REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FILMINERA RESOURCES CORPORATION
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8666

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
NOV 1 1 2015 4:19 pm

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RESOLUTION

COTANGCO-MANALASTAS, *J.*:

The Court is confronted with a *Motion for Reconsideration*[1] filed by petitioner, by counsel, on August 18, 2015. Petitioner prays that a resolution/decision be issued reconsidering the *Decision*[2] of this Court enunciated on August 3, 2015 and accordingly ordering respondent to refund or issue a Tax Credit Certificate (TCC) to the petitioner of the amount claimed representing its unutilized input value-added tax (VAT) attributable to its zero-rated sales during the period January 1, 2011 to March 31, 2011.

Petitioner contends that, on account of the exclusive Ore Sales and Purchase Agreement between petitioner and Philippine Gold Processing and Refining Corporation (PGPRC) – a BOI registered company subject to zero percent VAT – it is implausible for herein petitioner to have input VAT, in its books of accounts which can be made available as credit against its future output VAT liability, particularly towards transactions with a BOI registered purchaser with 100% exportation of its processed products, PGPRC.

[1] *Rollo*, pp. 1075-1091.
[2] *Rollo*, pp. 1053-1074.

Further, petitioner asserts that, while there was no amount indicated in the portion "VAT refund/TCC claimed" of the BIR Form 2550Q for the first quarter of 2012, there still appeared overpayments as indicated in item no. 29 of the said BIR Form in the total amount of Php310,416,997.85, which covered the amount being claimed for refund/TCC of the instant petition in the amount of Php51,966,544.20.

Petitioner submits and prays that the original computer print-out of the amended BIR Form No. 2550Q for the 1st quarter of fiscal year 2012 (July 1, 2011 to September 30, 2011), the quarter succeeding the period of claim, attached as Annex P-1 to the subject *Motion for Reconsideration* be admitted to evidence to form part of the records of the instant case. According to petitioner, the said amended BIR Form No. 2550Q clearly showed that petitioner has a total VAT refund/TCC claim from March 2010 to September 2011 in the total amount of Php 360,739,406.52 which is inclusive of the declarations of the petitioner in its BIR Form No. 2550Q for the 1st quarter of 2012 in the amount of Php310,416,997.85 admitted into evidence as Exhibit P-17.

A *Comment/Opposition (Re: Motion for Reconsideration of the Decision dated 3 August 2015)* was filed by respondent on September 11, 2015. Respondent contends that: petitioner's assertion that a refund may be granted since it had not allegedly used the creditable amount or carried over the same to succeeding taxable quarters is utterly misplaced; Annex P-1 attached to the subject motion for reconsideration had already been considered by this Court in the assailed *Decision* and the same should not be given credence since the same was not formally offered in evidence.

The instant *Motion* is bereft of merit.

There is nothing in the subject *Motion for Reconsideration* that was not considered and passed upon by this Court in the challenged *Decision*[3].

To reiterate, the petitioner in this case failed to prove that its claimed input taxes were not applied against any output liability during and in the succeeding period of claim. All the requisites for petitioner to be entitled to a refund or tax credit of input VAT payments attributable to zero-rated or effectively

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[3] *Supra*, Note 2.

zero-rated sales. Thus, petitioner's claim for refund or issuance of tax credit certificate in the amount of P51,966,544.20 representing its excess/ unutilized input VAT must be denied.

The wisdom behind the above-stated ruling is anchored on the following findings and jurisprudence stated in the assailed *Decision, viz*:

> "Nonetheless, before petitioner can validly claim a refund/tax credit, it must prove that the claimed input taxes were not applied against any output liability during and in the succeeding period of claim.
>
> It is petitioner's submission that the BIR Form 2550Q for the first quarter of 2012 (July 2011 to September 2011) it presented proves that petitioner had properly deducted therein the input VAT being claimed from the allowable input tax and was classified as "VAT refund/TCC claimed". However, contrary to its contention, the Court finds no iota of evidence that the subject claim was, indeed, deducted from the total allowable input VAT, as no amount was indicated in that portion "VAT refund/TCC claimed" of the said BIR Form 2550Q for the first quarter of 2012. This creates an impression that petitioner still had the input VAT in its books of accounts and is available as a credit against its future output VAT liability.
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> The Court reiterates the ruling in the case of *M+ W Philippines, Inc. us. Commissioner of Internal Revenue,* citing the case of *Sagara Metro Plastics Industrial Corp. vs.Commissioner of Internal Revenue* , to wit:
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>> "The reason for the deduction is to assure that the claimed input VAT shall not be applied against any future output VAT liability.
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>> XXX XXX XXX
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>> **Without convincing evidence that the subject input taxes were not utilized or carried over as credit to the subsequent quarters, this Court cannot grant petitioner's prayer.** To grant petitioner's claim for refund, without proof of deduction of the corresponding amount, would be dangerous and tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government." *(Emphasis supplied)*
>
> Well-settled is the rule that tax refunds are in the nature of tax exemptions. As such, they are regarded as

derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund. Petitioner has the burden of proof to establish the factual basis of its claim for tax refund.

Anent, the document attached to the subject *Motion for Reconsideration,* the Court is not inclined to grant petitioner's prayer that Annex P-1— amended BIR Form No. 2550Q for the 1st quarter of fiscal year 2012 (July 1, 2011 to September 30, 2011)—, attached to the subject *Motion for Reconsideration,* be admitted to evidence to form part of the records of the instant case.

Under Section 5, Rule 30 of the Rules of court, 'a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.'[4]

While it is true that the Rules of Court, specifically Section 5 of Rule 30, prescribe an order of trial, relaxation of the rule is permitted in the sound discretion of the court.[5] 'The Rules of Court does not prohibit a party from requesting the court to allow it to present additional evidence even after it has rested its case. Any such opportunity, however, for the ultimate purpose of the admission of additional evidence is already addressed to the *sound discretion of the court.*'[6] Jurisprudence dictate that 'the exercise of the court's discretion under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the attendant facts – *i.e.*, on whether the evidence would qualify as a "good reason" and be in furtherance of "the interest of justice."[7]

Below is a case pertinent to the disposition of the subject pending incident, enunciated by the Supreme Court and re-echoed in the case of *Republic of the Philippines vs. Sandiganbayan, et al.,*[8]:

Lopez v. Liboro, G.R. No. L-1787, August 27, 1948:

> "After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but,

[4] *Republic vs. Sandiganbayan, et al.,* G.R. No. 152375, December 16, 2011.
[5] *Republic vs. Sandiganbayan, et al.,* G.R. No. 159275, August 25, 2010.
[6] *Supra,* Note 4.
[7] *Supra,* Note 4.
[8] G.R. No. 152375, December 16, 2011.

> it has been held, the court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. (Siuliong and Co. vs. Ylagan, 43 Phil., 393; U. S. vs. Alviar, 36 Phil., 804.) So, generally, **additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered.** (I Moran's Comments on the Rules of Court, 2d ed., 545; 64 C. J., 160-163.) The omission to present evidence on the testator's knowledge of Spanish had not been deliberate. It was due to a misapprehension or oversight." (Emphasis supplied)

In this case, the circumstances in this case fail to persuade this Court to indulge petitioner's request for admission of additional evidence. In varying but consistent language, the Supreme Court has consistently declared that additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered. In this instance, there was no allegation that Annex P-1 was not available during trial; and petitioner neither claims any mistake/inadvertence to its omission to present the documents subject herein, nor alleges any intention to correct evidence previously offered.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice