REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TETRA PAK PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10237

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

OCT 09 2023 2:21 pm

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RESOLUTION

CUI-DAVID, J.:

This resolves:

1. Petitioner's *Motion for Partial Reconsideration (Re: Decision dated 19 May 2023)* filed on June 9, 2023, with respondent's *Comment/Opposition* thereto filed on July 10, 2023; and

2. Respondent's *Motion for Partial Reconsideration (Re: Decision promulgated on May 19, 2023)* filed on June 9, 2023, with petitioner's *Comment/Opposition* thereto filed on July 10, 2023.

Both parties seek partial reconsideration of this Court's Decision promulgated on May 19, 2023 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the amount

₱10,326,777.19 representing its unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of CY 2017.

SO ORDERED.

***Petitioner's Motion for Partial Reconsideration*:**

In its *motion*, petitioner claims that the Court erred in holding that its sales to Axelum Resources Corporation (Axelum), a Board of Investment (BOI)-registered entity, do not qualify as zero-rated sales because it allegedly failed to provide proof that Axelum had at least 70% export sales in the entire previous calendar year (CY) since the BOI Endorsement Letter it presented only covered January to November 2016.

According to petitioner, there is no legal basis to require a BOI Endorsement that covers the entire previous year. There is also no legal basis to apply Section 4.106-5(a) strictly (3) of Revenue Regulations (RR) No. 16-05 for export-oriented entities. For petitioner, RR No. 16-05 is clear that any enterprise whose export sales exceed 70% of the total annual production of the preceding CY shall be considered an export-oriented enterprise. Petitioner asserts that Axelum is not a mere export-oriented enterprise in the context of such provision but a BOI-registered entity.

Further, citing the BIR ruling [DA-193-06], where the Bureau of Internal Revenue (BIR) allegedly opined that a BOI endorsement letter or certification is sufficient for purposes of establishing zero-rating transactions, petitioner believes that it had a legal basis to rely on the BOI Endorsement Letter for purposes of determining the treatment of its sales to Axelum. In fact, according to petitioner, the BOI Endorsement Letter states that Axelum's Application for Zero-rating shall be valid from January 1 to December 31, 2017. Hence, it cannot be prejudiced for relying on such a letter issued by the BOI.

Moreover, the fact that the BOI Endorsement Letter only covers sales from January to November 2016 does not mean that Axelum is not entitled to VAT zero-rating. According to petitioner, the BOI allegedly confirmed, in a blind inquiry, that it is a common practice for entities to submit sales from said period only. The BOI considered the submission of entities as substantial compliance for issuing an endorsement letter.

Hence, petitioner asserts that its submission of Axelum's BOI Endorsement Letter and BOI Certificate of Registration is already sufficient to prove that its sales to Axelum are VAT zero-rated.

Petitioner likewise claims that the Court erroneously held that specific sales invoices (SIs) supporting its "*considered export sales*" to BOI-registered and PEZA-registered entities are not fully compliant with the invoicing requirements under Section 113(B)(4) of the Tax Code and RR No. 16-05. Allegedly, the SIs issued to Celebes Coconut Corporation, Peter Paul Coconut Water Corporation, and Del Monte Philippines, Inc. amounting to ₱33,036,237.77 are not compliant with the invoicing requirement due to the following: (1) failure to indicate the nature or description of goods sold; and (2) failure to indicate the Tax Identification Number (TIN) of the said entities in the SIs. Hence, said sales do not qualify as zero-rated export sales.

Petitioner counters that said SIs were generated through its Computerized Accounting System (CAS), duly registered with and approved by the BIR. Hence, the same should be deemed sufficient for complying with the Tax Code, as amended, and other BIR regulations pertaining to invoicing requirements.

Further, while Section 4.113-1(B)of RR No. 16-05 requires the Tax Identification Number (TIN), among others, to be indicated in the VAT SI or official receipt, such is not a pre-requisite for a sale to a BOI-registered and/or PEZA-registered entity to be considered as a zero-rated sale. According to petitioner, both RR No. 16-05 and the Tax Code, as amended, expressly provide that export sales by VAT-registered persons shall be zero-rated. Here, sales to Celebes Coconut Corporation, Peter Paul Coconut Water Corporation, and Del Monte Philippines, Inc. – entities proven to be BOI or PEZA-registered – are "*considered export sales*" under the above-cited legal bases and are supported by VAT-registered SIs.

In his *Comment/Opposition* thereto, respondent submits that the Court correctly denied the portion of the claim amounting to ₱10,500,082.21 for failure to fully comply with the requisites of a claim for credit/refund of excess input VAT.

According to respondent, Section 106(A)(2)(a)(3) of the Tax Code, as amended, as implemented by Section 4.106-5(a)(3) of RR No. 16-05, states that for sale of raw materials or packaging materials by a VAT-registered entity to an export-oriented enterprise be subject to VAT zero-rating, the export sales of the said enterprise must exceed 70% of its total annual production.

Here, the Court, considering the BOI Endorsement Letter for VAT zero-rating presented by petitioner to prove that its customers are export-oriented enterprises, determined that the percentage of export sales to total sales of Axelum from January to November 2016 is 82%. No information was, however, provided for December 2016. Hence, respondent submits that the Court is correct in holding that without the information for December 2016, it cannot be determined whether the export sales of Axelum indeed exceed 70% of its total annual production.

Respondent also submits that petitioner's reliance on BIR Ruling [DA-193-06] is misplaced as it was not the party who requested the same, citing *Brewery Properties, Inc. v. Commissioner of Internal Revenue.*[1] Besides, the BIR ruling cannot prevail over the clear provisions of Section 106(A)(2)(a)(3) of the Tax Code, as amended, and Section 4.106-5(a)(3) of RR No. 16-05, says respondent.

Lastly, respondent submits that the Court correctly disallowed petitioner's "considered export sales" to BOI-registered, PEZA-registered, and EMB-registered entities for the failure of petitioner to comply with the invoicing requirements under the Tax Code, as amended, and its implementing rules.

The Court finds petitioner's *motion* bereft of merit.

First, petitioner's assertions that (1) there is no legal basis to require a BOI Endorsement that covers the entire previous year, and (2) there is also no legal basis to strictly apply Section 4.106-5(a)(3) of Revenue Regulations (RR) No. 16-05 for export-oriented entities, must fail.

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[1] G.R. No. 239260. March 6, 2023.

As correctly pointed out by respondent, Section 106(A)(2)(a)(3) of the Tax Code, as amended, as implemented by Section 4.106-5(a)(3) of RR No. 16-05, expressly provides that for sale of raw materials or packaging materials by a VAT-registered entity to an export-oriented enterprise be subject to VAT zero-rating, the **export sales of the said enterprise must <u>exceed 70% of its</u> <u>total annual production</u>**.

In fact, in the case of *Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue*,[2] the Supreme Court already settled that for a BOI-registered enterprise to be qualified for VAT zero-rating, its export sales must exceed 70% of its total annual production, to wit:

> Petitioner further questions the validity of the requirement under Revenue Regulations No. 2-88 that BOI- and EPZA-registered enterprises must have at least 70% export sales for the sales to be qualified for zero-rating. Petitioner asserts that such requirement constitutes an amendment to the Omnibus Investment Code and the NIRC of 1986, as amended. **This argument is rendered moot by the enactment of Republic Act No. 8424 or the NIRC of 1997 which incorporated the provision that the sale of raw materials or packaging materials by VAT-registered persons to an export-oriented enterprise whose export sales exceed 70% of total annual production shall be subject to 0% rate**. (*Boldfacing supplied*)

In the instant case, the BOI Letter Endorsement for VAT zero-rating presented for Axelum only covers January to November 2016. As the Court pointed out in the assailed Decision, "*Without the information for December 2016, the Court cannot ascertain whether Axelum indeed made export sales exceeding 70% of its total annual production of the preceding CY 2016. As such, Axelum cannot be considered an export-oriented enterprise for purposes of VAT zero-rating.*"

Besides, petitioner's claim that there is no legal basis to require a BOI Endorsement that covers the entire previous year is betrayed by its presentation of the BOI Letter Endorsement for VAT zero-rating for Century Pacific Agricultural Ventures, Inc. covering the period January 1 to December 31, 2016.

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[2] G.R. No. 146221, September 25, 2007.

Second, on petitioner's assertion that the SIs generated through its CAS, which is duly registered with and approved by the BIR, should be deemed sufficient for purposes of complying with the Tax Code, as amended, and other BIR regulations pertaining to invoicing requirements must likewise fail.

In the case of *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, [3] the Supreme Court emphasized the relevance of due observance of invoicing and accounting requirements specified under the law and implementing rules relative to the refund claim as follows:

> In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. **It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. Hence, the mere fact that petitioner's application for zero-rating has been approved by the CIR does not, by itself, justify the grant of a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.**

Section 113(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:
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> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

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[3] G.R. No. 181136, June 13, 2012.

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and **description of the goods or properties** or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and **Taxpayer Identification Number (TIN) of the purchaser, customer or client**. (*Boldfacing supplied*)

It is apparent from the foregoing that the SI must indicate the nature or description of the goods sold, and, in case of sales where the amount is ₱1,000.00 or more, the TIN of the purchaser must be indicated.

As found by the Court in the assailed Decision, the SIs supporting petitioner's "considered export sales" amounting to ₱33,036,237.77 were disallowed for failure to comply with the invoicing requirements under Section 113 of the NIRC of 1997, as amended, and its implementing rules and regulations.

Given the foregoing, there is no compelling reason or overriding justification to disturb this Court's Decision of May 19, 2023.

***Respondent's Motion for Partial Reconsideration*:**

In asking for a reconsideration, respondent claims that the Court erred in partially granting petitioner's claim for refund, maintaining that:

I. THE PETITION MUST BE DISMISSED FOR FAILURE OF PETITIONER TO SUBSTANTIATE ITS ADMINISTRATIVE CLAIM FOR REFUND; and

II. PETITIONER IS NOT ENTITLED TO THE CLAIM FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN ITS ENTIRETY.

Citing the ruling in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[4] (*Total Gas*), respondent argues that since a decision has been rendered at the administrative level, the jurisdiction of the Court shifts from a trial court to an appellate tribunal. The Court should confine itself to whether the findings of the administrative body are consistent with the law.

In the instant case, respondent submits that since a decision has been rendered denying petitioner's administrative claim for a refund for failure to substantiate the same, petitioner cannot submit documents it did not present at the administrative level. Moreso, the Court is confined to a more limited issue of whether the denial was proper given the evidence submitted at the administrative level.

Finally, respondent argues that petitioner is not entitled to its claim for a refund, considering that their evaluation of petitioner's documents resulted in a deficiency VAT exposure amounting to ₱34,364,745.71.

By way of *Comment/Opposition* thereto, petitioner rejects respondent's *motion* based on the following arguments:

I. THE HONORABLE COURT SHOULD DENY THE SUBJECT MOTION FOR LACK OF BASIS. TETRA PAK SHOULD NOT BE BARRED FROM PRESENTING FURTHER EVIDENCE TO SUBSTANTIATE ITS CLAIM; and

[4] G.R. No. 207112, December 8, 2016.

II. THE HONORABLE COURT SHOULD DENY THE SUBJECT MOTION SINCE RESPONDENT FAILED TO POINT OUT SPECIFICALLY THE FINDINGS OR CONCLUSIONS OF THE DECISION WHICH ARE NOT SUPPORTED BY EVIDENCE, OR WHICH ARE CONTRARY TO LAW.

For petitioner, respondent is mistaken in applying the *Total Gas* case to the facts of this case. Petitioner explains that the *Total Gas* case involved instances where a taxpayer failed to submit supporting documents despite notice/request at the administrative level. In contrast with the *Total Gas* case, it showed during the trial that it submitted all the documents required by respondent.

Further, even if it failed to submit sufficient documents, respondent should have requested and notified it of the inadequacies following the *Total Gas* case. However, respondent did not. Hence, petitioner asserts that it is not barred from presenting supporting evidence to address the grounds for denial as stated in the Denial Letter and to prove its entitlement to a VAT refund before the Court.

Respondent also alleged in his *motion* that petitioner is not entitled to its claim due to the following findings and observations which he describes to be vital to the processing of said claim: (a) IERD/SAD/SSDT WITH DISCREPANCY/UNOFFICIAL, (b) IMPROPER INVOICING, (c) CAATTS TIN VERIFICATION, (d) ZERO RATED SALES SHOULD BE SUBJECT TO 12% VAT, (e) UNDECLARED SALES PER SLS VS. AITED, and (f) SALES NOT SUBJECTED TO VAT (VAT RETURNS VS. SLS).

According to petitioner, these allegations have no factual or legal basis. Further, the failure of respondent to point out specifically the findings or conclusions of the Decision, which are not supported by evidence, renders respondent's motion *pro forma* following the ruling in *Jesena v. Hervas*.[5]

Hence, in closing, petitioner submits that respondent's *motion* be denied for lack of merit and for violating Section 2,[6] Rule 37 of the Rules of Court.

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[5] G.R. No. L-47315, June 29, 1978.

[6] Section 2. *Contents of motion for new trial or reconsideration and notice thereof.* – The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

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Respondent's motion must fail.

The Court finds that the contentions presented in the motion are mere reiteration or amplification of the arguments raised by respondent in his Memorandum filed on March 24, 2022, all of which were duly considered in the assailed Decision. The Court, therefore, finds no justifiable reason to modify the assailed Decision.

Besides, as correctly pointed out by petitioner, respondent failed to point out specifically the findings and conclusions of the assailed Decision, which are not supported by evidence.

WHEREFORE, the *Motions for Partial Reconsideration* separately filed by petitioner Tetra Pak Philippines, Inc. and respondent Commissioner of Internal Revenue are **DENIED**, for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.