REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ORICA PHILIPPINES, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9974

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

MAY 24 2022 1:25pm

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RESOLUTION

MANAHAN, J.:

For this Court's resolution is respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 16 July 2021)* filed on October 21, 2021, without petitioner's comment as per Records Verification dated March 2, 2022.

On July 16, 2021, the Court promulgated a Decision partially granting petitioner's claim for refund of unutilized input value-added tax (VAT) attributable to its zero-rated export sales for the third (3rd) quarter of fiscal year 2016, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND/ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner Orica Philippines, Inc. the amount of **₱4,015,125.16**, representing the latter's unutilized excess input VAT attributable to its zero-rated sales for the 3rd quarter of FY 2016 or the period covering April 1, 2016 to June 30, 2016.
>
> The Letter dated September 19, 2018 of the Assessment Service of the Bureau of Internal Revenue, *am*

> denying petitioner's administrative claim for refund of unutilized input VAT attributable to zero-rated export sales in the amount of **₱18,757,113.07**, is **REVERSED** and **SET ASIDE.**
>
> **SO ORDERED**."

In his Motion, respondent primarily argues that the Court erred in ruling that the law does not require that the input VAT subject of the claim be directly attributable to zero-rated sales.

Respondent submits that the role of the Court is confined to the determination of whether his denial of the subject claim in the administrative level is proper. He cites the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,*[1] where the Supreme Court held that in every appeal or petition for review, petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny the claim; and that it is necessary for petitioner to show the Court that not only is it entitled under substantive law to the grant of its claim, but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund to prosper. Respondent points out that petitioner did not specifically assail the reason or basis why its administrative claim was denied by respondent, instead petitioner presented its case before this Court as if it was an original action.

Respondent further asserts that petitioner's claim for refund must be denied due to its failure to substantiate the same in the administrative level. He explains that petitioner's sales to its local customers, who are direct exporters as certified by the Board of Investments (BOI), were declared as effectively zero-rated sales. However, respondent continues that the records do not show that petitioner secured an Approved Application for Zero-Rating on the said sales, which is a requirement set forth under Section 2.13[2] of the "Revised Checklist of Mandatory Requirement for Claims for VAT Refund" under Annex A.1 of Revenue Memorandum Circular

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[1] G.R. No. 207112, December 08, 2015.

[2] "x x x.

___ 2.13 For effectively zero-rated transactions, copy of the approved application for zero-rating issued by the appropriate BIR office, if applicable." *cmv*

(RMC) No. 17-2018.[3] By failing to do so, respondent maintains that his denial of petitioner's claim for refund is proper.

Respondent also avers that the official receipts issued by petitioner for the zero-rated sales of services to its foreign customers were not properly labeled as "Zero-Rated", as required under Section 113(B)(2)(c) of the 1997 National Internal Revenue Code (NIRC), as amended.

Lastly, respondent insists that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded as provided under Section 110 (A) of the 1997 NIRC, as amended. Respondent posits that in the present case, no direct attributability was established between the input tax on purchases *vis-à-vis* the zero-rated sales, citing further the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,*[4] (Atlas case) to bolster its claim. Thus, respondent reiterates that petitioner fell short of proving the veracity of its claim for refund.

RULING OF THE COURT

The Court finds respondent's Motion for Partial Reconsideration bereft of merit.

Notably, the arguments raised by respondent are mere rehash of the arguments previously raised in his pleadings which have already been addressed and discussed in the assailed Decision.

It is, however, worthy to emphasize that this Court is not only confined to the determination of whether or not the denial of the subject claim in the administrative level is proper, as explained astutely in the assailed Decision:

> "We find respondent's assertions bereft of merit and espouses a limited view of the role of the Court over appeals

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[3] "SUBJECT: Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN)", dated February 27, 2018.

[4] G.R. No. 159471, January 26, 2011; G.R. Nos. 141104 & 148763, June 8, 2007.

> filed from a decision of the CIR or its representatives, denying a taxpayer's claim for refund.
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> xxx xxx xxx
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> Apparently, respondent's denial of the claim for refund may be the subject of a judicial appeal wherein a taxpayer may present evidence to convince the Court that he had no reason to deny said claim.
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> Moreover, no value is given to documentary evidence submitted in the BIR unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court is not limited to whether or not the Commissioner committed grave abuse of discretion, fraud, or error of law, as argued by the CIR. As evidence is considered and evaluated again, the scope of the Court's review covers factual findings.
>
> Thus, the Court shall determine not only whether petitioner is entitled to a claim for cash refund in the amount of ₱18,757,113.07, allegedly representing its excess and/or unutilized input VAT attributable to its zero-rated sales for the third quarter of FY 2016, but also whether petitioner has satisfied all the documentary and evidentiary requirements for an administrative claim."

More so, in the case of *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.),*[5] the Supreme Court categorically stated that the Court of Tax Appeals (CTA) is not precluded from considering evidence that was not presented in the administrative claim with the BIR, to wit:

> "The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. **The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund**.
>
> Cases filed in the CTA are litigated *de novo* as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim.' Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have

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[5] G.R. No. 231581, April 10, 2019. *Um*

> been submitted to the CIR as the case is being essentially decided in the first instance." *(Emphasis supplied)*

Time and again, this Court held that Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) categorically provides that the CTA shall be a court of record and as such it is required to conduct a formal trial (trial *de novo*) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[6] As such, petitioner's failure to submit documents in the administrative level is not fatal to its case filed and pending in the judicial level since the said case is litigated *de novo,* and decided based on what has been presented and formally offered by the parties during trial.

With regard to respondent's assertion that an Approved Application for Zero-Rating for effectively zero-rated sales must first be secured before filing a claim for refund, pursuant to the "Revised Checklist of Mandatory Requirement for Claims for VAT Refund" under RMC No. 17-2018, the Court likewise reiterates its ruling in the assailed Decision, to wit:

> "It must be noted, however, that RR No. 16-05 dated September 1, 2005, as amended by RR No. 04-07 dated February 7, 2007 no longer requires a pre-approved certificate as VAT Zero-Rated Enterprise for the admission of the VAT zero-rated transactions of petitioner, contrary to the claim of respondent. Besides, the period covered by this claim is for the 3rd quarter of TY 2016 which is before RMC No. 17-2018, thus the latter cannot be given a retroactive application. Furthermore, in the hierarchy of BIR administrative issuances, the revenue regulations, which have the force and effect of law, take precedence over RMCs. Thus, there was no obligation on the part of petitioner to submit a BIR Certificate of VAT Zero-Rated Enterprise."[7]

Also, in the case of *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*[8] the Supreme Court clarified that issuances of the Bureau of Internal Revenue (BIR) additionally requiring an approved prior application for effective zero rating cannot prevail over the clear VAT nature of the taxpayer-claimant's transactions since the scope of such

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[6] See *Rafael Arsenio S. Dizon, et.al v. Court of Tax Appeals, et.al.,* G.R. No. 140944, April 30, 2008.

[7] Docket, p. 543.

[8] G.R. No. 153866, February 11, 2005.

issuance is not "within the statutory authority x x x granted by the legislature, thus:

> "*First,* **a mere administrative issuance, like a BIR regulation, cannot amend the law; the former cannot purport to do any more than interpret the latter. The courts will not countenance one that overrides the statute it seeks to apply and implement.**
>
> **Other than the general registration of a taxpayer the VAT status of which is aptly determined, no provision under our VAT law requires an additional application to be made for such taxpayer's transactions to be considered effectively zero-rated. An effectively zero-rated transaction does not and cannot become exempt simply because an application therefor was not made or, if made, was denied. To allow the additional requirement is to give unfettered discretion to those officials or agents who, without fluid consideration, are bent on denying a valid application.** Moreover, the State can never be estopped by the omissions, mistakes or errors of its officials or agents.
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> x x x
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> **A VAT-registered status, as well as compliance with the invoicing requirements, is sufficient for the effective zero rating of the transactions of a taxpayer**. The nature of its business and transactions can easily be perused from, as already clearly indicated in, its VAT registration papers and photocopied documents attached thereto. Hence, its transactions cannot be exempted by its mere failure to apply for their effective zero rating. Otherwise, their VAT exemption would be determined, not by their nature, but by the taxpayer's negligence -- a result not at all contemplated. **Administrative convenience cannot thwart legislative mandate**." (Emphases supplied)

Clearly, the BIR's additional requirement of an Approved Prior Application for Effective Zero-Rating is not within the statutory authority granted to it by the legislature. Stated simply, no prior approved application is required for a transaction to be treated as subject to the zero percent (0%) VAT rate.

As to respondent's contention that the official receipts issued by petitioner for the zero-rated sales of services to foreign customers are not labeled as "zero-rated" which is in violation of Section 113(B)(2)(c) of the 1997 NIRC, as amended, the same has already been considered by the Court in the computation of the refundable amount. In the assailed Decision, the Court already scrutinized the documents submitted, including the supporting official receipts and sales invoices in relation to the Independent Certified Public Accountant (ICPA) Report of Ms. Krista V. Bambao, for purposes of compliance with the fourth and fifth requisites[9] in claiming VAT refund. To discuss them again would be superfluous.

With regard to respondent's last argument that no attributability was established between the input tax on purchases *vis-à-vis* the zero-rated sales, the Court finds this to be without legal and factual bases because in the determination of the total refundable amount granted to petitioner, the Court took into consideration the attributability factor based on the eighth requisite, i.e., that the input taxes claimed should be attributable to zero-rated sales or effectively zero-rated sales pursuant to Section 112 (A) of the 1997 NIRC, as amended.[10] However, in accordance to the same section of the 1997 NIRC, as amended, if the taxpayer has both taxable sales subject to 12% VAT and VAT zero-rated sales such as herein petitioner, the input taxes that cannot be

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[9] "C. In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;
5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2), and (b), and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;"

[10] "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

directly attributable to any of the sales will be proportionately allocated on the basis of the sales volume.

We quote the relevant portion of the assailed Decision, to wit:

> "To reiterate, the *eighth* requisite is to the effect that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are zero-rated or effectively zero-rated sale and taxable sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.
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> As earlier mentioned, for the subject period of the claim, petitioner had taxable sales subject to 12% VAT and zero-rated sales, in the respective amounts of ₱266,485,235.84 and ₱459,667,643.67, respectively, totaling ₱726,152,879.51.
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> However, since its input VAT cannot be directly or entirely attributed to any of the transactions, we shall allocate the valid input VAT of ₱40,854,903.49 proportionately on the basis of the volume of its sales." xxx xxx xxx[11]

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 16 July 2021) is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

[11] Docket, p. 557.