REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

AIR DRILLING ASSOCIATES PTE LTD.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10497

Present:

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

Promulgated:

9:10 AM

x - x

RESOLUTION

FERRER-FLORES, J.:

For the Court's resolution is respondent's **Motion for Reconsideration (Re: Decision dated August 15, 2024)** *(MR)* filed on September 5, 2024, without petitioner's comment per Records Verification Report dated January 7, 2025.

In the assailed Decision promulgated on August 15, 2024, the Court partially granted petitioner's claim for refund of unutilized input value-added tax (VAT) attributable to its zero-rated sales for the third quarter of taxable year (TY) 2018 in a reduced amount as duly supported and proven by documents, the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.
>
> Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, in the reduced amount of **₱4,133,940.15**, representing the unutilized input Value-Added Tax attributable to its zero-rated sales for the third quarter of taxable year 2018.

SO ORDERED.

In his *MR*, respondent moves for reconsideration of the assailed Decision on two grounds: *first*, the Court erred in taking cognizance of this case considering the claim for refund was belatedly filed; and *second*, even assuming that this Court has jurisdiction, it likewise erred in finding that petitioner has complied with all the requisites in claiming refund of unutilized input taxes.

Anent the *first* ground, respondent posits that the Court failed to consider the mandatory nature of the two-year prescriptive period and the reglementary period of 30 days within which to appeal the decision of the Bureau of Internal Revenue (BIR) before the Court of Tax Appeals (CTA). Respondent expounds that nothing in Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, allows for any extension of the period to appeal the denial of refund. Thus, while the filing of pleadings during the period of physical closure of courts was suspended due to the surge of the 2019 Corona Virus Disease (COVID-19), this should not extend the said two-year prescriptive period and reglementary 30-day appeal period provided under the said provision of the NIRC of 1997, as amended. The administrative circulars relative to any suspension or extension of filing of an appeal cannot supersede, abrogate, or modify the jurisdiction of the Court under Section 7 of Republic Act (R.A.) No. 1125,[1] as amended, in relation to Section 112 of the NIRC of 1997, as amended. According to respondent, regardless of any suspension of the filing of pleadings on the ground of COVID-19 pandemic, petitioner should have filed its appeal via electronic mail, which is one of the available modes of filing during said time, pursuant to CTA *En Banc* Resolution No. 4-2021.[2]

As for the *second* ground, respondent asserts that petitioner was not able to substantiate its claim for VAT refund as it failed to prove that it is engaged in zero-rated or effectively zero-rated sales. He points out that petitioner merely presented the Department of Energy (DOE) Certificates of Registration and Board of Investments (BOI) Registration in evidence and did not provide the DOE Certificate of Endorsement, as required in Part III, Rule 5, Section 18(C) of the DOE DC No. 2009-05-0008 dated May 25, 2009. Further, respondent claims that petitioner failed to comply with the invoicing requirements, *i.e.*, the term "zero-rated sale" was not prominently written or printed on the official receipts, having an incorrect business style, and lack of information as to list of payees from whom taxes were withheld, as required under Section 113 of the NIRC of 1997, as amended. Accordingly, respondent reiterates that there is no excess and unutilized input VAT which can be subject of petitioner's claim for refund.

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1 AN ACT CREATING THE COURT OF TAX APPEALS

2 *Pleadings, Motions and Other Court Submissions Filed by Email*, issued on February 24, 2021.

The Court finds respondent's *MR* bereft of merit.

At the outset, Section 5 (5), Article VIII of the 1987 Constitution, explicitly provides that the Supreme Court has the power to promulgate rules concerning pleadings, practice, and procedure in all courts. Correspondingly, the power to make rules necessarily includes the power to suspend or relax its application where there is a clear need to protect the rights of the parties. Perforce, the nation's exceptional situation of dealing with the COVID-19 pandemic in such a way that precautionary measures must be observed to preserve life and paramount public interest are sufficient compelling circumstances that warrant the issuance of numerous Supreme Court administrative circulars relative to suspension of court operations.

Indeed, this is in line with the spirit and purpose of the *Bayanihan to Heal As One Act*[3] and the *Bayanihan to Recover As One Act*[4] whereby the legislature vested upon the president the power to move statutory deadlines and timeliness for the filing and submission of any document, the payment of taxes, fees and other charges required by law.[5]

In fact, respondent likewise released various issuances concerning the extension and/or suspension of deadlines for the filing of returns and payment of taxes, such as Revenue Regulations (RR) Nos. 16-2020[6] and 27-2020,[7] which effectively suspended the period for the processing of VAT refund claims under Section 112 of the NIRC of 1997, as amended, as a response to the national emergency.

Considering, therefore, the suspension of the reglementary period during that time as carefully laid out in the assailed Decision, petitioner's administrative and judicial claims were both timely filed, thus, vesting the Court with jurisdiction over the instant case.

Respondent's second argument that petitioner should have been required to present a DOE Certificate of Endorsement for its claim to prosper is specious.

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3 Republic Act No. 11469, March 24, 2020.

4 Republic Act No. 11491, August 15, 2020.

5 Section 4, paragraph (z) of R.A. No 11469; Section 4, paragraph (tt) of R.A. No. 11491.

6 SUBJECT: Regulations Further Suspending the Due Dates in the Application of the Ninety (90)-Day Period to Process Value Added Tax (VAT) Refund/Claim Pursuant to Section 112 of the Tax Code of 1997, as Amended by Republic Act (R.A.) NO. 10963 (TRAIN LAW) For Taxable Quarters Affected by the Declaration of the National State of Emergency, issued on June 25, 2020.

7 SUBJECT: Regulations Suspending the Filing and Ninety (90)-day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4(tt) of Republic Act (R.A.) No. 11494, Otherwise known as the "Bayanihan to Recover as One Act", issued on October 6, 2020.

To stress, it is not necessary for a taxpayer-claimant to present a DOE Certificate of Endorsement to qualify for the VAT zero-rating incentive under Section 15(g) of RA No. 9513 or the Renewable Energy (RE) Act of 2008.[8] The said provision grants RE Developers entitlement to the VAT zero-rating treatment of their sale of fuel or power generated from renewable sources of energy and their purchases of local supply of goods, properties, and services related to the development, construction, and installation of its plant facilities.

As regards respondent's contention that petitioner failed to comply with invoicing requirements, the same was already passed upon and duly considered and resolved by the Court in the assailed Decision. Again, perusal of the official receipts[9] issued by petitioner to its sole client Energy Development Corporation (EDC) shows that the phrase "Zero Rated Sales" is clearly found on the left side of the document, where the corresponding zero-rated sales amount is placed beside it.

Respondent likewise argues that petitioner's Monthly Remittance Return on Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600)[10] failed to show in detail the List of Payees from Whom Taxes Were Withheld. Yet, records show that there was only one payee from which taxes were withheld and the related transactions were sufficiently proven by other competent evidence presented by petitioner.

In *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*,[11] the Supreme Court held that omission does not furnish ground for the outright denial of the claim for tax credit or refund if such claim is in fact justified or when there are other documents from which the CTA can determine the veracity of the taxpayer's claim, to wit:

> ...**The Court finds that SPP failed to indicate its zero-rated sales in its VAT returns. But this is not sufficient reason to deny it its claim for tax credit or refund when there are other documents from which the CTA can determine the veracity of SPP's claim.**
>
> Of course, such failure if partaking of a criminal act under Section 255 of the NIRC could warrant the criminal prosecution of the responsible person or persons. **But the omission does not furnish ground for the outright denial of the claim for tax credit or refund if such claim is in fact justified.**" *(Emphases added)*

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8 AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES, approved on December 16, 2008.

9 Exhibits "P-20", "P-21" and "P-22".

10 Exhibits "P-120" to P-121", inclusive of sub-markings.

11 G.R. No. 179632, October 19, 2011.

From the foregoing, the failure of a taxpayer to indicate or report zero-rated sales in its VAT Returns is not a sufficient ground to deny outright a claim for input VAT refund. Similarly, the failure of petitioner to indicate the name of its payee in the Summary List attached to its BIR Form No. 1600 is not sufficient ground to deny its claim for input VAT refund so long as there are other documents from which the Court can determine the veracity of its claim.

All told, the Court finds no compelling reason to reverse or amend the assailed Decision.

WHEREFORE, respondent's **Motion for Reconsideration (Re: Decision dated August 15, 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