REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

COLT COMMERCIAL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9270

Members:

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

Promulgated:

JAN 1 6 2019 4:15 pm

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RESOLUTION

MANAHAN, *J.*:

For resolution are:

1. respondent's **Motion for Reconsideration (Of the Amended Decision dated August 31, 2018)**, filed on September 18, 2018, petitioner's **Comment**, filed through registered mail on October 5, 2018 and the Court received on October 11, 2018; and

2. petitioner's **Motion for Reconsideration**, filed through registered mail on September 18, 2018 and received by the Court on September 25, 2018, without respondent's comment despite notice as per Records Verification dated October 24, 2018.

Both parties seek reconsideration of the Court's Amended Decision dated August 31, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, respondent's **Motion for Reconsideration (To the Decision dated March 21, 2018)** is **DENIED** for lack of merit. On the other hand, petitioner's **Motion for Reconsideration (of the Decision dated April 3, 2018)** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated April 3, 2018 is amended to read as follows:
>
>> '**WHEREFORE**, premises considered, this Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** the amount of **₱594,501.00** in favor of petitioner, representing the latter's unutilized input VAT attributable to its zero-rated sales covering the third quarter of taxable year 2013.
>>
>> **SO ORDERED**.'
>
> **SO ORDERED**."

Respondent moves for the reconsideration of the Amended Decision, alleging that this Court erred in ruling that the amount of ₱11,770.23 indicated in the Bureau of Customs (BOC) official receipt (OR) pertained to the importation dated September 20, 2013 and considered as petitioner's valid claim for input value-added tax (VAT).

According to respondent, this Court should have not considered the amount of ₱11,770.23 as petitioner's valid claim without the same first having been qualified as VAT zero-rating sale. Respondent states that after this Court perused the BOC OR under the name of petitioner, the Court immediately allowed the said amount as petitioner's additional valid claim.

Petitioner counter-argues that re-examination of the supporting BOC OR pertaining to the importation dated September 20, 2013 in the amount of ₱11,770.23 would show that it was under the name of petitioner. According to petitioner, the Court has the power to re-examine exhibits in the process of making a resolution on petitioner's Motion for Partial Reconsideration. Petitioner avers that respondent did not provide any basis in questioning the procedure and findings of this Court. Petitioner insists that it sufficiently presented documentary and evidentiary requirements for its claim for refund and complied with the invoicing and accounting requirements mandated by the National Internal Revenue Code (NIRC) and applicable revenue regulations with regard to the partially granted claim for refund.

On the other hand, as to petitioner's motion for reconsideration, petitioner claims that the evidence it formally offered substantiated its actual export of its foreign sales and VAT payment on purchases.

Petitioner states that it attached documents in the *Motion for Reconsideration* posted on April 19, 2018 (1st Motion for Reconsideration) to prove its actual export sales in the third quarter of taxable year (TY) 2013, that Purchase Invoice No. EY9B13000005 of Taegutec Ltd. dated June 28, 2013 was not dated outside the period of claim, that it paid the VAT on its importation, and that the proof of VAT remittance was validated by bank with respect to Purchase Invoice No. 82489. Petitioner asserts that based on documentary exhibits formally offered and admitted as evidence, petitioner proved its actual export of its foreign sales and VAT payment on purchases; and the annexes/documents attached to its 1st Motion for Reconsideration supported its arguments.

Petitioner points out that its witness, Mr. Cyrus S. Chung, testified that it sold and delivered cutting tools and hardware to their clients. Allegedly, the actual sale of petitioner's products to its foreign clients and its corresponding receipt of their payment thereto lead to no other conclusion than the actual export of petitioner's foreign sales to its clients located abroad. Thus, petitioner posits that this Court may take judicial notice of the fact that these foreign customers will not pay the consideration on their purchases had they not received the cutting tools and hardware delivered by the petitioner. Petitioner also believes that this Court may take judicial notice of the fact that the BOC will not release the goods imported by the petitioner if the latter did not pay the VAT on importation. Petitioner explains that the BOC could not have released the same and petitioner could not have used the same had the 12% VAT on importation not been paid.

Also, petitioner submits that the import entry on importation substantiated its input tax credits, because Section 4.110-8 of Revenue Regulations No. 16-2005 on Substantiation of Input Tax Credits requires the submission of import entry or other equivalent document showing actual payment of VAT on the imported goods.

The Court finds that the arguments raised by both parties are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Amended Decision. Thus, there is no reason for the Court to further address the same.

However, the Court shall only discuss on the issue raised by petitioner in its motion for reconsideration regarding the judicial notice of the above-mentioned material facts to enlighten petitioner on the matter.

Sections 1, 2, and 3, Rule 129 of the Rules of Court provide:

> "**SECTION 1.** *Judicial notice, when mandatory.* – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.
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> **SEC. 2.** *Judicial notice, when discretionary.* – A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.
>
> **SEC. 3.** *Judicial notice, when hearing necessary.* – During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon."

The taking of judicial notice is a matter of expediency and convenience for it fulfills the purpose that the evidence is intended to achieve, and in this sense, it is equivalent to proof.[1]

In the case of *Spouses Omar and Moshiera Latip vs. Rosalie Palaña Chua*[2], the Supreme Court cited its ruling in the case of *State Prosecutors vs. Muro*[3], stating that the power to take judicial notice must be exercised with caution, to wit:

> "On this point, *State Prosecutors v. Muro* is instructive:
>
> I. **The doctrine of judicial notice rests on the wisdom and discretion of the courts. The power to take judicial notice is to be exercised by courts with caution; care must be taken that the requisite notoriety exists; and every reasonable doubt on the subject should be promptly resolved in the negative.**
>
> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.
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> To say that a court will take judicial notice of a fact is merely another way of saying that the usual form of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. This is because the court assumes that the matter is so notorious that it will not be disputed. But judicial notice is not judicial knowledge. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he is not authorized to make his individual knowledge of a fact, not generally or professionally known, the basis of his action. Judicial

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[1] *Degayo vs. Magbanua-Dinglasan*, G.R. No. 173148, April 6, 2015.
[2] G.R. No. 177809, October 16, 2009.
[3] A.M. No. RTJ-92-876, September 19, 1994.

> cognizance is taken only of those matters which are 'commonly' known.
>
> Things of 'common knowledge,' of which courts take judicial notice, may be matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person." (*Emphasis supplied*)

In this case, petitioner alleges that the Court may take judicial notice of the following facts:

1. The foreign customers will not pay the consideration on their purchases had they not received the cutting tools and hardware delivered by the petitioner; and

2. The BOC will not release the goods imported by the petitioner if the latter did not pay the VAT on importation.

Applying the foregoing provisions to the instant case, the Court cannot mandatorily take judicial notice of the said facts since they do not fall within those enumerated matters under Section 1, Rule 129 of the Rules of Court. The same likewise cannot be considered of public knowledge, or capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions as contemplated under Section 2, Rule 129 of the same Rules. Further, petitioner did not request that the aforesaid facts would be subject of the judicial notice, and the Court did not hear such request in accordance with Section 3, Rule 129 of the same Rules.

The Court finds it worthy to reiterate its ruling in the Amended Decision, to wit:

"However, the documents attached to petitioner's motion for reconsideration and marked as Annexes 'P-1-MR', 'P-2-MR', 'P-3a-MR to 3g-MR', 'P-4a-MR to 4e-MR', 'P-5-MR', and 'P-6-MR' have not been formally offered as evidence and have just been presented for the first time.

The Court takes into consideration the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, 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:
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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.
>
> Although in a long line of cases, we have relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court, we exercised extreme caution in applying the exceptions to the rule, as pronounced in *Vda. de Oñate v. Court of Appeals*, thus:

> From the foregoing provision, ***it is clear that for evidence to be considered, the same must be formally offered.*** xxx'

Since the annexes attached to the motion have not been formally offered and petitioner has not stated any ground for the relaxation of the application of Section 34, Rule 132 of the Rules of Court in this case, the Court cannot consider the said documents.

With regard to the sales invoices, schedule and bank certification of inward remittance, and reconciliation of export sales and dollar remittances presented as evidence by petitioner and admitted by the Court, the same merely established the fact of sale of goods and the receipt of the corresponding foreign currency remittances. However, <u>the said pieces of evidence do not reveal the actual shipment of goods from the Philippines to a foreign country.</u> Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, mandates that the goods be physically shipped out of the Philippines to a foreign country which can be proven through the presentation of corresponding export declarations, and bills of lading or airway bills. Thus, petitioner's non-presentation of the said export documents warrants the denial of VAT zero-rating of its claimed direct export sales.

As regards the VAT on importation, the Court agrees with petitioner that it may be supported by import entry showing actual payment of the VAT. However, the import entry referred to by petitioner as Exhibit "P-22" was denied admission by the Court in the Resolution dated March 17, 2017, for not being found in the records of the case.

As earlier discussed, the annexes attached to the motion such as Statements of Settlement of Duties and Taxes and the Sworn Statement of Mr. Cruz, bank officer of the Bank of Commerce, were not formally offered, thus, the same cannot be considered by the Court."

Considering the foregoing, there is no cogent reason to disturb the assailed Amended Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Of the Amended Decision dated August 31, 2018)** and petitioner's **Motion for Reconsideration** are **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice