REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2632** (CTA Case Nos. 9655 & 9695)
-versus-	
PHILIP MORRIS PHILIPPINES MANUFACTURING, INC., *Respondent.*	

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PHILIP MORRIS PHILIPPINES MANUFACTURING, INC., *Petitioner,*	**CTA *EB* NO. 2636** (CTA Case Nos. 9655 & 9695)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 1 8 2024 11:48am

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RESOLUTION

MANAHAN, *J.*:

For resolution of the Court are the following:

1. *Motion for Reconsideration (Re: Decision promulgated 17 October 2023)* filed by the Commissioner of Internal Revenue ("CIR") on October 27, 2023;[1] and,

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[1] Docket – Vol. II, pp. 172-177.

2. *Motion for Partial Reconsideration (of the Decision dated 17 October 2023)* filed by Philip Morris Philippines Manufacturing, Inc. ("PMPMI") on November 3, 2023.[2]

Both *Motions* assail the Court *En Banc*'s *Decision* dated October 17, 2023[3] ("assailed Decision"), the dispositive portion of which reads:

> **WHEREFORE**, the Petition for Review, docketed as CTA EB No. 2632, filed by the Commissioner of Internal Revenue, is **DENIED** for lack of merit.
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> The Petition for Review, docketed as CTA EB No. 2636, filed by Philip Morris Philippines Manufacturing, Inc. is **PARTIALLY GRANTED**. The Decision and Resolution, dated January 20, 2021 and May 11, 2022, respectively, are **AFFIRMED WITH MODIFICATIONS**.
>
> Accordingly, the Commissioner of Internal Revenue is **ORDERED** to refund or issue a tax credit certificate in favor of Philip Morris Philippines Manufacturing, Inc. the amounts of **Php12,440,507.57** for CTA Case No. 9655 and **Php19,598,970.06** for CTA Case No. 9695 or a total of **Php32,039,477.63**, representing the latter's unutilized input VAT attributable to its zero-rated sales for the first and second quarters of taxable year 2015, respectively.
>
> **SO ORDERED**.

CIR's Motion

In his *Motion for Reconsideration*, the CIR reiterated the following arguments: 1.) PMPMI failed to comply with the requirement that the payment for zero-rated sale of services be in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas ("BSP") rules and regulations; 2.) PMPMI's zero-rated sales of goods were not fully supported with proof of inward remittances; and, 3.) PMPMI failed to amend its value-added tax ("VAT") returns from the 2nd quarter of 2015 up to the current year to reflect

[2] Docket – Vol. II, pp. 179-193.
[3] Docket – Vol. II, pp. 151-166.

its refund claim, and that it is already barred from amending the same since a letter of authority has been issued.

The CIR urges the Court that a motion for reconsideration is not *pro forma* just because it reiterates arguments earlier passed upon and rejected by the court, the same being made precisely to convince the court that its ruling was erroneous.

PMPMI's Motion

In its *Motion for Partial Reconsideration*, PMPMI faults the Court *En Banc* for failing to address the disallowance of export sales amounting to P204,044,531.65 which it allegedly was able to prove by evidence other than airway bills ("ABs") or bills of lading ("BLs"). It further asserts that the Court should have traced the inward remittances to its duly substantiated export sales of P3,319,057,825.44 instead of only to the export sales found by the Court *En Banc* to be supported by ABs and BLs in the amount of P56,748,621.90. PMPMI also faults the Court *En Banc* for not discussing the propriety of the Court in Division's disallowance of input VAT in the amount of P19,171,977.86, which are supported by Bureau of Internal Revenue ("BIR") Form No. 1600, due to the absence of the Electronic Filing and Payment System ("eFPS") payment confirmations. Finally, PMPMI posits that the Court should have allowed it to recall the Independent Certified Public Accountant ("ICPA") to testify on undisputed facts and evidence on record.

We now resolve.

The *CIR's Motion* contains the very same arguments that were already considered and exhaustively discussed by the Court; hence, it is futile to engage in another disquisition thereon. While it is true that a motion for reconsideration is not *pro forma* just because it is a mere reiteration of the issues raised by the parties and passed upon by the court, there must be a *bona fide* effort on the part of the movant to present the same matters in a different light. More importantly, it behooves the movant to specify the findings or conclusions in the judgment which are not supported by evidence or contrary to law, making express reference to the pertinent evidence or legal provisions.[4] This the CIR failed to do.

As to *PMPMI's Motion*, the Court finds that there are no cogent arguments therein that would merit a reversal or modification of the assailed Decision.

First, the Court properly affirmed the disallowance of the export sales amounting to P204,044,531.65 for failure of PMPMI to support the same. Under Section 106(A)(2)(a)(1) of the 1997 National Internal Revenue Code ("NIRC"), as amended, an export sale means "[t]he sale and *actual shipment* of goods from the Philippines to a foreign country ... paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP."[5] PMPMI insists that it presented in evidence the zero-rated sales invoices, which allegedly show that its buyers are foreign corporations domiciled outside the Philippines. However, this does not prove the fact of actual shipment. It is the ABs and BLs which serve as competent proof of actual shipment of goods.[6]

Thus, in the assailed Decision, the Court traced the inward remittances only to the amount of P56,748,621.90 which, upon review, was found to be supported by the ABs and BLs on record. Inward remittances attest only as to the fact of payment, but not as to the actual shipment of goods.[7]

Second, the Court need not trace the inward remittances to the amount of P3,319,057,825.44 which was found to be duly substantiated export sales by the Court in Division. PMPMI's failure to establish the same was already exhaustively discussed in the Court in Division's *Resolution* dated May 11, 2022. We quote a portion thereof with approval:

> "Herein, petitioner has not demonstrated any cogent reason to justify the reopening of the case for the submission of additional evidence and the recall

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[4] *Philippine National Bank v. Paneda*, G.R. No. 149236, February 14, 2007.
[5] *Emphasis supplied.*
[6] *Phil. Gold Processing & Refining Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 1670, July 9, 2018.
[7] *Phil. Gold Processing & Refining Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 1670, July 9, 2018, citing *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

> of the ICPA to testify as to the verification/examination of the supplemental evidence. In fact, the documents that petitioner would like to present are not newly discovered evidence but are readily available and already in existence even before or during a trial and could have been presented and offered in a seasonable manner, had it exercised ordinary prudence and diligence. Again, 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 (*sic*) with his failure to comply with the prescribed procedure.
>
> More so, in this jurisdiction, the "mistake" that is allowable is the one which ordinary prudence could not have guarded against...
>
> At this point, petitioner is reminded of the importance of submitting the complete documents in support of its claim for refund...
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> ...
>
> True, every party-litigant must be afforded the complete opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. However, petitioner must bear in mind that it had been given every chance to pursue its case and to prove its case. It cannot therefore claim that it was not heard or that substantial justice has not been served."[8]

Third, Revenue Regulations ("RR") No. 16-2005 cited by petitioner indeed provides that the duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input VAT. However, the same provision states that "VAT withheld *and paid for* the non-resident recipient (remitted using BIR Form No. 1600), which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, may be claimed as input tax by said VAT-registered withholding agent upon filing his own VAT Return, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales."[9] Petitioner failed to present

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[8] Docket – Vol. I, pp. 141-142; Vol. II, pp. 122-123. (*Emphasis in the original, citations omitted*)
[9] Revenue Regulations No. 16-2005, Sec. 4., 114-2, par. (b). (*Emphasis supplied*)

proof that the amount of P19,171,977.86 claimed as input VAT was paid for. Hence, the Court properly disallowed the same.

We must stress once again the basic tenet that it is essential for parties to diligently and conscientiously present all available evidence and arguments in support of their respective positions before the case is deemed submitted for judgment.[10] More so in cases involving tax refund, where not only is the law construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence are *strictissimi scrutinized* and must be duly proven.[11]

ACCORDINGLY, the *Motion for Reconsideration (Re: Decision promulgated 17 October 2023)* filed by the CIR on October 27, 2023 and the *Motion for Partial Reconsideration (of the Decision dated 17 October 2023)* filed by PMPMI on November 3, 2023 are both **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[10] *Lolita R. Alamayri v. Rommel Pabale, et al.*, G.R. No. 151243, April 30, 2008.
[11] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice