REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
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LEPANTO CONSOLIDATED MINING COMPANY, Petitioner,	**CTA Case No. 9426**
	Members:
- versus -	**UY,** *Chairperson, and* **RINGPIS-LIBAN, MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:***
	NOV 24 2020 10:44 a.m.

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RESOLUTION

UY, *J.*:

For resolution is respondent Commissioner of Internal Revenue's (CIR) ***MOTION FOR PARTIAL RECONSIDERATION (Re: Decision promulgated 30 June 2020)***[1] filed *via* registered mail on August 18, 2020 and received by the Court on August 28, 2020, with petitioner Lepanto Consolidated Mining Company's ***COMMENT/OPPOSITION (to the Motion for Partial Reconsideration dated 06 August 2020)***[2] filed on October 21, 2020, seeking the reversal and setting aside of the Decision dated June 30, 2020, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱22,458,084.40** representing the latter's

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[1] Docket – Vol. 2, pp. 575 to 586.
[2] Docket – Vol. 2, pp. 597 to 607.

unutilized input VAT attributable to its zero-rated sales for the four quarters of the year 2014.

SO ORDERED."

Respondent's arguments:

In his *Motion*, respondent maintains that petitioner failed to prove its entitlement to the refund sought because no attributability was established between the input tax on purchases *vis-à-vis* the zero-rated sales of petitioner.

It is respondent's position that the law requires that only "creditable input taxes" that are directly attributable may be refunded. According to respondent, to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production.

Respondent likewise stresses that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer.

Finally, respondent contends that petitioner had the obligation to not only point to the specific provision of law which entitles it to the refund sough, but also to prove its entitlement thereto.

Petitioner's counter-arguments:

Petitioner claims that the Court has correctly ruled that petitioner's input tax is directly attributable to its zero-rated sales because it has no business other than mining. Thus, the purchases for which the claimed input taxes have been paid are allegedly directly attributable to the zero-rated sales of the products from its mining operations.

Petitioner likewise insists that it has already established during trial the direct and concrete connection of its importation purchases to its zero-rated export sales.

Further, petitioner avers that it has proven its claim for tax refund or tax credit. Petitioner points out that the instant *Motion* did not cite any evidence that will controvert petitioner's claim for refund. MO

THE COURT'S RULING

We deny the instant *Motion for Partial Reconsideration*.

The CIR's position that to be creditable, the input tax must come from the purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production, deserves scant consideration.

Section 112 of the National Internal Revenue Code of 1997, as amended, allows the allocation of creditable input taxes which cannot be directly or entirely attributable to zero-rated sales, *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 taxes shall be allocated ratably between his zero-rated and non-zero-rated sales." *(Emphasis supplied).*

Based on the foregoing, creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero-rated or effectively zero-rated sale and taxable or exempt sale of goods of

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properties or services), shall be allocated proportionally on the basis of the volume of sales.

Evidently, contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct.

As for the other arguments raised by the CIR in the instant *Motion for Partial Reconsideration,* a perusal thereof shows that the same are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision. Moreover, the CIR failed to present new matters or arguments which may compel Us to reconsider, modify or reverse the assailed Decision. Hence, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN RINGPIS-LIBAN
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice