REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TAGANITO MINING CORPORATION, Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA EB NO. 2055
(CTA CASE NO. 9369)

x - x

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

- versus -

TAGANITO MINING CORPORATION, Respondent.

CTA EB NO. 2058
(CTA CASE NO. 9369)

Present:

DEL ROSARIO, *P.J.*,
CASTANEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and,
SAN PEDRO, *JJ.*

Promulgated:

MAY 2 8 2021 4:02 p.m.

x - x

RESOLUTION

DEL ROSARIO, P.J.:

Before the Court *En Banc* are the Commissioner of Internal Revenue's **Motion for Reconsideration (Re: Decision promulgated 23 July 2020)** filed on August 28, 2020 and Taganito Mining

Corporation's **Motion for Reconsideration** filed on October 23, 2020, praying for the Court *En Banc* to reconsider its Decision dated July 23, 2020. The dispositive portion of the assailed Decision states:

> "**WHEREFORE**, in light of the foregoing discussion, the Petitions for Review filed by Taganito Mining Corporation in CTA EB No. 2055 and the Commissioner of Internal Revenue in CTA EB No. 2058 are hereby **DENIED** for lack of merit. The assailed Decision dated December 6, 2018 and Resolution dated April 12, 2019 are hereby **AFFIRMED**.
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> **SO ORDERED**."[1]

Per Records Verification Report dated January 20, 2021[2] and January 25, 2021,[3] both parties failed to file their respective comments on the Motions for Reconsideration despite the Court *En Banc*'s directive in the Resolutions dated October 8, 2020 and November 26, 2020.[4]

In his Motion for Reconsideration, the Commissioner of Internal Revenue (CIR) insists that the Court *En Banc* erred in ruling that Taganito Mining Corporation (TMC) is entitled to refund in the reduced amount of ₱25,946,279.40 arguing that there was no mention in the assailed Decision of the Court in Division why TMC's capital assets, the input tax on its importations, and its purchases of capital goods are directly attributable to its zero-rated sales.

The CIR reiterates his position that the fact of "direct attributability" must be established and that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. He submits that no attributability was established between the input tax on purchases *vis-à-vis* the zero-rated sales of TMC. As this is a claim for refund, TMC must establish its claim by the required quantum of evidence and not by assumption.

The CIR also invokes the Court *En Banc*'s ruling in *Commissioner of Internal Revenue vs. Coral Bay Nickel Corporation and Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*,[5] stating that "the law would clearly want to preserve or restrict the refund incentive only to those which are directly attributable to the zero-rate sales" and the Separate Opinion of Associate Justice

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[1] CTA EB No. 2055 Docket, p. 180.
[2] CTA EB No. 2055 Docket, pp. 213.
[3] CTA EB No. 2055 Docket, pp. 214.
[4] CTA EB No. 2055 Docket, pp. 195-196 and 211-212.
[5] CTA EB Nos. 1735 and 1737, July 18, 2019.

Catherine T. Manahan in *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*.[6]

The CIR alleges that it is part of mandatory judicial notice that the Value-Added Tax (VAT) System was adopted from Europe and was introduced in the Philippines in 1998 *via* Executive Order No. 273. Allegedly, as it works in Europe, only the VAT paid for supplies in the business is creditable as an input tax of a VAT registered person. In turn, purchases must relate to the supplies (goods/services) that a person makes. As such, not all input tax accumulated by that person may be claimed. Meanwhile, purchases by the business such as for personal activities, business entertainment, corporate events, outside office meetings, cannot be claimed as an attributable and creditable input tax.

The CIR avers that similar to how the VAT system works in Europe, Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, does not state that all input taxes of a VAT-registered person whose sales are zero-rated are refundable. Further, Section 110 of the same Code defines what "creditable input taxes" are. Based on the provisions of the NIRC of 1997, as amended, the CIR reiterates that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production.

The CIR explains that after determining which input taxes are "creditable", the law requires a second evaluation to determine which "creditable" input taxes are "attributable", referring to the connection between the purchases and the finished product which must be "concrete" and not "imaginary" or "remote". The CIR asserts that there is nothing in the assailed Decision showing the direct attributability of the purchases or input tax to the finished product which sale is zero-rated.

Lastly, the CIR reminds that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. He stresses that the taxpayer must present convincing evidence to substantiate a claim for refund. He contends that TMC fell short in proving the veracity of its claim for refund. Thus, the same must be denied.

TMC, in its Motion, argues that Despatch is not service income. It claims that from its evidence, it is quite clear that its Despatch Income is derived from the very same entities to which it exports the mineral

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[6] CTA EB No. 1910, September 5, 2019.

ores and it may only arise as a consequence of an export sale of goods to the said entities. There is also no additional service or goods given to such entities which has caused such Despatch Income to arise. It is but a consequence of the time saved by the early loading of the shipment and there is sufficient basis to say that said Despatch Income is but a consequence of the sale of goods, in this case, the mineral ores.

Considering this, TMC posits that issuing an invoice for the receipt of Despatch Income, is likewise, not plausible as the items which form the basis for its payment are the same items covered by the invoice issued by TMC, to the foreign buyer of mineral ores. It maintains that the Court's treatment of the Despatch Income from the sale of service instead of an incidental income from sale of goods has resulted in an absurd situation wherein the very same foreign customers to whom the ores were sold and shipped abroad and who paid the additional price for the ores were suddenly treated as non-resident foreign corporations requiring proof of non-residency. Consequently, it is convinced that there is no basis for the Court to consider Despatch Income as Exempt Sales and use the 98.45% pro-rating of the amount of input taxes which were allowed.

Citing *The Secretary of Justice, et al. vs. Christopher Koruga,*[7] TMC submits that the general rule in construing words and phrases used in a statute is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage meaning. A literal interpretation of a statute is to be rejected if it will operate unjustly, lead to absurd results, or contract the evident meaning of the statute taken as a whole. After all, statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. Indeed, courts are not to give words meanings that would lead to absurd or unreasonable consequences.

TMC clarifies that it does not suggest that the Court *En Banc* is bound by the computation of the CIR but findings of the CIR are in the nature of administrative findings of fact which, absent any contrary evidence and considering substantial evidence, should be accorded proper respect by the courts.

Again, TMC claims that given the difference between the amount granted by the Court in Division as against the amount which was refunded by the CIR, it is incumbent upon the Court *En Banc* to render

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[7] G.R. No. 166199, April 24, 2009.

clarity on the case submitted before it by issuing a resolution that clearly states the following:

a. That the BIR records clearly show a computational error indicating that the CIR should have granted or endorsed the amount of ₱23,388,560.27 to the Bureau of Customs, corresponding to 98.54% of the allowed input tax amount of ₱23,735,092.62 broken down into ₱21,126,651.62 input taxes on imported capital goods plus ₱2,608,441.00 input taxes on imported non-capital goods;

b. That the amount of ₱7,734,480.74 forms part of the amount of ₱25,946,279.40 representing its unutilized excess input VAT for the four quarters of CY 2014 which the Court granted to TMC;

c. That the Court in Division reversed the amount of BIR disallowances from TMC's 2014 purchases in the total amount of ₱5,191,744.10 as shown in the appealed Decision of and therefore, the CIR should refund the same to TMC; and

d. That the CIR should also issue the corresponding refund for the amount of ₱65,704.36 in view of the fact that the CIR has already approved the said amount which was found by the Court in Division as unsupported input tax but merely failed to issue the corresponding tax refund due to clear computation error.

Finally, TMC repeats its request to introduce evidence to prove that there is basis for the additional administrative refund already granted by the CIR. It seeks new trial and/or reconsideration of the Court *En Banc*'s Decision under Rule 15 of the Revised Rules of the Court of Tax Appeals on grounds of honest mistake or oversight or excusable negligence and in the exercise of its sound discretion and in the paramount interests of truth, justice and equity, for the Court *En Banc* to override technical rules of procedure and cause the reopening of the case for the admission of additional evidence of TMC to further support and render clarity to the issues of the present case.

THE COURT EN BANC'S RULING

Both Motions for Reconsideration deserve scant consideration.

It is apparent that no new issues or arguments are raised in the Motions for Reconsideration. The parties merely reiterate their arguments in their respective Petitions for Review which have been considered and found without merit in the assailed Decision dated July 23, 2020. Hence, there is no compelling reason for the Court to modify, much more, to reverse its assailed Decision dated July 23, 2020.

WHEREFORE, premises considered, the CIR's Motion for Reconsideration (Re: Decision promulgated 23 July 2020) and TMC's Motion for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN R. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice