REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PORT BARTON DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8490

Members:

BAUTISTA, *Chairperson*;
FABON-VICTORINO, and
RINGPIS LIBAN, JJ.

Promulgated:

OCT 19 2017
3:44 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

In this *Motion for Reconsideration* dated August 9, 2017, respondent assails the Decision dated July 20, 2017, disposing the case as follows:

> **WHEREFORE**, the Petition for Review filed by petitioner Port Barton Development Corporation on May 11, 2012, is hereby **PARTIALLY GRANTED**. Accordingly, the deficiency Value-Added Tax assessment issued by respondent against petitioner for taxable year 2007 is **CANCELLED**. On the other hand, the deficiency Income Tax, Expanded Withholding Tax and Withholding Tax on Compensation assessments, are **AFFIRMED with MODIFICATIONS**.
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> Petitioner is **ORDERED TO PAY** respondent the amount of **₱1,236,895.86** representing basic deficiency Income Tax, Expanded Withholding Tax, and Withholding Tax on Compensation, inclusive of the 25% surcharge

imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	Basic	Surcharge	Total
Income Tax (MCIT)	₱ 195,067.35	₱ 48,766.84	₱ 243,834.19
Expanded Withholding Tax	31,426.98	7,856.75	39,283.73
Withholding Tax on Compensation	763,022.35	190,755.59	953,777.94
Total	**₱989,516.68**	**₱247,379.18**	**₱1,236,895.86**

In addition, petitioner is **ORDERED TO PAY**:

a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, expanded withholding tax and withholding tax on compensation computed from the following dates until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	Basic	Deficiency Interest computed from
Income Tax (MCIT)	₱195,067.35	15-Apr-08
Expanded Withholding Tax	₱ 31,426.98	15-Jan-08
Withholding Tax on Compensation	₱763,022.35	15-Jan-08

b) Delinquency interest at the rate of 20% per annum on the total amount of ₱1,236,895.86 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from May 10, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.[1]

Respondent submits that for zero-rated sales to exist, a declaration of the zero-rated amount in the Quarterly VAT Return is required. The fact that petitioner failed to indicate in its Quarterly VAT Return for TY 2007 that it has zero-rated sales means it has no zero-rated sales to speak of. Hence, the deficiency VAT assessment he issued against petitioner should be sustained.

[1] Docket, pp. 2330-2332.

While respondent admits that petitioner presented various sales invoices, export declarations, commodity clearances and airway bills to establish actual exportation of its pearls, he insists that additional documents evidencing actual receipts by the buyer-consignee of the pearls purchased must also be adduced for petitioner to qualify for zero-rated sales. Respondent surmises that since no evidence of actual receipts by the buyer, no actual exportation took place, therefore, petitioner has no zero-rated sales.

He further states that since petitioner failed to substantiate its claimed carry-over input tax, the same may not be subtracted to its output tax liability. Hence, the disallowance of said input tax must be sustained. Additionally, petitioner failed to overcome the presumption of correctness of the assessment, thus, the subject assessment against petitioner should be upheld.

In its comment, petitioner argues that failure to state the amount of zero-rated sales in its Quarterly VAT returns is not fatal to its cause. Both the Independent Certified Public Accountant (ICPA) and the Court verified all the documents relative to its sales of pearls to its foreign clients and found the existence of said zero-rated sales. In fine, its zero-rated sales are clearly based on sufficient proof justifying the grant of the relief prayed for.

Further, proof that its products were actually received by its buyer-consignee is not required. The proof of payments in US DOLLARS (USD), duly accounted for under the Bangko Sentral ng Pilipinas (BSP) rules and regulations, demonstrates that its cultured pearls were indeed exported.

Also, it is error for respondent to disallow its input VAT carry-over for TY 2007 in the subject assessment of even year given that the same would only benefit petitioner on TY 2008 onwards. Hence, the disallowance of its carry-over input VAT for TY 2007 is premature.

THE RULING OF THE COURT

The instant Motion should be denied.

Under Section 106(A)(2)(a)(1)[2] of the Tax Code, the following requisites must be satisfied for a taxpayer to have zero-rated sales via *actual* exportation, *viz*: (1) seller is a VAT-registered person; (2) there is sale and actual shipment of goods from the Philippines to a foreign country; and (3) the exported articles were paid in foreign currency and duly accounted for under *Bangko Sentral ng Pilipinas* (BSP) rules and regulations.

The mandate is very clear. And when the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[3]

As diametrically opposed to respondent's assertion, a plain reading of said provision reveals that a declaration as to the amount of zero-rated sales in the VAT Return is not a condition *sine qua non* to establish the existence of petitioner's zero-rated sales.

Navigating on the same premise, it is likewise error for respondent to oblige petitioner to present proof of receipt by the consignee-buyer of the articles or commodities exported for the same is not required under the Tax Code. What is only decreed by the relevant provision is proof of sale and

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[2] SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
(A) *Rate and Base of Tax.* –

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* – The term *'export sales'* means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

[3] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue,* G.R. No. 196907, March 13, 2013.

actual shipment of goods from the Philippines to another country.

Significantly, respondent raised for the first time in the instant Motion for Reconsideration its contention that petitioner failed to substantiate its alleged input tax carry-over of P1,951,552.96 and input tax claimed of P126,551.00, or a total of P2,078,103.96, effectively depriving petitioner of ample opportunity to ventilate its position on the matter. Also note that courts are precluded from entertaining matters ventilated for the first time only in a motion for reconsideration or on appeal.[4]

In fine, respondent failed to advance substantial arguments that will warrant a departure, much less, a modification of the Decision of July 20, 2017.

WHEREFORE, the Motion for Reconsideration dated August 9, 2017 filed by respondent Commissioner of Internal Revenue is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[4] See *Mendoza vs. Bautista, et al.,* G.R. No. 143666, March 18, 2005.