REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TOLEDO POWER COMPANY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1359
(CTA Case No. 8403)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

Promulgated:

MAY 25 2017 4:15 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review filed by Toledo Power Company (Toledo) pursuant to Section 3(b) and 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court seeking to:

1. Set aside the Resolution of the Court of Tax Appeals (CTA) Third Division which denied its Motion for Reconsideration/New Trial for lack of merit;

2. Remand the case for reception of additional evidence; and,

3. Grant the refund of ₱24,412,203.00.

THE FACTS

The facts, as summarized from the Decision and the records, are as follows:

Toledo is a partnership duly organized and existing under Philippine laws, with principal office located at Sangi, Toledo City, Cebu. It is registered with and authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. It is, likewise, registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Tax Identification No. 003-883-626-000/per BIR Certificate of Registration No. 2RC0000074406.[1]

Respondent is the Commissioner of Internal Revenue (CIR) with authority to act on and approve claims for refund or tax credit as provided by law and holds office at the BIR National Office Building, Diliman, Quezon City.[2]

On January 26, 2010, Toledo filed its Quarterly VAT Return for the 4th quarter of 2009[3] and reported the following transactions:[4]

	SALES/RECEIPTS	OUTPUT TAX
VATable Sales/Receipts	₱237,742 036.53	₱28,529,044.38
Sales to Government	13,572,156.80	1,628,658.82
Zero-rated sales/receipts	374,355,255.19	-
Exempt sales/receipts	986,198.90	-
TOTAL	₱626,655,647.42	₱30,157,703.20

In the same quarter, Toledo allegedly incurred the following input taxes, which were, likewise, reported in its VAT return, thus:[5]

	PURCHASES	INPUT TAXES
VATable purchases for the quarter	₱448,941,390.26	₱53,872,966.83
Input tax on purchases of capital goods amortized during the quarter		327,455.38
Total input taxes for the quarter		₱54,200,422.21

Toledo declared that a portion of the above input VAT are attributable to its zero-rated sales/receipts. This portion of the input VAT amounting to

[1] Decision, p. 1, Division Docket Vol. 4, p. 2115.
[2] Decision, p. 2, Division Docket Vol. 4, p. 2116.
[3] Decision, p. 2, Division Docket Vol. 4, p. 2116; Exhibit K, Formal Offer of Evidence, Division Docket Vol. 2, p. 569.
[4] Decision, p. 2, Division Docket Vol. 1, p. 2116; Exhibits J and K, Formal Offer of Evidence with Motion for Commissioner's Hearing, Division Docket Vol. 2, pp. 567-570.
[5] Decision, p. 2, Division Docket Vol. 4, p. 2116.

₱24,412,203.00 were not fully utilized in the same quarter and were not used against its output VAT in the subsequent periods.[6]

On August 26, 2011, Toledo filed with the BIR Revenue District Office No. 123 an administrative claim for VAT refund or issuance of tax credit certificate in the amount of ₱24,412,203.00. However, respondent failed to act on the said claim.[7]

On December 28, 2011, Toledo filed its judicial claim through a petition with the CTA Third Division praying for refund or issuance of tax credit certificate of the amount of ₱24,412,203.00, allegedly representing its unutilized input VAT for the 4th quarter of taxable year 2009.[8]

In the Answer, filed on January 24, 2012, respondent CIR argued that the subject claim for refund was still undergoing administrative examination by the BIR; that the claimed amount of ₱24,412,203.00 was not properly documented; that petitioner failed to submit complete documents in the administrative level; and that the burden of proof to establish the right to refund/credit is upon petitioner.[9]

On March 6, 2012, the parties filed their Joint Stipulation of Facts and Issues upon which the Pre-Trial Order, issued on March 20, 2012, was based.[10]

The initial presentation of evidence for Toledo was set on April 11, 2012[11] which was reset to May 31, 2012, upon motion of Toledo's counsel.[12]

During the trial, petitioner presented two (2) witnesses, namely: Reymonda Aida B. Obrero and Joseph Cedric V. Calica.[13]

In her Judicial Affidavit, which was filed with the court on May 28, 2012, Ms. Reymonda Aida B. Obrero declared that she is the Senior Accounting Manager of Global Business Power Corporation, a holding company with management and control of various power generation facilities, one of which is petitioner. She testified that petitioner duly filed with the BIR its administrative claim for refund of unutilized input VAT amounting to ₱24,412,203.00 for the 4th quarter of taxable year 2009, along with all the supporting documents.[14]

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[6] Decision, p. 2, Division Docket Vol. 4, p. 2116.
[7] Decision, pp. 2-3, Division Docket Vol. 4, pp. 2116-2117.
[8] Decision, p. 1, Division Docket Vol. 4, p. 2115.
[9] Decision, p. 3, Division Docket Vol. 4, p. 2117.
[10] *Id.*
[11] Minutes of February 23, 2012 Hearing, Division Docket Vol. 1, p. 127.
[12] Minutes of April 11, 2012 Hearing, Division Docket Vol. 1, p. 159.
[13] Decision, p. 3, Division Docket Vol. 4, p. 2117.
[14] *Id.*

After the completion of the direct examination of Ms. Reymonda Aida B. Obrero on May 31, 2012, her cross-examination was reset to June 27, 2012.[15]

On June 27, 2012, counsel for the CIR manifested that she will not cross-examine Toledo's witness Ms. Obrero, accordingly, the commissioning of the Independent Certified Public Accountant (ICPA) was set on July 26, 2012.

On July 24, 2012, Toledo filed a Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals for the commissioning of Mr. Joseph Cedric V. Calica as the ICPA. On July 26, 2012, Mr. Joseph Cedric V. Calica was commissioned as the ICPA.[16]

On August 8, 2012, the report of the court-commissioned ICPA Joseph Cedric V. Calica, including Exhibits AAA to FFF, was filed with the court.[17] Upon motion for Toledo's counsel, the September 6, 2012 hearing for the presentation of Toledo's evidence was reset to October 4, 2012.[18]

On September 28, 2012, the revised report of the ICPA, including Exhibits AAA to FFF, was filed with the court.[19]

On October 3, 2012, Toledo filed the judicial affidavit of the ICPA with the court.[20]

During the October 4, 2012 hearing, Toledo moved for the continuation of the presentation of evidence on the ground that the ICPA needed to mark additional documents. Accordingly, hearing was reset to November 12, 2012.[21]

On October 24, 2012, the ICPA final report, including summaries, schedules and other documents marked as Exhibits AAA to XXX, was filed with the court.[22]

The court-commissioned ICPA executed another Judicial Affidavit, filed on November 9, 2012,[23] in which he explained that petitioner is engaged in zero-rated sales as it sells and supplies electric power to entities located in economic zones or to Board of Investments (BOI)-registered entities. He considered petitioner's sales to CEBECO III as zero-rated because portions of its energy fee billing to CEBECO III were pass-through charges directly attributable to Balamban Enerzone Corporation (BEC) and Carmen Copper

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[15] Minutes of May 31, 2012 Hearing, Division Docket Vol. 1, p. 174.
[16] Oath of Commission dated July 26, 2012, Division Docket Vol. 1, p. 176.
[17] August 28, 2012 ICPA Report, Division Docket Vol. 1, pp. 192-236.
[18] Minutes of September 6, 2012 Hearing, Division Docket Vol. 1, p. 237.
[19] Division Docket Vol. I, pp. 238-283.
[20] Division Docket Vol. 1, pp. 284-289.
[21] Minutes of October 4, 2012 Hearing, Division Docket Vol. I, p. 290.
[22] Division Docket Vol. 1, pp. 291-442; see also Exhibit YYY, Formal Offer of Evidence, Division Docket Vols. 2-5, pp. 618-2058.
[23] Division Docket Vol. 1, pp. 443-451.

Corporation (CCC), which are zero-rated entities. And based on his findings, the amount that is due for refund to petitioner, as supported by documents, is ₱23,783,426.50.[24]

During the November 12, 2012 hearing, the direct testimony of the ICPA was completed. Upon motion of the counsel for the CIR, the cross examination of the ICPA was reset to December 6, 2012.[25]

During the December 6, 2012 hearing, counsel for the CIR manifested that he will no longer cross-examine the ICPA. The continuation of the presentation of evidence for Toledo was set on February 11, 2013.[26]

During the February 11, 2013 hearing, Toledo manifested that it is resting its case and requested for thirty days within which to file the Formal Offer of Evidence.[27]

On March 12, 2013, Toledo filed a Motion to Defer Filing of Formal Offer of Evidence with Motion to Reopen the Case stating that "after thoroughly going over the records of the case, Petitioner deemed it necessary to present additional evidence to prove Petitioner's claim."[28]

In a Resolution dated March 20, 2013, the Court granted Toledo's motion and set the presentation of Toledo's additional evidence on April 24, 2013.

On April 24, 2013, when the case was called for the presentation of Toledo's additional evidence, counsel for Toledo "moved for the resetting of the hearing on the ground that the intended witness would identify voluminous documents which have not been marked. Counsel for respondent [CIR] objected and moved to deny the motion and that the presentation of petitioner's additional evidence be deemed waived. Finding merit, the Court GRANTED the motion interposed by counsel for respondent [CIR]."[29] Consequently, Toledo's motion to reset hearing was denied and the presentation of its additional evidence was deemed waived.[30]

On May 3, 2013, Toledo filed a Motion for Reconsideration with Motion for Commissioner's Hearing asking for the court's indulgence in order to be extended "one last chance to present its additional evidence to prove its petition." Specifically, counsel for Toledo explained that the additional pieces of evidence "comprise mainly of official receipts and invoices issued by third parties, specifically official receipts and invoices from the customers of Cebu Electric Cooperative, Inc. (CEBECO), a VAT-registered entity." The motion

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[24] Decision, p. 4, Division Docket Vol. 4, p. 2118.
[25] Minutes of the November 12, 2012 Hearing, Division Docket Vol. 1, p. 452.
[26] Minutes of the December 6, 2012 Hearing, Division Docket Vol. 1, p. 453.
[27] Minutes of the February 11, 2013 Hearing, Division Docket Vol. 1, p. 455.
[28] Division Docket Vol. 1, pp. 458-461.
[29] Resolution dated May 2, 2013, Division Docket Vol. 1, pp. 466-467.
[30] *Id.*

further stated that Toledo must prove that "the electric power it sold to CEBECO is in fact distributed by CEBECO to PEZA-registered and BOI-registered entities."[31]

In a Resolution dated May 8, 2013, the Court ordered the CIR to comment on Toledo's motion.[32] However, the CIR failed to file a comment.[33]

In a Resolution dated May 27, 2013, the Court denied Toledo's Motion for Reconsideration with Motion for Commissioner's Hearing for lack of merit.[34]

On June 11, 2013, Toledo filed a Motion to Admit Formal Offer of Evidence.[35]

In a Resolution dated July 17, 2013, the Court granted Toledo's Motion to Admit Formal Offer of Evidence and likewise granted its Motion for Commissioner's Hearing, which was set on August 1, 2013, for purposes of comparing Exhibits C[36] and C-1[37] with the original copies and marking the same.[38]

On August 12, 2013, Toledo filed a Manifestation with Supplemental Formal Offer of Evidence where it submitted in evidence Exhibits C and C-1.[39]

In a Resolution dated October 14, 2013, the Court acted on Toledo's Formal Offer of Evidence and Manifestation with Supplemental Offer of Evidence the court and denied admission of the following exhibits:[40]

1. Exhibits H-1[41] and H-2[42] for Toledo's failure to identify the same; and,

2. Exhibits BBB-53, BBB-60, BBB-61, BBB-162, BBB-177, BBB-302, BBB-352, BBB-369, BBB-514 to BBB-515, BBB-658, BBB-797, BBB-963 to BBB-964, BBB-1017, BBB-1078 to BBB-1083,

[31] Division Docket Vol. 1, pp. 468-473.
[32] Division Docket Vol. 1, p. 478.
[33] Division Docket Vol. 1, p. 479.
[34] Division Docket Vol. 1, pp. 481-482.
[35] Division Docket Vol. 2, pp. 483-486.
[36] Certificate of Compliance issued by the Energy Regulatory Commission with COC No. 09-11-GXT61-0066, Summary of Exhibits, Division Docket Vol. 4, p. 2069.
[37] Energy Regulatory Commission Terms and Conditions of COC issued to Toledo Power Company dated November 16, 2009, Summary of Exhibits, Division Docket Vol. 4, p. 2069.
[38] Division Docket Vol. 4, pp. 2066-2067.
[39] Division Docket Vol. 4, pp. 2071-2078.
[40] Division Docket Vol. 4, pp. 2033-2034.
[41] PEZA ERD Form No. 97-01 Certificate No. 2010-1139 with Reissue No. 0623 issued by Philippine Economic Zone Authority (PEZA) on March 13, 2012, certifying that Balamban Enerzone Corporation is an Ecozone Utilities Enterprise and is a qualified enterprise for the purpose of VAT zero-rating; Toledo's Formal Offer of Evidence with Motion for Commissioner's Hearing, Division Docket Vol. 2, p. 559.
[42] Registration Agreement entered into on April 16, 2007 by and between PEZA and Balamban Enerzone Corporation, Toledo's Formal Offer of Evidence with Motion for Commissioner's Hearing, Division Docket Vol. 2, p. 560-565.

BBB-1086, BBB-1089, BBB-1115, BBB-1151[43] and HHH-1[44] for Toledo's failure to submit them.

On November 6, 2013, Toledo filed a Motion for Reconsideration of the Resolution denying admission of the exhibits.[45]

In a November 12, 2013 Resolution, the Court ordered the CIR to comment on Toledo's Motion for Reconsideration.[46]

On November 21, 2013, Toledo filed a Supplemental Motion for Reconsideration in connection with the inadvertence of ICPA on Exhibit XXX or Board of Investment (BOI) Certificate of Carmen Copper Corporation for 2011. Toledo alleged that the document that should have been attached to the Formal Offer of Evidence was the BOI Certificate for *2009*.[47]

In a November 26, 2013 Resolution, the Court ordered the CIR to comment on Toledo's Supplemental Motion for Reconsideration.[48]

In a January 22, 2014 Resolution, the Court granted Toledo's motions and admitted Exhibit BBB-53, BBB-162, BBB-369, BBB-797, BBB-1017, BBB-1151, HHH-1 and XXX subject to the court's final evaluation and/or appreciation of their probative value to the issues involved in the case. The initial presentation of evidence for the CIR was set on February 24, 2014.[49]

In a March 3, 2014 Resolution, the Court noted that the CIR manifested that no evidence would be presented in the absence of the final report from the examiner of the case.[50]

On May 2, 2014, the case was deemed submitted for decision with respondent filing of her Memorandum on March 24, 2014, and petitioner, on April 25, 2014.[51]

On April 16, 2015, the CTA Third Division promulgated its decision which denied Toledo's petition for lack of merit. In the Decision, the court disallowed Toledo's ₱38,437,707.15 input VAT for not being properly substantiated by VAT invoices or official receipts. Annex A of the Decision summarized the exhibits, their details and the grounds pertaining to the disallowed input VAT. The court further stated that the properly substantiated input VAT of Toledo amounted to only ₱15,617,165.61. Thus, it concluded

[43] Official Receipts and Sales Invoices on Domestic Purchases of Goods (other than Capital Goods) and Services for the Period October 1, 2009 to December 31, 2009 (4th Quarter); Toledo's Formal Offer of Evidence with Motion for Commissioner's Hearing, Division Docket Vol. 2, please see pp. 822-1171 and Division Docket Vol. 3, pp. 1285-1912.
[44] Relevant pages of the General Ledger on the 2009 Revenues on a Per Transaction Basis with Account Code No. 44700010110 for the 4th Quarter of 2009, Division Docket Vol. 2, p. 710.
[45] Division Docket Vol. 4, pp. 2035-2046.
[46] Division Docket Vol. 4, p. 2048.
[47] Division Docket Vol. 4, pp. 2051-2060.
[48] Division Docket Vol. 4, p. 2062.
[49] Division Docket Vol. 4, pp. 2065-2066.
[50] Decision, p. 4, Division Docket Vol. 4, p. 2118.
[51] *Id.*

that, comparing the output VAT with the substantiated input VAT, Toledo still had an output VAT due:[52]

"Likewise, the Court finds that the input VAT in the aggregate amount of P38,437,707.15 must be disallowed from petitioner's claim for not being properly substantiated by VAT invoices or official receipts as prescribed under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations (RR) No. 16-05, as amended. xxx.

xxx xxx xxx

The amount of ₱38,437,707.15 is broken down as follows:

Exceptions	Disallowed Input Tax	Remarks
Domestic Purchases of Goods	₱ 33,407,171.07	Annex A
Domestic Purchases of Services	1,115,249.70	
Importation of Goods Other than Capital Goods	3,587,831.00	
Purchases of Capital Goods Amortized during the Quarter	327,455.38	No supporting documents
Additional Disallowances per Court's Verification	**₱ 38,437,707.15**	

Proceeding therefrom, the Court finds that the properly substantiated input taxes of petitioner only amount to ₱15,617,165.61, as computed below:

Input VAT on Domestic Purchases of Goods and Services	₱ 39,753,631.83	
Input VAT on Importation of Goods Other than the Capital Goods	14,119,335.00	
Amortization of Input VAT on Capital Goods Exceeding 1 Million	327,455.38	54,200,422.21
Less: Disallowances		
Per Independent CPA's Findings	145,549.45	
Per Court's Verification	38,437,707.15	38,583,256.60
Properly Substantiated Input VAT		**₱ 15,617,165.61**

Comparing the output taxes reported by petitioner in its Quarterly VAT Return for the fourth quarter of 2009 with its properly substantiated input taxes, it appears that petitioner still has an output tax due, to wit:

Output Tax	₱ 30,157,703.20
Less: Properly Substantiated Input Tax	15,617 165.61
Output Tax Still Due	**₱ 14,540,537.59**

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[52] Division Docket Vol. 4, pp. 2115-2136.

Evidently, petitioner/s properly substantiated input taxes for the fourth quarter of 2009 are not sufficient to offset its output taxes for the same quarter. XXXX"

On April 23, 2015, Toledo filed a Motion for Clarification in connection with the disallowed input VAT of ₱38,437,707.17.[53]

On May 5, 2015, Toledo filed by registered mail a Motion for Reconsideration/New Trial with the following attachments:

- Annex A - Affidavit of Merit of Edita C. Encarnacion, Toledo's Assistant Vice President - Accounting;

- Annex B - Affidavit of Merit of Joseph Cedric V. Calica, the ICPA.

- Annex C – Photocopy of Permit to Use Computerized Accounting System dated June 25, 2009;

- Photocopies of Exhibit BBB-376 to BBB-377, BBB-379, BBB-386 to BBB-421, BBB-424 to BBB-442, BBB-464 to BBB-466, BBB-554 to BBB-606, BBB-609 to BBB-652 and BBB-674 - Pilipinas Shell Petroleum Corporation Invoices, *Toledo manifested that it mistakenly believed that the ICPA submitted the complete set of invoices but realized that what were submitted were only the first pages of the invoices and that the succeeding pages were omitted;*[54] and,

- Photocopies of Exhibit CCC-7, CCC-8, CCC-10 and CCC-11 - Import Entry Internal Revenue Declarations (IEIRD) issued to Toledo Power Company, *Toledo manifested that the ICPA only "submitted the front portions of the IEIRD and failed to photocopy the dorsal portions where the machine validation of the payment may be seen."*[55]

In a May 19, 2015 Resolution, the Court granted the CIR fifteen days to file a comment/opposition to the motion.[56]

On June 2, 2015, the CIR filed an Opposition (Re: Motion for Reconsideration/New Trial).[57]

On September 2, 2015, the Court promulgated a resolution which denied Toledo's Motion for Reconsideration/New Trial for lack of merit.

On October 7, 2015, Toledo filed the instant Petition for Review.

[53] Decision, p. 10, Division Docket Vol. 1, p. 2124; Motion for Clarification, Division Docket Vol. 4, pp. 2143-2147.
[54] Motion for Reconsideration/New Trial, pars. 20 and 21, Division Docket Vol. 4, pp. 2161-2162.
[55] Motion for Reconsideration/New Trial, par. 12, Division Docket Vol. 4, pp. 2160.
[56] Division Docket Vol. 5, p. 2844.
[57] Division Docket Vol. 5, p. 2855.

In a Resolution dated October 26, 2015, the Court *En Banc* ordered the CIR to file a Comment.[58]

On November 10, 2015, the CIR filed a Comment praying for the dismissal of the petition.[59]

In a Resolution dated December 18, 2015, the Court *En Banc* gave due course to the petition and required the parties to submit their memoranda.[60]

On January 8, 2016, the CIR manifested that she is adopting the arguments raised in her Comment as her Memorandum.[61]

In a Minute Resolution dated January 14, 2016, the Court *En Banc* noted the Manifestation filed by the CIR.

On February 11, 2016, Toledo filed its Memorandum.[62]

On June 15, 2016, the Court *En Banc* issued a Resolution submitting the case for decision.[63]

THE ISSUE

Toledo's assignment of errors can be reduced to a single issue of whether the CTA Third Division erred in denying the Motion for Reconsideration/New Trial for the reception of additional evidence in support of the claim for input VAT refund.

THIS COURT'S RULING

We deny Toledo's petition.

In its Decision, the CTA Third Division disallowed Toledo's ₱38,437,707.15 input VAT for not being properly substantiated by VAT invoices or official receipts according to the mandate in Sections 110(A) and 113(A) and (B) of the 1997 NIRC in relation to Section 4.110-8 and 4.113-1 of RR 16-2005, as amended.

Specifically, the Decision and its Annex A cite the grounds for disallowance pertaining to the exhibits formally offered in evidence, summarized as follows: *ge*

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[58] Rollo, pp. 56-57.
[59] Rollo, pp. 58-71.
[60] Rollo, pp. 73-74.
[61] Manifestation, Rollo, pp. 75-78.
[62] Rollo, pp. 80-110.
[63] Rollo, pp. 112-113.

I.	Domestic Purchases of Goods	
	1. Supported by TIN-V Registered Invoices	₱ 48,194.91
	2. Invoices not duly registered with the BIR	29,941,074.48
	3. Invoices not within the period of the claim	3,298,212.57
	4. Blank invoice	1,281.00
	5. No invoices	118,408.11
	Subtotal	**₱ 33,407,171.07**
II.	Domestic Purchases of Services	
	1. Supported by Non-VAT / TIN-V / TIN Registered Official Receipts	₱ 220,506.20
	2. Official Receipts not within the period of the claim	576,621.14
	3. No official receipts	318,122.36
	Subtotal	**₱ 1,115,249.70**
III.	Importation of Goods Other Than Capital Goods	
	1. BOC-IEIRD without Machine Validation	₱ 3,049,976.00
	2. Not within the period of the claim	511,837.00
	3. No supporting document	26,018.00
	Subtotal	**3,587,831.00**
	Total per Annex A	**₱ 38,110,251.77**
IV.	Purchases of Capital Goods Amortized during the Quarter- No supporting documents	₱ 327,455.38
	Total Input VAT Disallowed	**₱ 38,437,707.15**

To bolster its appeal, Toledo invokes Section 8 of Republic Act No. (RA) 1225, as amended.[64] Specifically, Toledo petitions the Court to relax its procedure and remand the case for further trial in order to admit and consider the missing pages of the invoices and the IEIRD and other documents which the counsel *inadvertently* failed to offer in evidence during trial.

First, the Court is well-aware that under Section 8 of RA 1225, as amended, proceedings before the CTA are not governed strictly by technical rules of evidence. This provision, however, must be construed in the light of the explicit documentary requirements of Sections 110(A) and 113(A) and (B) of the 1997 NIRC in relation to Section 4.110-8 and 4.113-1 of RR 16-2005, as amended:

[64] "**Section 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 technical rules of evidence."

"**SEC. 110.** *Tax Credits. -*

A. *Creditable Input Tax. -*

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

xxx xxx xxx

CHAPTER II - COMPLIANCE REQUIREMENTS

SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons. -*

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:

(a) The amount of the tax shall be known as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale: shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt.

(d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or Vat exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
>
> (4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client."

As an input VAT refund claimant, Toledo must show that the VAT invoices and official receipts issued by its suppliers of goods and services complied with the foregoing invoicing requisites. Strict observance of *all* VAT invoicing requirements is mandatory as stated by the Supreme Court in *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*:[65]

> "ETPI failed to discharge its burden to prove its claim. Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit. Considering that ETPI is engaged in mixed transactions that cover its zero-rated sales, taxable and exempt sales, it is only appropriate and reasonable for it to present competent evidence to validate all entries in its returns in order to properly determine which transactions are zero-rated and which are taxable. Clearly, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory. A claim for unutilized input taxes attributable to zero-rated sales will be given due course; otherwise, the claim should be struck off for failure to do so, such as what ETPI did in the present case." (underscoring supplied)

For failing to comply with the statutory requirements in support of its claim, Toledo, therefore, has no factual and legal basis for the reversal of the CTA Third Division's denial of the claim.

Second, Section 34, Rule 132 of the Rules of Court clearly provides that the Court cannot consider evidence which has not been formally offered:

> **"Sec. 34.** *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

The rule is that the court shall not consider any evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties at the trial. Unless and until admitted by the court in

[65] G.R. No. 183531, March 25, 2015.

evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight. Mere identification of documents and the markings thereof as exhibits do not confer any evidentiary weight on documents unless formally offered.[66]

While this Court is not governed strictly by technical rules of evidence, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Therefore, the Court cannot, without violating both the tax code provisions and the rules of procedure, give evidentiary value to *mere photocopies* of documents belatedly attached in Toledo's Motion for Reconsideration/New Trial:

- Annex C;[67]

- The missing pages of Exhibits BBB-376 to BBB-377, BBB-379, BBB-386 to BBB-421, BBB-424 to BBB-442, BBB-464 to BBB-466, BBB-554 to BBB-606, BBB-609 to BBB-652 and BBB-674;[68] and,

- The missing dorsal pages of Exhibits CCC-7, CCC-8, CCC-10 and CCC-11[69]

All of these additional pages and documents were not previously identified and marked during trial and were clearly *overlooked* by counsel in the set of exhibits that were subsequently attached to the Formal Offer of Evidence. Without a doubt, it goes against the orderly administration of justice to allow a party to submit *forgotten evidence* which it could have offered with the exercise of ordinary diligence, *more so, when a decision has already been rendered.*[70]

Third, in *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*,[71] the Supreme Court recently emphasized the necessity of adhering to Section 34, Rule 132 of the Rules of Court in trials before the CTA:

> "<u>Time and again, this Court has consistently declared that cases filed before the CTA are litigated *de novo*, party-litigants must prove every *minute aspect* of their cases</u>. Section 8 of R.A. No. 1125, as amended by R.A. No. 9282, categorically described the CTA as a court of record. <u>Indubitably, no evidentiary value can be given to any documentary evidence merely attached to the BOC Records, as the rules on documentary evidence require that such documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Rules of Court which reads:</u>

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[66] *Heirs of the Deceased Carmen Cruz-Zamora v. Multiwood International, Inc.*, G.R. No. 146428, January 19, 2009.
[67] Permit to Use Computerized Accounting System dated June 25, 2009 with Permit No. 0609-LTADII-CAS-00083 issued by the BIR Large Taxpayers Services to Pilipinas Shell Petroleum Corporation.
[68] Pilipinas Shell Petroleum Corporation Invoices.
[69] Import Entry Internal Revenue Declarations issued to Toledo Power Company.
[70] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008.
[71] G.R. No. 195876, December 5, 2016.

> **Section 34.** *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

From the foregoing provision, it is clear that for evidence to be considered by the court, the same must be formally offered. Corollarily, 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 of a party. In *Interpacific Transit, Inc. v. Aviles*, We had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.

The Rule on this matter is patent that even documents which are identified and marked as exhibits cannot be considered into evidence when the same have not been formally offered as part of the evidence, but more so if the same were not identified and marked as exhibits, such as in the present case. An assay of the records reveals that the subject Memorandum dated 2 February 2001 was neither identified nor offered in evidence by respondent during the entire proceedings before the CTA in Division. Consequently, this is fatal to respondent's cause in establishing the existence of fraud committed by petitioner since the burden of proof to establish the same lies with the former alone.

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 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 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.

By analogy, in *Dizon v. CTA*, this Court underscored the importance of a formal offer of evidence and the corresponding admission thereafter. We quote:

While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves and are primarily intended as tools in the administration of justice, the presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims against the Estate. The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause. Such failure is aggravated by the fact that not even a single reason was advanced by the BIR to justify such fatal omission. This, we take against the BIR.

Per the records of this case, the BIR was directed to present its evidence in the hearing of February 21, 1996, but BIR's counsel failed to appear. The CTA denied petitioner's motion to consider BIR's presentation of evidence as waived, with a warning to BIR that such presentation would be considered waived if BIR's evidence would not be presented at the next hearing. Again, in the hearing of March 20, 1996, BIR's counsel failed to appear. Thus, in its Resolution dated March 21, 1996, the CTA considered the BIR to have waived presentation of its evidence. In the same Resolution, the parties were directed to file their respective memorandum. Petitioner complied but BIR failed to do so. In all of these proceedings, BIR was duly notified. Hence, in this case, we are constrained to apply our ruling in *Heirs of Pedro Pasag v. Parocha*:

> "A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.
>
> Strict adherence to the said rule is not a trivial matter. The Court in *Constantino v. Court of Appeals* ruled that **the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would 'condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice.'**

Applying the aforementioned principle in this case, we find that the trial court had reasonable ground to consider that petitioners had waived their right to make a formal offer of documentary or object evidence. Despite several extensions of time to make their formal offer, petitioners failed to comply with their commitment and allowed almost five months to lapse before finally submitting it. **Petitioners' failure to comply with the rule on admissibility of evidence is anathema to the efficient, effective, and expeditious dispensation of justice**. (Emphasis and underlining supplied)

Clearly therefore, evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. Neither may it be taken into account on appeal. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected." (underscoring supplied; citations omitted) *Je*

Fourth, Toledo asserts denial of due process when the CTA Third Division refused to grant its Motion for Reconsideration/New Trial to present the omitted documents.

We are unconvinced.

In *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*,[72] the Supreme Court resolved an issue similar to the one at bench where the CTA denied the input VAT refund of Atlas for insufficiency of evidence. Atlas timely filed a Motion for Reconsideration and prayed for a re-trial which the CTA denied. The Supreme Court denied the taxpayer's appeal and stressed that there was no denial of due process:

> "**Second Issue: No denial of due process**
>
> <u>Atlas asserts denial of due process when the courts *a quo* denied its prayer to be given the opportunity to present the required documents,</u> asserting that the reliance by the courts a quo on Sec. 2 of Rule 37 of the 1997 Revised Rules on Civil Procedure is misplaced as said proviso applies only to a motion for new trial and not to a motion for reconsideration.
>
> We are not convinced.
>
> <u>Clearly, Atlas attempted or showed willingness to submit the required documents only after the CTA rendered its decision</u>. Aside from assailing the applicability of RR 3-88, Atlas argued in its motion for reconsideration before the CTA that, <u>on the alternative, the case be re-opened to allow it to present the required documents as it followed in good faith the requirement under Sec. 106 of the 1977 Tax Code, and alleged that it has committed a mistake or excusable negligence when the CTA ruled that RR 3-88 should be the one applied requiring Atlas to submit the documents needed</u>.
>
> Obviously, Atlas' reliance on Sec. 106 of the 1977 Tax Code is unacceptable for such does not constitute excusable negligence. <u>In short, Atlas is guilty of inexcusable negligence in the prosecution of its case</u>. The courts *a quo* relied on the procedural deficiency of non-compliance with Sec. 2, Rule 37 of the Rules of Court in denying a new trial. In doing so, the courts *a quo* recognized Atlas' motion for reconsideration also as a motion for new trial, which was alternatively prayed for by Atlas.
>
> <u>Be that as it may, even if Atlas has complied with the affidavits-of-merits requirement, its prayer for a new trial would still not prosper. *First*, Atlas is guilty of inexcusable negligence in the prosecution of its case. It is duty-bound to ensure that all proofs required under the rules are duly presented</u>. Atlas has indeed repeatedly asserted that in its action for the instant judicial claim, the CTA is bound by its rules and suppletorily by the Rules of Court. It certainly has not exercised the diligence required of a litigant who has the burden of proof to present all that is required. <u>*Second*, forgotten evidence, not presented during the trial nor formally offered, is not newly found evidence that merits a new trial</u>. <u>*Third*, and most</u>

[72] G.R. No. 159490, February 18, 2008.

importantly, it goes against the orderly administration of justice to allow a party to submit forgotten evidence which it could have offered with the exercise of ordinary diligence, more so when a decision has already been rendered." (underscoring supplied)

The counsels for Toledo cannot lay the responsibility entirely upon the ICPA for the submission of the complete set of invoices and IEIRD. The records show that the ICPA, before his testimony in court, submitted three reports: the original report on August 28, 2012,[73] the revised report on September 28, 2012[74] and, lastly, the final report on October 24, 2012.[75] The counsels for Toledo, therefore, had three separate opportunities to carefully verify the ICPA reports and cross-reference them against the supporting documents, including the invoices and the IEIRD, submitted to the court.

Aside from this, the counsels also had three more occasions to further check the completeness of the invoices and IEIRD: when the ICPA's judicial affidavit was submitted on October 3, 2012[76] and on November 9, 2012[77] and when the ICPA's direct testimony was completed on November 12, 2012.[78]

Finally, if these opportunities were still not sufficient, Toledo had two more windows to make certain no documents were omitted: on April 24, 2013,[79] during the hearing for the presentation of additional evidence, and on June 11, 2013, when Toledo filed its Formal Offer of Evidence.[80]

It cannot be denied that these were squandered opportunities to prosecute the case with due diligence.

Finally, tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's heavy burden to prove the factual and statutory basis to be entitled to a claim for refund or tax credit.[81]

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

SO ORDERED.

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

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[73] Division Docket Vol. 1, pp. 192-236.
[74] Division Docket Vol. 1, pp. 238-283.
[75] Division Docket Vol. 1, pp. 291-442.
[76] Division Docket Vol. 1, pp. 283-289.
[77] Division Docket Vol. 1, pp. 443-451.
[78] Minutes of November 12, 2012 Hearing, Division Docket Vol. 1, pp. 443-451.
[79] May 2, 2013 Resolution, Division Docket Vol. 1, pp. 466-467.
[80] Division Docket Vol. 2, pp. 483-503.
[81] *Commissioner of Internal Revenue v. Team Sual Corporation*, G.R. No. 194105, February 5, 2014.

WE CONCUR:

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Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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CIELITO N. MINDARO-GRULLA
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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice