REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

RESTORED ENERGY DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9775, 9827 & 9854

Members:

DEL ROSARIO, *P.J.*, *Chairperson,*
MANAHAN, *and*
MODESTO-SAN PEDRO,* *JJ.*

Promulgated:
APR 06 2022 2:19 pm

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RESOLUTION

MANAHAN, J.:

Submitted before this Court is petitioner's **Motion for Reconsideration** filed, through registered and electronic mail, on December 29, 2021 without respondent's comment as per Records Verification dated March 9, 2022.

On November 16, 2021, the Court promulgated the Decision resolving the consolidated *Petitions for Review* by dismissing CTA Case No. 9854 for lack of jurisdiction, and denying petitioner's claim for refund of unutilized input value-added tax (VAT) attributable to zero-rated sales in CTA Case Nos. 9775 and 9827 for failing to sufficiently prove that it has excess input VAT to refund, the dispositive portion of which states as follows:

> "**WHEREFORE**, premises considered, the present Petition for Review filed by Restored Energy Development Corporation in CTA Case No. 9854 is **DISMISSED** for

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* *Assigned as Special Member.*

lack of jurisdiction. Meanwhile, the Petitions for Review filed by Restored Energy Development Corporation in CTA Case Nos. 9775 and 9827 are **DENIED** for lack of merit.

SO ORDERED."

In its Motion, petitioner primarily argues that, contrary to the above Decision, it complied with all the requisites in claiming VAT refund. Petitioner raises the following grounds in support of its arguments, *viz.*:

A. The Honorable Court erred in ruling that the Petition for Review in CTA Case No. 9854 was filed out of time.

B. The Honorable Court erred in ruling that out of the declared input VAT of ₱2,127,347.95, only the amount of ₱47,742.06 represents petitioner's valid input VAT incurred or paid for the 3rd and 4th quarters of taxable year 2015.

C. The Honorable Court erred in ruling that only the amount of ₱30,860.29 represents the valid input VAT attributable to its valid zero-rated or effectively zero-rated sales for the 3rd and 4th quarters of taxable year 2015.

D. The Honorable Court erred in ruling that petitioner failed to establish that the input taxes attributable to zero-rated or effectively zero-rated sales for the 3rd and 4th quarters of taxable year 2015 have not been applied against the output taxes.

As to the *first* ground, petitioner assails the dismissal of CTA Case No. 9854 for being filed out of time. Petitioner insists that based on the Judicial Affidavit dated March 4, 2019 of its Tax Specialist, Mr. Alexis S. Mendoza, petitioner filed its administrative claim for refund on March 2, 2018 and that the Bureau of Internal Revenue (BIR) incorrectly stamped March 2, 2017 on the same as the date of receipt thereof. It continues that Mr. Mendoza's testimony is even corroborated by the BIR's *Memorandum* for the Regional Director dated August 22, 2018,[2] and the paragraph under the heading "Facts

[2] Exhibit "P-43", Docket Vol. II (Case No. 9775), pp. 780-781.

of the Case",[3] stating that "[o]n March 2, 2018, taxpayer submitted their claims for input VAT refund xxx." As such, petitioner asserts that the BIR's admission in their *Memorandum* dated August 22, 2018 clearly supports petitioner's contention that the BIR incorrectly stamped March 2, 2017 as the date of receipt on its administrative claim for refund. Accordingly, petitioner claims that it complied with all the requisites for VAT refund in CTA Case No. 9854, and is therefore entitled to the amount of ₱594,645.17 representing the input VAT it paid and incurred in relation to its VAT zero-rated sales for the 1st quarter of taxable year 2016.

With regard to the *second* ground, petitioner also does not agree with the Court's findings in CTA Case Nos. 9775 and 9827 when it ruled that petitioner failed to comply with VAT invoicing and substantiation requirements, which led to the disallowance of its input tax claim amounting to ₱2,079,605.89 for the 3rd and 4th quarters of taxable year 2015. Petitioner asserts that the court-commissioned independent certified public accountant (ICPA) Mr. Floyd C. Paguio, already examined and vouched the official receipts and invoices representing the VATable sales and VAT zero-rated sales, purchases of goods, and services for the said period. As a result, petitioner insists that the official receipts and invoices representing the VATable sales and VAT zero-rated sales of petitioner, as well as for its purchases of goods and services for the said period are in compliance with the provisions of Section 4.113-1(B) of Revenue Regulations (RR) No. 16-2005, as amended. Thus, petitioner submits that the official receipts and invoices duly examined and vouched for by the ICPA are enough to substantiate the input VAT presented in petitioner's VAT returns.

As to the *third* ground, petitioner likewise submits that it complied with the requirement under Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, that the input VAT incurred by petitioner for the 3rd and 4th quarters of 2015 and 1st Quarter of 2016 were indeed attributable to its VAT zero-rated sales, as attested by the ICPA.

Lastly, with regard to the *fourth* ground, petitioner disagrees with the Court that it has no excess unutilized input taxes available for refund. Petitioner claims that perusal of the ICPA Report shows that the input VAT subject of the present claims for refund was not applied to any output VAT liability for the succeeding taxable quarters.

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[3] Exhibit "P-43-1", *id.*

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

As to the petitioner's first argument, it claims that the BIR incorrectly stamped March 2, 2017 as the date of receipt on its administrative claim for refund.

However, the Court does not agree.

In the assailed Decision, the Court held that it is a basic rule of evidence that between documentary and testimonial evidence, the former carries more weight. As such, petitioner's testimonial evidence cannot be given more credence if not supported by definitive proof of its allegations.

Applying the said rule in the present consolidated cases, petitioner's contention that Mr. Mendoza's testimony is corroborated by the BIR *Memorandum* dated August 22, 2018 is self-serving. Perusal of the actual receiving stamp in the *Application For Tax Credits/Refunds (BIR Form No. 1914) for the First Quarter of 2016,*[4] readily shows that the said receiving stamp was not a mere handwritten acknowledgement made by the person receiving the subject application for refund but a **mechanical imprint** which is less likely susceptible to human error. Unfortunately, petitioner failed to offer any explanation or show any proof how the "mistake/error" in putting the wrong year came about and the attending circumstances resulting to the alleged "mistake/error".

More importantly, considering the materiality of the filing date of a taxpayer's administrative claim in resolving tax refund cases, the parties should have stipulated the supposed correct filing date of the same in the "admitted facts" in their *Joint Stipulation of Facts and Issues,*[5] so as to clarify the date and rectify the alleged incorrect stamped date of filing.

Also, aside from the BIR *Memorandum* dated August 22, 2018, no other documentary evidence was presented by petitioner to substantiate its claim. Respondent's *Letter of Denial*[6] pertaining to

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[4] Exhibit "P-27", Docket Vol. I (Case No. 9854), p. 582; BIR Records, p. 280.
[5] Docket Vol. I (Case No. 9775), pp. 329-337.
[6] Exhibit "P-30", Docket Vol. 1 (Case No. 9775), pp. 586-587.

said administrative claim for refund was undated and did not mention the date when the said claim was filed. Moreover, perusal of the *Memorandum for Respondent*[7] filed with this Court on August 11, 2020, showed that there is no confirmatory declaration by respondent that petitioner's administrative claim for refund for the 1st quarter of 2016 was filed on March 2, 2018.

It must be remembered that cases filed before this Court are litigated *de novo*, and that **party litigants must prove <u>every minute aspect</u> of their cases**.[8] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[9] Claims for tax refunds, when based on statutes granting tax exemption or tax refund, partake of the nature of an exemption; thus, the rule of strict interpretation against the taxpayer-claimant similarly applies.[10]

As to the other grounds raised by petitioner, the Court finds that the same have already been discussed and passed upon in the assailed Decision.

The Court reiterates that although petitioner's *Amended Quarterly VAT Returns* for the 3rd and 4th quarters of taxable year 2015 reflected the amount of ₱2,113,617.1579 as "Input Tax Carried Over from Previous Period," petitioner was not able to substantiate the same.[11] Again, in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year.

More so, the Court would like to underscore that it is not bound by the findings of the ICPA. Correspondingly, the ICPA is

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[7] Docket Vol. II (Case No. 9775), pp. 910-915.

[8] *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, et seq.*, 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; *Dizon 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.

[9] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[10] *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

[11] *See* Decision, p. 38.

commissioned merely to assist the Court in the determination of the merit of taxpayer's claim. As provided under Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), 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 supplied)*

As aforequoted, the ultimate determination of the merits or probative value of an ICPA report belongs exclusively to the Court as it is free to either adopt, in whole or in part, or even disregard the said findings and conclusions, after making its own verification and evaluation of the same and the evidence on record. Stated otherwise, petitioner cannot claim that the ICPA's findings are sufficient to validate its claims, since the Court ultimately determines whether the evidence presented duly support the alleged zero-rated sales.

In view of the foregoing disquisitions, 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 November 16, 2021.

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

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

We Concur:

(I reiterate my Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
(Special Member)
Associate Justice