REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

COLT COMMERCIAL, INC.,
Respondent.

CTA EB No. 1889
(CTA CASE No. 9110)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
OCT 11 2019 3:16 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on January 11, 2019, of this Court *En Banc,* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) seeking reversal of the Amended Decision dated March 27, 2018[1] and the Resolution dated June 19, 2018[2] rendered by the Second Division of this Court, the dispositive portions of which, respectively, read as follows:

Amended Decision dated March 27, 2018:

> "**WHEREFORE,** petitioner's **"Motion for Reconsideration (of the Decision dated November 17, 2017)** is PARTIALLY GRANTED. Accordingly, the assailed Decision dated

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[1] Penned by Associate Justice Caesar A. Casanova concurred in by Associate Justice Juanito C. Castañeda, Jr., and Associate Justice Catherine T. Manahan, En Banc Docket, pp.33-48.
[2] *Id.*, pp.50-53.

November 17, 2017 is amended to read as follows:

> **WHEREFORE,** the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **P568,947.70**, representing its unutilized input taxes attributable to its zero-rated sales for the period covering January 1 to March 31, 2013.
>
> **SO ORDERED.**"

Resolution dated June 19, 2018:

> "**WHEREFORE**, finding no cogent reason to reverse the ruling in the assailed Amended Decision, respondent's **"Motion for Partial Reconsideration (Re: Amended Decision dated March 27, 2018)** is **DENIED** for lack of merit.
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> **SO ORDERED.**"

The following facts of the case as recited by the Court in Division in its Decision[3] and as established by evidence on record[4], read as follows:

> "Petitioner (now respondent) Colt Commercial Inc. (CCI) is a corporation duly organized and existing under the laws of the Philippines, with business address at Suite 508 Padilla Delos Reyes Bldg., 232 Juan Luna St. Brgy. 289 Zone 027, Binondo, Manila.
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> On the other hand, respondent (now petitioner) is the Commissioner of Internal Revenue (CIR) who is authorized under the law to act on claims for refunds, tax credit certificates and other matters involving the enforcement of the 1997 National Internal Revenue Code (NIRC), as amended.

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[3] Supra note 2, pp.18-48.
[4] JFSI, Division Docket, (Vol. I), pp. 241-244.

Petitioner is registered with Revenue District Office (RDO) No. 30, Binondo, Manila as VAT taxpayer, with Taxpayer Identification No. 008-327-264-000. Its primary purpose is to engage in the business of merchandising, distributing and marketing, whether as principal, agent, indenter or manufacturer's representative wholesale, or retail, such as but not limited to industrial, agricultural, manufacturing tools and equipment, engineering products, hardware items, construction materials and electrical supplies and or all kinds of goods, wares and merchandise.

As per the Amended Quarterly VAT Return for the 1st Quarter of Taxable Year 2013, petitioner has an excess input tax in the amount of P811,768.91.

On March 12, 2015, petitioner filed its administrative claim for VAT refund with BIR RDO No. 30.

However, on July 23, 2015, BIR RDO No. 30 denied the administrative claim for VAT refund of creditable input tax on the ground that the amount of P811,768.91, which is the subject of the application for refund, had been applied against the output tax for the 2nd quarter of taxable year 2013.

Later on, petitioner filed the instant Petition for Review on August 7, 2015.

On September 24, 2015, respondent filed an Answer interposing the following special and affirmative defenses:

'xxx xxx xxx

16. The petition is premature considering that petitioner's claim for tax refund/credit of unutilized input tax payments attributable to zero-rated sales for the first quarter of taxable year 2013 in the amount of

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P811,768.91 is still pending investigation with Revenue Region No. 6, Manila.

17. Petitioner has already applied the entire amount of input tax, subject of the claim for refund, against its output tax by carrying over the same to succeeding taxable quarters. Records showed that petitioner consistently carried forward its Input Tax credits from taxable quarter ending March 31, 2013 up to March 31, 2015.

18. Section 112 of the NIRC of 1997, as amended, provides that any VAT-registered person whose sales are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to zero-rated sales or effectively zero-rated sales, except transitional input tax, within two (2) years after the close of the taxable quarter when the sales were made, to the extent that such input tax has not been applied against output tax.

19. The remedies of tax refund and input tax carry-over are alternative and the choice of one precludes the other.

20. Claim for refund is construed strictly against the claimant and should not be allowed unless proven explicitly and categorically

21. Tax refunds are in the nature of tax exemptions. Accordingly, the claimants of those refunds bear the burden of proving the factual basis of their claims, and of showing, by words too plain to be mistaken, that the legislature intended to exempt them'

The case was set for Pre-Trial Conference on November 12, 2015. Then, petitioner's Pre-Trial Brief was filed on November 9, 2015, while

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Respondent's Pre-Trial Brief was filed on November 11, 2015.

On November 27, 2015, the parties filed their Joint Stipulation of Facts and Issues, which was subsequently approved in the Pre-Trial Order issued by the Court on January 21, 2016, and the pretrial of the case was deemed terminated."

After trial on the merits, the Court in Division directed both parties to submit their respective Memoranda. CCI filed its Memorandum[5] on November 15, 2016 while the CIR filed his Memorandum[6] on November 17, 2016. Thereafter, the case was considered submitted for decision.

On November 17, 2017, the Court in Division rendered a Decision[7] which denied CCI's claim for refund for insufficiency of evidence.

Aggrieved, CCI filed a Motion for Reconsideration. In an amended Decision dated March 27, 2018, the Court in Division partially granted CCI's claim for refund in the reduced amount of P568,947.70.

Consequently, the CIR filed a Motion for Reconsideration wherein the same was denied in a Resolution dated June 19, 2018.

Hence, this Petition for Review was filed by the CIR.

In the instant Petition for Review, petitioner maintains his position that CCI's claim for refund of unutilized input VAT should be denied for failure to prove that it had zero-rated sales for the 1st quarter of taxable year 2013, and thus, the claim for refund or tax credit must necessarily fail.

The arguments presented deserve scant consideration, and We rule to **DENY** the Petition for Review.

In claims for refund, the dispute most often centers on the sufficiency of the documentary evidence to prove the said erroneously paid taxes and it is for this reason that the

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[5] Division Docket, (Vol. I), pp. 528-549.
[6] Division Docket, (Vol. I), pp. 550-553.
[7] Supra Note 2.

CIR disagrees with the assailed Decision which granted the claim for refund.

In the case at bar, the CIR implores unto this Court that technical rules of evidence should be strictly applied on the basis that tax refunds are in the nature of tax exemptions. Relying thereon, petitioner avers that the Court should not have given credence to the PEZA Certification dated February 16, 2016 in partially granting CCI's claim for refund considering that the veracity and authenticity of the afore-mentioned document was not verified and formally offered.

We agree with the findings of the Court in Division. A perusal of the records would reveal that CCI's accumulated input VAT arising from its purchases of goods and services as well as its importation of goods are substantiated by pertinent documentary evidence.

The argument of the CIR is anchored on Section 34, Rule 132 of the Revised Rules of Evidence. Accordingly, the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc*[8]., that for evidence to be considered, the same must be formally offered, to wit:

> "Under Section 8 of Republic Act (R.A.) No. 1125, the CTA is categorically described as a court of record. As such, it shall have the power to promulgate rules and regulations for the conduct of its business, and as may be needed, for the uniformity of decisions within its jurisdiction. Moreover, as cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. Thus, 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. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:

[8] Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 2, 2014.

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> SEC. 34. Offer of evidence. -The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

Notably, however, in the same case, citing the case of *Vda. de Onate v. Court of Appeals,* the Supreme Court also ruled in this wise:

> "x x x From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles*[186 SCRA 385, 388-389 (1990)], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.
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> However, in *People v. Napat-a*[179 SCRA 403 (1989)] citing *People v. Mate*[103 SCRA 484 (1980)], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz.: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case**."

From the foregoing, while it is true that evidence not formally offered should not be admitted in evidence based on Section 34 of Rule 132 of the Rules of Court, the same admits of an exception.

To reiterate, the evidence may be admitted provided the following requirements are present: (1) the same must have been **duly identified** by testimony duly recorded; and (2) the same must have been **incorporated in the records of the case**. Being an exception, the same may only be applied when there is strict compliance with the requisites mentioned above; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail.

In light of the circumstances at bar, the Court agrees with the Court in Division in applying the exception. Indeed, the PEZA Certification[9] dated February 16, 2016 was not formally offered and admitted, but nonetheless, **it was made part of the Court's records when the Independent Certified Public Accountant (ICPA), Mr. Garry S. Pagaspas, identified the said certification in his Judicial Affidavitdated April 22, 2016[10].** Likewise, in the same Sworn Statement, he further attested that the said certification is a faithful reproduction of the original. (emphasis supplied)

As to the propriety of the claim for refund, records of the instant case support the findings of the Court in Division. Based on the assailed Amended Decision and Resolution, as discussed in detail, CCI had sufficiently proven, through documentary and testimonial evidence, that the excess input taxes of P568,947.70 were attributable to its validly zero-rated sales for the subject period of the claim and that the same remained unutilized, and was not applied against any output VAT liability.

Lastly, it bears emphasis that the factual findings of the Court in Division are entitled to the highest respect and can only be disturbed on appeal if not supported by substantial evidence[11]. In the case at bar, considering that the CIR failed to adduce contrary evidence to prove that CCI's claim for refund is untenable, We cannot rule otherwise.

Consequently, this Court holds that the findings of the Court in Division granting CCI a partial refund or a tax credit in the amount of P568,947.70 representing its unutilized input taxes attributable to its zero-rated sales for the period

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[9] Exhibit "P-60".
[10] Exhibit "P-35".
[11] Bonifacia Sy Po v. Honorable Court of Tax Appeals and Honorable Commissioner of Internal Revenue, G. R. No. L-8 1446, August 18. 1988.

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covering January 1 to March 31, 2013 are amply supported by evidence, thus, should not be disturbed.

While the settled rule is that tax refunds are in the nature of tax exemptions and regarded as derogation of the sovereign authority, thus should be construed *strictissimi juris* against the person or entity claiming the exemption, We find that CCI in this case was able to discharge the burden of proof to establish its right to a tax credit or refund.

All told, there is no error in the disquisition of judgment rendered by the Court in Division, the same being in accord with the evidence on record and with the applicable law and jurisprudence.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Amended Decision dated March 27, 2018, and the Resolution dated June 19, 2018 rendered by the Second Division of this Court are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice