REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHIL. GOLD PROCESSING & REFINING CORP.,
Petitioner,

- *versus* –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1599
(CTA Case No. 8697)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:

JUL 09 2018 1:33 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

For resolution of the Court *En Banc* is petitioner Phil. Gold Processing & Refining Corp.'s *Motion for Reconsideration*[1] filed on March 8, 2018. Petitioner's *Motion* seeks reconsideration of the Decision of the Court *En Banc* promulgated on January 31, 2018,[2] (the "assailed Decision") affirming the judgment of the Third Division of this Court ("Court in Division") in CTA Case No. 8697. The dispositive portion of the assailed Decision reads:

[1] Court *En Banc*'s Docket, pp. 109-117.
[2] *Id.*, pp. 98-108.

> "**WHEREFORE**, the present Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated September 1, 2016 and Resolution dated January 31, 2017 of the Third Division of this Court in CTA Case No. 8697 are **AFFIRMED**.
>
> **SO ORDERED.**"

In praying for the reconsideration of the assailed Decision, petitioner avers that: (1) when the Court in Division affirmed the fact of sale, it necessarily affirmed the fact that goods were actually shipped to foreign buyers;[3] (2) this Court mistakenly requires separate proof of the fact of actual shipment of goods;[4] (3) this Court failed to lend any credence to petitioner's export schedules even if they readily referenced the name of the buyer, airway bill (AWB) of the buyer, lading date, and date of remittance;[5] (4) this Court overlooked the absence of any provision in the National Internal Revenue Code identifying what specific documents prove the fact of actual shipment of goods;[6] and (5) save for the lack of export documents, this Court determined that petitioner substantiated its claim for refund for the pertinent taxable quarters.[7]

On the other hand, the Commissioner of Internal Revenue failed to file his Comment on petitioner's *Motion* despite notice, as per the Records Verification report issued by the Judicial Records Division of this Court dated May 16, 2018.[8] Considering the failure of respondent Commissioner of Internal Revenue to file his Comment on the *Motion* as required, the Court *En Banc* deemed petitioner's *Motion* as submitted for resolution in a Minute Resolution dated May 21, 2018.[9]

The Court *En Banc* resolves to deny petitioner's *Motion* for lack of merit.

A closer evaluation of the case records and the arguments raised by petitioner in its *Motion* reveals that the arguments relied upon are, indeed, mere rehash of the matters which had been thoroughly discussed and passed upon by the Court *En Banc* in the assailed Decision. Petitioner failed to raise any new or substantial matter let alone any compelling reason to warrant the modification much less reversal of the Court *En Banc*'s findings. yc

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[3] *Id.*, p. 109.
[4] *Id.*, p. 110.
[5] *Id.*, p. 111.
[6] *Id.*
[7] *Id.*, p. 113.
[8] *Id.*, p. 121.
[9] *Id.*, p. 122.

The Court *En Banc* maintains its stand that nowhere in the Decision or Resolution of the Court in Division was it indicated that the fact of sale established by the documents presented by petitioner is a fully consummated one, at least as far as petitioner is concerned. While the documents presented by petitioner had established that a sale was entered into, and that the foreign buyers already made payment, the same do not necessarily prove that petitioner has already fulfilled its end of the sale transaction, *i.e.*, the actual shipment of the goods sold. The Court *En Banc* likewise pointed out in the assailed Decision that it is precisely for the above reason that the Court in Division requires the presentation of the export documents such as the export declarations and the bills of lading or airway bills.

The Court *En Banc* also adheres to its ruling that Section 106(A)(2)(a)(1) of the National Internal Revenue Code of 1997, as amended, categorically demands proof of actual shipment of goods to a foreign country apart from the proof of the fact of sale of such goods. The law would not have specifically required that the actual shipment of goods be distinctly established if proof of such fact could be subsumed by the evidence of the fact of sale. The Court *En Banc* also explained that such proof is required by the Destination Principle and Cross-Border Doctrine underlying the Philippine Value-Added Tax System, as follows:

> "x x x The need to establish the fact of actual shipment of goods before one can avail of VAT zero-rating for export sales is not a trivial matter but is required by the Destination and Cross Border principles underlying the Philippine VAT System. According to the Destination Principle, goods and services are taxed only in the country where they are consumed. Thus, exports are zero-rated while imports are taxed. Similarly, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority. Accordingly, there is no basis for the grant of VAT zero-rating if there is no proof that the goods were actually shipped abroad." *(Citations omitted)*

The Court *En Banc* likewise stands by its position against petitioner's contentions that: (1) the Court in Division overlooked the absence of any provision in the 1997 NIRC identifying what specific documents prove the fact of actual shipment of goods; and (2) in the absence of specific identification by the legislature, the BIR, and the Supreme Court that export sales can only be proven by the presentation of export declarations, bills of lading, and airway bills, this Court may not insist on the presentation of the said documents as exclusive proof of actual shipment of goods. *JC*

The Court *En Banc* already explained its position on these matters in the assailed Decision. Thus, there is no need to belabor the same again. Suffice it to quote here the relevant discussion in the assailed Decision, to wit:

> "At the outset, contrary to petitioner's claim, it must be pointed out that the Supreme Court in *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* categorically identified export documents such as export declarations and airway bills as sufficient proof of actual shipment of goods from the Philippines to a foreign country. According to the Supreme Court:
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> '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**.' *(Emphasis supplied)*
>
> While it may be argued that the above pronouncement by the Supreme Court in *Intel* did not exclusively limit proof of actual shipment to export declarations, airway bills, or bills of lading only and that there *may* be other documents which *may* sufficiently prove that the goods were actually shipped to a foreign country, it still does not negate the reality that the documentary evidence adduced by petitioner before the Court in Division failed to sufficiently establish such fact. What is clear from the abovequoted portion of *Intel* is that export documents such as airway bills and export declarations prove the actual shipment of goods from the Philippines to a foreign country.
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> As correctly found by the Court in Division, the sales invoices, official receipts, HSBC Certification, and the Consolidated Cash Statement coming from BNP Paribas Corporate and Investment Banking that petitioner presented merely established the fact of sale of goods and receipt of the corresponding foreign currency remittances. Neither can the Export Schedules be given probative value for the purpose of proving actual shipment considering the failure of petitioner to present the source documents upon which the entries in the said schedules were based. Without the source documents, the Court cannot verify the veracity of the entries as contained in the said schedules." *(Citations omitted)*

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice