REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1362 (CTA CASE Nos. 8528 & 8576)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
FILMINERA RESOURCES CORPORATION, *Respondent.*	Promulgated: NOV 16 2017 9:12 a.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution is a Motion for Reconsideration filed by petitioner Commissioner of Internal Revenue (CIR) seeking the reversal of the Decision[1] dated March 29, 2017, which denied the Petition for Review for lack of merit. After notice, respondent Filminera Resources Corporation filed its comment on August 9, 2017.

Petitioner, in his motion, once again argues that respondent failed to prove that its sales are zero-rated as contemplated under the law. He further assails that no evidence was presented to show that indeed Philippine Gold Processing and Refining Corporation (PGPRC) exports 100% of its processed gold and silver ore. To petitioner, the BOI Certification, aside from it being a forgotten evidence, is not

[1] En Banc Docket, pp. 165-204.

sufficient enough to support its claim for refund. Petitioner insists that proof of actual shipment or exportation of PGPRC's products must be adduced for that purpose.

At the outset, the Court deems it necessary to discuss the re-opening of the trial and subsequent admission of the BOI Certification even after the parties have already rested its case.

The issue is no longer novel. In the recent case of *CIR v. De La Salle University, Inc. /De La Salle University, Inc., v. CIR,*[2] 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 offered by DLSU.
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> The Commissioner objects to the CTA Decision's admission of DLSU's supplemental pieces of documentary evidence.
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> 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.
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> ***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 supplemental evidence; and (2) the CTA is not governed strictly by the technical rules of evidence.*** (Emphasis supplied)
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> First, the failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.

[2] G.R. Nos. 196596, 198841 and 198941 , November 9, 2016.

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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 promptly object had no bearing on the materiality or sufficiency of the 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.

xxx xxx xxx"

The BOI Certification, which respondent sought to present and offer in evidence, is a very vital piece of evidence that could prove its entitlement to the claim for refund.

This Court have repeatedly 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[3].

Under the premises, the Court in Division did not err in allowing the reopening of trial to give respondent an opportunity to present and offer the BOI Certification in evidence.

Anent the sufficiency of the BOI Certification as proof of whether PGPRC is indeed a 100% exporter, petitioner points out that the BIR's ruling 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. Thus, the *caveat* that if upon investigation it will be disclosed that the facts are different from that of PGPRC's representations, the ruling shall be considered void.

In Section 3 of Revenue Memorandum Order No. 9-0029 (RMO No. 9-00) dated February 2, 2000, the Bureau of Internal Revenue enumerated the requirements for the zero-rating of sales by a VAT taxpayer to a BOI registered exporter, thus:

> "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:
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> (1) The supplier must be VAT -registered;

[3] BPI-Family Savings Bank v. Court of Appeals, G.R. No. 122480. April 12, 2000.

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(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 Sec.4.108-1(5) of Revenue Regulations No.7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

Relatively thereto, Section 4.106-5 of Revenue Regulations (RR) No. 16-2005 provides as follows:

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

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> 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 supplied).
>
> xxx xxx xxx"

In the present case, respondent was able to present a Certification issued by the BOI dated January 27, 2010 attesting to the fact that respondent is a BOI registered entity; and, that, the latter "exported 100% of its total sales volume/value" for the period January 1 to December 31, 2009.

In this regard, the BOI is the government agency tasked to determine the status or standing of PGPRC as a BOI-accredited/registered entity. Notably, jurisprudence dictate that acts of government officials enjoy the presumption of regularity, and that presumption may be overthrown only by evidence to the contrary.

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***[4]. This presumption is enjoyed by public officials in all genre of cases where the public official is being made to answer for administrative, civil or criminal liability. Further, the rule is, he who alleges, not he who denies, must

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[4] Prudencio M. Reyes, Jr. v. Simplicio C. Belisario and Emmanuel S. Malicdem, G.R. No. 154652, August 14, 2009, *citing* People V. Jolliffe, G.R. No. L-9553, May 13, 1959.

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prove[5]. 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.

On these bases, the Court finds no reason to reverse or modify the assailed Decision. These arguments raised by respondent have been addressed and discussed dated March 29, 2017.

To reiterate, with the formal offer and admission into evidence of the BOI Certification that PGPRC exported 100% of its total sales volume, respondent's sales thus qualify for VAT zero-rating under the law.

WHEREFORE, premises considered, the Commissioner of Internal Revenue's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(I maintain my 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

[5] Equitable Banking Corporation (Now Known As Equitable-Pel Bank) vs. Ricardo Sadac, G.R No. 164772, June 08, 2006.

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I maintain my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice