REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1395
(CTA CASE No. 8610)

- versus -

Present:

DEL ROSARIO, *PJ*
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN, *JJ.*

FILMINERA RESOURCES CORPORATION,
Respondent.

Promulgated:

MAR 2 3 2017 2:46 p.m.

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DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review dated December 4, 2015, petitioner Commissioner of Internal Revenue (CIR) assails the Amended Decision dated August 27, 2015 rendered by the Court in Division, which partially granted the Motion for Reconsideration filed by respondent Filminera Resources and accordingly modified the Decision dated March 6, 2015 by ordering petitioner to refund or issue tax credit certificate (TCC) in favor of respondent in the amount of P50,483,332.22, representing the latter's unutilized input VAT attributable to zero-rated sales covering the first quarter of fiscal year ending on June 30, 2011.

Petitioner likewise impugns the Resolution dated November 11, 2015, which denied its Motion for Partial Reconsideration of the Amended Decision dated August 27, 2015, for lack of merit.

The following facts of the case remain undisputed.

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR) authorized to act on claims for refund or issue TCC, with office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent is a domestic corporation engaged in the business of operating coal mines, prospecting explorations, and mining ores, metals, and mineral resources. It is a BIR-registered taxpayer with Certificate of Registration No. OCN8RC0000036160.

On July 5, 2007, respondent entered into an Ore Sales and Purchase Agreement with Philippine Gold Processing and Refining Corporation (PGPRC).

On September 14, 2012, respondent filed an Application for Tax Credit/Refund with petitioner, who however failed to act on the said application prompting respondent to elevate the matter to the Court in Division through a Petition for Review filed on February 8, 2013.

In the Decision dated March 6, 2015, the Court in Division denied respondent's claim for refund due to insufficiency of evidence as it failed to establish compliance with all the conditions set forth in Section 4.106-5(a)(5) of Revenue Regulations (RR) No. 16-2005 to qualify its transactions as VAT zero-rated or effectively zero-rated sales. The Court in Division ruled that while respondent was able to establish that it is a VAT-registered taxpayer and that its buyer - PGPRC - is a BOI-registered producer of gold and silver dore, it failed to prove that PGPRC's products are 100% exported. And while it is true that respondent attached to its Petition for Review the BOI Certification to the effect that PGPRC exported all of its products, the said

Certification was not formally offered in evidence precluding the Court from taking cognizance of the same.

On motion for reconsideration, the Court in Division allowed respondent to present and formally offer the BOI Certification dated January 27, 2010, [1] and thereafter modified its ruling in the assailed Amended Decision dated August 27, 2015 by partially granting respondent's claim for refund in the following fashion:

> "WHEREFORE, in view of the foregoing, (respondent's) *Motion for Reconsideration of the Decision dated 6 March 2015* is PARTIALLY GRANTED and the assailed Decision promulgated on March 6, 2015 is MODIFIED. Accordingly, (petitioner) is ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE in favor of (respondent) in the amount of P50,483,332.22, representing (respondent's) unutilized input VAT attributable to its zero-rated sales for the first quarter of FY ending June 30, 2011.
>
> SO ORDERED."

Unconvinced, petitioner moved for the reconsideration of the Amended Decision but the same was denied in the Resolution dated November 11, 2015, for lack of merit.

Hence, this appeal before the Court *En Banc* filed by petitioner on December 8, 2015.

Petitioner insists that respondent failed to prove that its sales to PGPRC are zero-rated or effectively zero-rated to be entitled to the prayed for refund or TCC. For petitioner, the BOI Certification of January 27, 2010 is no longer admissible since the Court in Division had already rendered judgment and that the said BOI Certification is not a newly discovered evidence nor one inadvertently omitted due to fraud, accident, mistake or excusable negligence to merit a reopening of the case pursuant to Section 1, Rule 37 of the Rules of Court. The failure of respondent to offer the same

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[1] Division docket pp. 802-803.

in evidence, after it was given ample opportunity to present all its evidence in chief, renders the said document a forgotten evidence which should not have been considered by the Court in Division for purposes of ruling on respondent's motion for reconsideration.

Moreover, while rules of procedure are not cast in stone, such rules are still indispensable for the orderly and expeditious resolution of cases, which tenet the Court in Division allegedly ignored when it admitted the subject BOI Certification.

Granting that the BOI Certification was properly admitted despite being a mere forgotten evidence, it does not automatically prove that PGPRC exports all of its processed gold and silver ore. Standing alone, the BOI Certification is insufficient to prove that PGPRC exports all its processed gold and silver ore since it was based only on PGPRC's representation to that effect. The record is bereft of any indication that PGPRC actually exports all its products. The Articles of Incorporation of PGPRC will not also save the day for respondent as it merely shows the company's purpose to export its processed ore but not the fact that it actually does. To petitioner, proof of actual shipment or exportation of PGPRC's products must be adduced for that purpose.

Even the BIR's ruling in the Letter dated August 3, 2009 [2] confirming that all the products of PGPRC are exported cannot be relied upon by it since no investigation was conducted by the BIR to verify the PGPRC's representation to that effect. Precisely, the *caveat* of the said ruling that if later it would be discovered that the facts are different from that of PGPRC's representations, the ruling shall be considered void.

Petitioner also points out that claims for refund are construed strictly against the claimant, who has the burden of proof to establish the factual basis of such claim.

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[2] Exhibit N.

By way of comment, respondent contends that the issues raised by petitioner are mere rehash of arguments already determined and ruled upon by the Court in Division.

Moreover, the admission of the BOI Certification was for proper determination of the present controversy in the best interest of justice. While legalisms and technical rules are important, such should be subordinate to ascertaining the truth, which is what cases and the courts are truly about. Respondent believes that the admission of the BOI Certification aided the Court in the determination of the merits of its claim. Allegedly, even the Supreme Court has allowed admission of documentary evidence attached to a party's motion for reconsideration although it was submitted after the conclusion of the trial. This is more in accord with the principle of fair play for after all, if the State expects fairness and honesty on the part of taxpayers in paying their taxes, so must it apply the same standard on itself in refunding excess payments, for the State should not keep money that does not belong to it at the expense of its citizens.

Further, respondent disagrees with petitioner's contention that it failed to prove its zero-rated sales to PGPRC for failure to prove that the latter exports all its products.

Contrary to petitioner's contention, recent rulings on the matter show that BOI Certification is a sufficient proof that the entity, such as respondent, exports all its products. The questioned BOI Certification dated January 27, 2010 is conclusive having been issued by the BOI, the government agency tasked to determine the status or standing of PGPRC as a BOI-accredited/registered entity. Jurisprudence holds that when the law confines in an administrative office the power to determine certain matters, the determination of such office in such matters where it has acquired expertise shall be accorded much respect by the courts, unless such determination or findings were arrived at without or in excess of jurisdiction, or with grave abuse of discretion which are not obtaining in the present case.

More importantly, respondent was able to fully establish that it is a VAT-registered entity exclusively engaged in the supply of Pre-Production Ore and ROM Ore to PGPRC, a BOI-registered producer of gold and silver ore whose products are 100% exported. On that account, respondent is entitled to VAT zero-rating on all its sales following the provision in Section 4.106-5 of Revenue Regulations (RR) No. 16-2005.

Respondent also puts premium on the alleged findings that it was able to establish that it is a BIR VAT registered taxpayer engaged in an activity subject to zero-rating pursuant to Section 4.106-5 of RR No. 16-2005; that its VAT invoices or official receipts are fully compliant with the applicable law and regulations showing its zero-rated transactions; that the input taxes subject of the claim are not transitional input taxes and not due to any shift from sales tax regime to VAT regime; that it is neither initially a non-registered VAT entity becoming a VAT-registered entity; that based on the pertinent Quarterly VAT Return and its Audited Financial Statements, the input VAT for refund has not been applied to any output taxes during the succeeding quarters; and that both its administrative and judicial claims for refund/TCC were seasonably filed.

THE RULING OF THE COURT

The issue of re-opening of the trial and subsequent admission of evidence after the parties have already rested, is not novel. The following jurisprudence is enlightening:

> The Rules of Court does not contain any provision prohibiting the trial court from allowing a party to offer additional proofs on the evidence-in-chief or rebuttal evidence after it had rested its case, or even after the case has been submitted for decision but before the rendition thereof. Neither does the Rules of Court contain a specific rule allowing the reopening of a case to allow a party to adduce additional proofs. However, the reopening of a case by the court either on its own motion or on motion of a party, allowing him or them to present additional proofs, is a recognized procedural recourse or device, deriving validity and acceptance from long-established usage. The matter of the trial court's allowing the reopening of a case

> for additional proof by a party or by the parties is addressed to the court's discretion provided that, by reopening the case, the court does not commit a grave abuse of its discretion. The trial court may allow the reopening of a case and the presentation of additional proofs for the orderly administration of justice or where evidence has been omitted by a party, through inadvertence or mistake, or oversight.[3]

Thus, the court, in its discretion, may allow the reopening of trial after the parties have rested the presentation of their evidence in chief, before a decision is rendered, provided that by so doing, it does not commit grave abuse of discretion.

In the present case, the Court in Division allowed the reopening of the case at the instance of respondent after a decision has been rendered. Thereafter the Court in Division admitted the additional document, specifically the questioned BOI Certification of January 27, 2010. All these were done in the exercise of its discretion anchored on jurisprudence[4] that the weightier reason for the relaxation of the applicable rule of procedure is that after taking into account the relative merits of the parties' cases, and if albeit preliminarily, the appeal is meritorious on its face, the court may relax the applicable rule of procedure after such *prima facie* finding of merit. This is apparent in this case for after relaxation of the rule, the Court in Division found respondent entitled to the refund sought to the extent substantiated.

Significantly, at the time the subject BOI Certification was offered, petitioner did not interpose any objection to its admission. The Minutes of the hearing dated June 1, 2015[5] clearly states that when respondent made an oral formal offer of evidence of the BOI Certification, petitioner interposed "no objection to the mentioned exhibits but only as to the manner by which they were identified in the Judicial Affidavit." The same manifestation by petitioner through its counsel was reproduced in the Resolution dated

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[3] Wainwright Rivera vs. Honorable Associate Justices of the Fourth Division, Sandiganbayan Rodolfo Palattao, Gregory Ong, Ma. Cristina Cortez-Estrada and Prosecutors John I.C. Turalba, Orlando I. Ines, Jaime C. Blancaflor, Rosalyn M. Loja of the Office of the Special Prosecutors/Ombudsman, G.R. No. 157824, January 17, 2005.

[4] Sps. Heber & Charlita Edillo vs. Sps. Norberto & Desideria Dulpina, G.R. No. 188360, January 21, 2010.

[5] See Minutes of hearing dated June 1, 2015, Division docket pp. 806-807.

June 1, 2015.[6] It has been held that objection to the admission of evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.[7] Thus, the admission of the BOI Certification dated January 27, 2010 as an issue in the present appeal to the Court *En Banc* is belatedly raised and evidently a mere afterthought.

Even assuming that strict application of the rule was observed and the reopening of the case for respondent to present the subject BOI Certification was disallowed, there was no preventing the Court in Division, at the instance of respondent through its plea for reconsideration, from taking cognizance of the said document in resolving the incident in the interest of substantial justice. Note that respondent attached it to its Motion for Reconsideration[8] assailing the Decision dated March 6, 2015 of the Court in Division. To be sure, the Court in Division committed no error in ordering the reopening of the case for the introduction of the subject BOI Certification to aid it in the judicious determination of the merit of the case. For after all, the said document has been part of the record of the case from the moment the case was filed as it was one of the supporting documents of the initiatory pleading. Basic is the rule that documents not formally offered in evidence, but form part of the record of the case, may be recognized and appreciated by the court in rendering its decision. thus:

> The CA's reliance on Rule 132, Section 34[9] of the Rules on Evidence is misplaced. This provision must be taken in the light of Republic Act No. 1125, as amended, the law creating the CTA, which provides that proceedings therein shall not be governed strictly by technical rules of evidence. Moreover, this Court has held time and again that technicalities should not be used to defeat substantive rights, especially those that have been established as a matter of fact.[10]

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[6] See Resolution dated June 1, 2015, Division docket pp. 808-809.
[7] Lucia Magaling, Paraluman R. Magaling, Marcelina Magaling-Tablada, and Benito R. Magaling (Heirs of the Late Reynaldo Magaling) vs. Peter Ong, G. R. No. 173333, August 13, 2008
[8] Dated March 20, 2015, Division docket, pp. 760-781.
[9] Sec. 34. *Offer of evidence*. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
[10] Filinvest Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 146941, August 9, 2007.

This was emphasized in another case which held thus:

> In *Filinvest Development Corporation v. Commissioner of Internal Revenue*, the Court held that the 1997 ITR attached to the motion for reconsideration is part of the records of that case and cannot be simply ignored by the CTA. Moreover, technicalities should not be used to defeat substantive rights, especially those that have been held as a matter of right.[11]

Anent the veracity of the contents of the BOI Certification dated January 27, 2010 stating on its face that it was merely based on the representations of PGPRC[12], as a general rule, "official acts" enjoy the presumption of regularity, and the presumption may be overthrown only by evidence to the contrary. When an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly.[13] Further, the rule is, he who alleges, not he who denies, must prove.[14]

Absent any evidence negating the content of the Certification issued by the BOI, the government entity which exercises jurisdiction with expertise over the matter, the said document enjoys the favorable presumption of regularity.

Finally, respondent was able to prove compliance with the following requisites mandated under Section 112 of the NIRC of 1997, as amended,[15] to be entitled to the refund of

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[11] Commissioner of Internal Revenue vs. PERF Realty Corporation, G.R. No. 163345, July 04, 2008.

[12] "It is understood that based on the affidavit executed by Phil. Gold Processing & Refining Corp., attached as Annex "A," all information provided herein are true and correct, and any misrepresentation shall be a ground for cancellation of BOI registration without prejudice to the institution of criminal and civil sanctions that may be warranted under the premises."

[13] Reyes, Jr. vs. Belisario, G.R. No. 154652, August 14, 2009.

[14] Equitable Banking Corporation (Now Known As Equitable-PCI Bank) vs. Ricardo Sadac, G.R. NO. 164772, June 08, 2006.

[15] Section 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 its alleged unutilized excess input VAT attributable to zero-rated or effectively zero-rated sales, to wit:

1. That the claim for refund was timely filed within the prescriptive period;
2. That there must be zero-rated or effectively zero-rated sales;
3. That input taxes were incurred or paid;
4. That such input taxes are attributable to zero-rated or effectively zero-rated sales; and
5. That the input taxes were not applied against any output VAT liability.

As to the timeliness of the claim, following Section 112, respondent had two (2) years after the close of the taxable quarter when the sales were made, within which to administratively apply for refund/tax credit of creditable input tax due or paid attributable to such sales.

The present claim for refund/tax credit of input VAT is for the period covering July 1, 2010 to September 30, 2010, hence, the administrative claim was seasonably filed with petitioner on September 14, 2012, or within two (2) years after the close of the pertinent taxable quarter when the relevant sales were made.

From September 14, 2012, respondent had 120 days or until January 12, 2013 to act on the application for refund,

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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 or 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 non-zero-rated sales."

(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. x x x" thereafter, respondent had 30 days to elevate the matter to the Court in Division. There being no action taken by petitioner, respondent timely filed its judicial claim through a Petition for Review on February 8, 2013.

Evidence also reveal that respondent was also able to prove that its sales qualify for VAT zero-rating pursuant to Section 106(A)(2)(a)(5) of the NIRC, as amended, and Section 4.106-5(a)(5) of Revenue Regulations (RR) No. 16-2005[16].

Respondent's Certificate of Registration No. OCN8RC0000036160 dated January 1, 1997, with Tax Identification Number 000-153-880-000 proved that it is a VAT-registered entity. The other requirements were satisfied through the BOI Certification dated January 27,

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[16] Sec. 106. *Value-added Tax on Sale of Goods or Properties.* -

(A) *Rate and Base of Tax.* - xxx

x x x x x x x x x

2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* - The term *"export sales"* means:

x x x x x x x x x

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.

x x x x x x x x x

SECTION. 4.106-5. *Zero-Rated Sales of Goods or Properties.* - xxx

The following sale by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* - *"Export Sales"* shall mean:

x x x x x x x x x

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments code of 1987, and other special laws.

x x x x x x x x x

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and *Provided, finally,* **that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.** (emphasis ours)

2010 which states that PGPRC exported 100% of its total sales volume for the period January 1 to December 31, 2009, and that it was issued pursuant to Guidelines on the issuance of BOI Certification per Revenue Memorandum Order No. 9-2000 entitled Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales. The validity of the said BOI Certification was from January 1 to December 31, 2010, unless sooner revoked by the BOI.

Finally, the Court *En Banc* agrees with the findings of the Court in Division respecting the amount which respondent is entitled to as refund/tax credit. Respondent's Quarterly VAT Return for the first quarter (July 1, 2010 to September 30, 2010) of the subject fiscal year indicates its zero-rated sales/receipts amounted to P678,879,105.84. This amount substantiated by invoices and summaries of sales transactions, corresponds to respondent's ore sales to PGPRC in the amount of P678,444,105.84 and its revenues from lease of land to PGPRC in the amount of P435,000.00, or a total of P678,879,105.84.

However, per Section 106(A)(2)(a)(5) of the NIRC, as amended, the amount of P435,000.00 revenues derived by respondent from lease of its land to PGPRC cannot be considered as zero-rated export sale of goods, thus must be disallowed.

Thus, out of the total amount of P678,879,105.84 zero-rated sales/receipts declared by respondent in its Quarterly VAT Return for the period July 1, 2010 to September 30, 2010, only the amount of P678,444,105.84 representing respondent's ore sales to PGPRC for the same period, is subject to zero percent (0%) VAT.

Likewise established through respondent's Quarterly VAT Return for the period July 1, 2010 to September 30, 2010, that respondent incurred input VAT in the amount of P51,639,178.25 consisting of Domestic Purchases of Goods other than Capital Goods in the amount of P1,234,980.60, and Domestic Purchase of Services in the amount of P50,404,197.65, as shown in various suppliers' invoices and official receipts and the Report of the Independent Certified Public Accountant (ICPA).

However, out of the input VAT of P51,639,178.25, the amount of P1,123,477.49 should be disallowed for failure to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC, as amended, as implemented by Sections 4.110-8 and 4.113-1 of RR No. 16-2005. Note that neither petitioner nor respondent assailed the cited disallowance rendering the same binding upon them.

Therefore, out of respondent's input VAT claim for the period of July 1, 2010 to September 30, 2010, in the amount of P51,639,178.25, only the amount of P50,515,700.76 represents respondent's valid input tax, as follows:

	Amount	
Input VAT Claim	P	51,639,178.25
Less: Disallowed Input VAT		1,123,477.49
Valid Input VAT	**P**	**50,515,700.76**

Since all of respondent's sales for the pertinent period were made to PGPRC, the substantiated input VAT of P50,515,700.76 is entirely attributable thereto, with the exception of the lease of land to PGPRC in the amount of P435,000.00. Thus, only the input VAT of P50,483,332.22 can be attributed to respondent's zero-rated sales.

Significantly, verification of respondent's Quarterly VAT Return for the period of July 1, 2010 to September 30, 2010 and its Notes to Audited Financial Statements for the fiscal year (FY) 2011, shows that it has no output tax liability against which the subject input VAT claim may be applied or credited since all the reported sales/gross receipts of respondent for the same FY were also zero-rated. While the claimed input taxes were carried over to the succeeding quarters, the same remained unutilized until they were deducted as "VAT Refund/TCC Claimed" from respondent's total available input taxes in its Quarterly VAT Return for the first quarter of FY 2012.

WHEREFORE, the Petition for Review dated December 4, 2015 filed by the Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit.

The Amended Decision dated August 27, 2015 and the Resolution dated November 11, 2015, both rendered by the Court in Division, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
(With Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

FILMINERA RESOURCES CORPORATION,
Respondent.

CTA EB NO. 1395
(CTA Case No. 8610)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:

MAR 23 2017 2:46 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I agree with the *ponencia* that the Court in Division did not commit a reversible error in granting Filminera Resources Corporation's (FRC) motion for the reopening of the case, albeit after a decision has been rendered as this is consistent with the doctrine laid down by the Supreme Court in ***BPI-Family Savings Bank vs. Court of Appeals***[1] and the more recent case of ***Commissioner of Internal Revenue vs. De La Salle University, Inc.***[2]

[1] G.R. No. 122480, April 12, 2000.
[2] G.R. Nos. 196596, 198841, 198941, November 9, 2016.

In the ***BPI-Family Savings Bank case***,[3] the CTA dismissed the petition on the ground that petitioner failed to present as evidence its Annual Income Tax Return (ITR) for 1990 to establish the fact that petitioner had not yet credited the amount being claimed for refund to its 1990 tax liability. Petitioner filed a motion for reconsideration attaching thereto a copy of its ITR for 1990 but the same was ignored by the CTA. The Court of Appeals (CA) affirmed the decision of the CTA. The Supreme Court, however, reversed the CA and held the following:

> "More important, a copy of the Final Adjustment Return for 1990 was attached to petitioner's Motion for Reconsideration filed before the CTA. A final adjustment return shows whether a corporation incurred a loss or gained a profit during the taxable year. In this case, that Return clearly showed that petitioner incurred P52,480,173 as net loss in 1990. Clearly, it could not have applied the amount in dispute as a tax credit. Again, the BIR did not controvert the veracity of the said return. It did not even file an opposition to petitioner's Motion and the 1990 Final Adjustment Return attached thereto. In denying the Motion for Reconsideration, however, the CTA ignored the said Return. In the same vein, the CA did not pass upon that significant document.
>
> **True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth**. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.
>
> In the present case, the Return attached to the Motion for Reconsideration clearly showed that petitioner suffered a net loss in 1990. Contrary to the holding of the CA and the CTA, petitioner could not have applied the amount as a tax credit. In failing to consider the said Return, as well as the other documentary evidence presented during the trial, the appellate court committed a reversible error.
>
> It should be stressed that the rationale of the rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice. But there can be no just determination of the present action if we ignore, on grounds of strict technicality, the Return submitted before the CTA and even before this Court. To repeat, the undisputed fact is that petitioner suffered a net loss in 1990; accordingly, it incurred no tax liability to which the tax credit could be applied. Consequently, there is no reason for the BIR and this Court to withhold the tax

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[3] *Supra*, Note 1.

> refund which rightfully belongs to the petitioner." *(Boldfacing supplied)*

More recently, in the ***De La Salle University, Inc. case***,[4] the Supreme Court upheld the CTA's admission of the supplemental evidence made upon filing of petitioner's motion for reconsideration in this wise:

> "III. CTA correctly admitted
> the supplemental evidence
> formally offere by DLSU.
>
> The Commissioner objects to the CTA Decision's admission of DLSU's supplemental pieces of documentary evidence.
>
> To recall, **DLSU formally offered its supplemental evidence upon filing its motion for reconsideration with the CTA Division**. The CTA Division admitted the supplemental evidence, which proved that a portion of DLSU's rental income was used actually, directly and exclusively for educational purposes. Consequently, the CTA Division reduced DLSU's tax liabilities.
>
> **We uphold the CTA Division's admission of the supplemental evidence on distinct but mutually reinforcing grounds, to wit: (1) *the Commissioner failed to timely object to the formal offer of supplmental evidence;* and (2) *the CTA is not governed strictly by the technical rules of* evidence**.
>
> First, the failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.
>
> The Court has held that if a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal. Because of a party's failure to timely object, the evidence offered becomes part of the evidence in the case. As a consequence, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.
>
> As disclosed by DLSU, the Commissioner did not oppose the supplemental formal offer of evidence despite notice. The Commissioner objected to the admission of the supplemental evidence only when the case was on appeal to the CTA *En Banc*. By the time the Commissioner raised her objection, it was too late; the *formal offer, admission,* and *evaluation* of the supplemental evidence were all *fait accompli*.
>
> We clarify that while the Commissioner's failure to promply object had no bearing on the materiality or sufficiency of the

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[4] *Supra*, Note 2.

supplemental evidence admitted, she was bound by the outcome of the CTA Division's assessment of the evidence.

Second, the CTA is not governed strictly by the technical rules of evidence. The CTA Division's admission of the formal offer of supplemental evidence, *without prompt objection* from the Commissioner, was thus justified.

Notably, this Court had in the past admitted and considered evidence attached to the taxpayer's motion for reconsideration.

In the case of BPI-Family Savings Bank v. Court of Appeals, the tax refund claimant attached to its motion for reconsideration with the CTA its *Final Adjustmenty Return*. The Commissioner, <u>as in the present case</u>, did not oppose the taxpayer's motion for reconsideration and <u>the admission of the *Final Adjustment Return*</u>. We thus admitted and gave weight to the *Final Adjustment Return* although it was only submitted upon motion for reconsideration.

We held that **while it is true that strict procedural rules generally frown upon the submission of documents after the trial, the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence and that the paramount consideration remains the ascertainment of truth**. We ruled that procedural rules should not bar courts from considering *undisputed facts* to arrive at a just determination of a controversy.

We applied the same reasoning in the subsequent cases of *Filinvest Development Corporation v. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue v. PERF Realty Corporation*, where the taxpayers also submitted the supplemental supporting document only upon filing their motions for reconsideration.

Although the cited cases involved claims for *tax refunds*, we also dispense with the strict application of the technical rules of evidence in the present *assessment case.* If anything, the liberal application of the rules assumes greater force and significance in the case of a taxpayer who claims a constitutionally granted tax exemption. While the taxpayers in the cited cases claimed *refund* of excess tax payments based on the Tax Code, DLSU is claiming tax *exemption* based on the Constitution. If liberality is afforded to taxpayers who paid more than they should have under a statute, then with more reason that we should allow a taxpayer to prove its exemption from tax based on the Constitution.

Hence, we sustain the CTA's admission of DLSU's supplemental offer of evidence not only because the Commissioner failed to promptly object, <u>but more so because the strict application of the technical rules of evidence may defeat the intent of the Constitution</u>." *(Boldfacing & underscoring supplied)*

The Board of Investments (BOI) Certification, which FRC attached to its Motion for Reconsideration and which it sought to present and offer in evidence, is a very vital piece of evidence that could prove its entitlement to the claim for refund. Indeed, it was proper for the Court in Division to allow the reopening of trial to give FRC the opporutnity to present and offer the BOI Certification in evidence; **otherwise, the Court in Division would have no basis in giving evidentiary value to the BOI Certification (Exhibit "BB") although a BOI Certification was attached to FRC's Petition for Review which was filed with the Court in Division.**[5]

On this point, the pronouncement in ***Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs***[6] is instructive. In said case, the Supreme Court held that for evidence to be considered by the court, the same must be formally offered; and that even if a documentary evidence was included as part of the Bureau of Customs (BOC) Records submitted before the Court of Tax Appeals (CTA) in compliance with a lawful order of the court, it does not permit the trial court to consider the same as the Rules prohibit it. Interestingly, in the *Shell case*, Pilipinas Shell Petroleum Corporation (PSPC) did not request for a re-opening of the case after a judgment has been rendered for the purpose of presenting additional documents. Truth to tell, the CTA, in making a pronouncement that fraud was committed by PSPC, relied on the factual finding contained in the Memorandum dated 2 February 2001 issued by the officials of the CIIS-IPD of the BOC. Since said Memorandum was not presented, identified, testified to or offered in evidence by either party before the trial court, albeit the same was found in the BOC Records, the Supreme Court ruled that no evidentiary value can be given to the said Memorandum. Pertinent parts of the Supreme Court's pronouncement are quoted hereunder:

> "In the case at bench, a perusal of the records reveals that there is neither any iota of evidence nor concrete proof offered and admitted to clearly establish that petitioner committed any fraudulent acts. **The CTA in Division relied solely on the Memorandum dated 2 February 2001 issued by the CIIS-IPD of the BOC in ruling the existence of fraud committed by petitioner. However, there is no showing that· such document was ever presented, identified, and testified to or offered in evidence by either party before the trial court.**
>
> Time and again, this Court has consistently declared that cases filed before the CTA are litigated *de novo*, party-litigants must prove every minute aspect of their cases. Section 8 of R.A.

[5] Division Docket, pp. 67 to 68.
[6] G.R. No. 195876, December 5, 2016.

No. 1125, as amended by R.A. No. 9282, categorically described the CTA as a court of record. Indubitably, no evidentiary value can be given to any documentary evidence merely attached to the BOC Records, as the rules on documentary evidence require that such documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Rules of Court which reads:

xxx xxx xxx.

From the foregoing provision, it is clear that for evidence to be considered by the court, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles*, We had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.

The Rule on this matter is patent that even documents which are identified and marked as exhibits cannot be considered into evidence when the same have not been formally offered as part of the evidence, but more so if the same were not identified and marked as exhibits, such as in the present case. An assay of the records reveals that the subject Memorandum dated 2 February 2001 was neither identified nor offered in evidence by respondent during the entire proceedings before the CTA in Division. Consequently, this is fatal to respondent's cause in establishing the existence of fraud committed by petitioner since the burden of proof to establish the same lies with the former alone.

As a matter of fact, even if the aforesaid documentary evidence was included as part of the BOC Records submitted before the CTA in compliance with a lawful order of the court, this does not permit the trial court to consider the same in view of the fact that the Rules prohibit it. The reasoning forwarded by the CTA in Division in its Resolution dated 24 February 2009, that the apparent purpose of transmittal of the records is to enable it to appreciate and properly review the proceedings and findings before an administrative agency, is misplaced. **Unless any of the party formally offered in evidence said Memorandum, and accordingly, admitted by the court *a quo*, it cannot be considered as among the legal and factual bases in resolving the controversy presented before it**.

xxx xxx xxx.

Clearly therefore, evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. Neither may it be taken into

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account on appeal. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected."

The admission in evidence of the BOI Certification, notwithstanding, I am constrained to withhold my assent to the conclusion that the BOI Certification issued on January 27, 2010 sufficiently proved that FRC complied with the requirement that its buyer's products were **100% exported for the period from July 1, 2010 to September 30, 2010**.

For ease of reference, the BOI Certification[7] is reproduced below:

"RMO 9-2000/BOI-ID Certificate No. 2010-057
Date Filed: January 15, 2010
Appln. No.:2010-C107

C E R T I F I C A T I O N

This is to certify that **PHIL. GOLD PROCESSING & REFINING CORP.** is registered with the Board of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, with the following data:

Reg'n. No./Date Reg'd/Law	Reg'd Product	Type/Status of Reg'n
2008-042 / 07 February 2008/ EO 226	Gold and Silver Dore	New/Non-Pioneer with Pioneer Incentives

Information is hereby given that the firm exported 100% of its total sales volume/value for the calendar year covering January 01 to December 31, 2009 based on the attached documents (Annexes B & C) submitted to the BOI, summarized as follows:

TIN	:	233-903-100-000
Total Sales Volume/Value*	:	3,820,982.5 g / $75,178,299.96
Total Export Sales Volume/Value	:	3,820,982.5 g / $75,178,299.96
Direct Export Volume/Value	:	3,820,982.5 g / $75,178,299.96
Constructive Export Volume/Value	:	None
Indirect Export Volume/Value	:	None
% of Export to Total Sales	:	100%
Period Covered	**:**	**CY January 01 to December 31, 2009**

*subject to post audit in case of computational discrepancy

It is understood that based on the affidavit executed by **Phil. Processing & Refining Corp.**, attached as Annex "A", all information provided therein are true and correct, and any

[7] Exhibit "BB".

misrepresentation shall be a ground for cancellation of BOI registration without prejudice to the institution of criminal and civil actions that may be warranted under the premises.

This Certification is issued pursuant to the Guidelines on the issuance of BOI Certification per Revenue Memorandum Order No. 9-2000 entitled "Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales" dated February 2, 2000.

This Certification is valid from January 01 to December 31, 2010 unless sooner revoked by the BOI Governing Board for any or all of the following grounds: (a) Failure of the herein registered enterprise to comply with any of its BOI registration terms, commitment, and conditions; (b) Failure to export 100% in any of the instances set forth in Section 2 of RMO No. 9-2000; (c) Submission of fraudulent documents; and (d) Failure to submit Audited Financial Statements, Annual Income Tax Return and Annual Report on Actual Operations.

Since the firm's accounting reporting period ends every 30th day of June, its succeeding application should be filed within fifteen (15) days from the end of the said fiscal year period in order that the BOI certification to be issued shall be valid for a period of one (1) year effective from the date of the start of the new fiscal year.

This Certification is issued in accordance to Section 3.3 of subject RMO No. 9-2000 on this 27th day of January 2010 at Makati City, Philippines, upon the request of the Phil. Gold Processing & Refining Corp., subject to the foregoing conditions.

(Signed)
LUCITA P. REYES
Executive Director
Project Assessment Group"

(Boldfacing supplied)

Clear from the aforesaid Certification is the BOI's confirmation that **Philippine Gold Processing & Refining Corp. (PGPRC), the buyer of FRC's products, is BOI-registered and that PGPRC exported 100% of its total sales volume/value for the calendar year covering <u>January 1, 2009 to December 31, 2009</u>.** The said BOI Certification is valid from January 1 to December 31, 2010.

Considering that the refund claim covers the period **July 1, 2010 to September 30, 2010** (first quarter of FY ending June 30, 2011), the same is obviously outside the period referred to in the BOI

Certification anent the firm's exportation of 100% of its total sales volume/value. Thus, I submit that FRC's claim for refund must be denied for failure to prove that PGPRC indeed exported 100% of its total sales for the period from July 1, 2010 to September 30, 2010.

In fine, I VOTE to GRANT the Petition for Review filed by the Commissioner of Internal Revenue and REVERSE AND SET ASIDE the assailed Amended Decision and Resolution and REINSTATE the March 6, 2015 Decision of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1395** **(CTA Case No. 8610)**
-versus-	Present :
FILMINERA RESOURCES CORPORATION, *Respondent.*	DEL ROSARIO, PJ CASTANEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, JJ.
	Promulgated: MAR 23 2017 2:46 p.m.

x- x

CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

With all due respect, while I concur with the majority position that there are certain instances that a liberal application of technical rules of evidence may be applied to avoid a miscarriage of justice, I would like to manifest my dissent to the evidentiary value given to the BOI Certification submitted by Filminera Resources Corporation (FRC/respondent) that would merit a reversal of this Court's original decision.

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The original decision dated 06 March 2015 partially granted the claim for refund of Php50,483,332.22 representing FRC's unutilized input VAT attributed to zero rated sales for the first quarter of fiscal year (FY) ending 30 June 2011 covering the period July 1 to September 30, 2010.

The amended decision dated 27 August 2015 and corroborated by the Resolution dated 11 November 2015 that partially granted the refund was anchored on the court's approval of FRC's motion for reconsideration to present and formally offer in evidence the BOI Certification dated 27 January 2010. The non-presentation of said certificate was the root cause of the denial of the claim in the first instance. The amended decision stated that the insufficient evidence which warranted the denial was cured by the presentation of the BOI Certification dated 27 January 2010 because it proved that Philippine Gold Processing and Refining Corporation (PGPRC), the buyer, "exported 100% of its total sales volume for the period January 1 to December 31, 2009"[1]. The sufficiency of the evidence was based on the period of validity of the BOI document from January 1 to December 31, 2010 thus covering the instant claim for refund.

In resolving this issue, the entitlement to the refund claim is primordially based on the status of the buyer, PGPRC as a BOI-registered manufacturer/producer, and seller FRC, herein respondent as a VAT-registered supplier. The sale of goods and properties made by a VAT-registered supplier (seller) to a BOI registered manufacturer/producer (buyer) whose products are 100% exported are considered "export sales" and thus accorded a VAT zero-rated status.

Section 4.106-5 of Revenue Regulations (RR) No. 16-2005 provides thus:

> The following sales by VAT registered persons shall be subject to zero percent rate:
>
> a) Export sales- "Export sales" shall mean:

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[1] Amended Decision page 5 of 11 dated August 27, 2015.

> **(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987 and other special laws.**
>
> xxx xxx xxx xxx
>
> For purposes of zero rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and provided, finally that **sales of goods and properties or services made by a VAT registered supplier to a BOI registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect shall be issued by the Board of Investments (BOI) which shall be good for one year unless subsequently re-issued by the BOI.** (emphasis ours).

Based on the foregoing provision, respondent is a VAT registered supplier and PGPRC is a BOI registered manufacturer/producer, hence entitling respondent to a VAT zero rated status.

I share the view of the majority that the BOI Certification is one important piece of evidence to prove that the sale is zero-rated as clearly provided in the aforequoted RR 16-2005. Furthermore, Section 3 of Revenue Memorandum Order (RMO) No. 09-00 issued on 02 February 2000 enumerates the following requirements before such type of sale is accorded the automatic zero rating status, thus:

> 1. The supplier must be VAT-registered.
>
> 2. The BOI registered buyer must likewise be VAT registered.
>
> 3. The buyer must be a BOI registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI.
>
> Xxx xxx xxx

In VAT Ruling No. 018-05 dated September 15, 2005, the BIR held that the BOI Certification is an essential requirement in availing of the benefits provided under Section 3[2] of RMO 9-2000 and I quote:

> "The BOI Certification that the buyer is a BOI-registered manufacturer/producer whose products are 100% exported and the furnishing of the same to the suppliers are mandatory in order to benefit from section 3 of RMO 9-2000 xxx xxx"

Aside from the other requirements to support the refund of alleged unutilized input VAT, the BOI certification stands out as one vital piece of document that could spell the difference between a grant or outright denial of the claim as what happened in the decision dated 06 March 2015.

Acceding to the majority decision on the relevance of the BOI Certification as one of the documents to prove the zero rating status and its admissibility as evidence even if presented and formally offered after a decision has already been promulgated, I consider the BOI Certification dated 27 January 2010 as insufficient evidence to warrant a reversal of this court's original decision since the same does not attest to the 100% export sale of PGPRC for calendar year 2010.

I agree with the opinion of Justice del Rosario in his Concurring and Dissenting Opinion when he took issue with the period of effectivity of the BOI Certification vis-a-vis the actual period of the refund claim that needs to be supported by a 100 % export sales. It is noteworthy to mention that the BOI certification which FRC attached to its Petition for Review is not the same as that which was offered in evidence (Exhibit "BB") after the Motion for Reconsideration was granted, contrary to the

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[2] Section 3. Sales of goods, properties or services made by a VAT-registered supplier to a BOI registered exporter shall be accorded automatic zero rating, i.e. without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions:

(1) The supplier must be VAT-registered,
(2) The BOI-registered buyer must likewise be VAT-registered;
(3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
(4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and;
(5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words "zero rated" stamped thereon in compliance with Section 4.108-1 (5) of RR 7-95. The supplier must likewise indicate in the VAT invoice the name and BOI-registry number of the buyer.

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contention of the majority that the "said document has been part of the record of the case from the moment the case was filed as it was one of the supporting documents of the initiatory pleading."[3] The BOI certification attached to the Petition for Review covered the period July 1, 2009 to June 30, 2010 while the one formally offered in evidence covered the period January 1 to December 31, 2009 with validity period of January 1 to December 31, 2010.

This is not the first time that the court has dealt with FRC and its claims for refund of unutilized input VAT attributed to its zero-rated sales to PGPRC. In fact, this court has already adjudicated and decided on several claims of petitioner with varying results from partial grant to outright denials based on factual grounds, i.e., whether or not petitioner has sufficiently proven compliance with the conditions provided under the aforequoted Section 4.106-5 (a) (5) of RR 16-2005 to qualify as a zero rated sale. In each case, the petitioner has presented in evidence BOI Certifications covering different dates to prove its claim, among others. Below is a summary of the CTA cases covering such claims for refund and the periods of coverage of the BOI certifications, to wit:

Case Number	**Period claimed**	**BOI Cert. Coverage**	**BOI's validity**
8938	April 1, 2012 to June 30, 2012 or **Fourth quarter of FY 30 June 2012**	July 1, 2011 to June 30, 2012	Not provided
8802 and 8842 (consolidated cases)	October 1, 2011 to December 31, 2011 and January 1, 2012 to March 31, or **Second and Third Quarters of FY June 30, 2012**	July 1, 2011 to June 30, 2012	Not Provided
8690 and 8716	April 1, 2011 to June 30, 2011 and July 1, 2011 to September 30, 2011 or **Fourth Quarter of FY June 30, 2011 and First Quarter of FY June 30, 2012**	July 1, 2010 to June 30, 2011	July 1, 2011 to June 30, 2012 unless sooner revoked by BOI

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[3]CTA EB Decision page 8 second paragraph.

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8666	January 1, 2011 to March 31, 2011 or **Third Quarter of FY 2011 ending June 30, 2011**	Decision did not mention the coverage of the BOI certification but stated that Petitioner was able to sufficiently prove that it is engaged in zero-rated sales, being a VAT registered supplier to PGPRC whose products are 100% exported." - page 17 of the decision	Valid for the period ending July 1, 2010 to June 30, 2011.
8610	July 1, 2010 to September 30, 2010 or **First quarter of FY ending June 30, 2011**	**First BOI certification** attached to the Petition for Review but not offered in evidence – **July 1, 2009 to June 30, 2010** **Second BOI certification** – formally offered in evidence – **January 1 to December 31, 2009**	**First BOI certification – July 1, 2010 to June 30, 2011** **Second BOI certification – January 1 to December 31, 2010**

One may notice from the summary that each BOI Certification covers one whole fiscal year corresponding to the accounting period adopted by FRC– July 1 to June 30. The BOI Guidelines on the issuance of certifications to BOI- registered companies under RMO 9-2000 direct BOI-registered companies to file applications (for BOI certifications) based on the following schedules:

> "Applicant firm with accounting reporting period ending calendar year should file its application not later than 15 January of the succeeding year in order that the BOI certification to be issued shall be valid for a period of one (1) year effective 01 January of that year.

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> "Applicant firm with accounting reporting period ending in fiscal year should file its application within fifteen days from the end of the said fiscal year period in order that the BOI certification to be issued shall be valid for a period of one (1) year effective from the date of the start of the new fiscal year."

This meant that the BOI-registered manufacturer/producer may file an application for BOI Certification within fifteen (15) days after the end of its accounting period, whether calendar or fiscal year in order for the said certification to be valid for a period of one (1) year effective 01 January of the calendar year or the first month of the fiscal year, as the case may be.

For instance, if one files an application for BOI Certification covering the fiscal year July 1, 2010 to June 30, 2011, the validity of said certification shall cover the period July 1, 2011 to June 30, 2012 which is the next fiscal or calendar year as the case may be. The filing period for applications which is scheduled within fifteen (15) days from the end of the accounting period is also due to the fact that the certification will be based on data provided for the entire preceding year (whether fiscal or calendar) such as those embodied in the financial statements, sales performance reports, income tax returns etc. of the BOI-registered enterprise.

In the original case (CTA Case No. 8601), the BOI Certification presented as evidence attested to the 100% export sales of FRC for the period January 1 to December 31, 2009 and not the subject period of refund, i.e., July 1 to September 30, 2010 which is the first quarter of the taxable year 2011. What should have been presented by FRC is a BOI certification attesting that PGPRC has 100% export sales for the period covering January 1 to December 31, 2010.

There was enough time to secure this document to support the application for refund or Tax Credit Certificate (TCC) of input VAT by FRC which was filed on September 14, 2012, more than a year after. Since PGPRC adopts a calendar year accounting period, it could have filed for a BOI certification on January 15, 2011 for its annual export sales in 2010. Such certification would have covered the subject period for the refund claim of FRC, i.e., July 1 to September 30, 2010.

The validity period of January 1 to December 31, 2010 indicated in the BOI Certification of PGPRC made the majority conclude that the claim for refund pertaining to the period July 1, 2010

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to September 30, 2010 falls within the coverage of the certification as it is valid until December 31, 2010. This may well be true if the purpose is to accord zero-rating status to sales made during the covered period including its extended validity period but it does not prove that the buyer PGPRC as a BOI registered exporter, exported 100% of its products from the Philippines to foreign countries for the period July 1, 2010 to September 30, 2010.

To sum up, FRC submitted a BOI Certification from PGPRC, its BOI-registered buyer, that failed to prove that it exported 100% of its sales from January 1 to December 31, 2010. Hence, FRC sorely failed to qualify for a VAT-zero rated status that will entitle it to claim for an input VAT refund under existing law and revenue regulations.

Hence, I vote to grant the Petition for Review to reverse and set aside the aforecited Amended Decision dated 29 August 2015 and the Resolution dated 11 November 2015, and to reinstate the original decision of the Court in Division dated March 6, 2015.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice