REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HALLIBURTON WORLDWIDE LIMITED – PHILIPPINE BRANCH, Petitioner,	CTA Case No. **9890**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 26 2024 3:30 pm

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RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution are:

1. Petitioner Halliburton Worldwide Limited – Philippine Branch's (**petitioner**'s) "Motion for Partial Reconsideration (Re: Decision dated 12 April 2024)"[1] (**petitioner's MPR**) filed on 06 May 2024, without comment[2] from respondent Commissioner of Internal Revenue (**respondent/CIR**); and,

2. Respondent's "Motion for Partial Reconsideration"[3] (**respondent's MPR**) filed (*via* private courier) on 13 May 2024[4], with petitioner's "Comment/Opposition (Re: CIR's Motion for Reconsideration dated 13 May 2024)"[5] (**Comment**) filed on 03 June 2024.

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1 Division Docket, Volume III, pp. 1278-1284.
2 See Records Verification dated 25 June 2024, id., p. 1307.
3 Id., pp. 1285-1293.
4 Received by the Court on 14 May 2024.
5 Division Docket, Volume III, pp. 1299-1306.

Both the MPRs contest the Decision of 12 April 2024[6] (**assailed Decision**) that partially granted petitioner's claim for input value-added tax (**VAT**) refund in the amount of ₱8,425,306.12 for calendar year (**CY**) 2016.

Petitioner's MPR seeks the reversal of the following disallowances: (1) the discrepancy of ₱3,336,384.93 between the Summary List of Sales (**SLS**) and the supporting official receipts (**ORs**); and, (2) the input taxes of ₱764,465.17 covered by a withholding VAT (**WVAT**) outside the period of claim.

For the first disallowance, petitioner avers that the Independent Certified Public Accountant (**ICPA**) had already explained that the said discrepancy is the two percent (**2%**) expanded withholding tax (**EWT**). This EWT was already deducted, thus resulting in different sales amounts in the ORs. Petitioner further claims that by simple arithmetic computation, this Court can already discern that the discrepancy is the exact 2% EWT of the sales reflected in the SLS. Thus, by preponderance of evidence, petitioner had already accounted for the said difference.

As for the second disallowance, petitioner submits that based on the statutory filing of monthly VAT declarations (pursuant to Section 4.114-1[7] of Revenue Regulations [**RR**] No. 04-2007[8]), a taxpayer is required to file its monthly WVAT on or before the 10th day of the following month. Therefore, the input tax for December 2016 may be paid on or before 10 January 2017. The input taxes based on the WVAT dated 10 January 2017 may thus be considered within the subject period of claim.

On the other hand, in respondent's MPR, he or she asserts that petitioner failed to submit the mandatory requirements and the complete supporting documents when it filed its administrative claim before the Bureau of Internal Revenue (**BIR**) office. Hence, on this ground alone, petitioner's claim for refund must be denied outright.

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6 Id., pp. 1239-1277.
7 SEC. 4.114-1. *Filing of Return and Payment of VAT.*
8 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

Respondent also declares that petitioner failed to proffer in evidence the Certificate of Endorsement (**COE**) from the Department of Energy (**DOE**) even though its claim for exemption is anchored on Republic Act (**RA**) No. 9513[9], or the Renewable Energy Act of 2008.

In response to respondent's MPR, in its Comment, petitioner alleges that the former did not raise any new arguments that would warrant the modification of the assailed Decision. It points out that the COE from DOE is no longer a requirement to prove entitlement to VAT refund as held in several Court of Tax Appeals (CTA) decisions. As for the non-submission of complete documents, petitioner emphasizes that the BIR office (where it submitted its administrative claim) had received and accepted its prior application for tax refund considering that it submitted the complete supporting documents (based on the checklist). Thus, this argument has no leg to stand on.

We resolve.

After an examination of the parties' arguments in their respective motions, We are constrained to deny petitioner's MPR for lack of merit and respondent's MPR for being filed out of time.

PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION (MPR)

Petitioner claims that by preponderance of evidence, it was able to establish the difference of ₱3,336,384.93 between the SLS and ORs. Actions for tax refund or credit, as in the instant case, 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. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[10]

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9 AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES.

10 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018.

Here, although through mathematical computation, We may indeed determine that the difference is the 2% EWT deducted from the sales, such determination could not rest on a mere presumption. The actual proof of withholding should prove the alleged 2% EWT discrepancy. Failing in this, We are constrained to maintain the disallowance.

As for the WVAT, We echo Our findings in the assailed Decision that the VAT withheld and paid for the nonresident recipient may be claimed as input tax by the withholding agent **upon filing his own VAT Return** –

> ...
>
> Anent the input taxes on services rendered by nonresidents, it must be noted that Section 110 of the NIRC of 1997, as amended, provides that a creditable input tax includes, among others, "[p]urchase of services on which **a value-added tax has actually been paid**."
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> Corollarily, Sections 4.110-8(a) and (c) and 4.114-2(b) of RR No. 16-2005, as amended by RR No. 04-2007, provide:
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>> ...
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>> SEC. 4.110-8. *Substantiation of Input Tax Credits.* —
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>> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
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>> ...
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>> (d) Input tax from payments made to non-residents (such as for services, rentals and royalties) **shall be supported by a copy of the Monthly Remittance Return of Value[-]Added Tax Withheld (BIR Form 1600) <u>filed</u> by the resident payor in behalf of the non-resident <u>evidencing remittance</u> of VAT due which was withheld by the payor**.
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>> ...
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>> SEC. 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* —
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>> ...

> *(b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%)* VAT, *starting February 1, 2006, with respect to the following payments:*
>
> (1) Lease or use of properties or property rights owned by non-residents; and
>
> **(2) Other services rendered in the Philippines by non-residents.**
>
> In remitting VAT withheld, the withholding agent shall use BIR Form No. 1600 Remittance Return of VAT and Other Percentage Taxes Withheld.
>
> **VAT <u>withheld</u> and <u>paid</u> for the non-resident recipient (remitted using BIR Form No. 1600)**, which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, **may be claimed as input tax by said VAT-registered withholding agent <u>upon filing his own VAT Return</u>**, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. **The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT.**
>
> ...

As can be gleaned from the afore-quoted provisions, the withholding VAT (**WVAT**) may be claimed as input tax credit **in the month such WVAT is withheld and remitted to the BIR** supported by BIR Form No. 1600. However, in the instant case, the December 2016 WVAT Return was remitted to the BIR on **10 January 2017**, which is outside the period of claim of 01 January 2016 to 31 December 2016. As it stands, the Court is left with no choice but to disallow the same.[11]

...

RESPONDENT'S MOTION FOR PARTIAL RECONSIDERATION (MPR)

Section 1, Rule 15 of the Revised Rules of Court of Tax Appeals[12] (**RRCTA**) provides that an aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration (**MR**) or new trial within fifteen (15) days from the party's receipt of the notice of the decision, resolution, or order of the Court.

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[11] Citations omitted, emphasis, italics and underscoring in the original text.

[12] A.M. No. 05-11-07-CTA.

Also in the case of *Republic of the Philippines, represented by the Land Registration Authority v. Raymundo Viaje, et al.*[13], the Supreme Court clarified that although there are deputized lawyers to represent the government in legal proceedings, the Office of the Solicitor General (**OSG**) remains to be the principal counsel (for the government agency) that is entitled to be furnished with copies of all court orders, notices, and decisions. Additionally, the Supreme Court ruled that the proper basis for computing a reglementary period and for determining whether a decision had attained finality is service on the OSG.

In the instant case, based on the Notice of Decision[14], the OSG, as principal counsel, received the assailed Decision of 12 April 2024 on **19 April 2024**. Counting 15 days therefrom, respondent had until **04 May 2024** to file his or her MR. However, pursuant to Section 1[15], Rule 22 of the Rules of Civil Procedure, if the last day to file fell on a Saturday, the time shall not run until the next working day, or in this case, on **06 May 2024**. As the records yield, respondent filed his or her MPR on **13 May 2024**. Thus, it was filed out of time.

It bears stressing that an MR must necessarily be filed within the period to appeal. When filed beyond such period, the MR *ipso facto* forecloses the right to appeal.[16] Simply stated, a party who fails to assail an adverse decision through the proper remedy within the period prescribed by law for the purpose loses the right to do so; thus, the decision becomes final and binding as to such party.[17] Consequently, in herein case, the assailed Decision of 12 April 2024 is now final and binding to respondent.

WHEREFORE, premises considered, petitioner's "Motion for Partial Reconsideration (Re: Decision dated 12 April 2024)" filed on 06 May 2024 is **DENIED** for lack of merit. On the other hand,

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13 G.R. No.180993, 27 January 2016.

14 Division Docket, Volume III, p. 1238.

15 Sec. 1. *How to compute time.* – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

16 *Barrio Fiesta Restaurant, et al. v. Helen C. Beronia*, G.R. No. 206690, 11 July 2016.

17 *Marcelino E. Lopez, et al. v. The Hon. Court of Appeals, et al.*, G.R. Nos. 163959 and 177855 (Resolution), 01 August 2018.

respondent's "Motion for Partial Reconsideration" filed on 13 May 2024 is also **DENIED** for having been filed out of time.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice