Final Adjustment Return attached thereto. In denying the Motion for Reconsideration, however, the CTA ignored the said Return. In the same vein, the CA did not pass upon that significant document.

True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it "shall not be governed strictly by the technical rules of evidence." The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.

It should be stressed that the rationale of the rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice. But **there can be no just determination of the present action if we ignore, on grounds of strict technicality, the Return submitted before the CTA and even before this Court.** To repeat, the undisputed fact is that petitioner suffered a net loss in 1990; accordingly, it incurred no tax liability to which the tax credit could be applied. Consequently, there is no reason for the BIR and this Court to withhold the tax refund which rightfully belongs to the petitioner. (Boldfacing and underscoring supplied)

Similarly, in *San Miguel Brewery, Inc. vs. Commissioner of Internal Revenue (San Miguel case)*,² the Supreme Court ruled:

It appears that SMB was able to comply with the provisions of RR No. 17-2012 and RMC No. 3-2013, as it filed the relevant sworn statements for its SML in kegs for the subject period with the BIR. While these were admittedly not submitted to the ICPA, the latter was able to refer to the Schedule of Net Retail Price of SML products. **In any case, the sworn statements stamped received**

² G.R. No. 258813, October 2, 2023.

by the BIR were submitted by SMB to the CTA with its Motion for Partial New Trial.

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Granted, SMB may have failed to strictly comply with the rules of procedure. However, substantial justice, equity, and fair play, should take precedence over technicalities and legalisms. (Boldfacing and underscoring supplied)

The foregoing case laws reiterated that the law creating the Court of Tax Appeals (CTA) provides that proceedings before it *"shall not be governed strictly by the technical rules of evidence"* and *"substantial justice, equity, and fair play, should take precedence over technicalities and legalisms"*.

Moreover, there appears to be not much difference between submitting a vital document by attachment to a motion for reconsideration or motion for partial new trial before the Court in Division with that of attaching it to the petition for review before the Court *En Banc* because both courts belong to one CTA. In fact, in *BPI case*, the vital document was appreciated by the Supreme Court when the same was also attached to the Petition for Review filed before it.

The rule still remains that the CTA is not bound by strict adherence to the technical rules of procedure, the same may be relaxed for a just determination of the case and in the ascertainment of truth.

True, petitioner was not able to formally offer the Notice of Decision/Order as evidence during trial. Nevertheless, petitioner was able to allege in paragraph 3 of its Petition for Review the date of receipt of the assailed decision of the Bureau of Customs on February 28, 2008 and this fact can be corroborated by the notice attached to the present petition. A similar notice was part of the Bureau of Customs (BOC) records submitted to the Court pursuant to Section 5(b), Rule 6 of the Revised Rules of the CTA. Respondent, moreover, did not controvert the veracity of the said attached notice in its Comment (On Petitioner's Petition for Review dated 14 July 2022).

Guided by Section 8, Republic Act No. 1125, as amended,³ that the proceedings before the CTA shall not be governed strictly by the technical rules of evidence and in the interest of substantial justice, the Court can exercise liberality in the application of procedural rules which, in my humble opinion, should be done in this case.

³ SEC. 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, **but such proceedings shall not be governed strictly by the technical rules of evidence.** (Boldfacing supplied)

I am not unaware that the Court shall consider no evidence which has not been formally offered. I am also aware of the ruling of the Supreme Court that “[U]nless any of the party formally offered in evidence said Memorandum, and accordingly, admitted by the court a quo, it cannot be considered as among the legal and factual bases in resolving the controversy presented before it”, as it held in *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*.⁴ However, I submit that the same is not applicable to the case at bar.

The Supreme Court in the cases of *People vs. Napat-a*,⁵ *People vs. Mate*,⁶ and *The Heirs of Romana Saves, et al. vs. The Heirs of Escolastico Saves, et al.*,⁷ to cite a few, enumerated the requirements so that evidence, not previously offered, may be admitted and considered by the Court, namely: (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*.

Here, to prove that the Petition for Review was timely filed before the Court in Division, petitioner attached the Notice of Decision/Order in the present petition. A similar notice was traced to be a part of the BOC records submitted to the Court on August 11, 2008; and, while the same was not duly identified by testimony duly recorded during the proceedings of the case, it should be noted that the questioned document is a public document.

Public documents are admissible in evidence even without further proof of their due execution and genuineness.⁸

Section 19, Rule 132 of the Rules on Evidence defines public documents as follows:

SEC. 19. Classes of documents. — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- (a) The written official acts, or **records of the official acts** of the sovereign authority, official bodies and tribunals, and **public officers**, whether of the Philippines, or of a foreign country;
- (b) Documents acknowledged before a notary public except last wills and testaments; and
- (c) Public records, kept in the Philippines, of private documents required by law to be entered therein (Boldfacing supplied)

⁴ G.R. No. 195876, December 5, 2016.

⁵ G.R. No. 84951, November 14, 1989.

⁶ L-34754, March 27, 1981.

⁷ G.R. No. 152866, October 6, 2010.

⁸ *Iris Rodriguez vs. Your Own Home Development Corporation*, G.R. No. 199451, August 15, 2018.

The Notice of Decision/Order, issued by Atty. Cesar T. Palaña, is a record of an official act of a public officer which falls under the definition of a public document. The said document need not be identified but must be proved in accordance with Sections 23, 24, and 25 of Rule 132 of the Rules of Court, to quote:

Sec. 23. *Public documents as evidence.* — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. **All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.**

Sec. 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or **by a copy attested by the officer having the legal custody of the record**, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

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A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being a *prima facie* evidence of the due execution and genuineness of the document involved. xxx

Sec. 25. *What attestation of copy must state.* — Whenever a **copy of a document or record** is attested for the purpose of evidence, the attestation **must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer**, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

Applying the above rule to the present case, the Notice of Decision/Order was stamped with “CERTIFIED TRUE COPY” by no less than the issuer thereof Atty. Cesar T. Palaña, Chief, Law Division. The notice therefore was duly proven as an official record. Hence, while it was not presented during trial or attached to the motion for reconsideration, the same was submitted to the CTA, on August 11, 2008, as required under Section 5(b), Rule 6, of the Revised Rules of the Court of Tax Appeals.⁹ It was also attached to the present Petition for Review. The notice forms part of the records of the case; and, it is a public document duly attested to by the issuer thereof. The notice therefore becomes “*evidence, even*”

⁹ Order dated June 17, 2008, Docket – Vol. I, p. 309.

against a third person, of the fact which gave rise to their execution and of the date of the latter".

Hence, as early as August 11, 2008, the timeliness of the Petition for Review before the Court in Division could have been easily verified from the BOC Records submitted to the CTA by the respondent. The earliest date from which the thirty (30)-day period to file the petition can be reckoned from the date of issuance of the Notice of Decision/Order on February 27, 2008. Counting thirty (30) days therefrom, petitioner had until March 28, 2008 to file the Petition for Review before the Court in Division. Clearly, the filing of the Petition for Review on March 28, 2008 is within the prescriptive period.

As to the rest of the issues of the case, I concur with my esteemed colleague, Associate Justice Henry S. Angeles, in disposing of the merits of the case into a naught.

In the light of the above disquisitions, while the Petition for Review was timely filed before the Court in Division, I still vote to deny the petition for lack of merit.


CORAZON G. FERRER-FLORES
Associate Justice