REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

TOTAL (PHILIPPINES) CORPORATION, *Petitioner,*	**CTA EB NO. 1153** (CTA Case No. 8253)
	Present:
-versus -	*Del Rosario, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Fabon-Victorino,* *Mindaro-Grulla,* *Cotangco-Manalastas, and* *Ringpis-Liban, JJ.*
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	Promulgated: OCT 14 2015 1:45 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court *En Banc* is a Petition for Review[1] to nullify the Decision of the Special First Division of the Court ("Court in Division") dated October 24, 2013,[2] as well as the Resolution dated

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[1] *Rollo,* CTA EB Case No. 1153 (CTA Case no. 8253), pp. 7-27.

[2] Penned by Associate Justice Erlinda P. Uy with Associate Justice Esperanza R. Fabon-Victorino concurring, pp. 50-72, *Annex "B."*

March 17, 2014,[3] pursuant to *Section 2(d) of Rule 4*[4] *and Section 4(b) of Rule 8*[5] *of the Revised Rules of the Court of Tax Appeals ("CTA").*[6]

The Parties[7]

Petitioner Total (Philippines) Corporation is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at the Penthouse, Philplans Corporate Center, 1012 Triangle Drive, North Bonifacio, Bonifacio, Global City, 1634 Taguig City, where it may be served with notices and other court processes. It is registered with the Bureau of Internal Revenue ("BIR") as a Value-Added Tax ("VAT") taxpayer with Tax Identification No. ("TIN") 005-145-964-000.

Respondent is the duly appointed Commissioner of the BIR. She is empowered to perform the duties of her office, including among others, the duty to act upon and approve claims for refund or issuance of tax credit certificate ("TCC") as provided by law.

The Facts

As stated in the Decision dated October 24, 2013,[8] the factual antecedents of this case are as follows:

> For the year 2009, petitioner filed its Quarterly VAT Returns at the following dates, to wit:

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[3] *Id.*, pp. 33-47, *Annex "A."*

[4] RULE 4 - JURISDICTION OF THE COURT

xxx xxx xxx

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:

xxx xxx xxx

> (d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over tax collection cases;

[5] RULE 8. PROCEDURE IN CIVIL CASES

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

xxx xxx 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.

[6] *Rollo*, CTA EB Case No. 1034, p. 6.

[7] *Id.*, pp. 50-51.

[8] *Id.*, pp. 36-61.

Period Covered	Original Return	First Amendment	Second Amendment	Third Amendment	Fourth Amendment
1st Quarter	August 24, 2009	August 24, 2009	February 05, 2010	April 19, 2010	April 30, 2010
2nd Quarter	July 23, 2009	August 24, 2009	February 05, 2010	April 19, 2010	April 30, 2010
3rd Quarter	October 26, 2009	February 05, 2010	April 19, 2010	April 30, 2010	
4th Quarter	January 26, 2010	February 05, 2010	April 19, 2010	April 30, 2010	

On November 26, 2010, petitioner filed its application for [TCC]/refund for the unutilized input VAT attributable to zero-rated sales for 2009 in the amount of PhP111,100,273.80, along with all supporting documents, with the Large Taxpayers Excise Audit Division II of the BIR.

Subsequently, on March 31, 2011, petitioner filed the instant judicial claim for refund or issuance of [TCC].

On June 10, 2011, respondent filed her Answer, interposing the following special and affirmative defenses, *viz.*:

'7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the [BIR].

8. Petitioner must prove that it paid the alleged VAT input taxes for the period in question.

9. Petitioner must prove that the same alleged VAT input taxes was not utilized against any output tax liability.

10. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112(A) of the Tax Code of 1997, as amended [("1997 NIRC")].

11. Petitioner must prove compliance with the following:

a) Registration requirements of a value-added taxpayer under the pertinent provision of the [1997 NIRC] and its implementing regulations;

b) Invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of [the 1997 NIRC]; Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of claim for input tax of the taxpayer claimant. (Revenue Memorandum Circular No. 42-2003);

c) Petitioner must prove the submission of complete documents in support of the administrative claim for refund pursuant to Section 112(c) of the [1997 NIRC], and its implementing rules, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with Section 112(c) of the [1997 NIRC];

12. Petitioner must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated sales.

13. Petitioner must prove that the claim was filed within the period prescribed by law.

14. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

15. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

16. Applications for refund/credit of input VAT with the BIR must comply with the appropriate Revenue Regulations [("RR")] and Revenue [M]emorandum [O]rders [("RMO")].

17. Thus, as cited in the case of ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION vs. CIR (G.R. NO. 159490, February 18, 2008.), 'Atlas mere allegations of the figures in its amended VAT return for the first quarter of 1993 as well as in its petition before the CTA are not sufficient proof of the amount of its refund entitlement. They do not even constitute evidence adverse to the Commissioner against whom they are being presented. While Atlas indeed submitted several documents, still, the CTA could not ascertain from them the veracity of the figures as the documents presented by Atlas were not sufficient to prove its action for tax credit or refund. Atlas has failed to meet the burden of proof required in order to establish the factual basis of its claim for a tax credit or refund. Neither can we ascertain the veracity of Atlas alleged input VAT taxes which are refundable nor the alleged actual export sales indicated in the amended VAT return. Clearly, it would not be proper to allow Atlas to simply prevail and compel a tax credit or refund in the amount it claims without proving the amount of its claim. After all, tax refunds are in the nature of tax exemptions, and are to be construed

> *strictissimi juris* against the taxpayer. It is thus academic whether compliance with the documentary requirements of RR No. 3-88 is necessary. Suffice it to say that a revenue regulation is binding on the courts as long as the procedure fixed for its promulgation is followed. It has not been disputed that RR No. 3-88 has been duly promulgated pursuant to the rule-making power of the Secretary of Finance upon the recommendation of the [Commissioner]. As aptly held by the courts *a quo,* citing Eslao, these RRs or administrative issuances have the force of law and are entitled to great weight.'

On August 25, 2011, the parties submitted their Joint Stipulation of Facts and Issues, which the Court approved in the Resolution dated September 2, 2011.

During trial, although both parties were given the opportunity to present evidence to support their claims or defenses, it was only petitioner that presented and offered its documentary and testimonial evidence. On the other hand, respondent's counsel manifested during the hearing held on October 25, 2012, that there is no report of investigation, and that she will no longer present evidence. Thereafter, the parties were granted a period of thirty (30) days from said date to file their respective memorandum.

On January 2, 2013, this case was submitted for decision, taking into consideration respondent's Memorandum filed on December 14, 2012, and petitioner's Memorandum filed on December 21, 2013.

On October 24, 2013, the Court in Division issued a Decision,[9] denying petitioner's claim for refund or issuance of TCC in the total amount of PhP111,100,273.80, allegedly representing unutilized input VAT related to VAT zero-rated sales for the taxable period from January 1, 2009 to December 31, 2009, stating that:

[9] *Id.,* pp. 50-72.

> **WHEREFORE,** all the foregoing considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

Unsatisfied with the Decision, petitioner filed a Motion for Reconsideration/New Trial[10] on January 28, 2014. On the other hand, respondent filed its Comment[11] through registered mail on January 28, 2014.

On March 17, 2014, the Court in Division issued a Resolution[12] upholding the Decision and denying the Motion for Reconsideration/New Trial dated January 28, 2014, stating that:

> **WHEREFORE,** all the foregoing considered, the petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

On April 11, 2014, petitioner filed a Motion for Extension of Time to File Petition for Review,[13] which was granted by the Court *En Banc* in a Minute Resolution[14] dated April 15, 2014.

Thus, on April 25, 2014, petitioner filed the present Petition for Review.[15]

On May 28, 2014, the Court *En Banc* issued a Resolution[16] ordering respondent to file its Comment, within ten (10) days from receipt thereof.

In compliance with the above Resolution, respondent filed its Comment[17] to the Petition for Review through registered mail on June 16, 2014.

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[10] *Records*, pp. 558-576.
[11] *Id.*, pp. 756-766.
[12] *Id.*, pp. 769-784.
[13] *Rollo*, pp. 1-4.
[14] *Id.*, p. 6.
[15] *Id.*, pp. 7- 22.
[16] *Id.*, pp. 74-75.

On July 30, 2014, the Court *En Banc* issued a Resolution[18] giving due course to the Petition for Review and requiring the parties to submit their respective Memoranda within thirty (30) days from receipt of the Resolution.

On September 4, 2014, respondent filed her Motion for Extension of Time to File Memorandum[19] for an additional period of thirty (30) days from September 5, 2014 or until October 5, 2014, which was granted by the Court *En Banc* in a Minute Resolution[20] dated September 8, 2014.

On September 5, 2014, petitioner filed its Memoranda.[21] While respondent filed its Memoranda[22] on October 6, 2014, hence, the Court *En Banc* issued a Resolution[23] dated November 6, 2014, stating that the case is deemed submitted for decision.

Hence, this Decision.

The Issues[24]

Petitioner raises the following issues:

I

WHETHER OR NOT THE COURT IN DIVISION ERRED IN DISREGARDING THE INPUT VAT FROM THE PREVIOUS QUARTER.

II

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[17] *Id.*, pp.76-86.
[18] *Id.*, pp. 88-89.
[19] *Id.*, pp. 90-94.
[20] *Id.*, p. 117.
[21] *Id.*, pp. 95-116.
[22] *Id.*, pp. 118-131.
[23] *Id.*, p. 133.
[24] *Id.*, p. 10.

WHETHER OR NOT THE COURT IN DIVISION ERRED IN RULING THAT THE GRANT OF REFUND OR TCC REPRESENTING INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES MUST BE MADE ONLY "IN PROPER CASES."

III

WHETHER OR NOT THE COURT IN DIVISION ERRED IN RULING THAT A NEW TRIAL IS UNWARRANTED.

IV

WHETHER OR NOT THE COURT IN DIVISION SHOULD HAVE CONSIDERED THE ATTACHED IMPORT ENTRY AND INTERNAL REVENUE DECLARATION, SUPPLIER INVOICES AND OFFICIAL RECEIPTS IN THE MOTION FOR RECONSIDERATION.

The Arguments of Petitioner

According to petitioner, the Court in Division erred in four (4) instances, to wit: (*i*) in the Decision dated October 24, 2013, when the Court in Division disregarded the input VAT from the previous quarter; (*ii*) in the Decision dated October 24, 2013, when the Court in Division ruled that the grant of refund or TCC representing input VAT attributable to zero-rated sales must be made only "in proper cases;" (*iii*) in the Resolution dated May 28, 2014, when the Court in Division resolved that a new trial for the presentation of the newly discovered evidence, *i.e.*, Import Entry and Internal Revenue Declaration ("IERDs"), supplier Sales Invoices ("SIs") and Official Receipts ("ORs") is unwarranted; and (*iv*) in the Resolution dated May 28, 2014, when the Court in Division resolved that the IERDs, supplier SIs, and ORs, which were not offered in evidence shall not be considered in the Motion for Reconsideration.

Concerning the first and second instances, petitioner alleges that it is entitled to a refund of input taxes related to VAT zero-rated sales, regardless of the amount of total input taxes and output taxes, pursuant to *Section 112 (A)*[25] *of the 1997 NIRC*.[26]

Relative thereto, petitioner further alleges that the judicial claim filed was a claim for input VAT refund and not a VAT deficiency assessment, which are two different claims and require different procedural due process. Thus, petitioner claims that if there are any disallowance of input VAT and zero-rated sales in any refund proceedings, it should be recomputed to determine the amount of input VAT properly allocated to zero-rated sales, and any difference between the recomputed input VAT allocated to VATable sales must be tackled in a separate proceeding and not in a judicial claim for refund.[27]

Third, petitioner alleges that a new trial is warranted pursuant to the requisites for newly discovered evidence established by the CTA in the case ***Kelphil, Inc. v. Commissioner of Internal Revenue*** *("Kelphil Case")*.[28] In the *Kelphil Case*, the CTA ruled that "a motion for new trial on the ground of newly discovered evidence shall be granted when the concurrence of the following requisites is established: (*i*) the evidence is discovered after trial; (*ii*) the evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence; and (*iii*) the evidence is material and not merely corroborative, cumulative or impeaching and is of such weight that if admitted, would probably change the judgment. It is petitioner's position that it fully complied with the aforementioned requirements. Therefore, a new trial for the presentation of the newly discovered evidence, *i.e.*, IERDs, supplier SIs and ORs, is in order.[29]

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[25] 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 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.
[26] *Rollo*, pp. 10-18.
[27] *Id.*, pp. 17-18.
[28] CTA Case No. 7749, November 22, 2010.
[29] *Rollo*, pp. 18-24.

Finally, petitioner alleges that, in the interest of justice, the Court should consider the IERDs, supplier SIs, and ORs in rendering the Motion for Reconsideration,[30] as prescribed by Section 2,[31] Rule 1 of the Revised Rules of the CTA.[32]

The Arguments of Respondent

Three major points were invoked by respondent to controvert petitioner's allegations, *viz.*: (*i*) *Section 110(B) of the 1997 NIRC* which provides the rule on excess output or input tax;[33] (*ii*) *Paragraph (b) Section 2, Rule 121 of the Rules of Court* provides the requisites for newly discovered evidence to be a ground for new trial, as confirmed by several Supreme Court and CTA Decisions;[34] and (*iii*) the Supreme Court case entitled ***Spouses Begonia and Luzviminda Castillo v. Court of Appeals*** *("Castillo Case")*,[35] wherein the Honorable Court discussed the argument of "in the interest of justice."[36]

First, *Section 110(B) of the 1997 NIRC* states that "if at the end of the taxable quarter, the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess output or input tax shall be carried over to the succeeding quarter or quarters xxx." Thus, petitioner cannot claim a refund if its output VAT exceeds its input tax, which is present in the instant case.

Second, respondent buttresses her defense that the Motion for New Trial is unwarranted based on the Supreme Court ruling in the case ***Office of the Ombudsman v. Coronel***.[37] In the aforementioned case, the Highest Tribunal ruled that the "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

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[30] *Records*, pp. 558-576.
[31] Sec. 2 Liberal construction. - The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court.
[32] *Rollo*, pp. 24-26.
[33] *Id.*, pp. 77-78.
[34] *Id.*, pp. 78-81.
[35] G.R. No. 189151, January 25, 2012.
[36] *Rollo*, pp. 81-83.
[37] G.R. No. 164460, June 27, 2006.

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."

Third, respondent invokes the *Castillo Case* against petitioner's allegation that the Court in Division in the Resolution dated March 17, 2014 should have considered the IERDs, supplier SIs and ORs "in the interest of justice." In the *Castillo Case*, the Supreme Court ruled that petitioners "ought to be reminded 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."

In view of the foregoing major points, it is respondent's position that the Court *En Banc* deny the instant Petition.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the Petition for Review.

In the Decision dated October 24, 2013, the Special First Division unanimously ruled as follows:

> Although petitioner was able to submit supporting documents relative to its refund claim, the Court however finds that not all the legal requisites for the refund of unutilized or excess input VAT have been fully complied with by petitioner in this case.
>
> ***Respondent judicially admitted that petitioner submitted "all supporting documents" at the administrative level.***
>
> The contention of respondent to the effect that petitioner failed to submit complete documents required under RMO No. 53-98 is inconsistent with her explicit admissions in the Joint Stipulation of Facts and Issues (JSFI) as follows:
>
>> "3. Petitioner filed its application for [TCC]/refund for the unutilized VAT input taxes attributable to zero rated sales for 2009 in the amount of One Hundred Eleven Million

> One Hundred Thousand Two Hundred Seventy Three Pesos and Eighty Centavos (PhP111,102,273.80) **along with all supporting documents** on November 26, 2010 with the Large Taxpayers Excise Audit Division II of the Bureau of Internal Revenue." (*Emphasis supplied*)

It must be emphasized that the JSFI was executed and submitted by petitioner and respondent themselves. The approval of the JSFI by this Court marked the termination of the pre-trial process in this case.

The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof. Correspondingly, respondent cannot escape the binding effect of the above-quoted judicial admission.

Proper interpretation of the term "complete documents" under Section 112 (C) of the [1997 NIRC].

Section 112 (C) of the [1997 NIRC], as amended by Republic Act No. (RA) 9337, provides as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> 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."

The contention of the respondent that the law requires the submission of complete documents in support of the application filed with the BIR before the 120-day period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law, deserves scant consideration. This issue boils down to the proper interpretation of the term "*complete documents*" under the above-quoted Section 112 (C).

In *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, the Supreme Court ruled:

> "The term 'relevant supporting documents' should be understood as **those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer**. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit." (*Emphasis supplied*)

Admittedly, the foregoing ruling refers to the interpretation of the term "*relevant supporting documents*" under Section 228 of the NIRC of 1997 referring to tax assessments. However, We find no reason not to apply the same doctrine in the interpretation of "*complete documents*" under Section 112 (C) of the same Code. This must be so because of the following reasons:

1. if the determination of the completeness of the documents depends on the BIR, the concerned taxpayer will also be at the mercy thereof; and

2. it has been held that the respondent ought to know the tax records of all taxpayers. Thus, the Commissioner can easily decide whether or not to grant the concerned taxpayer's administrative claim for refund or tax credit certificate. In this connection, nothing in RMO No. 53-98 mandates that the list of documents therein stated, insofar as the VAT is concerned, should be submitted in connection with an application for refund or tax credit certificate under the said Section 112, upon the filing thereof. Furthermore, said RMO is explicit, in its subject and objective, that it provides a checklist of documents to be submitted "*upon Audit*", and that it was issued to "(i)*dentify the documents* ***to be required from a taxpayer during audit***", respectively. In this case, it was not shown that an audit was ever conducted by the BIR in connection with petitioner's application for refund or tax credit certificate. This is manifested by the lack of BIR Records transmitted to this Court, and by the absence of any report of investigation or "status report" concerning petitioner's administrative claim for refund or tax credit certificate. But even if We are to assume that an audit was made, it was never established that the respondent ever required petitioner to submit the documents stated in the said RMO.

Accordingly, the term "complete documents" under Section 112 (C) of the [1997 NIRC], as amended by RA [No.] 9337, should be understood as those documents necessary to support the application for refund or [TCC] as determined by the taxpayer. Thus, should the taxpayer decide to submit only certain documents, or should the taxpayer fail, or opt not to submit any document at all, in support of its application for refund or tax credit certificate under Section 112 of the [1997 NIRC], as amended by [RA] 9337, then the reckoning date of the 120-day period should be from the filing of the said application.

In the instant case, considering that petitioner's administrative claim for refund, along with all the supporting documents, was filed on November 26, 2010, the 120-day period enunciated under Section 112 (C) ended on March 26, 2011. Petitioner, therefore, had thirty (30) days thereafter or until April 25, 2011 within which to appeal its claim before this Court. Having done so on March 31, 2011, petitioner's judicial claim for refund was timely made.

Requisites for the refund of unutilized/excess input VAT.

Section 112 (A) of the [1997 NIRC], as amended by RA [No.] 9337, provides as follows:

> "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 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 volume of sales: . . ."

Based on the foregoing, the requisites for the refund or issuance of tax credits of unutilized/excess input VAT are the following:

1. The taxpayer must be VAT-registered;

2. The taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;

3. The claim must be filed within two years after the close of the taxable quarter when such sales were made; and

4. The creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

Anent the first requisite, petitioner was able to prove that it is a VAT-registered person.

As for the second requisite, on the basis of the uncontroverted evidence of petitioner vis-à-vis the report of the Court-commissioned independent Certified Public Accountant (CPA), We find that petitioner established that it is engaged in sales which are zero-rated or effectively zero-rated.

With regard to the third requisite, the present claim covers the four (4) taxable quarters of 2009 which respectively closed on March 31, 2009; June 30, 2009; September 30, 2009 and December 31, 2009. Counting two years from the said dates, petitioner had until March 31, 2011; June 30, 2011; September 30, 2011 and December 31, 2011, respectively, within which to file its administrative claim for tax credit certificate/refund. Thus, considering that petitioner's administrative claim covering the said four (4) quarters was filed on November 26, 2010, the same was timely made, in accordance with Section 112 (A) of the [1997 NIRC].

Finally, We look into petitioner's compliance with the last requisite, *i.e.*, the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

In its 2009 amended Quarterly VAT Returns respectively filed on April 30, 2010, petitioner reflected the following:

Year 2009	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**
Exhibits	**Z**	**EE**	**II**	**MM**
Vatable Sales/Receipts- Private	4,090,765,097.11	4,796,258,630.09	4,339,747,056.13	4,864,292,449.37
Sale to Government	9,630,567.80	11,641,127.16	15,933,122.86	12,432,220.92
Zero Rated Sales/Receipts	205,816,522.48	253,231,620.91	296,152,860.89	313,672,677.63
Exempt Sales/Receipts	0.00	0.00	0.00	0.00
Total Sales/Receipts	**4,306,212,187.39**	**5,061,131,378.16**	**4,651,833,039.88**	**5,190,397,347.92**
Output Tax Due	**P492,047,479.79**	**P576,947,970.87**	**P522,681,621.47**	**P585,206,960.43**
Less: Allowable Input Tax				
Input Tax Carried Over from Previous Quarter	132,031,599.36	154,561,505.28	85,139,893.59	413,945.60
Input Tax Deferred on Capital Goods Exceeding				
P1Million from Previous Quarter	13,273,422.42	13,049,067.62	13,393,875.20	13,273,878.66
Current Transactions:				
Purchases of Capital Goods not exceeding				
P1Million	105,990.83	0.00	0.00	0.00
Purchases of Capital Goods exceeding				
P1Million	697,237.60	1,335,099.84	913,483.12	2,775,056.12
Domestic Purchases of Goods				
Other Than Capital Goods	100,896,109.61	65,520,765.85	44,529,775.95	35,524,219.57
Importation of Goods Other than Capital Goods	408,267,343.42	446,124,975.93	392,939,467.50	559,379,105.00
Domestic Purchase of Services	27,617,043.00	18,890,694.37	26,531,845.44	35,995,143.05
Total Available Input Tax	**P682,888,746.24**	**P699,482,108.88**	**P563,448,340.80**	**P647,361,348.00**
Less: Deductions from Input Tax				
Input Tax on Purchases of Capital Goods				
exceeding P1Million deferred for the				
succeeding period	13,049,067.62	13,393,875.20	13,273,878.66	14,926,980.81
Input Tax on Sale to Gov't closed to expense	526,024.66	405,654.72	473,083.39	632,271.88

Input Tax allocable to Exempt Sales	0.00	0.00	0.00	0.00
VAT Refund/TCC claimed	22,704,675.90	23,594,720.61	26,605,817.34	38,195,059.97
Total	**36,279,768.18**	**37,394,250.53**	**40,352,779.39**	**53,754,312.66**
Total Allowable Input Tax	**646,608,978.06**	**662,087,858.35**	**523,095,561.41**	**593,607,035.34**
Net VAT Payable	**(154,561,498.26)**	**(85,139,887.47)**	**(413,939.93)**	**(8,400,074.91)**
Less: Tax Credits/Payments				
VAT withheld on Sales to Government	0.00	0.00	0.00	0.00
Tax Still Payable/ (Overpayment)	**P(154,561,498.26)**	**P(85,139,887.47)**	**P(413,939.93)**	**P(8,400,074.91)**

In summary, as indicated in the Returns, petitioner's total allowable input VAT arising from its domestic purchases of capital goods not exceeding PhP1Million, domestic purchases of goods other than capital goods, importation of goods other than capital goods, domestic purchases of services and amortization of input VAT on purchases of capital goods exceeding PhP1Million for the four quarters of 2009 amounted to PhP2,166,389,797.82, broken down as follows:

Period Covered	Input VAT
1st Quarter	P 537,808,079.27
2nd Quarter	531,526,728.41
3rd Quarter	465,034,568.55
4th Quarter	632,020,421.59
TOTAL	**P 2,166,389,797.82**

These amounts per quarter are further broken down as follows:

Year 2007	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter	P13,273,422.42	P13,049,067.62	P13,393,875.20	P13,273,878.66
Add: Input Tax_on Capital Goods exceeding P1Million Purchased this quarter	697,237.60	1,335,099.84	913,483.12	2,775,056.12
Total Unamortized Input Tax on Capital Goods exceeding P1Million	13,970,660.02	14,384,167.46	14,307,358.32	16,048,934.78
Less: Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period	13,049,067.62	13,393,875.20	13,273,878.66	14,926,980.81
Amortization of Input Tax on Capital Goods exceeding P1Million	921,592.40	990,292.26	1,033,479.66	1,121,953.97
Add: Input Tax on:				

Purchase pf Capital Goods not exceeding P1Million	105,990.83			
Domestic Purchases of Goods Other than Capital Goods	100,896,109.61	65,520,765.85	44,529,775.95	35,524,219.57
Importation of Goods other than Capital Goods	408,267,343.42	446,124,975.93	392,939,467.50	559,379,105.00
Domestic Purchase of services	27,617,043.00	18,890,694.37	26,531,845.44	35,995,143.05
Total Input Tax	**P537,808,079.27**	**P531,526,728.41**	**P465,034,568.55**	**P632,020,421.59**

Based on the foregoing amounts of input VAT, petitioner computed the input VAT allocable to its declared zero-rated sales for the year 2009 as follows:

Year 2009	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Zero-Rated Sales	P205,816,522.48	P253,231,620.91	P296,152,860.89	P313,672,677.63
Total Sales	4,306,212,187.39	5,061,131,378.16	4,651,832,992.64	5,190,397,347.92
Zero-Rated Sales/Total Sales	4.779525799%	5.003458752%	6.366369157%	6.04332687%
Multiply by Input Tax	537,808,079.23	531,526,728.41	465,034,568.54	632,020,421.59
Refundable Claims	**P25,704,675.90**	**P26,594,720.61**	**P29,605,817.34**	**P38,195,059.97**

However, notwithstanding the respective amount of the refundable claims for taxable year 2009, as shown above (totaling P120,100,273.82), petitioner is just claiming the amounts of P22,704,675.90; P23,594,720.61; P26,605,817.34 and P38,195,059.97 for the first, second, third and fourth quarters, respectively, which in petitioner's computation totals P111,100,273.80.

Parenthetically, it can be easily discerned that the respective computation of the refund claims per quarter by petitioner is in accordance with the provisions of the aforequoted Section 112 (A) [of the 1997 NIRC,] to wit: *"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 volume of sales"*.

Thus, for purposes of the fourth requisite for the refund or issuance of tax credits of input VAT, the attribution of the input VAT to the zero-rated or effective zero-rated sales of petitioner need not be direct.

To prove that it actually incurred the input VAT in the total amount of P2,166,389,797.82 upon which the claimed refund of P111,100,273.80 was computed, petitioner presented its Summary Lists of Purchases, Summary Lists of Importations and the related [IEIRDs] and/or Bureau of Customs Form 38-A, suppliers' [SIs] and/or [ORs].

Upon verification of the aforesaid documents, however, the Court-commissioned independent CPA summarized his findings as follows:

Summary of Findings	**Exhibit**	**Amounts**	
No Exceptions:			
Local goods and services	FFFF-5	P317,906,239.30	
Importations	FFFF-1	1,652,225,259.76	P1,970,131,499.06
Exceptions Noted:			
a. Supporting documents were			
not yet provided:			
Local goods and services	FFFF-7	P26,314,164.55	
Importations	FFFF-3	143,314,034.73	
b. Without appropriate			
supporting documents			
Importations	FFFF-2	11,171,597.36	
c. Supporting documents were			
dated outside the period of			
claim:			
Local goods and services	FFFF-6	220,659.73	
d. Supporting documents that			
did not show the amount of			
Input VAT on the face of the			
documents	FFFF-8	440,949.30	
e. Supporting documents			
without petitioner's TIN	FFFF-9	8,571,770.56	
f. Supporting documents not			
in the name of petitioner	FFFF-4	6,119,131.77	196,152,308.00
		Total	**P2,166,283,807.06**

The total amount of P196,152,308.00 input VAT excepted by the ICPA should be disallowed for not being properly substantiated by VAT invoices or official receipts in accordance with Sections 110 (A) and 113 (A) and (B) of the [1997 NIRC] and as implemented by Sections 4.110-8 and 4.113-1 of the [RR] No. 16-2005, as amended.

In addition, it should be noted that there is a discrepancy in the amount of P105,990.76 between the total allowable input VAT declared in petitioner's Quarterly VAT Returns in the amount of P2,166,389,797.82 and the input VAT examined by the Court-commissioned independent CPA, Enrico Pizarro, in the amount of P2,166,283,807.06. Upon verification, the Court found that the discrepancy of P105,990.76 pertains to petitioner's declared input VAT on capital goods not exceeding P1 million for the first quarter of 2009. For also being unsubstantiated, the input taxes of P105,990.76 shall likewise be disallowed.

Apropos, although it is true that this Court is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements under the VAT law must, nevertheless, be followed because it is the only way to determine the veracity of petitioner's claims.

Therefore, out of petitioner's declared total allowable input tax of P2,166,389,797.82, only the amount of P1,970,131,499.06, as computed below, represents petitioner's valid input VAT:

Total Input VAT per Returns		P2,166,389,797.82
Less:	Disallowances	
	Not properly substantiated input VAT per ICPA's	
	report	196,152,308.00
	Discrepancy between the input VAT per return vis-à-vis	
	the input VAT examined by the ICPA	105,990.76
		196,258,298.76
Valid Input VAT		**P1,970,131,499.06**

At this point, We take into consideration the output VAT reported by petitioner in its Quarterly VAT Returns for the year 2009 and compare the same with the foregoing substantiated input VAT, to wit:

Output VAT			
	1st Quarter	P492,047,479.79	
	2nd Quarter	576,947,970.87	
	3rd Quarter	522,681,621.47	
	4th Quarter	585,206,960.43	P2,176,884,032.56
Less:	Valid Input VAT		1,970,131,499.06
Output VAT Still Due			**P206,752,533.50**

As shown above, petitioner's claimed input VAT for the year 2009 are not enough to cover its output VAT for the same year. While petitioner reflected in its amended Quarterly VAT Return for the first quarter of 2009, the amount of P132,031,599.36 44 as "Input Tax Carried Over from Previous Period," the Court found that petitioner failed to present VAT invoices or receipts to prove the existence of such amount. Hence, the input VAT carry-over of P132,031,599.36 cannot be validly applied against petitioner's output VAT pursuant to Section 110 (A) in relation to Section 110 (B) of the [1997 NIRC], which states:

> 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
>
> (B) Excess Output or Input Tax. – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters.

Nevertheless, even granting that the input VAT carry-over in the amount of P132,031,599.36 was properly substantiated by VAT invoices or official receipts, it is still not enough to cover the above-computed output VAT still due of P206,752,533.50.

Considering that there is no excess input VAT which may be the subject of a claim for refund/tax credit certificate under Section 112 (A) of the NIRC of 1997, as amended by RA 9337, the instant claim must be denied.

The Court En Banc finds that Court in Division correctly disregarded the input VAT from the previous quarter and ruled that the grant of refund or TCC representing input VAT attributable to zero-rated sales must be made only "in proper cases."

Anent the allegation that the Court in Division erred in disregarding the input VAT from the previous quarter and ruling that the grant of refund or TCC representing input VAT attributable to zero-rated sales must be made only "in proper cases," petitioner avers that *Section 112(A) of the 1997 NIRC* is the applicable provision for claims of refund of unutilized input tax attributable to zero-rated sales and not *Section 110(B) of the 1997 NIRC*, as ruled by the Court in Division in its Decision and Resolution dated October 24, 2013 and March 17, 2014, respectively.

The Court in Division settled the issue in the Decision dated October 24, 2013, when it found that petitioner failed to present VAT invoices or receipts to prove the existence of its claimed Input Tax Carried Over from Previous Period in the amount of Php132,031,599.36, hence, it cannot be applied against petitioner's output VAT pursuant to Section *110 (A) in relation to Section 110 (B) of the 1997 NIRC*. Even assuming that there was proper substantiation, the amount is not enough to cover the output VAT still due of Php206,752,533.50. There being no excess input VAT which may be the subject of a claim for refund/TCC under *Section 112 (A) of the 1997 NIRC*, the claim was correctly denied.

The Court in Division in its Resolution dated May 17, 2014, relating to the Motion for Reconsideration/New Trial filed by petitioner, confirmed the said Decision, *viz.*:

> Be that as it may, as will be shown hereafter, the consideration of the said amount of PhP132,031,599.36, as forming part of petitioner's valid input VAT for taxable year 2009, is of no moment, considering that the output

VAT for the same period remains higher than the said input VAT.

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It is clear from the last proviso of the foregoing Section 110 (B) [of the 1997 NIRC] that the refund or credit of 'any input tax attributable to zero-rated sales by a VAT-registered person' is 'subject to the provisions of Section 112 [of the 1997 NIRC]. Correspondingly, the grant of such refund or credit cannot be confined merely to the provisions of paragraph (A) of Section 112 [of the 1997 NIRC], but to the whole of Section 112 [of the 1997 NIRC].

The term 'in proper cases' under Section 112 (C) [of the 1997 NIRC] qualifies the granting of refund under Section 112 (A) [of the 1997 NIRC]. Thus, it is not only when the input VAT is attributable to zero-rated sales and the same has not been applied against the output VAT that the grant of refund or tax credit may be made; it must likewise be "proper" or appropriate under the circumstances.

In this case, it is the finding of this Court that the output VAT liability of petitioner is more than its input VAT credits for the four (4) quarters of taxable year 2009, to wit:

xxx xxx xxx

The first sentence of the aforequoted Section 110 (B) [of the 1997 NIRC] is plain that '(i)f at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person.' Thus, it would be 'improper' or inappropriate, if not irregular, to grant a refund of, or issue a [TCC] for, input VAT in favor of petitioner where there are still unpaid output VAT for taxable year 2009.

xxx xxx xxx

In other words, the payment of the output VAT by petitioner is undoubtedly imperative."

The Court *En Banc* sustains this finding.

Sections 110(B) and 112(A) of the 1997 NIRC provide:

SEC. 110. *Tax Credits.* -

xxx xxx xxx

(B) Excess Output or Input Tax — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112." (Emphasis ours)

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 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 sales 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."(Emphasis ours)

A cursory reading of *Sections 110(B) and 112(A) of the 1997 NIRC* reveals that it is not the intention of the law for input VAT and output VAT to be considered in isolation.

In the case ***AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue,***[40] the Highest Tribunal had the opportunity to discuss the interpretation of provisions of the 1997 NIRC. The Supreme Court stated:

> Legislative intent must be ascertained from a consideration of the statute as a whole and not of an isolated part or a particular provision alone. This is a cardinal rule in statutory construction. For taken in the abstract, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those with which it is associated. Thus, an apparently general provision may have a limited application if viewed together with the other provisions.

Hence, every part of the statute must be considered with the other parts. Accordingly, the whole of *Section 112(A) of the 1997 NIRC* should be read in conjunction with *Section 110(B) of the 1997 NIRC* so as to give life to all the provisions intended for a claim for refund of input VAT.

Section 110(B) of the 1997 NIRC already provides that if the output tax exceeds the input tax, the excess shall be paid. However, should the input tax exceed the output tax, the excess may be carried over to the succeeding quarter/s; and any input tax attributable to zero-rated sales by VAT-registered entities may be refunded or credited against other internal revenue taxes.

Furthermore, in the case ***San Roque Power Corporation v. Commissioner of Internal Revenue,***[41] the Supreme Court had the

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[40] G.R. No. 185969, November 19, 2014; citing the case of *Aboitiz Shipping Corp., et al v. City of Cebu,* 14 Phil 425.

[41] G.R. No. 180345, November 25, 2009, 605 SCRA 536.

occasion to lay down the criteria governing claims for refund or tax credit under *Section 112(A) of the 1997 NIRC*, which includes the requirement that the input taxes have not been applied against output taxes during and in the succeeding quarters.

From the foregoing discussions, petitioner's assertion has no merit.

In the instant case, the Court *En Banc* has no valid reason to modify the findings of the Court in Division, that the total output VAT of petitioner in 2009 in the amount of PhP2,176,884,032.56 is more than the valid input VAT for the same year in the amount of PhP1,970,131,499.06, as computed by the Court in Division. Hence, there is an Output VAT still payable in the amount of PhP206,752,533.50. Clearly, the payment of output VAT is mandatory. In the absence of excess input VAT, and the claim is unreasonable, as prescribed by *Sections 112(A) and 110(B) of the 1997 NIRC.*

The Court En Banc finds that Court in Division correctly ruled that a new trial is unwarranted.

Petitioner avers that that a new trial is warranted pursuant to the requisites established by the CTA in the *Kelphil Case*[42], and postulates that a new trial for the presentation of the newly discovered evidence, *i.e.*, IERDs, supplier SIs and ORs, is in order.

The aforestated argument has been thoroughly considered and discussed by the Court in Division when it resolved the matter in its Resolution dated March 17, 2014. The Court *En Banc* quotes:

> In order that newly discovered evidence may be a ground for allowing a new trial, it must be fairly shown that: (a) the evidence is discovered after the trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) such evidence is material, not merely cumulative, corroborative, or impeaching; and (d) such evidence is of

[42] CTA Case No. 7749, November 22, 2010.

such weight that it would probably change the judgment if admitted.

In *Custodio, et al. vs. Sandiganbayan, et al.,* the Supreme Court said:

> 'It should be emphasized that the applicant for new trial has the burden of showing that the new evidence he seeks to present has complied with the requisites to justify the holding of a new trial.
>
> The threshold question in resolving a motion for new trial based on newly discovered evidence is whether the proffered evidence is in fact a 'newly discovered evidence which could not have been discovered by due diligence.' The question of whether evidence is newly discovered has two aspects: a temporal one, i.e., when was the evidence discovered, and a predictive one, i.e., when should or could it have been discovered. It is to the latter that the requirement of due diligence has relevance. We have held that in order that a particular piece of evidence may be properly regarded as newly discovered to justify new trial, what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it; what is essential is that the offering party had exercised reasonable diligence in seeking to locate such evidence before or during trial but had nonetheless failed to secure it.
>
> The Rules do not give an exact definition of due diligence, and whether the movant has exercised due diligence depends upon the particular circumstances of each case. <u>Nonetheless, it has been observed that the phrase is often equated with 'reasonable promptness to avoid prejudice to the defendant.' In other words, the concept of due</u>

> <u>diligence has both a time component and a good faith component. The movant for a new trial must not only act in a timely fashion in gathering evidence in support of the motion; he must act reasonably and in good faith as well. Due diligence contemplates that the defendant acts reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him.'</u>
>
> xxx xxx xxx

Based on the foregoing, the following conclusions may be drawn:

1. That despite having known, as early as December 12, 2011, the said ICPA Report up to the time it filed its Formal Offer of Evidence on September 27, 2012, petitioner never asked this Court for time to be allowed to locate the supposed original documents, which have not been provided to the ICPA; and

2. That before 'finally' resting its case or the filing of its Formal Offer of Evidence, petitioner, not only reviewed the case, but also studied the case twice. And after doing so, petitioner has only one (1) issue to settle before this Court, i.e., to recall Mr. Dennis Odra to testify on other specific matters.

Thus, the alleged 'newly discovered evidence' of petitioner should be treated as 'forgotten evidence. Parenthetically, the latter term refers to evidence already in existence or available before or during trial, which was known to and obtainable by the party offering it and, which could have been presented and offered in a seasonable manner were it not for the oversight or forgetfulness of such party or his counsel.

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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.

The said oversight or forgetfulness is even bolstered by the fact that petitioner never resorted to secondary evidence, in accordance with Sections 5 and 7, Rule 130 of the Rules of Court, *viz.*:

xxx xxx xxx

Needless to state, when the best evidence (original copy of the documents) cannot be submitted, secondary evidence may already be considered.

xxx xxx xxx

Simply stated, the original copy of petitioner's supporting documents, particularly the IERDs, supplier [SIs, and ORs] do not constitute newly discovered evidence which would warrant a new trial or a reopening of the case.

xxx xxx xxx

We are left with no recourse but to conclude that this is a simple case of negligence on the part of the petitioner. For this act of negligence, the petitioner cannot be allowed to seek refuge in a liberal application of the Rules. For it should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. In the case at bench, a liberal application of the rules of procedure to suit the petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance." (Emphases supplied)

Considering the foregoing, the Court in Division has settled petitioner's aversion in its Motion for Reconsideration[43] before the Court in Division. Consequently, the Court *En Banc* deems it futile to address the argument which is a mere rehash of petitioner's position before the Court in Division.

The Court En Banc finds that Court in Division correctly denied the Import Entry and Internal Revenue Declaration, Supplier Invoices, and Official Receipts as evidence in the Motion for Reconsideration.

Petitioner argues that the Court in Division should have taken a liberal application of the technical rules, pursuant to *Section 2, Rule 1 of the Revised Rules of CTA* and the pronouncement of the CTA *En Banc* in the case ***Commissioner of Internal Revenue vs. Hydro-Electric Development Corporation,***[44] and thus the Court in Division should have considered the IERDs, supplier SIs and ORs as evidence in the Motion for Reconsideration.

The aforestated arguments have been extensively and thoroughly considered by the Court in Division in the Resolution dated March 17, 2014, when it ruled in the following manner:

> Moreover, attaching copies of certain IERDs, supplier invoices and official receipts in the instant Motion is of no consequence, since the same have not been formally offered 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.' 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

[43] *Rollo*, pp. 7-19.
[44] CTA EB Case No. 682, March 30, 2012.

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.

In Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, the Supreme Court said:

> '. . . the Rules of Court, which is suppletory in quasi-judicial proceedings, particularly Sec. 34 of Rule 132, Revised Rules on Evidence, is clear that no evidence which has not been formally offered shall be considered. Thus, where the pertinent invoices or receipts purportedly evidencing the VAT paid by Atlas were not submitted, the courts a quo evidently could not determine the veracity of the input VAT Atlas has paid. Moreover, when Atlas likewise failed to submit pertinent export documents to prove actual export sales with due certification from accredited banks on the export proceeds in foreign currency with the corresponding conversion rate into Philippine currency, the courts a quo likewise could not determine the veracity of the export sales as indicated in Atlas' amended VAT return.'

Under Section 8 of [RA] 1125, this Court is categorically described as a court of record. To reiterate, as cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given to the pieces of evidence submitted by petitioner attached to the instant Motion, as the rules on documentary evidence require that these documents must be formally offered before this Court.

The Court *En Banc* sustains this finding.

Petitioner cannot find solace in *Section 2, Rule 1 of the Revised Rules of the CTA*. Petitioner failed to recall that the rule on formal offer of evidence is not a trivial matter.[45]

In the case of ***Heirs of Pedro Pasag vs. Parocha***[46] *("Pasag Case")*, the Supreme Court had the occasion to discuss the rationale of the rule on formal offer of evidence. The Highest Tribunal stated:

> The Rules of Court [provide] that 'the court shall consider no evidence which has not been formally offered.' 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.
>
> xxx xxx xxx
>
> 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 formally offered in evidence cannot in any manner be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value. It must be stressed that there is a significant distinction between identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while the latter is done only when the party rests its case. 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

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[45] *People v. Saturnino Villanueva*, G.R. No. 181829, September 1, 2010 citing the case *of Heirs of Pedro Pasag v. Parocha*, G.R. No. 155483, April 27, 2007, 522 SCRA 410.
[46] G.R. No. 155483, April 27, 2007, 522 SCRA 410.

consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.

It is worth emphasizing that rules of procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose.[47]

In view of the foregoing, the Court in Division correctly denied the admissibility of petitioner's IERDs, supplier SIs and ORs attached to the Motion for Reconsideration, pursuant *to Section 34 of Rule 132 of the Rules of Court* and the Supreme Court ruling in the *Pasag Case.*

Finding no reversible error, we affirm the assailed Decision dated October 24, 2013 and Resolution dated March 17, 2014 of the Special First Division.

WHEREFORE, premises considered, the Petition for Review filed by petitioner is hereby **DENIED.** The Court *En Banc* **AFFIRMS *IN TOTO*** the Decision of the Special First Division dated October 24, 2013, as well as the Resolution dated March 17, 2014.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[47] *Zapanta, et. al. v. Co King* Ki, G.R. No. 191694, December 3, 2014.

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to *Section 13, Article VIII of the Constitution,* it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice