REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

PHILEX MINING CORPORATION,
Respondent.

CTA *EB* NO. 1296
(CTA Case Nos. 7933 & 7968)

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

Promulgated:

NOV 04 2016 3:05 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is the Motion for Reconsideration filed by petitioner on August 24, 2016; with respondent's Opposition/Comment (Motion for Reconsideration) (Decision of July 21, 2016) filed on September 8, 2016.

On July 21, 2016, the Court promulgated a Decision, the dispositive portion thereof reads as follows:

> **WHEREFORE**, premises considered, the Petition for Review filed by petitioner is hereby **DENIED.** The Court *En Banc* hereby **AFFIRMS *IN TOTO*** the Decision of the Special Second Division dated January 21, 2015, as well as its Resolution dated March 25, 2015.

SO ORDERED.

In the above Decision, the Court *En Banc* held that the Special Second Division of the Court ("Court in Division") correctly ruled that respondent complied with the third requisite of *Revenue Regulations ("RR") No. 16-2005*; and noted that the Court in Division identified the existence of the required documents - certificate of inward remittances issued by local banks and pages of the passbooks – to prove that respondent's export sales were paid for in US dollars, an acceptable foreign currency, and accounted for in accordance with BSP rules. The Court *En Banc* likewise pointed out that nowhere in the provisions of the *1997 NIRC* and *RR No. 16-2005* is the condition to "submit relevant documents necessary to substantiate its alleged receivables, repayment of loan payable, and bank charges;" and to supplement a fifth condition is to read into the clear words of the law an additional condition that its literal wording does not support.

The Court *En Banc* also ruled that the Court in Division was right in partially granting respondent's claim for tax refund/credit of alleged unutilized input VAT for the second and third quarters of taxable year 2007.

Finding no reversible error, the Court *En Banc* affirmed the assailed Decision dated January 21, 2015 and Resolution dated March 25, 2015 of the Court in Division.

In petitioner's Motion for Reconsideration, he avers that respondent failed to comply with the third requisite of *RR No. 16-05*, *i.e.*, the non-submission of bank credit advice, certificate of bank remittance, or any other document evidencing payment for the goods in acceptable foreign currency or its equivalent in goods and services; and that the Court erred when it partially granted respondent's claim for tax credit/refund of alleged input VAT for the second and third quarters of 2007.

In respondent's Opposition/Comment, it pointed out that petitioner is raising the same arguments which were already passed upon by the Court *En Banc* in its Decision.

The Court *En Banc* finds no merit in petitioner's Motion for Reconsideration.

A perusal of the contents of petitioner's Motion for Reconsideration shows that the grounds raised therein are the exact same ones found in his Memorandum. Reproduced hereunder are petitioner's arguments in his Memorandum, as appearing in the July 21, 2016 Decision:

> ***The Arguments of the CIR***
>
> According to the CIR, the Court in Division erred twice in the *Assailed Decision* dated January 21, 2015, to wit: *(1)* when it ruled that the evidence submitted by PMC, particularly the certificate of inward remittances and pages of the bank passbooks, in relation to the Provisional/Final Sales Invoices were sufficient to satisfy the third requisite of *RR No. 16-2005*; and *(2)* when it ruled to partially grant PMC's claim for tax refund or credit of alleged unutilized input VAT for the second and third quarters of taxable year 2007.
>
> Concerning the first instance, the CIR alleges that PMC failed to comply with the third requisite of *RR No. 16-2005, viz.*, the existence of bank credit advice, certificate of bank remittance, or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services, in order for it to claim VAT zero-rated direct export sales; that PMC failed to submit or present relevant documents to substantiate its alleged receivables, payment of loan payable, and bank charges; that due to PMC's failure to submit the aforementioned documents, she cannot determine whether the remittances actually pertained to the alleged zero-rated sales for the quarters covered in the present claim; and that PMC failed to comply with the conditions or requirements during an audit/verification of administrative claims, in accordance with *Item III RMC No. 29-2009.*
>
> In view of the foregoing allegations, it is the CIR's position that the Court *En Banc* order the reversal of the January 21, 2015 Assailed Decision and the March 25, 2015 Assailed Resolution.

These arguments have been comprehensively passed upon and refuted in the Decision dated July 21, 2016. Hence, the Court finds no cogent reason to reverse its Decision.

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

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
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