REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CARMEN COPPER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1461
(CTA Case No. 8418)

Present:

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

Promulgated:

JUN 06 2018 2:09 p.m.

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RESOLUTION

Fabon-Victorino, J.:

Before the Court *En Banc* is the *Motion for Reconsideration*[1] filed by petitioner via registered mail on December 21, 2017, assailing the November 16, 2017 Decision[2] which denied its Petition for Review for lack of merit. The assailed Decision sustained the ruling of the Court in Division denying petitioner's claim for refund of its alleged excess and unutilized input value-added tax (VAT) paid on importation of capital goods attributable to its zero-rated sales for taxable year (TY) 2010 amounting to ₱65,329,954.52.

[1] *En Banc* docket, pp. 188-200.
[2] *En Banc* docket, pp. 145-160.

In its plea for reconsideration, petitioner reiterates that contrary to the ruling of the Court *En Banc*, it was able to sufficiently prove, through the Board of Investments (BOI) Certification it presented, the actual export of its products for the period covering January 1, 2010 to December 31, 2010. Petitioner explained that applicants for BOI Certification are required to submit a duly signed and notarized Detailed Export Sales Report for the relevant year. This Detailed Export Sales Report covers the schedule showing the export invoice number, export declaration number, Airway Bill/Bill of Lading Number and Date, product exported, sales volume and value. Petitioner believes that the BOI would not have the required information for input in the BOI Certification had it not reviewed and ascertained the completeness and veracity of the documents it submitted for purposes of the application for certification. Citing the case of *Republic v. Far East Enterprises, Inc.*[3], petitioner submits that the findings of the BOI for the purpose of its issuance of the Certification are findings of facts, which must be respected by the Court.

Again, contrary to the ruling of the Court, petitioner claims that it formally offered the additional documentary evidence it presented consisting of various export documents during the presentation of its Port Operations Department head Rodrigo B. Guardario, who duly identified them in support of its *Motion for Reconsideration* and to prove the sufficiency of the BOI Certification.

Even assuming that it did not formally offer the said documents, the Supreme Court has allegedly ruled that documents not previously offered in evidence may be admitted as part of a party's evidence if the same had been duly identified in the testimony duly recorded; and the evidence must have been incorporated in the record of the case. According to petitioner, the various bills of lading and other documents proving its actual export of copper concentrates for TY 2010 were identified by witness Guardario, whose testimony was duly recorded, and that the said bills of lading and other documents were incorporated in the record of the case as attachments to the *Motion for Reconsideration* and the *Judicial Affidavit* of Guardario.

[3] G.R. No. 176487, August 25, 2009.

Finally, petitioner contends that the certified true copies of the bills of lading comply with the Best Evidence Rule since their originals were submitted to the banks of the buyers for the banks to release the letters of credit to it. The submission of these certified true copies is justified as the originals thereof cannot be produced in court without bad faith on its part. Besides, respondent did not object to the presentation and admission of the certified true copies of the bills of lading.

In his Opposition[4] to petitioner's motion, respondent invokes the precept that tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. He points out that the taxpayer must present convincing evidence to substantiate a claim for tax refund. Thus, he agrees with the Court's ruling that "*the presentation of the Certification from the Board of Investments dated January 14, 2011, certifying that 100% of petitioner's sales volume/value for calendar year 2010 were by way of exports does not sufficiently meet the requirements of the law that there must be actual shipment of the goods from the Philippines to a foreign country*".

Moreover, the export documents cited by petitioner must be denied admission for they were not formally offered and were mere photocopies.

Petitioner's Motion for Reconsideration utterly lacks merit, hence, must be denied.

A thorough review of the assailed Decision of November 16, 2017 shows that petitioner merely reiterated its previous arguments in its *Motion for Reconsideration.* All the basic issues raised in the Motion have been determined and passed upon, first by the Court in Division and subsequently on appeal by the Court *En Banc*. There are no substantial arguments raised to warrant a deviation, let alone a reversal from the Court's ruling in the assailed Decision of November 16, 2017.

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[4] *En Banc* Docket, pp. 206-212.

It must be noted that petitioner was even given a second chance to prove its case when the Court in Division allowed the reopening of the case for the presentation of additional documents to sufficiently prove its actual shipments of good from the Philippines to a foreign country. Petitioner however fell into complacency, forgetting the need to formally offer the documents presented by its witness which in the first place were mere photocopies of the alleged bills of lading of the subject shipments.

Section 34 of Rule 132 of the Rules of Court explicitly directs the Court to consider in the resolution of the case or incident only exhibits formally offered in evidence. Precisely, party-litigants are required to formally offer their evidence and cite their purpose or purposes not only for the appreciation and evaluation of the Court but also to allow the adverse party to interpose objection/comment thereon. It has been ruled that strict adherence to the rule is not a trivial matter.

In the case of *Dizon v. CTA,*[5] the Supreme Court discussed the essence of formal offer of evidence in deciding a case on the merit and ruled that failure to comply with the rule on admissibility of evidence is fatal to the party's cause. To emphasize its import, the Supreme Court quoted the relevant portion of the ruling in the case of *Heirs of Pedro Pasag v. Parocha*,[6] thus:

> A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.

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[5] 576 Phil. 111, 128 (2008).
[6] 550 Phil. 571 (2007).

> Strict adherence to the said rule is not a trivial matter. The Court in Constantino v. Court of Appeals ruled that the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would "condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice."
>
> Applying the aforementioned principle in this case, we find that the trial court had reasonable ground to consider that petitioners had waived their right to make a formal offer of documentary or object evidence. Despite several extensions of time to make their formal offer, petitioners failed to comply with their commitment and allowed almost five months to lapse before finally submitting it. Petitioners' failure to comply with the rule on admissibility of evidence is anathema to the efficient, effective, and expeditious dispensation of justice.

WHEREFORE, the *Motion for Reconsideration* filed by petitioner Carmen Copper Corporation is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

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

(On Leave)

MA. BELEN RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice