REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TEAM SUAL CORPORATION (formerly MIRANT SUAL CORPORATION and SOUTHERN ENERGY PANGASINAN, INC.)	**CTA CASE NO. 7620**
Petitioner,	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* *and* **UY,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 2 9 2020 1:09 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court's is respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 2 March 2020)**, filed through registered mail on June 10, 2020 and received by this Court on June 17, 2020, with petitioner's **Comment/Opposition (Re: Respondent's Motion for Partial Reconsideration dated 13 March 2020)**, filed through registered mail on July 9, 2020 and received by this Court on July 20, 2020.

On March 2, 2020, the Court promulgated a Decision, partially granting petitioner's claim for refund of input value-added tax (VAT) attributable to its zero-rated sale of electricity to National Power Corporation, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing discussions, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to refund or issue a tax credit certificate in

> favor of petitioner in the amount of **₱97,846,457.61**, representing the latter's unutilized excess input VAT attributable to its zero-rated sales/receipts for the 1st, 2nd and 3rd quarters, and the month of October, of taxable year 2005.
>
> **SO ORDERED**."

In his Motion, respondent prays for the complete denial of petitioner's claim for refund, primarily arguing that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. Respondent explains that, from the definitions provided by law, to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer, or it must be directly used in the chain of production. As such, he claims that there is nothing in the Court's Decision showing the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated. Thus, respondent contends that petitioner fell short of proving the veracity of its claim for refund.

On the other hand, in its comment, petitioner claims that the Decision assailed by respondent already extensively discussed petitioner's compliance with the requisites for refund of excess input VAT, specifically the requisite that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. Lastly, petitioner insists that direct attributability, that creditable input tax form part of the finished product, is not a requirement to successfully prove entitlement to a refund or issuance of a tax credit certificate.

Accordingly, respondent's Motion for Partial Reconsideration is bereft of merit.

As correctly pointed out by petitioner, there is nothing in the law which requires a taxpayer-claimant to prove which of its purchases are directly attributable to its zero-rated transactions and which are directly attributable to its taxable transactions. In fact, Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for a situation where the taxpayer is engaged in zero-rated or effectively zero-rated sales and in taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of the sales, in which case, the input taxes shall be allocated proportionately on the basis of the volume of sales, to wit:

> "**SEC. 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 attributable 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 sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed 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." *(Emphasis supplied)*

From the foregoing, the law merely requires that the creditable input VAT should be "attributable" to the zero-rated or effectively zero-rated sales. The above provision does not specifically require that the refundable creditable input tax should be "directly attributable" to such sales. As a matter of fact, the law only mandates that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales. The law also allows allocation of input taxes in case the same cannot be directly or entirely attributed to any of the sales. Simply stated, input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales already satisfy the requirement of attributability.

As to respondent's argument that from the definitions provided by law, the input tax, to be creditable, must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production, the Court likewise find it untenable.

Section 110 (A)(1) of the NIRC of 1997, as amended, provides that any input tax on the following transactions evidenced by a VAT invoice or official receipt shall be creditable against the output tax:

> "**SEC. 110.** *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
>
> (i) For sale; or
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
> (iii) For use as supplies in the course of business; or
> (iv) For use as materials supplied in the sale of service; or
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> (b) Purchase of services on which a value-added tax has been actually paid."

Moreover, Section 110(A)(3)[1] of the NIRC of 1997, as amended, provides that the term "input tax" means the VAT due

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[1] "**SEC. 110.** *Tax Credits.* – x x x

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

x x x

The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of from or paid by a VAT-registered person *in the course of his trade or business* on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. Notably, the NIRC did not limit input taxes to those purchases that only form part of the finished product of the taxpayer.

"It is [a] well recognized rule that where the law does not distinguish, courts should not distinguish. <u>*Ubi lex non, distinguit nec nos distinguere debemos.*</u> The rule, founded on logic, is a corollary of the principle that general words and phrases in a statute should ordinarily be accorded their natural and general significance. The rule requires that a general term or phrase should not be reduced into parts and one part distinguished from the other so as to justify its exclusion from the operation of the law. In other words, there should be no distinction in the application of a statute where none is indicated."[2]

Accordingly, when Section 112(A) of the NIRC of 1997, as amended, speaks of "creditable input tax due or paid *attributable* to such sales," it is more logical to interpret this phrase as referring to instances of an apportionment of the input VAT in mixed transactions, i.e., taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable or exempt sales, rather than on the classification of the purchase.

Needless to say, the Court has thoroughly scrutinized the evidence on record and determined that petitioner had valid zero-rated sales for the 1st, 2nd and 3rd quarters, and the month of October, of taxable year 2005, as held in the assailed Decision:

> "x x x [W]here 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.

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goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code."

2 *Federated LPG Dealers Association v. Ma. Cristina L. Del Rosario, et al.*, G.R. No. 202639, November 9, 2016 citing *Philippine British Assurance Co., Inc. vs. Intermediate Appellate Court*, 234 Phil. 512, 519 (1987); italics and underscoring in the original.

Records show that for the subject period of claim, petitioner's reported total sales/receipts consisted of both zero-rated sales/receipts and VATables sales/receipts, to wit:

	VATable Sales/Receipts	**Zero-Rated Sales/Receipts**	**Total Sales/Receipts**
1st quarter 2005 *(Exhibit "C")*	₱129,873.36	₱3,775,412,124.01	₱3,775,541,997.37
2nd quarter 2005 *(Exhibit "D")*	423,255.68	3,600,420,391.50	3,600,843,647.18
3rd quarter 2005 *(Exhibit "E")*	1,625,012.27	3,700,406,077.70	3,702,031,089.97
October 2005 *(Exhibit "HH")*	141,085.46	1,199,803,134.88	1,199,944,220.34
Total	₱2,319,226.77	₱12,276,041,728.09	₱12,278,360,954.86

However, considering that petitioner's input VAT cannot be directly identified or attributed with specific sales, We shall allocate the excess valid input VAT of ₱101,902,544.04 proportionately on the basis of the volume of its sales, as follows:

Valid zero-rated sales/receipts per this Court's verification	₱11,789,638,188.67
Divided by total declared sales/receipts	÷ ₱12,278,360,954.86
Multiplied by valid excess input VAT due or paid	x ₱101,902,544.04
Excess valid input VAT due or paid allocated to zero-rated sales/receipts	**₱97,846,457.61**

Such being the case, petitioner has refundable excess input VAT in the amount of ₱97,846,457.61."[3]

In view of the foregoing, the Court finds no new or substantial matter, or compelling reason to justify the reversal or modification of the Decision being assailed.

WHEREFORE, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 2 March 2020) is **DENIED** for lack of merit. *fr*

[3] Decision, p. 26.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I Concur:

ERLINDA P. UY
Associate Justice