REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

M.E.T.R.O. (MANUFACTURE, EXPORT, TRADE, RESEARCH OFFICE), INCORPORATED, *Petitioner,*	**CTA Case No. 8921**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 06 2018 9:05 am

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RESOLUTION

MANAHAN, *J.*:

This resolves petitioner's Motion for Reconsideration (Re: Decision dated 3 January 2018) filed through registered mail on January 22, 2018 and received by this Court on January 29, 2018. Respondent's Comment/Opposition (To Petitioner's Motion for Reconsideration) was filed on February 15, 2018.

The assailed Decision disposed of the case and denied petitioner's claim, as follows:

> **WHEREFORE**, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

In its Motion, petitioner prays that the Court reconsider its Decision dated January 3, 2018 and to grant petitioner's claim for issuance of a tax credit certificate in the amount of Php1,981,905.48 for taxable year 2012. Petitioner argues that there is sufficient proof that petitioner's sales are zero-rated; that the submission of the Consularized Memorandum and Articles of Association of Kerson Investment Limited was sufficient to prove that petitioner's sales to this entity are zero-rated sales; and, that the Court should have considered the remaining evidence presented by petitioner including the ICPA's findings with respect to the amount claimed.

In his Comment, respondent disagrees with petitioner's arguments and states that the petition was correctly dismissed for insufficiency of evidence presented by petitioner; that the motion for reconsideration is clearly *pro forma* for being mere repetition and reiteration of arguments already ruled upon; and, that tax refunds are to be construed *strictissimi juris* against the taxpayer.

The motion lacks merit.

In ruling that petitioner failed to prove its zero-rated sales, the Court reasoned:

> Records reveal that petition[er] only submitted the Consularized Memorandum and Articles of Association of Kerson Investment Limited proving that the same was incorporated in Hong Kong. However, without the SEC Certification of Non-Registration of Corporation/ Partnership, Kerson Investment Limited cannot be considered as non-resident foreign corporation doing business outside the Philippines, hence, the Court cannot give due course to petitioner's claim.

Petitioner itself recognized the need for the submission of the Securities and Exchange Commission (SEC) Certification of Non-Registration of Corporation/Partnership when it stated in its motion that:

> 10. For the services to be considered as being 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, and consequently, be subjected to value-added tax at zero percent (0%) rate, <u>it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a non-resident foreign corporation</u>. (*Underscoring supplied*)

The Court had occasion to clarify the probative value of different documents submitted to prove whether an entity is a non-resident foreign corporation doing business outside the Philippines, *to wit*: pm

> Each of the aforesaid documents, standing alone, is inadequate to prove that petitioner's clients are non-resident foreign corporations doing business outside the Philippines. While the SEC Certificates of Non-Registration show that the named entities therein are not registered corporations/partnerships in the Philippines, the same does not prove that such entities are non-resident foreign corporations doing business outside the Philippines.
>
> xxx xxx xxx
>
> In addition, the Memorandum and/or Articles of Association, ... only prove that the named entities therein were incorporated/organized abroad, but do not establish that such entities are not doing business in the Philippines.
>
> To be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported by **both** SEC Certificate of Non-Registration **and** Certificate/Articles of foreign incorporation/association...[1]

Clearly, having submitted only its client's Memorandum and Articles of Incorporation, without the SEC Certification of Non-Registration of Corporation/Partnership, petitioner failed to prove that its client is a non-resident foreign corporation doing business outside the Philippines.

Jurisprudence dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[2]

Well-settled is the rule that tax refunds are in the nature of tax exemptions and as such they are regarded as in

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[1] *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 940, May 6, 2014.

[2] *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. NO. 171307, August 28, 2013, citing *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.

derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming it.[3]

WHEREFORE, the instant Motion for Reconsideration (Re: Decision dated 3 January 2018) is **DENIED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[3] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999; *Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., et al.*, G.R. No. L-68252, May 26, 1995.