REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

AGC FLAT GLASS PHILIPPINES, INC.,
Petitioners,

-*versus*-

BUREAU OF CUSTOMS,
Respondent.

CTA Case No. 8752

Members:

CASTAÑEDA, JR., *Chairperson*
and
MANAHAN, *JJ.*

Promulgated:
NOV 20 2018 9:16 Am

x- x

RESOLUTION

MANAHAN, *J.:*

To be resolved are the following:

1) Respondent's **Motion for Partial Reconsideration [Of the *Decision* dated 09 May 2018)** filed on May 24, 2018[1], with petitioner's Comment/Opposition[2] filed through registered mail on June 7, 2018 and received by this Court on June 19, 2018; and

2) Petitioner's **Motion for Partial Reconsideration** filed through registered mail on June 14, 2018 and received by this Court on June 25, 2018[3], with respondent's Comment[4] filed through registered mail on August 20, 2018 and received by this Court on August 28, 2018.

Both parties seek reconsideration of the Court's Decision promulgated on May 9, 2018, the dispositive portion of which reads as follows:

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[1] Docket, CTA Case No. 8752, pp. 1859-1875.
[2] *Id.* at 1904-1923.
[3] *Id.* at 1925-1946.
[4] *Id.* at 1975-1982.

> **WHEREFORE**, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**, and accordingly, respondent is **ORDERED** to **REFUND OR ISSUE TAX CREDIT CERTIFICATE** in the amount of **TWELVE MILLION FOUR HUNDRED THIRTEEN THOUSAND TWO HUNDRED THIRTY NINE & 49/100 PESOS (Php12,413,239.49)**.
>
> **SO ORDERED**.

On respondent's motion for reconsideration (MR), the following grounds were raised:

I. The Honorable Court has no jurisdiction over the inaction of the Commissioner of Customs.

II. Petitioner is not entitled to PEZA incentives and its claim for refund should be entirely denied.

On the other hand, petitioner, in its MR, argues that the custom duties paid for petroleum fuel purchased for the month of February 2008 are actually supported by documents. It also argues that the custom duties on importations supported by the Import Entry and Internal Revenue Declarations (IEIRDs) it submitted were actually paid.

The above-cited grounds by the respondent are mere rehash of the issues previously raised in its Memorandum which have already been extensively addressed and discussed in the assailed Decision. Hence, there is no compelling reason to disturb the disquisitions in the said assailed decision.

As to petitioner's motion, it may be recalled that in the assailed decision, the Court disallowed petitioner's claim for refund of customs duties in the amounts of ₱2,491,809.00 and ₱13,668,201.66 totalling ₱16,160,010.66. The pertinent parts of the Decision are quoted hereunder:[5]

> The ICPA stated that the **estimated customs duties of ₱2,491,809.00** pertain to the following purchases in February 2008 supported with official receipt dated March 31, 2008 and Certification from PSPC but **unsupported with evidence of the actual quantity of liters purchased such as sales**

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[5] Docket, Vol. V, Decision, pp. 1851-1854.

invoices, delivery notes and other supplementary evidence:

xxx xxx xxx

The Court finds that the amount of ₱2,491,809.00 should be disallowed from petitioner's claim since it was based merely on an estimated quantity. While petitioner provided a Certification from PSPC attesting that it has delivered and sold 3,732,188 liters of fuel oil, the same must be corroborated by sales invoices, delivery notes and other documents proving the actual quantity sold and delivered.

xxx xxx xxx

The ICPA used the customs duty per liter per month reflected in the PSPC's Certifications which were based on the related Import Entry and Internal Revenue Declarations (IEIRDs) filed by PSPC with the Bureau of Customs (BOC) and computed by dividing the total customs duty paid to BOC by the total quantity in liters of imported fuel oil per month, as shown below:

xxx xxx xxx

However, a scrutiny of the related IEIRDs shows that the following do not have machine validation or BOC official receipt or Statement of Settlement of Duties and Taxes (SSDT) or any other document to prove payment to the BOC of the total amount of customs duties and VAT indicated thereon:

xxx xxx xxx

Likewise, it was noted that the second page of IEIRD marked as Exhibit P-1321 was not submitted and the machine validation thereon does not match with the indicated total amount of customs duties and VAT. Also, the IEIRD marked as Exhibit P-1343 has machine validation but is unreadable and IEIRD marked

> **as Exhibit P-1356 has no machine validation and the second page thereof was not submitted.**
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> While, as stated earlier, the Supply Agreements prove that the fuel prices charged by PSPC against petitioner included the customs duties imposed on the imported fuel oil, **petitioner must also establish that PSPC actually paid the said customs duties to the BOC**. Thus, **for petitioner's failure to prove that the customs duties covered by the aforementioned IEIRDs were remitted to the BOC**, **petitioner's claim must be reduced by an amount of ₱13,668,201.66**, as computed below: *(Emphasis supplied)*

With regard to the disallowed amount of ₱2,491,809.00, petitioner asserted that the same is actually supported by the following documents: (a) invoice no 913656021 dated February 2008, with official receipt no 3008 dated March 31, 2008 covering the amount of ₱5,774,944.00 and (b) invoice no 913656022 dated February 2008, with official receipt no 3008 covering the amount of ₱68,546,355.00 or a total of ₱74,321,299.00.

Thus, it is allegedly erroneous to state that the only proof of the total number of petroleum fuel purchases by the petitioner is the Certification by PSPC. The Certification from PSPC merely complements the supporting documents (i.e. invoice and official receipts).

Petitioner averred that what must be emphasized is that it actually purchased petroleum fuel from outside the country and that the corresponding import duties thereon were paid. That any uncertainty on the amount of liters purchased, which determines the custom duties paid by Pilipinas Shell Petroleum Corporation (PSPC) and reimbursed by petitioner was addressed by a simple computation as determined by PSPC and confirmed by ICPA. Petitioner maintained that while there may be uncertainty on the number of liters purchased, there is no doubt that the petitioner imported petroleum fuel which is subject to exemption under its PEZA registration.

Petitioner's contentions are unfounded.

The sales invoices referred to by petitioner with alleged serial numbers 913656021 and 913656022 and purportedly supporting its fuel purchases in February 2008 worth ₱74,321,299.00 were not presented. Thus, the ICPA merely estimated the quantity of fuel purchased by petitioner in February 2008 based on the prior month's average quantity in liter per invoice amount and compared this with the quantity indicated in PSPC's Certification in arriving at the estimated customs duties of ₱2,491,809.00.

It bears stressing that tax refunds are based not on estimates but on actual amounts paid to the government. Otherwise, it would be detrimental to the interest of the government as it may be granting refund without corresponding payment of tax from the taxpayer-claimant. Thus, the denial of petitioner's claim in the amount of ₱2,491,809.00, which was a mere estimate, shall remain.

With reference to the disallowed amount of ₱13,668,201.66, petitioner presented a comparison of the images of the right-hand portions of the disallowed IEIRDs numbered 364-08, 609-08 and 610-08 [6] and the bank validations of the IEIRDs[7] which were allowed by the Court. Petitioner pointed out that the signature of the bank official in the latter documents is the same as that found, albeit only a portion, in the disallowed IEIRDs. Thus, petitioner argued that since all of these IEIRDs were certified by the same bank official, it must be conclusively decided that the customs duties reflected in the disallowed IEIRDs were paid and that the same must be refunded.

We disagree with the petitioner.

To be considered as valid proof of payment of customs duties and taxes, the IEIRDS must be machine validated as to the actual amount of duties and taxes paid, including other required information, and signed by the duly authorized bank official as clearly provided under paragraphs 2.3 and 2.3.1 of Customs Administrative Order No. 2-95 dated September 8, 1995, to wit:

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[6] marked as Exhibits "P-1309", "P-1314" and "P-1315" and found in pages XI-112, XI-124, XI-126 of the ICPA report (Exhibit "P-81"), respectively.

[7] found in pages XI-130, XI-132, XI-134, XI-136, XI-138 and XI-140 of the ICPA report (Exhibit "P-81").

> "September 8, 1995
>
> CUSTOMS ADMINISTRATIVE ORDER NO. 2-95
>
> XXX XXX XXX
>
> 2.3 The Bureau of Customs Official Receipt (BCOR) will no longer be issued by the AABs (Authorized Agent Banks) for the duties and taxes collected. In lieu thereof, **the amount of duty and tax collected** including other required information **must be machine validated** directly on the following import documents **and signed by the duly authorized bank official**:
>
> 2.3.1. Import Entry and Internal Revenue Declaration (IEIRD) for final payment of duties and taxes." (*Emphasis supplied*)

Without the bank machine validation, the date and actual amount of payment made for customs duties and taxes cannot be determined. Thus, even if the disallowed IEIRDs bear the same bank official's signature as that found in the allowed IEIRDs, it must be shown that the total customs duties and taxes reflected therein were machine validated by the bank.

In its Motion, petitioner contended that at the very least, it must be allowed to re-submit clearer copies of the subject IEIRDs because the same already form part of the records of the case. Petitioner alleged that it was only due to the inadvertence on the part of the ICPA that clearer and complete copies of the subject IEIRDs were not presented.

Again, we cannot subscribe to petitioner's assertion.

It is petitioner's primary responsibility of ensuring that clearer and complete copies of the IEIRDs are submitted before the Court. Records show that the ICPA submitted two reports: the main report[8] on July 31, 2015 and the supplemental report[9] on August 24, 2015. Also, the ICPA testified on direct examination by way of judicial affidavit[10] and completed his testimony during the hearing on September 9, 2015[11]. Thus, petitioner had three separate occasions/opportunities to

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[8] Exhibit "P-81".
[9] Exhibit "P-82".
[10] Exhibit "P-80".
[11] Docket, Vol. IV, p. 1417

scrutinize the ICPA reports and the supporting documents, including the IEIRDs, submitted to the Court. Petitioner had ample time to make sure that no documents were omitted prior to the filing of its Formal Offer of Evidence on November 3, 2015.[12]

To reiterate, tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is a claimant's heavy burden to prove the factual and statutory basis to be entitled to a claim for refund or tax credit.[13]

Also, in its Motion, petitioner questioned this Court's finding that the following IEIRDs were not machine validated and as such there is no proof of payment made:

Exhibit No	IEIRD No
P-1362	173209
P-1364	173309
P-1364	173409
P-1365	173509
P-1366	173609
P-1367	173709
P-1368	173809
P-1373	2327-09
P-1374	2328-09
P-1375	2329-09

Petitioner argued that a closer review of the second page of the IEIRDs would show that the initial computations of the customs duties were actually reviewed, revised and approved by the BOC as evidenced by the signature of the responsible officer of the BOC.

Thus, according to petitioner, the fact that the IEIRDs above were revised and approved by the responsible officer of the BOC leads to no other conclusion but that the importations were approved for release and the customs duties were paid. Petitioner maintained that the bank machine validation is not the only proof of payment of customs duties,

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[12] Docket, Vol. IV, p. 1475.
[13] *Commissioner of Internal Revenue v. Team Sual Corporation*, G.R. No. 194105, February 5, 2014.

other proof of payment of the customs duties may be relied upon to show that customs duties were paid. The approval by the customs officers of the corresponding IEIRD should be given credence and be sufficient basis of the proof of payment of customs duties.

Petitioner's contention is flawed.

As correctly pointed out by respondent in his Comment, the fact that a BOC official approved the computations in the IEIRDs does not prove actual payment of customs duties, as such computation, at most, only shows the amount that should have been settled by petitioner.

Further, petitioner maintained that since the petroleum fuel purchases from PSPC were allowed to be released from the custody of the BOC, this leads to the conclusion that the customs duties due on these importations were actually paid.

We are not swayed. It is the machine-validated IEIRD which determines the date and amount of payment made for customs duties and taxes.

WHEREFORE, in view of the foregoing, respondent's and petitioner's Motions for Partial Reconsideration filed on May 24, 2018 and June 14, 2018, respectively are hereby **DENIED** for lack of merit and the assailed DECISION is hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice