Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PHIL. GOLD PROCESSING & REFINING CORP.,
Respondent.

CTA EB No. 1460
(CTA Case No. 8652)

Present:

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

Promulgated:

DEC 07 2017 3:53 p.m.

x- x

DECISION

CASANOVA, *J.*:

This Petition for Review[1] was filed, *via* registered mail, by the Commissioner of Internal Revenue on May 27, 2016 pursuant to Section 2 (a)(1)[2] Rule 4 of A.M. No. 05-11-07-CTA, otherwise known as the "Revised Rules of the Court of Tax Appeals". It assails the Amended Decision[3] dated December 1, 2015 and Resolution[4] dated April 27, 2016,

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[1] CTA *En Banc* Rollo, pp. 6-14.

[2] "**SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;"

[3] Division Docket (Vol. II), pp. 1336-1344.

[4] *Ibid.*, pp. 1363-1368.

rendered by the First Division of the Court of Tax Appeals (CTA) in CTA Case No. 8652, which partially granted Phil. Gold Processing & Refining Corp.'s claim for refund in the aggregate reduced amount of ₱68,143,880.38 representing its unutilized input Value Added Tax (VAT) for the 3rd and 4th quarters of fiscal year (FY) ended June 30, 2011.

Petitioner Commissioner of Internal Revenue (CIR) is the one charged with the administration and enforcement of national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the Tax Code. He holds office at the 4th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Phil. Gold Processing & Refining Corp. is a domestic corporation duly organized and existing under Philippines laws with business address at the 3rd floor Corinthian Plaza, 121 Paseo de Roxas, Legaspi Village, Makati City. It is primarily engaged in the business of processing, milling, crushing, refining, smelting, and concentrating mineral resources for export, more particularly gold and silver doré.

On December 27, 2004, respondent was issued a Certificate of Incorporation by the Securities and Exchange Commission (SEC) under its former name, LFT Processing Corporation. It is registered with the Board of Investments (BOI) under BOI Registration No. 2008-042 dated February 7, 2008 with a status of non-pioneer with pioneer incentives being located in Less Developed Area (LDA). Respondent is, also, a VAT-registered taxpayer under Certificate of Registration OCN 8RC0000036156 dated on March 15, 1996.

On April 20, 2011 and July 25, 2011, respondent, respectively, filed, through the Electronic Filing and Payment System (eFPS), its VAT Returns for the 3rd and 4th quarters of FY ending June 30, 2011. Subsequently, on July 29, 2011, respondent amended and filed its 4th quarter VAT return.

Then, on December 10, 2012, respondent filed its administrative claim for refund, *via* an Application for Tax Credits/Refunds (BIR Form 1914), for the 3rd and 4th quarters of FY ending June 30, 2011 in the amounts of ₱35,530,279.00 and ₱41,414,000.64, respectively, with the BIR's Revenue District Office (RDO) No. 121 – Large Taxpayer Service Excise. On December 13, 2012, respondent completed the submission of all its documentations before the Department of Finance's One Stop Shop (DOF-OSS) Inter Agency Credit and Duty Drawback Center.

Claiming inaction thereof, respondent then elevated the matter, *via* a Petition for Review, to the Court of Tax Appeals (CTA) on May 10, 2013.

Thereafter, trial ensued.

On June 10, 2015, the CTA-Division rendered a Decision[5] denying respondent's claim for refund. The court found that respondent failed to prove that the foreign currency it remitted actually pertains to its alleged export sales for the subject period.

Undaunted, respondent filed, on July 6, 2015, a Motion for Reconsideration of the Decision dated 10 June 2015[6].

On December 1, 2015, an Amended Decision[7] was promulgated. The CTA-Division reconsidered its initial Decision and found partial merit in respondent's Motion, the dispositive portion of the said Amended Decision reads as follows:

> "**WHEREFORE,** *[respondent]*'s Motion for Reconsideration is **PARTIALLY GRANTED.** Accordingly, *[petitioner]* is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of *[respondent]* in the amount of **SIXTY*[-]*EIGHT MILLION ONE HUNDRED FORTY THREE THOUSAND EIGHT HUNDRED EIGHTY PESOS AND 38/100 (₱68,143,880.38)** representing its unutilized input VAT for the period covering January 1, 2011 to June 30, 2011 or the third and fourth quarters of fiscal year ended June 30, 2011.
>
> **SO ORDERED.**"

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[5] *Id.*, pp. 1287-1317.
[6] *Id.*, pp. 1318-1329.
[7] *Supra* No. 3.

Then, on December 17, 2015, petitioner filed, through registered mail, a Motion for Reconsideration (of the Amended Decision dated 01 December 2015)[8]. He prays that the above Amended Decision be set aside and a new one be rendered denying the Petition for Review for lack of merit.

On April 27, 2016, the CTA-Division promulgated the assailed Resolution[9], denying petitioner's Motion for Reconsideration.

Hence, on May 27, 2016, petitioner appealed the case to the Court *En Banc* through the instant Petition for Review[10]. He prays that the Amended Decision dated December 1, 2015 be reversed and set aside, and that a new one be rendered denying respondent's claim for refund in its entirety.

Meanwhile, on July 4, 2016, respondent filed an Entry of Appearance[11] stating that the law firm of Gonzales Batiller Leabres & Reyes with office address as 7th Floor, ALPAP I Building, 140 L.P. Leviste Street, Salcedo Village, Makati City, will be its new counsel for the instant case.

In a Minute Resolution[12] dated July 7, 2016, the CTA *En Banc* noted the appearance of respondent's new counsel. Consequently, the Court *En Banc* ordered that copies of all notices, affidavits, orders, resolutions and other pleadings relative to the instant case be sent directly at its given address.

Thereafter, on July 12, 2016, the Court *En Banc* issued a Resolution[13] directing respondent to file its comment to the Petition for Review within ten (10) days from receipt thereof. Thus, on August 25, 2016 respondent filed its Comment/Opposition (To the Petition for Review dated 23 May 2016)[14].

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[8] Division Docket (Vol. II), pp. 1345-1351.
[9] *Supra* No. 4.
[10] *Supra* No. 1.
[11] CTA *En Banc* Rollo, pp. 43-44.
[12] *Ibid.*, p. 47.
[13] *Id.*, pp. 49-50.
[14] *Id.*, pp. 52-58.

On September 21, 2016, a Resolution[15] was rendered by the Court *En Banc* which gave due course to the instant Petition for Review and, also, granted the parties a period of thirty (30) days within which to file their respective memoranda.

In compliance, respondent filed its Memorandum (Of the Respondent)[16] on October 17, 2016 while petitioner, on the other hand, failed to file his memorandum as per Records Verification[17] dated November 23, 2016.

Accordingly, in a Resolution[18] dated December 13, 2016, the Court *En Banc* deemed the instant case submitted for decision.

The sole issue[19] raised by the petitioner in his Petition is "[w]hether the Honorable First Division of the CTA erred in denying herein Petitioner's Motion for Reconsideration."

In his Petition, petitioner mainly argues that respondent's failure to comply with the invoicing requirements is fatal to its claim for refund. Petitioner insists that respondent violated Section 113 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 4.113-1 of Revenue Regulations (RR) No. 16-05, by not writing or printing prominently the word "zero-rated" on its sales invoice. He continues that, respondent merely rubber-stamped the word "zero-rated" on its official receipts which, therefore, directly violates the requirements of the law and regulation.

On the other hand, respondent asserts that petitioner's arguments are misguided and, therefore, deserves scant consideration. Respondent strongly emphasizes that, no less than the Supreme Court itself, in the case of *Commissioner of Internal Revenue vs. Toledo Power Company*[20], held that stamping of "zero-rated sales" on receipts and invoices is adequate compliance with the requirement of the law since the purpose of the law to segregate zero-rated sales from sales subject to VAT is served.

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[15] *Id.*, pp. 60-61.
[16] *Id.*, pp. 62-74.
[17] *Id.*, p. 75.
[18] *Id.*, pp. 77-78.
[19] Issue, Petition for Review, *Id.*, p. 7.
[20] G.R. No.183880, January 20, 2014.

After due consideration, *We* find no merit in the instant Petition.

Notably, the issue and arguments raised by petitioner in the instant Petition for Review are reiterations of those which he already presented in his Motion for Reconsideration[21] and Memorandum[22] with the CTA-Division. Unfortunately, no new matter was presented to warrant reversal or modification of the assailed Amended Decision and Resolution.

Time and again, *We* have consistently ruled that in zero-rated VAT transactions, failure of a taxpayer claimant to comply with the invoicing requirements is fatal to his claim for refund or issuance of tax credit certificate. The relevance of the said requirement is obvious – the presentation of invoices and/or receipts will prove the existence and nature of transactions and will be a basis for computation of taxes.

On November 1, 2005, with the effectivity of Republic Act (RA) No. 9337[23], the requirement of writing or printing the term "zero-rated sale" was introduced, following the amendment of Section 113 of the NIRC of 1997. In fact, as early as 2007, the rationale for this requirement was elucidated in the case of *APPLIED FOOD INGREDIENTS CO., INC. vs. COMMISSIONER OF INTERNAL REVENUE*[24], wherein *We* explained that:

> "*x x x* **If the invoice or official receipt was not imprinted with 'zero-rated', there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated.** This is the rationale for the mandatory requirement in Revenue Regulations No. 7-95 that the words 'zero-rated' be imprinted in the invoice or receipt, as the case may be. The zero-rated taxpayer should be entitled to a tax credit/refund on input taxes paid on its purchase of goods or services subject to the mandatory compliance with the

[21] *Supra* No. 8.
[22] Division Docket (Vol. II), pp. 1258-1263.
[23] "AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES" took effect on November 1, 2005.
[24] CTA EB No. 359 (CTA Case No. 6513), June 4, 2008; *citing* J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 128, January 15, 2007.

invoicing requirements under the regulations. Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer." *(Emphasis Ours)*

Now, in its arguments, petitioner insists that the words "zero-rated" should be reflected on respondent's sales invoices but only by written or printed means, to the exclusion of any other methods like that of rubber stamping.

We do not agree.

Relative to the resolution of the instant case are Sections 113 (B) (2) (c) of the NIRC of 1997, as amended, in relation to 4.113-1 (B) of RR No. 16-05[25], which provides that:

"**SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.** —

x x x

(B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:

x x x

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

[25] "CONSOLIDATED VALUE-ADDED TAX REGULATIONS OF 2005" dated September 1, 2005.

(c) If the sale is subject to zero percent (0%) value-added tax, **the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt**;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: "Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale." *(Emphasis Ours)*

"**SECTION 4.113-1. Invoicing Requirements. —** *x x x*

(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) **If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt**;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between

> its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale." *(Emphasis Ours)*

Verily, there are additional information that an invoice and receipt must contain in accordance with the invoicing requirement, such as having the term "zero-rated" in cases of zero percent (0%) VAT sales. However, by rigidly construing that the said term should only be done by written or printed means is somewhat isolating the requirement of the law rather than giving life to its meaning. It cannot be gainsaid that the interpretation of a statute must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. Thus, you have to look at the whole statute to determine the legislative intent, and not just the portion at issue.

Perforce thereto, *We* again stress that the requirement of imprinting the word "zero-rated" was added merely so as to distinguish sales that are subject to the regular twelve percent (12%) VAT to those that are subject to zero percent (0%) VAT and, those that are VAT exempt. In fact, as held by the CTA-Division in the assailed Resolution dated April 27, 2016,

> "Relative to this is the case of *Commissioner of Internal Revenue vs. Toledo Power Company*, where the Supreme Court categorically ruled that mere stamping of the words 'zero-rated' on the VAT invoices/official receipts is sufficient compliance with the law, to wit:
>
> > 'In the present case, we agree with the CTA's findings that the words 'zero-rated' appeared on the VAT invoices/official receipts presented by the TPI in support of its refund claim. **Although the same was merely stamped and not pre-printed, the same is sufficient compliance with the law**, since the imprinting of the word 'zero-rated' was required merely to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly

> implement and enforce the other VAT provisions of the Tax Code.' *(Emphasis ours)*
>
> In this case, the term 'zero-rated" appears on the face of petitioner's sales invoices, albeit, they are rubber stamped. Considering the foregoing, the Court finds that petitioner substantially complied with the requirement that the word 'zero-rated' must prominently appear on the face of sales invoices covering zero-rated sales. The word 'zero-rated', although rubber stamped, in petitioner's sales invoices serves the purpose of preventing its buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. It also helps segregate sales that are subject to 12% VAT from those sales that are zero-rated."

On a final note, findings of fact of the Court in Division are entitled to great weight and will no longer be disturbed absent any findings that would otherwise support a contrary conclusion.[26] It is a long-standing rule that the Court will not lightly set aside the conclusions reached by the Court in Division which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[27]

Hence, in view of the foregoing, *We* find no cogent reason to disturb the assailed Amended Decision and Resolution rendered by the CTA-Division.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Amended Decision dated December 1, 2015 and Resolution dated April 27, 2016 in CTA Case No. 8652 are both **AFFIRMED.**

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[26] Deltek Systems (Philippines) Ltd. vs. Commissioner of Internal Revenue, CTA EB No. 1105 (CTA Case No. 7893), August 12, 2015; *citing* Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 180173, April 6, 2011; Commissioner of Internal Revenue vs. TeaM (Philippines) Operations Corporation [formerly Mirant (Philippines) Operations Corporation], G.R. No. 185728, October 16, 2013.
[27] *Ibid.*

SO ORDERED.

CAESAR A. CASANOVA
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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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