REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

COLT COMMERCIAL, INC.,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9110

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JUN 19 2018 1:00 pm

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RESOLUTION

CASANOVA, <u>J.</u>:

For the Court's resolution is respondent's **Motion for Partial Reconsideration (Re: Amended Decision dated March 27, 2018)**, filed on April 18, 2018, with petitioner's **Comment (On Respondent's Motion for Partial Reconsideration dated April 18, 2018)**, filed on May 4, 2018.

Respondent moves for reconsideration of the Amended Decision dated March 27, 2018 (assailed Amended Decision), the dispositive portion of which reads:

> "**WHEREFORE**, petitioner's **Motion for Reconsideration (of the Decision dated November 17, 2017)** is **PARTIALLY GRANTED**. Accordingly, the assailed Decision dated November 17, 2017 is amended to read as follows:

> **WHEREFORE,** the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **₱568,947.70**, representing its unutilized input taxes attributable to its zero-rated sales for the period covering January 1 to March 31, 2013.
>
> **SO ORDERED**.
>
> **SO ORDERED**."

Respondent alleges that the Court should not consider the Philippine Economic Zone Authority (PEZA) Certification dated February 16, 2016 as the same was not formally offered by petitioner. Respondent adds that no less than the commissioned Independent Certified Public Accountant (ICPA) admitted in his ICPA Report that he was not able to determine whether or not the supporting documents related to registration with PEZA were faithful reproduction of the originals as petitioner was not able to provide the ICPA with the same.

Respondent further claims that the Court erred in partially granting the refund of petitioner in the amount of ₱568,947.70 representing unutilized input taxes attributable to zero-rated sales for the period covering January 1, 2013 to March 31, 2013 because petitioner allegedly failed to adduce sufficient evidence to prove that it is entitled to the amount sought to be refunded.

On the contrary, petitioner argues that the Court's partial grant of the Petition for Review is proper and supported by factual and legal bases. Petitioner points out that the said partial grant is grounded on the established exception to Section 34, Rule 132 of the Rules of Court. Petitioner further alleges that respondent's arguments are mere rehash of the latter's allegations in his comment to petitioner's Motion for Reconsideration dated December 27, 2017 which was already passed upon by the Court.

At the outset, the Court notes that the motion was belatedly filed by respondent.

Under Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals, an aggrieved party may seek a reconsideration of any decision by filing a motion for reconsideration within fifteen (15) days from the date of receipt of notice of the decision of the Court in question.

In this case, respondent manifests that he received the Amended Decision dated March 27, 2018 on April 3, 2018. However, records of the case show that respondent received the Notice of Amended Decision on April 2, 2018. Thus, counting 15 days from April 2, 2018, respondent only had until April 17, 2018 within which to file a motion for reconsideration of the Amended Decision. Clearly, the instant Motion for Reconsideration, which was filed only on April 18, 2018, was filed beyond the 15-day period provided by law.

Even assuming that respondent actually received the Notice of Amended Decision on April 3, 2018 and that the instant Motion for Reconsideration was timely filed, the Court still finds the instant motion bereft of merit.

As to respondent's allegation that the Court erred in allowing the PEZA Certification dated February 16, 2016 to be part of petitioner's evidence despite not being formally offered, the same has already been extensively addressed in the assailed Amended Decision.

To reiterate, while the Court agrees with respondent's allegation that evidence not formally offered should not be admitted in evidence based on Section 34 of Rule 132 of the Rules of Court, the same admits of an exception.

As mentioned in the assailed Amended Decision, the Supreme Court, in the case of *Dizon vs. Court of Tax Appeals*[1], held that courts may allow evidence not formally offered to be admitted and considered, provided the following requirements are present, *viz.*: 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.

In this case, the Court already found that the PEZA Certification dated February 16, 2016, pre-marked as Exhibit "P-60", though not

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[1] G.R. No. 140944, April 30, 2008.

formally offered, was identified by the ICPA, Mr. Garry S. Pagaspas, in his Judicial Affidavit dated April 22, 2016[2]. As further clarified in his Sworn Statement attached to petitioner's Motion for Reconsideration (of the Decision dated November 17, 2017), the certification is a faithful reproduction of the original and was submitted to this Court as part of the records of this case. Thus, the Court correctly applied the exception to the general rule found in Section 34 of Rule 132 of the Rules of Court, and considered the PEZA Certification in the disposition of the instant case.

Furthermore, it must be noted that the Court based its finding that petitioner is entitled to a refund amounting to ₱568,947.70 on the evidence presented by petitioner, including the PEZA Certification, as discussed in detail in the assailed Amended Decision. Accordingly, the allegation that petitioner failed to adduce sufficient evidence to prove the refund claimed is untenable.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Amended Decision, respondent's **Motion for Partial Reconsideration (Re: Amended Decision dated March 27, 2018)** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

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[2] Exhibit "P-35".