REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

SL HARBOR BULK TERMINAL CORPORATION, Petitioner,	**CTA CASE NO. 10250** Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 1 9 2024 2:40 pm

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RESOLUTION

FERRER-FLORES, J.:

Before this Court is respondent's **Motion for Reconsideration with Motion to Reopen Proceedings (Re: Decision 26 July 2024)** filed via accredited courier service provider on August 16, 2024 and received by the Court on August 20, 2024, with respondent's **Comment (To Petitioner's Motion for Reconsideration with Motion to Reopen Proceedings dated August 16, 2024)** filed on September 23, 2024.

On July 26, 2024, the Court promulgated a Decision (assailed Decision), denying petitioner's claim for tax credit of erroneously paid excise tax in the amount of ₱3,100,000.00, the dispositive portion of which states as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Amended Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

As such, petitioner filed the instant *Motion*, praying for the Court to reconsider the assailed Decision and to grant its claim for tax refund or credit of erroneously paid excise tax in the amount of ₱1,650,000.00. Alternatively, petitioner requests for the Court to grant its *Motion to Reopen the Proceedings* based on mistake and set the case for presentation of additional evidence.

In assailing the said Decision, petitioner anchors its arguments on the following grounds:

a. Petitioner's sales of petroleum products to Johnson Controls-Hitachi Air Conditioning Philippines Inc. (Johnson) during the first quarter of 2018 are exempt from excise tax.

b. Petitioner sufficiently established that the sale of petroleum products to tax-exempt entities was sourced from January to March 2018 importations on which excise taxes were paid.

c. Petitioner sufficiently established that it is entitled to a tax credit amounting to ₱1,650,000.00.

d. There were mistakes made in good faith which warrants the reopening of the case.

As to the *first* ground, petitioner contends that Johnson's Subic Bay Exemption Metropolitan Authority (SBMA) *Certificate of Registration and Tax Exemption* (CRTE) is a renewal certificate as Johnson has been an SBMA-registered entity since 1997 as evidenced by its CRTE No. 1997-0022. Hence, petitioner's sale of imported petroleum products to Johnson during the first quarter of 2018 should be considered exempt from excise tax and are proper subject of petitioner's claim for tax credit.

With regard to *second* and *third* grounds, petitioner avers that it was able to present all the required documentary evidence sufficient to prove its claim for refund of taxes erroneously paid or illegally collected under Section 229 in relation to Section 135(c) of the National Internal Revenue Code (NIRC) of 1997, as amended, and as amplified under Revenue Memorandum Order (RMO) No. 19-06,[1] but the Court failed to consider the said evidence. Petitioner claims that the rest of its evidence, including the testimonies of its witnesses, allegedly established that the products sold to tax-exempt entities came from imported petroleum products.

Petitioner points out that based on the testimony of its Billing Head Jenny Catriz, petitioner sold imported special fuel oil (SFO) to tax-exempt

[1] Providing for guidelines and procedures for processing of pending claims for tax credit/refund of excise tax paid on petroleum products, particularly on sale and delivery of tax-paid petroleum products by a local manufacturer/producer or importer to exempt from direct and indirect taxes pursuant to Section 135(c) of the NIRC.

clients for the months of January to March 2018 as reflected in various sales invoices it issued. Consistent with the foregoing, petitioner's Finance Manager Shiela Ahing has allegedly confirmed that a part of petitioner's remaining inventory of bunker fuel and diesel exclusively comes from its ending inventory as of December 31, 2017 and subsequent additional importation of bunker fuel and diesel during the first quarter of 2018. The Independent Certified Public Accountant (ICPA), Ms. Alma Sese, also testified that, based on her audit of various records, she was able to confirm that petitioner's claim for excise tax credit was sourced from importations of petroleum made in January to March 2018 and were properly subjected to excise tax; thus, that bunker fuel oil (BFO) and SFO sold to petitioner's tax-exempt clients were exclusively sourced from its importations of bunker fuel and diesel in the first quarter of 2018 which were subjected to excise tax.

In view thereof, petitioner asserts that it has a clear right to claim tax credit of excise tax it previously paid on the amount of ₱1,650,000.00 considering that the bunker fuel and diesel which it imported was subsequently used to sell 660,000 liters (L) of BFO and SFO to entities registered with SBMA and Philippine Economic Zone Authority (PEZA).

Petitioner stands firm that it sufficiently substantiated its claim for excise tax credit; however, it recognizes the wisdom of this Court in the assailed Decision which warrant the submission of additional documents. Accordingly, petitioner shall submit the required documents should it be allowed to do so invoking Section 5, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA).

Petitioner thus, raises, as *fourth* ground, that it made a mistake in good faith which ordinary prudence could not have guarded against and by reason of which have impaired its rights. In the assailed Decision, the Court declared that petitioner should have provided properly supported fuel oil inventory records and sales invoices and other pertinent documents of all its sales for the first quarter of 2018. Nevertheless, petitioner points out that the documents mentioned by this Court were not included in the list of documents required in processing claims for excise tax credit pursuant to Revenue Memorandum Order (RMO) No. 19-06.

Following RMO No. 19-06, petitioner alleges that the duly commissioned ICPA conducted her examination of petitioner's documents and deemed it proper not to attach certain documents as these were not required in the BIR issuance and were already summarized in the Report or a separate document; that as per the ICPA Report, the ICPA examined petitioner's registered books of accounts, sales summary for January 1 to March 31, 2018, sales of invoices for the first quarter of 2018, and ORB's, as well as accounted for the movement of goods based on the existing inventory, importation and sale; and, that the ICPA only included the summary instead of the actual sales invoices and related documents due to the voluminous nature and since it was not required under RMO No. 19-06. Petitioner explains that upon issuance of the ICPA Report, it no longer questioned it and the documents included therein as the ICPA was entrusted and appointed by the Court to assist in the determination of petitioner's claim for excise tax credit.

With that, petitioner posits that there was a clear mistake on its part arising from misplaced confidence when petitioner relied in good faith on the examination and report of the duly commissioned ICPA based on RMO No. 19-06. Petitioner holds that the mistake was committed in good faith and was not something that could have been avoided with ordinary prudence as the ICPA was an expert on this matter and she relied in good faith on RMO No. 19-06.

Thus, petitioner requests for the indulgence of the Court to reopen the case for presentation of additional evidence to substantiate its claim for excise tax credit and comply with the documentary requirements as stated by the Court. To support its prayer, petitioner attached with the *Motion* the soft copies of the additional documents it intends to present through its ICPA's supplemental testimony.

On the other hand, respondent counters that petitioner failed to prove its entitlement to tax credit.

According to respondent, excise taxes on imported petroleum products shall be paid by the petitioner to the customs officers before the release of such products from the customs house; hence, petitioner, as importer and statutory taxpayer, correctly paid the excise tax imposed on the petroleum. Its payment cannot be purportedly considered as illegally or erroneous collected tax.

As to the Johnson's SBMA CRTE, respondent claims that contrary to the allegations of petitioner, Certificate No. 1997-0022 is merely a control number and it is not sufficient proof that Johnson is an SBMA-registered entity since 1997. Assuming *arguendo* that Johnson is an SBMA-registered entity, respondent points out that petitioner failed to show proof that it paid the prescribed fees within the reglementary period from 1997 to June 18, 2018. Hence, respondent agrees with the pronouncement of the Court that the sale of petroleum products to Johnson is subject to excise tax and that petitioner is not entitled to the tax credit subject of the present claim.

With respect to petitioner's claim of mistake in good faith as basis for reopening of the proceedings, respondent opposes it on the ground that it was without legal basis and that petitioner had every opportunity to present its documentary evidence during the trial to prove its claim for tax refund but failed to do so; hence, the instant claim for tax refund and motion to reopen proceedings must fail.

We now resolve.

After due consideration, the Court finds respondent's *Motion for Reconsideration with Motion to Reopen Proceedings (Re: Decision 26 July 2024)* without merit.

Petitioner failed to establish its entitlement to the refund; mistake was not proven as basis for the reopening of the proceedings.

As explained in the assailed Decision, the evidence presented by the petitioner still failed to sufficiently prove that the sale of 620,000 liters of petroleum products to JX Nippon on March 31, 2018 was sourced from its importations from the first quarter of 2018 for which it paid excise taxes on January 24, 2018, January 26, 2018, February 1, 2018, and March 20, 2018. As it is, with the evidence on record, petitioner was not able to satisfactorily prove its entitlement to the refund.

Petitioner, thus, moves for the reopening of the proceedings for the presentation of additional evidence.

Under Section 8 of Republic Act (R.A.) No. 1125,[2] the CTA is categorically described as a court of record. As cases filed before this Court are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA.[3] A party should present all its evidence at first instance and not by piecemeal to avoid injurious surprises to the other party.

The reopening of a case for the reception of additional evidence after a case has been submitted for decision but before judgment is actually rendered

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2 An Act Creating the Court of Tax Appeals.
3 *Dizon vs. Court of Tax Appeals*, G.R. No. 140944, 30 April 2008.

is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely on the sound judicial discretion of a trial court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown.[4]

In this case, however, the Court already rendered its judgment, taking into account the pieces of evidence adduced by the parties to prove their respective claims. At this point, no further evidence may be considered unless warranted on the grounds of fraud, accident, mistake or excusable negligence; or of newly discovered evidence.

A motion for new trial may be granted only upon specific, well-defined grounds, set forth in Section 5, Rule 15 of the RRCTA to wit:

> SEC. 5. *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
>
> (a) Fraud, accident, **mistake** or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.
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> A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

In relation thereto, Section 6 of the same Rule further prescribes the contents of a motion for reconsideration or new trial, viz.:

> SEC. 6. *Contents of motion for reconsideration or new trial and notice.* – The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.
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> A motion for new trial shall be proved in the manner provided for proof of motions. **A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits.** A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

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4 *Alegre vs. Reyes*, G.R. No. L-56923, May 9, 1988.

> A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed *pro forma,* which shall not toll the reglementary period for appeal. *(Emphasis supplied)*

Petitioner claims that there was mistake in good faith in the Court-commissioned ICPA's reliance on the list of required documents set forth in RMO No. 19-06. However, petitioner only attached the Affidavit of Ms. Shiela Mary A. Ahing, petitioner's Finance Manager, instead of the duly commissioned ICPA who was purportedly the one who did not submit the pertinent documents.

It is emphasized that the Rule requires that motions for new trial founded on fraud, accident, <u>mistake</u> or excusable negligence must be accompanied by affidavits of merits, *i.e.*, affidavits showing the facts (not mere conclusions or opinions) constituting the valid cause of action or defense which the movant may prove in case a new trial is granted, because a new trial would serve no purpose and would just waste the time of the court as well as the parties if the complaint is after all groundless or the defense is nil or ineffective.[5]

Notably, the affidavit of Ms. Ahing merely stated that certain documents were made available to the Court-commissioned ICPA and that no additional documents or information was requested by the ICPA from the petitioner. It is further claimed therein that they relied on the completeness and accuracy of the contents and documents attached to the ICPA Report. Clearly, there was no statement of facts constituting the alleged mistake made by the ICPA in relying on the documents enumerated in RMO No. 19-06.

Further, no affidavit was executed by the ICPA confirming her reliance on the documents listed in RMO No. 19-06 when she examined the documents provided by petitioner and determined that the documents enumerated in the ICPA Report were sufficient to establish petitioner's claim for tax credit for erroneously paid excise tax. Thus, petitioner failed to provide valid grounds to show that there was indeed a mistake in good faith, for the Court to allow the reopening of the proceedings.

In a motion for reconsideration based on fraud, accident, mistake or excusable negligence, the circumstances must be such that ordinary prudence could not have guarded against them, and by reason of which, the party applying to set aside a judgment has probably been impaired in his rights.[6]

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[5] *Uy vs. First Metro Integrated Steel Corp.*, G.R. No. 167245, September 27, 2006.

[6] *Atlas Consolidated Mining and Development Corp. vd. Court of Tax Appeals*, CA-GR SP No. 46717, May 1, 2000.

It is an accepted tenet that rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure.[7]

Evidently, petitioner has not demonstrated any cogent reason for the Court to take an exception.

Petitioner failed to prove the exempt status of Johnson.

To recall, the Court held in the assailed Decision that, when the imported petroleum products were sold to Johnson on various dates in March 2018, its registration with the SBMA was not yet effective, inasmuch as the *SBMA CRTE* presented was issued and became effective on June 18, 2018 until June 17, 2021.

Petitioner, however, claims that the said *CRTE* issued on June 18, 2018 is already a renewal certificate.

We quote the pertinent portions of the said *CRTE*[8] as follows:

> Certificate of Registration and Tax Exemption
> Subic Bay Freeport Enterprise
> Certificate No. 1997-0022
> Business Plate No. 0077
>
> June 18, 2018
>
> In accordance with Republic Act No. 7227 known as the Bases Conversion and Development Act of 1992 (the "Act"), the rules and authority bestowed on the Subic Bay Metropolitan Authority ("SBMA") in accordance with Section 12 of the Act, and the Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone (the "Implementing Rules"), the SBMA hereby grants the following rights, privileges and benefits to **JOHNSON CONTROLS-HITACHI AIR CONDITIONING PHILIPPINES, INC.** (The "Company") with principal address at **1-A Binictican Drive, Subic Bay Industrial Park Phase II, Subic Bay Freeport Zone.**
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> ARTICLE I The Company Shall be classified as a Subic Bay Freeport Enterprise, as such term is defined under Section 3, Paragraph G of the Implementing Rules for the following purpose: **Manufacture and sale of wholesale basis of home appliances and air conditioners, importation and sale of raw materials and spare parts for air-conditioner and air-**

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[7] *Suarez vs. Villarama, Jr.*, G.R. No. 124512, June 27, 2006.
[8] Exhibit "P-38-1", Docket – Vol. IV, pp. 1720 to 1721, USB.

> **conditioning finished products, sale of wasted materials from production, and testing services of air conditioners at 1-A Binictican Drive, Subic Bay Industrial Park Phase II, Subic Bay Freeport Zone.**
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> ARTICLE II The Company is hereby granted a PERMIT TO OPERATE the aforementioned business at the address specified in Article I, subject to compliance with applicable laws and SBMA regulations.
>
> ARTICLE III The Company, with regard to its business at the location described above, shall enjoy all the rights, obligations, privileges, responsibilities, incentives and benefits established under and in accordance with the Act, the Implementing Rules and other applicable policies, rules and regulations as listed at the back of this Certificate.
>
> ARTICLE IV This Certificate and the rights, obligations, privileges, responsibilities, incentives and benefits hereby granted may be revoked, suspended or cancelled by the SBMA upon fifteen (15) days prior written notice if the Company violates any of the terms and conditions of its lease with SBMA, the Act, the Implementing Rules, this Certificate, other SBMA rules and regulations, or any customs or tax regulation of the Republic of the Philippines. The Company shall have the obligation of showing compliance with the aforementioned laws and regulations.
>
> ARTICLE V This is Certificate automatically renewed annually under Section 23 of the Implementing Rules from the date set forth above until **June 17, 2021**. This Certificate and the rights, obligations, privileges, responsibilities, incentives and benefits hereby granted shall be renewable so long as the Company is in compliance with the terms and conditions hereof, the Act and the Implementing Rules and has a valid lease agreement with the Subic Bay Freeport Zone.

Contrary to the claim of petitioner, nowhere in the subject *CRTE* is it shown that it is a renewal certificate. The claim of petitioner that Johnson has been a registered entity with SBMA since 1997 based on control number (i.e., Certificate No. 1997-0022) indicated on the header of the *CRTE* is merely an allegation, as no evidence was presented to prove such date of registration. Accordingly, considering that the *CRTE* was issued on June 18, 2018, the sale of imported petroleum products to Johnson on the first quarter of 2018 is not covered by the subject *CRTE*, hence, was properly disallowed for failure to meet the second requisite for entitlement to the claim for refund or issuance of tax credit certificate – that the entity to which the petitioner sold the petroleum products is an entity exempt by law from indirect and direct taxes.

It must be emphasized that it is the taxpayer-claimant that has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[9] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed

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[9] *Citibank, N.A. vs. Court of Appeals*, G.R. No. 107434, October 10, 1997.

strictissimi juris against the person or entity claiming the exemption.[10] Thus, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[11] Strict adherence to the conditions prescribed by law is required of the taxpayer.[12]

In fine, the Court finds no substantial arguments raised by petitioner which merit reconsideration of the assailed Decision promulgated on July 26, 2024.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration with Motion to Reopen Proceedings (Re: Decision 26 July 2024)** is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[10] *Commissioner of Internal Revenue vs. Interpublic Group of Companies, Inc.*, G.R. No. 207039, August 14, 2019.

[11] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[12] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.