REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9537

Members:

UY, *Chairperson*,
RINGPIS-LIBAN, and
MODESTO-SAN PEDRO, JJ.

Promulgated:

JAN 13 2021
3:20 p.m.

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AMENDED DECISION

UY, J.:

For resolution are the following:

1) Petitioner's ***Motion for Partial Reconsideration (of Decision promulgated on June 30, 2020)*** filed via registered mail on July 30, 2020, with respondent's ***Comment/Opposition To Petitioner's Motion For Partial Reconsideration Dated July 30, 2020*** filed on October 26, 2020; and

2) Respondent's ***Motion for Partial Reconsideration (Re: Decision promulgated on 30 June 2020)*** filed on August 20, 2020 with respondent's ***Comment (on Respondent's Motion for Partial Reconsideration dated 13 August 2020)*** filed on October 16, 2020.

In their respective *Motion,* the parties seek reconsideration of the Decision promulgated on June 30, 2020, partially granting the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of **₱34,446,355.43,** representing its excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2015.
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> **SO ORDERED**."

Petitioner's Motion for Partial Reconsideration

Petitioner argues in its *Motion* that the Court committed reversible error in disallowing the VAT zero-rating of the sales of services of petitioner that were indisputably made to and paid for by A.P. Moller-Maersk (APMM) and Maersk Line A/S (ML), entities engaged in international shipping.

Allegedly, the disallowed sale represented by Official Receipt (O.R.) No. 154 (Exhibit "P-31.4") was examined and verified by the Court-commissioned Independent Certified Public Accountant and was admitted by the Court in the Resolution dated June 19, 2018. Furthermore, the ICPA examination and verifications show that the disallowed sales were actually made to and paid for by APMM and ML, which was not disputed in the Decision.

Citing *CIR vs. Euro-Philippines Airline Services, Inc.*[1] *(*herein referred to as *Euro-Phil* case*)*, petitioner argues that Section 108(B)(4) of the NIRC of 1997, as amended, provides that the disallowed Sales should qualify as VAT zero-rated sales.

Petitioner also claims that the Court erred in citing Section 113 of the NIRC of 1997, as amended, as basis in disqualifying the disallowed sales from VAT zero-rating. Allegedly, there is nothing in Section 113 that provides the consequence of the VAT zero-rating of sales and that that *Euro-Phil* case held that non-compliance with section 113 of the NIRC of 1997, as amended, will not qualify sales of services rendered to persons engaged in international shipping or international air-transport operations from VAT zero-rating.

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[1] G.R. No. 222436, July 23, 2018.

Moreover, the disallowed sales qualify as VAT zero-rated sales of services under Section 108(B)(4) as the imperfections in the corresponding official receipts do not negate the established fact that the said services were rendered by petitioner to and paid for by APMM and ML, entities engaged in international shipping.

Petitioner points out that there are documents other than the official receipts from the disallowed sales from which the Court can determine the veracity of such sales and their qualification for VAT zero-rating under Section 108(B)(4).

According to petitioner, the Court committed reversible error in disallowing the input VAT amounting to ₱1,736,310.49 for supposed non-compliance with substantiation requirements.

The official receipts/invoices issued for the disallowed purchases reveal the input VAT amount which petitioner is entitled to claim and that the technical clerical errors in the invoices/official receipts issued for petitioner's disallowed purchases should not obstruct the Court from considering undisputed facts to arrive at a just determination of petitioner's entitlement to the refund of its unutilized excess input VAT from the said purchases.

Lastly, petitioner submits that the downward adjustment of petitioner's refund claim to ₱999,525.00 is improper. Petitioner's excess valid input VAT attributable to its VAT zero-rated sales total to ₱41,090,298.94.

Respondent's Counter-arguments to petitioner's Motion for Partial Reconsideration

Respondent counter-argues that the Court correctly disallowed the sales for violating the provisions on invoicing and substantiation requirements. Tax refunds are in the nature of tax exemptions and are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law.

According to respondent, absence or non-printing of the word "zero-rated" in petitioner's invoices is fatal to its claim for the refund and/or tax credit representing its unutilized input VAT attributable to its zero-rated transactions. Hence, the Court's disallowance is valid.

Respondent further asserts that petitioner failed to comply with the substantiation requirements, thus, the disallowance of the subject transaction must be upheld.

Respondent's Motion for Partial Reconsideration

In his *Motion*, respondent argues that the Court erred in ruling that petitioner's alleged input tax attributable to zero-rated sales for the period January 1, 2015 to December 31, 2015 were not carried over to the succeeding periods.

Allegedly, petitioner failed to overcome the burden that the subject input tax being claimed remained unutilized and have not been applied against any output tax for the current and succeeding quarters of the following TY 2016 for failure to present all the VAT Returns for TY 2015 which would tend to prove that the subject claim was not actually utilized for the subject year.

Respondent also argues that the Court erred in ruling that petitioner's input tax in the amount of ₱35,445,880.43 is attributable to its alleged zero-rated sales. According to respondent, Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, uses the phrase "directly attributable", and thus, the fact of petitioner's unutilized input taxes was directly attributable must be established. It is allegedly erroneous to assume that when a taxpayer has zero-rated sales, all its input tax is automatically directly attributable to zero-rated sales without establishing how it factored in the production chain.

Respondent further asserts that the input tax must come from purchases of goods and services that form part of the finish product or service of the taxpayer and that the Court should determine that the input tax is "directly attributable" to the zero-rated sales.

Petitioner's Counter-arguments to respondent's Motion for Partial Reconsideration

Petitioner counter-argues that the Motion for Partial Reconsideration should be denied at it does not raise any new, cogent or substantial ground to warrant the modification of the Decision.

According to petitioner, respondent's assertion, that the VAT Returns evaluated by the Court were there pertaining only to taxable year 2015, is false and erroneous.

Petitioner stresses that the ICPA's findings was correctly relied upon by the Court. That the said report includes annexes which pertain to the schedule of input VAT incurred by petitioner for TY 2015 and the photocopies of official receipts and sales invoices of petitioner's purchases of capital goods, goods other than capital goods, and services. On the basis thereof, petitioner could not have rendered its zero-rated sales of services without such purchases of capital goods, goods other than capital goods, services as laid out in schedule and as proven in the photocopies of official receipts and sales invoices examined by the ICPA.

Petitioner also counter-argues that the reliance of respondent on the cases of *Taganito Mining vs. Commissioner of Internal Revenue* and *Atlas Consolidated Mining and Development Corporation vs Commissioner of Internal Revenue* is misplaced since there is evidence on record of petitioner's purchases that are attributable to its zero-rated sales.

THE COURT'S RULING

Petitioner's *Motion for Partial Reconsideration* is partly meritorious, with respect to petitioner's disallowed purchases are concerned, but only for the total amount of **₱28,677.32** only while the remaining amount of **₱1,707,633.17** shall remain denied

On the other hand, respondent's *Motion for Reconsideration* is without merit.

Petitioner's Motion for Partial Reconsideration

As aforementioned, the Court reconsiders a portion of its findings related to petitioner's disallowed purchases in the total amount of **₱28,677.32** and shall include the said amount in the computation of its valid input VAT.

Partial reconsideration of petitioner's disallowed purchases

Petitioner contends that it is entitled to the refund of ₱1,736,310.49 as incurred input VAT from its disallowed purchases. Petitioner argues that the official receipts/invoice issued for the disallowed purchases reveal the input VAT amount which petitioner is entitled to claim. That the technical error in the invoices/official receipts issued for petitioner's disallowed purchases should not obstruct the Court from considering undisputed facts to arrive at a just determination of petitioner's entitlement to the refund of its unutilized excess input VAT from the said purchases.

After a second hard look at the records of the instant case, the Court reconsiders the disallowance of the following purchases of goods of and services by petitioner for the reasons indicated here below, to wit:

Customer Name	Input VAT	Exhibit	Reason
Biotech Environmental Services	₱ 2,015.13	"P-177"	VAT amount is indicated in the OR
DHL Express	15,634.82	"P-260"	The purchase was made in the year covered by the refund claim.
Globe Telecom Inc.	1,281.38	"P-321"	VAT amount is indicated in the OR
Globe Telecom Inc.	3,703.13	"P-338"	VAT amount is indicated in the OR
Icon Interiors	6,042.86	"P-384"	Customer name can be found in the latter part of the OR
Total Reconsidered Valid Input VAT	**₱28,677.32**		

However, the Court maintains the disallowance of the following purchases of goods and services made by petitioner for failure to substantiate and comply with the invoicing requirements prescribed under Section 113 (A) and (B) of the NIRC of 1997, as amended:

Customer Name	Input VAT	Exhibit	Reason(s)
Globe Telecom Inc.	9,751.76	"P-331"	Petitioner failed to substantiate the discrepancy between the amount of input VAT being claimed and the amount of VAT indicated in the OR

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Integrated Computer Systems	₱ 1,296.43	"P-390"	Sales Invoice without indication of receipt by authorized signatory
Integrated Computer Systems	9,531.43	"P-392"	Sales Invoice without indication of receipt by authorized signatory
Integrated Computer Systems	31,055.90	"P-397"	VAT was not separately indicated
Integrated Computer Systems	32,128.93	"P-412"	VAT was not separately indicated
Integrated Computer Systems	20,310.00	"P-416"	VAT was not separately indicated
Jeon Software Info. Solutions	4,200.00	"P-439"	The correct amount of VAT cannot be deduced with certainty from the document because of the alteration and the same was not counter-signed by an authorized signatory
Soliman Security Services	7,259.21	"P-705"	The entries in the OR are doubtful, the VAT amount cannot be determined with certainty.
Soliman Security Services	6,241.91	"P-706"	
Soliman Security Services	8,736.65	"P-707"	
Soliman Security Services	8,347.61	"P-708"	
Soliman Security Services	4,025.32	"P-713"	
Punta De Fabian Inc.	4,062.50	"P-864"	VAT amount is incorrect
Ragojos Heritage Construction	1,491,428.57	"P-1026"	Description of goods is lacking
Ragojos Heritage Construction	41,625.00	"P-1027"	Description of goods is lacking
Schneider Electric IT Philippines	18,000.00	"P-1028"	Description of goods cannot be ascertained
Discovery Suites	9,631.95	"P-1117"	Description of goods cannot be ascertained
Total Disallowed Input VAT	**₱1,707,633.17**		

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At this juncture, it bears stressing that actions for tax refund are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[2]

In light of the foregoing findings, the findings of the Court in the assailed Decision pertaining to petitioner's disallowed purchases shall be reduced from ₱1,835,095.07 to **₱1,789,868.49**.

Hence, the Court's findings in the assailed Decision shall be modified as follows:

Input VAT per claim		48,087,076.37
Less: Disallowances		
Per ICPA[3]	6,897,992.85	
Per Court[4]	**1,789,868.49**	**8,687,861.34**
Excess Valid Input VAT		**39,399,215.03**

In sum, out of the claimed input VAT of ₱48,087,076.37, petitioner has proven the amount of ₱39,399,988.45 which represents petitioner's valid input VAT.

Consequently, only the excess input VAT of ₱39,399,988.45 can be attributed to the total zero-rated sales declared by petitioner in the amount of ₱2,151,275,117.96, and the input VAT is modified to **₱35,486,615.72** which is attributable to the valid zero-rated sales of ₱1,937,639,451.92, computed as follows:

Excess Valid Input VAT	**39,399,215.03**[5]
Divided by Declared Zero-Rated Sales	2,151,275,117.96
Multiply by Valid Zero-Rated Sales	1,937,639,451.92
Excess Input VAT Attributable to valid Zero-Rated Sales	**35,486,615.72**

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[2] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159490, February 18, 2008.
[3] Disallowances found by the ICPA as adopted by the Court
[4] Additional disallowances as found by the Court.
[5] With Modification.

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Petitioner failed to substantiate the disallowed zero-rated sales in the amount of ₱213,635,665.07.

In the assailed Decision, the Court disallowed petitioner's VAT zero-rated sales of services to APMM and ML amounting to ₱213,635,665.07 (or equivalent to US$4,784,458.20) with the following details, to wit:

OR No.	OR Date	Customer	Amount (in USD)	Amount (in PHP)	Exhibit	Grounds for disallowance
144	07/01/2016	A.P. Moller Maersk A/S	3,053,628.94	137,156,797.47	P-31	Not indicated as zero-rated sales
154	18/03/2015	Maersk Line A/S	193,630.31	8,639,203.54	P-31.5	Without supporting OR
155	18/03/2015	Maersk Line A/S	1,537,198.95	67,839,664.06	P-31.6	Zero-rated sales amount not the same
Total			**4,784,458.20**	**213,635,665.07**		

Petitioner avers that the Court erred in disallowing the sale represented by O.R. No. 154, allegedly marked as Exhibit "P-31.4", on the ground that it is "Without Supporting OR". Petitioner argues that the said exhibit was admitted in the Court's Resolution dated June 19, 2018 and the same was duly examined and verified by the ICPA.

We do not agree.

A perusal of petitioner's exhibits that were admitted by the Court in the Resolution dated June 19, 2018 reveal that the document marked as Exhibit "P-31.4" refers to O.R. No. 151 and not to O.R. No. 154. Although it is noted that petitioner attached a copy of O.R. No. 154 to its Motion for Partial Reconsideration, the same cannot be considered by the Court as it was not formally offered as part of petitioner's evidence.

Section 34 of Rule 132 of the Revised Rules on Evidence states that "the Court shall consider no evidence which has not been formally offered." To reiterate, records show that the document attached to petitioner's motion, O.R. No. 154 was not formally offered and admitted by the Court. Hence, the Court cannot give probative value thereto as the same was not formally offered and admitted as part of petitioner's supporting evidence in this case.

Furthermore, petitioner argues that the disallowed sales should qualify as VAT zero-rated sales pursuant to Section 108(B)(4) of the NIRC of 1997, as amended and because of the ruling in the case *Commissioner of Internal Revenue vs. Euro-Philippines Airline Services, Inc*[6] (*Euro-Phil)* case. Petitioner also avers that nothing in Section 113 of the NIRC of 1997, as amended, provides the consequence of disallowance of the VAT zero-rating of sales and that non-compliance with Section 113 thereof does not disqualify sales of services rendered to persons engaged in international shipping or international air transport operation from VAT zero-rating.

Petitioner's argument is misplaced.

It is not disputed that petitioner is a VAT registered entity that rendered services to persons engaged in international shipping, pursuant to Section 108 (B) (4) of the NIRC of 1997, as amended. In fact, that was the Court's finding in the assailed Decision. However, petitioner is reminded that its alleged Vat zero-rated sales do not automatically qualify as valid VAT zero-rated sales because petitioner must still prove compliance with mandatory and invoicing requirements of the law.

In the case of *Miramar Fish Company, Inc. vs. Commissioner of Internal Revenue,*[7] the Supreme Court held that non-compliance with the invoicing requirements under the provisions of Section 113 of the NIRC of 1997, as amended, will result in the immediate denial of the refund claim, to wit:

> "The provisions of Sections 113 and Section 237 of the NIRC of 1997, as amended, and Section 4.108-1 of RR No. 7-95, are clear in enumerating the invoicing requirements necessary to be shown in order to qualify as duly registered receipts or sales or commercial invoices issued by VAT-registered entities, such as petitioner herein, for the purpose of claiming for refund of creditable input tax due or paid attributable to any zero-rated or effectively zero-rated sales. Absent compliance, the unavoidable result is immediate denial of the claim."

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[6] G.R. No. 222436, July 23, 2018.
[7] G.R. No. 185432, June 4, 2014.

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It must be emphasized that compliance with all the VAT requirements provided by tax laws and regulations is mandatory.[8] Moreover, the invoicing requirement is reasonable and must be strictly complied with, as it is the only way to determine the veracity of the claim.[9]

Moreover, petitioner's reliance on the ruling of the *Euro-Phil* case has no leg to stand on. In said case, the Supreme Court did not forego with the mandatory invoicing requirement of the law. The pronouncement of the Supreme Court pertains to the absence of a presumption created by law that the non-imprintment of the word "zero-rated" deems the transaction subject to 12% VAT and that the failure to comply with invoicing requirements as mandated by law does deem the transaction subject to 12% VAT.

Petitioner failed to substantiate the discrepancy in the amount of ₱999,525.00 between the amount of petitioner's refund claim and the amount declare in petitioner's Quarterly VAT Return for the 1st quarter of 2016 and that said amount was not carried over in the succeeding periods.

Petitioner alleges that the Court erred in effecting a downward adjustment to petitioner's refund claim. In support of its argument, petitioner relies on the explanation by the Court-commissioned ICPA in the ICPA Report,[10] to wit:

> "[T]he amount actually being applied for refund of P48,087,076.28 was erroneously presented as 47,087,551.37 per 1st quarter VAT return of taxable year 2016. Upon checking the VAT return for the month of January 2016, the amount however was correct, i.e., P48,087,076.28 (please refer to Exhibit "P-41")
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> Nonetheless, in either case, the amount being carried over from previous period was at the same time deducted from total input VAT as VAT refund/TCC

[8] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.

[9] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011.

[10] ICPA Report, Docket – Vol. 2, p. 798.

claimed. Accordingly, it has not been applied against any output VAT."

The Court is not convinced.

It bears noting that the amount claimed by petitioner as excess input VAT for TY 2015 amounts to ₱48,087,076.37. However, as noted by the Court, only the amount of ₱47,087,551.34[11] was declared as **"VAT Refund/TCC claimed"**[12] in petitioner's Quarterly VAT Return for the 1st quarter of 2016. The Court finds that the discrepancy amounting to ₱999,525.00 was not sufficiently substantiated by petitioner. Thus, the Court cannot ascertain whether the said discrepancy remained unutilized in the succeeding taxable periods. Accordingly, the Court sustains the downward adjustment.

Relative thereto, in light of the modified findings of the Court pertaining to petitioner's excess Input VAT attributable to valid zero-rated sales, petitioner's unutilized Input VAT shall be adjusted as follows:

Adjusted Excess Input VAT Attributable To valid Zero-rated Sales	**₱35,486,615.72**
Less: Input VAT carried-over the succeeding period	999,525.00
Adjusted Unutilized Input VAT	**₱34,487,080.72**

Respondent's Motion for Reconsideration

As aforementioned, respondent's motion lacks merit.

Petitioner was able to show that its excess input taxes for TY 2015 were not applied against any of its output VAT liability.

Respondent alleges that petitioner failed to show that the claimed input tax being claimed remained unutilized and have not been applied against any output tax for the succeeding quarters of TY 2016 for failure to present all the VAT Returns for TY 2015. For failure

[11] Exhibit "P-40.1", Line 23D, refer to the USB (Petitioner's FOE).
[12] Exhibit "P-40", Line 23D, refer to the USB (Petitioner's FOE).

to present ll the VAT Returns for TY 2015, the Court allegedly erred in ruling that the claimed input tax remained unutilized based solely on the first quarter VAT Return for TY 2016.

Respondent's argument is unavailing.

The Court cannot subscribe to respondent's argument that due to petitioner's failure to present all its VAT Returns for TY 2015, the subject claim was not utilized for the TY 2015.

Records show that the Quarterly VAT Returns for the First (1st),[13] Second (2nd),[14] Third (3rd),[15] and Fourth (4th)[16] quarters of 2015 were offered in evidence by petitioner, as well as the Quarterly VAT Returns for the 1st Quarter of 2016[17] and Monthly VAT Returns for January 2016[18] were also offered, and all were admitted and considered by the Court in the Resolution dated June 19, 2018.[19]

It is noteworthy that aside from the findings made by the court-commissioned ICPA, the Court also verified that the excess input taxes claimed by petitioner for TY 2015 were not applied against any of its output VAT liability. Absent any contrary evidence shown by respondent, the Court sees no reason to disturb its findings.

Section 112 (A) of the NIRC of 1997, as amended, does not provide that input VAT should be directly attributable to zero-rated sales.

Respondent contends that Section 112 of the NIRC of 1997, as amended, uses the phrase "directly attributable", and thus, the Court should determine that petitioner's unutilized input taxes was directly attributable to its zero-rated sales. As such, respondent avers that the input taxes must come from purchases of goods and services that form part of the finish product or service of the taxpayer, wherein their connection between the purchases and the finished product must be concrete and not imaginary or remote. To bolster his argument,

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[13] Exhibit "P-15", Docket – Vol. 2, pp. 651 to 652.
[14] Exhibit "P-16, Docket – Vol. 2, pp. 653 to 654.
[15] Exhibit "P-17", Docket – Vol. 2, pp. 655 to 656.
[16] Exhibit "P-18", Docket – Vol. 2, pp. 657 to 658.
[17] Exhibits "P-40" to "P-40.1", refer to the USB (petitioner's FOE).
[18] Exhibits "P-41" to "P-41.1", refer to the USB (petitioner's FOE).
[19] Docket – Vol. 2, pp. 907 to 909.

respondent invokes CTA decision, *Taganito vs. Commissioner of Internal Revenue (Taganito* case),[20] and Supreme Court decisions in *Atlas Consolidated Mining and Development Corporation vs Commissioner of Internal Revenue*[21] (2011 Atlas case) and *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[22] (2007 Atlas case), pertaining to the requirement of "direct attributability".

We are not convinced.

Section 112 (A) of the NIRC of 1997, as amended, provides for the tax credit/refund of creditable input VAT attributable to zero-rated or effectively zero-rated sales, to wit:

> "SECTION 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 <u>attributable</u> 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 or properties or services, and the amount of creditable input tax due or paid **<u>cannot be directly and entirely attributed</u> 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.

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[20] CTA Case No. 8680, September 14, 2017.
[21] G.R. No. 159741, January 26, 2011.
[22] G.R. Nos. 141104 & 148763, June 8, 2007.

A close reading of the above-cited provision would reveal that the law merely states that the creditable input VAT should be "attributable" to the zero-rated or effectively zero-rated sales. Clearly, nowhere is it stated in Section 112(A) that the refundable creditable input VAT should be "directly attributable" to such sales. It must be remembered that where the law does not distinguish, none must be made.[23]

Admittedly, the words *"directly...attributed"* were used under the aforequoted provision. However, the said words merely relate to a situation where the creditable input VAT cannot be *"directly...attributed"* to any transaction. It does not, in any way, qualify the preceding sentences of the same Section 112(A) which will have the effect of making the refundable input VAT to refer only to those which are *"directly attributable"* to zero-rated or effectively zero-rated sales.

Thus, there is no legal basis for respondent's stand that the fact of "direct attributability" must be established.

Furthermore, respondent's reliance in the Decision of the CTA in the *Taganito* case is also without merit for the reason that CTA decisions do not constitute precedents, and do not bind this Court or the public.[24] Only Supreme Court decisions, and not CTA decisions), constitute as binding precedents forming part of the legal system. Thus, petitioner cannot invoke the *Taganito* case.

We cannot also rely on the rulings in the *Atlas* cases also invoked by respondent. This must be so because, the cases were decided under the earlier Revenue Regulations (RR) No. 5-87 dated September 1, 1987, as amended by RR No. 3-77 dated February 15, 1988, Section 16 of which provides, in part, as follows:

> In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund." *(Emphasis and underscoring supplied)*

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[23] *The Commissioner of Internal Revenue vs. The Commission on Audit, etseq.,* G.R. Nos. 101976 and 102258, January 29, 1993.

[24] *Commissioner of Internal Revenue vs. San Roque Power Corporation,* G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

Understandably, on the basis thereof, the Supreme Court required and ruled in the *Atlas* cases that the input VAT being claimed for refund should be "*directly and entirely attributable*" to the zero-rated sales. However, RR Nos. 5-87 and 3-88, and the jurisprudential pronouncements interpreting and/or applying the same, could no longer be applied as the same are deemed revoked as provided under Section 23 of Republic Act No. 9337, to wit:

> "SEC. 23. *Implementing Rules and Regulations.* – The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than June 30, 2005, the necessary rules and regulations for the effective implementation of this Act. **Upon issuance of the said rules and regulations, all former rules and regulations <u>pertaining to value-added tax</u> shall be deemed <u>revoked.</u>"** *(Emphasis and underscoring supplied)*

Pursuant to the foregoing provision, rules and regulations pertaining to VAT issued before effectivity of RA No. 9337, such as RR Nos. 5-87 and 3-88, shall be deemed revoked upon the issuance of the rules and regulations implementing the said law which should be done not later than June 30, 2005.

On June 22, 2005, RR No. 14-2005[25] was issued by the Secretary of Finance, which became effective on July 1, 2005. Parenthetically, RR No. 14-2005 was later superseded by RR No. 16-2005 on September 1, 2005, which took effect on November 1, 2005. The latter Revenue Regulation, in turn, has undergone several amendments thereafter.

Correspondingly, all Revenue Regulations pertaining to VAT, including RR Nos. 5-87 and 3-88 were deemed revoked as of July 1, 2005. Thus, unless the provisions of the said RR pertaining to the requirement that the input VAT being claimed for refund should be "*directly and entirely attributable*" to the zero-rated sales, has been retained in the said RR No. 14-2005 and subsequent RR pertaining to VAT, such treatment under the said RR Nos. 5-87 and 3-88 is deemed revoked.

A cursory examination, however, of RR No. 14-2005 and subsequent RR pertaining to VAT would reveal that the provisions of RR Nos. 5-87 and 3-88, as to the requirement that the input VAT

[25] SUBJECT: CONSOLIDATED VALUE-ADDED TAX REGULATIONS OF 2005".

being claimed for refund should be *"directly and entirely attributable"* to the zero-rated sales, has not been retained. Thus, the aforequoted portion of Section 16 of RR No. 5-87, as amended by RR No. 3-88, is no longer binding, upon the effectivity of RR No. 14-2005, *i.e.,* on July 1, 2005.

Considering that the taxable year under consideration is 2015, the provisions of RR Nos. 5-87 and 3-88, as applied to the *Atlas* cases, may no longer be validly applied to the instant case.

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Partial Reconsideration* is **PARTLY GRANTED,** while, respondent's *Motion for Partial Reconsideration* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated June 30, 2020 is hereby amended to read as follows:

> "**WHEREFORE,** in light of the foregoing considerations, 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 total amount of **₱34,487,090.72**[26] representing its excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2015.
>
> **SO ORDERED.**"

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[26] ₱35,486,615.72 Less ₱999,525.

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice