FIRST DIVISION

[G.R. No. 236325, September 16, 2020]

COMMISSIONER INTERNAL REVENUE, PETITIONER, VS. FILMINERA RESOURCES CORPORATION, RESPONDENT.

D E C I S I O N

LOPEZ, J.:

Proof of actual exportation of goods sold by a Value Added Tax (VAT)-registered taxpayer to a Board of Investments (BOI)-registered enterprise is vital for the transaction to be considered as zero-rated export sales.

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated March 29, 2017 and Resolution[3] dated November 16, 2017 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1362, which upheld the Amended Decision[4] dated May 25, 2015 and Resolution dated September 10, 2015 of the CTA Division in CTA Case Nos. 8528 & 8576 ordering the Commissioner of Internal Revenue (CIR) to refund or issue a tax credit certificate (TCC) in favor of Filminera Resources Corporation (Filminera Resources) in the amount of P111,579,541.76.

ANTECEDENTS

On July 5, 2007, Filminera Resources and Philippine Gold Processing and Refining Corporation (PGPRC), a domestic corporation registered with the BOI, entered into an Ore Sales and Purchase Agreement.[5] For the third and fourth quarters of the fiscal year (FY) ending June 30, 2010, Filminera Resources' sales were all made to PGPRC.[6]

On March 30, 2012 and June 29, 2012, Filminera Resources filed its amended quarterly VAT returns for the third and fourth quarters, respectively.[7] On the same dates, Filminera Resources filed administrative claims for refund or issuance of TCC of its unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters.

Thereafter, on August 16, 2012 and November 23, 2012, Filminera Resources filed separate petitions for review before the CTA, which were docketed as CTA Case No. 8528 and CTA Case No. 8576.[8] The CIR filed his answer in CTA Case No. 8528 on October 23, 2012,[9] and in CTA Case No. 8576 on December 12, 2012.[10] The two cases were consolidated,[11] and thereafter, trial on the merits ensued.

On September 25, 2014, the CTA Division denied Filminera Resources' petitions on the ground of insufficiency of evidence.[12] The CTA Division held that Filminera

Resources failed to prove that its sales to PGPRC during the third and fourth quarters of FY 2010 qualify as export sales subject to the zero percent (0%) rate under Section 106(A)(2)(a)(5)[13] of the 1997 National Internal Revenue Code,[14] as amended by Republic Act No. 9337 (1997 NIRC), and Section 4.106-5(a)(5)[15] of Revenue Regulations (RR) No. 16-2005.[16]

Filminera Resources sought reconsideration and submitted a certified true copy of BOI Certification dated January 27, 2010[17] to establish that PGPRC was a BOI-registered enterprise that exported its total sales volume from July 1, 2009 to June 30, 2010. The CIR counter-argued that the BOI Certification failed to prove that all of PGPRC's products from January 1, 2010 to June 30, 2010 were actually exported.

On May 25, 2015, the CTA Division amended its Decision[18] on petitioner's motion for reconsideration dated September 25, 2014. Considering that the validity period of the BOI Certification covered the period subject of the claims for refund, the CTA Division concluded that Filminera Resources' sales were zero-rated, *viz*.:

> **WHEREFORE**, [Filminera Resources'] **Motion for Reconsideration of the Decision dated 25 September 2014** is **PARTIALLY GRANTED.** Accordingly, the assailed Decision promulgated on September 25, 2014 is hereby **AMENDED** to read as follows:
>
> > "**WHEREFORE**, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. Accordingly, [the CIR] is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of [Filminera Resources] in the amount of P111,579,541.76, representing [Filminera Resources'] unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters of FY ending June 30, 2010."
>
> **SO ORDERED.**[19] (Emphasis in the original.)

The CIR's motion for reconsideration was denied on September 10, 2015.[20] Hence, the CIR elevated the case to the CTA *En Banc*.

On March 29, 2017, the CTA *En Banc* dismissed the petition for lack of merit.[21] On reconsideration, the CIR insisted that the BOI Certification was not sufficient to support Filminera Resources' claim for refund because there must be proof of actual exportation of PGPRC's products.[22] Besides, the BOI Certification was a forgotten evidence, which was not presented during the trial.

On November 16, 2017, the CTA *En Banc* denied the CIR's motion and ruled:[23]

> x x x, with the formal offer and admission into evidence of the BOI Certification that PGPRC exported 100% of its total sales volume, [Filminera Resources'] sales thus qualify for VAT zero-rating under the law.
>
> **WHEREFORE**, premises considered, the [CIR]'s Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[24] (Emphasis in the original.)

Hence, the CIR filed the instant petition before this Court.

The CIR maintains that the BOI Certification dated January 27, 2010 does not satisfy the conditions imposed by law and the rules for the sales made to PGPRC be considered as zero-rated sales. The certification merely provides that the period covered is from January 1 to December 31, 2009, and does not state that PGPRC exported 100% of its products from January 1 to June 30, 2010, which are the period subject of the claims for refund. Further, it was impossible for the BOI to certify that PGPRC exported its entire products from January 1 to June 30, 2010 because the certification was issued only on January 27, 2010. Lastly, the extension of the certification's validity period until December 31, 2010 was intended to give taxpayers an extended period to avail of the benefits of zero-rating.

In compliance with this Court's Resolution[25] dated June 18, 2018, Filminera Resources filed its Comment[26] on October 23, 2018, after requesting for two extensions.[27]

Filminera Resources counters that the petition should be dismissed outright for failure to conform to the prescribed format in violation of Section 4,[28] Rule 45 of the Rules of Court. Filminera Resources avers that its copy of the petition was not accompanied by any copy of the CTA *En Banc*'s assailed Decision and Resolution, as well as material portions of the records as would support the petition. Further, the petition raises a question of fact which is beyond the ambit of a Rule 45 petition. In any case, Filminera Resources posits that the CTA *En Banc* did not err in concluding that its sales for the third and fourth quarters of FY 2010 were zero-rated.

In his Reply,[29] the CIR claims that a copy of the petition served to Filminera Resources had the attachments required by the Rules of Court. Also, what the petition seeks to correct is the CTA *En Banc*'s wrongful appreciation of the BOI Certification as sufficient compliance with one of the conditions imposed by law and the rules for the transaction to be considered export sales. This is a question of law and not a question of fact.

RULING

The petition is meritorious.

Procedurally, Section 4,[30] Rule 45 of the Rules of Court requires the CIR to attach all material portions of the record as would support the allegations in the petition. Here, the petition was accompanied by duplicate original of the CTA *En Banc*'s Decision[31] dated March 29, 2017 and certified true copy of the Resolution[32] dated November 16, 2017. The CIR, however, did not attach a copy of the BOI Certification dated January 27, 2010, which was the basis of the CTA in granting refund to Filminera Resources. Undoubtedly, the BOI Certification is a material portion of the records that should be attached to the petition.

Nonetheless, the BOI Certification was reproduced in the Dissenting Opinion[33] of

Presiding Justice Del Rosario to the Decision dated March 29, 2017. The CIR attached to the petition duplicate original of the dissenting opinion.[34]

In *Cusi-Hernandez v. Sps. Diaz,*[35] we held that "[t]he fact that no certified true copy of the Contract to Sell was attached to the Petition before the CA did not weaken the petitioner's case."[36] Based on *Cadayona v. Court of Appeals,*[37] not all of the supporting papers accompanying the petition should be certified true copies. In that case, the documents attached by the petitioner consisted only of the original duplicate copies of the assailed Decisions and Orders of the lower court but the contract to sell was not annexed. Since the Metropolitan Trial Court Decision attached to the petition reproduced *verbatim* the contract to sell and a certified true copy of the contract was also attached to the motion for reconsideration, we declared that there was substantial compliance with the rules.[38]

Thus, by attaching to the petition a duplicate original of the Dissenting Opinion which reproduced *verbatim* the BOI Certification, the CIR, at the very least, substantially complied with the requirements embodied in Rule 45 of the Rules of Court. We have consistently held that a strict and rigid application of rules that would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided,[39] as in this case.

The issue raised before this Court is a question of law.

It is well-settled that only questions of law may be raised in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Questions of fact are generally proscribed. As applied to claims for refund of taxes, a question of law may be distinguished from a question of fact, as follows:

> x x x the proper interpretation of the provisions on tax refund that does not call for an examination of the probative value of the evidence presented by the parties-litigants is a question of law. Conversely, it may be said that if the appeal essentially calls for the re-examination of the probative value of the evidence presented by the appellant, the same raises a question of fact. *Often repeated is the distinction that there is a question of law in a given case when doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when doubt or difference arises as to the truth or falsehood of alleged facts.*[40] (Italics supplied.)

The CIR asserts that the BOI Certification issued on January 27, 2010 merely established that PGPRC exported 100% of its products for the period from January 1 to December 31, 2009. It does not prove that PGPRC similarly exported its entire products during the period subject of the claims for refund -the third and fourth quarters of FY 2010 or from January 1 to June 30, 2010. The BOI Certification, therefore, does not satisfy one of the conditions imposed under the 1997 NIRC that the BOI-registered buyer exported 100% of its products. Also, the extension of the validity period of the certification until December 31, 2010 is intended to give the seller-taxpayer an extended period to avail of the benefits of zero-rating and does not apply to subsequent sales not identified in the certification.

Essentially, the issue is whether the sales made to PGPRC for the third and fourth quarters of the FY ending June 30, 2010 are zero-rated export sales based on the certification issued by the BOI on January 27, 2010. This is a question of law which does not burden the Court to examine the probative value of the BOI Certification presented. The petition mainly requires us to determine the scope of the BOI Certification and the period when PGPRC exported 100% of its products. These are questions well within the bounds of a Rule 45 Petition.

The sales made to PGPRC during the third and fourth quarters of FY 2010 do not qualify for zero-rating; Filminera Resources is not entitled to a refund or credit of input VAT attributable to such sales.

"Export sales" is defined in Executive Order No. 226[41] as "the Philippine port F.O.B. value x x x of export products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when ***actually exported*** by the latter x x x."[42]

The foregoing export sales was included in the list of sales subject to the zero percent rate under Section 106(A)(2)(a)(5) of the 1997 NIRC:

> SECTION 106. Value-added Tax on Sale of Goods or Properties. - (A) *Rate and Base of Tax.* - x x x
>
> x x x x
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term '*export sales*' means: x x x x
>
> (5) **Those considered export sales under Executive Order No. 226,** otherwise known as the Omnibus Investment Code of 1987, and other special laws x x x. (Emphasis supplied.)

The tax treatment of export sales is based on the Cross Border Doctrine and Destination Principle of the Philippine VAT system. Under the Destination Principle, goods and services are taxed only in the country where these are consumed.[43] In this regard, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of goods destined for consumption outside the territorial border of the taxing authority.[44] Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with VAT. Plainly, sales of export products to another producer or to an export trader are subject to zero percent rate provided the export products are actually exported and consumed in a foreign country.