REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHIL. GOLD PROCESSING & REFINING CORP., Petitioner,	**CTA CASE NO. 8697**
	Members:
- versus -	**BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 31 2017 1:59 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is petitioner's **Motion for Reconsideration**, filed on October 13, 2016, without respondent's comment as per Records Verification dated November 15, 2016.

Petitioner moves for reconsideration of the Court's Decision promulgated on September 1, 2016 (assailed Decision)[1], denying petitioner's claim for refund or issuance of a tax credit certificate for its alleged unutilized creditable input value-added tax (VAT) in the aggregate amount of ₱53,540,003.27, for the first (1st) and second (2nd) quarters of fiscal year (FY) ended June 30, 2012 (*i.e.*, July 1, 2011 to December 31, 2011), for insufficiency of evidence.

Petitioner's motion is based on the following grounds:

1. The Honorable Court of Tax Appeals (CTA) Third Division unduly imposed the requirement of submitting specific kinds of documents

[1] Docket, pp. 1708-1726.

contrary to the National Internal Revenue Code (NIRC) and Revenue Regulations (RR) No. 16-2005;

2. The Honorable CTA Third Division unduly denied petitioner's claim for refund despite petitioner's proof as to actual shipment of goods; and

3. Petitioner has satisfactorily supported its claim for refund and/or issuance of tax credit certificate for the 1st and 2nd quarters of FY ended June 30, 2012.

Petitioner avers that contrary to the pronouncement of the Court, Section 106(A)(2)(a)(1), Section 113(A)(1), (B)(1), and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-2005 do not particularly identify "export declarations, bills of lading and airway bills" as the sole evidence to prove the fact of actual shipment of goods.

According to petitioner, even the quoted portions of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[2] reveal that the Supreme Court has not limited the proof of export sales to "export declarations, bills of lading and airway bills" exclusively. Hence, petitioner argues that in the absence of specific identification by the legislature, the Bureau of Internal Revenue, and even the Supreme Court, that export sales can only be proven thru "export declarations, bills of lading and airway bills", the Court may not insist on the presentation of the same documents nor may it deny a claim for refund citing their deficiency.

Petitioner points out that in addition to sales invoices, official receipts, Hongkong and Shanghai Banking Corporation Limited (HSBC) Certification and BNP Paribas Corporate & Investment Banking Consolidated Cash Statements, it submitted Export Schedules for the 1st and 2nd quarters of FY ended June 30, 2012 in order to support actual shipments of goods. Moreover, petitioner also submitted a Board of Investment (BOI) Certification dated July 15, 2011 that it exported 100% of gold and silver dore.

Petitioner stresses that the Export Schedules readily provides: (1) the name of the buyer, (2) AWB (airway bill) of the buyer, (3) lading date, and (4) date of remittance. All together, not only does the information contained in the Export Schedules support the fact of actual sales paid for in foreign currency in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, but also the actual shipments of goods for the pertinent taxable

[2] G.R. No. 166732, April 27, 2007.

periods. The Export Schedules clearly record and reference the Airway Bills and Bills of Lading documenting the actual shipments of goods.

Petitioner also emphasizes that the fact of sale and export is further supported/evidenced by the Certification issued by HSBC that the inward remittances from Metalor Technologies, Standard Chartered Bank, BNP Paribas, and West LB AG London Branch were made and credited to the HSBC account of petitioner. The inward remittance and the payment made and credited to petitioner is an acknowledgment by the buyers that they received the shipment of goods.

Hence, petitioner contends that in dismissing the instant petition the Court failed to lend any evidentiary credence to the Export Schedules and BOI Certification that petitioner exported 100% of its gold and silver dore, resulting in petitioner's undue prejudice.

In sum, petitioner submits that it has substantiated its claim for refund or issuance of tax credit certificate of its unutilized/excess input VAT for the 1st and 2nd quarters of FY 2012.

The Court is not persuaded.

The Court already considered every piece of evidence presented by petitioner to prove the actual shipment of goods from the Philippines to a foreign country. However, as held in the assailed Decision, the same did not sufficiently establish the fact of actual shipment, to wit:

> The sales invoices, official receipts, HSBC Certification, and the Consolidated Cash Statement coming from BNP Paribas Corporate and Investment Banking presented by petitioner only established the fact of sale of goods and the receipt of the corresponding foreign currency remittances. The said pieces of evidence do not reveal the actual shipment of goods from the Philippines to a foreign country. Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, mandates that the goods be physically shipped out of the Philippines to a foreign country, which can be proven through the presentation of corresponding export declarations, and bills of lading or airway bills. Thus, petitioner's non-presentation of the said export documents will warrant the dismissal of its claim for refund or issuance of tax credit certificate.

Moreover, the Schedules of Export Sales[3] are not sufficient to prove the actual shipment of goods from the Philippines to a foreign country. As the description of the document suggests, it is a mere schedule and does not prove the fact of actual shipment of goods. Though the schedule contains a column described as "AWB of Buyer" and "Lading Date", petitioner should have attached the source document from which the entries were based, *i.e.*, the airway bill itself, so that the Court can verify the accuracy of these entries.

Likewise, the BOI Certification dated July 15, 2011[4] is not sufficient evidence to prove that petitioner's sales are export sales and that there was actual shipment of goods from the Philippines to a foreign country. The pertinent portion of the BOI Certification reads:

> Information is hereby given that the firm exported 100% of its total sales volume/value for the fiscal year covering July 01, 2010 to June 30, 2011 based on the attached documents (Annexes B & C) submitted to the BOI, summarized as follows: xxx
>
> It is understood that based on the affidavit executed by **Phil. Gold Processing & Refining Corp.**, attached as Annex "A", all information provided herein are true and correct, and any misrepresentation shall be a ground for cancellation of BOI registration without prejudice to the institution of criminal and civil actions that may be warranted under the premises.

A similar issue has already been settled by the Court in CTA Case No. 8270[5], involving petitioner's claim for refund but pertaining to a different period, and affirmed by CTA *En Banc* in CTA EB No. 1082[6], to wit:

> In the instant case, this Court finds that the BOI Certification for VAT zero-rating issued in favor of petitioner is not sufficient evidence to prove that it exported 100% of its total sales. The pertinent portion of the BOI Certification reads:
>
> > "Information is hereby given that the firm exported 100% of its total sales volume/value for the calendar year covering January 01 to December 31, 2009 based on the attached documents (Annexes B & C) submitted to the BOI, ...

[3] Exhibits "P-53", "P-53-A", "P-53-B", "P-53-C", "P-53-D" and "P-53-E", docket, pp. 1484-1489.

[4] Exhibit "P-4".

[5] *Phil. Gold Processing & Refining Corp. vs. Commissioner of Internal Revenue*, CTA Case No. 8270, Resolution dated September 26, 2013.

[6] *Phil. Gold Processing & Refining Corp. vs. Commissioner of Internal Revenue*, CTA EB No. 1082, November 26, 2014.

It is understood that based on the affidavit executed by **Phil. Gold Processing & Refining Corp.**, attached as Annex 'A', all information provided herein are true and correct, and any misrepresentation shall be a ground for cancellation of BOI registration without prejudice to the institution of criminal and civil actions that may be warranted under the premises."

Based on the foregoing, it is clear that the BOI Certification itself is not sufficient to prove that there was actual shipment of petitioner's goods from the Philippines to the foreign country as the information contained therein originally came from petitioner through its affidavit and sales performance. Thus, it is merely self-serving and the presumption of regularity in the performance of BOI's duty in issuing the said certification cannot be applied in this case.

Moreover, it should be noted that the BOI Certification dated July 15, 2011 states that "information is hereby given that the firm exported 100% of its total sales volume/value for the fiscal year covering July 01, 2010 to June 30, 2011", while the instant claim for refund refers to the period July 1, 2011 to December 31, 2011.

In view of the foregoing, the Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, the instant **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen L-L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice