REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MAXIMA MACHINERIES, INC.,
Petitioner,

CTA CASE NO. 9453

Present:

-versus-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 16 2022 2:00 pm

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RESOLUTION

MANAHAN, *J.*:

This resolves the *Motion for Reconsideration* filed by petitioner Maxima Machineries, Inc. on July 19, 2021, seeking reconsideration of the Decision dated June 30, 2021, which denied petitioner's claim for issuance of tax credit certificates (TCCs) representing unutilized excess input value-added taxes (VAT) which are allocable and directly attributable to its VAT zero-rated transactions, for the period January 1 to March 31, 2014, of fiscal year (FY) ending March 31, 2014. The assailed Decision's dispositive portion is quoted below:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**[1]

In its *Motion*, petitioner argues that the sales of services to Marubeni Corporation qualified for VAT zero-rating. Petitioner states that the services rendered to Marubeni Corporation were clearly stated in the ICPA report and that such sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of

[1] Decision dated June 30, 2021, p. 66.

the Bangko Sentral ng Pilipinas (BSP) as supported by invoices and inward remittances from banks. Petitioner also states that in the sale of services to Marubeni Corporation, it merely acted as an agent in the Philippines for the placing of orders of the local customer to its non-resident foreign suppliers, which activity does not involve any processing, manufacturing or repacking of goods in the Philippines. Petitioner also points out that the Supreme Court has declared Marubeni Corporation as a non-resident foreign corporation not engaged in trade or business in the Philippines.

Petitioner also argues that it had sufficiently shown, through the presentation of its Quarterly VAT return for the 4th Quarter of FY 2014, its input tax carried over from the previous period amounting to Php369,111,554.05 and the deferred tax on capital goods in excess of Php1,000,000.00 from previous quarters amounting to Php2,731,710.09. As such, these amounts can be validly applied against petitioner's output tax liability. Petitioner further states that respondent never disputed such amounts by documentary or testimonial evidence.

Thus, petitioner prays that the input VAT directly and indirectly attributable to petitioner's zero-rated sales in the amount of Php59,299,666.51 should be refunded.

On November 2, 2021, respondent Commissioner of Internal Revenue (CIR) filed his *Comment/Opposition Re: Petitioner's Motion for Reconsideration.*

On December 16, 2021, the subject *Motion for Reconsideration* was submitted for resolution of the Court.

The *Motion for Reconsideration* is denied.

As discussed in the assailed Decision dated June 30, 2021, the alleged export sales to Marubeni Corporation in the amount of Php2,496,680.49, failed to qualify for zero percent (0%) VAT due to petitioner's failure to prove that Marubeni Corporation is a non-resident foreign corporation doing business outside the Philippines. Petitioner only presented proof of Marubeni Corporation's incorporation, but failed to present the Securities and Exchange Commission (SEC) Certificate of Non-Registration of Corporation/Partnership. am

As to petitioner's reliance on *Marubeni Corporation v. Commissioner of Internal Revenue*,[2] the Court notes that the same is a 1989 ruling, and relates to taxation of Marubeni's gross income from all sources within the Philippines. In fact, even the said Supreme Court ruling contained a caveat as to the status of Marubeni, as follows:

> Petitioner, being a non-resident foreign corporation with respect to the transaction in question, the applicable provision of the Tax Code is Section 24(b)(1)(iii) in conjunction with the Philippine-Japan Treaty of 1980. Xxx
>
> xxx
>
> Proceeding to apply the above section at bar, petitioner, being a non-resident foreign corporation, as a general rule, is taxed 35% of its gross income from all sources within the Philippines. (*Underscoring supplied*)

It is reiterated that to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** an SEC Certificate of Non-Registration of Corporation/ Partnership **and** proof of incorporation, association or registration in a foreign country. The first document proves that the entity is not doing business in the Philippines, while the latter document shows that the entity is doing business outside the Philippines. Taken together, the said documents establish that the entity is a non-resident foreign corporation not engaged in business in the Philippines.

Petitioner also failed to establish that the services rendered to Marubeni Corporation are other than "processing, manufacturing or repacking goods", and that such services were performed in the Philippines. Finally, petitioner failed to present any certification or proof of inward remittances showing the fact of payment "in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

Petitioner has not raised any argument nor pointed to any evidence in the records which would warrant a reversal of the abovementioned findings with respect to the alleged sales to Marubeni Corporation.

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[2] G.R. No. 76573, September 14, 1989. *an*

With respect to petitioner's argument that its input VAT carried over from the previous period can be validly applied against its output tax liability and that such input VAT was not disputed by respondent, we reiterate that petitioner failed to prove that it has excess input VAT.

In claiming excess or unutilized input VAT from zero-rated transactions, it is the excess input tax over the output tax which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough excess input tax credits from prior years to cover its output tax liability for the current taxable year. As computed in the assailed Decision, petitioner failed to prove that the input taxes have not been applied against output taxes during and in the succeeding quarters.

> After deducting the input VAT attributable to VATable sales to private entities amounting to ₱3,539,167.39[3] from its output VAT liability of ₱166,477,266.81[4] on the said sales, petitioner still has a net output VAT payable of ₱162,938,099.42 as computed below:
>
> | Particulars | Amount |
> |---|---|
> | Output VAT per Return | ₱166,477,266.81 |
> | Less: Input VAT attributable to VATable sales to private entities | 3,539,167.39 |
> | **Net output VAT Payable** | **₱162,938,099.42** |
>
> Considering that the input VAT attributable to VATable sales to private entities is not enough to cover its output VAT liability, the input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT liability. However, the input VAT attributable to zero-rated sales of ₱59,299,666.51 is way lower than the net output VAT payable of ₱162,938,099.42. Consequently, petitioner

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Common input VAT allocable to VATable sales to private entities		₱ 186,769.89
Add: Input tax directly attributable to VATable sale of machineries from current purchase (Exhibit "P-45-BR")		₱13,394,928.92
Less: Input VAT on importations supported by BOC IEIRD/SAD/ Assessment Notice without machine validation/SSDTs		
Actual Exhibit No.	Exhibit Reference per Schedule	Amount
"P-45-BR-1"	"P-45-BR-12"	₱ 3,934,145.60
"P-45-BR-2"	"P-45-BR-13"	568,997.07
"P-45-BR-8"	"P-45-BR-10"	397,931.75
"P-45-BR-9"	"P-45-BR-4"	214,037.00
"P-45-BR-10"	"P-45-BR-11"	4,927,420.00
TOTAL		*₱10,042,531.42*
Input VAT attributable to VATable sales to private entities		**₱ 3,539,167.39**

4 Exhibit "P-21" (Line 15B), Docket - Vol. 3, p. 1255.

still has net output VAT due of ₱103,638,432.91, computed as follows:

Particulars	Amount
Net output VAT Payable	₱ 162,938,099.42
Less: Input VAT attributable to zero-rated sales	59,299,666.51
Net Output VAT Still Due	**₱103,638,432.91**

Although petitioner's Amended Quarterly VAT Return for the 4th quarter of FY 2014 reflected the amount of ₱369,111,554.05[5] as *"Input Tax Carried Over from Previous Period"*, petitioner, however, failed to fully substantiate the same.

As ascertained by the ICPA, out of the reported input VAT from the 2nd quarter of FY 2013 up to the 3rd quarter of FY 2014 in the aggregate amount of ₱915,618,038.88[6], only the input VAT on importations in the amount of ₱758,489,926.43[7] were verified. Even assuming that the amount of ₱758,489,926.43 were valid input VAT attributable to VATable sales to private entities and zero-rated sales, the same is still not enough to cover its reported output VAT on VATable sales to private entities for the same period in the aggregate amount of ₱776,092,538.96[8], thereby resulting in net output VAT payable of ₱17,602,612.53[9]. Needless to say, petitioner failed to prove that it has excess input VAT carried over from the previous period.

All told, the Court finds no cogent reason to modify or reverse the foregoing findings.

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

[5] Exhibit "P-21" (Line 20A), Docket - Vol. 3, p. 1255.
[6] Exhibit "P-46", No. 9.b, Docket - Vol. 2, pp. 1087 to 1088.
[7] Exhibit "P-46", No. 9.d, Docket - Vol. 2, pp. 1088 to 1089.
[8] Exhibit "P-46", No. 9.b, Docket - Vol. 2, pp. 1087 to 1088.
[9] ₱776,092,538.96 less ₱758,489,926.43.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(no part)
MARIAN IVY F. REYES-FAJARDO
Associate Justice