Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

HEDCOR SIBULAN, INC., Petitioner,	**CTA EB NO. 1751** (CTA Case No. 8014)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 29 2019 1:40 pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on July 19, 2018 is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Amended Decision[2] in the case entitled Hedcor Sibulan, Inc.

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-

(a) xxx.

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

(c) xxx.

[2] En Banc Docket, pp. 48-58.

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vs. Commissioner of Internal Revenue (CIR), docketed as CTA Case No. 8014, dated August 15, 2017, rendered by the Special Third Division of this Court, and its Resolution[3] dated November 10, 2017.

The Special Third Division of this Court denied petitioner's claim for refund of the alleged unutilized input value-added tax (VAT) on purchases of goods and services for the fourth quarter of calendar year 2007.

Petitioner assails both the aforesaid Amended Decision and Resolution, the pertinent portions of which, respectively, read as follows:

CTA Case No. 8014

Amended Decision dated August 15, 2017:

"xxx, [U]pon perusal of petitioner's evidence, the court finds that petitioner failed to submit its ERC Registration and COC. Nowhere in the records of the case was it shown that petitioner is duly authorized by the ERC to operate facilities used in the generation of electricity. Thus, in the absence of evidence that petitioner is a generation company, its sales cannot qualify for VAT zero-rating under Section108(B)(7) of the 1997 NIRC, as amended by RA No. 9337, in relation to Section 4.108-3 of RR No. 16-2005, and Section 4 of Rule 5 of the Implementing Rules and Regulations of RA. No. 9136

The Certificate of Endorsement from the DOE is simply inadequate to sustain petitioner's claim that it is a generation company entitled to the refund or credit. xxx.

xxx.

In addition, petitioner's Final Amended 4th Quarterly VAT Return for 2007 declared no zero-rated sales, it was only on March 2010 and the subsequent months that petitioner made its sale of generated power to its sole customer, DLPCI. Thus, the claimed input VAT was not attributable to zero-rated sales.

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[3] En Banc Docket, pp. 60-62.

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***WHEREFORE**, premises considered, the Petition for Review filed by Hedcor Sibulan, Inc. is hereby **DENIED** for lack of merit.*

***SO ORDERED**."*

CTA Case No. 8014

Resolution November 10, 2017:

*"**WHEREFORE**, premises considered, petitioner's Omnibus Motion (Re: Amended Decision dated August 15, 2017) is hereby **DENIED** for lack of merit.*

***SO ORDERED**."*

The antecedent facts as narrated by the Court in Division in its Amended Decision read as follows:

CTA Third Division

On September 18, 2012, the Court promulgated a Decision stating that no decision has yet been rendered by respondent, neither was there inaction on his part, as the one hundred and twenty (120)-day period to decide has not yet lapsed; and that, thus, the Court of Tax Appeals ("CTA") has not acquired jurisdiction over petitioner's claim for refund or credit of unutilized input VAT for the fourth quarter of CY 2007, for having been prematurely filed. Accordingly, the Petition for Review was dismissed for lack of jurisdiction.

Petitioner filed its Motion for Reconsideration via registered mail on October 8, 2012; and its Supplemental Motion for Reconsideration was thereafter filed on October 23, 2012. Respondent replied through a Comment/ Opposition (Re: Petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration) filed on November 16, 2012.

Thereafter, on February 13, 2013, the Court in Division issued a Resolution denying the Motion for Reconsideration for lack of merit.

CTA En Banc

After being granted an extension and on March 18, 2013, petitioner then filed before the CTA En Banc a

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Petition for Review, which was docketed as CTA EB No. 987. Respondent then filed his Comments thereto on May 20, 2013.

The CTA En Banc promulgated a Decision dated October 7, 2013 granting the Petition for Review and remanding the case to the Court for the proper and immediate determination of the propriety of the claim for refund or the issuance of a TCC; and consequently, the declaration of the specific amount to which petitioner is entitled, if any.

On November 7, 2013, respondent filed a Motion for Reconsideration (Re: Decision promulgated on Oct. 7, 2013), which was denied by the CTA En Banc on April 29, 2014 for lack of merit.

Supreme Court

On June 27, 2014, respondent filed his Petition for Review on Certiorari with the Supreme Court ("SC"), docketed as G.R. No. 212460, after praying for and being granted an extension.

In a Resolution dated July 23, 2014, the Second Division of the SC considered the allegations, issues, and arguments adduced in the Petition for Review on Certiorari assailing the Decision and the Resolution of the CTA En Banc. However, it denied respondent's Petition for Review on Certiorari for failure to show any reversible error in the assailed judgment to warrant the exercise by the SC of its discretionary appellate jurisdiction in the case.

The SC sent a Notice to the CTA En Banc via registered mail on September 10, 2014, reiterating the contents of the July 23, 2014 Resolution.

On February 18, 2015, the CTA En Banc received a Letter of Transmittal from the SC transmitting a photocopy of the Entry of Judgment. The said Letter states that as of October 3, 2014, the July 23, 2014 Resolution has become final and executory and was recorded on the Book of Entries of Judgments.

On June 21, 2017, the Court ordered the parties to file their respective Manifestations regarding any supervening event that might affect the determination of petitioner's claim, for refund or for the issuance of a TCC, within a period of five (5) days from receipt thereof.

After being granted an extension, on July 12, 2017, petitioner filed its Manifestation, stating that there has

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> *been no development or supervening event that might affect the determination of petitioner's claim for refund or for issuance of a TCC. As to respondent, he failed to file his Manifestation.*
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> *On July 31, 2017, the case was deemed submitted for decision; xxx.*

On August 15, 2017, the Special Third Division of this Court rendered an Amended Decision which denied for lack of merit, petitioner's petition praying for the refund of alleged unutilized input value-added tax (VAT) on purchases of goods and services for the fourth quarter of calendar year 2007. Likewise, petitioner's "Omnibus Motion (Re: Amended Decision dated August 15, 2017)" was denied for lack of merit.

Hence, this Petition for Review was filed.

Petitioner submits that the Court in Division erred in denying its claim for refund based on the following grounds:

> *"12.1. The Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC) is a procedural requirement under R.A. 9136 and Implementing Rules and Regulations of R.A. 9136 (IRR) before Petitioner may start commercial operation and not a condition sine qua non before Petitioner may be considered as a generation company;*
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> *12.2. Failure to secure a COC prior to start of commercial operation attracts the applicable fines and penalties, and does not affect Petitioner's qualification as a generation company;*
>
> *12.3. At the time that Petitioner generated zero-rated sales in CY 2010, it already had a COC issued by the ERC. Thus, there is no doubt that Petitioner has satisfied the requirements of Section 4. 108-3, Revenue Regulations (Rev. Regs.) No. 16-2005 and Section 4, Rule 5, IRR;*
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> *12.4. Petitioner's non-submission of COC should not be deemed fatal to its claim for refund*

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considering that Petitioner was able to present sufficient and uncontroverted evidence that it is a generation company engaged in zero-rated sales of power;

12.5. This Court may take judicial notice of Petitioner's COC and ERC Registration;

12.6 Hedcor's unutilized input VAT for the 4th Quarter of CY 2007 was neither applied nor credited against any output tax VAT liability;

12.7. Hedcor has proven by preponderant evidence that its sales supported by official receipts and/or invoices were attributable to its sales of power generated from Renewable Energy (RE) sources;

12.8. Unless reversed, the Amended Decision will cause irreparable economic injury not only to Petitioner but to the power generation industry in general; and

12.9. The CTA-Division erred in denying Petitioner's Motion to Re-Open Trial."

From the foregoing, the principal issue is whether petitioner Hedcor Sibulan, Inc. is entitled to its claim for refund/credit in the amount of P15,301,194.87, representing the alleged unutilized input VAT attributable to zero-rated sales.

We resolve.

The relevant provisions of law pertaining to the claim for refund of input tax of a power generation company are Section 4 (x), Section 6 of Republic Act (RA) No. 9136, also known as the Electric Power Industry Reform Act of 2001 (EPIRA) and Section 4, Rule 5 of the Rules and Regulations to Implement RA No. 9136, which provides that sales of generated power by generation companies are VAT zero-rated. It also provides that "Generation Company' refers to any person or entity authorized by the ERC (Energy Regulatory Commission) to operate facilities used in the

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generation of electricity. Otherwise stated "Generation Company" who are qualified for VAT (Value Added Tax) zero rating refers to any person or entity who had secured an approved Certificate of Compliance from the ERC pursuant to EPIRA law; to wit:

Sections 4(x) and 6 of Republic Act (RA) No. 9136, also known as the Electric Power Industry Reform Act of 2001 (EPIRA) provides:

> *"SEC. 4. Definition of Terms. —*
>
> *xxx xxx xxx.*
>
> *(x) 'Generation Company' refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;"*
>
> *"SEC. 6. Generation Sector. — xxx.*
>
> *xxx, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws. xxx.*
>
> *Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated. xxx.*

Section 4, Rule 5 of the Rules and Regulations to Implement RA No. 9136 EPIRA law, provides:

> *"Section 4. Obligations of a Generation Company. —*
>
> *(a) A COC shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.*
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> *(i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from effectivity of*

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> *these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operational history, a general company profile and other information that ERC may require. Upon making a complete submission to the ERC, such person shall be issued a COC by the ERC to operate such existing Generation Facility."*

On the other hand, Sections 108 (B) (7) in relation to 112 (A) and (C) of the National Internal Revenue Code (NIRC) of 1997, provides the requirements for the issuance of a tax credit certificate or refund of input tax due or paid attributable to the taxpayer's zero-rated sales or effectively zero-rated sales, to wit:

Section 108 (B) (7) of the NIRC of 1997, as amended provides:

> *"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —*
>
> *xxx xxx xxx*
>
> *(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:*
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> *xxx xxx xxx*
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> *(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."*

Section 112 (A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> *"SEC. 112. Refunds or Tax Credits of Input Tax. —*
>
> *(A) Zero-rated or Effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the*

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> *close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.*
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> *xxx xxx xxx*
>
> *(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.*
>
> *In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."*

Accordingly, a taxpayer may claim a refund or tax credit certificate for input taxes paid on purchases of goods and services attributable to zero-rated sales upon compliance with the following requisites:

1. the taxpayer-claimant must be VAT-registered;

2. there must be zero-rated or effectively zero-rated sales;

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3. input taxes were incurred or paid;

4. such input taxes are attributable to zero-rated or effectively zero-rated sales;

5. said input taxes were not applied against any output VAT liability; and

6. the claim was filed within the prescriptive period.

As to the first requisite, it is undisputed. Petitioner was able to prove that it is a registered VAT taxpayer with the Bureau of Internal Revenue as evidenced by its Certificate of Registration with Tax Identification Number OCN 2RC000027022.28[4].

As to the second requisite, petitioner failed to comply. Pursuant to the EPIRA law and its implementing rules[5], there is a need for a company to secure a Certificate of Compliance (COC) from the ERC in order to be registered as a generation company and to be able to engage in the generation of electricity. Once considered as a generation company under the EPIRA law, the sales of generated power by such generation company shall be VAT zero-rated.

In the case of *Commissioner of Internal Revenue vs. Toledo Power Company*[6], the Supreme Court pointed the importance of the COC from the ERC to a generation company before it can qualify for VAT zero-rating and claim for refund. The Supreme Court instructively ruled as follows:

> *"Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4(x) of the same law states that a generation company "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Corollarily, to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must*

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[4] Exhibit "B", Bureau of Internal Revenue Certificate of Registration, Vol 2, Division Docket p. 569.

[5] Section 4 (x), Section 6 of Republic Act (RA) No. 9136, also known as the Electric Power Industry Reform Act of 2001 (EPIRA) and Section 4, Rule 5 of the Rules and Regulations to Implement RA No. 9136.

[6] G.R. Nos. 196415 and 195451, December 2, 2015.

establish: (1) that it is a generation company, and (2) that it derived sales from power generation.

In this case, TPC failed to present a COC from the ERC during the trial. On partial reconsideration, TPC argued that there was no need for it to present a COC because the parties already stipulated in the JSFI that TPC is a generation company and that it became entitled to the rights under the EPIRA when it filed its application with the ERC on June 20, 2002.

We find the arguments raised by TPC unavailing.

There is nothing in the JSFI to show that the parties agreed that TPC is a generation company under the EPIRA. The pertinent portions of the JSFI read:

> *JOINTLY STIPULATED FACTS*
>
> *1. [TPC] is principally engaged in the business of power generation and subsequent sale thereof to the [NPC, CEBECO, ACMDC, and AFC].*
>
> *2. On 20 June 2002, petitioner filed an application with the Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance pursuant to the Implementing Rules and Regulations of the EPIRA.*
>
> *xxx xxx xxx.*
>
> *ADMITTED FACTS*
>
> *xxx xxx xxx.*
>
> *3. Effective 26 June 2001, sales of generated power by generation companies became VAT zero-rated by virtue of Section 4(x) in relation to Section 6 of the EPIRA and Rule 5, Section 6 of the Rules and Regulations to Implement the EPIRA.*

Obviously, the parties did not stipulate that TPC is a generation company. They only stipulated that TPC is engaged in the business of power generation and that it filed an application with the ERC on June 20, 2002. However, being engaged in the business of power generation does not make TPC a generation company under the EPIRA. Neither did TPC's filing of an application for COC with the ERC automatically entitle TPC to the rights of a generation company under the EPIRA.

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> *At this point, a distinction must be made between a generation facility and a generation company. A generation facility is defined under the EPIRA Rules and Regulations as "a facility for the production of electricity." While a generation company, as previously mentioned, "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Based on the foregoing definitions, what differentiates a generation facility from a generation company is that the latter is authorized by the ERC to operate, as evidenced by a COC.*
>
> *Under the EPIRA, all new generation companies and existing generation facilities are required to obtain a COC from the ERC. New generation companies must show that they have complied with the requirements, standards, and guidelines of the ERC before they can operate. As for existing generation facilities, they must submit to the ERC an application for a COC together with the required documents within ninety (90) days from the effectivity of the EPIRA Rules and Regulations. Based on the documents submitted, the ERC will determine whether the applicant has complied with the standards and requirements for operating a generation company. If the applicant is found compliant, only then will the ERC issue a COC.*
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> *In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA."*

Clearly, all new generation companies and existing generation facilities are required to obtain a COC from the ERC under the EPIRA law. Evidently, failure to present a COC before the Courts is fatal to a taxpayer's claim. Thus, under the principle of *stare decisis* petitioner's assertions that (1) the COC is not a condition sine qua non before petitioner may be considered as a generation company; (2) failure to secure a COC prior to start of commercial operation attracts the applicable fines and penalties, and does not affect petitioner's qualification as a generation company; and (3) non-submission of COC should not be deemed fatal to its claim for refund considering that

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petitioner was able to present sufficient and uncontroverted evidence that it is a generation company engaged in zero-rated sales of power, lack merit.

No less than the Supreme Court in the *Toledo Case*[7] ruled that being engaged in the business of power generation does not make a corporation a generation company under the EPIRA law. Neither did the filing of an application for COC with the ERC automatically entitle a corporation to the rights of a generation company. Under the EPIRA law, all new generation companies and existing generation facilities are required to obtain a COC from the ERC. New generation companies must show that they have complied with the requirements, standards, and guidelines of the ERC before they can operate. As for existing generation facilities, they must submit to the ERC an application for a COC together with the required documents within ninety (90) days from the effectivity of the EPIRA Rules and Regulations. Based on the documents submitted, the ERC will determine whether the applicant has complied with the standards and requirements for operating a generation company. If the applicant is found compliant, only then will the ERC issue a COC and only then it qualifies for VAT zero-rating under the EPIRA.

In the present case petitioner did not present the COC from the ERC. Accordingly, absent the COC from the ERC, petitioner cannot qualify for VAT zero-rating under the EPIRA law.

The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the EPIRA Law in order to successfully pursue one's claim.[8]

The Court cannot just take cognizance of petitioner's alleged COC. Evidence allegedly presented and admitted by the court in a previous case cannot be adopted in a separate

[7] Ibid.
[8] Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 206526, January 28, 2015

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case pending before the same court without the same being offered and identified anew as the cases might involve similar parties before the Court's Division but do not cover the same claim. This Case involves a tax refund for calendar year 2007. Thus, we affirmed the Court in Division when it ruled that it will not consider any evidence which was not formally offered.

In addition, the COC from ERC is not among the matters which the law mandatorily requires the Court to take judicial notice of, without any introduction of evidence. In the case of Silkair (Singapore) Pte. Ltd. Vs. CIR[9], the Supreme Court ruled as follows:

> *"xxx, the documents are not among the matters which the law mandatorily requires the Court to take judicial notice of, without any introduction of evidence, as petitioner would have the CTA do. Section 1, Rule 129 of the Rules of Court reads:*
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> > *SECTION 1. Judicial notice, when mandatory. A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.*
>
> *Neither could it be said that petitioners SEC Registration and operating permits from the CAB are documents which are of public knowledge, capable of unquestionable demonstration, or ought to be known to the judges because of their judicial functions, in order to allow the CTA to take discretionary judicial notice of the said documents."*

Evidently, the COC from ERC is not a document of public knowledge, capable of unquestionable demonstration, or ought to be known to the judges because of their judicial functions, in order to allow the Court in Division to take discretionary judicial notice.

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[9] G.R. No. 184398, February 25, 2010.

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Furthermore, it is settled jurisprudence that cases filed before this Court are litigated *de novo,* party litigants should prove every minute aspect of their cases. No evidentiary value can be given to a document as the rules on documentary evidence require that these documents must be formally offered during trial before this Court.[10] A party should present all its evidence at first instance and not by piecemeal to avoid injurious surprises to the other party. The reopening of a case for the reception of additional evidence after a case has been submitted for decision, rests entirely in the sound judicial discretion of a trial Court. In Alegre vs. Reyes, et al.[11] the Supreme Court instructively ruled as follows:

> *"xxx the reopening of a case for the reception of additional evidence* ***after a case has been submitted for decision but before judgment is actually rendered*** *is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown. (Emphasis supplied)"*

In this case, the Court already rendered its judgment. In fact, petitioner presented its evidence and rested its case with the CIR not presenting any evidence during trial and submitted the case for decision before this Division as early as 2012. A party should present all its evidence at the first instance and not by piecemeal when it suits the case.

An additional documentary evidence, which is already in existence or available before or during a trial; known to and obtainable by petitioner; and could have been presented and offered in a seasonable manner which petitioner seek to present only after obtaining an unfavorable decision cannot be allowed. It is a forgotten evidence. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice.[12]

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[10] Dizon v. Court of Tax Appeals, G.R. No. 140944, April 30, 2008, 553 SCRA 111.
[11] Alegre vs. Reyes, et .al., G.R. No. L-56923, May 9, 1988.
[12] Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel, G.R. No. 164460, June 27, 2006.

Aside from the fact that petitioner failed to prove its qualification for VAT zero-rating under the EPIRA law, petitioner failed to prove that the claimed input tax was attributable to zero rated sales since at the time of refund there was no declared zero-rated sales.

We noted that on December 18, 2009, petitioner filed its administrative claim for refund/tax credit with RDO 115 for its alleged unutilized input VAT for the fourth quarter of calendar year 2007 and on December 29, 2009, petitioner filed a Petition for Review before the Court in Division. However, under the Section 112 (A) of the NIRC of 1997, as amended, any input tax attributable to zero-rated sales may at his option be refunded or credited against other internal revenue taxes within two (2) years after the close of the taxable quarter when the sales were made. Suffice it to say, at the time of the filing of its administrative claim for refund and the judicial claim for refund by filing a Petition for Review before the Court in Division on December 29, 2009, no declared zero-rated sales exists, thus, non-compliance to the 4th requisite that the claimed input taxes be attributable to zero-rated or effectively zero-rated sales. Hence, We find that the Court in Division aptly ruled as follows"

> *"In addition, petitioner's Final Amended 4th Quarterly VAT Return for 2007 declared no zero-rated sales, it was only on March 2010 and the subsequent months that petitioner made its sale of generated power to its sole customer, DLPCI. Thus, the claimed input VAT was not attributable to petitioner's zero-rated sales."*

Having failed to qualify for VAT zero-rating under the EPIRA law and that the claimed input taxes are not attributable to zero-rated or effectively zero-rated sales, the court need not discuss the other requisites. Petitioner is not entitled to its claim for refund of the alleged unutilized input value-added tax (VAT) on purchases of goods and services for the fourth quarter of calendar year 2007.

In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by jurisprudence and evidence on record.

WHEREFORE, premises considered, the Petition for Review docketed as CTA EB No. 1751 is **DENIED** for lack of merit. Accordingly, the Amended Decision dated August 15, 2017, rendered by the Special Third Division of this Court in CTA Case No. 8014, and its Resolution dated November 10, 2017 are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice