REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION,
Petitioner,

-versus-

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7565

Members:

CASTAÑEDA, JR., *Chairperson and*
MANAHAN, *JJ.*

Promulgated:

OCT 2 2 2019 4:00 pm

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RESOLUTION

MANAHAN, *J.*:

This resolves petitioner's *Motion for Reconsideration and/or Motion for New Trial,* posted on July 19, 2019 and received by the Court on July 30, 2019. Petitioner assails the Decision dated June 27, 2019, which denied its claim for refund, as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence. Accordingly, the denial by respondent of petitioner's application for tax credit and/or refund of excise tax payments is hereby **AFFIRMED**.
>
> **SO ORDERED**.

The Court found that petitioner failed to prove that Petron paid to the BIR the excise taxes due on the petroleum products it sold to petitioner and that the said excise taxes were subsequently passed on/charged to and paid by petitioner.

In its *Motion,* petitioner submits a copy of the Sales Agreement between petitioner and Petron Corporation (Petron) dated November 28, 2003, which allegedly covers the period January 2005 to October 2005, which is the subject matter of the instant case for refund of excise taxes. Petitioner states that in Article IV of the said Sales Agreement, it is expressly stated that the "prices include all taxes and charges that are due to the National and/or Local Governments and/or their instrumentalities and agencies."

Petitioner also states that the original of the Sales Agreement can no longer be presented because sometime in November 2013, typhoon Yolanda destroyed most of the documents in petitioner's offices in Leyte. Petitioner states that its failure to produce the Sales Agreement during the trial was due to the destruction of its documents by typhoon Yolanda and the passage of more than 13 years. Allegedly, the copy of the Sales Agreement was located in a stockroom of the office of its Supply Chain Division in Leyte. Petitioner asserts that a copy of a document may be allowed under Rule 130, Section 5 of the Rules of Evidence when the original document has been lost or destroyed.

As to the Court's findings that petitioner failed to prove the particular amounts of excise taxes paid by Petron corresponding to the volume of petroleum products delivered to petitioner, petitioner relies on the BIR Letter dated January 3, 2007 which stated that "at the time the oil products in question were sold and delivered to you by PETRON, the same were already tax paid." Petitioner further states that the findings of the BIR can be considered as conclusive as to the payment of excise taxes by Petron since the same has been supported by Withdrawal Certificates of Manufactured Petroleum Products, Excise Tax Returns, Sales Invoices, and Cash Receipts.

Petitioner's *Motion for Reconsideration and/or Motion for New Trial* lacks merit.

Under Section 1 of Rule 37 of the Revised Rules of Court, a motion for new trial or reconsideration may be grounded on the following:

> Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes, materially affecting the substantial rights of said party:

> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.
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> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

Petitioner's *Motion* does not aver any fraud, accident, mistake or excusable negligence which would justify a new trial. Neither can petitioner's attached Sales Agreement be considered newly-discovered evidence.

Petitioner's Sales Agreement was signed on November 28, 2003 in Makati City. Petitioner states the following circumstances with respect to the loss of the original copies of the Sales Agreement and subsequent location of a copy thereof:

> 5. The original of the Sales Agreement can no longer be [presented] before this Honorable Court because sometime in November 2013, typhoon Yolanda destroyed most of the documents in several offices of PASAR in Leyte, including the office of the Legal Department, where the original Sales Agreement was kept. For the same reason, petitioner was unable to produce the original Sales Agreement between itself and PETRON during the trial of the instant case.
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> 6. It should be noted that when PASAR sought to claim a refund of excise taxes before the BIR Regional Director in Leyte and the Commissioner of Internal Revenue, such claim was denied. A case was filed with the Court of Tax Appeals in January 2007 and was elevated to the Supreme Court with regard to the issue on entitlement of PASAR to claim a refund, it being an EPZA registered entity. It was only on 22 January 2015 that the Supreme Court ruled with finality that PASAR was entitled to claim for a refund and it was only on 02

> May 2016 when this Honorable Court ordered the presentation of evidence by PASAR.
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> 7. The Sales Agreement was not produced during the presentation of evidence before this Honorable Court due to the passage of more than 13 years and due to the destruction caused by typhoon Yolanda. In fact, most of the documents in support of the refund were obtained from PETRON. PASAR was precluded from presenting the Sales Agreement by a fortuitous event, which Agreement, if presented would probably alter the result of the trial.
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> 8. When the Decision of the CTA dated 27 June 2019 was received, the legal counsel of PASAR directed its personnel to exert their utmost efforts to locate the whereabouts of the Sales Agreement. It was found that a copy of the Sales Agreement dated 28 November 2003 was tucked away in a stockroom lumped together with other documents located in another department particularly at the office of Supply Chain Division in Leyte.[1]

However, the Court finds that the stated reasons do not justify the reopening of trial in order to present the Sales Agreement dated November 28, 2003. The said Sales Agreement was found in less than 15 days, i.e., from the date of receipt of the Decision on July 4, 2019 up to the filing of the subject Motion for Reconsideration on July 19, 2019. If petitioner had exercised ordinary diligence in preparing for its case, the Sales Agreement could have been found within the almost year-long presentation of its evidence during trial. Further, petitioner was able to present copies of several pieces of evidence, the originals of which were also allegedly lost, to wit:

> 72. Q: Now, these letters are photocopies. Where are the originals of the letters dated 20 November 2006 and 28 November 2006 both addressed to the BIR main office, and letter dated 20 November 2006 addressed to the Regional Office of the BIR?
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> A: The originals of the letters are already gone. The same were also destroyed during typhoon Yolanda, along with PASAR's other documents which were stored in its office in Leyte, Ma'am.

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[1] Petitioner's Motion for Reconsideration and/or New Trial, pp. 3-4.

Considering the foregoing, the Court finds that the Sales Agreement proposed to be presented on new trial is merely "forgotten evidence". Forgotten evidence is not a valid ground for new trial.

> Forgotten evidence refers to evidence already in existence or available before or during trial; known to and obtainable by the party offering it; **and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or counsel**. Presentation of forgotten evidence is disallowed because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.[2]

As to the proof that Petron paid to the BIR the excise taxes due on the petroleum products it sold to petitioner, petitioner cites Exhibit "P-8", the BIR's Letter of Denial dated January 3, 2007. Said Exhibit "P-8" allegedly contains a statement from the BIR that "at the time the oil products in question were sold and delivered to you by PETRON, the same were already tax paid."

However, while there is a January 3, 2007 Letter marked as Exhibit "P-8"[3] in the records, a perusal of petitioner's Formal Offer of Evidence (FOE) readily shows that this January 3, 2007 Letter was not formally offered nor admitted. Exhibit "P-8" was described in the FOE[4] as follows:

"P-8" to "P-8-B"	List of Invoices, specifying the petroleum products delivered by Petron Corporation to PASAR. Certified as True Copy by: Johanna T. Keh	Exhibits "P-8" to "P-8-B" are offered to prove that Petron Corporation paid the excise taxes on petroleum products sold and delivered to PASAR.

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[2] *Office of the Ombudsman represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel*, G.R. No. 164460, June 27, 2006.
[3] Docket, Vol. II, pp. 1014-1015.
[4] Docket, Vol. IV, p. 2354.

Based on the foregoing, the Court finds no cogent reason to reverse the ruling the Decision dated June 27, 2019.

WHEREFORE, petitioner's *Motion for Reconsideration and/or Motion for New Trial* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice