REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

AIR LIQUIDE PHILIPPINES, INC.,	**CTA CASE NO. 8052**
Petitioner,	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	APR 22 2022 . 9:30 a.m.

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RESOLUTION

DEL ROSARIO, P.J.:

Before this Court is petitioner's **Motion for Reconsideration (Re: *Decision* dated 25 October 2021)** filed on December 1, 2021, without respondent's comment as per Records Verification dated March 8, 2022.

On October 25, 2021, the Court promulgated a Decision denying petitioner's claim for refund of unutilized input value-added tax (VAT) for failing to sufficiently prove its entitlement thereto, the dispositive portion of which states as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* filed by Air Liquide Philippines, Inc. on March 30, 2010, praying for the refund or issuance of a tax credit certificate in the total amount of Twenty-One Million Four Hundred Sixty Thousand Four Hundred Thirty-One Pesos and Forty-Eight Centavos (₱21,460,431.48) representing its alleged unutilized input Value-Added Tax (VAT) for the 1st quarter of 2008 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

In its Motion, petitioner primarily claims that based on the *totality of evidence*, it has sufficiently proven that it has excess unutilized input VAT for the first (1st) quarter of calendar year (CY) 2008. Petitioner expounds that considering that the bulk of its sales for said period were mostly effectively zero-rated, having been made to Philippine Economic Zone Authority (PEZA)-registered entities, its input VAT is greater than its output VAT liability; and, that its input VAT has not been applied against any output tax.

Petitioner likewise asserts that the Court erred in finding that petitioner failed to substantiate the amount of input VAT carried over from the previous period. Allegedly, it submitted its Quarterly VAT Returns for the 1st quarter of CY 2008 and for the third (3rd) and fourth (4th) quarters of CY 2007, which were examined by the Court-commissioned Independent Certified Public Accountant (ICPA); and, based on the ICPA Report, the ICPA confirmed that petitioner had excess unutilized input VAT at the end of the 4th quarter of CY 2007, which was then carried over to the 1st quarter of CY 2008.

The Court finds petitioner's Motion for Reconsideration bereft of merit.

Further review of the records disclosed that petitioner failed to substantiate its claim for refund of unutilized input VAT for the 1st quarter of CY 2008 due to the disallowance of the following items, *viz.*:

a) Discrepancy of ₱235,556.93 on the VAT return and zero-rated sales per schedule for being unsupported;

b) Invoices on the sale of goods in the amount of ₱41,977,912.91 are not stamped or printed with the phrase 'zero-rated sales';

c) Sale of services amounting to ₱563,797.17 for not being supported by zero-rated official receipts;

d) Sales amounting to ₱20,899,537.41 to PEZA-registered entities with:

    i. no certification,
    ii. cancelled certifications,
    iii. not PEZA-registered,
    iv. registered only in year 2010,
    v. not entitled to VAT zero-rating, and
    vi. not listed in the letter issued by PEZA;

e) Sales in the amount of ₱11,611,487.95 to PEZA-registered customers prior to the issuance of their respective PEZA certifications;

f) Total input VAT of ₱20,711,373.79 not properly substantiated by VAT invoices and official receipts;

g) Input VAT of ₱17,337.48 for being without proper supporting document; and,

h) Input VAT of ₱291,149.85 was not fully substantiated.

Given the foregoing, the Court concluded that only the amount of ₱341,142.48 represents valid input VAT attributable to petitioner's total reported zero-rated sales, and the input VAT attributable to zero-rated sales is way lower than the net output VAT payable of ₱6,748,858.67. Consequently, the claim for refund was appropriately denied as there is no excess or unutilized input VAT to speak of after applying the ₱341,142.48 valid input VAT attributable to zero-rated sales against the output VAT payable of ₱6,748,858.67.

Petitioner insists in the present motion that it has sufficiently proven its excess unutilized input VAT for the 1st quarter of CY 2008 based on the totality of the evidence. Thus, said unutilized input VAT should have been applied against its output VAT payable.

Suffice it to say that the totality of evidence in this case had been duly considered in the assailed Decision, and petitioner has failed to convince this Court that a particular finding in the assailed Decision is based on erroneous appreciation of evidence.

Regarding the Court's finding that petitioner failed to substantiate the amount of input VAT carried over from the previous period, petitioner asserts that it submitted its Quarterly VAT Returns for the 3rd and 4th quarters of CY 2007, not only its Quarterly VAT Return for the 1st quarter of CY 2008; and, that the ICPA confirmed, based on the VAT Returns, that it had excess unutilized input VAT at the end of the 4th quarter of CY 2007 which it carried over to the 1st quarter of CY 2008. To the mind of petitioner, the foregoing are sufficient to prove that it has input VAT carried over from the previous period which could be applied against its output VAT payable for the 1st quarter of 2008.

The foregoing contentions are not meritorious.

Foremost, it is worth stressing that under Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), the Court is not bound by the findings of the ICPA, to wit:

> "SEC. 3. *Findings of independent CPA*.– The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent

> CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification**." *(Emphasis and underscoring supplied)*

Clearly, the findings and conclusions of the ICPA are not conclusive upon the Court. The Court is free to either adopt, completely or partially, or even disregard the said findings and conclusions in the ICPA Report, after making its own verification and evaluation of the same based on the evidence on record. Indeed, the ultimate determination on the validity of petitioner's claim rests upon the Court based on the evidence presented by the parties.

While petitioner submitted its Quarterly VAT Returns for the 3rd and 4th quarters of CY 2007, it nonetheless failed to substantiate the amount of input VAT carried over from the previous quarter by VAT invoices or official receipts. As held by the Supreme Court in the case of *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*,[1] a claim for refund of creditable input taxes must be evidenced by a VAT invoice or official receipt, to wit:

> "An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements. **Consequently, the old CTA, as affirmed by the CTA en banc, correctly ruled that a claim for the refund of creditable input taxes must be evidenced by a VAT invoice or official receipt in accordance with Section 110(A)(1) of the NIRC**. Sections 237 and 238 of the same Code as well as Section 4.108-1 of RR No. 7-95 provide for the invoicing requirements that all VAT-registered taxpayers should observe, such as: xxx." *(Emphasis supplied)*

Otherwise stated, petitioner is required to substantiate its input VAT from the previous quarters with official receipts or invoices pursuant to Section 110 (A) of the National Internal Revenue Code of 1997, as amended.

It bears stressing that actions for tax refund or credit, as in the present case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[2]

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[1] G.R. No. 183531, March 25, 2015.

[2] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018

Moreover, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[3] Thus, it is imperative for the claimant to fully substantiate its claim for refund, which petitioner has failed to discharge.

There being no new matter or substantial issue raised by petitioner in its Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on October 25, 2021.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated 25 October 2021) is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

We Concur:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[3] *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Rafael Arsenio S. Dizon, et al. v. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.