REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

PILIPINAS KYOHRITSU INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9646

Members:

RINGPIS-LIBAN, *Chairperson and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUL 1 1 2024
4:20 p.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

Submitted before this Court are the following:

1. Petitioner's *Motion for Partial Reconsideration (Re: Decision dated July 07, 2023)*, filed on August 1, 2023, with respondent's *Comment and Opposition (Re: Motion for Partial Reconsideration dated 01 August 2023)*, filed on September 19, 2023;

2. Respondent's *Motion for Partial Reconsideration (Re: Decision promulgated on 07 July 2023)*, filed on August 23, 2023; and

3. Petitioner's *Comment/Opposition on Respondent's Motion for Partial Reconsideration*, filed on November 29, 2023.

On July 7, 2023, the Court promulgated a Decision, partially granting petitioner's claim for refund of unutilized input value-added tax (VAT) attributable to its zero-rated sales for failing to sufficiently prove compliance with the invoicing and substantiation requirements, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** to petitioner the reduced amount of

> **₱3,230,574.57** representing petitioner's unutilized excess input taxes attributable to its zero-rated sales for the period January to March 2015 or the 4th quarter of petitioner's FY2015.
>
> **SO ORDERED.**

Undaunted, both parties filed their respective Motions for Partial Reconsideration.

Petitioner's Comment/Opposition

Before discussing the parties' respective Motions, the Court first notes that petitioner's Comment/Opposition cannot be admitted. Under *Rule 15, Section 2 of the Revised Rules of the Court of Tax Appeals*, a party must file its opposition to a Motion for Reconsideration within 10 days from receipt of either said Motion or of the Court's order directing them to file its opposition. Petitioner, by its own admission, received such order on September 7, 2023, giving it until September 22, 2023 within which to file its comment. As it only filed the present Comment/Opposition on November 29, 2023, or 83 days after its receipt of the Court's order, the same was filed late.

We thus cannot admit petitioner's Comment/Opposition, given its late filing.

Petitioner's Motion for Partial Reconsideration

In its Motion, petitioner primarily assails the above Decision in finding that petitioner failed to comply with the second, third, and fourth elements of *Section 108 (B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended*, in proving that its sale or supply of services are subject to zero-rating.

With regard to the second element (*i.e.,* the services must be performed in the Philippines by a VAT registered person), petitioner maintains that the subject services were performed in the Philippines. Petitioner claims that it was able to prove through its Articles of Incorporation and Certificates of Registration issued by the Bureau of Internal Revenue (BIR) and Board of Investment (BOI) that it is a resident corporation and that the primary area of its operations is in the Philippines. It even quoted the testimony of its witness, Ms. Edna Luisa Lopez, in proving that all of its registered activities were performed and all done in Lipa, Batangas.

As for the third element (*i.e.,* the recipient of the services is a foreign corporation and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the

Philippines when the services were performed), petitioner insists that is has sufficiently established that its service-recipient, Sumitomo Wiring Systems, Ltd. (SWS-Japan), is a non-resident foreign corporation doing business outside the Philippines. Petitioner asserts that its Service Agreement with SWS-Japan, marked as ICPA Exhibit "P-35.7", indicates not only the place of business and area operations of SWS-Japan, but also the need for petitioner to get technical assistance from SWS-Japan, particularly, the sending of an engineer from SWS-Japan to advise and instruct petitioner's personnel with regard to "the engineering of wiring harness and its related products." Petitioner continues that both respondent and the Court must give respect to the Certification issued by another government agency like the Securities and Exchange Commission (SEC) in proving that SWS-Japan is a non-resident foreign corporation.

Anent the fourth element (*i.e.,* the payment for such services should be in acceptable foreign currency accounted for in accordance with Bangko Sentral ng Pilipinas rules), petitioner points out that the presentation of its Certificate of Inward Remittance and the corresponding debit notes and invoices sufficiently prove that the payments for the services rendered were made in acceptable foreign currency duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules. Petitioner continues that the said debit notes indicate not only the fact that the "Engineering Design" was rendered for SWS-Japan and its customers, but also the bank where the foreign currency will be remitted. Petitioner further insists that its offsetting arrangement should not affect petitioner's compliance with the fourth element, as its compliance thereon should have been based on the invoice amount, and not adjusted to any adjustments made by petitioner. Petitioner also claims that since the present Petition for Review covers the period from January to March of fiscal year (FY) 2015, the prohibition on off-setting arrangement under *Revenue Memorandum Circular (RMC) No. 61-2016* does not apply to the present case. As such, petitioner insists that the portion of the export sale of goods in the amount of US $18,063,088.97 should not have been disallowed by the Court based on the foregoing reasons.

On the other hand, in his Comment, respondent emphasizes that the issue of whether the services rendered by petitioner was indeed performed in the Philippines is a question of fact which must be proven by specific evidence. He continues that although petitioner is a VAT-registered taxpayer is of no moment since it is still necessary on its part to sufficiently prove that the services it rendered qualify as zero-rated VAT under Section 108(B)(2) of the NIRC, as amended. Lastly, respondent claims that tax refunds are strictly construed against the taxpayer and in favor of the government and, as such, petitioner has the burden of proving its entitlement to the refund amount.

After careful evaluation, this Court finds no merit in petitioner's Motion for Partial Reconsideration.

Again, petitioner insists that the testimony of Ms. Edna Luisa Lopez and the presentation of its Articles of Incorporation and BIR and BOI Certificates of Registration would prove that all of its registered activities were performed and all done in Lipa, Batangas, in compliance with the second element in proving that its sale or supply of services are subject to VAT zero-rating.

The Court is not convinced.

First, petitioner's quoted testimony of Ms. Lopez was centered only on the manufacture or production of petitioner's products in its plant located at Lipa, Batangas. Nowhere did it discuss the place where the services rendered by petitioner to SWS-Japan were performed, to wit:

> Q18: Where and how do you produce Petitioner's products?
>
> A: The manufacture and production of the wiring harness and petitioner's registered activities are all done at its plant in Lipa, Batangas. For us to produce and manufacture Petitioner's products, PKI purchases and sources its raw materials, supplies, goods and capital equipment from local and international suppliers. These, in turn, are used in its manufacturing registered activities, which are then supplied, exported and delivered to our customers abroad.[1]

Second, even the Engineering Service Agreement[2] does not categorically state that the services rendered by petitioner to SWS-Japan will be exclusively performed in the Philippines. Also, it bears repeating that while the Indemnification Clause in the said agreement states that petitioner will comply with Philippine laws "while performing services anywhere in the Philippines," the said statement does not still detract from the possibility that petitioner may render services outside the Philippines.

Lastly, the presentation of petitioner's Articles of Incorporation and the BIR and BOI Certificates of Registration cannot give rise to the presumption that the services rendered by petitioner were indeed performed in the Philippines as said documents merely established petitioner's incorporation under the laws of Philippines and its registration with the said government agencies.

Accordingly, this Court sustains its above-stated finding that petitioner failed to prove its compliance with the second element (*i.e.,* the services must be performed in the Philippines by a VAT registered person) of *Section 108 (B)(2) of the NIRC, as amended.*

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[1] Q&A No. 18, Exhibit "P-24", Docket – Vol. 1, p. 182.
[2] ICPA Exhibit "P-35.7".

With regard to petitioner's argument that Article 8(a) of its Engineering Service Agreement, which states that petitioner will shoulder the travel expense of SWS-Japan's engineer who will provide technical assistance to petitioner in Philippines, coupled with the SEC Certificate of Non-Registration, should be sufficient in proving that SWS-Japan is a non-resident corporation, the Court is not swayed.

No less than the Supreme Court in the case of *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte., Ltd.,*[3] has ruled that ***both*** the SEC Certification of Non-Registration and proof of foreign corporation are necessary to establish the non-resident foreign corporation status (NRFC) of a foreign corporation, thus:

> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court a quo's findings. To the Court's mind, the SEC ***Certifications of Non-Registration*** *show that their affiliate are foreign corporations.* On the other hand, the ***articles of association/certificates of incorporation*** *stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are* prima facie *evidence that their clients are not engaged in trade or business in the Philippines.*
>
> Proof of the abovementioned second component sets this case apart from *Accenture, Inc. v. Commissioner of Internal Revenue and Sitel Philippines Corp. v. Commissioner of Internal Revenue.* In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (i.e., that the affiliate is foreign). The absence of any other competent evidence (*e.g.,* articles of association/certificates of incorporation) proving the second component (*i.e.,* that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.
> (Italics and emphasis supplied)

From the above, the SEC Certification of Non-Registration of SWS-Japan and petitioner's service agreement with the latter, without any proof of foreign incorporation of SWS-Japan, are insufficient to establish the NRFC status of SWS-Japan. Consequently, the Court sustains its position that petitioner failed to comply with the third element (*i.e.,* the recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines or is a non-resident person not engaged in business who is outside the Philippines when the services were performed) of *Section 108 (B)(2) of the NIRC, as amended.*

[3] G.R. No. 234445, July 15, 2020.

As to petitioner's final argument that the Certificate of Inward Remittance[4] shows that there were remittances made in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, which are equivalent to the amounts per Debit Notes issued by petitioner to Sumitomo Wiring Systems, Ltd.[5] for its Engineering Design in favor of the latter, in compliance with the fourth element, the Court does not agree.

Said foreign currency remittances referred to under *Section 108(B)(2)* must be duly supported by VAT zero-rated official receipts in accordance with *Section 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended*, which provide that a VAT taxpayer shall, for every lease of goods or properties, and for every sale, barter, or exchange of services, issue a VAT official receipt which must contain the information stated in the said provisions.

However, Mr. Lorenz Samuel Gomez, the Independent Certified Public Accountant (ICPA), noted in his Report that petitioner failed to provide the official receipts required under *Section 113(A) of the NIRC of 1997, as amended*. Hence, he did not include such export sale of services in his computation of petitioner's VAT zero-rated sales,[6] to which this Court agrees. As such, the Court ruled that petitioner failed to support its alleged zero-rated sale of services amounting to ₱9,813,313.64 with proper official receipts.

As to the actual export sale of goods under *Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended*, the Court disallowed a portion of petitioner's zero-rated sales of goods not only because there was a partial non-compliance with the invoicing requirements provided by law and regulations, but also due to petitioner's failure to show the actual remittance to its foreign currency account of the alleged zero-rated sales of goods.

Petitioner further insists that its offsetting arrangement should not affect its compliance with the fourth element in proving that its sale or supply of services are subject to VAT zero-rating and insists that its compliance with the fourth element should have been based on the invoice amount and not to adjustments made by petitioner

The Court cannot accept the same.

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4 Exhibit "P-38".
5 ICPA Exhibits "P-35.1" to "P-35.6".
6 Exhibit "P-30", Docket – Vol. 2, p. 527.

To recall, in proving its compliance with the third element, petitioner submitted a Certificate of Inward remittance issued by the Bank of Tokyo-Mitsubishi UFJ, Ltd – Manila Branch;[7] Summary of Dollar Remittances,[8] where invoices are listed and grouped in accordance with the date of the alleged corresponding inward remittance, net of offsetting; and the Net-off Payment documents between petitioner and its client, SWS[9]. These documents, however, are insufficient in establishing its offsetting arrangement, if they are not accompanied by other documents required under *RMC No. 42-2003*,[10] *viz*:

> Q-8: With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the *processing of claims for TCC/refund, specifically on offsetting arrangements?*
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> A-8 In the case of offsetting arrangements, the following documents should be required:
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> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
>
> b. *Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales*;
>
> c. *Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company*;
>
> d. *Documents or correspondence regarding offsetting arrangements*;
>
> e. *Confirmation of the offsetting arrangements by the heads of the business organizations involved*;
>
> f. Documents to prove actual export of goods; [and]
>
> g. Documents to prove that the sales are zero-rated sales (Italics and emphases supplied)

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7 Exhibit "P-38".
8 Exhibit "P-39".
9 Exhibit "P-40".
10 "SUBJECT: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters", dated July 23, 2003.

Thus, even if *RMC No. 61-2016* is not applicable to the present case, petitioner still failed to sufficiently establish its offsetting arrangement with its customers in accordance with *RMC No. 42-2003*, as it failed to submit the above-highlighted documents that could have supported such arrangement.

Moreover, an examination of the Reconciliation of Export Sales and Dollar Remittances with attached Summary of Dollar Remittance[11] reveals that the monthly dollar remittances for export sales of goods per Certificate of Inward Remittance were either lower or higher than the unadjusted sales due to certain adjustments.

Based on the Court's independent verification, the adjustments can be categorized as follows: (1) sales adjustments based on the date of delivery of exported goods per bill of lading (BL)/airway bill (AWB); (2) offsetting of receivables and payables between petitioner and its non-resident foreign affiliates; and, (3) deductions for importations from petitioner's non-resident foreign affiliates. Below is the breakdown of the said adjustments:

Particular	**January**		**February**		**March**	
	SWS	**SEWS**	**SWS**	**SEWS**	**SWS**	**SEWS**
Sales per Invoice	₱ 9.368.842.49	₱ 6.849.718.95	₱ 8.146,690.82	₱ 5.556.609.52	₱ 6.050.978.97	₱ 7.203.053.37
Adjustment based on BL/AWB Date	(3.537.336.91)	(2.493.004.03)	1,585.986.22	1.415.917.88	1.123.954.24	1.065.941.15
Other receivables credited	8.375.08	0.00	18.312.07	34,734.86	13.161.44	10.093.44
Importation	(6.751.472.48)	0.00	(4,261.988.18)	0.00	(4.152,938.92)	0.00
Other charges debited	(204.062.33)	0.00	(199.909.06)	(173,078.00)	(327,770.26)	(269.471.00)
Net proceeds	**₱1,115,604.15**	**₱4,356,714.92**	**₱5,289,091.87**	**₱6,834,184.26**	**₱2,707,385.47**	**₱8,009,616.96**
Date of remittance	PKI paid SWS	16-Mar-2015	25-Mar-2015	15-Apr-2015	24-Apr-2015	15-May-2015

However, the Court was not able to ascertain the veracity of the foregoing adjustments as petitioner failed to provide any supporting document for each of the additions for "adjustment based on BL/WB date", "other receivables credited" and the deductions for "adjustment based on BL/WB date", "importation" and "other charges debited". Needless to say, the offsetting of receivables and payables were unsubstantiated.

Hence, the Court is correct in its approach in determining the reasonable amount of valid zero-rated sales for exported goods in this case, *i.e.*, by comparing the amounts of sales per invoices vis-à-vis the amounts actually remitted in foreign currency, on a per remittance basis. To reiterate, if the actual payment is lower than the total invoice amount, then only the amount remitted should be considered zero-rated sales. On the other hand, if the actual remittance is higher, then the zero-rated sales should be merely based on the invoice amount. Simply put, the invoice amount or the net proceeds, whichever is lower, shall be considered valid for VAT zero-rating.

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[11] Exhibit "P-39".

To stress, the burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit since actions for tax refund or credit, as in the present case, are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[12] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[13] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[14]

That having been settled, the Court shall now proceed to discuss the merit of respondent's Motion for Reconsideration.

Petitioner's Motion for Partial Reconsideration

In his Motion, respondent primarily argues that tax refunds are subject to routinary investigation – that it is not enough for petitioner to prove its zero-rated sales, but must likewise substantiate its claim that the alleged unutilized input VAT were attributable to such zero-rated sales. Respondent further argues that tax refunds are strictly construed against the taxpayer and in favor of the government and, thus, petitioner has the burden of proving that the right on such tax refund indubitably exists and well-founded doubt is fatal to its claim.

After due consideration, respondent's Motion for Reconsideration is likewise bereft of merit.

Notably, the arguments raised in respondent's Motion for Partial Reconsideration are mere reiterations of the arguments raised in his Answer,[15] which have already been discussed extensively in the assailed Decision.

In the case of *Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*,[16] the Supreme denied a party's Motion for Reconsideration for being mere reiteration of their previous arguments and for failing to raise matters substantially plausible or

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[12] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*, G.R. No. 127105, June 25, 1999.

[13] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

[14] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015, citing *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

[15] Docket – Vol. 1, pp. 163 to 171.

[16] G.R. No. 159938, January 22, 2007, citing *Guerra Enterprises Company, Inc. v. Court of First Instance of Lanao del Sur, et al.*, G.R. No. L-28310, April 17, 1970.

compellingly persuasive to warrant the reversal of the Decision being assailed, *viz.*:

> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought.

In fine, this Court is constrained to deny the present Motion as it is a mere reiteration or rehash or arguments that have already been previously pleaded, submitted and resolved by this Court, and the arguments therein are too unsubstantial to warrant reconsideration of the assailed Decision.[17]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by the parties in their respective Motions for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on July 7, 2023.

WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration (Re: Decision dated July 07, 2023), and respondent's Motion for Partial Reconsideration (Re: Decision promulgated on 07 July 2023), are both **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[17] *Eduardo M. Cojuangco, Jr. v. Republic of the Philippines*, G.R. No. 180705, July 9, 2013.