REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CARMEN COPPER CORPORATION, *Petitioner,*	**CTA CASE No. 9457** **For: Refund**
-versus-	**Members:** **CASTAÑEDA, JR., Chairperson,** **MINDARO-GRULLA, and** **BACORRO-VILLENA, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** SEP 19 2019 10:04 AM

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court is a Motion for Reconsideration filed by Carmen Copper Corporation (CCC)[1] seeking to set aside the Decision promulgated on July 23, 2019,[2] the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In its motion, CCC asserts that it was able to prove the existence of its zero-rated sales. It attached in its Motion for Reconsideration as evidence photocopies of the following:

[1] Dockets, Vol. III, filed through registered mail on August 8, 2019.
[2] Dockets, Vol. III.

A. Reconciliation Schedule of Zero-Rated sales vis-à-vis Sales Invoices (which could be properly traced to the relevant sales invoice);

B. Certain provisions of its sample Offtake Contract;

C. Certification issued by the Philippine Economic Zone (PEZA) Authority dated January 4, 2013;

D. Certification issued by the Philippine Associated Smelting & Refining Corporation (PASAR) dated October 8, 2018;

E. Readable supporting documents; and

F. Certificate of Inward Remittances.

In addition, CCC seeks relief by requesting for a reopening of this case for presentation of additional evidence, in the interest of justice.

In his Opposition,[3] the CIR reiterates that CCC failed to substantiate its zero-rated sales with supporting documents. He opposes CCC's motion to re-open the case because he opines that the claimant must introduce, at first instance, all the evidence necessary to support its claim and that the re-opening of cases is allowed only under exceptional circumstances which are not attendant to this case.

The Court finds petitioner's motion bereft of merit.

In the assailed Decision, the Court disallowed a portion of CCC's zero-rated sales because the amount of sales per schedule cannot be traced to the supporting sales invoice.

[3] *Ibid.*, filed on September 4, 2019.

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In its Motion for Reconsideration, CCC explains that the difficulty in tracing the export sales to the relevant sales invoices may be due to the fact that there is a variance in amounts indicated in the export sales schedule vis-à-vis the relevant sales invoice.

CCC alleges that this variance is a result of its practice of issuing a provisional invoice upon initial payment and a final invoice upon the final statement of the same, wherein the issuance of the provisional invoice and final invoice may or may not be made within the same taxable year and/or quarter. As such, the schedule of export sales may not always match with the final amount indicated in the sales invoice.

In order to clarify the above arguments, CCC presented a Reconciliation Schedule of Zero-Rated Sales vs. Sales Invoices attached as "Annex A" in the Motion. However, the Court observed that CCC did not submit the export sales schedule and other corroborating documents (*i.e.* corresponding provisional invoices and supporting accounting ledgers or schedules) in order verify the veracity of its allegations and satisfactorily account for the zero-rated sales in question. As such, this Court cannot reconsider the disallowances on the matter.

In the assailed Decision, the Court also disallowed CCC's portion of its zero-rated sales since the supporting sales invoices are unreadable. In its Motion, CCC attached "readable copies" of the subject invoices and attached the same as "Annexes E to K".

An examination of the readable copies however, discloses that the amounts therein do not match the amounts per export sales schedule as stated in the assailed Decision. Neither did CCC account for any discrepancies arising from those invoices in the Reconciliation Schedule of Zero-Rated Sales vs. Sales Invoices attached as "Annex A" in the Motion. In fact the reconciliation did not even show any discrepancy arising' from the disallowed zero-rated sales when compared to the corresponding attached copies of sales invoices.

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Be that as it may, based on Section 8, Republic Act (R.A.) No. 1125, as applied and settled in numerous rulings of the Supreme Court, this Court is categorically described as a court of record, thus, as cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases.[4] Consequently, it is the function of this Court to review factual issues and examine, evaluate or weigh the probative value of the evidence presented by the parties.

While CCC attached documents in its Motion to prove its claim, the Court notes that CCC did not formally offer the same during trial and the documents submitted are mere photocopies. Thus, the Court is constrained to disregard the documents, for lack of probative value and being inadmissible in evidence.

Section 34, Rule 132 of the Rules of Court provides that "the court shall consider no evidence which has not been formally offered."

In the case of *Heirs of Serapio Mabborang, et al. vs. Hermogenes Mabborang and Benjamin Mabborang,*[5] the Supreme Court discussed the significance and purpose of formal offer of evidence, to wit:

> "xxx A formal offer is necessary because judges are mandated to rest their findings of facts and judgment strictly and only upon the evidence offered by the parties at trial. Consequently, review by the appellate court is facilitated for it will not be required to review documents not previously scrutinized by the trial court. xxx:
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> > <u>Thus, the trial court is bound to consider only the testimonial evidence presented and exclude the documents not offered. Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not</u>

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[4] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.) Inc.*, G.R. No. 197515, July 2, 2014, 729 SCRA 113; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014, 736 SCRA 609.
[5] G.R. No. 182805, April 22, 2015.

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> formally offered in evidence cannot in any manner be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value. xxx The mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence. It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected." (Underlinings supplied.)

Although the rule admits an exception, CCC's claim would still fail considering that not only did it fail to formally offer the subject documents, it also failed to submit the originals thereof.[6]

Under the best evidence rule, when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself.[7]

In the case of *Philippine Banking Corporation vs. Court of Appeals and Leonilo Marcos,*[8] the Supreme Court held that:

> "The Best Evidence Rule provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had. Absent a clear showing that the original writing has been lost, destroyed or cannot be produced in court, the photocopy must be disregarded, being unworthy of any probative value and being an inadmissible piece of evidence." (Underlining supplied.)

In the case of *MCMP Construction Corp. vs. Monark Equipment Corp.,*[9] the Supreme Court provided the

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[6] *Carmen Copper Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 8418, May 2, 2016.
[7] Section 3, Rule 130 of the Rules of Court.
[8] G.R. No. 127469, January 15, 2004, 419 SCRA 487.
[9] G.R. No. 201001, November 10, 2014, 739 SCRA 432.

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requirements before a party may present secondary evidence to prove the contents of the original document whenever the original has been lost:

> "Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents."

In this case, CCC failed to satisfy the requirements for the introduction of secondary evidence. It did not provide a plausible reason as to why the originals of the documents presented could not be produced before the court. Thus, the Court cannot give any evidentiary weight to the documents presented.

Based on this, an examination of the records shows that there were various Customer's Charges which were deducted from the invoice price before arriving at the net remittances which were not explained by CCC during trial. Now in its motion, a mere copy of certain provisions of its Offtake contract was attached to explain that the final settlement of sale of copper concentrates is collected upon determination of the final shipment value of final weight and assays for metal content and prices during the quotational period less deductions for smelting prices. Considering this Court's stand on evidence not formally offered, the attached copy of the certain provisions of the Offtake Contract cannot be factored in by the Court in its analysis. This notwithstanding, the copy of the certain provisions of the Offtake Contract does not even show the details of these Customer's Charges.

Also in the assailed Decision, the Court disallowed a portion of CCC's zero-rated sales due to the fact that the documentary evidence of CCC shows that the goods were only shipped locally to Isabel, Leyte.

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In its Motion, CCC asserts that PASAR is a corporation duly-registered with the PEZA. The corresponding PEZA Certification issued to PASAR was attached in its Motion. Accordingly, CCC's sales to PASAR are allegedly considered as export sales subject to zero-rating in accordance with the cross-border doctrine, which was expressly adopted by CCC.

While an Ecozone is viewed as a foreign territory by legal fiction, thus, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the Ecozone are considered exports to a foreign country subject to 0% VAT,[10] CCC must prove that its clients are registered with the PEZA.[11]

Considering the foregoing pronouncement that the PEZA and PASAR Certifications are inadmissible in evidence, this Court cannot give evidentiary weight to the attached photocopies of documents in the Motion to prove sales of CCC to an entity registered and operating within the Ecozone.

Lastly, CCC avers that due to the findings of this Court that it failed to properly substantiate its claim through the proper documentation, it moves, with leave of court and in the interest of substantial justice, for the reopening of the case for the submission of the attached additional supporting documents in its Motion.

In *Republic of the Philippines vs. Sandiganbayan (Fourth Division), et. al.,*[12] the Supreme Court said:

> "The basis for a motion to reopen a case to introduce further evidence is Section 5, Rule 30 of the Rules of Court, which reads:
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> > Sec. 5. Order of trial. - Subject to the provisions of section 2 of Rule 31, and

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[10] *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,* G.R. No. 150154, August 9, 2005.
[11] *Maxima Machineries Inc. vs.* Commissioner of Internal Revenue, CTA Case No. 9358, March 11, 2019.
[12] G.R. No. 152375, December 13, 2011.

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> unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
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> xxxx
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> (f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case [.]

Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.

A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence; xxx." (Emphases in the original omitted; underlinings supplied.)

Clearly from the foregoing, a party's right to introduce further evidence must be recognized: (1) when the evidence is rebuttal in character or is a newly discovered evidence; (2) for good reasons; and (3) in the paramount interest of justice.

In this case, CCC alleges that it prays for the reopening of the case based on the findings of this Court in the assailed Decision that it failed to properly substantiate its claim through proper documentation. Thus, the evidence sought to be presented is not rebuttal in nature, nor newly discovered evidence, but allegedly, additional evidence to substantiate its claim through documentation.

As previously stated, evidence is rebuttal in character when the necessity of introducing the same, for instance, arose from the shifting of the burden of evidence from one

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party to the other.[13] In this case, CCC's failure to properly substantiate its claim through proper documentation does not fall under the purview of rebuttal evidence.

As regards the term "newly discovered evidence", the same has a specific definition under the law. Under the Rules of Court, the requisites for newly discovered evidence are: (a) the evidence was discovered after trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.

In the case at bar, there is no indication that these were discovered after trial; and that such evidence could not have been discovered and produced at the trial with reasonable diligence. In fact, a cursory examination of the documents to be presented by CCC shows that these were already capable of being produced during trial.[14] Without doubt, the evidence presented cannot be considered as newly discovered evidence.

As stated in the case of *Philippine Securities Settlement Corp. vs. Commissioner of Internal Revenue:*[15]

> "We must stress that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the decree of his thoughtlessness in not complying with the procedure prescribed."[16]

[13] *Philippines Securities Settlement Corp. vs Commissioner of Internal Revenue,* CTA Case No. 9058, August 22, 2019.
[14] *Ibid.*
[15] *Ibid.*
[16] Citing *Lazaro, et al., vs. Court of Appeals, et al.,* G.R. No. 137761, April 6, 2000.

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It is noteworthy that during trial, CCC was accorded full opportunity to present its testimonial and documentary evidence, after which, CCC filed its Formal Offer of Evidence[17] on August 24, 2017. Thereafter, this Court ruled on the admissibility and inadmissibility of the said evidence in its Resolution dated January 26, 2018.[18] Thus, CCC cannot claim any injustice committed during the trial of the instant case.[19]

While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. Unless substantial justice dictates that procedural rules be relaxed to arrive at a just disposition of a case, there shall be no liberality in the interpretation and application of the rules.

Actions for tax refund, as in the instant case, are in the nature of a claim for exemption hence must be construed in *strictissimi juris* not only against the taxpayer, but also with respect to scrutinizing and analyzing the evidence presented.[20]

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated 23 July 2019) is **DENIED** for lack of merit.

SO ORDERED.

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

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[17] *Dockets,* Vol. II, pp. 643-667.
[18] *Ibid.,* pp. 1187-1189
[19] *Supra,* note 16.
[20] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice