REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

CORAL BAY NICKEL CORPORATION,
Respondent.

CTA *EB* NO. 1735
(CTA Case No. 8905)

x- x

CORAL BAY NICKEL CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1737
(CTA Case No. 8905)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and,*
MODESTO-SANPEDRO, *J.J.*

Promulgated:
DEC 15 2020 3:10pm

x- -x

RESOLUTION

MANAHAN, J.:

For this Court's resolution is petitioner Coral Bay Nickel Corporation's *Motion for Reconsideration* filed on January 31, 2020 in CTA *EB* No. 1737 praying for the reversal of the Court *En Banc's* Amended Decision dated January 9, 2020, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, Coral Bay's *Motion for Reconsideration* filed on August 16, 2019 in CTA *EB* No. 1737 is **DENIED** for lack of merit. However, petitioner Commissioner of Internal Revenue's Motion for Reconsideration in CTA *EB* No. 1735 is **GRANTED.**
>
> Accordingly, the claim for refund of Coral Bay in the total amount of P1,575,051.81 representing its unutilized input VAT for the first quarter of 2013 is hereby **DENIED.**
>
> **SO ORDERED."**

Petitioner sets forth the following grounds for its Motion for Reconsideration, and we quote:

"Grounds for Reconsideration

A. The Honorable Court erred in ruling that only input taxes directly attributable to the zero-rated sales may be claimed for refund.
B. The Government is already barred on*(sic)* denying that the input VAT of a taxpayer engaged in purely zero-rated transaction is automatically attributable thereto under the doctrine of equitable estoppel.
C. The Honorable Court erred in denying the claim for refund of petitioner in the total amount of P1,575,051.81 representing its unutilized input VAT for the first quarter of 2013."

Petitioner disagrees with the Court's ruling that it failed to comply with the basic requisite that input taxes that were incurred were related to its zero-rated sales and alleges that this proposition is misplaced and may set a dangerous precedent. It proposes that the concept of "attribution" as provided in Section 112 (A) of the 1997 National Internal Revenue Code (NIRC), as amended, means that the input tax is connected with a taxpayer's zero-rated or effectively zero-rated sales and not to its taxable or exempt sales. Petitioner further opposes the Court's position that the input VAT be directly attributable to the zero-rated transactions and alleges that the Court "mixed up" the concept of attribution as used in the first and third paragraph of Section 112 (A) of the 1997, NIRC, as amended. Petitioner goes on to analyze that the word "directly" was used only in the third sentence of Section 112 (A) of the 1997 NIRC, as amended, and was made in reference to a scenario rather than as a requirement for the claim for refund.

Petitioner also cites the doctrine of equitable estoppel and maintains that the Government is already barred in denying the claim for refund of a taxpayer engaged in purely zero-rated transaction because Section 3 of Revenue Regulations (RR) No. 09-89 supposedly provides that when a taxpayer is exclusively engaged in zero-rated or effectively zero-rated transactions, it shall be entitled to the entire amount of value-added tax paid on purchases of goods and services. Petitioner asserts that it cannot be faulted in acting in good faith by following the provisions of RR No. 09-89 and that the doctrine of equitable estoppel applies because it should not be prejudiced by the reversal of rules promulgated by the Bureau of Internal Revenue (BIR).

Respondent Commissioner of Internal Revenue (CIR) no longer filed its comment/opposition to petitioner's Motion for Reconsideration.

RULING OF THE COURT

We deny petitioner's Motion for Reconsideration.

The issues raised by petitioner were already comprehensively passed upon and resolved in the assailed Amended Decision dated January 9, 2020. However, we find the conclusions of the Court in the assailed Amended Decision worthy of reiteration and emphasis in the following disquisitions.

The instant claim for refund is based on the provisions of Section 112 (A) of the 1997 NIRC, as amended, quoted below:

> "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, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had

> been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *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 of 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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

Based on the foregoing provision of Section 112 (A) of the 1997 NIRC, as amended, in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:[1]

1. that the taxpayer is VAT-registered;
2. that there must be zero-rated or effectively zero-rated sales;
3. that input taxes were incurred or paid;
4. that input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
5. that input taxes have not been applied against any output VAT liability; and
6. that the claim was filed within the prescribed periods both in the administrative and judicial levels.

xxx xxx xxx

The records of the case show that Coral Bay incurred the claimed input VAT on its purchases of goods and services which were consumed and rendered outside the Philippine Economic Zone Authority (PEZA) zone and within the customs territory. Coral Bay is a duly registered PEZA enterprise as evidenced by its PEZA Registration Certificate No. 02-072 dated December 27, 2002. The purchases were used to construct the row house and dormitory for Coral

---

[1] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.

Bay's laborers as well as the foreman's duplex and airport runway, all located outside of the PEZA zone.

It is well-settled that one of the requisites for a claim for refund of excess or unutilized input VAT under the afore-quoted Section 112 (A) to prosper is that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales.

In the decision promulgated by the Third Division of this Court (Court in Division) dated June 2, 2017, Coral Bay was described as a domestic corporation engaged in the manufacture and exportation of nickel/cobalt mixed sulfide. The Decision further narrated that during taxable year 2012, Coral Bay exported its nickel cobalt mixed sulfide to Sumitomo Metal Mining Co., Ltd. (SMMC), a corporation organized and existing under the laws of Japan.

It is clear from the records of this case as well as the afore-quoted narration that the sales of Coral Bay are qualified to be zero-rated under "export sales" in accordance with Section 106 (A) (2) of the 1997 NIRC.

However, it is also clear that the input taxes that were incurred and which are the subject of the instant claim for refund arose from purchase transactions that are not related or attributable to its zero-rated sales.

It is noteworthy that one of the incentives granted by law is that any unutilized or excess input VAT may be refunded to VAT zero-rated taxpayers provided that these are attributable to its zero-rated sales which in the case of Coral Bay pertained to the exportation of nickel cobalt and mixed sulfide to Sumitomo Metal Mining Co. Ltd. (SMMC) located in Japan.

Section 110 (B) of the 1997 NIRC, as amended, provides as follows:

> Section 110. *Tax Credits.-*
>
> 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 any other internal revenue taxes, subject to the provisions of Section 112.**(emphasis supplied)

Coral Bay categorically admitted that the goods and services were consumed outside of the Rio Tuba Export Processing Zone and were used to construct the laborer's row houses, dormitories and foreman's duplex etc., which are unrelated to the said export sales. The Supreme Court has already ruled that any unutilized input VAT *attributable* to zero-rated sales may be claimed as refund or tax credit.[2] The tax refund embodied in Section 112 (A) of the 1997 NIRC is intertwined with the essence of the incentives granted to enterprises that engage in exportation of local goods and services: that instead of imposing the regular VAT rate of 12% they are subject to zero-rate VAT. However, since exportations of this nature are not subject to output VAT, the input VAT from its purchases cannot be credited against the output VAT so it is accumulated either as excess input VAT and/or remains unutilized. Thus, the payment of input VAT and the resulting refund under Section 112 is not premised on an erroneous payment but is a privilege or an option inherent in the incentive granted by law. The provisions of Section 112 of the 1997 NIRC, as amended, provides a solution whereby the excess or unutilized input VAT may now be claimed as a cash refund or applied as a tax credit so as not to negate the essence of the incentive. However, there are requisites for its entitlement. Whether applied as a refund or tax credit, the requisite of attribution to the zero-rated sales remains consistent, otherwise, it is not covered by the provisions of Section 112 (A) and the claim for refund should not prosper.

There being no new arguments proferred by petitioner, we therefore find no cogent reason to reconsider the Amended Decision.

WHEREFORE, premises considered, Coral Bay Nickel Corporation's *Motion for Reconsideration* on January 31, 2020 in CTA *EB* No. 1737 is **DENIED** for lack of merit. The assailed

---

[2] Team Sual Corporation (formerly Mirant Sual Corporation), G.R. No. 194105, February 5, 2014.

Amended Decision dated January 9, 2020 is hereby **AFFIRMED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion on the Amended Decision)
ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice