20-000299-0067

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10358

SCHAEFFLER PHILIPPINES INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. PHILIP A. MAYO
ATTY. JONELLE ELLAINE A. MAGALONG
Bureau of Internal Revenue - Revenue Region No. 8A
36th Floor, Export Bank Plaza Building
Sen. Gil Puyat Avenue corner Chino Roces Avenue
Makati City

FOLLOSCO MORALLOS & HERCE
25th Floor, 88 Corporate Center
141 Valero corner Sedeño Streets
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **June 25, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 26, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

SCHAEFFLER PHILIPPINES INC., Petitioner,	**CTA CASE NO. 10358**
	Members: **DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 25 2024; 2:00PM

x - x

RESOLUTION

***DEL ROSARIO, P.J.*:**

This resolves petitioner's **Motion for Reconsideration (Of the Decision dated 15 February 2024)** filed via registered mail on March 12, 2024 and received by the Court on March 20, 2024, with respondent's **Comment/Opposition To Petitioner's Motion for Reconsideration (Of the Decision dated 15 February 2024)** filed via registered mail on April 18, 2024 and received by the Court on April 29, 2024.

Petitioner's Motion seeks reconsideration of the Court's Decision dated February 15, 2024, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack [of] merit.
>
> **SO ORDERED**."[1]

In the present Motion, petitioner argues that the Court committed reversible error when it ruled that:

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[1] CTA Docket, Vol. II, p. 970.

1. petitioner's failure to present the original of the Board of Investments (BOI) Certification evidencing that Philippine Gold Processing and Refining Corp. (PGPRC) exports 100% of its products renders the submitted photocopy of such certification (marked as petitioner's exhibit "P-65") inadmissible in evidence;

2. petitioner's failure to submit the BOI Certificate of Registration of PGPRC should lead to the disallowance of the zero-rated sales made by petitioner to PGPRC in the amount of Php193,851.00; and,

3. petitioner's VAT refund claim should be denied for petitioner's failure to comply with the invoicing requirements under Section 113(A), in relation to Section 113(B)(2)(C) of the National Internal Revenue Code (NIRC) of 1997, as amended and Section 4.113-1 of Revenue Regulations (RR) No. 16-2005.

On the other hand, respondent counter-argues that petitioner failed to comply with all the requisites before secondary evidence may be allowed in lieu of the originals, and to state any factual and legal grounds to support the instant motion, hence, it should be denied for utter lack of merit.

THE COURT'S RULING

The Court finds no merit in the present Motion.

Petitioner contends that the photocopy of the BOI Certification (Exhibit "P-65") evidencing that PGPRC exports 100% of its products should not be denied admission considering that a photocopy is a duplicate original and may be admissible to the same extent as an original unless a genuine question is raised as to the authenticity of the original, or in the circumstances, it is unjust or inequitable to admit the duplicate in lieu of the original.

Section 1, Rule 15 of the Revised Rules of Court of Tax Appeals provides:

> "SECTION 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. **He shall file a motion for reconsideration or**

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> **new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question.**"

In this case, petitioner failed to file a timely motion for reconsideration of the Resolution denying the admission in evidence of the exhibit in question. Such failure to seek reconsideration of the denial precludes petitioner from challenging the same thereafter.

But even assuming that petitioner may still question the denial of the exhibit in the present Motion assailing the Decision, and even if the Court were to admit the exhibit, the claim for refund must still be denied because petitioner failed to comply with the substantiation requirement of **prominently imprinting** the term "zero-rated sale" on its invoices as required under Section 113 of the NIRC of 1997, as amended.

As elucidated in the assailed Decision, all of petitioner's alleged zero-rated sales, evidenced by VAT invoices, do not bear the term "zero-rated sale" written or printed prominently on such invoices.

Petitioner now argues that the term "VAT ZERO-RATED SALES" is prominently printed on petitioner's sales invoices, albeit the imprinting thereof is reflected in the breakdown portion of the invoices.

Petitioner's argument fails to convince.

First, as explained in the assailed Decision, the breakdown which indicates the term "zero-rated sale" does not cure petitioner's failure to comply with the imprinting requirement. Parenthetically, the information necessary to be indicated in the "breakdown" on one hand, and the writing or imprinting of "zero-rated sale" on the VAT official receipts on the other hand, are requirements governed by separate provisions of the NIRC of 1997, as amended.

Second, in the context of Section 113 of the NIRC of 1997, as amended, a breakdown necessarily requires both the type of the sale (*i.e.*, VATable sale subject to 12%, zero-rated sale, and exempt sale) and the corresponding amount of sale. Without specifying the type of the sale involved, a breakdown cannot be considered complete. To assert that the type of the sale indicated in the breakdown also fulfils the writing or imprinting requirement renders not only the provision on imprinting for zero-rated sales but also the provision on imprinting for exempt sales redundant and superfluous, considering that a proper breakdown inherently specifies the type of the sale.

Otherwise stated, if the breakdown requirement, which necessarily indicates the type of the sale, is intended by law to also encompass the imprinting requirement, then the law could have easily deleted the specific provision on the imprinting requirements for both zero-rated sales and exempt sales for being superfluous.

Section 113 of the NIRC of 1997, as amended, in both its previous form, which is applicable in this case, and present form as introduced by Republic Act No. 11976, otherwise known as "Ease of Paying Taxes Act", requires **either** the imprinting requirement **or** the breakdown requirement **(depending upon the nature or type of sale involved)**. Section 21 of the said Act amended Section 113 of the NIRC of 1997, to read as follows:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> x x x
>
> (B) *Information Contained in the VAT Invoice.* – The following information shall be indicated in the VAT invoice:
>
> (1) A statement that the seller is a VAT-registered person, followed by the seller's Taxpayer Identification Number;
>
> (2) The total amount which the purchaser pays or is obliged to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:
>
> (a) The amount of the tax shall be shown as a separate item in the invoice;
>
> (b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed on the invoice;
>
> (c) **If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be <u>written or printed on the invoice</u>**;
>
> (d) **If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components**, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice: Provided, That the seller may issue separate invoices for the taxable, exempt, and zero-rated components of the sale."

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x x x

(D) *Consequences of Issuing an Erroneous VAT Invoice.* –

x x x

(3) If a VAT-registered person issues a VAT invoice to another VAT-registered person with lacking information required under Subsection (B) hereof, the issuer shall be liable for noncompliance with the invoicing requirement, however, the VAT shall still be allowed to be used as input tax credit on the part of the purchaser pursuant to Section 110 of this Code if the lacking information do not pertain to the amount of sales, amount of VAT, name and Taxpayer Identification Number of both the purchaser and issuer/seller, description of goods or nature of services, and the date of the transaction."

Interestingly, the Ease of Paying Taxes Act, a piece of legislation intended "to modernize tax administration and improve its efficiency and effectiveness by providing mechanisms that encourage proper and easy compliance at the least cost and resources possible" and "to update taxation system, adopt best practices and replace antiquated procedures", **has retained specific but separate provisions on the type of sales subject to imprinting requirement and those that are subject to breakdown requirement**, albeit with a minor modification on the imprinting requirement, *i.e.*, the omission of the word "prominently" to qualify the requirement. The retention of both requirements, with a minor modification on the imprinting requirement, supports the interpretation that the imprinting requirement is indeed separate and distinct from the breakdown requirement; otherwise, the legislature could have easily stricken out the provision on imprinting requirement for being redundant and superfluous.

Again, tax refunds are in the nature of a claim for tax exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[2]

WHEREFORE, premises considered, the Motion for Reconsideration is **DENIED** for lack of merit.

[2] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, G.R. No. 211779, November 3, 2020.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

(With due respect, I reiterate my Dissenting Opinion in the assailed Decision)
MARIAN IVY F. REYES-FAJARDO
Associate Justice