REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CBK POWER COMPANY LIMITED,
Respondent.

CTA *EB* NO. 2600
(CTA Case No. 9793)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JAN 0 8 2024 4:15pm

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RESOLUTION

CUI-DAVID, J.:

For the resolution of the Court *En Banc* is petitioner's ***Motion for Reconsideration (Re: Decision promulgated 14 June 2023)***,[1] filed on July 4, 2023, with respondent's ***Comment on Petitioner's Motion for Reconsideration filed on July 4, 2023***,[2] filed on August 18, 2023.

Petitioner seeks the reconsideration of the Court *En Banc*'s *Decision* promulgated on June 14, 2023,[3] the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **DENIED**.

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[1] *En Banc* (*EB*) Docket, pp. 118-129.
[2] *Id.*, pp. 132-137.
[3] *Id.*, pp. 83-111.

Accordingly, the assailed *Decision* dated October 21, 2021, is **MODIFIED** as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **Thirty-Seven Million Nine Hundred Ninety-Nine Thousand Four Hundred Thirty-Five Pesos and Ninety-Two Centavos (₱37,999,435.92)**, representing the unutilized input VAT attributable to its zero-rated sales/receipts for the calendar year 2016, in addition to the Tax Credit Certificate in the amount of ₱1,296,022.00 to be issued in favor of petitioner pursuant to the Letter dated March 12, 2018, signed by Ms. Teresita M. Dizon, OIC-Assistant Commissioner, Large Taxpayers Service.
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> **SO ORDERED.**

SO ORDERED.

Petitioner received the assailed *Decision* on June 20, 2023. Thus, petitioner had until July 5, 2023 to file his Motion for Reconsideration. Accordingly, on July 4, 2023, petitioner timely filed his *Motion for Reconsideration (Re: Decision promulgated 14 June 2023).*

We now proceed to petitioner's arguments.

Reiterating his *Petition for Review*, petitioner argues that Section 44 of the Implementing Rules and Regulations of Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008, categorically repeals any issuance or administrative rule contrary to the said law. Thus, according to petitioner, there is no need to revoke, reverse, or modify BIR Ruling No. DA-146-2006 since anything inconsistent with RA No. 9513 is deemed revoked, and the Court's reliance on BIR Ruling No. DA-146-2006 is misplaced. Petitioner further argues that input VAT must be directly attributable to zero-rated sales to be refundable.

We find petitioner's arguments without merit.

An examination of petitioner's *Motion* shows that the arguments raised are mere reiterations of the arguments that have been thoroughly considered, resolved, and passed upon by this Court in the assailed *Decision.*

It is well-settled that a motion for reconsideration containing a mere reiteration or rehash of grounds and arguments that have already been considered, weighed, passed upon, and resolved by the court before the *Decision* sought to be reconsidered is rendered does not need a new judicial determination.[4] Therefore, there is no necessity to discuss and rule again on these grounds since this would be a useless formality of ritual invariably involving merely a reiteration of the reasons for rejecting the arguments advanced by the movant already set forth in the judgment.[5]

In *Shangri-La International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*,[6] the Supreme Court pronounced that it is incumbent upon the movant to convince the Court that certain findings or conclusions are contrary to law, to wit:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
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> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

Further, direct and entire attributability of the input taxes to zero-rated or effectively zero-rated sales is not required in claims for tax refund and issuance of a tax credit certificate. We quote the Supreme Court in its recent disquisition in *Commissioner of Internal Revenue v. Toledo Power Co.*,[7] *viz.*:

[4] *People v. Agacer*, G.R. No. 177751, January 7, 2013 citing *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005; *Madeleine Mendoza-Ong v. Hon. Sandiganbayan, et al.*, G.R. Nos. 146368-69, October 18, 2004.
[5] *People v. Agacer*, G.R. No. 177751, January 7, 2013 citing *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005 and *Ortigas Land Co. Ltd. Partnership v. Judge Velasco*, G.R. No. 109645, March 4, 1996.
[6] G.R. No. 159938 (Resolution), January 22, 2007, 541 SCRA 138-143.
[7] G.R. Nos. 255324 & 255353, April 12, 2023.

Contrary to petitioner's allegation, the Tax Code does not require direct and entire attribution of input taxes to the zero-rated or effectively zero-rated sales before it may be made subject of a tax refund or claim for tax credit certificate. In fact, the law only mentions the phrase "directly and entirely" in reference to mixed transactions or in cases where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and VAT-taxable or VAT-exempt sales — such that input taxes which cannot be directly and entirely attributed to specific transactions shall be allocated based on the sales volume of each transaction.

The word attribute means to explain something by indicating a cause. Thus, when the law states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be incurred on a purchase or importation which causes or relates to the zero-rated or effectively zero-rated sales but not necessarily a part of the finished goods subject of such sales.

Based on this parameter, the input taxes of taxpayers engaged purely in either zero-rated or effectively zero-rated transactions are presumably attributable to the zero-rated or effectively zero-rated activity as they are not engaged in any other category for VAT purposes. All its purchases of goods and services are made in relation to or caused by its zero-rated or effectively zero-rated activities. Otherwise, how else would the taxpayer utilize its purchase but for its main activity which, incidentally in this case, is a zero-rated or effectively zero-rated transaction? The remaining requirement for it to claim refund or tax credit certificate for unutilized input tax are the documentary requirements and the period within which the same must be filed.

Meanwhile, taxpayers engaged in mixed transactions must first categorize its input taxes. Those which can be directly and entirely attributed to VAT-taxable transactions, VAT-exempt transaction, zero-rated transactions, and effectively zero-rated transactions shall first be applied to the respective output tax resulting from such transaction. Thereafter, residual input taxes, or input tax which "cannot be directly and entirely attributed to any one of the transactions, [x x x] shall be allocated to any one of the transactions [x x x] proportionately on the basis of the volume of sales." Simply stated, even if the input VAT cannot be directly and entirely allocated in any of these transactions, the taxpayer may still apply the input VAT proportionately based on the volume of the transactions. This is so because requirement of direct and entire attributability only applies in mixed transactions and only to the extent that input taxes can be attributed as a particular transaction.

> This interpretation is further bolstered when juxtaposed with the definition of creditable input taxes under Section 110 of the Tax Code and the effective revenue regulations at the time.
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> ... ...
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> Contrary to petitioner's submission, creditable input taxes go beyond taxes on purchases of goods that form part of the finished product of the taxpayer or those which are directly used in the chain of production. The Tax Code did not limit creditable input taxes to those incurred on purchases which ultimately find its way to taxpayer's finished products for sale. Input taxes incurred on other purchases may still be credited against output tax liability. Despite not forming part of the finished goods, Section 110 treats as creditable those input tax due from or paid in the course of their trade or business on the importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. Surely, even if the purchased goods do not find their way into the taxpayer's finished product, the input tax incurred therefrom can still be credited against the output tax if it is (1) incurred or paid in the course of the VAT registered taxpayer's trade or business, and (2) supported by a VAT invoice issued in accordance with the invoicing requirements of the law.

With this, petitioner fails to convince the Court to reconsider its *Decision*.

Accordingly, the Court affirms the assailed *Decision* and sees no need to reverse or modify its finding regarding respondent's entitlement to the issuance of a Tax Credit Certificate for ₱37,999,435.92, representing the excess or unutilized input VAT attributable to its zero-rated sales/receipts for the calendar year 2016.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (Re: Decision promulgated 14 June 2023)* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(I reiterate my Separate Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice