REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FOSECO PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8879

Members:

DEL ROSARIO, *P.J., Chairperson*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
APR 02 2018 : 2:13pm

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RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution is respondent's **Motion for Partial Reconsideration Re: Decision dated November 3, 2017**, filed on November 22, 2017, with petitioner's **Comment / Opposition to Respondent Commissioner of Internal Revenue's Motion for Partial Reconsideration**, filed on January 5, 2018.

Respondent seeks reconsideration of the Court's Decision (assailed Decision)[1] promulgated on November 3, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or

[1] Docket, pp. 336-379.

TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner in the amount of **₱3,102,813.87**, representing its excess and unutilized input value-added tax attributable to its zero-rated sales for the first to fourth quarters of calendar year 2012.

SO ORDERED."[2]

Respondent moves for reconsideration of the assailed Decision, arguing that the Court erred in ruling that petitioner incurred input taxes for calendar year (CY) 2012 which are attributable to its zero-rated or effectively zero-rated sales for the same period. He contends that to be entitled to refund, petitioner must present evidence that will prove that such input taxes were directly attributable to zero-rated sales or effectively zero-rated sales.

According to respondent, the phrase directly attributable means "arising from a particular source or cause". He claims that input tax must come from the purchase of goods and services that form part of the finished product of the taxpayer. Respondent argues that there is nothing in the assailed Decision explaining the evidence showing the direct connection of the purchases or input tax to the finished product which sale is zero-rated.

Respondent claims that petitioner merely presented official receipts, invoices and Import Entry and Internal Revenue Declarations (IEIRD) and that these documents failed to show the direct relationship of these invoices to petitioner's zero-rated sales.

On the other hand, petitioner alleges that it submitted 1,703 documentary exhibits and the Independent Certified Public Accountant Report (Exhibit P-57), as well as testimonies of its Finance Manager Bricel Ann Reyes and CPA Richard Querido, while respondent did not submit documentary or testimonial evidence.

Petitioner also contends that the Court exhaustively and meticulously evaluated and analyzed petitioner's documentary and testimonial evidence, citing the legal basis and court decisions that was complied by petitioner, that eventually led to the grant of the VAT refund, while respondent did not present factual or legal argument to counter the factual and legal findings of the Court.

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[2] Docket, p. 378.

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The Motion for Partial Reconsideration is bereft of merit.

Contrary to respondent's assertion, Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, does not require that the input taxes subject of a claim refund be directly attributable to zero-rated sales or effectively zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law.[3] Moreover, where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, the provision allows allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales[4], to wit:

> "Sec. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid **attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That **where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales**: Provided, finally, That for a person making sales that are zero-rated under Section 108 (B)(6), the input

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[3] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 8905, October 19, 2017.
[4] *CBK Power Company Limited vs. Commissioner of Internal Revenue,* CTA Case No. 7887, February 2, 2018.

taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

As found in the assailed Decision, aside from zero-rated sales, petitioner had VATable sales to private entities and VATable sales to the government for the year 2012. Thus, while petitioner's valid input VAT is not entirely attributable to its zero-rated sales, petitioner's input VAT amounting to ₱4,324,592.01 is attributable to zero-rated sales, to wit:

> "The valid input VAT of ₱5,972,320.24 is not entirely attributable to petitioner's zero-rated sales since petitioner had VATable sales to private entities and VATable sales to government for the year 2012. Allocating, therefore, the input VAT of ₱5,972,320.24 among petitioner's zero-rated sales, VATable sales to private entities and VATable sales to government would result in the following input VAT attributable to VATable sales to private entities in the amount of ₱1,641,052.41, input VAT attributable to VATable sales to government in the amount of ₱6,675.82 and input VAT attributable to zero-rated sales in the amount of ₱4,324,592.01, as shown below:

CY 2012	Input VAT Attributable to 12% VATable Sales to Private Entities	Input VAT Attributable to 12% VATable Sales to Government	Input VAT Attributable to Zero-Rated Sales	Total Input VAT
1st Quarter	₱ 440,976.57	-	₱ 1,199,226.07	**₱ 1,640,202.64**
2nd Quarter	401,921.00	-	1,041,982.33	**1,443,903.33**
3rd Quarter	382,111.30	-	1,084,271.44	**1,466,382.74**
4th Quarter	416,043.55	₱ 6,675.82	999,112.16	**1,421,831.53**
Total	**₱ 1,641,052.41**	**₱ 6,675.82**	**₱4,324,592.01**	**₱5,972,320.24**

Allocation was based on the percentage of each type of sales to total sales as shown below:

CY 2012	12% VATable Sales to Private Entities	12% VATable Sales to Government	Zero-Rated Sales	Total
1st Quarter *(Exh. "P-7")*	₱ 5,923,315.90	-	16,108,327.25	₱ 22,031,643.15
% to Total Sales	26.885493%	-	73.114507%	100%

2nd Quarter *(Exh. "P-8")*	5,910,073.81[5]	-	15,321,897.75[6]	21,231,971.56
% to Total Sales	27.835728%	-	72.164272%	100%
3rd Quarter *(Exh. "P-9")*	5,708,911.18	-	16,199,493.25	21,908,404.43
% to Total Sales	26.058087%	-	73.941913%	100%
4th Quarter *(Exh. "P-10")*	5,642,541.05	90,540.00	13,550,339.75	19,283,420.80
% to Total Sales	29.261100%	0.469523%	70.269377%	100%

xxx xxx xxx"

Clearly, the Court did not err in ruling that petitioner incurred input taxes for CY 2012 which are attributable to its zero-rated or effectively zero-rated sales for the same period.

To reiterate the assailed Decision, petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate in the reduced amount of ₱3,102,813.87, representing its excess and unutilized input value-added tax attributable to its zero-rated sales for the four quarters of CY 2012 which are attributable to its zero-rated sales for the same period.

Furthermore, it must be noted that in the case of *Republic vs. Team (Phils.) Energy Corporation (formerly Mirant [Phils.] Energy Corporation)*[7], the Supreme Court held that when the 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

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Amount per VAT Return	₱ 5,887,033.81
Add: Sales subject to 12% VAT per Inv. 14411 found by the ICPA to have been erroneously reported as Zero-Rated Sales	23,040.00
Adjusted Amount of 12% VATable Sales to Private Entities	**₱5,910,073.81**

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Amount per VAT Return	₱ 15,344,937.75
Less: Sales subject to 12% VAT per Inv. 14411 found by the ICPA to have been erroneously reported as Zero-Rated Sales	23,040.00
Adjusted Amount of 12% VATable Sales to Private Entities	**₱ 15,321,897.75**

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

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> 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." (*Emphasis supplied.*)

Based on the foregoing, when the taxpayer is able to establish *prima facie* its right to claim for refund, it is upon respondent to present a rebuttal evidence to shift the burden of evidence back to petitioner to establish its entitlement for a refund.

During trial, respondent did not present any evidence to rebut petitioner's claim for refund. Thus, respondent's failure to present any evidence is fatal to his contention that petitioner failed to comply with the requisites to be entitled to a refund or issuance of a tax credit certificate of input VAT due or paid attributable to zero-rated sales.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on November 3, 2017.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration Re: Decision dated November 3, 2017** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO	**ERLINDA P. UY**
Presiding Justice	Associate Justice