REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ORICA PHILIPPINES, INC.,
Petitioner,

CTA CASE NO. 9647

Members:

- versus -

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 1 3 2020 8:49 Am

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner's **Motion for Reconsideration (Re: 4 June 2020 Decision of the Honorable Court of Tax Appeals – Second Division)**, filed on 22 June 2020, with respondent's **Comment/Opposition Re: Petitioner's Motion for Reconsideration**, filed on 20 July 2020.

Petitioner's instant motion assails the Court's Second Division Decision dated 04 June 2020 in the above-titled case, denying its claim for refund or issuance of a tax credit certificate (**TCC**) amounting to ₱18,021,462.87, representing its alleged unutilized input value-added tax (**VAT**) arising from export sales for the second quarter of fiscal year ended 30 September 2015 (**2nd Quarter of FY 2015**) or the period of 01 January 2015 to 31 March 2015. The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, the foregoing premises considered, the instant Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

Essentially, the Court disallowed the zero-rated sales for petitioner's failure to prove inward remittance of foreign currency payments and for the absence of the Certificates (covering the claimed period) from the Board of Investment (**BOI**) for its sales to BOI-registered entities. Other export sales not supported by export declaration were likewise denied.

In its motion, petitioner contends that it should not be burdened by its faithful reliance on the methods used by the independent Certified Public Accountant (**ICPA**) in verifying its refund claim. It emphasizes that the supposed documents (which absence became the bases for the denial of its claim) form part of the voluminous documents examined and verified by the ICPA.

Petitioner is of the view that the ICPA, as officer of the Court, has the solemn duty to assist in the determination of the merits of its claim. It then could not be faulted for relying in good faith on the ICPA report considering that the ICPA was able to trace the export sales to the bank statements and found the BOI Certificates for the sales to BOI-registered entities.

Moreover, petitioner insists that the BOI Certificates supporting its sales to BOI-registered entities accurately cover the claimed period (2^{nd} Quarter of FY 2015). Hence, the corresponding sales should be considered as zero-rated sales.

Petitioner thus prays for the Court to (1) reconsider the findings and allow it to present additional evidence, or in the alternative, order the re-opening of the case for the submission of additional evidence to comply with the substantiation requirements; (2) reverse the assailed 04 June 2020 Decision; and, (3) grant its claim for refund amounting to ₱18,021,462.87.

Respondent, on the other hand, opposes the instant motion claiming that petitioner has outstanding liabilities before it thus barring any processing of application for TCC.

Respondent further echoes the Court's decision that the claim was properly denied for petitioner's failure to comply with Sections 112[1] and 113[2] of the National Internal Revenue Code (**NIRC**), as amended.

Lastly, respondent believes that if the Motion for Reconsideration (**MR**) were to be granted, it will send the wrong message that decided cases can still be relitigated even in the absence of valid grounds. He adds that both parties were already afforded ample opportunity to present their respective sides. Thus, a re-opening of the case is a waste of precious time and resources for him and the Court.

We resolve.

After considering the parties' opposing arguments and even after a second hard look on the records, We still find no cogent reason to deviate from our findings or grant a re-opening of the case.

COURT NOT BOUND BY THE FINDINGS OF THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT

As petitioner pointed out, the Court-commissioned ICPA has the following duties[3]:

> ...
> a) Examination and verification of receipts, invoices, vouchers and other long accounts;
> b) Reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of original documents, and pre-marking of documentary exhibits consisting of voluminous documents;
> c) Preparation of schedules or summaries containing a chronological listing of the numbers, dates and amounts covered by receipts or

[1] Section 112. *Refunds or Tax Credits of Input Tax.*
[2] Section 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.*
[3] Section 2, Rule 13, RRCTA, *Trial By Commissioner.*

invoices or other relevant documents and the amount(s) of taxes paid;

d) Making findings as to compliance with substantiation requirements under pertinent tax laws, regulations and jurisprudence.
e) Submission of a formal report with certification of authenticity and veracity of findings and conclusions in the performance of the audit;
f) Testifying on such formal report; [and,]
g) Performing such other functions as the Court may direct.

...

From the above, the ICPA is tasked to verify the taxpayer's documents and make a report on the findings based on the documents provided by the latter. However, it is ultimately the taxpayer who determines the documents it will subject for verification to substantiate its claim. The ICPA would simply examine the documents made available to him by the taxpayer.

Moreover, it bears stressing that the Court is not beholden to the ICPA's findings. Section 3 of Rule 13 of the Revised Rules of the CTA (**RRCTA**) provides:

...

Sec. 3. *Findings of independent CPA.* – ...The findings and conclusions of the independent CPA may be challenged by the parties and **shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**[4]

...

Hence, while the Court has the prerogative to adopt the ICPA's findings; it may still determine the merits of the case on its own, as it did in herein case.

