REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

COLT COMMERCIAL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9340

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

OCT 0 2 2019, 10:46 am

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RESOLUTION

MINDARO-GRULLA, J.:

For resolution are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 10 April 2019)**, filed on April 29, 2019, with petitioner's **Comment/Opposition to Respondent's Motion for Partial Reconsideration (Re: Decision Promulgated 10 April 2019)**, filed on June 7, 2019;

2. petitioner's **Motion for Partial Reconsideration (of the Decision dated April 10, 2019),** filed on May 17, 2019, with respondent's **Opposition (Re: Motion for Partial Reconsideration dated 17 May 2019)**, filed on June 7, 2019; and

3. petitioner's **Supplemental Motion for Partial Reconsideration (of the Decision dated April 10,**

> **2019)**, filed on July 3, 2019, with respondent's **Opposition (Re: Supplemental Motion for Partial Reconsideration dated 03 July 2019)**, filed on August 5, 2019.

The parties seek reconsideration of the Court's Decision (assailed Decision) promulgated on April 10, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND or ISSUEA A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱1,145,317.71**, representing unutilized input VAT attributable to its zero-rated sales for the 4th quarter of taxable year 2013.
>
> **SO ORDERED.**"

Respondent's Motion for Partial Reconsideration

Respondent moves for reconsideration of the assailed Decision, arguing that the Court erred in ruling that the claimed input tax subject of the instant case remains unutilized.

Respondent contends that the information contained in petitioner's VAT returns for taxable year 2015 should not be given weight as the same were mere results of self-declaration of petitioner and still subject to audit investigation by respondent. According to respondent, the pertinent documents and records which were subjected to evaluation by the Court were those pertaining to taxable year 2013 only.

Moreover, respondent alleges that verification of the VAT returns of petitioner disclosed that it applied the entire amount of input tax, subject for refund against the output tax by way of carrying it over to the 1st quarter of taxable year 2014. Respondent maintains that as petitioner applied such input tax against the output tax, then it failed to satisfy the fourth requisite that the input taxes were not applied against any output VAT liability. Thus, respondent avers that petitioner failed to overcome the burden that the subject input VAT being claimed remained unutilized or has not been applied

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against any output tax for the current and the succeeding quarters of the following taxable year/s.

Finally, respondent avers that since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

Petitioner counters that there is no basis for respondent's allegation that the verification of VAT returns of petitioner disclosed that it applied the entire amount of input tax, subject for refund against the output tax by way of carrying it over to the 1st quarter of taxable year 2014, considering that the supposed Memorandum dated March 28, 2016 recommending the denial of the claimed refund and marked as Exhibit "R-2" for respondent was never formally offered.

Further, petitioner alleges that a reading of the Report of the Independent CPA, which was formally offered and duly considered by the Court clearly states on page 15 thereof:

> V. Q4 – 2013 EXCESS INPUT VAT NOT USED ON CARRY-OVER
>
> A. Based on the Quarterly VAT return for the Fourth Quarter of 2013, the amount of Php 7,236,255.76 was indicated as excess input VAT over out and was carried-over until Third Quarter of 2015 when said amount was deducted from creditable input VAT under line item 23D "VAT Refund/TCC" of BIR Form No. 2550Q. **The excess input VAT during the quarterly VAT returns from fourth quarter of 2013 was carried-over to third quarter of 2015 when it was claimed for refund.**
>
> B. Based on our analysis on Table 13, **excess input VAT of 4th Quarter 2013 has not been applied against any output VAT until it was applied for tax refund.** (emphasis supplied)

Thus, petitioner maintains that there is no basis whatsoever for the Court to grant respondent's Motion for Partial Reconsideration.

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At the outset, the issues and arguments presented in respondent's motion are essentially a mere rehash of what have been said and reiterated in previous pleadings and have been thoroughly considered, weighed and resolved by the Court in the assailed Decision, *viz*:

> All told, petitioner was able to prove that the claimed excess input VAT of ₱2,082,376.41 for the 4th quarter of taxable year 2013 was not applied against any output VAT in the succeeding quarters. The said amount remained unutilized as it was deducted as "VAT Refund/TCC claimed" in its Amended Quarterly VAT Returns for the 3rd quarter of taxable year 2015. Apparently, the subject claim no longer formed part of the excess input VAT of ₱278,416.77 at the end of the said quarter of taxable year 2015 which can be carried over/applied to the succeeding quarters. Henceforth, it eliminates the possibility that the present claim would be applied to future output VAT liability.

Further, as argued by petitioner, the Memorandum dated March 28, 2016 and marked as Exhibit "R-2", which respondent cites to support his claim that "verification of VAT returns of petitioner disclosed that it applied the entire amount of input tax, subject for refund against the output tax by way of carrying it over to the 1st quarter of taxable year 2014", was never formally offered by respondent.

In *Republic vs. Gimenez, et al.*[1], the Supreme Court ruled:

> Rule 132, Section 34 provides:
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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.
>
> The rule on formal offer of evidence is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence submitted against them and take the necessary actions to

[1] G.R. No. 174673, January 11, 2016.

> secure their case. Hence, any document or object that was marked for identification is not evidence unless it was "formally offered and the opposing counsel [was] given an opportunity to object to it or cross-examine the witness called upon to prove or identify it."
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> This court explained further the reason for the rule:
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>> The Rules of Court provides that "the court shall consider no evidence which has not been formally offered." A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. *On the other hand, this allows opposing parties to examine the evidence and object to its admissibility.* Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court. (Emphasis supplied, citations omitted)
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> To consider a party's evidence which was not formally offered during trial would deprive the other party of due process. Evidence not formally offered has no probative value and must be excluded by the court.

Accordingly, respondent's reliance on Exhibit "R-2", which was not formally offered during trial, is devoid of legal basis.

Petitioner's Motion for Partial Reconsideration and Supplemental Motion for Partial Reconsideration

Petitioner also moves for reconsideration of the assailed Decision, contending that it was able to substantiate its actual export sales through its sales invoices, airway bills, certifications of inward remittances, reconciliation of export sales and dollar remittances and the ICPA Report.

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Petitioner contends that the Court-commissioned ICPA has certified that petitioner's actual export sales amounting to ₱2,077,110.82 were supported by documents. Petitioner also submits enlarged copies of the subject airway bills to determine petitioner's zero-rated sales on account of its actual export sales.

Moreover, petitioner asseverates that its importations were duly supported by Import Entry & Internal Revenue Declarations (IEIRDs) with machine validations. It argues that the required evidence to support payment of input VAT on importation is the IEIRD, and that in the absence thereof, other equivalent document showing actual payment of VAT on the imported goods should be presented. Petitioner attaches to its motion copies of its Statement of Settlement of Duties and Taxes.

On the other hand, respondent opposes petitioner's motion contending that the burden of proof is on the taxpayer to establish its right to refund, and that he must prove that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Respondent avers that petitioner failed to establish the same.

In its supplemental motion, petitioner submits a Certification from DHL dated June 21, 2019 to prove that petitioner's products were sold to its foreign client and were actually shipped to Germany.

Upon careful consideration of the parties' arguments and counter-arguments, and review of the evidence presented, the Court finds petitioner's motion unmeritorious.

In the assailed Decision, the Court had already considered the supporting documents petitioner mentioned in its motion, but found them lacking. The Court ruled as follows:

> As noted by the court-commissioned ICPA in his ICPA Report, petitioner had actual export sales in the amount of ₱2,077,110.82 which were duly supported by *(i)* airway bills/bills of lading, as proof of actual shipment of goods from the Philippines to a foreign country; *(ii)* certificate of inward remittances; and, *(iii)* reconciliation of export sales and dollar remittances, as proof of payment for the goods in acceptable foreign currency.

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> Thus, the ICPA considered the said amount in the computation of petitioner's zero-rated sales.
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> Nonetheless, this Court cannot ascertain whether the airway bills submitted by petitioner actually support the purported zero-rated sales declared by petitioner as the same were unreadable. As such, the claimed actual export sales shall also be denied VAT zero-rating.[2]

It must be noted that the summary with the certification by an independent CPA is merely corroborative of the actual input VAT paid and the actual export sales. The pertinent invoices, receipts, and export sales documents are the best and competent pieces of evidence required to substantiate the claim for tax credit or refund which is merely corroborated by the summary duly certified by a CPA.[3]

It is also pertinent to note that the documents attached to petitioner's motion and supplemental motion, such as the enlarged airway bills, Statement of Settlement of Duties and Taxes, and DHL certification, were not marked, identified nor formally offered by petitioner, much less admitted in evidence by this Court. Furthermore, save for the DHL certification, the documents were mere photocopies, and were not certified that it was examined by the independent CPA.

Section 34, Rule 132 of the Rules of Court provides that the Court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight. Mere identification of documents and the markings thereof as exhibits do not confer any evidentiary weight on documents unless formally offered.[4]

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[2] Assailed Decision dated April 10, 2019, p. 15.

[3] See *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

[4] *Diwata Ramos Landingin vs. Republic of the Philippines*, G.R. No. 164948, June 27, 2006.

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The Court likewise finds that the additional evidence submitted by petitioner amount to no more than "forgotten" evidence, the belated uncovering of which would not have justified a reconsideration of the case. As held in the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo vs. Carmencita D. Coronel*[5]:

> xxx Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.

Anent petitioner's argument that its importations were duly supported by IEIRDs, a review of the IEIRDs submitted to the Court shows that the documents have no machine validation thereon. The importations in the aggregate total of ₱219,835.00 were disallowed because in addition to the IEIRDs having no machine validation, no other documents were provided to prove payment of the claimed input VAT.[6] Hence, the Court maintains the disallowance.

In view of the foregoing, the Court is constrained to likewise deny petitioner's motion and supplemental motion.

WHEREFORE, finding no cogent reason or overriding justification to disturb the assailed Decision, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 10 April 2019)** and petitioner's **Motion for Partial Reconsideration (of the Decision dated April 10, 2019)** and **Supplemental Motion for Partial Reconsideration (of the Decision dated April 10, 2019)** are **DENIED** for lack of merit.

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[5] G.R. No. 164460, June 27, 2006.
[6] Assailed Decision dated April 10, 2019, pp. 21-22.

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SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice