REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

CARMEN COPPER CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2596
(CTA Case No. 9726)

Present:

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
MAY 20 2024 3:50pm

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For the Court's resolution is petitioner's "Motion for Reconsideration" ("Motion") filed via licensed courier on October 13, 2023, with respondent's "Opposition (Re: Motion for Reconsideration of the Decision dated 25 September 2023)" ("Opposition") attached to his "Compliance," filed on November 3, 2023.

In its Motion, petitioner assails this Court *En Banc*'s Decision, dated September 25, 2023 ("Assailed Decision") by arguing the following:

(a) Due process violations must have consequences;
(b) The Bureau of Internal Revenue ("BIR") Records were formally offered;
(c) Value-Added Tax ("VAT") zero-rating of Board of Investments ("BOI")-registered exporters does not require the inward remittance of export proceeds;

(d) The requirements of *Section 106(A)(2)(a)(1) of the National Internal Revenue Code of 1997, as amended* ("*NIRC*"), are not applicable to zero-rated sales covered by *Section 106(A)(2)(a)(5)* of said code;

(e) The Court in Division should not have ruled on the validity of petitioner's zero-rated sales as the same was already settled by respondent;

(f) *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[1] ("*Coral Bay*") is not applicable to this case; and

(g) Input tax on "invalid zero-rated" sales does not become attributable to VATable or exempt sales to be removed from the refundable amount.

Respondent argues against the above in his Opposition by quoting from the Assailed Decision at length.

The Motion lacks merit.

First, this Court obviously agrees with the general principle that due process violations must have consequences. We do not, however, agree that this should be applied to this case in the manner espoused by petitioner. The central issue here is the propriety of petitioner's claim for refund—*not* respondent's assessment of the former. For the aforementioned consequences to materialize, petitioner should have earlier assailed the assessment. It unfortunately did not do so. As such, this Court must act only on the claim for refund.

Regarding its claim that the BIR Records were formally offered, the Court *En Banc* notes that even the Court in Division, in its March 22, 2022 Resolution, acknowledged that respondent formally offered said Records. *Who* offered said records is important here, however: *Respondent* offered the BIR Records. *Petitioner* did not offer the BIR Records or the relevant documents within, much less offer these with a statement of purpose. This was the reason the Court in Division rejected petitioner's argument when the same was raised before it. As petitioner failed to substantially challenge this finding, the Court *En Banc* leaves it undisturbed.

Neither is the Court convinced by petitioner's equivocations on the Court of Tax Appeals' ("CTA") jurisdiction over secondary issues related to the main issue. Petitioner claims that the validity of its zero-rated sales is not an issue at all as it and respondent have no disagreements over the same. Given that said validity is not an "issue", it cannot be considered a "related issue" which the CTA can resolve.

The above argument only stands, however, if the word "issue" is interpreted solely as a "disagreement". This is misplaced. Reading "issue" as "disagreement" renders the relevant paragraph of *Rule 14, Section 1 of the Revised Rules of the Court of Tax Appeals* meaningless—for how can two parties disagree over something that neither raised?

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1 G.R. No. 190506, June 13, 2016.

The word should instead by interpreted as referring to related "matters" or "topics". And as the validity of petitioner's zero-rated sales is a matter significantly related to its claim for refund, the Court in Division was correct to rule on it. We thus leave its ruling undisturbed.

The final issue needing resolution by this Court is whether the requirements under *Section 106(A)(2)(a)(1) of the NIRC* apply to petitioner's sales. In the assailed Decision, we said that export sales as defined under *Section 106(A)(2)(a)(5) of the NIRC* must comply with the requirements under *Section 106(A)(2)(a)(1) of the NIRC*, as both are forms of export sales. Petitioner disagrees, claiming that nothing in the relevant laws or jurisprudence supports this interpretation.

We agree with petitioner's argument regarding the interpretation of these provisions but not with its main contention that its sales need not comply with the requirements of *Section 106(A)(2)(a)(1) of the NIRC*.

Upon review of the relevant sections of the *NIRC*, the Court *En Banc* now sees We were mistaken. *Sections 106(A)(2)(a)(1) & (5) of the NIRC* contemplate two distinct definitions of export sales. *Section 106(A)(2)(a)(1) of the NIRC* defines a very specific type of export sales, one different from the export sales defined under *Section 106(A)(2)(a)(5) of the NIRC*. As such, the latter does not necessarily have to comply with the requirements identified in the former.

However, the above does not mean that the requirements are not applicable to petitioner's own sales. Upon review of the records, this Court *En Banc* found that petitioner itself characterized its own sales as "zero rated ***under Section 106(2)(a)(1)*** and (5) of the 1997 National Internal Revenue Code (NIRC)" (emphasis supplied) in both its Petition for Review[2] and Memorandum[3] before the Court in Division. In said Memorandum, petitioner even claims that its "zero-rated sales were generated from exports to various customers abroad, the consideration for ***which was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas*** ("BSP"), as well as to customers enjoying fiscal incentives"[4] (emphasis supplied). It was these characteristics, petitioner itself adds, that "made sales to these customers zero-rated under existing laws."[5]

Given petitioner's own consistent insistence that its sales were zero-rated not just under *Section 106(A)(2)(a)(5)* but also *Section 106(A)(2)(a)(1) of the NIRC*, the Court in Division was correct to apply the requirements of the latter to said sales. The Court *En Banc* cannot allow petitioner to contradict itself by adopting a different view on its own sales and conveniently abandoning a position it held throughout the proceedings below. We must thus uphold the Court in Division's treatment of

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2 Division Docket Vol. 1, p. 19.
3 *Id.* at 535.
4 *Id.* at 526.
5 *Id.*

petitioner's export sales as falling under *Section 106(A)(2)(a)(1) of the NIRC* and the requirements prescribed therein.

Given that petitioner failed to prove it complied with all of said requirements, as found by the Court in Division, both the latter's Decision and the assailed Decision still stand. We thus no longer need to discuss petitioner's other arguments.

ACCORDINGLY, the instant Motion for Reconsideration, filed via licensed courier on October 13, 2023, is hereby **DENIED** for lack of merit. The assailed Decision, dated September 25, 2023, is hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(With due respect, I reiterate my Dissenting Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

(I kindly join PJ's Dissenting Opinion.)
HENRY S. ANGELES
Associate Justice