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. 1670
(CTA Case No. 8763)

Present:

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

Promulgated:

MAY 07 2018 1:55 p.m.

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D E C I S I O N

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by the Phil. Gold Processing & Refining Corp. on July 3, 2017 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2], which prays for the reversal of the February 15, 2017 *Decision*[3] and May 25, 2017 *Resolution,*[4] promulgated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 8763, entitled "*Phil. Gold Processing & Refining Corp vs. Commissioner of Internal Revenue,*" and the issuance of a new decision instead.

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[1] *Rollo,* CTA EB No. 1670, pp. 5-23.

[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

[3] *Rollo,* pp. 25-42.

[4] *Rollo,* pp. 43-47.

The dispositive portions of the assailed Decision and Resolution read:

Decision[5] dated February 15, 2017:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED**."

Resolution[6] dated May 25, 2017:

> "**WHEREFORE**, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Decision dated February 15, 2017 is **AFFIRMED** and **UPHELD**.
>
> **SO ORDERED**."

The Facts

Petitioner is a domestic corporation duly organized in accordance with Philippine laws, with the primary purpose of engaging in the business of processing, milling, crushing, refining, smelting, concentrating, amalgamating and beneficiating mineral resources, and the products or by-products thereof, of every kind and description and whatsoever process, method or mode in which such activities can carried out; and in conjunction with the foregoing, to build, construct, operate, purchase, lease or otherwise acquire such processing, milling, refining, and beneficiating, plants, machinery, tools and other equipment, whatsoever, which are necessary and incidental in carrying out the foregoing purpose, and to carry on the business of preparing for market, buying, selling, at wholesale, and exchanging mineral resources and the products or by products thereof.[7]

Further, it is a Value-Added Tax (VAT) registered entity with TIN No. 004-498-686-000 and a Certificate of Registration No. OCN 8RC0000036156 issued on July 9, 2012, Since March 15, 1996, it has been registered with the Board of

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.
[7] *Rollo*, Decision dated February 15, 2017, p. 26.

Investments (BOI) on a non-pioneer status as a New Producer of Gold and Silver *Doré*.[8]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with the power and authority to perform the duties of his office, including among others, the duty to act and approve claims for refund or tax credit as provided by law.[9]

On February 7, 2008, petitioner was issued a BOI Certificate of Registration No. 2008-042.[10]

On July 24, 2012, it filed its Quarterly VAT Return or BIR Form No. 2550-Q for the fourth quarter (April 1 to June 30, 2012) of Fiscal Year (FY) 2012, reflecting the amounts of Php29,136,415.95 as Total Available Input Tax, Php23,432,701.00 as VAT Refund/TCC Claimed and the remaining Php5,703,714.95 as VAT Overpayment.[11]

On February 8, 2013, petitioner filed its Amended Quarterly VAT Return or BIR Form No. 2550-Q for the Third Quarter (January 1 to March 31, 2012) of FY 2012, reflecting the amounts of Php41,044,089.07 as Total Available Input Tax, Php35,340,374.12 as VAT refund/TCC Claimed and the remaining Php5,703,714.95 as VAT Overpayment.

On September 18, 2013 petitioner filed its Applications for Tax Credits/Refunds or BIR Form No. 1914, asking specifically for TCCs covering the periods January 1, 2012 to March 31, 2012 and April 1, 2012 to June 30, 2012, in the amounts of Php35,340,374.12 and Php23,432,701.00, respectively, based on Section 112 of the 1997 National Internal Revenue Code (NIRC), as amended, and Section 4.112 of Revenue Regulations No. 16-05.[12]

On February 11, 2014, petitioner filed his judicial claim in this Court.[13] After the trial of the case, the Court in Division ruled against the petitioner under the Decision dated February 15, 2017 (assailed decision) for insufficiency of evidence.

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[8] *Rollo*, Decision dated February 15, 2017, pp 26-27.
[9] *Id.* at 27.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*

Petitioner then moved for the reconsideration of the assailed decision but was again denied for lack of merit under Resolution dated May 25, 2017.

On July 3, 2017, after the Court *En Banc* granted[14] its motion for extension of time to file the instant petition for review,[15] petitioner elevated the case and appealed the adverse ruling on the said assailed decision and resolution.

On September 20, 2017,[16] the court gave due course to the instant petition after the respondent failed[17] to submit his comment despite due notice.[18] Both parties were required by the court to submit its respective memoranda.

Petitioner submitted its Memorandum[19] on November 3, 2017 while the respondent submitted its Memorandum[20] on November 9, 2017.

On December 6, 2017, this Court, after the parties submitted their respective memoranda, declared that the instant case is deemed submitted for decision

The Issue

Whether or not petitioner is entitled to a refund or issuance of tax credit certificate for its alleged unutilized input VAT for the 3rd and 4th quarters of FY 2012.

Arguments of Petitioner[21]

Petitioner interposed the following errors or arguments in the instant petition:

1. The principle of *Strictissimi Juris* should not be interpreted as to require more than substantial proof;

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[14] *Rollo*, Minute Resolution dated June 20, 2017, p. 4.
[15] *Rollo* at pp. 1-3.
[16] *Rollo*, Resolution dated September 20, 2017, pp. 49-50.
[17] *Rollo*, Records Verification, p. 51.
[18] *Rollo*, Notice of Resolution dated July 20, 2017, p. 48-A.
[19] *Rollo* at 55-70.
[20] *Rollo* at 71-78.
[21] *Supra.*, Note 19.

2. The Honorable CTA failed to cite any legal basis to support its assertion that Actual Shipment of goods to a foreign buyer can be proven only by the presentation of specific export documents, specifically export declarations, airway bills, and bills of lading;

3. The Honorable CTA failed to appreciate that the fact of sale, as proven by the inward remittances, proves that there was actual shipment of goods to a foreign buyer; and

4. The Honorable CTA committed a grave error when it denied petitioner's claim for tax refund and/or issuance of tax credit certificate for the unutilized and/or unapplied input VAT for the 3rd and 4th quarters of FY 2012, on the ground of insufficiency of evidence, even if the BOI Certification, coupled with the proof of inward remittances and the summary of export sales, confirmed the fact that petitioner exported 100% of its gold and silver doré.

Arguments of Respondent[22]

On the other hand, respondent argues that the Honorable Court correctly ruled that petitioner is not entitled to the issuance of tax credit certificate due to insufficiency of evidence.

Ruling of the Court *En Banc*

Tax refund is in the nature of tax exemption which is not favored and is never presumed

Petitioner argues that this Court should not have interpreted the principle of *strictissimi juris* as imposing a higher burden of proof upon a taxpayer in a claim for tax refund which is a civil case, more specifically, by requiring the presentation of specific export documents to prove actual shipment of goods to foreign buyers. *ern*

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[22] *Supra.*, Note 20.

It can be recalled that the assailed decision ruled that tax refunds, being in the nature of tax exemptions, are construed *strictissimi juris* against the taxpayer and liberally in favor of the government, hence, the claimant has the burden to prove the factual basis of such claim for refund or tax credit. In the instant case, petitioner must prove not only the entitlement to such claim but also compliance with all the documentary and evidentiary requirements.

The ruling of the Court in Division has basis not only in law but as well as in our jurisprudence. The abovementioned ruling was also the same ruling of the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,*[23] to wit:

> Clearly, it would not be proper to allow Atlas to simply prevail and compel a tax credit or refund in the amount it claims without proving the amount of its claim. After all, "[t]ax refunds are in the nature of tax exemptions," and are to be construed *strictissimi juris* against the taxpayer.

The strictness of such doctrine against tax exemptions, which is the nature of tax refunds, was thoroughly explained in the case of *Commissioner of Internal Revenue v. A.D. Guerrero, Special Administrator, in substitution of Nathaniel I. Gunn, as Administrator of the Estate of the late Paul I. Gunn,*[24] to wit:

> From 1906, in *Catholic Church vs. Hastings*[3] to 1966, in *Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs,* it has been the constant and uniform holding that **exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer.** Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris.* The state of the law on the subject was aptly summarized in the *Esso Standard Eastern, Inc.* case by Justice Sanchez thus: "The drive of petitioner's argument is that marketing of its gasoline product 'is corollary to or incidental to its industrial operations.' But this contention runs smack against the familiar rules that exemption from taxation is not favored, and that exemptions in tax statutes are never presumed. Which are but statements in adherence to the ancient rule that exemptions from taxation are construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing

[23] G.R. No. 159490 dated February 18, 2008.
[24] G.R. No. L-20942 datedSeptember 22, 1967

> authority. Tested by this precept, we cannot indulge in expansive construction and write into the law an exemption not therein set forth. Rather, we go by the reasonable assumption that where the State has granted in express terms certain exemptions, those are the exemptions to be considered, and no more . . . ."
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> In addition to Justice Tracey, who first spoke for this Court in the *Hastings* case in announcing "the cardinal rule of American jurisprudence that exemption from taxation not being favored," and therefore "must be strictly construed" against the taxpayer, two other noted American jurists, Moreland and Street, who likewise served this Court with distinction, reiterated the doctrine in terms even more emphatic. According to Justice Moreland: "Even though the complaint in this regard were well founded, it would have little bearing on the result of the litigation when we take into consideration the universal rule that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be mistaken." From Justice Street: "Exemptions from taxation are highly disfavored, so much so that they may almost be said to be odious to the law. He who claims an exemption must be able to point to some positive provision of law creating the right. It cannot be allowed to exist upon a vague implication such as is supposed to arise in this case from the omission from Act No. 1654 of any reference to liability for tax. The books are full of very strong expressions on this point."
> (*Emphasis supplied*)

Thus, petitioner has the duty and responsibility to prove his allegations through submission of clear and convincing evidence, or evidence which produces in the mind of the trier of fact a firm belief or conviction, or indicates high probability or reasonable certainty,[25] that indeed its sales were made through exportation or its goods were sold and delivered outside the Philippines. However, petitioner failed to do so.

Petitioner, in the second assigned error, argues that the fact of actual shipment of goods is a necessary conclusion after establishing the fact of sale as verified by inward remittances.

Petitioner should be aware, as discussed in the abovementioned cases, that considering tax refunds are in the nature of tax exemptions, it must prove every aspect of its allegations or arguments with certainty. There is no room for

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[25] Evidence, Willard B. Riano, 2009, p. 421; Black's Law Dictionary, Eight Edition, p. 596.

any presumption or assumption of facts to be entitled to such claim for refund.

As discussed by the Court in Division in the assailed decision, petitioner's submission of documents such as sales invoices and certification from Hongkong and Shanghai Banking Corporation (HSBC) do not fully substantiate its alleged export sales for the 3rd and 4th quarters of FY ending June 30, 2012. The Court in Division noted that petitioner failed to submit export documents such as export declarations and bills of lading or airway bills.

Moreover, the foreign currency remittances indicated in the HSBC Certification do not reconcile with those reflected in the invoices issued by petitioner to its clients for the 3rd and 4th quarters of FY ending June 30, 2012. Thus, such failure on the part of petitioner was fatal to its claim, for it cannot be ascertained whether such foreign currency remittances actually pertain to its export sales for the subject period of claim.

Evidence's probative value is the most important in Court's judgment

Petitioner, in its third and fourth assigned error, insisted that this Court failed to appreciate the weight of the Board of Investment's (BOI) Certification which certified that its sales for 3rd and 4th quarters of FY 2012 were 100% export sales.

Petitioner also argues that this Court failed to consider the inward remittances as certified by HSBC which confirm its sales to Metalor Technologies S.A. Refining Corp. in Switzerland, Standard Chartered PLC in Singapore, BNP Paribas in United Kingdom, and West LB, also in the United Kingdom.

In the case of *PNOC Shipping and Transport Corporation v. Honorable Court of Appeals et al.,*[26] the Supreme Court distinguished the admissibility of evidence from its probative value, to wit: *am*

[26] G.R. No. 107518 dated October 08, 1998.

> ...This is a distinction we wish to point out. Admissibility of evidence refers to the question of whether or not the circumstance (or evidence) is to (sic) considered at all. On the other hand, the **probative value of evidence refers to the question of whether or not it proves an issue**... (*Emphasis supplied*)

Now, the question is, what did such BOI Certification and inward remittances prove?

A perusal of said certification marked as Exhibit "P-5"[27] reveals that BOI certified that petitioner is registered with the BOI pursuant to Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.

Further, the information indicated therein as to the alleged 100% export of petitioner's total sales volume/value was based on the affidavit of petitioner that it submitted to the BOI **with a note that such volume/value is subject to post-audit and in the event of any misrepresentation such will be a ground for the cancellation of its BOI registration**.

Nowhere in the said BOI certification did BOI certify that such sales came from petitioner's export activity nor did it have personal knowledge that indeed the sales were all from export transactions. The information was based only on the self-serving document provided by the petitioner.

A close scrutiny of HSBC Certification marked as Exhibit "P-8-jj"[28] evinces that the bank received inward remittances from the named remitter therein and such were credited to petitioner's account. These remittances were wired money transfers.

However, nowhere in the said certification does it state that these money transfers or remittances were payment for the export sales made by the petitioner to those named remitting entities. Nothing was mentioned as to the nature and purpose of the inward remittance that would connect it to the alleged export sale of petitioner.

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[27] Docket, CTA Case No. 8763, Vol. 2, pp. 1128-1129.
[28] Docket, CTA Case No. 8763, Vol. 3, p. 1554.

Thus, both BOI Certification and HSBC Certification did not prove that petitioner's alleged sales came from export activities.

It must be recalled that the assailed decision considered the claim for refund as having been based on Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, or from export sales.

The term "export sales" is defined in the said provision as "the **sale and actual shipment of goods from the Philippines to a foreign country**, irrespective of any shipping arrangement 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 (BSP)."

Thus, the provision requires that there should be an actual shipment of goods from the Philippines to a foreign country and such shipment can only be proven by the airway bill or bill of lading.

In *Aniceto G. Saludo et al. v. Court of Appeals et al.*,[29] the Supreme Court ruled that the airway bill or bill of lading is a receipt of the goods shipped, to wit:

> A **bill of lading is a written acknowledgment of the receipt of the goods** and an agreement to transport and deliver them at a specified place to a person named or on his order. Such instrument may be called a shipping receipt, forwarder's receipt and receipt for transportation. The designation, however, is immaterial. It has been held that freight tickets for bus companies as well as receipts for cargo transported by all forms of transportation, whether by sea or land, fall within the definition. Under the Tariff and Customs Code, a bill of lading includes airway bills of lading. **The two-fold character of a bill of lading is all too familiar; it is a receipt as to the quantity and description of the goods shipped** and a contract to transport the goods to the consignee or other person therein designated, on the terms specified in such instrument. (*Emphasis supplied*)

[29] G.R. No. 95536 dated March 23, 1992.

Further, in the case of *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*,[30] the Supreme Court ruled that inward remittances attest only as to the fact of payment but not as evidence of the actual shipment of goods, to wit:

> ...Moreover, the **certification of inward remittances attests to the fact of payment** "in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *BSP*."... (*Emphasis supplied*)

The bill of lading or airway bill, as the case may be, is the document that will prove petitioner's allegation that the money remitted by the foreign companies through HSBC and credited to its bank account was actually the payment for the goods that petitioner shipped to the said foreign companies. As such, export sale is clearly and convincingly proven. However, petitioner failed to do so in the case at hand.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The February 15, 2017 *Decision*[31] and May 25, 2017 *Resolution*[32] of the CTA Third Division in CTA Case No. 8763, are hereby **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
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

[30] G.R. No. 166732 dated April 27, 2007.
[31] *Supra*, Note 3.
[32] *Supra*, Note 4.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice