Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

Third Division

SARTORIOUS AKETIENGESELLSCHAFT, *Petitioner,*	**CTA CASE NO. 8951**
	Members:
- versus -	**BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	MAY 02 2018 2:35 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J*.:

For this Court's resolution is respondent's **Motion for Reconsideration**, filed on January 10, 2018, with petitioner's **Comment/Opposition to Respondent's Motion for Reconsideration**, filed on February 8, 2018.

Respondent seeks reconsideration of the Court's Decision dated December 8, 2017 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** to petitioner the total amount of **₱1,442,396.04**, representing the capital gains tax and documentary stamp tax it erroneously paid on December 20, 2012.
>
> **SO ORDERED**."[2]

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[1] Docket, vol. II, pp. 751-766.
[2] Docket, vol. II, p. 765.

Respondent seeks the reversal of the assailed Decision on the following grounds:

1. Petition for Review lacks proper verification and a valid certification against forum shopping;
2. The Petition for Review was filed out of time;
3. There is no erroneous collection of CGT and DST; and
4. Petitioner is liable for CGT and DST.

On the other hand, petitioner alleges that respondent's motion deserves scant merit and consideration as it raises no new matters or issues which have not already been thoroughly and correctly decided by the Court in the assailed Decision. It contends that respondent is merely rehashing the same arguments he already provided in his Answer.

Moreover, petitioner prays for the denial of respondent's motion on the following grounds:

1. Atty. Editha R. Hechanova was authorized to sign the Verification and Certification against Forum Shopping. Hence, the Petition contained both proper and valid Verification and Certification against Forum Shopping;
2. The judicial claim for refund was filed on time;
3. There were erroneous, illegal and excessive collections of CGT and DST; and
4. Petitioner is entitled to the refund of its payments under protest of CGT in the amount of ₱1,379,268.42 and DST in the amount of ₱63,027.62.

Respondent's Motion for Reconsideration is bereft of merit.

The arguments raised by respondent in his Motion for Reconsideration are a mere rehash of the same facts and issues which have already been duly considered and extensively discussed in the assailed Decision.

To be clear, the Court already found that petitioner have substantially complied with the requirements of verification and certification, which was in fact already settled in the Resolution dated May 14, 2015. Also, the Court correctly held that the administrative and judicial claims for refund were timely filed and that petitioner is entitled to the refund of its payments under protest of CGT and DST.

It is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[3] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[4]

In this case, petitioner was able to prove its entitlement to the total amount of ₱1,442,396.04, representing the capital gains tax and documentary stamp tax it erroneously paid on December 20, 2012.

Moreover, the Supreme Court held in the case of *Republic vs. Team (Phils.) Energy Corporation (formerly Mirant [Phils.] Energy Corporation)*[5] that when taxpayer was able to establish *prima facie* its right to the refund by testimonial and object evidence, the BIR should have presented rebuttal evidence to shift the burden of evidence back to the taxpayer, *viz*:

> "We are likewise unmoved by the assertion of the petitioner that the respondent should have submitted the quarterly returns of the respondent to show that it did not carry-over the excess withholding tax to the succeeding quarter. **When the respondent was able to establish *prima facie* its right to the refund by testimonial and object evidence, the petitioner should have presented rebuttal evidence to shift the burden of evidence back to the respondent. Indeed, the petitioner ought to have its own copies of the respondent's quarterly returns on file, on the basis of which it could rebut the respondent's claim that it did not carry over its unutilized and excess creditable withholding taxes for the immediately succeeding quarters.** The BIR's failure to present such vital document during the trial in order to bolster the petitioner's contention against the respondent's claim for the tax refund was fatal."

It must be noted that respondent did not present any rebuttal evidence to shift the burden of evidence back to petitioner after the latter established its entitlement to a claim of refund.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on December 8, 2017.

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[3] *Commissioner of Internal Revenue vs. Bank of the Philippines Islands*, G.R. No. 178490, July 7, 2009.

[4] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[5] G.R. No. 188016, January 14, 2015.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice