REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

INTERGRAPH PROCESS & BUILDING SOLUTIONS PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 9454

Members:
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:
SEP 23 2019
11:44 a.m.

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RESOLUTION

***RINGPIS-LIBAN, J.*:**

This resolves respondent's **Motion for Reconsideration (of the Decision dated 15 April 2019)**, filed through registered mail on May 14, 2019 and received by the Court on May 23, 2019, with petitioner's **Comment/Opposition**, filed on July 23, 2019.

Respondent seeks reconsideration of the Court's Decision dated April 15, 2019 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **Php14,964,108.71** representing petitioner's excess input VAT attributable to its zero-rated sales for the period covering January 1, 2014 to December 31, 2014.
>
> **SO ORDERED**."

In his motion for reconsideration, respondent argues that petitioner failed to prove that its input taxes are attributable to its zero-rated or effectively zero-rated transactions. Moreover, he alleges that petitioner failed to satisfy the substantiation requirements for refund of value-added tax (VAT). Lastly, respondent reiterates that petitioner failed to prove that it was engaged in zero-rated sales or transactions with regards to its alleged Philippine Economic Zone Authority (PEZA)-registered clients.

On the other hand, petitioner asserts that respondent's motion for reconsideration is pro-forma as respondent failed to point out the findings and conclusions of the Court that is not supported by evidence, or contrary to law. Respondent miserably failed in stating why reconsideration is warranted, thus, petitioner argues that the subject motion should be denied. Assuming arguendo that the motion is not pro-forma, petitioner contends that it must be denied considering that it merely contains reiterations of those already argued by respondent in its previous pleadings submitted to the Court. According to petitioner, the arguments stated in respondent's motion were already considered by the Court in the assailed Decision.

After a careful perusal of respondent's arguments, the Court finds that the same have already been passed upon extensively in the assailed Decision.

Respondent argues that since petitioner deals with vatable and zero-rated transactions, petitioner has the burden of proof to prove which of its purchases are directly attributable to its zero-rated sales and which are not. However, respondent points out that a scrutiny of the evidence presented by petitioner shows that it failed to prove the relations of the documents it presented to its alleged zero-rated sales.

Contrary to respondent's argument, petitioner is not required to prove which of its purchases are directly attributable to its zero-rated transactions and which are directly attributable to its taxable transactions. In fact, Section 112(A) of the National Internal Revenue Code ("NIRC") of 1997, as amended, provides for a situation where the taxpayer is engaged in zero-rated or effectively zero-rated sales and in taxable or exempt sales and the input taxes cannot be directly and entirely attributed to any of the sales, in which case, the input taxes shall be allocated proportionately on the basis of the volume of sales, to wit:

> "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 sales 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**: *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 nonzero-rated sales."[1]

Hence, in the assailed Decision, the Court held that:

> "A portion, however, of the total valid input VAT of Php22,805,063.26 shall be applied against the reported output VAT liability of Php7,570,876.08. Consequently, only the remaining input VAT of Php15,234,187.18 can be attributed to the entire zero-rated sales amounting to Php340,059,361.20 and only the input VAT of Php14,964,108.71 is attributable to the valid zero-rated sales of Php337,352,405.90, xxx"

Considering that the above finding is based on the allocation provided in Section 112(A) of the NIRC of 1997, as amended, then, there is no reason to disturb this finding of the Court.

As regards the allegation that petitioner failed to satisfy the substantiation requirement, that is, petitioner presented different documents to substantiate its purchases of services from an alleged non-resident corporation rather than submitting the official receipts for said transactions, the Court is not convinced.

Paragraph 2 of Section 2 of Rule 37 of the Rules of Court provides:

> "A motion for reconsideration shall point out specifically the findings or conclusions of the judgment of final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions."

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[1] *Emphasis supplied.*

In the instant motion, respondent failed to point out specifically which among the evidence presented and considered by the Court did not satisfy the substantiation requirement. It is noteworthy that the Court already made specific factual findings upon the evidence petitioner presented, which became the basis of the Court's ruling to partially grant the Petition for Review. The Court already scrutinized and examined petitioner's documentary evidence *vis-à-vis* its compliance with the requirements laid down by law and regulation to be entitled to a claim for VAT refund or tax credit certificate, including the mandatory invoicing requirement, and thoroughly discussed its findings in the assailed Decision.

Moreover, assuming that respondent was referring to the presentation of BIR Form No. 1600 for services rendered by non-resident suppliers as mentioned in the assailed Decision, to wit:

> "To support the total current input taxes of Php22,853,277.13, petitioner submitted the official receipts (for domestic purchase of services) issued by its suppliers and BIR Form No. 1600 (for services rendered by non-residents)."

