REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2358
(CTA Case No. 9112)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
FEB 10 2022 11:12am

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* filed by Oceanagold (Philippines), Inc. seeking the reversal of the Decision dated June 17, 2020 and Resolution dated October 9, 2020 in CTA Case No. 9112, which denied Oceanagold's claim for refund amounting to Php1,265,929,377.57 allegedly representing unutilized value-added tax (VAT) arising from domestic purchase and importation of goods (other than capital goods), domestic purchases of services and purchases of capital goods which are attributable to zero-rated sales for the second (2nd) quarter of taxable year 2013.

FACTS

The CTA 2nd Division narrated the facts, as follows:

> Petitioner Oceanagold (Philippines), Inc., formerly known as Australasian Mining, Inc., is a corporation organized and existing under the laws of the Philippines with office address at 2nd Floor Carlos J. Valdes Building, 108 Aguirre Street, Legaspi Village, 1229 Makati City, Philippines. It is engaged in large-scale exploration, development and utilization of mineral resources such as gold, silver and copper, and was issued a Certificate of Registration by the Board of Investments (BOI) as a 'New Export Producer of Dore Bars and Copper Concentrate" on December 16, 2011.
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> Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification Number 004-870-171-000.
>
> Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue (BIR) National Office Building located at Agham Road, Diliman, Quezon City.
>
> xxx
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> For the 2nd quarter of taxable year 2013, petitioner reported zero-rated sales in the amount of P1,998,260,627.81.
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> On March 31, 2015, petitioner filed with the Excise Large Taxpayers Audit Division 1 ("ELTAD 1") of the BIR an administrative claim for refund or issuance of tax credit for its unutilized input VAT attributable to zero-rated sales for the 2nd quarter of taxable year 2013 in the aggregate amount of P1,265,929,377.57.
>
> On July 14, 2015, petitioner received from respondent the letter dated on the same day, informing it that its administrative claim has been denied.[1]

Petitioner filed its Petition for Review before the Court of Tax Appeals (CTA) Division on August 11, 2015.

After trial, the CTA 2nd Division rendered the assailed Decision[2] dated June 17, 2020, denying the claim for refund. The Decision held that the provision invoices did not comply with the requirement to have the word "zero-rated" prominently written or printed thereon. The Decision likewise held that the final invoices were dated outside the period of claim. Based on these, the Division held that petitioner failed to prove that it is engaged in zero-rated or effectively zero-rated sales during the 2nd quarter of taxable year 2013.

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[1] *Rollo*, Decision dated June 17, 2020, pp. 51-52.
[2] *Rollo*, pp. 50-78.

In the Resolution dated October 9, 2020,[3] the CTA 2nd Division recognized that the shipment date indicated in the Bills of Lading, as well as in the provisional invoices, is the date of the sale of petitioner's exported products. Nonetheless, the absence of the written or prominently printed word "zero-rated sale" in the issued provisional invoices is fatal to petitioner's claim for refund. Thus, petitioner's Motion for Reconsideration was likewise denied.

On November 12, 2020, petitioner electronically filed its Petition for Review,[4] with the hard copy being filed on November 16, 2020.

On December 21, 2020, respondent Commissioner of Internal Revenue (CIR) filed his Comment (Re: Petitioner's Petition for Review dated 10 November 2020).[5]

The case was submitted for decision on January 12, 2021.[6]

ISSUES

Petitioner submits a sole issue for the Court's consideration:

> WHETHER PETITIONER IS ENTITLED TO A REFUND OR TAX CREDIT OF ITS UNUTILIZED INPUT VAT ARISING FROM DOMESTIC PURCHASES AND IMPORTATION OF GOODS, DOMESTIC PURCHASES OF SERVICES, AND PURCHASES OF CAPITAL GOODS ATTRIBUTABLE TO ZERO-RATED SALES FOR THE 2ND QUARTER OF TAXABLE YEAR 2013.[7]

Petitioner's arguments

Petitioner argues that the absence of the written or prominently printed "zero-rated sale" in its provisional invoices is not fatal to its claim for refund. Petitioner argues that provisional invoices are not valid proof to support the claim of

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[3] *Rollo*, pp. 79-82.
[4] *Rollo*, pp. 13-42.
[5] *Rollo*, pp. 235-246.
[6] *Rollo*, pp. 249-250.
[7] *Rollo*, p. 23.

input tax, and its issuance is merely for recording, monitoring and control purposes, in this case, to provisionally determine the market value of the minerals at the time of shipment. Specifically, petitioner uses provisional invoices to provide a provisional pricing or valuation of its shipments pending agreement with its foreign buyers as to the final settlement weights, assays, quotations, and the final price of the shipment.

Petitioner also argues that its export sales during the 2nd quarter of taxable year 2013 qualify for VAT zero-rating, and that it has established its claim for refund of unutilized input VAT arising from domestic purchases and importation of goods, domestic purchases of services, and purchases of capital goods attributable to its zero-rated sales for the 2nd quarter of taxable year 2013.

Respondent's arguments

Respondent states that it is incumbent upon petitioner to prove that it is entitled to the claim for refund, which includes compliance with the invoicing requirements. Respondent also states that the invoicing and registration requirements under Section 113 of the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing rules, Revenue Regulations (RR) No. 16-2005, applies to both provisional and final sales invoices.

Respondent also states that the Court correctly based the date on the provisional invoices as the date of sale in determining whether such sales were made within the taxable quarter involved in the claim for refund.

RULING OF THE COURT

The instant Petition for Review was timely filed.

Petitioner received the assailed Resolution dated October 9, 2020, on October 13, 2020. Petitioner had fifteen (15) days from the date of receipt of the resolution, or until October 28, 2020, within which to file the petition for review before the

Court *En Banc*, pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b).[8]

On October 26, 2020, petitioner filed its *Motion for Extension of Time To File Petition for Review*,[9] praying for an additional fifteen (15) days from October 28, 2020, or until November 12, 2020, within which to file a petition for review. The same was granted in the Minute Resolution dated October 28, 2020.[10]

On November 12, 2020, petitioner electronically filed its Petition for Review. On November 16, 2020, the hard copy Petition for Review was filed with petitioner's Manifestation.

Thus, the Petition for Review is timely filed.

There is no compelling reason to reverse or modify the CTA 2nd Division's findings.

Petitioner's appeal hinges on whether the words "zero-rated" are required to be printed on the provisional invoices.

Citing Revenue Regulations (RR) No. 18-2012, [11] petitioner states that provisional invoices, also known as commercial invoices, are classified as supplementary receipts/invoices for purposes of VAT, and are not valid proof to support the claim of input taxes by buyers of goods and/or services. Based on this distinction in RR No. 18-2012, petitioner argues that the VAT invoice referred to in Section 113 of the NIRC of 1997, as amended, means the VAT Sales Invoice evidencing the sale of goods issued to customers and

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[8] Rule 8 Procedure in Civil Cases
Sec. 3. *Who may appeal; period to file petition.*
xxx xxx xxx
(b) A party adversely by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[9] *Rollo*, pp. 1-6.

[10] *Rollo*, p. 7.

[11] Regulations in the Processing of Authority to Print (ATP) Official Receipts, Sales Invoices, and Other Commercial Invoices using the On-line ATP System and Providing for the Additional Requirements in the Printing Thereof, October 22, 2012.

not the supplementary invoice such as the provisional invoice herein.

We disagree.

RR No. 18-2012 provides the regulations for processing the authority to print (ATP) of official receipts, sales invoices, and other commercial invoices. While it provides that provisional invoices are classified as "commercial invoices" and as "supplementary invoices" which are not valid proof to support the claim for input taxes by buyers of such goods,[12] nowhere in said RR No. 18-2012 was it stated that provisional invoices/commercial invoices/supplementary invoices need not contain the required information in a VAT invoice.

Commercial invoices, such as the provisional invoices issued by petitioner, are likewise required to be duly registered with the Bureau of Internal Revenue (BIR) and covered by a valid authority to print, as provided in Sections 237 and 238 of the NIRC of 1997, as amended, to wit:

> SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00 or more, <u>issue duly registered</u> receipts or <u>sales or commercial invoices</u>, prepared at least in duplicate, <u>showing the date of transaction, quantity, unit cost and description of merchandise</u> or nature of service. (*Underscoring supplied*)
>
> SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* – All persons engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> <u>No authority to print</u> receipts or <u>sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations</u> to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. (*Underscoring supplied*)

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[12] RR No. 18-2012, Section 2(3).

Clearly, provisional invoices should also contain the same information required by law to be contained in a VAT invoice. Such information is provided in Section 113 of the NIRC of 1997, as amended, as follows:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> > (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
> >
> > (2) xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> > (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
> >
> > (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:
> >
> > > (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
> > >
> > > (b) xxx
> > >
> > > (c) If the sale is subject to zero percent (0%) value-added tax, the term '**zero-rated sale**' shall be written or printed prominently on the invoice or receipt;
> > >
> > > xxx xxx xxx
> >
> > (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service.

Again, nowhere in the NIRC of 1997, as amended, does it state that provisional invoices do not need to contain the words "zero-rated sale", or any other information required to be contained in a regular VAT invoice, or the final VAT invoice.

The completeness of the information contained in the provisional invoices gains particular importance in the case of petitioner, where the provisional invoice is used as proof of the actual sale and actual shipment of the goods together with the bill of lading, in determining that the sales were made within the period claimed for refund/tax credit.

In fact, in *Commissioner of Internal Revenue v. Philex Mining Corporation,*[13] the CTA *En Banc* held:

> As correctly found by the Court in Division, it was established that the shipment date in the Bills of Lading and Provisional Invoices is the date of sale. The Final Invoices bearing dates later than the dates of shipment does not remove the fact that the sales and actual shipment of goods from the Philippines to a foreign country, as contemplated under Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, had actually transpired during the period of claim. The final invoices are merely additional evidence to support respondent's claimed zero-rated sales, having been issued by respondent in reference to sales transactions consummated during the period of claim.
>
> As stated in the assailed Decision, aside from the provisional invoice issued by respondent upon shipment, a final invoice was issued after the contracting parties reached an agreement regarding the final settlement of weigh[t]s, assays and quotations or final value of the shipment which is done after arrival of the shipment at the port of loading. Thus, the Final Invoices dated outside the period of claim do not cover separate sales transactions for different taxable periods, but actually relates to the sales transactions of respondent during the period of claim as indicated in the provisional invoices, bills of lading and export declarations.

The abovequoted case also reiterated the need for indicating the word "zero-rated sales" on the provisional invoices, *to wit*:

> A scrutiny of the sales invoices, both provisional and final, supporting petitioner's sales of gold to Heraeus Ltd. amounting to P1,099,909.00, shows that the same were not duly registered with the BIR as there was no BIR Permit number reflected thereon and the word 'VAT' after petitioner's TIN was not imprinted. <u>Likewise, the word 'zero-rated sales' was not stamped nor imprinted on the Provisional Invoice</u>. Thus, petitioner's reported sales in the

[13] CTA EB No. 1525, April 2, 2018.

> amount of P1,099,909.00 cannot qualify for VAT zero-rating.[14]

Based on the foregoing, this Court finds no reason to reverse nor modify the CTA 2nd Division's findings, as follows:

> Nevertheless, upon careful examination of all the said provisional invoices issued by petitioner in support of its export sales, the same reveals that the word ***"zero-rated"*** was not written or printed prominently thereon, which is a clear violation of the above-quoted Section 113(B)(2)(c) of the NIRC of 1997, as amended, and Section 4.113-1(B)(2)(c) of RR No. 16-2005, as amended. Hence, the zero-rated sales supported by the said provisional invoices in the amount of P1,995,524,661.81 shall likewise be denied *in toto* for VAT zero-rating.[15]

Not having proven that its sales for the 2nd quarter of taxable year 2013 qualify for VAT zero-rating, petitioner's claim for refund of input VAT allegedly attributable to its zero-rated sales must also fail, without the necessity of determining petitioner's compliance with the remaining requisites for a refund of unutilized input VAT.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution of the Court's Second Division, dated June 17, 2020 and October 9, 2020, respectively, are **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[14] *Id.*
[15] *Rollo*, Decision dated June 17, 2020, pp. 75-76.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice