REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ACTUATE BUILDERS, INC., Petitioner,	**CTA CASE NO. 9206**
	Members:
- versus -	**CASTAÑEDA, JR.**, *Chairperson*, **MINDARO-GRULLA** and **BACORRO-VILLENA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 1 6 2020 1:45 pm

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RESOLUTION

***MINDARO-GRULLA, J.*:**

Submitted before this Court is respondent's **Motion for Partial Reconsideration** filed through registered mail on February 28, 2020, and received by the Court on March 5, 2020, with petitioner's **Opposition (Re: Motion for Partial Reconsideration, dated 24 February 2020)** filed on March 12, 2020.

On February 12, 2020, a Decision was promulgated by this Court, partially granting petitioner's claim for refund of creditable input value-added tax (VAT) attributable to its zero-rated sales, the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱2,063,561.36**, representing petitioner's excess and unutilized input VAT attributable to its zero-rated sales for the 2nd, 3rd and 4th quarters of CY 2013.

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SO ORDERED.

In his Motion, respondent raises the following assignments of error in support of his arguments, *viz.*:

I. PETITIONER FELL SHORT OF THE INVOICING REQUIREMENTS UNDER SECTION 113 OF THE NIRC OF 1997, AS AMENDED BY REPUBLIC ACT (RA) NO. 9337.

II. PETITIONER'S SALES OF SERVICES TO VARIOUS CLIENTS DO NOT QUALIFY AS ZERO-RATED SALES BUT SUBJECT TO 12% VAT.

III. PETITIONER'S SALES OF SERVICES TO DIVERSIFIED TECHNOLOGY SOLUTIONS INTERNATIONAL INC. (DTSII) AND ANTHEM SOLUTIONS INC (ASI), PEZA-REGISTERED ENTERPRISES, DO NOT QUALIFY AS ZERO-RATED SALES BUT SUBJECT TO 12% VAT.

IV. EXHIBITS OF PETITIONER SHOULD NOT BE GIVEN ANY PROPBATIVE VALUE FOR BEING HEARSAY EVIDENCE.

As to the first ground, respondent argues that the claimed input taxes on domestic purchases of goods/services should be disallowed considering that the amount of VAT was not separately indicated in the supporting official receipts and sales invoices; that some of petitioner's official receipts and sales invoices failed to state the quantity, unit cost and description of the goods or properties or nature of service; and, that some of petitioner's official receipts and sales invoices have no taxpayer identification number (TIN) or address of petitioner.

With regard to the second ground, respondent cites the Court of Tax Appeals case *Chartis Technology & Operations Management Corporation (Philippines) vs. Commissioner of Internal Revenue*[1] (*"Chartis"* case herafter), wherein it was held that presentation of the Philippine Economic Zone Authority (PEZA) Amended Certificates of Registration alone is insufficient to establish that its clients are indeed non-resident foreign corporations doing business outside the Philippines, pursuant to Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended.

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[1] CTA Case Nos. 8432, 8498, 8534 and 8581, November 6, 2015.

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As to the third ground, respondent claims that under Section 23 of Republic Act (RA) No. 7916 or *The Special Economic Zone Act of 1995*, a PEZA-registered enterprise has the option to choose between two (2) sets of fiscal incentives: the 5% preferential tax on gross income earned, which is in lieu of national and local taxes, or the incentives provided for under Book VI of Executive Order (EO) No. 226 or the *Omnibus Investments Code of 1987*, including but not limited to an income tax holiday of 4 to 5 years depending on whether or not an entity is registered as a pioneer or non-pioneer enterprise. As such, ECOZONE enterprise cannot avail of these 2 sets of fiscal incentives at the same time following VAT-Ruling Nos. 037-98; 043-98; 027-99 and 063-99. Henceforth, if petitioner's PEZA-registered clients, *i.e.,* DTSII and ASI, had already availed of the income tax holiday under EO No. 226, they ought to be subject to VAT, which correspondingly means that petitioner's sales of services shall likewise be subject to 12% VAT.

Lastly, respondent submits that petitioner failed to present any credible and competent witness who had a hand in the preparation of petitioner's exhibits. By failing to do so, the exhibits identified by its witnesses should not be given probative value for being hearsay evidence.

On the other hand, in its comment, petitioner opposes respondent's Motion for being *pro forma*. Petitioner asserts that the first ground cited by respondent failed to specify the alleged non-compliant invoices or receipts, as well as the findings or conclusions in the judgment which are not supported by evidence or contrary to law.

Petitioner also claims that the *Chartis* case relied upon by respondent is inapplicable as the ruling thereon is based on Section 108(B)(2) of the NIRC of 1997, as amended, which deals with services rendered to person "engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed"; while the present case is founded on Section 108(B)(3) of the NIRC of 1997, as amended, which deal with services "rendered to persons or entities whose exemption under special laws... effectively subjects the supply of such services to zero (0%) rate." Clearly, respondent erred in looking for evidence not relevant to the subject claim.

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More so, petitioner insists that the "old rule" requiring election of incentives had already been abandoned by respondent himself when he issued Revenue Memorandum Circular (RMC) No. 74-99[2].

To finish, petitioner claims that without specifying who the witness is or the material parts of his or her testimony which respondent seeks to dispute, this Court could not even begin to investigate how its Decision had supposedly considered hearsay. Thus, petitioner concludes that it only confirms its argument that respondent's Motion is *pro forma*.

After due consideration, respondent's Motion for Partial Reconsideration is bereft of merit.

Considering that the first and fourth grounds cited by respondent are intertwined, the Court shall discuss them jointly.

Section 2, Rule 37 of the Rules of Court provides that a motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

As correctly pointed out by petitioner, respondent failed to specifically point out the VAT official receipts or sales invoices which failed to comply with the invoicing requirements provided under Section 113 (A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended. Respondent likewise failed to identify the material parts of the testimony of the witness which are supposedly supported by hearsay evidence. Accordingly, on these scores, the first and fourth grounds cited by respondent need not be considered by this Court in resolving the present Motion.

Nonetheless, this Court would like to take this opportunity to highlight that the documentary evidence such as official receipts and sales invoices, need not be identified by the persons who had a hand in the preparation of the said documents considering that these

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[2] "SUBJECT: Tax Treatment of Sales of Goods, Property and Services Made by a Supplier from the Customs Territory to a PEZA Registered Enterprise; and Sale Transactions Made by PEZA Registered Enterprises Within and Without the ECOZONE", October 15, 1999.

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documents are already recognized as vital pieces of evidence of commercial transactions and, thereby, given probative value. The Supreme Court case of *Seaoil Petroleum Corporation vs. Autocorp Group and Rodriguez*[3], is instructive on the matter, *to wit:*

> "x x x A sales invoice is a commercial document. Commercial documents or papers are those used by merchants or businessmen to promote or facilitate trade or credit transactions. Business forms, *e.g.,* order slip, delivery charge invoice and the like, are commonly recognized in ordinary commercial transactions as valid between the parties and, at the very least, they serve as an acknowledgment that a business transaction has in fact transpired. **These documents are not mere scraps of paper bereft of probative value, but vital pieces of evidence of commercial transactions. They are written memorials of the details of the consummation of contracts**."

Accordingly, as long as the offered exhibits are substantially identified by its witness, and verified by the court-commissioned independent certified public accountant, in accordance with Section 5 of Rule 12 in relation to Rule 13 of the Revised Rules of the Court of Tax Appeals[4] the same can be considered by this Court and given probative value.

With regard to the second assigned error, respondent erred in claiming that what should have been applied is the provision of Section 108(B)(2) of the NIRC of 1997, as amended, which requires the presentation of proof that the recipient of such services must be doing business outside the Philippines in order to be entitled to VAT zero-rating. A careful reading of the Decision shows that this Court partially granted petitioner's claim for refund of excess and unutilized input VAT based on Section 108(B)(3) of the NIRC of 1997, as amended, and not on Section 108(B)(2). The pertinent portions of the Decision being assailed are quoted hereafter for ready reference, *viz.*:

> "Relative to the determination of whether petitioner is engaged in zero-rated or effectively zero-rated sales,

[3] G.R. No. 164326, October 17, 2008.
[4] A.M. No. 05-11-07-CTA, enacted on November 22, 2005.

the applicable provision is Section 108(B)(3) of the NIRC of 1997, as amended. It provides:

> 'SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> x x x
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> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
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> x x x
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> 3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**.' *(Emphasis ours)*

The special law pertinent to this case is RA No. 7916, otherwise known as *'The Special Economic Zone Act of 1995'.* Sections 8 and 24 thereof, as amended RA No. 8748, read as follows:

> 'SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**
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> x x x.' *(Emphasis ours)*
>
> 'SECTION 24. *Exemption from National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted** as follows:

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> (a) Three percent (3%) of the National Government;
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> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.' *(Emphasis ours)*

Based on the foregoing provisions, a Special Economic Zone or 'ECOZONE' is treated as a separate customs territory, and business establishments operating within the ECOZONE is exempt from national and local taxes, except for real property taxes on land owned by developers. Needless to state, such tax exempt status of said business establishments or enterprises operating within the ECOZONE includes exemption from the imposition of VAT." *(Citations omitted)*

With emphasis, to qualify for VAT zero-rating under Section 108(B)(3) of the NIRC of 1997, as amended, it only requires that a sale of service must satisfy the following:

1. Sale of service is performed in the Philippines;
2. Service is performed by a VAT-registered person; and,
3. Service is rendered to persons or entities exempted under special laws or international agreement to which the Philippines is a signatory.

Accordingly, the need to establish that petitioner's clients are non-resident foreign corporations doing business outside the Philippines is irrelevant in the said provision.

As to the remaining ground, this Court, again, agrees with petitioner's position that the "old rule" requiring election of incentives had already been abandoned by respondent himself when he issued RMC No. 74-99, as held by the Supreme Court in the case of *Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue*[5], *to wit*:

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[5] G.R. No. 190506, June 13, 2016.

"Prior to the effectivity of RMC 74-99, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives, namely: (1) if the PEZA-registered enterprise chose the 5% preferential tax on its gross income in lieu of all taxes, as provided by Republic Act No. 7916, as amended, then it was VAT-exempt; and (2) if the PEZA-registered enterprise availed itself of the income tax holiday under Executive Order No. 226, as amended, it was subject to VAT at 10% (now, 12%). Based on this old rule, *Toshiba* allowed the claim for refund or credit on the part of Toshiba Information Equipment (Phils.), Inc.

This is not true with the petitioner. With the issuance of RMC 74-99, the distinction under the old rule was disregarded and the new circular took into consideration the two important principles of the Philippine VAT system: the Cross Border Doctrine and the Destination Principle. Thus, *Toshiba* opined:

> The rule that any sale by a VAT-registered supplier from the Customs Territory to a PEZA-registered enterprise shall be considered an export sale and subject to zero percent (0%) VAT was clearly established only on 15 October 1999, upon the issuance of RMC No. 74-99. Prior to the said date, however, whether or not a PEZA-registered enterprise was VAT-exempt depended on the type of fiscal incentives availed of by the said enterprise. This old rule on VAT-exemption or liability of PEZA-registered enterprises, followed by the BIR, also recognized and affirmed by the CTA, the Court of Appeals, and even this Court, cannot be lightly disregarded considering the great number of PEZA-registered enterprises which did rely on it to determine its tax liabilities, as well as, its privileges.
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> According to the old rule, Section 23 of Rep. Act No. 7916, as amended, gives the PEZA-registered enterprise the option to choose between two sets of fiscal incentives: (a) The five percent (5%) preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and (b) the income tax holiday provided under Executive

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> Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.
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> x x x
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> **This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory**. It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. Again, for emphasis, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives: (1) If the PEZA-registered enterprise chose the five percent (5%) preferential tax on its gross income, in lieu of all taxes, as provided by Rep. Act No. 7916, as amended, then it would be VAT-exempt; (2) If the PEZA-registered enterprise availed of the income tax holiday under Exec. Order No. 226, as amended, it shall be subject to VAT at ten percent (10%). **Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration; and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as a VAT-exempt entity.**' (underscoring and emphasis supplied)

Furthermore, Section 8 of Republic Act No. 7916 mandates that PEZA shall manage and operate the ECOZONE as a separate customs territory. The provision thereby establishes the fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an ECOZONE will be considered as exportations. Following the Philippine VAT system's adherence to the Cross Border Doctrine and Destination Principle, the VAT implications are that 'no VAT shall be imposed to form part of the cost of goods destined for consumption

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outside of the territorial border of the taxing authority.' Thus, Toshiba has discussed that:

> This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
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> **<u>It is important to note herein that respondent Toshiba is located within an ECOZONE</u>**. An ECOZONE or a Special Economic Zone has been described as —
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> > . . . [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
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> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
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> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; **<u>thus, creating the fiction that the ECOZONE is a foreign territory</u>. As a result, sales made by a supplier in the Customs Territory <u>to a purchaser in the ECOZONE</u> shall be treated as an exportation from the Customs Territory**. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs

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> Territory shall be considered as an importation into the Customs Territory. (underscoring and emphasis supplied)'" *(Citations omitted)*

In view of the foregoing discussions, this Court finds no compelling reason to reverse or modify the assailed Decision.

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

SO ORDERED.

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

We Concur:

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice