REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MARIETTA A. BONDAD, in her capacity as Municipal Treasurer of the Municipality of Mankayan, Benguet and DONALD DAGANOS, in his capacity as Municipal Assessor of the Municipality of Mankayan, Benguet, Petitioners,	**CTA EB NO. 1316** *(CTA AC No. 107)*
	Members:
- versus -	Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, JJ.
LEPANTO CONSOLIDATED MINING COMPANY (LCMC), Respondent.	Promulgated: FEB 13 2017 1:35 p.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review seeking the reversal of the Decision promulgated on November 4, 2014 by the Third Division of this Court (Court in Division) in CTA AC No. 107 affirming the March 4, 2013 Decision of the Regional Trial Court Branch 64 of Abatan, Buguias, Benguet (RTC) which set aside the December 23, 2011 Final Assessment of Business Tax for taxable years 2011 and 2012 issued by petitioners against respondent and declared that the latter is entitled to the preferential tax rate of 50% prescribed under Section 143(c) of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 (LGC).

THE PARTIES

Petitioners Marietta A. Bondad and Donald Daganos are the Municipal Treasurer and Municipal Assessor, respectively, of the Municipality of Mankayan, Benguet, a local government unit with office at Poblacion, Mankayan, Benguet Province.[1] They instituted the present case in their respective capacities as Municipal Treasurer and Municipal Assessor of the Municipality of Mankayan, Benguet.[2]

Respondent Lepanto Consolidated Mining Company *(LCMC)*, on the other hand, is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at Lepanto, Mankayan, Benguet, where notices and processes may be served.[3]

FACTS

On December 26, 2011, LCMC received a letter with attached Final Assessment from the Municipal Treasurer of the Municipality of Mankayan, Benguet involving Business Tax for taxable year 2011 in the amount of Php3,899,516.84. LCMC disputed the assessment in its letter sent on January 5, 2012 and received by the Municipal Treasurer on January 6, 2012.[4]

On February 28, 2012, LCMC again received a letter of even date with attached Final Assessment dated February 10, 2012 from the Municipal Treasurer involving Business Tax due for 2012 in the amount of Php2,490,988.93, which was also disputed by LCMC in its letter sent on March 6, 2012 and received by the Municipal Treasurer on March 8, 2012.[5] In the said letter dated February 28, 2012, the Municipal Treasurer also reminded LCMC of its business tax deficiency for taxable year 2011.[6]

Not having received a reply from the Municipal Treasurer on its letter contesting the said Final Assessment and being aware of the possibility that the assessment may lapse into finality, LCMC instituted an appeal before the Regional Trial Court of Abatan,

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[1] Petition for Review, CTA EB No. 1316 Rollo, p. 7.
[2] Petition for Review, CTA EB No. 1316 Rollo, p. 7.
[3] Court in Division Decision, CTA AC No. 107 Docket, p. 116.
[4] Petition, par. 1, 2 & 3 in relation to Answer, par. 1 & 2, RTC Docket, pp. 6 & 55.
[5] Petition, par. 4, 7, 8, & 16 in relation to Answer, par. 1, RTC Docket, pp. 6, 7 & 55.
[6] RTC Docket, pp. 20-21.

Buguias, Benguet (RTC) on March 28, 2012.[7] LCMC claims in its Petition before the RTC that the Final Assessment of Business Tax for 2011 and 2012 is erroneous as it does not consider the 50% reduction of tax rate accorded to exporters pursuant to Section 143(c) of the LGC.

In their Answer to the Petition filed on May 16, 2012, petitioners *[respondents before the RTC]* argued, by way of Special Affirmative Defense, that LCMC's interpretation of Section 143(c) of the LGC to the effect that the preferential rate provided therein applies to two (2) categories of business taxpayers, namely: (i) to exporters; and (ii) to those dealing in essential commodities, is misplaced; that the provision of Section 143(c) of the LGC is clear as it talks only of one subject matter which is "Essential Commodities", thus, it does not need any interpretation; that Section 143 (c) of the LGC used the conjunction word *"and"*, and not the word/disjunctive term *"or"*, and if indeed the provision pertains to two groups as claimed by LCMC, the law should have read: *"On exporters, **or** on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities"* instead of *"On exporters, **and**"*; that the preferential tax rate in Section 143(c) of the LGC pertains to (i) on exporters of essential commodities; and (ii) on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities; that since LCMC is not an exporter of essential commodities, it does not enjoy the preferential tax rate granted by Section 143(c) of the LGC; and that since Section 143(c) of the LGC is a relief granted by law, the same must be strictly construed against LCMC following Section 5(b) of the LGC.

During the Pre-Trial Conference on December 12, 2012, the parties identified two (2) issues for the RTC's resolution, to wit:

(1) Whether or not LCMC is entitled to the preferential tax rate of 50% under Section 143(c) of the LGC; and,

(2) Whether or not the application of the word "exporter" under Section 143(c) of the LGC is limited by the phrase "essential commodities."

LCMC posits that to be entitled to the preferential tax rate of 50%, it is not required that LCMC is exporting essential commodities only. In contrast, petitioners argue that LCMC cannot avail of the fifty percent (50%) rate since it is not an exporter of essential commodities.[8]

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[7] Petition, par. 19 in relation to Answer, par. 1, RTC Docket, pp. 9 & 55.
[8] December 12, 2012 Transcript; RTC TSN Folder, p. 9-13.

As aforestated, the RTC rendered its Decision[9] on March 4, 2013 declaring that LCMC is entitled to the preferential tax rate of 50% prescribed under Section 143(c) of the LGC as an exporter of gold, copper and silver, and setting aside the assailed Final Assessment of Business Tax dated December 23, 2011.

A Motion for Reconsideration of the March 4, 2013 Decision was filed by petitioners on April 2, 2013,[10] but the same was denied in the Order of the RTC dated April 22, 2013.[11]

Subsequently, petitioners filed through registered mail on May 27, 2013 a Petition for Review before the Court in Division pursuant to Section 3(c), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), praying for the reversal of the RTC's Decision.[12] After the filing of the parties' respective memoranda, the case was submitted for decision on November 19, 2013.[13]

On November 4, 2014, the Court in Division promulgated the assailed Decision affirming the RTC's Decision and Order, the dispositive portion of which reads:

> "WHEREFORE, finding no reversible error in the Assailed Decision dated March 4, 2013, and the Assailed Order dated April 22, 2013, both rendered by the Regional Trial Court (RTC), Branch 64, of Abatan, Buguias, Benguet, the same are hereby AFFIRMED.
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> SO ORDERED."

Petitioners filed their Motion for Reconsideration,[14] but the same was denied by the Court in Division in its Resolution dated April 13, 2015.[15]

Dissatisfied, petitioners filed on May 25, 2015 via registered mail the present Petition for Review,[16] which is well within the extended

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[9] RTC Docket, p. 175-180.
[10] RTC Docket, p. 188-195.
[11] RTC Docket, p. 208.
[12] CTA Division Docket, pp. 6-27; 6, 8 & 13.
[13] CTA Division Docket, p. 112.
[14] CTA Division Docket, pp. 129-134.
[15] CTA Division Docket, pp. 181-185.
[16] CTA En Banc Rollo, p. 7-19.

period allowed per Minute Resolution dated June 5, 2015.[17] LCMC filed its *Comment [On Petition for Review dated 24 May 2013]* on November 23, 2015[18] in compliance with the Court En Banc Resolution dated October 14, 2015.[19]

The Petition for Review was given due course on January 19, 2016.[20]

With the filing of the parties' respective memoranda within the period prescribed, the case was submitted for decision on April 20, 2016.[21]

ISSUE

The parties presented to the Court *En Banc* the question of whether LCMC is entitled to the tax rate of fifty percent (50%) pursuant to Section 143(c) of the LGC.[22]

PARTIES' ARGUMENTS

Petitioners claim that LCMC is not entitled to the 50% preferential tax rate on business tax provided in Section 143(c) of the LGC since LCMC is not an exporter of essential commodities. They assert that the present case seeks to interpret the provision of Section 143(c) of the LGC, but the same is subject to strict construction against the person claiming the exemption.

Allegedly, Section 143(c) of the LGC makes reference to only one subject matter which is "essential commodities" and nowhere in the enumerated essential commodities does it mention the business of LCMC, *i.e., exporter of mineral.* They cited the case of *Petron Corporation vs. Tiongco*,[23] where the Supreme Court stated that in order for an exporter to avail of the preferential tax rate under Section 143 of the LGC, it must be one of *"those engaged in the export or commerce of essential commodities."*

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[17] CTA En Banc Rollo, p. 6.
[18] CTA En Banc Rollo, pp. 50-63.
[19] CTA En Banc Rollo, pp. 48-49.
[20] Resolution dated January 19, 2016; CTA En Banc Rollo, pp. 65-66.
[21] CTA En Banc, pp. 124-125.
[22] Issue presented in the Petition for Review, and in the parties' respective memoranda, CTA En Banc Rollo, pp. 9, 70, & 112.
[23] G.R. No. 158881, April 16, 2008.

Petitioners state that the word *"and"* is different from the word *"or",* where the former is said to be a conjunction while the latter is said to be a disjunctive term signifying disassociation and independence of one thing from each of the other things enumerated; and that if Section 143(c) of the LGC pertains to two (2) groups of taxpayers: *(1) exporters, and (2) those dealing in essential commodities*, the law should have read "(c) On exporters, ***or*** on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities xxx".

LCMC counter-argues that the Court in Division correctly held that the term *"exporter"* in Section 143(c) of the LGC was clearly defined in the Implementing Rules and Regulations of the LGC as well as in the Model Local Government Revenue Code to cover all kinds of exporters and not only exporters of essential commodities; and that petitioners' avoidance of the Court in Division's well-reasoned discussion of *"exporters"* in the Model Local Government Revenue Code shows the weakness of the Petition.

LCMC asserts that Section 143(c) of the LGC speaks in clear and categorical language; thus, there is no room for interpretation but only application. LCMC stresses that the provision has included "exporters" in the enumeration of businesses that are entitled to the 50% preferential tax rate; the inclusion of "exporters" as a class in the enumeration is independent of, and separate from the other class, *i.e., manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities*; the comma after the word "exporters", followed by the words "and on", clearly denotes that the "exporters" is a class of its own, distinct from the "manufacturers, millers, producers, wholesalers, distributors, dealers or retailers" of essential commodities; and that applying the Doctrine of Last Antecedent, the qualifying and limiting phrase "of essential commodities" only restricts and modifies "manufacturers, millers, producers, wholesalers, distributors, dealers or retailers,"- the phrase to which the qualifying/limiting phrase "of essential commodities" is immediately associated, not the word "exporters" which is distantly or remotely located.

LCMC also contends that based on the Bicameral Conference deliberation on the LGC, the clear and explicit intent of the Legislature was to treat "exporters" as a separate class of taxpayer, distinct from "manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities," and such delineation aims to prevent local government units from misinterpreting the word "exporters" as referring solely to "exporters of basic or essential commodities;" and that the deliberation evinces the clear legislative intent to give preferential treatment to exporters in general, without regard to the nature of products exported - be it essential or non-essential.

LCMC finally argues that petitioners' reliance on *Petron Corporation vs. Tiangco* is misplaced as the issue involved therein is whether or not a local government unit is empowered under the LGC to impose business taxes on persons or entities engaged in the sale of petroleum products and the controversy hinges on the correct interpretation of Section 133(h) of the LGC on excise taxes, and the applicability of Article 232(h) of the Implementing Rules and Regulations, and not Section 143(c) of the LGC; and that *Petron* did not address the subject issue, that is, whether or not an exporter of minerals is entitled to a 50% preferential tax rate under Section 143 of the LGC.

RULING

The crux of the controversy relates to the proper construction of the provision of Section 143(c) of the LGC with respect to the term *"exporters"* as one of the covered entities of the 50% preferential tax rate. To petitioners, only those exporters of essential commodities are entitled to such preferential tax rate, while LCMC believes that the preferential tax rate covers all kinds of exporters and not only those exporters of essential commodities.

Section 143(c) of the LGC states:

> "Section 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:
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> xxx
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> (c) **On exporters, <u>and on</u> manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities** enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsection (a), (b) and (d) of this Section:
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> (1) Rice and corn;

(2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;

(3) Cooking oil and cooking gas;

(4) Laundry soap, detergents, and medicine;

(5) Agricultural implements. equipment and post-harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;

(6) Poultry feeds and other animal feeds;

(7) School supplies; and

(8) Cement." *(Boldfacing supplied)*

Based from the aforequoted provision of the LGC, the Court *En Banc* agrees with LCMC that *"exporters"*, irrespective of whether or not they export essential commodities, are entitled to the preferential tax rate. As correctly ruled by the RTC:[24]

"xxx the word 'on exporters' is not linked or included in the qualifying/limiting phrase 'of essential commodities'. The conjunction word 'AND' joins the word 'on exporters' with the phrase 'on manufacturers, millers, producers, wholesalers, distributors, dealers,' not with the limiting phrase 'of essential commodities' but joins them in the qualifying phrase 'at the rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b), and (d) of this Section,' which is the application of tax rate. The word 'AND' indicates or conjoins two (2) types of taxpayer entitled or enjoying the same tax rate."

Petitioners' contention that the Supreme Court already made a statement in *Petron Corporation vs. Tiongco* to the effect that the preferential tax rate under Section 143(c) of the LGC is available only to *"those engaged in the export or commerce of essential commodities*" is patently without basis. There is absolutely no pronouncement in the *Petron* case declaring that only those engaged in the export or commerce of essential commodities are entitled to the preferential tax rate. Petron simply involves the question of whether a local government unit (LGU) is empowered under the LGC to impose business taxes on persons or entities engaged in the sale of petroleum products, and ancillary to that issue is whether the clause "taxes, fees or charges on petroleum products" in Section 133(h) precludes an LGU from imposing business taxes on sale of petroleum

[24] RTC Decision, RTC Docket, pp. 175-180, 180.

products. In passing upon the controversy, the Supreme Court mentioned that the power of a municipality to impose business taxes is based on Section 143 of the LGC which specifically enumerates several types of businesses on which an LGU may impose taxes, including *"those engaged in the export or commerce of essential commodities,"* among others. While recognizing the LGUs' authority, the Supreme Court, however, ruled that Section 133(h) specifically prohibits LGUs from extending the levy of any kind of taxes, fees or charges on petroleum products. The issue settled in that case is not about the coverage of Section 143(c) of the LGC, but the authority of an LGU to impose business taxes on persons or entities engaged in the sale of petroleum products.

The legislative intent to give a preferential tax rate *"on exporters"* apart from those businesses *(i.e., manufacturers, millers, producers, wholesalers, distributors, dealers or retailers)* dealing with "essential commodities" in Section 143(c) of the LGC is clear and unequivocal. As the Court sees, the term "exporters" in Section 143(c) of the LGC is not limited by the phrase "essential commodities". If it was the intention of the legislature to limit the coverage of Section 143(c) of the LGC to those "exporters of essential commodities" only, the same could have been stated without the words ***"and on"*** and the provision would have read as follows: ***"On exporters, manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities"*** instead of "**On exporters, <u>and on</u> manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities**".

It has been said that the legislative intent is determined principally from the language of a statute, and where the language of a statute is clear and unambiguous, the law is applied to its express terms.[25] While it is true that in the construction of tax statutes, tax exemptions are not favored in the law, and are construed *strictissimi juris* against the taxpayer; it is, however, equally recognized principle that where the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking the legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction.[26]

The Court *En Banc* could not, however, determine at this stage whether LCMC is entitled to the benevolent provision of Section

[25] Ramirez vs. Court of Appeals, G.R. No. 93833, September 28, 1995.
[26] Acting Commissioner of Customs vs. Manila Electric Company and Court of Tax Appeals, G.R. No. L-23623, June 30, 1977.

143(c) of the LGC since there is no evidence on record to support any conclusion to be made.

The Court *En Banc* notes that while the RTC made a Decision holding that LCMC is entitled to the preferential tax rate of 50% prescribed under Section 143(c) of the LGC as an exporter of gold, copper and silver, the Court *En Banc* could not simply affirm such conclusion *sans* evidence on record to support it. It is observed that no presentation of evidence on the factual issue (i.e. whether LCMC had made export sales and the gross sales or receipts derived therefrom) was made by either parties before the RTC as the parties both proceeded on the premise that the case involved a question of law.[27]

Since no trial was ever conducted on the factual issue of whether LCMC had made export sales as well as the gross sales or receipts arising therefrom, it is prudent for the Court *En Banc* to remand the case to the RTC in order to give the parties an opportunity to litigate aforestated factual issue, and for the RTC to eventually determine whether based on the evidence to be presented by the parties, LCMC would indeed benefit from the preferential tax rate prescribed under Section 143(c) of the LGC.

WHEREFORE, in view of the foregoing, the Petition for Review is **PARTIALLY GRANTED**. The case is **REMANDED** to the Regional Trial Court Branch 64 of Abatan, Buguias, Benguet for its proper disposition of the case, particularly to conduct further proceedings to give the parties an opportunity to litigate the factual issue of whether LCMC had made export sales and to eventually determine whether based on the evidence to be presented by the parties, LCMC is indeed entitled to the 50% preferential tax rate prescribed under Section 143(c) of the LGC for taxable years 2011 and 2012.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[27] RTC Transcript Pre-Trial Conference, October 24, 2012, pp. 5-7 of TSN folder.

WE CONCUR:

(I join Associate Justice Cielito N. Mindaro-Grulla since petitioner had opportunity to present case at RTC level)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(With Concurring and Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

MARIETTA A. BONDAD, in her capacity as Municipal Treasurer of the Municipality of Mankayan, Benguet and DONALD DAGNOS, in his capacity as Municipal Assesssor of the Municipality of Mankayan, Benguet, Petitioners,	**CTA EB CASE NO. 1316** (CTA AC No. 107)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
LEPANTO CONSOLIDATED MINING COMPANY, Respondent.	Promulgated: FEB 13 2017 1:35 p.m.

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CONCURRING AND DISSENTING OPINION

MINDARO-GRULLA, J.:

With due respect to my esteemed colleagues, while I concur with the *ponencia* in affirming the ruling of the Third Division of this Court and the Regional Trial Court (RTC) of Abatan, Buguias, Benguet that the term "exporters" in Section 143 of the Local Government Code (LGC)[1] is not

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[1] Section 143. Tax on Business. - The municipality may impose taxes on the following businesses:

xxx xxx xxx

(c) On exporters, and on manufacturers , millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsection (a), (b) and (d) of this Section:

(1) Rice and corn;
(2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and

limited by the phrase "essential commodities," it is my submission that Lepanto Consolidated Mining Company (LCMC) had opportunity to present its case before the RTC level and it failed to prove its export sale, thus, it is not entitled to the 50% preferential tax rate on business tax under Section 143(c) of the LGC.

As proof thereof, LCMC attached a Board of Investment (BOI) Certification, certifying that it is registered with the BOI and exported gold and silver and subject to certain conditions, to wit:

> "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, 2011 based on the attached documents (Annexes B & C) submitted to the BOI, ...
>
> xxx xxx xxx."

However, the BOI Certification is insufficient to prove its export sales. This Court *En Banc*, in the case of *Philippine Gold Processing & Refining Corporation vs. Commissioner of Internal Revenue,* [2] ruled that the BOI certification is not sufficient to prove export sales for being self-serving, to wit:

> "Again, We agree with the findings of the Court in Division that the BOI Certification is not sufficient evidence to prove that petitioner's sales are export sales, to wit:

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other agricultural, marine, and fresh water products, whether in their original state or not;
(3) Cooking oil and cooking gas;
(4) Laundry soap, detergents, and medicine;
(5) Agricultural implements. equipment and post-harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;
(6) Poultry feeds and other animal feeds;
(7) School supplies; and
(8) Cement.

[2] *Phil. Gold Processing & Refining Corp. vs. Commissioner of Internal Revenue*, CTA EB No. 1082 (CTA Case No. 8270), Nov. 26, 2014.

"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. xxx

xxx xxx xxx

xxx [T]he 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."

Furthermore, this Court *En Banc* in another case of *Philippine Gold Processing & Refining Corporation vs. Commissioner of Internal Revenue* [3] reiterates the insufficiency of the BOI certification alone to prove export sales, to wit:

"We find that mere BOI Certification alone is insufficient to prove export sales.

Article 23 of Executive Order No. 226, otherwise known as the "Omnibus Investments Code of 1997" defined export sales as follows:

"Article 23. "Export sales" shall mean the Philippine port F.O.B. value, **determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported** xxx **Provided, That sales of export products** to another producer or to an export

[3] PHIL. GOLD PROCESSING & REFINING CORP.vs. COMMISSIONER OF INTERNAL REVENUE CTA EB CASE NO. 1192 (CTA Case No. 8301), JAN. 4, 2016.

> trader **shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents:** xxx
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> xxx xxx xxx"

Evidently, export sales are determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported and that sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents. In the case of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*[4], the Supreme Court had occasion to rule on the documentary evidences to prove export sales, to wit:

> "In this connection, petitioner, **in order to prove that it was engaged in export sales during the second quarter of 1998, offered in evidence copies of summary of export sales, sales invoices, official receipts, airway bills, export declarations and certification of inward remittances during the said period.** In addition, petitioners' Certificate of Registration with RDO Control No. 96-540-000713 issued by the BIR and Certificate of Registration No. 95-133 issued by the PEZA were likewise offered in evidence to prove that it is a VAT-registered entity as well as an Ecozone export enterprise.
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> **To the mind of the Court, these documentary evidence submitted by petitioner, e.g., summary of export sales, sales invoices, official receipts, airway bills and export declarations, prove that it is engaged in the sale and actual shipment of goods from the Philippines to a foreign**

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

> **country. In short, petitioner is considered engaged in export sales (a zero-rated transaction) if made by a VAT-registered entity.** 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. xxx (Emphasis supplied)"

Evidently, LCMC failed to prove its export sale and it is not entitled to the 50% preferential tax rate on business tax under Section 143(c) of the Local Government Code.

In view of the foregoing, I VOTE to GRANT the Petition and to SET ASIDE the Decision dated November 4, 2014 and Resolution dated April 13, 2015 rendered by the Third Division of this Court in CTA AC No. 107, as well as Decision dated March 4, 2013, and the Order dated April 22, 2013, both rendered by the Regional Trial Court (RTC), Branch 64, of Abatan, Buguias, Benget.

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