REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1395 (CTA Case No. 8610)
	Present:
-versus-	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
FILMINERA RESOURCES CORPORATION, Respondent.	Promulgated: NOV 08 2017 2:45p.m.

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RESOLUTION

Fabon-Victorino, J.:

For resolution is petitioner's *Motion for Reconsideration* dated April 19, 2017, impugning the Decision dated March 23, 2017, the dispositive portion of which reads:

> **WHEREFORE**, the Petition for Review dated December 4, 2015 filed by the Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit.
>
> The Amended Decision dated August 27, 2015 and the Resolution dated November 11, 2015, both rendered by the Court in Division, are **AFFIRMED**.

SO ORDERED.[1]

The impugned Decision sustained the Amended Decision of the Court in Division granting respondent's claim for refund or issuance of tax credit certificate (TCC) amounting to ₱50,483,332.22, representing its excess and unutilized input tax attributable to its zero-rated sales for the fiscal year (FY) ending June 30, 2011.

Petitioner asserts that the BOI Certification presented by respondent must be denied admission being a forgotten evidence. Allegedly, respondent failed to establish that the belated presentation of said BOI Certification was due to fraud, accident, mistake, or excusable negligence, nor that it was a newly discovered evidence. That being the case, the Court should not consider the same.

Even *ex gratia argumenti* that the subject BOI Certification was admitted, the same does not conclusively establish that Phil. Gold Processing and Refining Corp. (PGPRC) exported 100% of its products for it was based on the latter's self-serving representation. Per petitioner, absent any showing that the requisites for zero-rating under Section 106(A)(2)(a)(1) of the Tax Code were strictly complied with, the claim for refund should be disallowed.

Reiterating his usual stance, petitioner imputes fault in respondent's alleged failure to comply with all the requirements set forth in Revenue Memorandum Order (RMO) No. 53-98 justifying denial of the claim for refund.

On the other hand, respondent argues that the admission of BOI Certification was in order since under the obtaining circumstances, the reopening of the case to introduce the said document was within the parameters provided by law and jurisprudence.

For respondent, its sales of ore to PGPRC are subject to zero-rating as the BOI Certification indicates that 100% of PGPRC's gold, silver and ore production were exported. It follows that respondent's sale of ore to PGPRC are likewise

[1] *Rollo*, p. 109.

zero-rated per RMO No. 9-2000. Since it incurred excess and unutilized input VAT relative thereto, respondent's claim for refund must be sustained.

A scrutiny of petitioner's Motion for Reconsideration show that it is a practically truncated from his Petition for Review dated December 4, 2015. In other words, they are neither fresh nor new. The arguments set forth in petitioner's plea for reconsideration have been thoroughly considered and passed upon by the Court *En Banc* in the impugned Decision dated March 23, 2017. There being no substantial argument put forward by petitioner which would compel the Court *En Banc* to reverse, much less, modify its ruling, the instant motion must be denied.

WHEREFORE, the Motion for Reconsideration dated April 19, 2017, filed by petitioner Commissioner of Internal Revenue is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(I maintain my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice