REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHIL. GOLD PROCESSING & REFINING CORP.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1599
(CTA Case No. 8697)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:

JAN 31 2018 4:15 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review[1] filed under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA). It seeks the reversal of the Decision dated September 1, 2016,[2] (assailed Decision) as well as the Resolution dated January 31, 2017[3] (assailed Resolution) of the Third Division (Court in Division)[4] of this Court in CTA

[1] Court *En Banc's* Docket, pp.1-15.
[2] *Id.*, pp. 19-37.
[3] *Id.*, pp. 38-42.
[4] Composed of Associate Justice Lovell R. Bautista as Chairperson, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban as members.

Case No. 8697, entitled *Phil. Gold Processing and Refining Corp. v. Commissioner of Internal Revenue.*

The respective dispositive portions of the assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED**."

Assailed Resolution:

> "**WHEREFORE**, premises considered, the instant **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

As found by the Court in Division in its Decision dated September 1, 2016, the facts of the present case are as follows:[5]

> "Petitioner Phil. Gold Processing and Refining Corp. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It was issued a Certificate of Incorporation on December 27, 2004 by the Securities and Exchange Commission (SEC) under its former name, LFT Processing Corporation. Petitioner is registered with the Bureau of Internal Revenue (BIR), with Tax Identification No. 004-498-686-000 issued on March 15, 1996.
>
> Petitioner is principally engaged in the business of processing, milling, crushing, refining, smelting, and concentrating mineral resources. It is registered with the Board of Investment[s] (BOI) as a 'New Producer of Gold and Silver

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[5] Court *En Banc's* Docket, pp. 20-22 (Citations omitted).

Dore on a Non-Pioneer Status with Pioneer Incentives being located in Less Developed Area (LDA)'.

Respondent Commissioner [of Internal Revenue] is the head of the BIR, vested with the power and authority, among others, to grant a refund of or to issue a tax credit certificate for unutilized input VAT attributable to zero-rated sales. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for the first and second quarters of fiscal year (FY) ending June 30, 2012 on October 24, 2011 and on January 25, 2012, respectively.

Subsequently, on March 19, 2013, petitioner filed its administrative claim for the issuance of tax credit certificate or tax refund covering the first and second quarters of FY ending June 30, 2012.

On August 15, 2013, petitioner filed the instant Petition for Review with this Court, which was docketed as CTA Case No. 8697.

Respondent filed his Answer on October 24, 2013, interposing the following special and affirmative defenses: that respondent reiterates and repleads the preceding paragraphs of the [A]nswer as part of his Special and Affirmative Defenses; that petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue; that petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected; that taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable; that it is incumbent upon the Petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended; and that petitioner's claim for refund or issuance of tax credit certificate in the amount of Php25,183,423.00 and Php28,356[,]580.27 as alleged excess and unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 1st Quarter and 2nd Quarter of fiscal year ending June 2012 (or for the period July 1, 2011 to December 31, 2012) was not fully substantiated by proper documents, such as sales invoices, official receipts and others.

The case was set for pre-trial conference on January 30, 2014. Respondent filed her Pre-Trial Brief on January 16, 2014. On the other hand, petitioner filed its Pre-Trial Brief on January 20, 2014.

The parties filed their Joint Stipulation of Facts and Issues on May 2, 2014. Subsequently, the Court issued a Pre-Trial Order on May 19, 2014.

During trial, petitioner presented Juanita Lilet A. Dato-Abuel and Enrico T. Pizarro as its witnesses.

Petitioner filed its Formal Offer of Evidence on December 1, 2014. On January 21, 2015, the Court issued a Resolution on petitioner's Formal Offer of Evidence[.]

On February 6, 2015, petitioner filed a Motion for Partial Reconsideration of the Resolution dated January 21, 2015.

In the Resolution promulgated on April 20, 2015, the Court ordered petitioner to file a Supplemental Formal Offer of Evidence, and to submit the Amended Judicial Affidavit of Enrico T. Pizarro that incorporates the necessary correction in the formal offer and identification of petitioner's exhibits. Further, the Court resolved to defer the resolution of the motion for partial reconsideration filed by petitioner.

On May 25, 2015, petitioner filed a Motion to Admit Attached Amended Judicial Affidavit and Supplemental Formal Offer of Evidence.

In the Resolution promulgated on June 30, 2015, the Court granted petitioner's motion for partial reconsideration, and accordingly admitted, as evidence for petitioner the denied exhibits.

During the hearing held on August 10, 2015, the counsel for respondent manifested in open court that she has no evidence to present.

The Records Verification Report of the Judicial Records Division of this Court dated September 22, 2015 states that respondent failed to file his Memorandum. On the other hand, petitioner filed its Memorandum on September 23, 2015.

In the Resolution dated October 6, 2015, the case was declared submitted for [d]ecision."

On September 1, 2016, the Court in Division rendered the assailed Decision denying the Petition for Review for insufficiency of evidence. In denying the Petition for Review, the Court in Division held that petitioner failed to sufficiently establish the fact of actual shipment of its goods from the Philippines to a foreign country.

Aggrieved, petitioner filed its Motion for Reconsideration on October 13, 2016, which the Court in Division subsequently denied in a Resolution dated January 31, 2017.

On February 22, 2017, petitioner filed the present Petition for Review. Respondent failed to file his Comment to the Petition for Review despite order by the Court *En Banc*, as per Records Verification Report issued by this Court's Judicial Records Division dated April 25, 2017.[6]

In a Resolution dated May 11, 2017, the Court *En Banc* gave due course to the present Petition for Review.[7] Accordingly, the Court *En Banc* granted the parties a period of thirty (30) days from notice within which to file their Memoranda.

On June 21, 2017, petitioner filed its Memorandum.[8] Respondent, on the other hand, failed to file his Memorandum as per the Records Verification Report dated July 12, 2017.[9]

Accordingly, the present case was submitted for decision through the Court *En Banc*'s Resolution dated August 1, 2017.[10]

THE ISSUES

Petitioner filed the present Petition for Review of the basis of the following grounds:[11]

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[6] *Id.*, p. 73.
[7] *Id.*, p. 75.
[8] *Id.*, pp. 77-92.
[9] *Id.*, p. 93.
[10] *Id.*, pp. 95-96.
[11] *Id.*, p. 8.

"VI. GROUNDS

I.

THE HONORABLE CTA (THIRD DIVISION) FAILED TO CONSIDER THAT THE FACT OF SALE, AS PROVEN BY THE INWARD REMITTANCES, MAY ALSO SERVE AS PROOF OF THE FACT OF ACTUAL SHIPMENT OF GOODS.

II.

THE HONORABLE CTA (THIRD DIVISION) OVERLOOKED THE LACK OF LEGAL BASIS IDENTIFYING SPECIFIC EXPORT DOCUMENTS TO PROVE THE FACT OF ACTUAL SHIPMENT OF GOODS.

III.

PETITIONER PGPRC SATISFACTORILY SUBSTANTIATED ITS CLAIM FOR REFUND OF UNUTILIZED/EXCESS INPUT VAT FOR THE 1ST AND 2ND QUARTERS OF FY ENDED 30 JUNE 2012."

THE COURT *EN BANC*'S RULING

The Petition for Review is bereft of merit.

At the outset, it bears stressing that tax refunds are in derogation of State's taxing power.[12] Such being the case, tax refunds, like tax exemptions, are strictly construed against the taxpayer and liberally in favor of the State.[13] Consequently, the taxpayer is charged with the heavy burden of proving clearly the factual basis of its claim.[14] The taxpayer must show that it has strictly complied with all the statutory and administrative requirements for the grant of the tax refund.[15] Failure to present sufficient evidence to

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[12] *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue*, G.R. No. 133834, August 28, 2006, 499 SCRA 668.

[13] *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. No. 190506, June 13, 2016, 793 SCRA 200;

[14] *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005, 461 SCRA 375, 376.

[15] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015, 748 SCRA 615; *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010, 624 SCRA 358.

justify the claim for refund is fatal.[16] Any doubt as to whether a tax exemption exists is resolved against the taxpayer.[17]

Section 106(A)(2)(a)(1) of the National Internal Revenue Code of 1997, as amended (1997 NIRC) provides the definition of "export sales" that shall qualify for VAT zero-rating, to wit:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* —
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero-percent (0%) rate:
>
> (a) *Export Sales.* — The term 'export sales' means:
>
> (1) 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);" *(Emphasis supplied)*

To avail of the VAT zero-rating, the foregoing provision requires the VAT-registered taxpayer to prove three (3) essential and distinct facts, namely: (1) fact of sale; (2) fact of actual shipment of goods to a foreign country; and (3) fact of payment in acceptable foreign currency (or its equivalent in goods and services) duly accounted for in accordance with BSP regulations. Petitioner must clearly prove these facts by substantial evidence in order to establish its claim for refund.

In its Petition, petitioner argues that by establishing the fact of sale coupled with the proof of payment, it must be understood as the consummation of the sale, which would in this case, mean that there was an actual shipment of goods. Petitioner avers that the establishment of the fact of sale and payment necessarily included the fact of actual shipment of goods, and that the inward remittances together with bank certifications on

[16] *Id.*

[17] *Manila Electric Company v. City Assessor*, G.R. No. 166102, August 5, 2015, 765 SCRA 85; *Digital Telecommunications Philippines, Inc. v. City Government of Batangas*, G.R. No. 156040, December 11, 2008, 573 SCRA 632.

inward remittances clearly serve as acknowledgment by the foreign buyers that they received the shipment of goods.

Petitioner's argument is untenable.

Nowhere in the assailed Decision or Resolution was it indicated that the fact of sale established by the documents presented by petitioner is a fully consummated one, at least as far as petitioner is concerned. While the documents presented by petitioner had established that a sale was entered into, and that the foreign buyers already made payment, the same do not necessarily prove that petitioner has already fulfilled its end of the sale transaction, *i.e.*, the actual shipment of the goods sold. It is precisely for this reason that the Court in Division requires the presentation of the export documents such as the export declarations and the bills of lading or airway bills. Thus, the Court *En Banc* quotes with approval the ruling of the Court in Division as follows:

> "The sales invoices, official receipts, HSBC Certification, and the Consolidated Cash Statement coming from BNP Paribas Corporate and Investment Banking presented by petitioner only established the fact of sale of goods and the receipt of the corresponding foreign currency remittances. The said pieces of evidence do not reveal the actual shipment of goods from the Philippines to a foreign country. Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, mandates that the goods be physically shipped out of the Philippines to a foreign country, which can be proven through the presentation of corresponding export declarations, and bills of lading or airway bills. Thus, petitioner's non-presentation of the said export documents will warrant the dismissal of its claim for refund or issuance of tax credit certificate."

To reiterate, Section 106(A)(2)(a)(1) of the 1997 NIRC categorically demands proof of actual shipment of goods to a foreign country apart from the proof of the fact of sale of such goods. To the Court *En Banc*'s view, the law would not have specifically required that the actual shipment of goods be distinctly established if proof of such fact could be subsumed by the evidence of the fact of sale. The need to establish the fact of actual shipment of goods before one can avail of VAT zero-rating for export sales is not a trivial matter but is required by the Destination and Cross Border principles underlying the Philippine VAT System. According to the Destination Principle, goods and services are taxed only in the country where they are consumed.[18] Thus, exports are zero-rated while imports are taxed. Similarly,

[18] *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 102, 103.

the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority.[19] Accordingly, there is no basis for the grant of VAT zero-rating if there is no proof that the goods were actually shipped abroad.

Petitioner also claims that the Court in Division overlooked the absence of any provision in the 1997 NIRC identifying what specific documents prove the fact of actual shipment of goods.[20] It maintains that in the absence of specific identification by the legislature, the BIR, and the Supreme Court that export sales can only be proven by the presentation of export declarations, bills of lading, and airway bills, this Court may not insist on the presentation of the said documents as exclusive proof of actual shipment of goods.[21]

Petitioner's argument fails to persuade.

At the outset, contrary to petitioner's claim, it must be pointed out that the Supreme Court in *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,*[22] categorically identified export documents such as export declarations and airway bills as sufficient proof of actual shipment of goods from the Philippines to a foreign country. According to the Supreme Court:

> "To the mind of the Court, these documentary evidence submitted by petitioner, e.g., summary of export sales, sales invoices, official receipts, **airway bills and export declarations**, prove that it is engaged in the sale and **actual shipment of goods from the Philippines to a foreign country**." *(Emphasis supplied)*

While it may be argued that the above pronouncement by the Supreme Court in *Intel* did not exclusively limit proof of actual shipment to export declarations, airway bills, or bills of lading only and that there *may* be other documents which *may* sufficiently prove that the goods were actually shipped to a foreign country, it still does not negate the reality that the documentary evidence adduced by petitioner before the Court in Division failed to sufficiently establish such fact. What is clear from the abovequoted portion of *Intel* is that export documents such as airway bills and export declarations prove the actual shipment of goods from the Philippines to a foreign country.

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[19] *Id.*
[20] Court *En Banc* Docket, p. 8.
[21] *Id.*, p. 11.
[22] G.R. No. 166732, April 27, 2007, 522 SCRA 686.

As correctly found by the Court in Division, the sales invoices, official receipts, HSBC Certification, and the Consolidated Cash Statement coming from BNP Paribas Corporate and Investment Banking that petitioner presented merely established the fact of sale of goods and receipt of the corresponding foreign currency remittances. Neither can the Export Schedules be given probative value for the purpose of proving actual shipment considering the failure of petitioner to present the source documents upon which the entries in the said schedules were based. Without the source documents, the Court cannot verify the veracity of the entries as contained in the said schedules.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated September 1, 2016 and Resolution dated January 31, 2017 of the Third Division of this Court in CTA Case No. 8697 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding 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

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice