REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

OCEANAGOLD (PHILIPPINES), INC., Petitioner,	**CTA EB NO. 2492** (CTA Case No. 9289)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, and **CUI-DAVID**, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 01 2022 2:45

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves petitioner's **Motion for Reconsideration [of Decision dated May 31, 2022]** filed on June 22, 2022, with respondent's **Opposition (Re: Motion for Reconsideration of the Decision dated 31 May 2022)** filed on July 18, 2022.

Petitioner's Motion seeks reconsideration of the Court's Decision dated May 31, 2022, the dispositive portion of which reads:

> "**WHEREFORE,** the Petition for Review filed on July 13, 2021 is **DENIED**. The Decision dated October 7, 2020 and Resolution dated March 12, 2021 rendered by the Court in Division in CTA Case No. 9289 are **AFFIRMED**.
>
> **SO ORDERED.**"

In the present Motion, petitioner contends that neither the law nor the FTAA requires that payment of excise tax during the Recovery Period be detrimental before it may invoke its contractual tax exemption. To require it to submit additional documents beyond what is required is considered an impairment of such exemption. Even assuming that such requirement exists, petitioner alleges that it had sufficiently established that its payments of excise tax during the Recovery Period were detrimental to it as it had paid substantial amounts of assessed excise taxes as evidenced by the filing of refund claims pending in different courts. Petitioner's excise tax payments deprived it of the use of its assets or capital during the Recovery Period. Petitioner further argues that petitioner's tax exemption during the Recovery Period will be rendered nugatory if the only recourse available to it is to deduct the amounts of excise tax paid from the Government's Share in Net Revenues.

On the other hand, respondent maintains that petitioner failed to discharge its burden of establishing its claim for tax refund.

THE COURT *EN BANC*'S RULING

The Court finds that the arguments raised by petitioner have been sufficiently threshed out and passed upon in the assailed Decision dated May 31, 2022. Nevertheless, the Court shall discuss the issues raised in the instant Motion for a thorough and comprehensive disposition of this case.

Petitioner failed to prove that its payments of excise tax during the Recovery Period were detrimental to it, a requirement provided for in the FTAA itself

The fourth paragraph of Section 11.2 of the FTAA reads:

> "11.2 Recovery of Pre[-]operating Expenses, Property Expenses and Tax Paid During the Recovery Period.
>
> x x x x x x x x x
>
> **All taxes, duties, fees, costs, levies and imposts paid by the CONTRACTOR and which are detrimental to the CONTRACTOR's recovery of Pre[-]operating Expenses and Property Expenses during the five (5) Contract Years contemplated in this Section shall be recoverable by the**

> **CONTRACTOR, whenever possible during the year(s) such expenditures were actually incurred. Any amount not recovered shall be deducted from the GOVERNMENT's Share as more specifically provided in Section 11.5 of this Agreement**, unless legislation is required to allow the necessary deductions, in which case the deductions shall be made only after the appropriate legislation has been passed." (*Boldfacing and underscoring supplied*)

The FTAA explicitly provides that only those taxes "which are detrimental to [petitioner's] recovery of Pre[-]operating Expenses and Property Expenses x x x shall be recoverable by [petitioner.]"

It is a rule in statutory construction that particular words, clauses and phrases should not be studied as detached and isolated expression, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.[1] If the parties to the FTAA were of the view that any and all tax payments made during the Recovery Period may be recovered, then there was no reason to add the phrase "which are detrimental to x x x recovery of Pre[-]operating Expenses and Property Expenses[.]" The inclusion of such phrase shows the parties' intent to qualify the recoverable tax payments during the Recovery Period to those proven to be detrimental only.

Contrary to petitioner's claim, there exists no impairment of the contractual tax exemption granted to petitioner during the Recovery Period precisely because it is the FTAA itself -- as the law between the parties[2] -- which provides for the requirement that the excise taxes paid be detrimental to the recovery of Pre-operating and Property Expenses before it can be refunded.

A claimant for tax refund has the burden of proving the legal and factual bases of its claim. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.[3]

Petitioner unsuccessfully discharged such burden when it failed to adduce evidence to support its claim that its payments of excise tax during the Recovery Period were detrimental to its recovery of Pre-

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[1] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 192398, September 29, 2014.
[2] *Goldloop Properties, Inc. vs. Government Service Insurance System*, G.R. No. 171076, August 1, 2012.
[3] *Commissioner of Internal Revenue vs. Filminera Resources Corporation*, G.R. No. 236325, September 16, 2020.

operating and Property Expenses. Its argument that it could have used the amounts for other business purpose is a mere allegation, which is not evidence and not equivalent to proof.[4] Moreover, petitioner's reference to other pending cases for the refund of its excise tax payments during the Recovery Period may not be considered. It is a rule that courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court.[5]

Finally, the Court in stating that petitioner's available recourse is to deduct the amounts of excise tax paid during the Recovery Period from the Government's Share in Net Revenues is simply a remedy provided for in Section 11.2 of the FTAA. Anyway, petitioner only has itself to blame for its failure to prove that its payments of excise tax during the Recovery Period were indeed detrimental for such to be recoverable.

In view of the foregoing, the Court finds no cogent reason to disturb or modify the findings and conclusions embodied in the assailed Decision dated May 31, 2022.

WHEREFORE, petitioner's Motion for Reconsideration [of Decision dated May 31, 2022] filed on June 22, 2022 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[4] *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Commissioner of Internal Revenue and The Head Revenue Executive Assistant, et seq.*, G.R. Nos. 210689-90, 210704 & 210725, November 22, 2017.
[5] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.

WE CONCUR:

ERLINDA P. UY
Associate Justice

ON LEAVE
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

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice