REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CARMEN COPPER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8418

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

MAY 02 2016 ; 10:03 a.m.

x - x

RESOLUTION

MINDARO-GRULLA, *J*.:

For resolution is petitioner's **Motion for Reconsideration (of the Decision dated 30 June 2015)**, filed on July 24, 2015, with respondent's **Comment/Opposition (Re: Motion for Reconsideration of the Decision dated 30 June 2015)**, filed on August 18, 2015, and petitioner's **Memorandum (Re: Motion for Reconsideration dated 24 July 2015)**, filed on January 29, 2016.

Petitioner seeks reconsideration of the Court's Decision dated June 30, 2015[1] (the assailed Decision), the dispositive portion of which reads:

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

[1] Docket, vol. II, pp. 885-914.

SO ORDERED."[2]

In the assailed Decision, the Court ruled that petitioner failed to prove its entitlement to a refund or tax credit in the amount of ₱65,329,954.52 allegedly representing its excess and unutilized input VAT on the importation of capital goods directly attributable to its zero-rated sales for the taxable year 2010. Petitioner failed to satisfy the requirements under Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, as it did not present any bills of lading or airway bills to prove that there were actual shipments of its direct export sales from the Philippines to a foreign country. The Certification from the Board of Investments (BOI Certification) dated January 14, 2011 did not sufficiently meet the requirement of the law that there must be actual shipment of the goods from the Philippines to a foreign country.

In its Motion, petitioner argues that it presented sufficient evidence of the actual shipment of goods from the Philippines to a foreign country, and therefore it is entitled to the refund or tax credit in the amount of ₱65,329,954.52 for taxable year 2010. Petitioner raises the following arguments in support of its stance:

1. BOI Certification is not self-serving and proves the actual shipment of goods to a foreign country;

2. Other evidence in addition to the BOI Certification were presented; and

3. In the interest of substantial justice, the Court should consider petitioner's bills of lading attached to its motion. Thus, it alternatively prays that it be allowed to present additional evidence to prove its actual shipments of goods from the Philippines to a foreign country.

On the other hand, respondent maintains that petitioner failed to discharge the burden of establishing its claim for a tax refund or credit. She objects to the re-opening of the case for the presentation of additional evidence to prove petitioner's actual shipments of goods from the Philippines to a foreign country. She contends that the documents sought to be presented are neither newly discovered nor inadvertently omitted due to fraud, accident, mistake or excusable

[2] Docket, vol. II, p. 914.

negligence which merits a reopening of the case, hence, petitioner's motion to re-open trial has no legal basis.

In the Resolution[3] dated October 29, 2015, the Court granted petitioner's Urgent Motion to Set Case for Hearing (Re: Petitioner's Motion for Reconsideration). Petitioner subsequently presented its witness and submitted additional evidence.

The Court finds petitioner's motion bereft of merit.

Cases filed before the Court of Tax Appeals are litigated *de novo*

Based on Section 8, Republic Act (R.A.) No. 1125, as applied and settled in numerous rulings of the Supreme Court, the Court of Tax Appeals (CTA) is categorically described as a court of record, thus, as cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases.[4] Consequently, it is the function of this Court to review factual issues and examine, evaluate or weigh the probative value of the evidence presented by the parties. The Court is tasked to analyze and weigh all over again the evidence already considered in the proceeding before the Bureau of Internal Revenue (BIR).

It is for this reason that the Court cannot simply rely on the BOI Certification, in the absence of other evidence, to establish that there were actual shipments of goods from the Philippines to a foreign country.

Moreover, in the recent case of *Phil. Gold Processing & Refining Corporation*[5], the Court *En Banc* emphasized that a BOI Certification alone is insufficient to prove sales for a particular period, to wit:

> "We find that mere BOI Certification alone is insufficient to prove export sales.

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[3] Docket, vol. II, pp. 992-993.

[4] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, 729 SCRA 113; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014, 736 SCRA 609.

[5] CTA EB Case No. 1192 (CTA Case No. 8301), January 4, 2016.

Article 23 of Executive Order No. 226, otherwise known as the 'Omnibus Investments Code of 1997' defined export sales as follows:

> *'Article 23. 'Export sales' shall mean the Philippine port F.O.B. value,* ***determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported*** *directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same:* ***Provided, That sales of export products*** *to another producer or to an export trader* ***shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents:*** *Provided, further, That without actual exportation the following shall be considered constructively exported for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: Provided, further, That export sales of registered export trader may include commission income: and Provided, finally, That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.*

Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government and paid for in convertible foreign currency inwardly remitted through the Philippine banking systems shall also be considered export sales.'

Evidently, export sales are determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported and that sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents. In the case of Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, the Supreme Court had occasion to rule on the documentary evidences to prove export sales, to wit:

'In this connection, petitioner, ***in order to prove that it was engaged in export sales during the second quarter of 1998, offered in evidence copies of summary of export sales, sales invoices, official receipts, airway bills, export declarations and certification of inward remittances during the said period****. In addition, petitioners Certificate of Registration with RDO Control No. 96-540-000713 issued by the BIR and Certificate of Registration No. 95-133 issued by the PEZA were likewise offered in evidence to prove that it is a VAT-registered entity as well as an Ecozone export enterprise.*

To the mind of the Court, these documentary evidence submitted by petitioner, e.g., summary of export sales, sales invoices, official receipts, airway bills and export declarations, prove that it is engaged in the sale and

> ***actual shipment of goods from the Philippines to a foreign country. In short, petitioner is considered engaged in export sales (a zero-rated transaction) if made by a VAT-registered entity.*** *Moreover, the certification of inward remittances attests to the fact of payment in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP. xxx' (Emphasis supplied)*

Concomitantly, a BOI Certification alone is not sufficient to prove a taxpayer claimant's export sales for a particular period. xxx"

Considering the foregoing, petitioner needs to present other evidence to prove that there were actual shipments of goods from the Philippines to a foreign country.

Petitioner failed to formally offer its additional evidence, and the same are mere photocopies

During the hearing conducted on December 10, 2015[6], petitioner presented its witness Mr. Rodrigo Guardario, its Port Operations Department Head, who identified export documents to prove actual export of its copper concentrates, to wit:

a. Bills of Lading;
b. Export Declarations filed with the Bureau of Customs;
c. Ore Transport Permits issued by the Mines and Geosciences Bureau of the Department of Environment and Natural Resources;
d. Mates Receipts signed by the Captains of the various carriers;
e. Certificates of Loading issued by the Office of the Customs Collector of Cebu, Philippines;
f. Certificates of Weight signed by the Master and Chief Officer of the various carriers; and

[6] Docket, vol. III, pp. 1239-1242.

g. Outward Foreign Manifests signed by the Captains of the various carriers.

While petitioner presented the foregoing documents, the Court notes that petitioner did not formally offer the same and the documents submitted are mere photocopies. Thus, the Court is constrained to disregard the documents, for lack of probative value and being inadmissible in evidence.

Section 34, Rule 132 of the Rules of Court provides that "the court shall consider no evidence which has not been formally offered."

In the case of *Heirs of Serapio Mabborang, et al. vs. Hermogenes Mabborang and Benjamin Mabborang*[7], the Supreme Court discussed the significance and purpose of formal offer of evidence, to wit:

> "Section 34, Rule 132 of the Rules of Court provides that 'the court shall consider no evidence which has not been formally offered.' This is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. Also, it allows opposing parties to examine the evidence and object to its admissibility. A formal offer is necessary because judges are mandated to rest their findings of facts and judgment strictly and only upon the evidence offered by the parties at trial. Consequently, review by the appellate court is facilitated for it will not be required to review documents not previously scrutinized by the trial court. Hence, <u>strict adherence to this basic procedural rule is required, lest evidence cannot be assigned any evidentiary weight or value</u>:
>
> > **Thus, the trial court is bound to consider only the testimonial evidence presented and exclude the documents not offered. Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence cannot**

[7] G.R. No. 182805, April 22, 2015.

> **in any manner be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value.** It must be stressed that there is a significant distinction between identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while the latter is done only when the party rests its case. 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. **It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected**." (*Underlining ours*)

Although the rule admits an exception, petitioner's claim would still fail considering that not only did petitioner fail to formally offer the subject documents, it also failed to submit the originals thereof.

Best evidence rule applies

Under the best evidence rule, when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself.[8]

In the case of *Philippine Banking Corporation vs. Court of Appeals and Leonilo Marcos*[9], the Supreme Court held that:

> "The Best Evidence Rule provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had. Absent a clear showing that the original writing has been lost, destroyed or cannot be produced in court, the photocopy must be disregarded, being unworthy of any probative value and

[8] Section 3, Rule 130 of the Rules of Court.
[9] G.R. No. 127469, January 15, 2004, 419 SCRA 487.

> being an inadmissible piece of evidence." (*Underlining ours*)

In the case of *MCMP Construction Corp. vs. Monark Equipment Corp.,*[10] the Supreme Court provided the requirements before a party may present secondary evidence to prove the contents of the original document whenever the original has been lost:

> "Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents."

However, in this case, petitioner failed to satisfy the requirements for the introduction of secondary evidence. It did not provide a plausible reason as to why the originals of the documents presented could not be produced before the court. Thus, the Court cannot give any evidentiary weight to the documents presented.

While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. Unless substantial justice dictates that procedural rules be relaxed to arrive at a just disposition of a case, there shall be no liberality in the interpretation and application of the rules.[11]

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision.

Wherefore, premises considered, petitioner's **Motion for Reconsideration (of the Decision dated 30 June 2015)** is **DENIED** for lack of merit.

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[10] G.R. No. 201001, November 10, 2014, 739 SCRA 432.

[11] *Heirs of Serapio Mabborang, et al. vs. Hermogenes Mabborang and Benjamin Mabborang,* G.R. No. 182805, April 22, 2015.

SO ORDERED.

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

WE CONCUR:

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice