REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1457** (CTA Case Nos. 8753 & 8762)
	Present:
- **versus** -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
PHILEX MINING CORPORATION, Respondent.	***Promulgated:*** OCT 26 2017 3:09 p.m.

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RESOLUTION

UY, *J.*:

For resolution is the **"MOTION FOR RECONSIDERATION"** filed by petitioner on July 3, 2017, together with respondent's **"COMMENT/ OPPOSITION"** thereto filed on July 18, 2017. In said motion, petitioner prays to set aside this Court's Decision dated June 7, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated February 17, 2016 and Resolution dated April 27, 2016, both rendered by the Court in Division in CTA Case Nos. 8753 and 8762 are **AFFIRMED**.

SO ORDERED."

Petitioner argues that the Court *En Banc* erred in affirming the decision of the Court *a quo* in partially granting respondent's claim for refund/tax credit certificate considering that respondent failed to fully substantiate its claim for refund on its alleged unutilized VAT on purchase of goods and services allegedly attributable to its zero-rated sales by documentary evidence.

In support of his argument, petitioner alleges that respondent failed to establish that it does have a refundable or creditable input VAT and that the same has not been applied against its output liabilities. Likewise, petitioner asserts that respondent failed to provide proof that it does have a refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities – information which are supposed to be reflected in the taxpayer's VAT returns. Thus, an application for refund/credit must be accompanied by copies of the taxpayer's VAT return/s for the taxable quarter/s concerned.

Moreover, petitioner argues that the purchase invoices or official receipts must comply with the invoicing requirements provided under Revenue Memorandum Circular (RMC) No. 42-2003 citing the case of *Panasonic Communication Imaging Corp. vs. CIR*, G.R. No. 178090, February 8, 2010.

Lastly, petitioner alleges that when the letter of authority with LOA-311-2013-00000144 dated September 17, 2013 was served and received by the respondent, a copy of the checklist of requirements was also attached requiring the respondent to submit the documents specified thereon which are necessary documents to enable the assigned Revenue Officer to properly determine whether or not the respondent is entitled to refund/issuance of tax credit certificate.

On the other hand, respondent counter-argues in its *Comment/Opposition* that petitioner's sole ground raised in the motion for reconsideration which is the respondent's failure to fully substantiate respondent's claim for refund has already been raised before the Court in Division and in the *Petition for Review.*

THE COURT *EN BANC*'S RULING

Petitioner's *Motion for Reconsideration* lacks merit.

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We reiterate Our pronouncement in the assailed Decision, to wit:

> "Nonetheless, the Court in Division has found, based on the record of the case, including all the evidence presented, that respondent was able to substantiate its claim for VAT refund or issuance of tax credit certificate, albeit in the reduced amount of ₱34,174,775.19. In this connection, it must be stated that petitioner has not convincingly shown or argued in the instant Petition for Review that the Court in Division committed reversible error in granting the said amount. Thus, the said amount must be sustained."

We maintain the foregoing ruling considering that petitioner still failed to show or argue, in the instant *Motion for Reconsideration*, the supposed reversible error committed by the Court in Division.

Clearly, petitioner's arguments are mere general and perfunctory statements. Notably, the findings of the Court *a quo*, in determining the above-stated reduced amount of refund, have been properly presented and well-reasoned in its Decision dated February 17, 2016 and Resolution dated April 27, 2016, petitioner should have, at least, pinpointed which part of the said findings were improperly determined. However, petitioner failed to do so. This is especially true with petitioner's invocation of RMC No. 42-2003 and the case of *Panasonic Communication Imaging Corp. vs. CIR*, supra. Petitioner should have particularly determined which of respondent's purchase invoices or official receipts failed to comply with the invoicing requirements set forth by the law.

Moreover, contrary to petitioner's assertion, respondent has submitted its VAT return/s for the taxable quarter/s concerned, *i.e.*, the original and amended Quarterly VAT Returns for the 3rd and 4th quarters of 2011.[1] In addition thereto, respondent likewise presented its Quarterly VAT Returns for the four (4) quarters of 2012,[2] and the 1st and 2nd quarters of 2013.[3]

But even without the said VAT Returns, petitioner could have easily disproven respondent's claim for refund because he ought to know the tax records of all taxpayers.[4]

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[1] Exhibits "P-16-a", "P-16-b", "P-16-c", and "P-16-d".
[2] Exhibits "P-16-e", "P-16-f", "P-16-g", and "P-16-h".
[3] Exhibits "P-16-i", and "P-16-j".
[4] *BPI-Family Savings Bank, Inc. vs. Court of Appeals*, G.R. No. 122840, April 12, 2000.

With respect to petitioner's allegation that the checklist of requirements attached to the Letter of Authority (requiring respondent to submit the documents specified therein) is necessary to enable the assigned Revenue Officer to properly determine whether or not the respondent is entitled to refund/issuance of tax credit certificate, the same deserves scant consideration. This is so because the said allegation was not duly proven by evidence. Mere allegation is not equivalent to proof.[5]

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Reconsideration* dated July 3, 2017 is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
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

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

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[5] *Cagatin vs. Magsaysay Maritime Corporation, et al.*, G.R. No. 175795, June 22, 2015.