REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

TAGANITO HPAL NICKEL CORPORATION,
Respondent.

CTA *EB* NO. 2240
(CTA Case No. 9128)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:

FEB 23 2022
4:25 p.m.

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RESOLUTION

MANAHAN, J.:

For this Court's resolution is petitioner's *Motion for Reconsideration (Re: Decision promulgated 28 June 2021)* filed on July 13, 2021 praying for the reversal of the Court *En Banc's* Decision (Assailed Decision) dated June 28, 2021, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review filed by the CIR on February 27, 2020 is hereby **DENIED** for lack of merit.
>
> Accordingly, the assailed Decision dated November 8, 2019 and the assailed Resolution dated February 6, 2020, both rendered by the Second Division of this Court which ordered the CIR to issue a Tax Credit Certificate in the reduced amount of Php38,828,673.65, are hereby **AFFIRMED**.

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SO ORDERED."

Petitioner raised the following ground in support of its motion:

> "The Honorable Court erred in ruling that the law does not require that the input VAT subject of the claim be directly attributable to zero-rated sales."

Petitioner argues that the Court erred in ruling that input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfy the requirement of the law. He contends that the element of attributability is essential in the determination of a taxpayer's claim for refund of alleged excess and unutilized input VAT under the provisions of Section 112 (A) of the 1997 National Internal Revenue Code (NIRC), as amended. Based on this premise, petitioner considers the purchase of services for the construction of a new building outside the PEZA jurisdiction, not directly attributable to respondent's zero-rated sales and avers that any claim for refund on the excess input taxes pertaining to said purchase, should be denied.

Citing Section 110 (A) (1) of the 1997 NIRC, as amended, petitioner contends that for input taxes to be "creditable", the law requires that it must also be "attributable" to the finished product in a concrete manner and not merely imaginary or remote.

Petitioner concludes that respondent failed to prove that the claimed excess input taxes are attributable to its zero-rated sales and it was erroneous for the Court to grant the claim for refund, albeit partially.

In its *Comment/Opposition (To Motion for Reconsideration dated 15 July 2021)*, respondent submits the following counter-arguments, and we quote:

> "I. The Motion for Reconsideration is pro forma as the arguments raised by the CIR are a mere rehash and/or restatement of its Petition for Review.
>
> II. The Respondent has sufficiently proven that it has complied with all the requisites provided under the law to claim for refund of the unutilized input VAT."

Respondent submits that the issues raised by petitioner in his Motion for Reconsideration have already been exhaustively passed upon and resolved by the Court in Division in its Decision dated November 8, 2019 and affirmed by the Court *En Banc* in its Decision dated June 28, 2021 so there is no reason for any further discussion as it would not serve any useful purpose. Further, respondent insists that it has satisfactorily proven that it has complied with all the requisites provided under the law to claim a refund under Section 112 (A) of the 1997 NIRC, as amended, and this was confirmed by the Court in its findings embodied in the assailed Decision. Respondent alleges that petitioner failed to rebut its evidence during trial and failed to prove which of the amount granted should have been disallowed.

RULING OF THE COURT

The issue raised by petitioner has already been adequately addressed in the assailed Decision, and we quote:

> "It is well-entrenched in jurisprudence, that to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales based on the foregoing provision, the taxpayer must comply with the following requisites:[1]
>
> 1. that the taxpayer is VAT-registered;
> 2. that there must be zero-rated or effectively zero-rated sales;
> 3. that input taxes were incurred or paid;
> 4. that input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
> 5. that input taxes have not been applied against any output VAT liability; and
> 6. that the claim was filed within the prescribed periods both in the administrative and judicial levels.
>
> The foregoing requisites in claiming a refund of excess or unutilized input VAT under Section 112 of the 1997 NIRC, as amended, have been affirmed and applied in a myriad of cases through the years and remain to be the gold standard in determining a claimant's entitlement to a tax refund of this nature. Not be missed out in the enumerated requisites for a claim for refund of excess or unutilized input VAT under the

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[1] *Southern Philippines Power Corporation vs. CIR,* G.R. No 179632, October 19, 2011, *citing San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; *Intel Tecnhnology Philippines, Inc. vs. CIR,* G.R. No. 166732, April 27, 2007.

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afore-quoted Section 112 (A), is that the input taxes claimed are *attributable* to zero-rated or effectively zero-rated sales.

One of the incentives granted by law is that any unutilized or excess input VAT may be refunded to a VAT zero-rated taxpayer on the condition that these are attributable or used in the manufacture or exportation of its zero-rated sales. Section 110 (B) of the 1997 NIRC, as amended clearly provides, thus:

> Section 110. *Tax Credits.*-
>
> xxx xxx xxx
>
> (B) Excess Output or Input Tax - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. **Provided, however, That any input tax attributable to zero-rated sales by a VAT registered person may at his option be refunded or credited against any other internal revenue taxes, subject to the provisions of Section 112.** (emphasis supplied)"

It is clear from the requisites provided under Section 112 (A) in relation to Section 110 (B) of the 1997 NIRC, as amended, that a taxpayer-claimant must prove that the input taxes being claimed for refund is attributable to the zero-rated sales.

We quote for emphasis Section 112 (A) of the 1997 NIRC, as amended, to wit:

> "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

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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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx"

The Court, in its assailed Decision, based its conclusion on the afore-quoted requisites and found that a portion of the input taxes subject of the refund are both creditable and attributable to respondent's zero-rated sales of nickel and/or cobalt mixed sulfide in the reduced amount of Php38,828,673.65. On the other hand, the Court found the evidence presented by petitioner during trial, to be wanting in contravening the documentary proof offered by respondent, and we quote the assailed Decision, thus:

"On the other hand, the CIR did not present sufficient proof to rebut the evidence of Taganito during the trial conducted by the Court in Division. In his Motion for Partial Reconsideration filed with the Court in Division on November 22, 2019, the CIR failed to point out which of the amount granted should have been disallowed to support his allegation that the same are not attributable to Taganito's zero-rated sales or activities. He instead focused on the legal argument that direct attribution is required in tax refunds based on Section 112 (A) of the 1997 NIRC, as amended, and that the Court in Division did not show the direct attributability of the purchases or input tax to the finished product exported by Taganito. The evidence offered by respondent during trial, consisted of the following exhibits[2]:

"R-1"	Memorandum of Assignment dated March 31, 2015.
"R-2"	Checklist of Mandatory Requirement for Claims for VAT Credit Refund.
"R-3"	Letter dated July 16, 2015.
"R-4"	Certified True Copy of the entire BIR Records.

[2] Division Court Docket, Volume II, pp. 1264-1266.

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"R-5"	Judicial Affidavit of Revenue Officer Dalisay Umlas and her signature

In fine, no new arguments have been raised by petitioner, thus the Court affirms the ruling in the assailed Decision.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* filed on July 13, 2021 is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice