REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PILIPINAS KYOHRITSU, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9557

Members:

CASTAÑEDA, JR., *Chairperson,* and
BACORRO-VILLENA, *JJ.*

Promulgated:

AUG 03 2020 8:00 am

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court are the following:

1. respondent's **Motion for Partial Reconsideration Re: Decision dated 28 January 2020**, filed on February 13, 2020, without petitioner's comment as per Records Verification dated July 6, 2020; and,

2. petitioner's **Motion to Admit [the attached Comment to the Respondent's Motion for Partial Reconsideration]**, filed on July 17, 2020.

This Court shall first address petitioner's Motion to Admit.

To recall, a Resolution was promulgated by this Court on February 18, 2020, ordering petitioner to comment on respondent's Motion for Partial Reconsideration, within fifteen (15) days from receipt thereof.

However, on July 6, 2020, this Court, through the Judicial Records Division, issued a Records Verification report stating that petitioner failed to file its comment on respondent's Motion for Partial Reconsideration.

Then, on July 17, 2020, petitioner filed the instant Motion to Admit, explaining that in light of public concerns on health and safety due to the COVID-19 pandemic, the office work has been disrupted, and hence, the Comment attached to its Motion is not filed. Petitioner prays that the Motion to Admit be granted and the Comment attached to the Motion be admitted to form part of the records of this case.

In the interest of substantial justice, petitioner's Motion to Admit [the Attached Comment to the Respondent's Motion for Partial Reconsideration] is hereby **GRANTED**. Accordingly, petitioner's Comment [to Respondent's Motion for Partial Reconsideration dated 12 February 2020] is **ADMITTED** and shall form part of the records of the present case.

That having been settled, this Court shall now resolve respondent's Motion.

On January 28, 2020, a Decision was promulgated by this Court, partially granting petitioner's claim for refund of creditable input value-added tax (VAT), the dispositive portion of which reads as follows:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND** petitioner the amount of **₱5,475,537.44**, representing the unutilized input VAT attributable to zero-rated sales for the period covering the 3rd quarter of FY 2015, or from October 1, 2014 to December 31, 2014.
>
> **SO ORDERED.**"

In his Motion, respondent primarily contends that petitioner's alleged unutilized creditable input taxes allocable and directly attributable to its VAT zero-rated sales for the period October 2014 to December 2014, was not properly substantiated. He claims that petitioner failed to comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent further avers that petitioner was not able to prove compliance with the submission of all supporting and relevant documents provided under Revenue Memorandum Order (RMO) No. 53-98 and other existing rules and regulations to warrant the grant of the application for refund.

Nonetheless, respondent reiterates that this Court does not have jurisdiction to entertain the present Petition for Review considering that petitioner's administrative claim is *pro-forma* and should therefore be considered as not having complied with the requirement that an administrative claim for refund should first be filed prior to the institution of a judicial claim for refund.

On the other hand, in its Comment, petitioner primarily argues that respondent failed to raise matters substantially plausible to warrant partial reconsideration of the assailed Decision, considering that respondent's arguments are mere rehashes. Petitioner reiterates that this Court already ruled that petitioner's administrative and judicial claims were both timely filed, and that a thorough examination of the relevant supporting documents was also made, which found petitioner to have sufficiently proven its entitlement to refund the amount of ₱5,475,537.44. Hence, in the Decision assailed, respondent was ordered the refund of a portion of petitioner's claim that complied with the substantiation requirements, while the non-compliant portion thereof was correspondingly denied.

Furthermore, petitioner contends further that RMO No. 53-98 is not applicable in the instant case, and that even if the same is applicable, there is nothing therein that requires the submission of the complete documents enumerated in RMO No. 53-98 for a grant of a refund or credit. In any case, petitioner also argues that if indeed it failed to submit complete documents, there is nothing in the records which would show that the BIR informed petitioner that the submitted documents are incomplete or that petitioner is required to submit additional documents.

After due consideration, the Court finds respondent's Motion for Partial Reconsideration bereft of merit. *ge*

A cursory reading of the arguments presented by respondent reveals that the main arguments he raised in his Motion have already been sufficiently passed upon and threshed out in the Decision assailed.

However, with regard to respondent's claim that since petitioner was not able to prove faithful compliance with RMO No. 53-98[1], its claim for refund should therefore be denied, this Court does not agree.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal* Revenue,[2] the Supreme Court ruled that a taxpayer's failure to comply with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT, to wit:

> "Anent RMO No. 53-98, the CTA Division found that the said order provided a checklist of documents for the BIR to consider in granting claims for refund, and served as a guide for the courts in determining whether the taxpayer had submitted complete supporting documents.
>
> To quote RMO No. 53-98:
>
> REVENUE MEMORANDUM ORDER NO. 53-98
>
> SUBJECT: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.
>
> TO: All Internal Revenue Officers, Employees and Others Concerned
>
> I. *BACKGROUND*
>
> It has been observed for the same kind of tax audit case, Revenue Officers differ in their request for requirements from taxpayers as well as in the

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[1] "SUBJECT: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket", dated June 1, 1998.

[2] G.R. No. 207112. December 8, 2015.

attachment to the dockets resulting to tremendous complaints from taxpayers and confusion among tax auditors and reviewers.

For equity and uniformity, this Bureau comes up with a prescribed list of requirements from taxpayers, per kind of tax, as well as of the internally prepared reporting requirements, all of which comprise a complete tax docket.

II. *OBJECTIVE*

This order is issued to:

a. Identify the documents to be required from a taxpayer during audit, according to particular kind of tax; and,

b. Identify the different audit reporting requirements to be prepared, submitted and attached to a tax audit docket.

III. *LIST OF REQUIREMENTS PER TAX TYPE*

Income Tax/Withholding Tax
— Annex A (3 pages)

Value Added Tax
— Annex B (2 pages)
— Annex B-1 (5 pages)

x x x x

As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present **upon audit of their tax liabilities**. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are *actually* complete to support a claim for tax credit or refund of excess unutilized excess VAT. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation* (*formerely Mirant Sual*

Corporation):

> The CIR's reliance on RMO 53-98 is misplaced. <u>There is nothing in Section 112 of the NIRC. RR 3-88 or RMO K3-Q8 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT.</u> The subject of RMO 53-98 states that it is a `Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities x x x.' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer `if applicable.'

x x x

Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court." *(Citations omitted)*

As mentioned in the foregoing, there is nothing stated in RMO No. 53-98 that would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund.

Moreover, as categorically held by the Supreme Court, a taxpayer's failure to comply with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess, unutilized input VAT, especially when the application for tax credit or refund of excess unutilized excess VAT has already arrived at the judicial level. Accordingly, respondent's claim that this Court is without jurisdiction to entertain the present Petition for Review in light of petitioner's failure to submit the documents stated under

RMO No. 53-98 to support its claim for refund, thereby, making its administrative claim for refund pro-forma, must necessarily fail.

Consequently, finding no cogent reason to reverse or modify the assailed Decision, this Court denies the present Motion.

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration Re: Decision dated 28 January 2020 is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice