**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE**,
*Petitioner*,

- versus -

**GAMESA EOLICA, SL-UNIPERSONAL PHILIPPINE BRANCH,**
*Respondent*.

**CTA *EB* NO. 2523**
(CTA Case No. 9668)

*Present*:

**DEL ROSARIO,** *PJ*,
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,**
**MODESTO-SAN PEDRO,**
**REYES-FAJARDO,**
**CUI-DAVID,** *and*
**FERRER-FLORES,** *JJ.*

Promulgated:
JUL 07 2023 11:39a.m.

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# RESOLUTION

***CUI-DAVID, J.:***

For resolution is petitioner's *Motion for Reconsideration (Re: Decision promulgated 31 January 2023)* filed on February 7, 2023, with respondent's *Comment to the Motion for Reconsideration dated February 3, 2023,* filed *via* registered mail on March 8, 2023, assailing the Decision promulgated on January 31, 2023 (*assailed Decision*), the dispositive portion of which reads:

> **WHEREFORE** premises considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue is **DENIED** for lack of merit. Accordingly, the Decision dated September 2, 2020, and the Resolution dated July 8, 2021, of the Court's Third Division in CTA Case No. 9668 are **AFFIRMED**.
>
> **SO ORDERED.**

In his motion, petitioner argues that no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales of respondent. Petitioner relies on the European VAT system as he argues that only the VAT paid for supplies in the business is creditable as input tax of a VAT-registered person. Thus, purchases must, in turn, relate to the supplies.

Petitioner adds that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer, or it must be directly used in the production chain. Further, there must be a showing of the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

Petitioner reiterates that the Court's jurisdiction in an administrative claim for refund is strictly appellate. Hence, the Court should have confined itself to whether petitioner's findings are consistent with the law following *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue.*[1] Petitioner argues that respondent cannot submit documents that were not previously submitted at the administrative level.

Finally, petitioner counts on the rule that tax refunds are strictly construed against the taxpayer.

Respondent counters that it was able to substantiate its claim for a VAT refund/tax credit before the Court by presenting sales invoices, official receipts, BIR Forms No. 1600, and payment confirmation slips in support of the input VAT it carried over from the previous periods. Petitioner failed to show how said evidence falls short of the required attribution.

Respondent further counters that the Court is not confined to the evidence submitted at the administrative level as the proceedings before the Court are litigated *de novo*. Thus, the Court is not precluded from admitting new and additional evidence from respondent to prove its claim for a VAT refund/tax credit.

The Court finds no merit in petitioner's arguments.

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

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

> 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: ...
>
> Provided, further, **That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales:** ... (*Emphasis supplied*)

Contrary to petitioner's claim, there is nothing in Section 112(A) of the NIRC of 1997, as amended, which requires that the input taxes subject of a claim for refund be directly attributable to zero-rated sales or effectively zero-rated sales. The law merely states that the creditable input VAT should be attributable to zero-rated or effectively zero-rated sales.

The phrase "directly attributable" relates to a situation involving taxpayers having both zero-rated or effectively zero-rated sales and taxable or exempt sale of goods, properties, or services, and the creditable input VAT cannot be directly attributed to any of such transactions. In such cases, the input taxes shall be allocated proportionately on the basis of the volume of sales.

Anent petitioner's position that respondent cannot submit documents to the Court that it failed to submit before the administrative level, the Court reiterates its discussion in the assailed Decision emphasizing that, as a court of record, parties should prove every minute aspect of the case by presenting all evidence, regardless whether said evidence is found in the administrative claim, *viz.*:

> It bears to emphasize that the CTA is a court of record, and cases filed before it are litigated *de novo*.

> In the recent case of *Commissioner of Internal Revenue v. Philippine Bank of Communications,*[2] the Supreme Court underscored that the CTA's decision *should* be based *solely* on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR, *viz.*: ...
>
> ... ... ...
>
> More, in *Pilipinas Total Gas v. Commissioner of Internal Revenue,* the Supreme Court explained that "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."
>
> Given the foregoing, We agree with the Court in Division that respondent may present *new* and *additional* evidence to support its judicial claim for a tax refund or credit. In the determination of the judicial claim, only those pieces of evidence presented and formally offered by the parties, and admitted by the Court, would be considered in the latter's decision *regardless* of the evidence submitted to the BIR in support of the administrative claim.
>
> Further, even if the Court in Division is precluded from considering pieces of evidence that were not submitted before the BIR, it still could not entertain petitioner's claim since he did not specifically identify which document or exhibit was not presented in the administrative claim, and did not interpose any objection to the admission of respondent's evidence. Hence, this argument remains a mere allegation of non-submission of documents that will not hold water. ... (*Emphasis on the original*)

Indeed, petitioner failed to advance any new or substantial reason that will merit a reconsideration or modification of the assailed Decision promulgated on January 31, 2023.

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

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

[2] G.R. No. 211348, February 23, 2022.

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**LANEE S. CUI-DAVID**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice