**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

# *FIRST DIVISION*

**PAG-ASA STEEL WORKS, INC.**, *Petitioner*,

-*versus*-

**BUREAU OF INTERNAL REVENUE, COMMISSIONER OF INTERNAL REVENUE, ASSISTANT COMMISSIONER TERESITA M. ANGELES,** *Respondents*.

**CTA Case No. 9506**

Members:

**DEL ROSARIO**, *P.J., Chairperson*, *and*
**MANAHAN**, *JJ.*

Promulgated:
DEC 21 2020 11:00am

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## RESOLUTION

**MANAHAN, *J.*:**

This resolves the following:

1. *Motion for Partial Reconsideration* filed by petitioner Pag-Asa Steelworks, Inc. on September 25, 2020, without respondents' comment; and

2. *Motion for Partial Reconsideration (Re: Decision dated 02 September 2, 2020)* posted by respondent Commissioner of Internal Revenue (CIR) on September 22, 2020, with petitioner's *Comment/ Opposition to Respondents' Motion for Partial Reconsideration (dated September 22, 2020)* filed on October 9, 2020.

The parties assail the Decision dated September 2, 2020, which disposed of the case as follows:

> **WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments for deficiency VAT are **UPHELD WITH MODIFICATION**. Nevertheless, petitioner has no deficiency VAT liability and even incurred VAT overpayment amounting to P217,420,492.45, as computed above. *am*

**SO ORDERED.**[1]

*Petitioner's Motion for Partial Reconsideration*

While petitioner agrees with the cancellation of the deficiency VAT assessment considering that there is sufficient input VAT for the 1st and 2nd quarters of 2014, petitioner seeks reconsideration of the various deficiency VAT assessment items which were upheld by the Court.

Petitioner seeks reconsideration of the following findings by the Court:

1. Sales discount of Php323,376.84 not indicated in sales invoice is subject to output VAT
2. Zero-rated sales amounting to Php27,947,555.03 are considered taxable
3. Hauling charged to customers amounting to Php8,904,000.23 is subject to output VAT
4. Offsetting of receivable accounts with payable accounts and offsetting of various debit memos in the amount of Php316,543.03 are subject to output VAT
5. Disallowed input tax for non-compliance with invoicing requirements amounting to Php11,573,755.17

Petitioner once again argues that the account "Sales Discount" was erroneously used by petitioner in recording its price adjustments. Petitioner also states that these include minimal peso and/or centavo discrepancies which are considered immaterial to claim from petitioner's customers; adjustments for pricing errors; or, adjustments to reflect the real agreement between petitioner and its customers.

The Court reiterates that petitioner did not prove with clear and convincing evidence the real nature of the price adjustments involved herein. Absent such evidence, this Court must treat such amounts as it is labeled, that is, as sales discounts. For sales discount to be allowable as deduction from

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[1] Decision dated September 2, 2020, p. 34.

gross selling price, it must be indicated in the sales invoice at the time of sale.

Petitioner also prays that its sales to MSK Group Work, Inc. and SB Construction and Water Treatment be considered zero-rated sales. The sales were subjected to VAT after being found that the said sales were for pick-up or were delivered to places other than the Subic Bay Freeport Zone (SBFZ). However, as found by the Court, only the sale to MSK Group Work, Inc. amounting to Php762,840.00 was actually delivered within the SBFZ.

Petitioner points to Exhibits "P-413" and "P-414" which allegedly prove that the deliveries amounting to Php2,809,893.00 and Php355,440.00 to MSK Group Work, Inc. should be zero-rated. However, it should be pointed out that the delivery address of Clarkfield, Pampanga is not sufficient for this Court to presume that the same was delivered to MSK's Clark Freeport Zone address. On the other hand, Exhibit "P-414" is a certification that Taihan Precision Technology (Philippines) Co., Inc. is a PEZA-registered Ecozone Export Enterprise at the Lima Technology Center – SEZ in Lipa City, Batangas. However, Taihan Precision Technology (Philippines), Inc. is not petitioner's customer.

Thus, the Court finds no reason to reconsider its findings that the sales to MSK Group Work, Inc. and SB Construction and Water Treatment, in the amount of Php27,947,555.03, are subject to VAT.

As to the remaining assessments on hauling charges, offsetting of accounts, and disallowed input tax for non-compliance with invoicing requirements, petitioner did not present any convincing argument to cancel the subject assessments.

Based on the foregoing, petitioner's *Motion for Partial Reconsideration* is denied.

*CIR's Motion for Partial Reconsideration (Re: Decision dated 02 September 2020)*

Respondent asserts that only Php492,711,991.05 should be considered as allowable input tax per return, as shown in the assessment notices, instead of the Php726,205,217.28 used by the Court. Under respondent's computation using Php492,711,991.05 as the allowed input VAT, respondent argues that petitioner would have a deficiency VAT of Php16,164,274.58.

In arriving at petitioner's tax deficiency, respondent did not consider the excess input VAT as of June 30, 2014 amounting to Php233,493,226.23. Instead, respondent merely considered as allowed input VAT per return the exact amounts which were credited against the output VAT.[2] In his *Motion*, respondent explains that the [excess] allowable input VAT for the 2nd quarter was carried forward to the following quarter, hence, cannot be considered as part of the computation for deficiency VAT assessment of petitioner.

We disagree.

Respondent did not explain the basis for the disallowance of petitioner's excess input VAT, but merely reflected Php492,711,991.05 as the allowed input VAT. Following Section 228 of the National Internal Revenue Code, which requires that assessments shall state the law and the facts on which it is based, the disallowance of input tax amounting to Php233,493,226.23 is considered void.

Based on the foregoing, respondent's *Motion* is likewise denied.

**WHEREFORE**, the *Motion for Partial Reconsideration* filed by petitioner, and respondent's *Motion for Partial Reconsideration (Re: Decision dated 02 September 2020)* are both **DENIED**.

**SO ORDERED**.

**CATHERINE T. MANAHAN**
Associate Justice

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[2] 1st quarter – Php260,638,473.74
2nd quarter - 232,073,517.31
Php492,711,991.05

**I CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice