REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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PHIL. GOLD PROCESSING & REFINING CORP., *Petitioner,*	**CTA *EB* NO. 1670** (CTA Case No. 8763)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 09 2018 1:45 p.m.

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RESOLUTION

MANAHAN, J.:

To be resolved before this Court is petitioner's **Motion for Reconsideration**[1] filed on May 22, 2018, praying for the amendment of this Court's decision dated May 7, 2018 and the promulgation of a new decision granting its petition for review and directing respondent Commissioner of Internal Revenue (CIR) to refund the amount of Php58,773,075.12 representing petitioner's unutilized input value-added tax (VAT) for the periods January 1 to March 31, 2012 and April 1 to June 30, 2012. the dispositive portion of the abovementioned decision is quoted below:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The February 15, 2017 *Decision* and May 25, 2017 *Resolution* of

[1] *Rollo*, CTA EB No. 1670, pp. 95-102.

the CTA Third Division in CTA Case No. 8763, are hereby **AFFIRMED**.

SO ORDERED.

Petitioner faults this Court for interpreting the Doctrine of *Strictissimi Juris* as requiring from it the submission of evidence more than what is normally required to prove entitlement to the tax exemption.

Petitioner insists that the certification issued by the Board of Investments (BOI) marked "Exhibit "P-5" attests to the fact of petitioner's total export sales for the periods January 1 to March 31, 2012 and April 1 to June 30, 2012.

We deny the Motion for Reconsideration.

The records of the case reveal that petitioner's claim for tax refund on the alleged unutilized or unapplied input VAT is anchored on Section 112(A) in relation to Section 106(A)(2)(a)(1) of the 1997 National Internal Revenue Code (NIRC), as amended, pertaining to zero-rated or effectively zero-rated sales. In the case of *Commissioner of Internal Revenue v. Fortune Tobacco Corporation,*[2] the Supreme Court emphasized that when claim for tax refund is anchored on a tax statute, the claimant has the burden to prove said claim, to wit:

> Tax exemption is a result of legislative grace. And **he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken**. The rule is that tax exemptions must be strictly construed such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention.
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> **A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language**. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken. (*Emphasis supplied*)

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[2] G.R. Nos. 167274-75, July 21, 2008.

Among the requisites cited under Sections 106(A)(2)(a)(1) and 112(A) of the 1997 NIRC, as amended, which petitioner must prove is that its sales came from export sales. However, petitioner failed on this aspect as it did not present and submit, as part of its evidence, the bills of lading or airway bills to prove that the goods sold were actually shipped out of the country, thus, proving that said transactions were indeed export sales. Said requirement was amply explained in the assailed decision, to wit:

> It must be recalled that the assailed decision considered the claim for refund as having been based on Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, or from export sales.
>
> The term "export sales" is defined in the said provision as "the **sale and actual shipment of goods from the Philippines to a foreign country**, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."
>
> Thus, the provision requires that there should be an actual shipment of goods from the Philippines to a foreign country and such shipment can only be proven by the airway bill or bill of lading.
>
> In *Aniceto G. Saludo et al. v. Court of Appeals et al.*, the Supreme Court ruled that the airway bill or bill of lading is a receipt of the goods shipped, to wit:
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>> A **bill of lading is a written acknowledgment of the receipt of the goods** and an agreement to transport and deliver them at a specified place to a person named or on his order. Such instrument may be called a shipping receipt, forwarder's receipt and receipt for transportation. The designation, however, is immaterial. It has been held that freight tickets for bus companies as well as receipts for cargo transported by all forms of transportation, whether by sea or land, fall within the definition. Under the Tariff and Customs Code, a bill of lading includes airway bills of lading. **The two-fold character of a bill of lading is all too familiar; it is a receipt as to the quantity and description of the goods shipped** and a contract to transport the goods to the consignee or other person therein designated, on the terms specified in such instrument. (*Emphasis supplied*)
>
> xxx xxx xxx

> The bill of lading or airway bill, as the case may be, is the document that will prove petitioner's allegation that the money remitted by the foreign companies through HSBC and credited to its bank account was actually the payment for the goods that petitioner shipped to the said foreign companies. As such, export sale is clearly and convincingly proven. However, petitioner failed to do so in the case at hand.

The application by this Court of the doctrine of *Strictissimi Juris* in the instant case was proper. Petitioner is mistaken to believe that the Court required pieces of evidence more than what is normally required to prove compliance with the abovementioned provision. The bill of lading or airway bill is the basic evidence to prove the sale and actual shipment of goods outside the country.

As to petitioner's insistence that the BOI Certification had sufficiently proven that its sales for the periods January 1 to March 31, 2012 and April 1 to June 30, 2012 consisted wholly of export sales, this Court had sufficiently explained the tenor of said BOI Certification in the assailed decision, to wit:

> A perusal of said certification marked as Exhibit "P-5" reveals that BOI certified that petitioner is registered with the BOI pursuant to Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.
>
> Further, the information indicated therein as to the alleged 100% export of petitioner's total sales volume/value was based on the affidavit of petitioner that it submitted to the BOI **with a note that such volume/value is subject to post-audit and in the event of any misrepresentation such will be a ground for the cancellation of its BOI registration**.
>
> Nowhere in the said BOI certification did BOI certify that such sales came from petitioner's export activity nor did it have personal knowledge that indeed the sales were all from export transactions. The information was based only on the self-serving document provided by the petitioner.

This Court cannot accept as hard evidence some certification that, on its face, is not certain as to its truthfulness and veracity. It is very clear from the face of said document that the alleged sales were only based on the affidavit petitioner submitted to the BOI with a caveat that its accuracy may be subjected to audit. There was no categorical statement from the BOI as to the truthfulness of such export sale. What was apparent in the certification at the time of its issuance is that the volume of sales is subject to post-audit or validation as to its correctness. Hence, BOI's certification cannot fully substantiate the evidence of such export sales.

There being no new issues or matters raised by petitioner in the instant motion, this Court finds no compelling reason to reverse the ruling in the assailed decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit. Consequently, the February 15, 2017 *Decision* and May 25, 2017 *Resolution* of the CTA Third Division in CTA Case No. 8763 are hereby **UPHELD** and **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice