REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9496

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 12 February 2019)**, filed on February 28, 2019, with petitioner's **Comment (To Respondent's Motion for Partial Reconsideration dated February 28, 2019)**, filed on March 18, 2019.

Respondent seeks partial reconsideration of the Decision dated February 12, 2019 (assailed Decision), which partially grants petitioner's claim for refund in the reduced amount of ₱15,857,575.46, representing its unutilized excess input value-added tax (VAT) attributable to its zero-rated sales for the second quarter of calendar year (CY) 2014. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**.

> Accordingly, respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱15,857,575.46**, representing the latter's unutilized excess input VAT attributable to its zero-rated sales for the second quarter of CY 2014.
>
> **SO ORDERED.**"

In the instant motion, respondent asserts that the Court erred in ruling that petitioner's input tax in the amount of ₱15,857,575.46 is attributable to the valid zero-rated sales. Moreover, respondent assails the Court's ruling that the claimed input VAT subject of the instant case remained unutilized.

Petitioner, on the other hand, maintains that it has sufficiently proved by preponderant evidence that input VAT claimed for refund is attributable to its zero-rated sales and that it remained unutilized.

The Court finds respondent's motion bereft of merit.

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "**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 regulations of the Bangko Sentral ng Pilipinas (BSP): ***Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated**

> **sales 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**: *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 nonzero-rated sales." (Emphasis supplied)

The foregoing provision discloses that the law does not require that 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 or entirely attributed to any of the sales.[1] Section 112(A) of the NIRC of 1997, as amended, only mandates that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales. It does not require that the input tax be directly attributable to petitioner's zero-rated sales. Input tax that bears a direct or indirect connection with petitioner's zero-rated sales satisfies the requirement of the law.[2]

We restate the ruling of the Supreme Court in the case of *Philippine British Assurance Co., Inc. vs. Honorable Intermediate Appellate Court, et.al.,* [3] where it held that:

> "It is a well-recognized rule that where the law does not distinguish, courts should not distinguish. *Ubi lex non distinguish nec nos distinguere debemos.* 'The rule, founded on logic, is a corollary of the principle that the general words and phrases in a statute should ordinarily be accorded their natural and general significance. The rule requires that a general term or phrase should not be reduced into parts and one part distinguished form the other so as to justify its exclusion from the operation of the law. In other words, there should be no distinction in the application of a statute where none is indicated. **For courts are not authorized to distinguish, where the law makes no distinction.** They should instead administer the law not as they think it ought to be but as

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[1] *CBK Power Company Limited vs. Commissioner of Internal Revenue,* CTA Case No. 7887, February 2, 2018.

[2] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 8905, October 19, 2017.

[3] G.R. No. 72005, May 29, 1987.

they find it and without regard to consequences.'" (Emphasis supplied)

Moreover, the Supreme Court, in the case of *Bolos vs. Bolos*[4], emphasized that:

> "A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verbal legis.* It is expressed in the maxim, *index animi sermo*, or 'speech is the index of intention.' Furthermore, there is the maxim *verbal legis non est recedendum*, or 'from the words of a statute there should be no departure.'"

As regards the allegation that the claimed input VAT remained unutilized, we reiterate 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, to wit:

> "SEC. 110. **Tax Credits.** –
>
> xxx xxx xxx
>
> (C) Determination of Creditable Input Tax. – The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.
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> xxx"

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[4] G.R. No. 186400, October 20, 2010.

The reason for the deduction is to assure that the claimed input VAT shall not be applied against any future output VAT liability.[5]

In the instant case, the Court already ruled that even though the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its amended Quarterly VAT Return for the second quarter of calendar year (CY) 2016. Therefore, the excess input VAT of ₱164,806,025.92 as of the end of the second quarter of CY 2016, which was already carried over to the succeeding quarter of 2016, is no longer included in the claim.

Lastly, the Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim.[6] Consequently, once the requirements laid down under the NIRC of 1997, as amended, and other pertinent tax laws and regulations have been met, a claimant should be considered successful in discharging the burden of proving its right to refund.

In this case, the Court found that petitioner has established its claim for refund or issuance of TCC in the reduced amount of ₱15,857,575.46, representing its unutilized excess input VAT attributable to its zero-rated sales for the second quarter of CY 2014. Clearly, there is no cogent reason to disturb the assailed Decision.

WHEREFORE, in view of the foregoing, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 12 February 2019)** is **DENIED** for lack of merit.

SO ORDERED.

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

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[5] *CBK Power Company Limited vs. Commissioner of Internal Revenue, supra.*
[6] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 206526, January 28, 2015.

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice