REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MAIBARARA GEOTHERMAL, INC., Petitioner,	**CTA CASE NOS. 9119, 9201, 9254 and 9336**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 09 2019 : 2:20 pm

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RESOLUTION

UY, *J.*:

This resolves the following motions filed by petitioner, to wit: **Motion for Reconsideration**, filed through registered mail on March 25, 2019 and received by this Court on April 16, 2019; and **Motion for Reconsideration**, filed on March 26, 2019, which, as prayed for, is treated as a Supplemental Motion for Reconsideration. Both motions assail the Decision dated March 4, 2019, the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petitions for Review* are **DENIED** for lack of merit.
>
> **SO ORDERED.**

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No comment was filed by respondent to said motions within the respective given period of ten (10) days from notice, as per Records Verification dated May 31, 2019.

In said motions, petitioner argues that the case of *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*[1] is not applicable in the instant case because the status of operation of Luzon Hydro Corporation when it incurred its input value-added tax (VAT) is noticeably different from the circumstances in the instant case. Allegedly, Luzon Hydro Corporation failed to present proof of its zero-rated sales of electricity, while petitioner was able to present sufficient proof to establish that it had zero-rated sales of electricity. The apparent differences in the factual circumstances would lead to the inevitable conclusion that the ruling in the *Luzon* case is not applicable to the case of petitioner.

Further, petitioner argues that the documents it presented established the existence of zero-rated sales from its operations as a renewable energy contractor.

Allegedly, its sales are considered entirely zero-rated and that it is apparent that it complied with the fourth requisite that "the taxpayer is engaged in zero-rated or effectively zero-rated sales". According to petitioner, it has no other option but to claim for refund of input VAT that is attributable to its zero-rated sales. If refund is not allowed, the law does not contemplate a scenario that will be prejudicial to petitioner and will enrich the government unfairly; and that it does not contemplate a scenario where petitioner will shoulder the loss.

In addition, petitioner argues that there is no requirement that the zero-rated or effectively zero-rated sales should be made during the same period as when the input taxes sought to be refunded were paid or incurred. Petitioner contends that the taxpayer must only establish the existence or presence of zero-rated or effectively zero-rated sales and attribute the input taxes subject of the claim to the said sales. It is allegedly not necessary that the zero-rated or effectively zero-rated sales and the input taxes subject of the refund fall during the same period.

Petitioner also contends that following the doctrine laid down by the Court in its Amended Decision in *GST Philippines, Inc. vs. Commissioner of Internal Revenue*[2], as long as the zero-rated sale

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[1] G.R. No. 188260, November 13, 2013.
[2] CTA Case No. 7718, June 23, 2010.

occur, even at a later date, the taxpayer-claimant is entitled to a refund or issuance of a tax credit certificate of the input taxes that can be attributed thereto. The only requirement is that the taxpayer-claimant be able to attribute such input taxes to the later zero-rated sale.

Moreover, petitioner argues that in the Decision made by the Court's Third Division in *Maibarara Geothermal, Inc. vs. Commissioner of Internal Revenue*[3], the Court ruled that there was, in fact, a zero-rated sale that could be attributable in order to validly claim for refund. Petitioner avers that the case at bar and the said case have the same facts.

Allegedly, there is effectively a denial of any relief by the Court, depriving petitioner of its property without due process of law. Moreover, petitioner avers that there will be unjust enrichment in favor of the government if petitioner will not be allowed to recover the input VAT.

Further, petitioner argues that the petitioner cannot claim reimbursement from the suppliers since the importations and local purchases are not considered zero-rated purchases.

THE COURT'S RULING

The Court maintains its ruling that the subject *Petitions for Review* cannot be given due course because there were no zero-rated or effectively zero-rated sales during the subject periods.

To reiterate, the applicable case is that which was cited in the assailed Decision, *i.e., Luzon Hydro Corporation* vs. *Commissioner of Internal Revenue*[4], wherein the Supreme Court ruled:

> The petitioner did not competently establish its claim for refund or tax credit. **We agree with the CTA *En Banc* that the petitioner did not produce evidence showing that it had zero-rated sales for the four quarters of taxable year 2001. As the CTA *En Banc* precisely found, the petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity.** Had there been

[3] CTA Case Nos. 8871, 8937, 8999 & 9042, August 2, 2017.
[4] G.R. No. 188260, November 13, 2013.

> zero-rated sales, it would have reported them in the returns. Indeed, it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, or in the *de novo* litigation before the CTA in Division. (*Emphasis supplied)*

The thrust of the foregoing jurisprudence is the importance of having to show the presence of zero-rated or effectively zero-rated sales, to which the input VAT being refunded must be attributable. Simply put, when there are no zero-rated or effectively zero-rated sales on the part of the refund claimant, input VAT is not refundable, or at the very least, is not yet refundable.[5]

Without any zero-rated or effectively zero-rated sales being shown by petitioner, the attribution requirement or that the input tax due or paid must be attributable "*to **such sales***" in Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, cannot be fulfilled or complied with. To be clear, what is refundable under Section 112(A) of the NIRC of 1997, as amended, is the input VAT attributable to the taxpayer-claimant's zero-rated or effectively zero-rated sales.[6]

As to petitioner's assertion that by denying petitioner of its right to refund, the Court has denied petitioner of what is rightfully owed to it and effectively allowed respondent to be unjustly enriched by keeping what rightfully belongs to petitioner, suffice it to say that the fundamental duty of the Court is to apply the law regardless of who may be affected.[7]

It is well-settled that a claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (*a*) the taxpayer is VAT-registered; (*b*) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (*c*) the input taxes are due or paid; (*d*) the input taxes are not transitional input taxes; (*e*) the input taxes have not been applied against output taxes during and in the succeeding quarters; (*f*) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (*g*) for zero-

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[5] *Maibarara Geothermal, Inc. vs. Commissioner of Internal Revenue*, CTA Case Nos. 8699, 8732, 8771 and 8811, January 3, 2018.
[6] *Ibid.*
[7] *Jesus Nepomuceno, et al. vs. Rehabilitation Finance Corporation (now Development Bank of the Philippines)*, G.R. No. L-14897, November 23, 1960.

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rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (*h*) where there are both zero-rated or effectively zero-rated sales and taxable or exempt 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; and (*i*) the claim is filed within two years after the close of the taxable quarter when such sales were made.[8]

In this case, petitioner failed to comply with requisites (b) and (f), that the taxpayer is engaged in zero-rated or effectively zero-rated sales and that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales, respectively. Hence, the Petitions for Review, cannot be given due course.

Considering the foregoing, there is no cogent reason to disturb the assailed Decision.

WHEREFORE, in light of the foregoing considerations, petitioner's **Motion for Reconsideration**, filed through registered mail on March 25, 2019 and received by this Court on April 16, 2019, and **Motion for Reconsideration**, which is treated as a Supplemental Motion for Reconsideration, filed on March 26, 2019, are **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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