REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MTI ADVANCED TEST DEVELOPMENT CORPORATION, *Petitioner,*	**CTA EB No. 2620** (CTA Case No. 9679)
	Present:
-versus-	**DEL ROSARIO**, *PJ,* **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, and **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 14 2023 3:30pm

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DECISION

DEL ROSARIO, PJ.:

Before this Court is a Petition for Review filed on June 3, 2022 by MTI Advanced Test Development Corporation, praying that the Court *En Banc* reverse and set aside the Decision dated September 29, 2021 and the Resolution dated April 20, 2022 promulgated by the Court of Tax Appeals (CTA) Third Division[1] in CTA Case No. 9679, entitled *MTI Advanced Test Development Corporation vs. Commissioner of Internal Revenue*. The CTA Third Division denied petitioner's claim for refund or issuance of a tax credit certificate representing its unutilized input Value-Added Tax (VAT) in the amount of ₱3,344,544.96, covering the period of April 1, 2015 to June 30, 2015, and in the amount of ₱2,647,138.78, covering the period of

[1] Composed of Associate Justice Erlinda P. Uy, Associate Justice Ma. Belen M. Ringpis-Liban, and Associate Justice Maria Rowena Modesto-San Pedro.

October 1, 2015 to December 31, 2015, or in the total amount of ₱5,991,683.74.

The dispositive portions of the assailed Decision and assailed Resolution of the CTA Third Division are as follows:

September 29, 2021 Decision:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

April 20, 2022 Resolution:

> "**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration (of the Decision dated September 29, 2021) is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner MTI Advanced Test Development Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, and registered with the Securities and Exchange Commission (SEC), with principal office at 3/F BPI-Philam Life Alabang, Alabang-Zapote Road, cor. Acacia Ave., Madrigal Business Park, Alabang, Muntinlupa City.[2]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Tax Identification Number (TIN) 006-674-191-00000.[3] It is also registered with the Board of Investments (BOI) as a new information technology (IT) export service firm in the field of software development (test programs for semiconductor industry).[4]

Respondent is the Commissioner of the Bureau of Internal Revenue. He is vested with authority to exercise the functions of said office, including *inter alia*, the power to refund any internal revenue

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[2] Par. 1, Stipulation of Fact, Joint Stipulation of Facts and Simplification of Issue (JSFSI), *CTA Division Docket*, Vol. I, pp. 156 to 157.
[3] Exhibit "P-8", *CTA Division Docket*, Vol. I, p. 374.
[4] Exhibit "P-7", *CTA Division Docket*, Vol. I, p. 373.

tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, or of VAT input taxes attributable to zero-rated sales. Respondent holds office at the BIR National Office Building, Diliman, Quezon City, Metro Manila. [5]

THE FACTS

The facts of the case as found by the CTA Third Division are as follows:

> "On April 27, 2017, Petitioner filed with the BIR Revenue District Office No. 53B, *Applications for Tax Credits/Refunds* in the amount of Php3,344,544.96, covering the period of April 01, 2015 to June 30, 2015, and the amount of Php2,647,138.78, covering the period of October 01, 2015 to December 31, 2015, or in the total amount of Php5,991,683.74, pursuant to Section 4.112-1 of Revenue Regulations ('RR') No. 16-2005. Said *Applications* were respectively accompanied by Petitioner's letters dated April 27, 2017, with the corresponding *Checklists of Mandatory Requirements for Claims for VAT Credit/Refund.*
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> The BIR then issued the following:
>
> 1) *Letter of Authority* ('LOA') dated May 15, 2017 (SN: eLA201200035259), authorizing certain revenue officers to examine Petitioner's books of accounts and other accounting records for VAT tax credit certificate/refund, for the period from April 01, 2015 to June 30, 2015, pursuant to Sections 6 (A) and 10 (C) of the National Internal Revenue Code ('NIRC') of 1997, as amended; and
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> 2) LOA dated May 17, 2017 (SN: eLA201200035263), authorizing certain revenue officers to examine Petitioner's books of accounts and other accounting records for VAT tax credit certificate/refund, for the period from October 01, 2015 to December 31, 2015, pursuant to Sections 6 (A) and 10 (C) of the NIRC of 1997, as amended.
>
> Thereafter, in the letter dated August 01, 2017, Revenue District Officer Mahinardo G. Mailig denied Petitioner's application for excess input taxes for the period April 01, 2015 to June 30, 2015, in the amount of Php3,344,544.96. The said letter was received by Petitioner on August 09, 2017. And in the letter dated August 09, 2017, which was received by Petitioner on August 17,

[5] Par. 2, Stipulation of Fact, JSFSI, *CTA Division Docket*, Vol. I, p. 157.

2017, the same Revenue District Officer denied Petitioner's application for excess input taxes for the period October 01, 2015 to December 31, 2015, in the amount of Php2,647,138.78.

Petitioner filed the instant *Petition for Review* on September 05, 2017.

Respondent filed his *Answer* on November 10, 2017, interposing the following special and affirmative defenses, to wit:

xxx xxx xxx

The Pre-Trial Conference was set and held on April 10, 2018. Prior thereto, *Respondent's Pre-Trial Brief* and the *Pre-Trial Brief (for the Petitioner)* were respectively filed on February 20, 2018 and April 03, 2018.

On April 23, 2018, the parties filed their *Joint Stipulation of Facts and Simplification of Issue*. The Pre-Trial Order was issued on May 04, 2018, thereby deeming the termination of the Pre-Trial Conference.

Trial ensued.

During trial, Petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Maria Eugene M. Ibañez, Petitioner's Senior Accountant; (2) Ms. Beverly Viray, Petitioner's Accounting Supervisor and Treasurer; and (3) Ms. Ofelia C. Flores, the Court-commissioned Independent Certified Public Accountant ('ICPA').

Ms. Flores submitted her ICPA *Report* on August 06, 2018.

Petitioner filed its *Formal Offer of Evidence* on January 08, 2019. Respondent posted his *Comment/Opposition (Petitioner's Formal Offer of Evidence)* on January 16, 2019. In the Resolution dated March 22, 2019, the Court admitted Petitioner's exhibits, *except* for Exhibits 'ICPA-P3-305' and 'ICPA-P3-382', for not being found in the records of the case. In the same Resolution, the Court noted the following:

1) Page 2 of Exhibit P-1' was not submitted; and

2) While Exhibit 'ICPA-P8-28' to ICPA-P8-29' is offered as 'Independent Auditors' Report,' the document pre-marked is actually pages 19 to 20 of the Notes to Financial Statements.

Petitioner then filed its *Motion for Partial Reconsideration (of the Resolution dated March 22, 2019)* on April 03, 2019, praying that the Court: (1) consider page 2 of Exhibit 'P-1' as admitted, including the purpose it was offered, and Exhibits 'ICPA-P8-28' to

'ICPA-P8-P29' be described and referred to as Notes to Financial Statements; and (2) give Ms. Flores a period of fifteen (15) days, within which to submit the soft copy of the complete ICPA *Report* and the corresponding annexes and/or schedules in Microsoft Word and/or Excel format. Respondent failed to file his comment on the said *Motion for Partial Reconsideration*. In the Resolution dated June 17, 2019, the Court granted Petitioner's *Motion for Partial Reconsideration*.

On April 08, 2019, the soft copy of the complete ICPA *Report* and the corresponding annexes and/or schedules in Microsoft Word and/or Excel format was submitted by Ms. Flores to the Court.

Petitioner filed its *Supplemental Formal Offer of Evidence* on July 17, 2019. Respondent failed to file his comment thereon.

Respondent likewise presented his documentary and testimonial evidence. He proffered the testimonies of Revenue Officers Aida F. Bacud, and Eugene Valentine V. Berganion.

Respondent posted his *Formal Offer of Evidence* on July 29, 2019. Petitioner filed its *Comment (To Respondent's Formal Offer of Evidence dated July 26, 2019)* on August 06, 2019. In the Resolution dated September 11, 2019, the Court admitted Respondent's exhibits, *except* for Exhibit 'R-3', for failure of the document identified to correspond with the duly marked document. As regards Petitioner's *Supplemental Formal Offer of Evidence*, the Court denied the admission of Exhibit 'P-17', for failure to present the original for comparison; and Exhibit 'P-18', for failure to identify and for failure to present the original for comparison.

Petitioner filed its *Motion for Partial Reconsideration and Motion to Defer Submission of Memorandum* on October 03, 2019. Respondent failed to file his comment on the said Petitioner's *Motion for Partial Reconsideration*. In the Resolution dated October 09, 2019, Petitioner's *Motion to Defer Submission of Memorandum* was granted. Moreover, in the Resolution dated November 21, 2019, the Court granted Petitioner's *Motion for Partial Reconsideration*, and accordingly admitted Exhibits 'P-17' and 'P-18'.

Petitioner's Memorandum was filed on February 19, 2020. Respondent failed to file his memorandum.

On October 28, 2020, this case was deemed submitted for decision." (*Citations omitted*)

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As aforestated, on September 29, 2021, the CTA Third Division rendered the assailed Decision[6] denying the Petition for Review.

On December 2, 2021, petitioner filed a "Motion for Reconsideration".[7] In opposition thereto, respondent posted its "Comment/Opposition (To Petitioner's Motion for Reconsideration)" *via* registered mail on March 3, 2022.[8]

On April 20, 2022, the CTA Third Division issued the assailed Resolution[9] denying petitioner's "Motion for Reconsideration" for lack of merit.

On May 20, 2022, petitioner filed a "Motion for Extension of Time to File Petition for Review" before the Court *En Banc*.[10] The same was granted in the Minute Resolution[11] dated May 23, 2022,

Petitioner was given until June 4, 2022, within which to file its Petition for Review.

Petitioner posted the present "Petition for Review" before the Court *En Banc* on June 3, 2022.[12]

With the posting of respondent's "Comment/Opposition",[13] the "Petition for Review" was submitted for decision on August 23, 2022.[14]

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues[15] for the Court *En Banc*'s resolution:

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[6] Annex "B", *CTA En Banc Docket,* pp. 19 to 58.
[7] *CTA Division Docket*, Vol. II, pp. 688 to 694.
[8] *CTA Division Docket*, Vol. II, pp. 710 to 716.
[9] Annex "C", *CTA En Banc Docket,* pp. 59 to 66.
[10] *CTA En Banc Docket,* pp. 1 to 3.
[11] *CTA En Banc Docket,* p. 4.
[12] *CTA En Banc Docket*, pp. 5 to 18.
[13] *CTA En Banc Docket*, pp. 74 to 81.
[14] *CTA En Banc Docket*, pp. 84 to 85.
[15] Petition for Review, *CTA En Banc Docket*, p. 9.

1. Whether the CTA Third Division erred in ruling that petitioner failed to sufficiently establish that the input value-added tax, subject of the present case, was not carried over or applied against any output tax in the succeeding quarters; and,

2. Whether the CTA Third Division erred in treating that only the sales representative services to Microchip Technology Ireland Limited (MTIL) were performed in the Philippines.

PARTIES' ARGUMENTS

Petitioner's arguments

Petitioner contends that it complied with all the requisites for the grant of the refund or issuance of a tax credit certificate in accordance with Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Petitioner also posits that, similar to its sales of representative services to MTIL, its sales and technical support, and accounting and consultancy services to Microchip Technology Incorporated (MTech) and its master research and development services to MTIL were also rendered in the Philippines; thus, qualified for zero-rated sales.

Respondent's arguments

Respondent, in his Comment, counter-argues that the CTA Third Division already considered in the assailed Decision the findings of the Independent Certified Public Accountant (ICPA) pertaining to petitioner's effectively zero-rated sales *vis-à-vis* the pertinent pieces of evidence presented to support said sales.

Respondent also avers that the CTA Third Division was correct in ruling that the belated submission of certified true copies of the 2nd and 4th Quarterly VAT Returns for Fiscal Year (FY) 2016 in support of petitioner's claim that its input taxes were not carried over nor applied against any output tax in the succeeding quarters cannot be considered.

RULING OF THE COURT *EN BANC*

The present Petition for Review was filed on time

At the outset, the Court *En Banc* shall determine whether the present Petition for Review was timely filed.

Section 3 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals states:

> "**SEC. 3.** *Who may appeal; period to file petition.* – xxx
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)"

Records show that petitioner received the assailed Resolution on May 5, 2022. Petitioner had fifteen (15) days from May 5, 2022 or until May 20, 2022 within which to file the Petition for Review before the Court *En Banc*. With the filing of a "Motion for Extension to File Petition for Review" on May 20, 2022, petitioner was given until June 4, 2022[16] within which to file its Petition for Review. The Petition for Review was timely filed on **June 3, 2022**.[17]

The present Petition for Review has no merit

The Court *En Banc* notes that petitioner's arguments in the present Petition for Review are mere rehash of the arguments in its Motion for Reconsideration filed before, and adequately passed upon, by the CTA Third Division in the assailed Resolution. Nonetheless,

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[16] *Supra* Note 10.
[17] *Supra* Note 11.

the Court *En Banc* will address petitioner's arguments to finally put its mind to rest.

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

> "SEC. 112. Refunds or Tax Credits of Input Tax. –
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the 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 of properties or services, and the amount of creditable input tax due or paid cannot be **directly and entirely attributed** to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.
>
> 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." *(Boldfacing supplied)*

A taxpayer has to prove compliance with the following requisites to be entitled to a claim for refund:

"As to the timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;

2. in case of full or partial denial of the refund claim, or the failure on the part of Respondent to act on the said claim within a period of one hundred twenty (120) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 120-day period;

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;

In relation to the taxpayer's output VAT:

4. **the taxpayer is engaged in zero-rated or effectively zero-rated sales;**

5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* ('BSP') rules and regulations;

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;

7. the input taxes are due or paid;

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively, zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

9. **the input taxes have not been applied against output taxes during and in the succeeding quarters.**[18] (*Citations* omitted)

The CTA Third Division found that petitioner was able to comply with the foregoing requisites, except for: *(i)* the fourth requisite, specifically with regard to the zero-rating of its sales and technical support, and accounting and consultancy services to MTech and its master research and development services to MTIL; and, *(ii)* the ninth

[18] Decision dated September 29, 2021, CTA Case No. 9679.

requisite anent the non-application of the input VAT against the output taxes in the succeeding quarters.

Petitioner failed to comply with the fourth requisite

Section 108(B)(2) of the NIRC of 1997, as amended, provides:

> "**Section 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) Transactions Subject to Zero Percent (0%) Rate. - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

In order for sale of services to qualify as zero-rated sales under Section 108 (B)(2) of the NIRC of 1997, as amended, the following requisites must be established:

1. The services fall under any of the categories under Section 108(B)(2), or the services rendered should be other than "processing, manufacturing or repackaging goods";

2. The recipient of the services is a foreign corporation, and the aforesaid corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;

3. The services were performed in the Philippines by a VAT-registered person; and,

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.

Petitioner claims that it is engaged in: *(i)* the business of providing engineering support of services in the areas of product validation and qualification, characterization and development of manufacturing test procedures; *(ii)* promoting business opportunities in connection with a variety of complementary metal oxide semiconductor components to support the market for cost-effective embedded control solutions; and, *(iii)* providing sales and technical support to Microchip sales channel and customers and accounting and consultancy services.

According to petitioner, its employees, which are residents of the Philippines, are the ones providing or performing the above services in the Philippines. As a VAT-registered entity engaged in IT Export Service Activities, petitioner insists that all its services are considered zero-rated for VAT purposes.

After carefully reviewing the records of the case, the Court *En Banc* concurs with the findings of the CTA Third Division that **petitioner was not able to substantiate its claim that its sales and technical support, and accounting and consultancy services to MTech, and its sales of master research and development services to MTIL, were rendered in the Philippines.**

Contrary to petitioner's claim, there is nothing in the Independent Certified Public Accountant's (ICPA) Report which confirms that petitioner's sales and technical support, and accounting and consultancy services to MTech, and the sales of master research and development services to MTIL, were rendered in the Philippines. Truth to tell, the following are the only findings made by the ICPA with regard to services rendered in the Philippines by petitioner:

> "I also checked the pertinent Intra-group Service Agreements (Exhibit Nos. ICPA-P10-1 to ICPA-P10-52) between MATDC and its non-resident customers which provide the relevant terms and conditions of the services to be rendered by MATDC.
>
> I also confirmed that the customers of MATDC, the services for which were considered zero-rated sales, are non-resident foreign

> corporations that were outside the Philippines when the services were performed by checking the SEC Certificate of Non-Registration issued for each non-resident foreign customer and the Articles of Incorporation/Association, Certificate of Incorporation and Memorandum of Association of Customers Issued in Their Respective Countries (Exhibit Nos. ICPA-P11-1 to ICPA-P11-32)."[19]

Furthermore, a careful scrutiny of the Service Agreements submitted by petitioner reveals that its sales representative services to MTIL (**Exhibit "ICPA-P10-27"**) is the only sales of service ascertained to have been performed by petitioner in the Philippines. As for the master research and development services to MTIL, and the sales and technical support and accounting and consultancy services to MTech, the related Service Agreements do not reflect that said services were rendered by petitioner in the Philippines.

It is hornbook doctrine that mere allegations do not constitute proof. Bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[20]

The Court *En Banc* finds no reason to depart from the findings of the CTA Third Division in its assailed Decision and Resolution considering that petitioner failed to provide a convincing argument to reconsider, reverse, or modify the same.

Petitioner failed to comply with the ninth requisite

Petitioner contends that the court-commissioned ICPA verified that the input tax being claimed in the amounts of ₱3,344,544.96 and ₱2,647,138.78 were not utilized in its VAT Returns for the succeeding quarters. Petitioner also claims that the CTA Third Division may have inadvertently ignored the verified report and recommendation of the duly commissioned ICPA and the VAT Returns offered which prove that the claimed input taxes were not applied against any output tax in the succeeding quarters.

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[19] Exhibit "P-14", *CTA Division Docket*, Vol. I, p. 212.
[20] *Government Service Insurance System vs. Prudential Guarantee and Assurance, Inc., et al.*, G.R. No. 165585, November 20, 2013; *Government Service Insurance System vs. Prudential Guarantee and Assurance, Inc.*, G.R. No. 176982, November 20, 2013, citing *Real vs. Belo*, 542 Phil. 109 (2007).

After painstakingly going through the pieces of evidence offered by petitioner, including the ICPA Report, the Court *En Banc* finds that petitioner failed to prove that the input taxes were not carried over and not utilized in the succeeding quarters.

The Court *En Banc* quotes with approval the findings of the CTA Third Division in the assailed Decision and Resolution. The pertinent portions of the said Decision and Resolution are as follows:

Assailed Decision

"In this case, Petitioner alleged that for each of the subject quarters, it indicated in the succeeding VAT return specifically in box 23D across the line, '*Less: Deduction from Input Tax- Any VAT Refund/Tax Credit Certificate Claimed*', to avoid any double tax refund or benefit.

However, Petitioner failed to present its Quarterly VAT Returns for the 2nd quarter of FY 2016 (July 01 to September 30, 2015) and 4th quarter of FY 2016 (January 01 to March 31, 2016) showing actual deduction of the claimed input taxes of Php3,344,544.96, covering the 1st quarter (April 01, 2015 to June 30, 2015), and Php2,647,138.78, covering the 3rd quarter (October 01 to December 31, 2015) of FY 2016. Although Petitioner presented its Quarterly VAT Returns for the 1st and 3rd quarters of FY 2017, which reflected in box 23D across the line, '*Less: Deduction from Input Tax-VAT Refund/TCC Claimed*' the amounts of Php2,601,068.29 and Php2,217,370.72, respectively, these amounts do not reconcile or correspond to any of the claimed input VAT of Php3,344,544.96 and Php2,647,138.78.

In sum, notwithstanding that out of the total claim of Php5,991,683.74, Petitioner was able to prove that the amount of Php339,103.25 represents excess input VAT attributable to its zero-rated sales/receipts for the 1st and 3rd quarters of FY 2016, the latter amount cannot be granted since Petitioner failed to establish that it was *not* carried-over *nor* applied against any output tax in the succeeding quarters."[21] (*Boldfacing* supplied)

Assailed Resolution

"To reiterate, the ICPA is commissioned merely to assist the Court in the determination of the merit of taxpayer's protest. The findings and conclusions of the ICPA shall not be conclusive upon the Court which is free to either completely or partially adopt or disregard, the findings of the ICPA, after making its own verification and evaluation of the evidence on record. In other words, the Court will still

[21] *CTA En Banc Docket*, p. 56.

> examine and verify the documents audited or examined by the ICPA – and the Court, in its sound discretion, may render judgment without considering the ICPA report.
>
> As such, petitioner cannot assert that the ICPA's findings are sufficient to validate its claim since the ultimate determination rests upon the Court based on the evidence presented by the parties. However, this is not to say that the Court disregarded the ICPA Report, certainly, the ICPA findings on petitioner's effectively zero-rated sales *vis-à-vis* the pertinent pieces of evidence presented to support the said sales were duly taken into consideration, and were thoroughly examined by the Court arriving at the conclusions made in the assailed Decision.
>
> Herein, the Court found that petitioner failed to present its Quarterly VAT Returns for the 2nd quarter (July 1 to September 30, 2015) and 4th quarter (January 1 to March 31, 2016) of FY 2016, showing actual deduction of the claimed input taxes of Php3,344,544.96 covering the first quarter (April 1, 2015 to June 30, 2015) and Php2,647,138.78 covering the third quarter (October 1 to December 31, 2015) of FY 2016. Although petitioner presented its Quarterly VAT returns for the first and third quarters of FY 2017, which reflected in box 23D across the line, "*Less: Deduction from Input Tax – VAT Refund/TCC Claimed*" the amounts of Php2,601,068.29 and Php2,217,370.72, respectively, however, those amounts do not reconcile or correspond to any of the claimed input VAT of Php3,344,544.96 and Php2,647,138.78."[22]

To prove that the input taxes were not applied against any output taxes in the succeeding quarters, petitioner, in its Motion for Reconsideration filed before the CTA Third Division, and in the present Petition for Review, attached the certified true copies of its 2nd and 4th Quarterly VAT Returns for FY 2016.[23] In the said VAT Returns, petitioner asserts that the amounts being claimed are reflected in box 23D of the said returns, indicated specifically across the line "Less: Deduction from Input Tax-VAT Refund/TCC Claimed", the amounts of ₱3,344,544.96 and ₱2,647,138.78, respectively.

As a general rule, the Court shall consider no evidence which has not been formally offered.[24] While the Supreme Court in several cases[25] have relaxed the application of Section 34, Rule 132 of the

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[22] *CTA En Banc Docket,* pp. 62 to 63.
[23] They were attached to the Motion for Reconsideration filed before the CTA Third Division, and attached to the Petition for Review filed before the Court *En Banc.*
[24] Section 34, Rule 132 of the Revised Rules on Evidence.
[25] *Filinvest Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 146941, August 9, 2007 and *Commissioner of Internal Revenue vs. PERF Realty Corporation,* G.R. No. 163345, July 4, 2008.

Revised Rules on Evidence, the claimant must still comply with two requisites.

In *Commissioner of Internal Revenue vs. United Salvage and Towage,*[26] the Supreme Court laid down two (2) requirements that must be present before the relaxation of Rule 132 may apply; in particular, the proffered evidence must have been: *(i)* duly identified by testimony duly recorded; and, *(ii)* incorporated in the records of the case. Being an exception, the same may only be applied when there is strict compliance with the said requisites; otherwise, the general rule in Section 34, Rule 132 of the Rules of Court should prevail.[27]

The said VAT Returns were never marked, identified, and formally offered during trial before the CTA Third Division. Petitioner simply attached them to its Motion for Reconsideration filed before the CTA Third Division without moving for the reopening of trial for the purpose of identifying and marking the 2nd and 4th Quarterly VAT Returns for FY 2016. Since they were never marked nor identified, the Court cannot consider the same.

Petitioner further insists that Ms. Beverly Viray, in her Judicial Affidavit dated March 27, 2018, also confirmed that the total amount being claimed as tax credit or refund has never been applied against any tax liability in the four quarters of FY ending March 31, 2016 or in the succeeding quarters.

Section 8 of Republic Act No. 1125 categorically provides that the Court of Tax Appeals shall be a Court of record and as such it is required to conduct a formal trial (*trial de novo*) where the parties must present their evidence accordingly, if they desire the Court to take their evidence into consideration.[28] As cases filed before the CTA are litigated *de novo*, party litigants should prove every minute aspect of their cases.

In the present case, testimonial evidence alone is insufficient to determine whether petitioner's input taxes were not applied against its output taxes in the succeeding quarters. It must be coupled with documentary evidence to support the testimony of petitioner's witness. While petitioner's witness did testify that petitioner never

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[26] G.R. No. 197515, July 2, 2014.
[27] *Ibid.*, citing *Dizon vs. Court of Appeals*, 576 Phil. 110, 128 (2008).
[28] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

applied the input taxes for the period April 1, 2015 to June 30, 2015 and October 1, 2015 to December 31, 2015 against any output tax liability, as allegedly shown by VAT Returns in the four (4) quarters ending FY March 31, 2016, records show that petitioner only submitted in evidence the VAT Returns for the 1st and 3rd quarters of FY 2016. Petitioner failed to submit the VAT Returns for the 2nd and 4th quarters of FY 2016 in order to corroborate the testimony of petitioner's witness.

In *Republic of the Philippines vs. Sandiganbayan*,[29] the Supreme Court emphasized the superiority of written evidence over oral evidence, *viz.*:

> "We are thus vividly and fittingly reminded of the proverbial words of Mr. Justice Story that:
>
> > 'Naked statements must be entitled to little weight when the parties hold better evidence behind the scenes' and
> >
> > 'A party's nonproduction of a document which courts almost invariably expect will be produced unavoidably throws a suspicion over the cause.'
>
> Corollary to this is that the presumption is always and inevitably against a litigant who fails to furnish evidence within his reach, and it is the stronger when the documents, writings, etc., would be conclusive in establishing his case. This is indeed an occasion to emphasize once again that the superiority of written evidence, compared with oral, is so pronounced, obvious and well known, that in most cases the deliberate and inexcusable withholding of the written evidence, and effort to secure favorable consideration of oral testimony in the place of it, is an affront to the intelligence of the court." (*Citations* omitted)

Considering that petitioner failed to present the VAT Returns for the 2nd and 4th quarters of FY 2016 during trial and have them identified, the Court *En Banc* cannot accord sufficient probative value to the testimony of petitioner's witness that petitioner's input taxes have not been applied against output taxes in the succeeding quarters of FY 2015.

Petitioner has the duty to prove all aspects of its claim for refund considering that tax refunds partake the nature of tax exemption. Thus, any tax exemption should be construed in *strictissimi juris* against the person claiming the same. *Commissioner of Internal Revenue vs. Filminera Resources Corporation*[30] elucidates:

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[29] G.R. Nos. 112708-09, March 29, 1996.
[30] G.R. No. 236325, September 16, 2020.

> "Xxx the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund. After all, tax refunds partake the nature of exemption from taxation, and as such, must be looked upon with disfavor. It is regarded as in derogation of the sovereign authority, and should be construed in *strictissimi juris* against the person or entity claiming the exemption. The taxpayer who claims for exemption must justify his claim by the clearest grant of organic or statute law and should not be permitted to stand on vague implications. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund."

WHEREFORE, in light of the foregoing, the Petition for Review filed by petitioner MTI Advanced Test Development Corporation is **DENIED**, for lack of merit. The assailed Decision dated September 29, 2021 and the assailed Resolution dated April 20, 2022 promulgated by the CTA Third Division are hereby **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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