INWARD REMITTANCE OF FOREIGN CURRENCY PAYMENTS NOT SUFFICIENTLY PROVEN

We maintain our ruling that petitioner failed to establish that the foreign currency payments were inwardly remitted. Some pages of

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4 Emphasis supplied.

the bank statements, as well as screenshots of e-mails from the supposed payor, were inconclusive and cannot be traced to the corresponding export sales as evidenced by invoices.

We likewise reiterate that the pages of the bank statements offered were self-serving documents and cannot be used as basis for the refund of input VAT attributable to zero-rated sales. For emphasis, We quote a portion of our earlier disquisition in the assailed Decision:

> ...
>
> In RR 3-88[5], one of the documents needed in claims for refund or issuance of TCC is a statement from the BSP or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency were inwardly remitted and accounted for in accordance with applicable banking regulations. Furthermore, in the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund[6] on Dollar Remittances, one of the items required is the schedule and <u>copy of Bank Credit Memos</u> to prove inward receipts of foreign currency for export sales. Regrettably, petitioner failed to submit the bank issued Bank Credit Memos; or alternatively, the Certificate of Inward Remittance that the recipient bank likewise issued.
>
> Petitioner's failure to submit a bank-certified credit memo or the Certificate of Inward Remittance is fatal to its claim. Indubitably, it is crucial that the proof of inward remittance of the payments in foreign currency be traced back to the export sales to which it relate. In this case, the unequivocal reference between the subject export sales and the inward transmittal of payments is missing.
>
> ...

Therefore, the export sales equivalent to ₱192,628,598.28 do not qualify for VAT zero-rating.

CERTIFICATES FROM THE BUREAU OF INVESTMENTS (BOI) DO NOT PERTAIN TO THE CLAIMED PERIOD

Contrary to petitioner's argument that the BOI Certifications of its customers cover the claimed period, a perusal of these certificates

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[5] *Revenue Regulations Amending Sections 16 and [23(b)] of Revenue Regulations No. 5-87.*

[6] Annex A, RMC 54-2014, *Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, As Amended.*

indeed shows that the validity of all the subject certificates were beyond the 2nd Quarter of FY 2015. The validity period of each Certification of petitioner's customers are reproduced below:

> ...
>
> **CARMEN COPPER CORPORATION**
>
> This is to certify that <u>**CARMEN COPPER CORPORATION**</u> is registered with the Board of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, with the following data: ...
>
> ...
>
> This Certification is issued pursuant to the provisions of BIR Revenue Regulations No. 16-2005 and Revenue Memorandum Order No. 7-2006.
>
> This Certification is valid from **January 1 to December 31, 2016** unless sooner revoked by the BOI Governing board for any or all of the following grounds: ...
>
> ...
>
> **GREENSTONE RESOURCES CORPORATION**
>
> This is to certify that **GREENSTONE RESOURCES CORPORATION** is registered with the Board of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, with the following data: ...
>
> ...
>
> This Certification is issued pursuant to the provisions of BIR Revenue Regulations No. 16-2005 and Revenue Memorandum Order No. 7-2006.
>
> This Certification is valid from **July 01, 2016 to June 30, 2017** unless sooner revoked by the BOI Governing board for any or all of the following grounds: ...
>
> ...
>
> **LEPANTO CONSOLIDATED MINING CO.**
>
> This is to certify that **LEPANTO CONSOLIDATED MINING CO.** is registered with the Board of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, with the following data: ...
>
> ...

> This Certification is issued pursuant to the provisions of BIR Revenue Regulations No. 16-2005 and Revenue Memorandum Order No. 7-2006.
>
> This Certification is valid from **January 1 to December 31, 2017** unless sooner revoked by the BOI Governing board for any or all of the following grounds: ...
>
> ...
>
> **OCEANAGOLD (PHILIPPINES) INC.**
>
> This is to certify that **OCEANAGOLD (PHILIPPINES), INC.** is registered with the Board of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, with the following data: ...
>
> ...
>
> This Certification is issued pursuant to the provisions of BIR Revenue Regulations No. 16-2005 and Revenue Memorandum Order No. 7-2006.
>
> This Certification is valid from **January 1 to December 31, 2016** unless sooner revoked by the BOI Governing board for any or all of the following grounds: ...[7]
>
> ...

Petitioner, however, maintains to anchor its claim from the statement in the certifications that its customers had 100% export sales for the whole year (which cover the period of sales made by petitioner to its respective customers) *prior* to the effectivity of the Certification, to wit:

> ...
>
> Information is hereby given that the firm exported 100% of its total sales volume/value for the period covering January 1 to December 31, 2015 based on the attached documents (Annexes B & C) submitted to the BOI summarized as follows:..
>
> ...

As quoted above, the BOI Certifications were issued pursuant to Revenue Regulations (**RR**) 16-2005 and Revenue Memorandum Order (**RMO**) 7-2006.

7 Emphasis and underscoring in the original text.

Section 4.106-5 (a)(5) of RR 15-2005 provides:

> ...
> SECTION 4.106-5. Zero-Rated Sales of Goods or Properties. - ...
>
> (a) Export sales. – "Export Sales" shall mean:
>
> ...
>
> (5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.
>
> *"Considered export sales under Executive Order No. 226"* shall mean the Philippine port F.O.B value...; Provided, That sales of export products to another producer or to an export trader **shall only be deemed export sales when actually exported by the latter**, as evidenced by landing certificates or similar commercial documents...
>
> ...
>
> ...Provided, finally, that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. **A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.**[8]
>
> ...

Concomitantly, Revenue Memorandum Order 7-2006 reads in part:

> ...
>
> 4. The **Application for VAT Zero-Rate shall be accomplished and filed by the seller** (not by the purchaser of goods, properties and/or services) to cover transactions qualified for effective zero-rating. The Application for VAT Zero-Rate shall be filed only by VAT-registered sellers to cover sale of goods, properties or services to qualified buyers **certified or endorsed, whenever necessary, by the concerned government regulatory agency.**[9]
>
> ...

As can be gleaned from RR 16-2005, the sale made to BOI-registered entities will be considered as export sales only when the said entities actually exported the same. The statement petitioner relied on (and used as basis for the substantiation of its claim) cannot qualify for

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[8] Emphasis supplied.
[9] Id.

VAT zero-rating considering that it is impossible to conclude solely from the Certification that the sales made by it on the 2nd Quarter of 2015 actually form part of the export sales of its respective customers for the same year.

For purposes of VAT zero-rating, it is essential that petitioner presents the **valid** Certification that its customers are duly registered with the BOI. The statement petitioner depended on was actually a statement of compliance on the part of the entities concerned that they were engaged in 100% export sales for the *prior* year, thus warranting the issuance of the certification effective for one year covering the *subsequent* year.

Unfortunately, for petitioner, what were proffered were BOI Certifications with validity period outside the period claimed for VAT zero-rating. We thus uphold our findings disallowing particular sales in the total amount of ₱143,029,082.07[10] for VAT zero-rating.

RE-OPENING OF THE CASE NOT AN AVAILABLE OPTION

Petitioner prays for the re-opening of the case to submit additional documents to substantiate its claim for refund deemed lacking by the Court in the assailed Decision. Essentially, petitioner is requesting for a new trial. Rule 15 of the RRCTA on *Motion for Reconsideration or New Trial* states:

> ...
> SECTION 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen (15) days from the date of receipt of notice of the decision, resolution or order of the Court in question.
>
> SECTION 5. *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which

10 The total amount includes sale to Philex Mining Corporation without BOI Certification.

> the rights of such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which could not, with reasonable diligence, have discovered and produced at the trial, and which, if presented, would probably alter the result.
>
> ...

Petitioner neither alleged nor proved the existence of any of the enumerated grounds. The Court cannot thus justify the re-opening of the case after exhaustively passing upon its merits, only to allow petitioner to submit evidence which We found lacking.

Verily, a re-opening of the case after judgment has been rendered, although have not attained finality, should be done sparingly and only upon showing of the presence of the grounds cited above. Petitioner was already given sufficient opportunity to prove its claim. By no stretch of imagination could its reliance to the findings of the ICPA be considered as mistake or excusable negligence. In the first place, as stated earlier, the documents to be examined by the ICPA remains to be the taxpayer's choice.

As respondent aptly invoked, the Supreme Court's ruling in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[11] may be applied in this case, thus:

> ...
>
> There can be no dispute that the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund, but once it has submitted all the required document, it is the function of the BIR to assess these documents with purposeful dispatch. It therefore falls upon herein petitioner corporation to first establish that its sales qualify for VAT zero-rating under existing laws (legal basis), and then to present sufficient evidence that said sales were actually made and resulted in refundable or creditable input VAT in the amount being claimed (factual basis).
>
> ...
>
> Besides, **litigation is not a "trial and error" proceeding.** A party who moves for a new trial on the ground of mistake must show that ordinary prudence could not have guarded against it. A new trial is not a refuge for the obstinate. **Ordinary prudence in these**

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[11] G.R. Nos. 141104 & 148763, 08 June 2007.

> **cases would have dictated the presentation of all available evidence that would have supported the claims** for refund/credit of input VAT of petitioner corporation...
>
> ...

Lastly, tax refunds are in the nature of tax exemptions. It is regarded as in derogation of the sovereign authority, and should be construed in *strictissimi juris* against the person or entity claiming the exemption. The taxpayer who claims for exemption must justify his claim by the clearest grant of organic or statute law and should not be permitted to stand on vague implications.[12]

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: 4 June 2020 Decision of the Honorable Court of Tax Appeals – Second Division) is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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

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12 Id.