REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MAXIMA MACHINERIES, INC., Petitioner,	**CTA CASE NO. 9210**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 0 5 2019 10:30 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is petitioner's **Motion for Reconsideration and/or New Trial**, filed on February 15, 2019, with respondent's **Opposition (Re: Motion for Reconsideration and/or New Trial)**, filed on March 8, 2019.

Petitioner seeks reconsideration of the Court's Decision dated January 30, 2019, the dispositive portion of which reads:

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

Petitioner seeks reconsideration of the findings of the Court that since petitioner's input value-added tax (VAT) attributable to VATable sales to private entities during the period in question is not enough to cover its output VAT liability, the substantiated input VAT attributable to its zero-rated sales in the amount of ₱18,246,358.83, as determined by the Court, shall be utilized against the remaining output VAT liability of ₱45,157,885.35.

Relative to its zero-rated sales, petitioner avers that, in addition to adopting the findings of the Independent Certified Public Accountant (ICPA) as to the denial of VAT zero-rated sales in the amount of ₱47,255,199.60 for petitioner's failure to comply with the invoicing requirements, the Court denied the reported zero-rated sales in the amount of ₱109,062,764.53 for VAT zero-rating due to the following reasons:

(a) Sales of goods supported by charge sales invoices with unreadable details;
(b) Sales of goods supported by charge sales invoices dated outside the period of claim;
(c) Sales of goods supported by charge sales invoices without the word "zero-rated" sales written or imprinted;
(d) Sales to entities not registered with Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA), Clark Development Corporation (CDC), Cagayan Economic Zone Authority (CEZA), or Board of Investments (BOI) without proof of VAT zero-rating;
(e) Sales to entities with proof of VAT zero-rating but outside the validity period or without validity period indicated.

Meanwhile, petitioner also avers that, in addition to the disallowances made by the ICPA, the Court disallowed input VAT in the amount of ₱10,795,971.58, due to various reasons.

In relation to the above, petitioner re-submits the following:

(a) Duly marked Exhibits "P-78-R-157" to "P-78-R-229", "P-78-T-6" to "P-78-T-30" and "P-78-U-92" to "P-78-U-102", which are allegedly readable, for sales of goods supported by charge sales invoices with unreadable details;
(b) Exhibits "P-78-T-4" to "P-78-T-5", which the ICPA allegedly verified to be within the period of claim, with regards to sales of goods supported by charge sales invoices dated outside the period of claim;

(c) Exhibits "P-78-AA-8" and "P-78-AA-9", to prove that VAT invoice shows the Authority to Print (ATP);
(d) Exhibits "P-78-AB-4", "P-78-AR-1", and "P-78-AR-13", to prove that the same are readable; and
(e) Exhibit "P-78-AC-12", to prove that although the name of petitioner is incomplete, the same invoice clearly refers to petitioner.

Relative to sales to entities not registered with PEZA, SBMA, CDC, CEZA, or BOI without proof of VAT zero-rating, petitioner avers that the ICPA failed to include the Certificates of Non-Registration of Marubeni Corporation and Orix Leasing & Finance Corp. Hence, petitioner requests that the Securities and Exchange Commission (SEC) Certificates of Non-Registration of Marubeni Corporation and Orix Leasing & Finance Corp. be presented and identified by the ICPA in a new trial to prove that they are non-resident foreign corporations.

Petitioner also moves for the continuance of the audit of the ICPA with regard to the relevant documents pertaining to the prior period excess input VAT carry-over, and for a new trial for such purpose, considering that the ICPA failed to complete his audit of petitioner's documents due to lack of material time.

In support of its motion, petitioner submits the Affidavits of Neil U Sison, the Court-commissioned ICPA, and Yusuke Yamada, petitioner's Chief Finance Officer, attached to the motion as Annexes "A" and "B", respectively, as well as the documents marked as Exhibits "P-78-R-157" to "P-78-R-229", "P-78-T-6" to "P-78-T-30", "P-78-U-92" to "P-78-U-102", and "P-78-T-4" to "P-78-T-5", "P-78-AA-8", "P-78-AA-9", "P-78-AB-4", "P-78-AC-12", "P-78-AR-1", "P-78-AR-13", and "P-84" (*i.e.*, SEC Certificate of Non-Registration of Marubeni Corporation Japan).

Further, petitioner argues that the Court erred in ruling that although petitioner's Quarterly VAT return for the 1st quarter of fiscal year 2014 reflected the amount of ₱331,752,463.44 as "Input Tax Carried Over from Previous Period", petitioner failed to fully substantiate the same. Petitioner alleges that the input tax carry over from previous quarters is not an issue in the case at bar and that the issue in this case is limited only to the allocation of the input VAT arising from purchases of goods and services between VAT and zero-rated sales.

Petitioner contends that the validity of the input VAT carried over from the previous quarter is undertaken by the Bureau of Internal Revenue (BIR) examiners pursuant to a valid Letter of Authority to examine the books of accounts and other accounting records of petitioner for all internal revenue tax purposes or for value-added tax purposes covering the period in question. Petitioner avers that the Letter of Authority issued for the examination of the books of accounts of petitioner in relation to the subject claim for refund is confined only to the determination as to the validity of its claim for VAT refund. Thus, petitioner maintains that the input VAT attributable to zero-rated sales in the amount of ₱18,246,358.83, as determined by the Court, should be refunded to petitioner and should not be offset against the output VAT for the same period.

In his opposition, respondent vehemently objects to petitioner's motion that the Court allow the ICPA to continue his verification of the documents pertaining to the prior period excess input tax carry-over and order a new trial for the reception of additional evidence, arguing that petitioner was given more than ample opportunity to properly ventilate its case.

Respondent contends that partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of tax exemptions, respondent maintains that these claims are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority.

The motion for reconsideration and/or new trial is bereft of merit.

Petitioner prays for the reconsideration of the assailed Decision, to allow the ICPA to continue his verification of the documents pertaining to the prior period excess input tax carry-over, and to order a new trial for the reception of evidence in support of the input VAT carried over from the previous periods and the SEC Certificate of Non-Registration of Marubeni Corporation and Orix Leasing & Finance Corp. as non-resident foreign corporations.

While a party may believe that it has a meritorious legal defense, this must be weighed against the need to halt an abuse of the flexibility of procedural rules. It is well established that faithful compliance with the Rules of Court is essential for the prevention and avoidance of unnecessary delays and for the organized and efficient dispatch of judicial business.[1]

With respect to the input tax carry-over in the amount of ₱331,752,463.44, the Court reiterates its finding in the assailed Decision that the same cannot be validly applied against petitioner's output tax because petitioner failed to prove that it has excess input VAT carried over from previous period. An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[2]

Pursuant to Section 110(A)(1) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, any input tax shall be creditable against the output tax only if the same is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, and in claiming excess/unutilized input tax from zero-rated transactions, it is the excess input tax over the output tax which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input tax credits to cover its output tax liability for the current taxable year.[3]

Considering that petitioner failed to present its VAT invoices or official receipts to prove the existence of the "Input Tax Carried Over from Previous Period" in the amount of ₱331,752,463.44, said amount cannot be validly applied against petitioner's output tax.

Even petitioner's motion for new trial is bereft of merit. A motion for new trial may be granted only upon specific, well-defined grounds, set forth in the Rules.[4]

Sections 1 and 2, Rule 37 of the Rules of Court provide:

> SECTION 1. *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for

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[1] *Philippine National Bank vs. Commissioner of Internal Revenue,* G.R. No. 172458, December 14, 2011.
[2] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.
[3] *Chevron Holdings, Inc. [formerly Caltex (Asia) Limited] vs. Commissioner of Internal Revenue,* CTA EB No. 1146, April 14, 2015.
[4] *Alegre vs. Hon. Reyes, et al.,* G.R. No. L-56923, May 9, 1988.

taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

SEC. 2. *Contents of motion for new trial or reconsideration and notice thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

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A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal. ge

Relative to these provisions are Sections 5 and 6, Rule 15 of the Revised Rules of the Court of Tax Appeals, to wit:

> SEC. 5. *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.
>
> A motion for new trial shall include all grounds then available and those not included shall be deemed waived.
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> SEC. 6. *Contents of motion for reconsideration or new trial and notice.* – The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.
>
> A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.
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> A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed

> *pro forma,* which shall not toll the reglementary period for appeal.

The Rule requires that motions for new trial founded on fraud, accident, mistake or excusable negligence must be accompanied by affidavits of merits, *i.e.*, affidavits showing the facts (not mere conclusions or opinions) constituting the valid cause of action or defense which the movant may prove in case a new trial is granted, because a new trial would serve no purpose and would just waste the time of the court as well as the parties if the complaint is after all groundless or the defense is nil or ineffective.[5]

On the other hand, in *Commissioner of Internal Revenue vs. A. Soriano Corporation, et al.*[6], the High Court laid down the requisites for the grant of a motion for new trial on the ground of newly discovered evidence in this wise:

> Section 5, Rule 13 of the Rules of the Court of Tax Appeals provides that the provisions of Rule 37 of the Rules of Court shall be applicable to motions for new trial before the Court of Tax Appeals. Under Section 1, Rule 37 of the Rules of Court, the requisites for newly discovered evidence as a ground for a new trial are: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment. All three requisites must characterize the evidence sought to be introduced at the new trial.

From the foregoing, it can be seen that the rules allow the filing of a motion for new trial on the grounds of fraud, accident, mistake or excusable negligence; or of newly discovered evidence, in the manner provided for proof of motions.

An examination of the instant motion and of the affidavits attached thereto, however, shows that the same was neither based on fraud, accident, mistake or excusable negligence, nor based on newly discovered evidence. The allegations in the affidavits failed to

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[5] *Elpidio S. Uy vs. First Metro Integrated Steel Corp., et al.*, G.R. No. 167245, September 27, 2006.
[6] G.R. No. 113703, January 31, 1997.

convince the Court that there is a valid ground for granting a new trial.

In this case, the ICPA, through his Affidavit, admitted that:

1. he was not able to audit the balances and details comprising the excess input VAT from second to fourth quarter of fiscal year 2013 which included the input tax carried over from the previous period in the amount of ₱331,752,463.44 as the documents in support thereof were not made available during the course of the audit; and

2. due to sheer oversight, he failed to submit to the Court the Certifications of Non-Registration of Marubeni Corporation and Orix Metro Leasing & Finance Corp. issued by the Securities and Exchange Commission which show that Marubeni Corporation and Orix Metro Leasing & Finance Corp are not doing business in the Philippines.

On the other hand, the Chief Financial Officer of petitioner mentioned in his Affidavit that during the audit of the ICPA, there were some documents pertaining to the VAT refund of petitioner which were not yet available. He further mentions that some documents pertaining to the input tax carry over from previous quarters were not verified by the ICPA. Also, he states that due to the voluminous documents in support of the refund claim and limited time, they were not able to gather all documents during the audit of the ICPA. Lastly, he avers that they have already collated the documents in support of the input VAT carried forward from the previous periods which were not previously available and verified by the ICPA and are now available for the review of the ICPA.

From the foregoing, the Court finds that the additional documentary evidence constitutes "forgotten" evidence which petitioner intends to present only after obtaining an unfavorable decision. As held in the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel*[7]:

> xxx Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have

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[7] G.R. No. 164460, June 27, 2006.

> been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. 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 and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.

In view of the foregoing, the SEC Certificates of Non-Registration of Marubeni Corporation and Orix Leasing & Finance Corp., which petitioner seeks to introduce in its motion for new trial, are neither newly discovered evidence nor omitted due to fraud, accident, mistake or excusable negligence. The motion for new trial is an attempt to remedy the failure of petitioner to allege and to prove during trial that Marubeni Corporation and Orix Leasing & Finance Corp. are persons engaged in business conducted outside the Philippines or are nonresident persons not engaged in business who is outside the Philippines when the services are performed, which may qualify the sale of services to these persons as VAT zero-rated sales provided the requirements under Section 108(B)(2) of the NIRC of 1997, as amended, are met.

Notably, petitioner only alleged that in the course of its trade and business, it sells to export entities registered with PEZA, SBMA, Clark Development Authority (CDA), CEZA, CDC, and BOI.[8] Likewise, the ICPA only found that petitioner rendered services and sell goods to entities registered with PEZA, SBMA, CDA, CEZA, CDC, and BOI, which are subject to VAT at zero percent (0%) under Sections 106(A)(2)(c) and 108(B)(3).[9] Petitioner only alleged that it also sells to non-resident foreign corporations when the Court rendered an unfavorable decision.

It also cannot be said that the SEC Certificates of Non-Registration of these corporations were not in existence or available before or during the trial of the instant case. Clearly, the SEC Certificates of Non-Registration of Marubeni Corporation and Orix Leasing & Finance Corp. are forgotten evidence and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of petitioner or its counsel. If the

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[8] Par. 3, Part III, Memorandum for the Petitioner, docket, vol. III, p. 1355.
[9] Exhibit "P-79" (ICPA Report), docket, vol. II, p. 863.

alleged newly discovered evidence could have been very well presented during the trial with the exercise of reasonable diligence, the same could not be considered newly discovered evidence.[10]

Moreover, even if the SEC Certificates of Non-Registration were admitted, the same by themselves do not constitute sufficient proof that sale of services to Marubeni Corporation and Orix Leasing & Finance Corp. are VAT zero-rated under Section 108(B)(2) of the NIRC of 1997. To be considered as non-resident foreign corporations doing business outside the Philippines, each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/partnership and certificate/articles of foreign incorporation/ association/registration.[11] Further, there must be proof that the payment for such services were inwardly remitted in acceptable foreign currency accounted for in accordance with the BSP rules and regulations. Hence, it will be useless to allow the presentation of the SEC Certificates of Non-Registration and then to eventually affirm the disallowance of the corresponding zero-rated sales for failure to prove all the requisites to qualify for VAT zero-rating.

On the other hand, the failure of petitioner to present its VAT invoices or official receipts to prove the existence of the "Input Tax Carried Over from Previous Period" does not warrant a new trial considering that such evidence is already in existence or available before or during the trial; known to and obtainable by petitioner; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight of petitioner or counsel. The Court finds that the documents in support of the input VAT carried forward from the previous period which were not previously available and verified by the ICPA and are now available for the review of the ICPA constitute "forgotten" evidence which petitioner intends to present only after obtaining an unfavorable decision.

The parties must diligently and conscientiously present all arguments and available evidences in support of their respective positions to the court before the case is deemed submitted for judgment. Only under exceptional circumstances may the court receive new evidence after having rendered judgment; otherwise, its

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[10] *Manuel Ybiernas, et al. vs. Ester Tanco-Gabaldon, et al.,* G.R. No. 178925, June 1, 2011.

[11] *Deutsche Knowledge Servic es, Pte. Ltd. vs. Commissioner of Internal Revenue,* CTA Case No. 7808, December 16, 2014 affirmed *in toto* by the CTA En Banc on August 16, 2016 in CTA EB No. 1290.

judgment may never attain finality since the parties may continually refute the findings therein with further evidence.[12]

To allow the presentation of petitioner's additional evidence without having complied with the requisites for the grant of a motion for new trial will set a dangerous precedent of never-ending suits.

It is an accepted tenet that rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure.[13] In this case, petitioner has not demonstrated any cogent reason for the Court to take an exception.

Although it is true that the Court of Tax Appeals is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of petitioner's claims.[14]

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration and/or New Trial** is **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[12] *Alamayri vs. Rommel, Elmer, Erwin, Roiler and Amanda, all surnamed Pabale,* G.R. No. 151243, April 30, 2008.

[13] *Suarez vs. Judge Villarama, Jr., et al.,* G.R. No. 124512, June 27, 2006.

[14] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 181858, November 24, 2010.