REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

PORT BARTON DEVELOPMENT CORPORATION,
Respondent.

CTA *EB* NO. 1743
(CTA Case No. 8490)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and,*
MODESTO-SAN PEDRO, *J.J.*

Promulgated:

AUG 07 2019

2:42 p.m.

x- x

RESOLUTION

MANAHAN, J.:

For this Court's resolution is petitioner's *Motion for Reconsideration (of the Decision dated 21 January 2019)* posted on February 8, 2019 praying for the reversal of the Court *En Banc's* Decision dated January 21, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, the Petition for Review is **DENIED**, for lack of merit. Accordingly, the Decision dated July 20, 2017 rendered by the Third Division of this Court in CTA Case No.

8490 and its Resolution dated October 19, 2017, are hereby **AFFIRMED."**

SO ORDERED."

In its *Motion for Reconsideration,* petitioner focuses its arguments on the cancellation of the value-added tax (VAT) assessment on the ground that the zero-rated sales of respondent were not clearly established by the evidence on record. Petitioner contends that there was no indication in respondent's quarterly VAT returns whether or not such sales or transactions are zero-rated and this is illustrated by the fact that respondent did not fill up or left blank "Line 17" in said tax returns. Hence, petitioner concludes that respondent cannot claim that it had zero-rated sales for taxable year 2007 since it did not declare that its export sales are zero-rated particularly in its first to fourth quarter VAT returns for taxable year 2007.

Petitioner poses the question: If respondent failed to supply the respective entry in "Line 17" of the VAT return, what other information in the same return did it fail to provide? Petitioner further puts forth the theory that in order for export sales to qualify as zero-rated, there must be actual shipment of goods from the Philippines to a foreign country and that respondent should have presented documents to prove that the cultured pearls sold and shipped abroad were indeed received by its consignee.

Petitioner further asserts that respondent should have clearly shown by convincing evidence that the input tax carry-over in the total amount of Php2,078,103.96 were properly supported in claiming VAT zero rated export sales. Petitioner alleges that the input tax was deducted outright against the output VAT liability of respondent without any substantial proof that it had complied with the proper substantiation requirements. This, according to petitioner goes against the well-established doctrine that the burden of proof is on the taxpayer contesting the validity of the assessment because assessments are presumed correct and made in good faith.

Respondent no longer filed its Comment to petitioner's Motion for Reconsideration based on the Records Verification Report of the Court dated May 2, 2019.

RULING OF THE COURT EN BANC

We deny the *Motion for Reconsideration (of the Decision dated 21 January 2019)* filed by petitioner.

Upon a review of the records of this case and careful evaluation of petitioner's arguments, we find no sufficient and cogent reason to reverse the assailed Decision promulgated on January 21, 2019.

The argument that respondent did not sufficiently prove that it had zero-rated sales for taxable year 2007 is belied by the records of this case and the evidence admitted by the Court. The un-filled portions of "Line 17" prove to be insignificant insofar as proving the fact that respondent generated export sales in 2007. We quote portions of the assailed Decision:

> "It is worthy to note that the un-filled portions of "Line 17" of the Quarterly VAT returns of respondent are insignificant insofar as proving the fact that respondent generated export sales in 2007. From the above discussion, it is clear that there are specific documentary requirements to prove the fact that the taxpayer generated export sales and filling up "Line 17" in the quarterly VAT returns is not one of the said conditions, hence it cannot be a basis for concluding that no export sales have been made by herein respondent.
>
> In the assailed Decision dated July 20, 2017, the Court in Division found that petitioner offered in evidence sales invoices, export declarations issued by the Department of Trade and Industry (DTI), clearance certificates from the Bureau of Fisheries and Aquatic Resources (BFAR), airway bills, and certificates of inward remittances, detailed as follows:
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> xxx xxx xxx
>
> In its appreciation of the evidence offered by respondent to prove its export sales, the Court in Division made the following observations, and we quote:
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>> "A close scrutiny of the above documents reveals that **petitioner's cultured pearls were indeed sold and shipped abroad, except for the purported sales amounting to US$195,000.00 with peso equivalent of ₱9,395,100.00, as the sales invoice supporting the same was not imprinted with the word "zero-rated sales", and the amount of US$136,030.27 with peso equivalent of**

> **₱5,866,985.55 as no record would show that petitioner was indeed paid in foreign currency which was duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.**
>
> As such, only the amount of US$770,082.84 with peso equivalent of ₱34,475,930.26 [₱49,738,015.81 - (₱9,395,100.00 + ₱5,866,985.55)] properly falls within the export sales transactions subject to zero percent VAT referred to under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, while the amount of ₱15,262,085.55 shall be subjected to 12% VAT."(emphasis supplied)

As regards the assertion of petitioner that the Court erred in deducting the input tax against the output tax outrightly without substantial proof provided by respondent, we likewise find this to be without merit particularly because this is contradictory to petitioner's stance in the administrative level and this was clearly observed by the Court *En Banc* and disposed in this manner, thus:

> "In the Formal Assessment Notice issued by petitioner with Details of Discrepancies[1] and attached as Annexes to the Final Decision on Disputed Assessment (FDDA)[2], respondent clearly admits the existence of said input tax and precisely puts into issue the fact that respondent carried over this excess input tax to the next quarter, and we quote:
>
> **DETAILS OF DISCREPANCIES**
>
> xxx xxx xxx
>
> "Excess Input Tax carried over to the next quarter, P2,078,103.96 – **Excess input tax carried over to the succeeding quarters was deducted from total creditable input tax considering that said amount has been credited against the estimated quarterly tax liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 110 (9) (B) of the 1997 NIRC."** (emphasis supplied)
>
> xxx xxx xxx
>
> To now dispute the existence of the excess input tax at the *En Banc* level and claim that it is unsubstantiated is to skirt around the issue and contradict earlier statements which herein petitioner used to form a conclusion that respondent has VAT liabilities for taxable year 2007. It must be recalled that one of the issues resolved by petitioner in the administrative level and

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[1] Exhibit "P-5", Court Docket, Volume I, pp. 254-262.
[2] Exhibit "P-6", Court Docket, Volume I ,pp.263-267.

> appealed to the judicial level (Court in Division) is whether or not respondent rightfully deducted its generated input tax in 2007 to its output VAT liability for that same year and this was clear in the Details of Discrepancies which accompanied the Assessment Notices issued against the taxpayer. It was obvious that petitioner admitted the existence of the input tax, otherwise it could not have completed its theory that respondent had VAT deficiencies in 2007. Petitioner cannot now turn around and say that the input tax was not properly substantiated after the Court in Division allowed the excess input tax to be applied against the output tax for that same year. Surely, respondent in the Division level could not have submitted evidence to prove the existence and amount of the input tax, precisely because it was never put in issue."

We take note that all presumptions are in favor of the correctness of an assessment, but this presumption does not apply upon proof that an assessment is without foundation, meaning it is arbitrary and capricious.[3]

WHEREFORE, premises considered, petitioner's Motion for Reconsideration posted on February 8, 2019 is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[3] CIR vs. Hantex Trading Co., Inc., G.R. No. 136975, March 31, 2005.

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(took no part)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(took no part)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice