REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHIL. GOLD PROCESSING & REFINING CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8652

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

DEC 01 2015 ; 9:00 a.m.

x - x

AMENDED DECISION

MINDARO-GRULLA, *J.*:

For resolution is petitioner's **Motion for Reconsideration of the Decision dated 10 June 2015**, filed on July 6, 2015, without respondent's comment despite notice as per Records Verification dated August 11, 2015.

Petitioner moves for reconsideration of the Court's Decision dated June 10, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, petitioner's claim for refund or issuance of tax credit certificate is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

In the assailed Decision, the Court denied petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱76,944,279.64 representing unutilized input VAT attributable to zero-rated sales for the third and fourth quarters of fiscal year (FY) ended June 30, 2011 on the ground that petitioner's proof of foreign currency inward remittances marked as Exhibits "P-24-A" to "P-24-I" were not formally offered in evidence; hence, inadmissible and were not considered by this Court.

Petitioner alleges that it has sufficiently presented all documentary and evidentiary requirements in support of its claim for refund and/or issuance of tax credit certificate. As regards the documents not formally offered, petitioner cites the cases of *Vda. De Oñate vs. Court of Appeals*[1] and *Dizon vs. Court of Tax Appeals*[2], wherein the Supreme Court ruled that relaxation of the rules and allowance of evidence not formally offered can be admitted and considered by the Court provided the same must have been duly identified by testimony duly recorded, and the same have been incorporated in the records of the case. Thus, petitioner asks the Court to reconsider the assailed Decision and admit its Exhibits "P-24-A" to "P-24-I" in the resolution of its claim for refund and or issuance of tax credit certificate.

We find petitioner's Motion for Reconsideration partly meritorious.

After a careful evaluation of the arguments presented by petitioner and upon re-examination of the records of the case, the Court finds that petitioner's Exhibits "P-24-A" to "P-24-I" should be given evidentiary weight.

Section 34, Rule 132 of the Rules on Evidence provides that the court shall not consider any evidence which has not been formally offered. Thus, without a formal offer of evidence, courts cannot give weight on this evidence even if previously marked and identified.

This rule, however, admits of an exception. The Supreme Court, in appropriate cases, relaxed the formal-offer rule and allowed evidence not formally offered to be admitted. In the recent case of *Herman Medina vs. People of the Philippines*[3], the Supreme Court

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[1] G.R. No. 116149, November 23, 1995, 250 SCRA 283.
[2] G.R. No. 140944, April 30, 2008, 553 SCRA 111.
[3] G.R. No. 182648, June 17, 2015.

enumerated the two essential conditions in order that the evidence not formally offered may be admitted, to wit:

> "In *Mato v. CA*, which referred to *People v. Napat-a*, citing *People v. Mate*, We relaxed the application of Section 34, Rule 132 of the Rules of Court by allowing the admission of evidence not formally offered. **To be admissible, however, two essential conditions must concur: *first*, the same must have been duly identified by testimony duly recorded and, *second*, the same must have been incorporated in the records of the case.**" (*Emphasis ours*)

Based on the foregoing, documents not formally offered may be admitted and considered in evidence if (1) the documents have been duly identified by testimony duly recorded, and (2) the documents have been incorporated in the records of the case.

In the present case, petitioner's proof of foreign currency inward remittances, specifically, the Certification from the Hongkong and Shanghai Banking Corporation Limited (HSBC) marked as Exhibit "P-24-A"[4] and the BNP Paribas Corporate & Investment Banking Consolidated Cash Statements marked as Exhibits "P-24-B" to "P-24-I"[5], although not formally offered, were duly identified by the Court-commissioned Independent Certified Public Accountant (ICPA), Atty. Clifford E. Chua, in his Judicial Affidavit[6]; thus, forms part of the case records as attachments (contained in black binder) to the ICPA report[7]. Hence, Exhibits "P-24-A" to "P-24-I" shall be admitted and considered in evidence.

With the admission of Exhibits "P-24-A" to "P-24-I" as part of petitioner's documentary evidence, the Court shall now proceed to determine petitioner's valid zero-rated sales and the input VAT attributable thereto.

In the assailed Decision, the Court ruled that pursuant to Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), and (2)(c) of the same Code and Sections 4.113-1(A)(1), c

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[4] Attachments to ICPA Report.
[5] *Ibid.*
[6] Docket, pp. 1052-1053.
[7] Exhibit "P-318".

(B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, namely:

1. Sales Invoice as proof of sale of goods;
2. Export Declaration and Bill of Lading or Airway Bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3. Bank Credit Advice, Certificate of Bank Remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

To reiterate, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Further, the sales invoices supporting the export sales must be registered with the BIR and must contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

Records show that petitioner is registered with the BIR as a VAT taxpayer on March 15, 1996 with Tax Identification Number (TIN) 004-498-686-000, as evidenced by its BIR Certificate of Registration.[8] Petitioner is also a Board of Investments (BOI)-registered enterprise with a Non-Pioneer Status with Pioneer Incentives, being located in Less Developed Area (LDA) as a new producer of gold and silver dore.[9]

For the third and fourth quarters of FY ended June 30, 2011, petitioner actually shipped its processed gold and silver dore to its foreign buyers, Metalor Technologies S.A. Refining Corp. in Switzerland, Standard Chartered PLC in Singapore, BNP Paribas in Great Britain and West LB, also in Great Britain and generated export sales in the respective amounts of US$43,483,221.28 and US$72,941,006.89 or in the sum of US$116,424,228.17 as shown in its zero-rated VAT sales invoices[10] and export documents[11] consisting of airway bills, export declarations, transport permits, packing lists and provisional invoices, summarized as follows[12]:

[8] Par. 4, Summary of Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 1022; Exhibit " P-4".
[9] Par. 3, Summary of Stipulated Facts, JSFI, docket, p. 1022; Exhibits " P- 5" and "P-5-A".
[10] Exhibits "P-35" to "P-55".
[11] Exhibits "P-56" to "P-159".
[12] Exhibit "P-318", Annex "A".

Exhibit	Invoice No.	Date	Customer	Export Sales (In US Dollars)
3rd Quarter of FY 2011 (January to March 2011)				
"P-35"	0061	1/31/2011	Standard Chartered PLC	7,579,931.00
"P-36"	0062	1/31/2011	Metalor Technologies SA	55,695.05
"P-37"	0063	1/31/2011	West LB AG	1,266,399.25
"P-38"	0064	1/31/2011	BNP Paribas Bank	1,234,953.50
"P-39"	0065	2/28/2011	Standard Chartered PLC	12,091,102.89
"P-40"	0066	2/28/2011	West LB AG	1,271,080.25
"P-41"	0067	2/28/2011	BNP Paribas Bank	1,239,634.50
"P-42"	0068	3/31/2011	Standard Chartered PLC	16,217,672.39
"P-43"	0069	3/31/2011	West LB AG	1,279,140.75
"P-44"	0070	3/31/2011	BNP Paribas Bank	1,247,611.70
Subtotal				**43,483,221.28**
4th Quarter of FY 2011 (April to June 2011)				
"P-45"	0071	4/30/2011	Standard Chartered PLC	13,194,639.92
"P-46"	0072	4/30/2011	West LB AG	1,295,705.80
"P-47"	0073	4/30/2011	BNP Paribas Bank	1,263,885.20
"P-48"	0074	5/31/2011	Standard Chartered PLC	1,411,453.90
"P-49"	0075	5/31/2011	Metalor Technologies SA	16.29
"P-50"	0076	5/31/2011	West LB AG	1,300,442.60
"P-51"	0077	5/31/2011	BNP Paribas Bank	22,307,183.28
"P-52"	0078	6/30/2011	Standard Chartered PLC	1,861,153.58
"P-53"	0079	6/30/2011	Metalor Technologies SA	27,727,988.12
"P-54"	0080	6/30/2011	West LB AG	1,305,179.40
"P-55"	0081	6/30/2011	BNP Paribas Bank	1,273,358.80
Subtotal				**72,941,006.89**
TOTAL				**116,424,228.17**

Petitioner's Quarterly VAT Returns reflected the peso equivalent of the afore-stated export sales as follows:

Exhibit	Taxable Quarter (FY ended June 30, 2011)	Zero-Rated Sales
"P-13"	Third Quarter	₱ 1,893, 161,293.40
"P-161"	Fourth Quarter	3,152,355,597.98
	Total	**₱ 5,045,516,891.38**

A careful perusal of the Consolidated Cash Statements[13] from BNP Paribas Corporate & Investment Banking shows that out of the US$116,424,228.17 reported export sales; only the amount of

[13] Exhibits "P-24-B" to "P-24-I".

US$101,024,507.75 has corresponding foreign currency remittances detailed as follows:

Invoice No.	Customer	Export Sales (in US$)	Inward Remittance Amount (in US$)	Inward Remittance Exhibit	Export Sales Without Corresponding Inward Remittance
3rd Quarter of FY 2011 (January to March 2011)					
0061	Standard Chartered PLC	7,579,931.00	7,579,910.00	"P-24-C"	21.00
0062	Metalor Technologies SA	55,695.05	-	-	55,695.05
0063	West LB AG	1,266,399.25	1,266,385.25	"P-24-B"	14.00
0064	BNP Paribas Bank	1,234,953.50	1,234,953.50	"P-24-C"	-
0065	Standard Chartered PLC	12,091,102.89	12,058,408.40	"P-24-C", "P-24-D"	32,694.49
0066	West LB AG	1,271,080.25	1,271,066.25	"P-24-C"	14.00
0067	BNP Paribas Bank	1,239,634.50	1,239,627.50	"P-24-D"	7.00
0068	Standard Chartered PLC	16,217,672.39	16,180,651.10	"P-24-D", "P-24-E"	37,021.29
0069	West LB AG	1,279,140.75	1,279,126.75	"P-24-D"	14.00
0070	BNP Paribas Bank	1,247,611.70	1,247,604.70	"P-24-E"	7.00
Subtotal		**43,483,221.28**	**43,357,733.45**		**125,487.83**
4th Quarter of FY 2011 (April to June 2011)					
0071	Standard Chartered PLC	13,194,639.92	11,757,452.00	"P-24-E"	1,437,187.92
0072	West LB AG	1,295,705.80	-	-	1,295,705.80
0073	BNP Paribas Bank	1,263,885.20	-	-	1,263,885.20
0074	Standard Chartered PLC	1,411,453.90	1,411,439.90	"P-24-G"	14.00
0075	Metalor Technologies SA	16.29	-	-	16.29
0076	West LB AG	1,300,442.60	1,300,428.60	"P-24-F"	14.00
0077	BNP Paribas Bank	22,307,183.28	22,259,972.30	"P-24-F", "P-24-G"	47,210.98
0078	Standard Chartered PLC	1,861,153.58	1,737,194.80	"P-24-G"	123,958.78
0079	Metalor Technologies SA	27,727,988.12	16,621,769.50	"P-24-G"	11,106,218.62
0080	West LB AG	1,305,179.40	1,305,165.40	"P-24-G"	14.00
0081	BNP Paribas Bank	1,273,358.80	1,273,351.80	"P-24-H"	7.00
Subtotal		**72,941,006.89**	**57,666,774.30**		**15,274,232.59**
TOTAL		**116,424,228.17**	**101,024,507.75**		**15,399,720.42**

Thus, petitioner's total valid export sales subject to zero percent (0%) VAT under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, for the third and fourth quarters of FY ended June 30, 2011 amounted to US$43,357,733.45 and US$57,666,774.30, respectively, totaling US$101,024,507.75 with the peso equivalent of ₱1,887,697,836.54 and ₱2,492,235,664.56, respectively, totaling ₱4,379,933,501.10 computed as follows:

	3rd Quarter	4th Quarter	Total
Total Export Sales in US$	43,483,221.28	72,941,006.89	116,424,228.17
Less: Disallowed Export Sales	125,487.83	15,274,232.59	15,399,720.42

in US$			
Valid Zero-Rated Sales in US$	**43,357,733.45**	**57,666,774.30**	**101,024,507.75**
Declared Zero-Rated Sales per return in Php	1,893,161,293.40	3,152,355,597.98	5,045,516,891.38
Multiplied by:			
Valid Zero-rated Sales in US$	43,357,733.45	57,666,774.30	
÷ Total Export Sales in US$	43,483,221.28	72,941,006.89	
Total Valid Zero-rated Sales in Php	**1,887,697,836.54**	**2,492,235,664.56**	**4,379,933,501.10**

The Court shall now determine whether petitioner incurred input taxes in connection thereto and if said input taxes were not applied against any output VAT liability of petitioner. In the Quarterly VAT Returns for the third and fourth quarters of FY ended June 30, 2011, petitioner reported the amounts of ₱35,530,279.00 and ₱41,414,000.64, respectively, or in the sum of ₱76,944,279.64 representing input taxes on importations of goods other than capital goods for the same taxable quarters, to wit:

Importations - Goods other than Capital Goods	**Purchases**	**Input Tax**
Third Quarter *(Exhibit "P-13")*	₱ 296,085,658.33	₱ 35,530,279.00
Fourth Quarter *(Exhibit "P-161")*	345,116,672.00	41,414,000.64
Total	**₱641,202,330.33**	**₱76,944,279.64**

Based on ICPA's examination of documents supporting petitioner's claimed input VAT such as Import Entry and Internal Revenue Declarations (IEIRDs), Assessment Notices and Statements of Settlement of Duties and Taxes[14], input VAT in the amount of ₱32,320.00[15] for the fourth quarter of FY ended June 30, 2011 should be disallowed for lack of proper supporting documents.

Therefore, only the remaining input VAT for the third and fourth quarters of FY ended June 30, 2001 in the respective amounts of ₱35,530,279.00 and ₱41,381,680.64 totaling ₱76,911,959.64 shall represent petitioner's valid input VAT computed as follows:

	3rd Quarter	**4th Quarter**	**Total**
Input VAT Claim	₱ 35,530,279.00	₱ 41,414,000.64	₱ 76,944,279.64
Less: Disallowance	-	32,320.00	32,320.00

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[14] Exhibits "P-162" to "P-317-A".

[15] Exhibit "P-318", Annex "I".

Total Valid Input VAT	**₱35,530,279.00**	**₱41,381,680.64**	**₱76,911,959.64**

Since petitioner's sales for the third and fourth quarters of FY ended June 30, 2011 were all direct export sales, the substantiated input VAT of ₱76,911,959.64 is entirely attributable thereto. However, as previously stated, petitioner had export sales with no corresponding foreign currency remittances, hence, only the input VAT in the amounts of ₱35,427,742.49 and ₱32,716,137.89 totaling ₱68,143,880.38 can be attributed to petitioner's valid zero-rated sales in the amounts of ₱1,887,697,836.54 and ₱2,492,235,664.56, respectively, totaling ₱4,379,933,501.10 for the third and fourth quarters of FY ended June 30, 2011, computed as follows:

Third Quarter of FY 2011		
Valid Input VAT		₱ 35,530,279.00
Multiplied by:		
Valid Zero-Rated Sales in Php	₱1,887,697,836.54	
÷ Total Zero-Rated Sales Per Return	1,893,161,293.40	99.7114109%
Valid Input VAT Attributable To Valid Zero-Rated Sales		**₱ 35,427,742.49**
Fourth Quarter of FY 2011		
Valid Input VAT		₱ 41,381,680.64
Multiplied by:		
Valid Zero-Rated Sales in Php	₱2,492,235,664.56	
÷ Total Zero-Rated Sales Per Return	3,152,355,597.98	79.0594712%
Valid Input VAT Attributable To Valid Zero-Rated Sales		**₱ 32,716,137.89**
Total Input VAT Attributable to Zero-Rated Sales		**₱ 68,143,880.38**

As to whether or not the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarter(s), petitioner's Quarterly VAT Returns[16] for the subject period of claim show that petitioner had no output tax liability against which the claimed input VAT may be applied or credited. Additionally, petitioner's input tax claim for the third and fourth quarters of FY ended 2011 in the total amount of ₱76,944,279.64 was deducted as "VAT Refund/TCC claimed"[17] in the Quarterly VAT Returns for the fourth quarter, thus, preventing the carry-over or application of such input taxes in the next taxable quarter/s.

[16] Exhibits "P-13" and "P-161", line 15B.
[17] Exhibit "P-161", line 23D.

In view of the foregoing, the Court finds that petitioner is entitled to a refund or issuance of a tax credit certificate in the amount of **₱68,143,880.38** representing its unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters of FY ended June 30, 2011.

WHEREFORE, petitioner's Motion for Reconsideration is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **SIXTY EIGHT MILLION ONE HUNDRED FORTY THREE THOUSAND EIGHT HUNDRED EIGHTY PESOS AND 38/100 (₱68,143,880.38)** representing its unutilized input VAT for the period covering January 1, 2011 to June 30, 2011 or the third and fourth quarters of fiscal year ended June 30, 2011.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division