It should be noted that Section 4.114-2 of Revenue Regulations ("RR") No. 16-2005, as amended by RR No. 4-2007, provides that in case of VAT withheld and paid for non-resident recipients, BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax, to wit:

> "SEC. 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* —
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> xxx xxx xxx
>
> (b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%) VAT, starting February 1, 2006, with respect to the following payments:
>
> xxx xxx xxx
>
> (2) Other services rendered in the Philippines by non-residents.
>
> In remitting VAT withheld, the withholding agent shall use BIR Form No. 1600 Remittance Return of VAT and Other Percentage Taxes Withheld.

> VAT withheld and paid for the non-resident recipient (remitted using BIR Form No. 1600), which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, may be claimed as input tax by said VAT-registered withholding agent upon filing his own VAT Return, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. **The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT.**"[2]

Relative to respondent's argument that petitioner failed to prove that it was engaged in zero-rated sales or transactions with regard to its PEZA-registered clients, he asserts that it is necessary that petitioner's PEZA-registered clients should have availed of the 5% preferential tax rate, otherwise, these PEZA-registered clients would be subject to 12% VAT under Section 108 of the NIRC of 1997, as amended, and Section 23 of Republic Act No. 7916. Respondent contends that if petitioner's PEZA-registered clients availed of the fiscal incentives under Executive Order No. 26, *i.e.*, income tax holiday, said clients are subject to VAT, and as a result, petitioner's sales of services to these PEZA-registered entities are also subject to 12% VAT.

Again, the Court is not convinced.

This argument is not a novel one and has in fact been addressed as early as 2005 in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*[3], where the Supreme Court held as follows:

> "Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
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> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

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2 *Emphasis supplied.*
3 G.R. No. 150154, August 9, 2005.

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.

Applying said doctrine to the sale of goods, properties, and services to and from the ECOZONES, the BIR issued Revenue Memorandum Circular (RMC) No. 74-99, on 15 October 1999. xxx

xxx xxx xxx

The rule that any sale by a VAT-registered supplier from the Customs Territory to a PEZA-registered enterprise shall be considered an export sale and subject to zero percent (0%) VAT was clearly established only on 15 October 1999, upon the issuance of RMC No. 74-99. Prior to the said date, however, whether or not a PEZA-registered enterprise was VAT-exempt depended on the type of fiscal incentives availed of by the said enterprise. This old rule on VAT-exemption or liability of PEZA-registered enterprises, followed by the BIR, also recognized and affirmed by the CTA, the Court of Appeals, and even this Court, cannot be lightly disregarded considering the great number of PEZA-registered enterprises which did rely on it to determine its tax liabilities, as well as, its privileges.

According to the old rule, Section 23 of Rep. Act No. 7916, as amended, gives the PEZA-registered enterprise the option to choose between two sets of fiscal incentives: (a) The five percent (5%) preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and (b) the income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.

The five percent (5%) preferential tax rate on gross income under Rep. Act No. 7916, as amended, is in lieu of all taxes. Except for real property taxes, no other national or local tax may be imposed on a PEZA-registered enterprise availing of this particular fiscal incentive, not even an indirect tax like VAT.

Alternatively, Book VI of Exec. Order No. 226, as amended, grants income tax holiday to registered pioneer and non-pioneer enterprises for six-year and four-year periods, respectively. Those availing of this incentive are exempt only from income tax, but shall be subject to all other taxes, including the ten percent (10%) VAT.

This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory. It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. Again, for emphasis, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives: (1) If the PEZA-registered enterprise chose the five percent (5%) preferential tax on its gross income, in lieu of all taxes, as provided by Rep. Act No. 7916, as amended, then it would be VAT-exempt; (2) If the PEZA-registered enterprise availed of the income tax holiday under Exec. Order No. 226, as amended, it shall be subject to VAT at ten percent (10%). **Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration; and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as a VAT-exempt entity.**"[4]

The above jurisprudence was cited in the 2016 case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[5]. The Supreme Court maintained that:

"xxx With the issuance of RMC 74-99, the distinction under the old rule was disregarded and the new circular took into consideration the two important principles of the Philippine VAT system: the Cross Border Doctrine and the Destination Principle. xxx

xxx xxx xxx

Furthermore, Section 8 of Republic Act No. 7916 mandates that PEZA shall manage and operate the ECOZONE as a separate customs territory. The provision thereby establishes the fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory. Accordingly, the sales made by suppliers from a customs territory to a purchaser located

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4 *Emphasis supplied.*
5 G.R. No. 190506, June 13, 2016.

> within an ECOZONE will be considered as exportations. Following the Philippine VAT system's adherence to the Cross Border Doctrine and Destination Principle, the VAT implications are that 'no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority; xxx"

Consequently, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on April 15, 2019.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (of the Decision dated 15 April 2019)** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice