REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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CARMEN COPPER CORPORATION, Petitioner,	**CTA EB NO. 2161** (CTA Case No. 9457)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUN 08 2021 4:08 p.m.

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RESOLUTION

UY, J.:

For resolution is the ***MOTION FOR RECONSIDERATION (Re: Decision dated November 26, 2020[1])***[2] filed by petitioner Carmen Copper Corporation on December 17, 2020 *via* registered mail and received by the Court on January 7, 2021, with the ***OPPOSITION (Re: Motion for Reconsideration of the Decision dated 25 November 2020)***[3] filed by the Commissioner of Internal Revenue (CIR) on January 29, 2021, praying for the reconsideration of the Court *En Banc's* Decision[4] dated November 25, 2020. The dispositive portion of the assailed Decision reads:

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[1] Should be November 25, 2020.
[2] EB Docket, pp. 111 to 131.
[3] EB Docket, pp. 142 to 146.
[4] EB Docket, pp. 92 to 110.

"**WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated July 23, 2019 and Resolution dated September 19, 2019, both rendered by the Court in Division in CTA Case No. 9457 are **AFFIRMED**.

SO ORDERED."

Petitioner's arguments:

Petitioner argues that its judicial claim for refund for the 1st quarter of taxable year 2014 was duly substantiated based on the provisions of the 1997 National Internal Revenue Code (NIRC), existing jurisprudence, and the Revised Rules of the Court of Tax Appeals (RRCTA).

Petitioner reiterates that the "Advances" and "Customer Charges" are information not required for judicial claim of refund. Allegedly it was able to prove the existence of its zero-rated sales with sufficient documentary evidence and that its failure to explain the "Advances" and "Customer Charges" does not warrant denial of the refund because it is not one of the elements that a taxpayer is required to prove under the Tax Code and jurisprudence.

Further, petitioner maintains that the Philippine Associated Smelting & Refining Corporation's (PASAR) *Certificate of Registration* issued by Philippine Economic Zone Authority (PEZA) is not required to prove that the sales thereto are subject to zero-rating; and that said *Certificate* is not a requirement in a judicial claim for refund.

Relying on the case of *Team Energy Corporation vs Commissioner of Internal Revenue*[5] (or Team Energy case), petitioner posits that it only needs to show that it is a VAT-registered entity and it complied with the invoicing requirements under the Tax Code and its implementing revenue regulations.

In addition, petitioner claims that since PASAR's address is located within the Leyte Industrial Economic Zone, an economic zone, as shown in the sales invoices to PASAR, its sales to PASAR

[5] G.R. No. 197663, March 14, 2018.

are considered as export sales subject to zero-rating in accordance with the cross-border doctrine.

As regards the unreadable supporting documents, petitioner submits that the same was due to inadvertence during the creation of the faithful reproductions of their original counterparts; and that the Court should allow the submission of a new set of faithful reproduction of the original documents to correct evidence previously offered.

Petitioner likewise contends that the *Certificate of Inward Remittance* relative to its sales to Mitsui & Co. was included in the Independent Certified Public Accountant (ICPA) Report which was offered and presented as evidence before the Court in Division; and that respondent did not object to the admissibility of the ICPA Report and the Court in Division's ruling admitting the said Audit Report. Further, petitioner submits that the total amount remitted per sales invoices matched with those in the said Certificate of Inward Remittance.

Finally, petitioner maintains that the reopening of trial for the admission of new evidence is proper as it allegedly proved the existence of its zero-rated sales.

Respondent's counter-arguments

In his *Opposition*, respondent argues that since the issue in the instant case is petitioner's entitlement to refund, and considering that claims for refund, which are in the nature of tax exemptions, are construed *strictissimi juris* against the claimant , petitioner must prove that it is entitled to the refund sought. In the instant case, petitioner allegedly failed to discharge its burden of establishing its claim for a tax refund or credit.

As to petitioner's contention that the case be reopened for the admission of new evidence, respondent cites the Court *En Banc's* ruling that petitioner has not established any good reason why a decree reopening the case should be granted by this Court. The failure of petitioner to discharge the burden of proof to substantiate its claim for refund cannot be considered as a good reason to allow the re-opening of this case.

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THE COURT *EN BANC'S* RULING

Petitioner's *Motion for Reconsideration* lacks merit.

After a careful examination and consideration of the instant *Motion*, it is noted that the arguments raised therein are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

As regards petitioner's reliance on the *Team Energy case,* the same is specious as the factual milieu in the said case is not on all fours with the present case. In the *Team Energy case,* what is involved is the power generation services rendered by the taxpayer-claimant to National Power Corporation (NPC), an entity which is exempt from payment of all taxes, whether direct or indirect, including VAT, pursuant to its special charter, Republic Act No. 6395 (or NPC charter).[6] The Supreme Court ruled that since the refund claim is premised on Section 108(B)(3) of the 1997 NIRC, ***in relation to***

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[6] Rep. Act No. 6395, Sec. 13 provides:

Section 13. *Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and other Charges by Government and Governmental Instrumentalities.* — The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation is hereby declared exempt:

(a) From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;

(b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;

(c) From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and

(d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power. (Section 24 of Republic Act No. 9337 which took effect on November 1, 2005, repealed NPC's exemption from VAT.).

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NPC's charter, the requirements under the EPIRA are inapplicable. Accordingly, the Supreme Court held that to qualify its electricity sale to NPC as zero-rated, the taxpayer-applicant needs only to show that it is a VAT-registered entity and that it has complied with the invoicing requirements under Section 108(B)(3) of the 1997 NIRC, in conjunction with Section 4.108-1 of Revenue Regulations No. 7-95.

In the instant case, however, what is involved is **not** a sale of electricity to NPC but a sale of copper concentrates to PASAR. As claimed by petitioner, PASAR is a corporation registered with PEZA; and that its sales to PASAR are allegedly subject to zero-rating.

Evidently, the ruling in the *Team Energy case* finds no application in the present case in view of the disparity of the issues involved as well as the factual background of the case.

The Court *En Banc* likewise finds no merit in petitioner's allegation that since PASAR's address is located in an economic zone as shown in the sale invoices to PASAR, its sales thereto are considered as export sales subject to zero-rating in accordance with the cross-border doctrine. While the sales invoice indicated that PASAR's address is located in an ecozone, the same is insufficient to prove that its sales are zero-rated. Said information can only be verified through the presentation of the *Certificate of Registration* duly issued by PEZA to PASAR. However, as found in the assailed Decision, petitioner failed to present the pertinent *Certificate of Registration* which would prove that PASAR is indeed a PEZA-registered entity.

Further, even if the Court *En Banc* concedes, for the sake of argument, that petitioner was able to establish that PASAR is a PEZA-registered entity, the subject sales of copper concentrates to PASAR will still be disallowed for petitioner's failure to substantiate the same.

In the assailed Decision, We found that the sales invoices relative to its sales to PASAR are unreadable and that petitioner failed to sufficiently account for the discrepancies in the amount shown in the export sales schedule vis-à-vis the amounts in the sales invoice. The said finding has not been adequately controverted by petitioner.

In view thereof and finding no compelling reason to reconsider, modify or reverse Our Decision, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice