REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

SUMISETSU PHILIPPINES, INC.,
Petitioner,

\- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8374

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 6 2015
11:24 a.m.

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AMENDED DECISION

BAUTISTA, J.:

For resolution is petitioner's "Omnibus Motion (1. For Partial Reconsideration of the Decision dated 22 September 2014; and 3. To admit into Evidence and Consider for Purposes of Resolving this Motion the Attached Documents)" filed by registered mail on October 14, 2014, and received by the Court on October 22, 2014.

On September 22, 2014, the Court promulgated the assailed Decision which partially granted petitioner's claim and ordered respondent to refund or issue a tax credit certificate in the amount of ₱6,155,193.95 representing its unutilized excess input VAT for the four quarters of taxable year 2009.[1]

On October 14, 2014, respondent filed her "Motion for Partial Reconsideration (Re: Decision promulgated 22 September 2014)," while petitioner filed its "Omnibus Motion (1. For Partial Reconsideration of the Decision dated 22 September 2014; 2. To Permit the Presentation of

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[1] *Records*, p. 1109.

Evidence with Respect to the Attached Documents; and 3. To Admit Into Evidence and Consider for Purposes of Resolving this Motion the Attached Documents)."

On December 19, 2014,[2] the Court issued a Resolution denying respondent's "Motion for Partial Reconsideration (Re: Decision promulgated 22 September 2014)," granting petitioner's "Omnibus Motion 2. To Permit Presentation of Evidence with Respect to the Attached Documents," and holding in abeyance the resolution of petitioner's "Omnibus Motion (1. For Partial Reconsideration of the Decision dated 22 September 2014; and 3. To admit into Evidence and Consider for Purposes of Resolving this Motion the Attached Documents)."

In view of the foregoing, petitioner was permitted to present evidence. After finding the evidence presented to be in order, the Court in a Resolution dated July 2, 2015, admitted Exhibits "SSS," "TTT-1,""UUU-1,""VVV-1,""WWW-1,""XXX-1,""YYY-1,""ZZZ-1,""AAAA-1,""CCCC,""DDDD,""EEEE," and "EEEE-1," and denied admission of Exhibits "RRR" and ""BBBB-1."

Hence, petitioner's "Omnibus Motion (1. For Partial Reconsideration of the Decision dated 22 September 2014; and 3. To admit into Evidence and Consider for Purposes of Resolving this Motion the Attached Documents)."

Petitioner seeks for a reconsideration of the Court's Decision dated September 22, 2014 which partially granted petitioner's claim in the amount of ₱6,155,193.95 due to the following disallowances: (a) zero-rated sales in the amount of ₱35,479,705.77; and (b) input taxes directly attributable to VATable sales in the amount of ₱6,899,036.26.

After reevaluation of the evidence presented for the disallowances, the Court finds the following:

A. For the Disallowed zero-rated
sales of ₱35,479,705.77.

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[2] *Id.*, pp. 1175-1178.

In the assailed Decision,[3] the Court found that not the entire amount of ₱599,640,941.93 of the reported zero-rated sales to PEZA, CSEZ and SSEFZ can be claimed. For only the amount of ₱564,161,236.16 was duly substantiated by official receipts and Certifications from PEZA, CSEZ and SSEFZ. Hence, only the latter amount was considered for VAT zero-rating under Section 108(B)(3) of the 1997 NIRC, as amended.

Petitioner, by presenting new documents, seeks to reconsider the following disallowed zero-rated sales:

1. Sales to entities without registration certificate from PEZA, CSEZ or SSEFZ, or VAT exemption certificate in the amount of ₱20,235,840.50.

    1.1 *Embassy of Japan (₱846,170.98[4]).* Among the sales disallowed were those to the Embassy of Japan. In various rulings, the Bureau of Internal Revenue has confirmed the VAT exemption of Embassy of Japan in the Philippines on the basis of reciprocity.[5] Therefore, petitioner's sales to the Embassy of Japan are VAT zero-rated.

    1.2 *Miyano Philippines, Inc. (₱6,794,200.00[6]).* Petitioner presented a Certification[7] from PEZA stating therein that MPI is a PEZA-registered Ecozone Export Enterprise. However, in the Resolution dated July 2, 2015, the Court denied the admission of said Certification for petitioner's failure to present the original for comparison. Thus, petitioner's sales to Miyano Philippines, Inc. do not qualify for the purpose of VAT zero-rating.

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[3] *Records*, Decision, pp. 1105-1108.

[4] *Id.*, pp. 27-28, Docket, Vol. 2, pp. 1110-1111.

[5] "x x x [I]n accordance with the principle of comity of nations and in view of the certification from the Department of Foreign Affairs that the Philippine embassy and its diplomats enjoy exemption from indirect tax on the basis of reciprocity, the local purchases of good[s] and services made by the Japanese embassy and its diplomats shall also be exempt from indirect tax. However, if the supplier of the goods and services is VAT-registered, then the sale shall be effectively zero-rated." *(VAT Ruling No. 086-89, March 31, 1989)*

"x x x [A]pplying the principle of reciprocity, this Office may confirm exemption to the Embassy of Japan x x x it appearing from the list submitted by the Department of Foreign Affairs as of 25 January 2008 that the Government of Japan allows similar exemption to the Philippine Embassy x x x." *(DA-ITAD BIR Ruling No. 062-09)*

[6] *Records*, pp. 27-28, Docket, Vol. 2, pp. 1111.

[7] Exhibit "RRR", Docket, Vol. 3, p. 1200.

1.3 *Misuzu Erie Corp.* and *Japan Create Co. Ltd. (₱12,347,261.52[8]).* Anchoring its claim under Section 108(B)(2)[9] of the NIRC of 1997, as amended, petitioner submitted credit advices[10]. These documents, however, merely prove that the payments received were in acceptable foreign currency, and in accordance with the rules and regulations of the BSP. To prove that the said companies are non-resident foreign suppliers doing business outside the Philippines, petitioner should have submitted, at the very least, Securities and Exchange Commission (SEC) Certificate of Non-Registration of the Company and Certificate/Articles of Foreign Incorporation/Association/ Registration. Since, petitioner failed to present the said documents, petitioner's sales to Misuzu Erie Corp. and Japan Create Co. Ltd. could not be considered for VAT zero-rating.

1.4 *Honda Parts Mfg. Corp.* and *Manila Japanese School (₱248,208.00[11]).* Petitioner did not submit the requisite certificate. Thus, the disallowance shall stay.

2. Sales not within the CSEZ or SSEFZ certificate's effectivity period in the amount of ₱14,355,530.76.

2.1 *Nanox Philippines, Inc.* The sales in question, amounting to ₱14,346,730.76[12], pertain to that made in January to July 2009. Petitioner offered a Certification[13] from Clark Development Corporation, which was issued on August 4, 2008, and was valid until August 3, 2009.

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[8] *Records*, pp. 27-28, Docket, Vol. 2, pp. 1110-1111.

[9] SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

x x x

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

x x x

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

[10] Exhibits "SSS", "TTT-1", "UUU-1", "VVV-1", "WWW-1", "XXX-1", "YYY-1", "ZZZ-1", "AAAA-1", and "BBBB-1", Docket, Vol. 3, pp. 1201, 1203, 1209, 1215, 1218, 1222, 1225, 1228, 1232 and 1236.

[11] *Records*, pp. 27-28, Docket, Vol. 2, pp. 1110-1111.

[12] *Id.* at Docket, Vol. 2, p. 1111.

[13] Exhibit "CCCC", Docket, Vol. 3, p. 1239.

2.2 *Nidec Subic Philippines Corp.* Petitioner did not challenge the disallowed sales, amounting to ₱8,800.00[14]. Thus, said sales shall not be reconsidered.

In sum, petitioner's sales of services which qualified for VAT zero-rating under Section 108(B)(3) of the NIRC is in the aggregate amount of ₱579,354,137.90, computed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Valid zero-rated sales per Decision	₱ 210,983,098.58	₱ 206,517,713.58	₱ 53,617,997.45	₱ 93,042,426.55	₱ 564,161,236.16
Add: Previously disallowed sales reconsidered by this Court					
1.1 Embassy of Japan	213,071.51	164,233.11	62,773.20	406,093.16	846,170.98
2.1 Nanox Philippines, Inc.	11,550,000.00	2,721,730.76	75,000.00	-	14,346,730.76
Adjusted Valid Zero-Rated Sales	**₱ 222,746,170.09**	**₱ 209,403,677.45**	**₱ 53,755,770.65**	**₱ 93,448,519.71**	**₱ 579,354,137.90**

B. For Input taxes directly attributable to VATable sales in the amount of ₱6,899,036.26.

In the assailed Decision,[15] the Court found that "petitioner failed to substantiate its claimed input taxes directly attributable to VATable sales amounting to Php6,899,036.26, which was applied against its output tax of Php14,859,489.19".

Petitioner, in its Omnibus Motion, merely reiterated the documents marked as Exhibits "AAA", "BBB", "BBB-1" to "BBB-8,471", "CCC", "DDD", "DDD-1" to DDD-12", "EEE", "EEE-1" to "EEE-1,421", "HHH", "III-1" to "III-274", "JJJ-1" to "JJJ-76", "KKK", "LLL", "MMM" and "NNN" which were previously presented and submitted before the Court. These documents had already been considered and evaluated by the Court. Moreover, the newly-offered Schedule[16] of Input Taxes Directly Attributable to VATable Sales simply detailed the purchase transactions from which the input taxes were derived. The foregoing documents do not support the input taxes directly attributable to VATable sales in the amount of ₱6,899,036.26. Thus, the disallowance of the same shall remain.

[14] *Records*, pp. 27-28, Docket, Vol. 2, p. 1111.
[15] *Records*, pp. 1107-1109.
[16] Exhibit "DDDD", Docket, Vol. 3, pp. 1243 to 1255.

In fine, petitioner's duly substantiated excess input taxes for the year 2009 shall be ₱6,349,500.15, instead of Php6,155,193.95, higher by ₱194,306.20, computed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Adjusted valid zero-rated sales	₱ 222,746,170.09	₱ 209,403,677.45	₱ 53,755,770.65	₱ 93,448,519.71	₱ 579,354,137.90
Total declared zero-rated sales	231,889,378.35	214,602,279.94	56,533,842.93	96,615,440.71	599,640,941 .93
% of valid zero-rated sales to total declared sales	96.0570819%	97.5775642%	95.0860013%	96.7221378%	
Multiply by: Valid excess input VAT per Decision	3,566,869.86	298,573.83	1,229,020.19	1,512,892.36	6,607,356.24
Adjusted Input VAT Attributable to Valid Zero-Rated Sales	**₱ 3,426,231.10**	**₱ 291,341.07**	**₱ 1,168,626.15**	**₱ 1,463,301.83**	**₱ 6,349,500.15**

WHEREFORE, in view of the foregoing, petitioner's "Omnibus Motion (1. For Partial Reconsideration of the Decision dated 22 September 2014; and 3. To admit into Evidence and Consider for Purposes of Resolving this Motion the Attached Documents)" is hereby **PARTIALLY GRANTED.** Accordingly, the Decision of the Court promulgated on September 22, 2014 is hereby **AMENDED** and **MODIFIED to the extent that respondent is ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner the total** amount of ₱6,349,500.15,[17] representing its unutilized excess input VAT for the four quarters of taxable year 2009.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[17] The sum of Php6,155,193.95 and ₱194,306.20.

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice