REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TAGANITO HPAL NICKEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9128

Members:

CASTAÑEDA, JR., *Chairperson*,
MINDARO-GRULLA and
BACORRO-VILLENA, *JJ.*

Promulgated:
FEB 06 2020 2:30 pm

x - x

RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 8 November 2019)**, filed on November 22, 2019, with petitioner's **Comment/Opposition (Re: Respondent's Motion for Partial Reconsideration dated 22 November 2019)**, filed on December 23, 2019.

In his Motion, respondent moves for the partial reconsideration of the Decision promulgated on November 8, 2019 in granting petitioner's claim for refund of its unutilized input value-added tax (VAT) attributable to is direct export sales, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the present Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **Thirty Eight Million Eight Hundred Twenty Eight**

Thousand Six Hundred Seventy Three and 65/100 Pesos (₱38,828,673.65), representing petitioner's unutilized excess input VAT for the four quarters of taxable year 2013.

SO ORDERED.

At the outset, respondent reiterates that petitioner is not entitled to its claim for refund representing its unutilized excess input VAT for the four quarters of taxable year 2013. He emphasizes that the law requires that only creditable input taxes that are "directly attributable" may be refunded. As such, respondent asserts that petitioner must establish its claim by the required quantum of evidence and not merely by assumption.

Respondent primarily argues that no attributability was established between the input tax on purchases vis-à-vis zero rated sales. He claims that the purchase of services for the construction of a new building was done outside the jurisdiction of the Philippine Export Zone Authority (PEZA), as evidenced by the official receipts that petitioner submitted. Thus, respondent maintains that the same cannot be considered directly attributable to petitioner's zero-rated sales under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

More so, respondent also posits 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. He explains that the connection between purchases and finished product must be "concrete" and not "imaginary" or "remote". In the present case, nothing in the Decision shows the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

To bolster its claim, respondent cites the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue (G.R. No. 159471, January 26, 2011),* wherein he avers that the Supreme Court itself affirmed the requirement of "direct attributability".

On the other hand, in its comment, petitioner claims that the present Motion is devoid of merit for the following reasons:

I. Respondent has misapplied the provisions of Section 112(A) and Section 110(A) of the 1997 Tax Code as amended.

II. Petitioner has satisfactorily proven during trial that its purchases were attributable to its VAT zero-rated sales.

III. Petitioner has satisfactorily proven that it has complied with all the requisites provided under the law to claim for tax credit certificate of input VAT.

IV. The ruling of the Supreme Court in the *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue (G.R. No. 159471, January 26, 2011),* is not applicable in the instant case.

Petitioner argues that in explaining the term "creditable input tax" respondent merely used the portion in Section 110(A) which pertains to purchase or importation of goods. Respondent failed to consider the part pertaining to purchase of services on which petitioner's input VAT were sourced from. Clearly therefore, that under Section 110(A) one of the transactions from which creditable input tax shall arise is the purchase of services, including lease or use of property, on which, VAT has been actually paid – same as the one in the present case.

Furthermore, as to respondent's contention on "attributability", petitioner explains that under Section 112(A), "attribution" is required where a taxpayer is engaged in: (a) zero-rated sales, (b) taxable sales, or (c) exempt sales. As such, creditable input taxes are required to be attributed to different classification of sales under the VAT rules. Accordingly, in the absence of VAT taxable sales and/or exempt sales will render the creditable input tax entirely attributable to VAT zero-rated sales.

Petitioner also claims that it has satisfactorily proven during trial that its purchases were attributable to its VAT zero-rated sales. It maintains that its purchases are directly related to the export sales made to foreign client. Petitioner, among others, paid for the construction of grizzly, fence, and evacuation road in Claver, Surigao, del Norte; paid fit-out worked in its office in Taguig; paid for rent on office building; paid for salvaging and refloating vessel; and, further paid for purchase of vehicle necessary for the operations of its business. Evidently, the foregoing expenses for which input VAT was incurred were directly related to its business.

Lastly, petitioner contends that the *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue (G.R. No. 159471, January 26, 2011)* is not applicable in the present case considering that the factual milieu of that case is different from the present case. Petitioner clarifies that unlike in *Atlas Case* where the claimant failed to present adequate proof of its export sales, petitioner was able to present sufficient evidence of its total amount of export sales for the taxable year (TY) 2013 as explained in this Court's Decision.

After due consideration, this Court finds no merit in respondent's Motion for Partial Reconsideration.

Contrary to respondent's belief that nothing in the assailed Decision shows the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated, this Court emphasizes that the law does not limit input taxes to purchases that only form part of the finished product of a taxpayer.

A cursory reading of Section 110(A)(3) of the NIRC of 1997, as amended, shows that the term "input tax" means the value-added tax due from or paid by a VAT-registered person *in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property,* from a VAT-registered person, as herein petitioner.

In relation thereto, Section 112(A) of the NIRC of 1997, as amended, further allows the tax credit/refund of creditable input VAT attributable to zero-rated or effectively zero-rated sales, thus:

> **SECTION 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 or 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.** x x x. *(Emphasis supplied)*

Apparently, the above provision provides that the law merely requires that the creditable input VAT should be "attributable" to the zero-rated or effectively zero-rated sales. Simply stated, the above-quoted provision does not specifically require that the refundable creditable input tax should be "directly attributable" to such sales. That where the amount of the allowable input tax paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately to each category of transaction.

In the present case, the input VAT paid by petitioner in the course of its trade or business are considered to be entirely attributable to its export sales considering the absence of taxable or exempt sales for TY 2013.

With regard to the cited *Atlas case*, the same may no longer be applied since the same was decided under an earlier Revenue Regulations (RR) No. 5-87 dated September 1, 1987. This Court finds the CTA En Banc case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*[1], as instructive on the matter on hand to wit:

> "We cannot rely on the rulings in the Atlas cases being invoked by the CIR. This must be so because, as clearly shown in the said cases, the latter were decided under the earlier Revenue Regulations (RR) No. 5-87 dated September 1, 1987, as amended by RR No. 3-88 *jc*

[1] CTA EB Case Nos. 1777 & 1779 dated August 1, 2019.

dated February 15, 1988, Section 16 of which provides, in part, as follows:

> 'In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund.' (Emphasis and underscoring supplied)

Understandably, on the basis thereof, the Supreme Court required and ruled in the Atlas cases that the input VAT being claimed for refund should be 'directly and entirely attributable' to the zero-rated sales. However, RR Nos. 5-87 and 3-88, and the jurisprudential pronouncements interpreting and/or applying the same, could no longer be applied as the same are deemed revoked.

x x x

A cursory examination, however, of RR No. 14-2005 and subsequent RR pertaining to VAT would reveal that the provisions of RR Nos. 5-87 and 3-88, as to the requirement that the input VAT being claimed for refund should be 'directly and entirely attributable' to the zero-rated sales, has not been retained. Thus, the aforequoted portion of Section 16 of RR No. 5-87, as amended by RR No. 3-88, is no longer binding, upon the effectivity of RR No. 14-2005, *i.e.*, on July 1, 2005.

Considering that the taxable year under consideration is 2008, the provisions of RR Nos. 5-87 and 3-88, as applied to the Atlas cases, may no longer be validly applied to the instant case."

Accordingly, this Court reiterates its ruling that since petitioner's reported sales for TY 2013 in the total amount of ₱1,195,966,104.17 were all direct export sales, the substantiated input VAT of ₱38,828,673.65 is entirely attributable thereto. As to petitioner's compliance with the other requisites for claim of refund, the same were thoroughly discussed in the Decision assailed. *gc*

Hence, in view of the foregoing, this Court finds that respondent failed to raise any new or substantial matter, or compelling reason to justify the reversal or modification of the assailed Decision.

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

SO ORDERED.

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

We Concur:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice