REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

– *versus* –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8928

Members:
Bautista, *Chairperson*
Fabon-Victorino, and
Ringpis-Liban, JJ.

Promulgated:
MAR 07 2018
10:02 a.m.

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RESOLUTION

BAUTISTA, J.:

For resolution are the following:

1. Petitioner's Motion for Partial Reconsideration (Of Decision dated 19 September 2017) ("Petitioner's Motion for Partial Reconsideration") filed on October 12, 2017; with respondent's Opposition (To Petitioner's Motion for Partial Reconsideration) ("Opposition") filed on October 27, 2017; and

2. Respondent's Motion for Partial Reconsideration filed on October 13, 2017; with petitioner's Comment [On respondent's Motion for Partial Reconsideration dated 13 October 2017], filed by registered mail on December 1, 2017, and received by the Court on December 7, 2017.

On September 19, 2017, the Court promulgated a Decision[1] ("Assailed Decision"), the dispositive portion of which states:[2]

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[1] *Records, Vol. 3, CTA Case No. 8928,* pp. 1393-1416.
[2] *Id.,* pp. 1416.

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **FIVE MILLION NINE HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED FIVE AND 40/100 PESOS (Php5,987,505.40)** representing excess and unutilized input VAT for the third and fourth quarters of CY 2012.
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> **SO ORDERED.**[3]

Petitioner and respondent filed their respective Motions for Partial Reconsideration. The Court ordered the petitioner and respondent to file their respective comments on the Motions for Partial Reconsideration filed by parties.

Respondent filed his Opposition on October 27, 2017, while petitioner filed its Comment by registered mail on December 1, 2017.

On December 20, 2017, the Court submitted for resolution the petitioner's Motion for Partial Reconsideration and respondent's Motion for Partial Reconsideration.

Petitioner's Motion for Partial Reconsideration

Petitioner avers that there should have been no allocation since the Court found that the entire input VAT of Php9,679,994.29 and Php5,187,175.38 or a total of Php14,867,169.67 for the third and fourth quarters of 2012 can be directly and entirely attributed to petitioner's zero-rated sales, therefore, the entire amount should have been the amount of the tax credit certificate ("TCC") awarded to petitioner.

Petitioner maintains that assuming that the Php14,867,169.67 input VAT cannot be directly or entirely attributed to petitioner's zero-rated sales, the formula used by the Court in arriving at the amount of TCC awarded in the Assailed Decision was erroneous; that the formula should be: the amount of zero-rated sales divided by the total sales multiplied by the total amount of input taxes.

[3] Emphasis retained.

Petitioner thus claims that applying this formula, it is entitled to Php5,581,639.80 and Php4,787,818.74 amount of TCC for the third and fourth quarters, respectively, instead of Php3,095,430.27 and Php2,892,075.13 awarded by the Court.

Meanwhile, in his Opposition, respondent points out that petitioner is not entitled to the claim for refund representing unutilized input tax for the third and fourth quarters of 2012 as petitioner's input tax in the amount of Php5,987,505.40 is not directly attributable to petitioner's zero-rated sales; and that there was no sufficient proof that the claimed input tax remained unutilized despite being carried over to the succeeding period.

Respondent's Motion for Partial Reconsideration

In respondent's Motion for Partial Reconsideration, he claims that the Court erred in ruling that petitioner's input tax in the amount of Php5,987,505.40 is entirely attributable to the zero-rated sales. According to respondent, *Section 112 of the 1997 National Internal Revenue Code ("1997 NIRC")* uses the word "directly attributable" and not the word "entirely attributable", thus, it was erroneous for the Court to declare that remaining input tax after allocation is entirely attributable to petitioner's zero-rated sales. Respondent states further that it does not necessarily follow that when a taxpayer has zero-rated sales, all its remaining input tax after allocation is automatically directly attributable to its zero-rated sales. Respondent insists that there is nothing in the Assailed Decision which explains the evidence showing the direct connection of the purchases or input tax to the finished product which sale is zero-rated.

Respondent claims further that the Court erred in ruling that the claimed input VAT remained unutilized, thus, he urges the Court to take a second look and reconsider its findings. Citing *Section 108 of the 1997 NIRC,* respondent states that a taxpayer is given an option either to carry over to succeeding quarters any unutilized input tax or to file a claim for refund pursuant to *Section 112 of the 1997 NIRC.* Respondent maintains that petitioner must prove that the subject VAT claimed for refund was not utilized in the succeeding taxable quarters.

Lastly, respondent insists that tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer, thus, the taxpayer must present convincing evidence to substantiate a claim for refund.

On the other hand, petitioner counter-argues in its Comment that the input taxes claimed as refund were paid by petitioner on its importations of materials and equipment that were necessary and/or used in its mining operations; that the end product of the materials and equipment were the gold and metals produce exported to Heraeus Ltd. in Hongkong from which the zero-rated sales arose; that the importations were proven by documentary evidence. Petitioner states that there is no merit to respondent's argument that it allegedly failed to prove that the input VAT being claimed remained unutilized or have not been applied against any output tax for the current and the succeeding quarters of the following taxable year.

On December 20, 2017, the Court issued a Resolution submitting both Motions for Partial Reconsideration for resolution.

The Court resolves.

Anent petitioner's Motion for Partial Reconsideration, petitioner avers that there should have been no allocation since the Court found that the entire input VAT of Php9,679,994.29 and Php5,187,175.38 for the third and fourth quarters of 2012 can be directly and entirely attributed to the petitioner's zero-rated sales. Alternatively, petitioner claims that should there be allocation, the formula used by the Court was erroneous claiming that the formula should be: Amount of zero-rated sales/ Total Sales * Total Amount of Input Taxes = Amount Creditable/ Refundable.

The Court does not agree.

As found by the Court in the Assailed Decision, petitioner declared taxable sales subject to both zero percent (0%) and twelve percent (12%) rates, and its input VAT cannot be directly or entirely attributed to any of the transactions, thus, in order to determine the amount of TCC that should be awarded to petitioner, the Court has to allocate the valid input VAT proportionately on the basis of the volume of its sales.

With regard to computation, it should be noted that in computing for the amount of TCC, any item disallowed from zero-rated sales are automatically excluded and are no longer taken into consideration in computing the final refund amount a taxpayer is entitled to. Thus, the Court sees no reason to deviate from its previous ruling.

Anent respondent's Motion for Partial Reconsideration, the Court must deny the same.

Section 112(A)[4] *of the 1997 NIRC* provides that a taxpayer may claim a refund or the issuance of a TCC for input taxes paid on purchases of goods and services attributable to zero-rated sales upon compliance with the following requisites:

1. that the taxpayer must be VAT-registered;
2. that the claim for refund must be filed within the two (2)-year prescriptive period;
3. that there must be zero-rated or effectively zero-rated sales;
4. that input taxes were incurred or paid;
5. that such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. that the input taxes were not applied against any output VAT liability.

There is no contest that petitioner complied with the first two requisites, respondent's issue now is with regard to petitioner's compliance with the other four (4) requisites.

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[4] *Section 112(A) of the 1997 NIRC* provides as follows:

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 sale and also in taxable or exempt sale of goods of 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._xxxxx

Respondent claims that *Section 112 of the 1997 NIRC* uses the word "directly attributable and not the word entirely attributable". Respondent seems to be mistaken as *Section 112 of the 1997 NIRC* uses both "directly" and "entirely".

Moreover, as found by the Court, petitioner was able to adequately prove its compliance with the other requisites. Perusal of the records reveal that petitioner submitted the following pieces of evidence to wit:

1. Import Entry and Internal Revenue Declarations ("IEIRDs") - *Exhibits* "P-23-A" to "P-23-Y"
2. statement of settlement of duties and taxes ("SSDTs") - *Exhibits* "P-24-A" to "P-24-CF"
3. single administrative documents - ("SADs") - *Exhibits* "P-25-A" to "P-25-DW"
4. Bank certifications - *Exhibits* "P-22-A" to "P-22-L"
5. VAT Sales Invoices/Official Receipts - *Exhibits* "P-26-A" to "P-26-AQ"
6. Schedule of Importation of Capital Goods exceeding 1 Million - *Exhibits* "P-27-A" to "P-27-B"
7. Schedule of Input VAT Amortization - *Exhibit* "P-28-A"
8. Subsidiary Ledger of Mine Machineries and Equipment - *Exhibits* "P-29-A" to "P-29-N"

Thus, to the Court, petitioner was able to prove that it incurred and paid input taxes for the importation of the goods and equipment that would be used in the production of its final product which was thereafter exported to its client, Heraeus Ltd. in Hongkong.

With regard to the 6th requisite, the Court stands by its finding that the claimed input VAT remained unutilized. Records reveal that although the claimed input VAT was carried-over by petitioner in its Quarterly VAT Return for the first quarter of 2013 until the second quarter of 2014, the same remained unutilized since it was deducted in the amended second Quarterly VAT Return of 2012, as "*VAT Refund/TCC claimed*" from the total available input tax of Php51,897,873.00. Thus, the claimed input taxes for the third and fourth quarters of CY 2012 could not have been carried-over/utilized in the succeeding third quarter of 2014.

Indeed claims for tax refund or TCC is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer and the taxpayer must present convincing evidence to substantiate a claim for refund. In the case at bar, the Court stands by its finding that petitioner was able to substantiate its claim for TCC, thus, respondent's Motion for Partial Reconsideration must fail.

WHEREFORE, premises considered, Petitioner's Motion for Partial Reconsideration (Of Decision dated 19 September 2017) filed on October 12, 2017 and Respondent's Motion for Partial Reconsideration filed on October 13, 2017 are hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S —

MA. BELEN M. RINGPIS-LIBAN
Associate Justice