REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHIL. GOLD PROCESSING AND REFINING CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 8542

x---x

PHIL. GOLD PROCESSING AND REFINING CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8577

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, JJ.

Promulgated:

FEB 1 6 2015 1:40 Am

x- -x

RESOLUTION

CASTAÑEDA, JR., J.:

For resolution is petitioner's *Motion for Reconsideration of the Decision dated 11 November 2014 with Motion for New Trial* filed on November 28, 2014, without respondent's comment as per Records Verification dated January 6, 2015.

Petitioner moves for the reconsideration of the assailed Decision dated November 11, 2014, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED."

In its motion, petitioner alleges that it complied with the invoicing requirements prescribed by existing laws and regulations.

Petitioner also avers that the documents such as export declarations, bills of lading, and airway bills need not be presented in evidence to substantiate its claim for refund as the actual shipment of the goods can be readily established from the payments made as evidenced by pertinent sales invoices.

According to petitioner, Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, does not require submission of export declarations, bill of ladings, and airway bills to prove the sale and its actual shipment to its intended buyer in a foreign country.

Petitioner explains that the actual shipment of the goods from the Philippines to the foreign country is clearly established by actual payments made by the buyer in the said foreign country in foreign currency duly accounted for pursuant to the rules and regulations of the *Bangko Sentral ng Pilipinas*, as evidenced by the Certification issued by Hong Kong and Shanghai Banking Corporation Limited (HSBC); which was admitted in evidence. Petitioner further insists that the fact that payments were made in the required currency by the buyer from a foreign country would prove that the goods covered by the sales invoices were actually shipped and actually received.

On this matter, petitioner must realize that this Court already scrutinized every piece of evidence presented by petitioner in support of its input value-added tax (VAT) claim such as sales invoices[1], official receipts[2], schedule of export sales[3], and Certification from HSBC[4]. However, the Court finds that the said pieces of evidence do not fully substantiate its alleged export sales for the third and fourth quarters of fiscal year ending June 30, 2010 since petitioner failed to submit export documents such as export declarations and bills of lading or airway bills. qr

---

[1] Exhibits "C" to "C-23".
[2] Exhibits "CC" to "CC-41", docket, pp. 873-894.
[3] Exhibits "BB" to "BB-1", docket, pp. 869-872.
[4] Exhibit "DD", docket, p. 895.

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, provides:

> SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* –
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term '**export sales**' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

Clearly, in order for an export sale to qualify as zero-rated, petitioner must establish the sale and actual shipment of goods from the Philippines to a foreign country.

While the sales invoices[5] and official receipts[6] presented by petitioner may prove the fact of sale of goods, they do not establish the actual shipment of goods from the Philippines to a foreign country as required under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

As a result, petitioner's averments that it need not present the export declarations, bills of lading, and airway bills, and that the evidence it presented are sufficient to substantiate its claim for refund, are bereft of merit.

---

[5] Exhibits "C" to "C-23".

[6] Exhibits "CC" to "CC-41", docket, pp. 873-894.

Nevertheless, petitioner attaches to the instant motion the provisional invoices with corresponding shipment number together with packing list, bar list, Transport Permit from the Mines and Geosciences Bureau, bill of lading, export declaration, airway bill, and a computer-generated reconciliation of the BNP Bank Remittances over the export sales of petitioner for the third and fourth quarters of the fiscal year ending June 30, 2010 to further support its claim for refund.

Petitioner requests the admission of the above-mentioned documents, and cites as its basis the ruling in the cases of *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.*[7] and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*[8], where the Supreme Court relaxed the application of the rules in order to promote the objective of securing a just, speedy, and inexpensive disposition of every action and proceeding.

Consequently, petitioner prays for the Court to grant a new trial for the instant case for the presentation of the documents attached to the instant motion and accordingly, to order respondent to refund or issue a tax credit certificate to petitioner in the total amount of P42,967,020.74 allegedly representing its unutilized input VAT attributable to its zero-rated sales during the period January 1, 2010 to June 30, 2010.

Section 5 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), which was based on Section 1 of Rule 37 of the Rules of Court, provides the grounds for the filing of motion for new trial, to wit:

a. Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or

b. Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result. ✓

---

[7] G.R. No. 122480, April 12, 2000.

[8] G.R. No. 180042, February 8, 2010.

In relation thereto is Section 6 of Rule 15 of the RRCTA, the pertinent parts of which state as follows:

> SEC. 6. *Contents of motion for reconsideration or new trial and notice.* – The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.
>
> A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

It is clear from the foregoing that the rules allow the filing of the motion for new trial on the grounds of fraud, accident, mistake or excusable negligence; or of newly discovered evidence, which should be proved in the manner provided for proof of motions.

Perusal of the instant motion, however, shows that the same was neither based on fraud, accident, mistake or excusable negligence that would need affidavits of merit, nor based on newly discovered evidence as to require affidavits of witnesses. In other words, there was nothing in the motion filed by petitioner which would show that it alleged any of the grounds mentioned under the rules for the filing of a motion for new trial.

Furthermore, while the Court considers the fact that petitioner already attached the documents which are proposed to be introduced in evidence, an examination of the said documents however shows that they are not authenticated documents, but are mere photocopies.

At this juncture, it must be emphasized that procedural rules are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[9]

---

[9] *Bergonia, et al. vs. Court of Appeals (4th Division), et al.*, G.R. No. 189151, January 25, 2012, citing *Asian Spirit Airlines vs. Spouses Bautista, et al.*, G.R. No. 164668, February 14, 2005.

In this case, the claimant has the burden of proof to establish the factual basis of its claim for refund or tax credit.[10] Petitioner already had the opportunity to establish that it is entitled to the claimed tax refund during the trial of the case; and the Court already found that petitioner failed to discharge the burden of proof in establishing its entitlement to the tax refund. The Court may, again, allow petitioner to present supplementary evidence to support its claim for tax refund in filing the subject *Motion for New Trial.* However, petitioner failed to comply with the requirements of the rules. Petitioner likewise did not provide any justifiable reason for its failure to present the documents attached to the instant motion during trial.

Since a liberal application of the rules of procedure in this case will only result in the wanton disregard of the rules, the Court finds that a denial of the *Motion for New Trial* is proper.

WHEREFORE, petitioner's *Motion for Reconsideration of the Decision dated 11 November 2014 with Motion for New Trial* filed on November 28, 2014 is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[10] *Hitachi Global Storage Technologies Philippines Corp. vs. Commissioner of Internal Revenue*, G.R. No. 174212, October 20, 2010.