REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

BUREAU OF CUSTOMS, Petitioner,	**CTA EB NO. 1973** (CTA Case No. 8752)
- versus -	
AGC FLAT GLASS PHILIPPINES, INC., Respondent.	
x---x	
PIONEER FLOAT GLASS MANUFACTURING, INC. (previously known as AGC FLAT GLASS PHILIPPINES, INC.), Petitioner,	**CTA EB NO. 1985** (CTA Case No. 8752)
	Present:
- versus -	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
BUREAU OF CUSTOMS, Respondent.	**Promulgated:** DEC 03 2020 3:50 p.m.

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RESOLUTION

UY, *J*.:

For resolution is the ***MOTION FOR PARTIAL RECONSIDERATION [Of the Decision dated 14 July 2020]***[1] filed by the Bureau of Customs' (BOC) on September 23, 2020 *via* registered mail and received by the Court on October 7, 2020, with

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[1] EB Docket (EB No. 1985), pp. 307 to 323.

COMMENT/OPPOSITION (to the Motion for Partial Reconsideration dated 21 September 2020)[2] filed by Pioneer Float Glass Manufacturing, Inc.'s (previously known as AGC Flat Glass Philippines, Inc., and hereinafter referred to as "Pioneer Float Glass") on October 8, 2020, seeking the partial reconsideration of the Court *En Banc's* Decision[3] dated July 14, 2020, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, both *Petitions for Review* are hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated May 9, 2018 and Resolution dated November 20, 2018, both rendered by the Court in Division in CTA Case No. 8752 are **AFFIRMED**.
>
> **SO ORDERED.**"

The BOC's arguments:

In its *Motion*, the BOC argues that the law creating the Court of Tax Appeals did not grant it jurisdiction over the inaction of the Commissioner of Customs (COC).

Petitioner insists that the law leaves no room for interpretation, as it is clear that only decisions of the COC may be appealed to the Court in Division.

The BOC likewise reiterates that Pioneer Float Glass failed to prove a clear and unmistakable right to PEZA incentives, hence, its claim for refund should be entirely denied.

Allegedly, there is no clear grant of incentives upon which Pioneer Float Glass can claim entitlement to a refund of customs duties incurred in the purchase of fuel.

Finally, the BOC contends that jurisprudence is settled that claim for refund, being in the nature of tax exemptions, should be construed in *strictissimi juris* against the claimant.

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[2] EB Docket (EB No. 1985), pp. 327 to 347.
[3] EB Docket (EB No. 1985), pp. 287 to 306.

Pioneer Float Glass counter-arguments:

In its *Comment/Opposition*, Pioneer Float Glass counter-argues that contrary to the BOC's assertion, the Court correctly assumed jurisdiction over the instant petition pursuant to the doctrine of *solutio indebiti*, which provides a prescriptive period of six (6) years.

Allegedly, while the doctrine of exhaustion of administrative remedies must be observed, there are instances when the said doctrine can be dispensed with, such as in the case of a claim for refund where the period to make the claim is about to prescribe.

In addition, Pioneer Float Glass maintains that it has proven its entitlement to duty and tax-free importation under its Registration Agreement with the PEZA which clearly provides for incentives in its favor.

THE COURT *EN BANC'S* RULING

The BOC's *Motion for Partial Reconsideration* lacks merit.

As ruled in the assailed Decision, applying the pronouncement in the case of *Nestle Philippines, Inc., (Formerly Filipro, Inc.) vs Court of Appeals, Court of Tax Appeals and Commissioner of Customs*[4], the inaction of the COC should not be allowed to prejudice the right of Pioneer Float Glass to its claim for refund of custom duties.

Accordingly, the failure of the COC to act on Pioneer Float Glass' claims for refund of custom duties will not bar this Court from taking cognizance of the instant case for purposes of determining the actual and proper amount of custom duties.

As for the other arguments raised by the BOC in the instant *Motion for Partial Reconsideration,* a perusal thereof shows that the same are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision. Moreover, the BOC failed to present new matters or arguments which may compel Us to reconsider, modify or reverse the assailed Decision. Hence, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein.

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[4] G.R. No. 134114, July 6, 2001.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Partial 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.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice