Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

KEP (PHILIPPINES) REALTY CORPORATION,
Respondent.

CTA EB NO. 1504
(CTA Case No. 8983)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
FEB 23 2018 10:31 a.m.

x---x

RESOLUTION

MINDARO-GRULLA, J.:

This resolves petitioner's "Motion for Reconsideration" of the Decision dated August 18, 2017 of this Court *En Banc*, the dispositive portion of which states:

> *"**WHEREFORE**, the Petition for Review is **DENIED**, for lack of merit. Accordingly, the Decision dated April 20, 2016, rendered by the Second Division of this Court in CTA Case No. 8983, and its Resolution dated August 11, 2016 are **AFFIRMED**. No pronouncement as to costs.*
>
> ***SO ORDERED."***

In assailing this Court's Decision, petitioner claims that the Court erred in ruling that the arguments raised to support the petition were bereft of legal basis. In support thereof, petitioner again rehashed the arguments raised in the petition.

In sum, petitioner reiterates the following:

1. that respondent cannot claim refund of the unutilized input VAT for 2012 since there is no zero-rated sale transactions for 2012;

2. that the property is merely rented for 25 years, ownership remains with respondent and that the refund can only be made when the property is eventually sold. Thus, only the portion which is attributable to such zero-rated sale that can be refunded, which in respondent's case refer to the contract of lease which was for a period of 25 years;

3. that a taxpayer is given the option to carry over to the succeeding quarters any unutilized input tax or to file a claim for refund and availing of an option precludes choosing that of the other; and

4. that respondent failed to prove that the input VAT being claimed remained unutilized for the taxable years 2012 to 2014.

We resolve to deny the motion.

After a careful examination of petitioner's "Motion for Reconsideration", the Court finds that arguments raised in said motion had already been sufficiently passed upon and fully discussed not only by the Second Division's Decision dated April 20, 2016 and its Resolution dated August 11, 2016 but also by this Court en banc's Decision dated August 18, 2017.

To reiterate, what the law and the implementing regulations provide is that a taxpayer who has zero-rated or effectively zero-rated transactions were allowed to apply for the issuance of a tax credit certificate or a tax refund for input taxes paid, in addition to the option to carry forward the input taxes against future output tax liabilities. To be entitled to the issuance of a tax credit certificate or tax refund, the input taxes should not have been applied against output taxes, the input tax is attributable to zero-rated or effectively zero-rated sales and the claim should be made within 2 years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

In the case at bar, the facts are undisputed. Respondent purchased from Cebu Light Industrial Park, Inc.

L

five (5) parcels of land and respondent reported an input VAT in the amount of P38,736,174.00 in the Quarterly VAT Return for the 3rd quarter of 2012.[1] Whether there is no reported zero rated sale for taxable year 2012 is immaterial as long as the input taxes should not have been applied against output taxes.

Thereafter, respondent entered into a contract of lease[2] with Knowles Electronics (Philippines) Corporation (KEPC), an entity registered with the PEZA and a qualified enterprise for the purpose of VAT zero-rating of its transactions with its local suppliers of goods, properties and services.[3] The rental fees were declared by respondent in its 2013 VAT Returns. Respondent claims that the input tax in the purchase of the land is attributable to zero-rated or effectively zero-rated sales (the lease of the land to a PEZA-registered corporation) and that the claim was made within 2 years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

It is an established rule[4] that the following criteria in claiming refund or tax credit under Section 112(A) must be complied with:

(1) The taxpayer is VAT-registered;
(2) The taxpayer is engaged in zero-rated or effectively zero-rated sales;
(3) The input taxes are due or paid;
(4) The input taxes are not transitional input taxes;
(5) The input taxes have not been applied against output taxes during and in the succeeding quarters;
(6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
(7) For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

---

[1] Exhibit "P-5", Division Docket, p. 200; Exhibit "P-3", Division Docket, pp. 162-198; and Exhibit "P-4", Division Docket, p. 199.
[2] The Contract of Lease with KEPC executed on January 7, 2013, involving the 5 parcels of land.
[3] Exhibit "P-12", Division Docket, pp. 752-764; Exhibit "P-8", Division Docket, p. 408; Exhibit "P-9", Davison Docket, p. 409.
[4] Southern Philippines Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 179632, October 19, 2011; San Roque Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009.

C

(8) Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

(9) The claim is filed within two (2) years after the close of the taxable quarter when such sales were made.

Respondent complied with the above-mentioned criteria, except for numbers 7 and 8 as the instant case neither involve zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2) nor does it involve mixed transactions.

In sum, We found no substantial argument was raised to merit reconsideration of our Decision promulgated on August 18, 2017.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice