REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHIL. GOLD PROCESSING AND REFINING CORP., *Petitioner,*	CTA EB No. 1278 (CTA CASE Nos. 8542 & 8577)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 04 2017 1:28 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves petitioner's "Motion for Reconsideration" of the Decision dated October 3, 2016 of this Court En Banc, the dispositive portion of which states:

> "**WHEREFORE**, premises considered, the instant petition for Review is hereby **DISMISSED** for lack of merit.
>
> **SO ORDERED.**"

Petitioner avers that Section 106(A)(2)(a)(1), Section 113(A)(1), (B)(1), and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-2005 do not particularly identify that actual shipments of the purchased ores may only be proven solely by export declarations, bills of lading and airway bills.

Petitioner insists that the Export Schedules[1] it submitted before the Court readily provides the following:

(1) Invoice Numbers;
(2) Airway Bill of the buyer;
(3) Date of the Bill of Lading; and
(4) Date of remittance.

Based on the foregoing, petitioner explains that not only does the information contained in the Export Schedules clearly record and support the fact of actual sales paid for in foreign currency in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), but it also shows proof of actual shipments of goods of the petitioner for the pertinent taxable periods.

Likewise, the petitioner asserts that the Certification[2] issued by Hongkong and Shanghai Banking Corporation (HSBC) serves as proof that the inward remittances from its buyers were made and credited to the HSBC account of petitioner. Hence, it is an acknowledgment by the buyers that they have received the shipment of goods from petitioner.

In sum, it is submitted by petitioner that it was able to substantiate its claim for refund or issuance of tax credit certificate of its unutilized/ excess input Value Added Tax (VAT) for the 3rd and 4th quarters of Fiscal Year 2010.

The Court is not persuaded.

We have carefully perused petitioner's Motion for Reconsideration and find the same bereft of merit. The issues and arguments raised in said motion had already been sufficiently passed upon and fully discussed not only by the Second Division's Decision dated November 11, 2014 and Resolution dated February 16, 2015 but also by this Court En Banc's Decision dated October 3, 2016.

It is undisputed that petitioner is a VAT-registered entity. Nonetheless, while petitioner proffered before the Court documents such as sales invoices, official receipts, schedules of export sales, and the HSBC Certification,

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[1] Exhibits "BB" to "BB-1", Division Docket, pp. 873-894.
[2] Exhibit "DD", Division Docket, p.895.

proving its receipt of foreign currency remittances, it does not prove **actual** shipment of the goods.

Section 106(A)(2)(a)(1)[3] of the NIRC of 1997, as amended, mandates that the goods be **physically shipped out** of the Philippines to a foreign country, which can be proven through the presentation of corresponding export declarations, and bills of lading or airway bills.

Contrary to what petitioner asserts, the Schedules of Export Sales are not sufficient to prove the actual shipment of goods from the Philippines to a foreign country. As the description of the document suggests, it is a mere schedule and does not prove the fact of actual shipment of goods. While it is true that the schedule contains the information specified above, it is still necessary for petitioner to attach the source document from which the entries were based from in order for the Court to verify the accuracy of these entries.

In the same vein, the HSBC Certification is also not sufficient evidence to prove that petitioner's sales are export sales and that there was actual shipment of goods from the Philippines to a foreign country. The issue is no longer novel since several pronouncements by this Court involving the same parties, but pertaining only to different periods, have already been resolved, in CTA Case No. 8270[4], affirmed by the CTA En Banc in CTA EB No. 1082[5], to wit:

> "In the instant case, this Court finds that the BOI Certification for VAT zero-rating issued

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[3] **SEC. 106. Value-Added Tax on Sale of Goods and Properties.** -

xxx xxx xxx

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

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

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangements that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

[4] PhiL Gold Processing & Refining Corp. vs. Commissioner if Internal Revenue, CTA Case No. 8270, Resolution dated September 26, 2013.

[5] PhiL Gold Processing & Refining Corp. vs. Commissioner if Internal Revenue, CTA EB No. 1082, November 26, 2014.

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in favor of petitioner is not sufficient evidence to prove that it exported 100% of its total sales. The pertinent portion of the BOI Certification reads:

> "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, xxx
>
> xxx xxx xxx
>
> 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 actions that may be warranted under the premises."

Based on the foregoing, it is clear that the BOI Certification itself is not sufficient to prove that there was actual shipment of petitioner's goods from the Philippines to the foreign country as the **information contained therein originally came from petitioner through its affidavit and sales performance. Thus, it is merely self-serving and the presumption of regularity in the performance of BOI's duty in issuing the said certification cannot be applied in this case**." (Emphasis supplied)

Considering that petitioner failed to present any of the said export documents mandated under the law, it therefore warrants the dismissal of its claim for refund or issuance of tax credit certificate.

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In sum, the Court En Banc found no new substantial argument was raised to merit reconsideration of our Decision promulgated on October 3, 2016.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice