REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SPECIAL THIRD DIVISION</u>

ZUELLIG PHARMA ASIA PACIFIC LTD. PHILS. ROHQ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9025

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *<u>JJ.</u>*

Promulgated:

NOV 18 2024
10:50 a.m.

x - x

RESOLUTION

FERRER-FLORES, <u>J</u>.:

Submitted before the Court is petitioner's **Motion for Reconsideration (Re: Decision dated April 19, 2024)** (*Motion*) filed on May 10, 2024, without respondent's comment as per Records Verification Report dated July 15, 2024.

On April 19, 2024, the Court promulgated a Decision denying petitioner's claim for refund of its excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for calendar year (CY) 2011 in the amount of ₱59,809,336.79, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED**."

In its *Motion*, petitioner prays for the Court to reconsider and set aside the above Decision by raising the following assignment of errors, *viz.*:

1. The discrepancy between petitioner's *Certificate of Inward Remittance* and the amount stated in its Official Receipts pertains to unpaid balances of Zuellig Pharma Holdings Ltd. (ZPHL) for CY 2011.

2. Petitioner was able to prove that its sales of services qualify as zero-rated sales under Section 108(B)(2), Tax Code.

3. The excessive and rigid application of the invoicing requirements, which led to the denial of petitioner's claim for refund, is not in accord with the foundational VAT principles; hence, must be revised by this Honorable Court.

To recall, the Court denied the amount of US$66,664.44 (₱2,878,729.05) in petitioner's claim, after comparing petitioner's zero-rated sales as reflected in its official receipts (ORs) and as shown in the *Certificates of Inward Remittances*. The Court found the said amount as discrepancy because petitioner failed to submit the *Certifications of Inward Remittances* covering the said amount.[1] The Court emphasized the importance of the *Certifications of Inward Remittances* as they serve as attestation to the fact of payment *"in acceptable foreign currency ...and accounted for in accordance with the rules and regulations of the BSP".*[2]

In this regard, petitioner insists that the difference between the amount stated in its ORs and its *Certificate of Inward Remittance* was due to the fact that the amount of US$66,664.44 has not yet been paid by petitioner as of December 2011. In any case, petitioner maintains that the Independent Certified Public Accountant (ICPA) was able to verify that its zero-rated sales of services to Zuellig Pharma Holdings Ltd. (ZPHL) for the four quarters of CY 2011 amounting to US$10,579,265.49 (₱457,570,398.82) were properly supported by zero-rated ORs for CY 2011 and that the payments for such services were inwardly remitted to its bank account. As such, petitioner asserts in its *Motion* that it should not result in the outright denial of its claim.

Accordingly, the Court finds petitioner's *Motion* bereft of merit.

An examination of the issues raised by petitioner reveals that the same were already exhaustively passed upon and duly considered and resolved by the Court in the assailed Decision.

Again, since petitioner's zero-rated sales are in the nature of sales of services under Section 108(B)(2) of the National Internal Revenue Code

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[1] Petitioner's zero-rated sales reflected in its ORs show the total amount of $10,579,927.15, while the Certificates of Inward Remittances show the total amount of $10,514,262.71, or a discrepancy of $66,664.44.

[2] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

(NIRC) of 1997, as amended, the law mandates that the payment for the services should be in acceptable foreign currency accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Furthermore, petitioner is also required to issue Bureau of Internal Revenue (BIR)-registered VAT ORs for the foreign currency proceeds of each sales transaction as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended, and the information contained therein must be in compliance with the applicable pertinent invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Section 4.113-1 (A) and (B) of Revenue Regulations (RR) No. 16-2005.[3]

Here, while petitioner's remaining reported zero-rated sales of ₱454,691,669.77 were proven to have been paid for in acceptable foreign currency and duly accounted for in accordance with BSP, the supporting ORs, however, are not compliant with the invoicing requirements under the VAT law and regulations, *i.e., the nature of the services performed by petitioner was not indicated in the supporting ORs*, in clear violation of Section 113(B)(3) of the NIRC of 1997, as amended. Therefore, the Court was constrained to deny petitioner's claim for its failure to properly substantiate its reported zero-rated sales for CY 2011.

Moreover, it likewise bears stressing that the Court is not bound by the findings of the ICPA. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case, it is only persuasive in nature and not conclusive upon the Court, as provided in Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals, to wit:

> SEC. 3. Findings of independent CPA. - The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.** *(Emphasis added)*

While the ICPA is commissioned to assist the Court in the determination of the merit of a taxpayer's case, the findings and conclusions of the ICPA shall not be conclusive upon the Court which is free to either completely or partially adopt or disregard the findings of the ICPA, after making its own verification and evaluation of the evidence on record. In other words, the Court will still examine and verify the documents audited or examined by the ICPA – and the Court, in its sound discretion, may render judgment without considering the ICPA report. Clearly then, petitioner cannot

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3 "SUBJECT: Consolidated Value-Added Tax Regulations of 2005", dated September 1, 2005.

merely rely on the ICPA's findings to validate its claim, since the ultimate determination rests upon the Court based on the evidence submitted by the parties. Thus, petitioner cannot insist that the ICPA's findings on its sales of services for CY 2011 are sufficient to justify its claim for refund, as the same are still subject to the examination and verification of the Court.

Albeit, this is not to say that the Court disregarded the ICPA Report, certainly, the ICPA findings on petitioner's compliance with the invoicing requisite *vis-à-vis* the pertinent pieces of evidence presented to support petitioner's claim were duly taken into consideration and were thoroughly examined by the Court in arriving at the conclusions made in the assailed Decision. It is imperative, however, for the taxpayer-claimant to fully substantiate its claim for refund, which in this case, petitioner failed to do so. To emphasize, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[4]

Time and again, it must be emphasized that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[5] Claimants of tax refunds have the burden to prove their entitlement to the claim under substantive law and the factual basis of their claim.

It must further be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[6] Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[7] Thus, it behooves petitioner to show compliance with each of the requisites and invoicing requirements. As a corollary, the absence of *any* of the requisites is already a valid ground to deny the refund claim. ᴍ

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4 *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon v. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue v. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

5 *Commissioner of Internal Revenue v. Interpublic Group of Companies, Inc.*, G.R. No. 207039, August 14, 2019.

6 *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

7 *Team Energy Corporation v. Commissioner of Internal Revenue, et seq.*, supra.

In view of the foregoing findings, there being no new matter or substantial issue raised in petitioner's motion, the Court finds no compelling reason to reverse or modify the Decision promulgated on April 19, 2024.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated April 19, 2024), is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

We Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice