REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

CBK POWER COMPANY LIMITED,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 7887

Members:
BAUTISTA, Chairperson;
FABON-VICTORINO,
RINGPIS-LIBAN, *JJ.*

Promulgated:
FEB 02 2018
3:44 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

This resolves Respondent's "Motion for Partial Reconsideration (Re: Amended Decision Promulgated on 10 October 2017)"[1] filed on November 3, 2017, assailing the Court's Amended Decision[2] in the above-captioned case promulgated on October 10, 2017 ("Assailed Amended Decision"), with Petitioner's "Comment on / Opposition to Respondent's Motion for Partial Reconsideration (Re: Amended Decision promulgated on 10 October 2017)" filed on December 01, 2017.

The dispositive portion of the Assailed Amended Decision reads as follows:

> "Consequently, Petitioner's 'Motion for Reconsideration' is **GRANTED**.
>
> Accordingly, the dispositive portion of our Decision dated June 06, 2017 is **AMENDED** to read, as follows:

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[1] Docket, pp. 1411-1421.
[2] Docket, pp. 1392-1410.

> **WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, Respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner **in the amount of Php41,131,185.33**, representing its unutilized input value-added taxes on its local purchases and/or importation of goods and services, capital goods and payments for services rendered by non-residents, attributable to its zero-rated sales for the period January 1, 2007 to December 31, 2007.
>
> **SO ORDERED.**"

Respondent moves for the partial reconsideration of the Assailed Amended Decision based on the following grounds:

I. THE HONORABLE COURT ERRED IN RULING THAT THE PROVISIONS OF THE RENEWABLE ENERGY ACT (RA 9513) IS NOT APPLICABLE TO THE INSTANT CASE.

II. THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S ALLEGED INPUT TAX ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE PERIOD JANUARY 1, 2007 TO DECEMBER 31, 2007 WERE NOT CARRIED OVER TO THE SUCCEEDING PERIODS.

III. THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S INPUT TAX IN THE AMOUNT OF Php41,131,185.33 IS DIRECTLY ATTRIBUTABLE TO ITS ZERO-RATED SALES.[3]

Review of Respondent's arguments shows that the same were sufficiently addressed and passed upon in the Assailed Amended Decision. At any rate, the Court shall reiterate the pertinent portions of the original Decision dated June 06, 2017 and Assailed Amended Decision.

First, Respondent insists that Petitioner is not entitled to refund pursuant to Section 15(g) of Republic Act ("RA") No. 9513 or the Renewable Energy Act of 2008, which reads as follows:

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[3] Docket, p. 1412.

"Section 15. Incentives for Renewable Energy Projects and Activities. – RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

xxx xxx xxx

(g) Zero Percent Value-Added Tax Rate. - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors."[4]

As held in the Assailed Amended Decision, RA No. 9513 does not apply in the instant case since **the subject claim pertains to taxable year 2007**. Note that **RA 9513 was approved only on December 16, 2008** and took effect fifteen (15) days after its publication. As a rule, laws are to be construed as having only prospective application, as also applied in the case *Commissioner of Internal Revenue vs. McGeorge Food Industries, Inc.*[5] Accordingly, RA No. 9513 cannot be made applicable for claims prior to its effectivity.

Second, Respondent urges the Court to reverse the finding that the input tax claim was not carried over to the succeeding quarters.

Respondent, quoting Section 110(B) of the NIRC of 1997, contends that Petitioner failed to overcome the burden that the subject claim remained unutilized or have not been applied against any output tax for the current and

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[4] *Emphasis supplied.*
[5] Article 4 of the Civil Code of the Philippines; G.R. No. 174157, October 20, 2010.

the succeeding quarters of the following taxable year 2008. Respondent claims that Petitioner failed to present the VAT Returns for taxable year 2008. Thus, the Court cannot rule that the same remained unutilized based solely on the VAT Returns for taxable year 2007.

As held by the Court, the total claim of Php58,802,851.18 was deducted from the total available input tax reflected in Petitioner's amended VAT Return for the fourth quarter of taxable year 2007. Consequently, the subject claim no longer formed part of the excess input VAT of Php3,056,892.88 as of the end of fourth quarter of taxable year 2007, which was carried over to the succeeding quarter.

It bears stressing that Section 110(C) of the NIRC of 1997, as amended, merely requires that the amount of input VAT being claimed for refund should be deducted from the accumulated input VAT as of the month or quarter when such claim was opted to be filed. The reason for the deduction is to assure that the claimed input VAT shall not be applied against any future output VAT liability.

Lastly, Respondent points out that Section 112 of the NIRC of 1997 uses the phrase "directly attributable". However, Respondent points out that the Court merely determined the input taxes incurred by Petitioner "in connection" to the alleged zero-rated sales.

Moreover, Respondent stresses that the NIRC of 1997 does not use the phrase "entirely attributable". Yet, the Court ruled that since Petitioner's reported sales were all zero-rated, the claimed input VAT is entirely attributable thereto.

Respondent explains that the phrase "directly attributable" means "arising from a particular source or cause". Thus, the Court erred in ruling that Petitioner has proven the element of a claim for unutilized input tax. Respondent argues that to the mind of the Court, the unutilized input taxes are directly attributable to zero-rated sales because the same are entirely attributable to zero-rated sales. There was no ruling that the unutilized input taxes were directly attributable to zero-rated sales. Respondent contends that it does not necessarily follow that when a taxpayer has zero-rated sales only, all its input taxes are automatically directly attributable to zero-rated sales.

The Court disagrees.

A perusal of Section 112 discloses that the Code does not require the input taxes subject of the claim be directly attributable to zero-rated sales. As a matter of fact, the Code allows allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales, 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: x x x *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."[6]

Further, the Court reiterates its previous ruling that since Petitioner's reported sales were all zero-rated, the input VAT claim is entirely attributable thereto. If such is not the case, then how will the input VAT be treated? Apparently, there is no other approach but to, in this case, attribute the subject input VAT to zero-rated sales.

Definitely, such input VAT was incurred in the course of Petitioner's trade or business. During the taxable year 2007, its operation results to zero-rated sales only. Necessarily, the input VAT was incurred in relation to such sales. Therefore, the input VAT claim is entirely attributable to zero-rated sales.

WHEREFORE, premises considered, Respondent's "Motion for Partial Reconsideration (Re: Amended Decision Promulgated on 10 October 2017)" filed on November 3, 2017 is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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6 *Emphasis supplied.*