REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TOTAL (PHILIPPINES) CORPORATION, Petitioner,	**CTA CASE NO. 7855** Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 09 2017 3:10 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is petitioner's **Motion for Reconsideration**, filed on October 3, 2016, with respondent's **Comment (Re: Petitioner's Motion for Reconsideration dated October 3, 2016)**, filed on November 8, 2016.

Petitioner moves for the reconsideration of the Decision[1] promulgated on September 15, 2016, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

[1] Docket, Vol III, pp. 1115-1144.

Petitioner mainly asserts that there is no law or regulation requiring that input value added tax (VAT) must first be proven to exceed output VAT and that there is likewise no requirement to substantiate input VAT carried over from previous periods, in claims for VAT refund.

On the other hand, respondent counters that the determination of the output VAT of a taxpayer is indispensable to establish the proper subject for a claim for refund or credit. Respondent also states that only input VAT evidenced by an official invoice or receipt may be carried over to the succeeding quarter. In this regard, respondent alleges that no evidence whatsoever was presented by petitioner to prove the existence of input VAT except for its VAT returns. Hence, respondent contends that the Court correctly denied petitioner's claim for refund.

Petitioner's motion has no merit.

Petitioner submits that there is no requirement under the law, rules and regulations and jurisprudence that a taxpayer-claimant must first prove that its input taxes exceed its output taxes to be entitled to the refund of input taxes. Petitioner contends that it is not mandatory for a taxpayer to apply first all input taxes against output taxes, and thereafter, only the excess amount will be refunded. Petitioner argues that a taxpayer can claim in the form of refund all input taxes attributable to zero-rated sales.

The Court does not agree.

A careful analysis of Section 110 (A) and (B) in relation to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, reveals that input VAT from zero-rated transactions can be claimed for refund or issuance of tax credit certificate (TCC) provided that input VAT is greater than output VAT.

Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended, clearly states:

"**SEC. 110.** ***Tax Credits.*** —

(A) *Creditable Input Tax.* — Je

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: xxx

xxx xxx xxx

(B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

Section 112 (A) of the NIRC of 1997, as amended, provides, as follows:

"**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**: xxx." (*Emphasis supplied*)

In the case of *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) vs. Commissioner of Internal Revenue*[2], the Supreme Court held that:

"Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes equal to the input taxes that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his

[2] G.R. No. 178090, February 8, 2010.

input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer."

In the case of *Total (Philippines) Corporation vs. Commissioner of Internal Revenue*[3], this Court *En Banc* has already ruled on the said issue, as follows:

"Petitioner maintains that it is entitled to refund of input taxes related to VAT zero-rated sales, regardless of the amount of total input taxes and output taxes. Essentially, petitioner claims that under Section 112 of the NIRC of 1997, a taxpayer can claim input VAT attributable to zero-rated sales even if the output VAT on other taxable sales is greater than its input taxes attributable to zero-rated sales.

The argument lacks merit. As aptly explained in the assailed Resolution, Section 112 of the NIRC of 1997 must be read in relation to the whole law, particularly to Section 110 of the same law xxx

xxx xxx xxx

It is clear from the provision of law that when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter/s. But when input tax, attributable to zero-rated sales, exceeds the output tax, it may be refunded or credited. Hence, for input tax attributable to zero-rated sales, it is only when input tax exceeds the output tax that a refund or credit is proper.

Moreover, the Court *a quo* debunked petitioner's argument in the assailed Resolution, thus:

While it may be true that a reading of the said Section 112(A) appears to suggest that input VAT, which is attributable to zero-rated sales and 'to the extent that such input tax has

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[3] CTA EB No.1154, April 21, 2015.

not been applied against the output tax', may be applied, without any further requirement, for the issuance of a tax credit certificate or refund, the said provision may not be read or applied in isolation with the other provisions of the VAT law.

xxx xxx xxx

Thus, the aforequoted Section 112 must still be read in conjunction with Section 110 (B) of the same Code, as last amended by RA No. 9361, provides as follows:

> 'SEC. 110. Tax Credits.-
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> xxx xxx xxx
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> (B) *Excess Output or Input Tax.*- If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT -registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.'

It is clear from the last proviso of the foregoing Section 110 (B) that the refund or credit of *'any input tax attributable to zero-rated sales by a VAT-registered person'* is *'subject to the provisions of Section 112.'* Correspondingly, the grant of such refund or credit cannot be confined merely to the provisions of paragraph (A) of Section 112, but must perforce include the whole of Section 112.

The term 'in proper cases' under Section 112 (C) qualifies the granting of refund under

> Section 112 (A). Thus, it is not only when the input VAT is attributable to zero-rated sales and the same has not been applied against the output VAT that the grant of refund or tax credit may be made; it must likewise be 'proper' or appropriate under the circumstances.
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> In this case, on the basis of the evidence offered and admitted during the trial, it is the finding of this Court that the output VAT liability of petitioner is more than its input VAT credits for the four (4) quarters of taxable year 2007, to wit:
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> **The first sentence of the aforequoted Section 110 (B) is plain that *'(i)f at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person.'* Thus, it would be 'improper' or inappropriate, if not irregular, to grant a refund of, or issue a tax credit certificate for, input VAT in favor of petitioner where there are still unpaid output VAT for taxable year 2007.**"

In the case of *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*[4], the Supreme Court ruled that every statute must be considered with the other parts, to wit:

> "Legislative intent must be ascertained from a consideration of the statute as a whole and not of an isolated part or a particular provision alone. This is a cardinal rule in statutory construction. For taken in the abstract, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those with which it is associated. Thus, an apparently general provision may have a limited application if viewed together with the other provisions."

[4] G.R. No. 185969, November 19, 2014.

Clearly, if at the end of a taxable quarter, the output VAT is greater than the input VAT, the taxpayer will have a VAT payable. On the other hand, if the input VAT is greater than the output VAT, the taxpayer may carry over the excess and unutilized input VAT to succeeding quarters or file a claim for refund or issuance of TCC.

Accordingly, this Court correctly denied petitioner's claim for refund or issuance of TCC after finding out that its output VAT liability is more than its valid input VAT, as follows:

> "In sum, petitioner's properly substantiated input VAT for the fourth quarter of 2006 amounted only to ₱594,510,839.75 which when compared with its output VAT liability for the same period in the amount of ₱722,903,477.94, there still remains an output VAT still due in the amount of ₱128,392,638.19 xxx
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> xxx xxx xxx
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> Clearly, petitioner's properly substantiated input VAT for the fourth quarter of 2006 is not enough to cover its output VAT for the same period. While petitioner reported an input VAT carried over from previous quarter in the amount of ₱411,598,506.73, the Court found that petitioner failed to present VAT invoices or official receipts to prove the existence of such amount. Hence, the input VAT carry-over of ₱411,598,506.73 cannot be validly applied against petitioner's output VAT pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended xxx
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> xxx xxx xxx
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> Since petitioner's output VAT liability is a lot higher than the valid input VAT, there is no excess input VAT which may be the proper subject of a claim for refund or tax credit under Section 112(A) of the NIRC of 1997, as amended. Consequently, the instant claim must be denied.
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Petitioner likewise contends that there is no requirement to first substantiate input tax carried over from previous periods in a claim for VAT refund. Petitioner alleges that what is required is for the taxpayer to validate only the input taxes out of which the claim is being made.

The Court does not agree with petitioner's allegation.

In the same case of *Total (Philippines) Corporation vs. Commissioner of Internal Revenue*, this Court *En Banc* also ruled that the validation of the carried over excess input VAT from the previous quarter of 2006 is necessary in the determination of entitlement to refund, as follows:

> "The validation of the carried over excess input VAT from the last quarter of 2006 is necessary in the determination of petitioner's entitlement to refund. This is to verify that the 2006 carried over input VAT is sufficient to cover the 2007 output VAT so that the 2007 input VAT remains undiminished by any 2007 output VAT."

Considering the foregoing, petitioner's claim that there is no need to first substantiate the input tax carried over from previous periods is bereft of merit.

At this juncture, it must be reiterated that statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions. The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.[5]

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Decision, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

[5] *Supra*, Note 2.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

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