REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ASURION HONG KONG LIMITED – ROHQ,	**CTA CASE NO. 9518**
Petitioner,	Members:
- versus -	**CASATAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA** *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	FEB 2 4 2020 1:32 PM

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted before this Court's is respondent's **Motion for Partial Reconsideration**, filed through registered mail on October 18, 2019 and received by this Court on October 25, 2019, with petitioner's **Comment (Re: Respondent's Motion for Partial Reconsideration dated October 18, 2019)**, filed on December 17, 2019.

In his Motion, respondent seeks reconsideration of the Decision dated October 2, 2019, in finding merit in petitioner's claim for refund of its excess input value-added tax (VAT), the dispositive portion of which reads as follows:

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent should be **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱4,065,163.03** representing unutilized input VAT attributable to its zero-

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rated sales for the period of September 1, 2014 to December 31, 2014.

SO ORDERED."

Respondent prays that the above Decision be set aside and that another one be rendered denying petitioner's claim for refund or issuance of tax credit certificate based on the following grounds:

1. Petitioner's sale of services that do not qualify for zero-rating should be subjected to 12% VAT and, hence, the output VAT thereon should be deducted from the amount of alleged unutilized input VAT being claimed for refund;

2. The Honorable Court erred in granting the refund inasmuch as the input taxes are not directly attributable to its zero-rated sales; and,

3. The Honorable Court erred in not applying the rule that tax refunds being in the nature of tax exemption are construed strictissimi juris against the person or entity claiming the exemption, thus, entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.

On the other hand, petitioner primarily claims that the present Motion was based on general assertions without any scintilla of evidence supporting such statements. Nonetheless, petitioner reiterates that there were no disallowed zero-rated sales of service; hence, no amount should be subjected to 12% VAT. In fact, the court-commissioned independent certified public accountant (ICPA) found that a total amount of ₱4,065,163.03, representing excess and unutilized input VAT for the 3rd and 4th quarter of CY 2014, were properly supported by VAT invoices and official receipts, which was further verified and confirmed by this Court in the assailed Decision.

After due consideration, the present motion is bereft of merit.

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At the onset, this Court bears emphasis on Section 2[1], Rule 37 of the Rules of Court, which provides that a motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions. A motion for reconsideration that does not comply with the foregoing shall be deemed *pro forma*, which shall not toll the reglementary period for appeal.[2]

In the present case, respondent failed to point out specifically the VAT invoices and official receipts which allegedly failed to comply with the invoicing requirements under the law. It should be accentuated that the Court itself already examined and tediously scrutinized the documentary evidence presented by petitioner.

Again, thorough examination of the evidence presented resulted in the conclusion that the total amount pertaining to zero-rated sales declared by petitioner were found to be valid. There being no sales of services that do not qualify for zero-rating, there was no imposition of the 12% VAT in the Decision assailed by respondent, thus:

> "In its amended Quarterly VAT Returns for the 3rd and 4th quarters of CY 2014, petitioner declared total zero-rated sales of ₱149,271,326.81, as follows:

Exhibit	Period	Amount
P-11	3rd Quarter	₱ -
P-13	4th Quarter	149,271,326.81
	Total Zero-Rated Sales	**₱149,271,326.81**

[1] "**SEC. 2.** *Contents of motion for new trial or reconsideration and notice thereof.*— The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

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A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A pro forma motion for new trial or reconsideration shall not toll the reglementary period of appeal. (2a)

[2] Sec. 6, Rule 15 of the Revised Rules of the Court of Tax Appeals.

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To prove that it rendered services to AISI for the 4th quarter of CY 2014 in the amount of US$3,370,000 with peso equivalent of ₱149,271,326.81, which was paid in foreign currency duly accounted for in accordance with the rules and regulations of the BSP, petitioner submitted the certificate of inward remittance dated 14 September 2016 issued by the Bank of America, as well as the official receipts supporting its zero-rated sales, summarized as follows:

Per Certificate of Inward Remittance			
Date	**USD Amount**	**Reference**	**Remitter's Name**
14-12-05	$1,165,000.00	6059 339LAC21	Asurion LLC
14-10-02	1,005,000.00	6059 274LAJ09	Asurion Insurance Services Inc.
14-10-31	1,200,000.00	6059 304LAA01	Asurion Insurance Services Inc.
Total	**$3,370,000.00**		

Per Official Receipts						
Registered Name	**OR No.**	**OR Date**	**Amount ($)**	**PDEX/ BSP Rate**	**Amount**	**Exhibit No.**
Asurion Insurance Services, Inc.	0051	10/2/2014	1,005,000.00	44.06256885	₱ 44,282,881.69	P-562
Asurion Insurance Services, Inc.	0052	10/31/2014	1,200,000.00	44.06256885	52,875,082.62	P-563
Asurion Insurance Services, Inc.	0053	12/5/2014	1,165,000.00	44.7325	52,113,362.50	P-564
Total			**$3,370,000.00**		**₱149,271,326.81**	

Upon examination of the documents submitted by the petitioner, it can be gleaned that the total amount of ₱149,271,326.81 are earnings from valid zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended."[3] *(Citations omitted)*

Truly, this Court recognizes that the burden of proof to establish the right to refund is on the claimant taxpayer, and that being in the nature of a claim for exemption, refunds are construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power.[4] This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim.[5] Hence, when the taxpayer is able to meet the requirements under the NIRC of 1997, as amended, and other pertinent tax laws and

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[3] *Decision*, pp. 17-18.
[4] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[5] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

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regulations, the taxpayer is considered to have discharged the burden of proving its entitlement to a refund or tax credit.

Evidently, in the present case, this Court found that petitioner has sufficiently proven its entitlement to a refund or tax credit in the reduced amount of ₱4,065,163.03, representing unutilized input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of CY 2014. Consequently, the grant of a refund or tax credit is proper and should be affirmed.

In view of the foregoing, the Court finds that respondent failed to properly address the issue or put forth any compelling reason to justify the reversal or modification of the assailed Decision.

WHEREFORE, respondent's Motion for Partial Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

We Concur:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice