REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

DOLE PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10212

Members:

DEL ROSARIO, *P.J.*,*
BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

FEB 07 2024

1:10 p.m.

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AMENDED DECISION

CUI-DAVID, J.:

Submitted before this Court are the following:

1. Petitioner's ***Motion for Partial Reconsideration*** filed on June 29, 2023, with respondent's ***Comment/Opposition (Re: Petitioner's Motion for Partial Reconsideration)*** filed on July 19, 2023; and

2. Respondent's ***Motion for Partial Reconsideration (Re: Decision promulgated on May 19, 2023)*** *(sic)* filed on June 30, 2023, with petitioner's ***Comment and Opposition (to the Motion for Partial Reconsideration dated 29 June 2023)*** filed on July 21, 2023.

On June 13, 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 or effectively zero-rated sales on domestic purchases from April 1, 2017 to March 31, 2018. The Court further ruled that since respondent had already previously issued a Tax Credit Certificate ("**TCC**") for ₱893,529,266.59 for its input VAT refund, the said amount shall be offset against the

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* Special Member per Memorandum dated January 23, 2024.

₱1,016,881,096.42 which was determined by the Court to be petitioner's excess input VAT attributable to valid zero-rated sales. As such, the Court arrived at the amount of ₱123,351,829.83 as the difference that petitioner is entitled to refund, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing, 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 additional amount of One Hundred Twenty-Three Million Three Hundred Fifty-One Thousand Eight Hundred Twenty-Nine Pesos and Eighty-Three Centavos (₱123,351,829.83), representing petitioner's excess and unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of FY ending March 2018.
>
> **SO ORDERED**."

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

Petitioner's Motion for Partial Reconsideration

In its *Motion*, petitioner primarily requests for the reconsideration of the following disallowances by the Court that led to the partial denial of its claim for refund, to wit:

	Disallowed Sales by the CTA[1]
Direct Export Sales	
A. Unsupported Zero-rated sales	₱ 117,094.24
B. Disallowances by the BIR sustained by the Court – unremitted export sales	1,209,764.41
C. Export Sales to DAH	
1. Export sales supported by blurred Bill of Lading ("BL")	47,229,731.48
2. Export sales supported by a bill of lading with mismatched BL number indicated in the sales invoice/without BL number indicated in the sales invoice	118,336,107.81
3. Export sales supported by a bill of lading without the date of shipment	1,287,802.80
4. Export sales not supported by a bill of lading and/or proof of inward remittance	126,654,059.57
5. Export sales supported by blurred sales invoices/sales invoices with incomplete or missing page(s)	107,253,514.12

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[1] Petitioner rounded-off to the nearest peso the amounts presented in its Motion.

6. Export Sales with different amounts per sales invoice	8,992,622.92
7. Export sales supported by bill of lading with corrections but not countersigned	2,883,956.21
8. Export sales dated outside the period of the claim	770,867.68
9. Export sales without supporting documents	1,818,905,670.46
	₱2,233,641,191.70
Indirect Export Sales	
1. The TIN of the purchaser is not indicated in the invoice issued by petitioner	₱ 46,750,778.91
2. Purported invoices were not formally offered	417,780.56
3. Failure to export 100% of its BOI Certification	17,800.00
	₱ 47,186,359.47
Total	**₱2,280,827,550.76**

In the above table, petitioner refutes the disallowance of unremitted export sales amounting to ₱1,209,764.41 by insisting that the same was duly supported by Sales Invoice ("**SI**"), Bill of Lading ("**BL**") and Export Declaration ("**ED**") to prove its actual shipment of export sales. Petitioner cites the Report of the court-commissioned Independent Certified Public Accountant ("**ICPA**"), reiterating the explanations disclosed therein, to wit:

1. The disallowed export sales amounting to ₱45,939,046.00 due to blurred BLs are duly supported by readable BL with the same BL number and/or quantity of goods in the invoice and ED with the same ED number, quantity, vessel, and/or voyage no. indicated in the sales invoice;

2. That the export sales of ₱86,280,653.00 supported by bills of lading with mismatched BL number or without BL number indicated in the sales invoice are supported with BL with the same quantity and/or item description in the invoice and export declaration with the same ED number, quantity, vessel and/or voyage number indicated in the sales invoice;

3. That export sales of ₱1,287,803.00 supported by BL without date of shipment are supported with export declaration with the same ED number indicated in the sales invoice with date of departure per related ED as of July 2017 which already proves the actual shipment of goods from the Philippines to a foreign country;

4. The aforementioned disallowed export sales amounting to ₱45,939,046.00, ₱86,280,653.00, and ₱1,287,803.00 are also supported by the original copy of customs certification certifying that the products corresponding to the sales invoice, airway bill or BL reference number, and ED number have been shipped from the Philippines to various international destinations;

5. Of the export sales which were found to be unsupported by BL and/or proof of inward remittance, ₱88,217,550.00 are supported with a statement of account from the bank and original copy of customs certification certifying that the products corresponding to the sales invoice, airway bill/bill of lading reference number, and export declaration number have been actually shipped from the Philippines to different international destination; and that ₱71,288,826 of the aforementioned duly supported export sales are not additional export sales but merely price adjustments that are supported by either debit or credit memo depending on whether the price adjustment is upward or downward;

6. That export sales for ₱8,992,622.92 with different amounts per sales invoice actually pertain to the amount shown in Annex V of the ICPA Report, which relates to the partial disallowance by the Bureau of Internal Revenue ("**BIR**") as supported by schedules and sub-annexes of adjustment and disallowances from the BIR's Tax Audit Review Division ("**TARD**");

7. The other export sales for ₱1,818,905,670.00, which were found by the Court to be without supporting documents: (a) the amount of ₱1,197,528,390.71 are not additional export sales but price adjustments that are supported by debit or credit memo depending on whether the price adjustment is downward or upward adjustment; (b) ₱25,400,026.92 are supported by proof of inward remittance such as a certified true copy of foreign currency passbook from Rizal Commercial Banking Corporation ("**RCBC**"); and (c) export sales issued beyond the period of claim amounting to ₱234,400,539.84 and ₱261,692,674.60 have been reversed in the same quarter or same taxable year as shown in the schedule of total zero-rated sales of goods for fiscal year ("**FY**") 2018 hence should no longer be deducted from its zero-rated sales; and,

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8. That indirect export sales amounting to ₱46,750,779.00 which were disallowed on account of petitioner's failure to indicate purchaser's Tax Identification Number ("**TIN**") in its issued SI, ₱40,628,407.00 thereof are duly supported with zero-rated sales invoice, Board of Investment ("**BOI**") endorsement letter to the BIR confirming that the purchases of the pertinent customers are considered as VAT zero-rated and Certificate of Registration and Tax Exemption wherein the TIN of the relevant purchasers are found.

Moreover, as for the export sales with blurred bills of lading, blurred sales invoices, or sales invoices with missing pages, petitioner attached copies of the following documents in its Motion: (i.) previously marked sales invoices with the corresponding bill of lading to show that export sales amounting to ₱45,939,046.00 are duly supported by readable bills of lading; and (ii.) previously marked sales invoices to prove that export sales of ₱70,549,856.00 are actually supported by readable sales invoices with complete pages. In addition, petitioner also attached the summary of findings of the ICPA vis-à-vis the previously disallowed export sales and the summary of findings of the ICPA as against the input VAT disallowed by the Court.

As for disallowed input VAT amounting to ₱17,602,110.62, petitioner explains that the input VAT supported by a blurred sales invoice amounting to ₱1,541.00 is, in fact, supported by readable sales invoice; a portion of the input VAT with official receipt (OR) that failed to indicate the nature of service amounting to ₱3,697,489.00 are duly supported by BIR approved ORs, hence should be considered; and that the input VAT without supporting documents in the amount of ₱6,658,432.00 are actually voided purchase transactions with corresponding reversals in the schedule of purchases, hence should no longer be deducted from petitioner's input tax credit.

Lastly, petitioner asserts that the court-commissioned ICPA, Ms. Sonia D. Segovia, recommended in her Report the full amount of ₱201,882,995.36 as petitioner's excess and unutilized input VAT attributable to its zero-rated sales for the first (1st) to fourth (4th) quarters of FY ending March 2018. Considering that the Court already partially granted the amount of ₱123,351,829.83, the remaining amount of ₱78,531,165.53 should also be granted since petitioner has sufficiently presented substantial and relevant evidence to establish its entitlement to the additional amount.

On the other hand, in its *Comment*, respondent posits that the Court correctly denied the portion of the claim amounting to ₱201,919,711.50 due to petitioner's failure to comply with the requisites of a claim for refund of excess input VAT. Respondent claims the unremitted export sales amounting to ₱1,209,764.41 was properly disallowed, there being no proof of actual shipment presented by petitioner, and that based thereon, the disallowance of petitioner's export sales for ₱2,232,314,333.05 is also correct for not being adequately substantiated. Respondent insists that petitioner should prove not only its compliance with the requisites for a valid claim for refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales provided in Section 112(A) of the National Internal Revenue Code ("**NIRC**") of 1997, as amended, but also that the VAT invoices and ORs comply with the invoicing requirements laid down in Section 113 of the same Tax Code. Lastly, respondent submits that the present Motion should be dismissed for lack of merit as petitioner seems to invoke therein the adoption of the findings of the ICPA, which are merely recommendatory in nature and, therefore, not conclusive to this Court.

After careful evaluation, this Court finds partial merit in petitioner's *Motion for Partial Reconsideration.*

At the outset, the Court observes that petitioner heavily relied on the ICPA's findings and conclusion in seeking to overturn the ruling of the Court in the assailed *Decision.*

It bears stressing that, as correctly pointed out by respondent, the Court is not bound by the findings of the ICPA. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case; it is only persuasive and not conclusive upon the Court. Determining the merits and probative value of the report belongs exclusively to the Court. Perforce, Section 3 of Rule 13 of the Revised Rules of the Court of Tax Appeals ("**RRCTA**") provides that:

> "SEC. 3. *Findings of independent CPA.*– The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such

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> documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**" *[Emphasis and underscoring supplied.]*

Again, the ICPA is commissioned to assist the Court in determining the merit of a taxpayer's case. However, the findings and conclusion of the ICPA shall not be conclusive upon the Court, which is free to ultimately, partially adopt, or disregard the findings of the ICPA after making its verification and evaluation of the evidence on record. As such, petitioner cannot assert that the ICPA's findings are sufficient to validate its claim since the ultimate determination rests upon the Court based on the evidence presented by the parties.

Though this is not to say that an ICPA Report is futile or ignored, indeed, the ICPA findings on petitioner's effectively zero-rated sales aids the Court in appreciating the pertinent pieces of evidence presented to support the said sales in arriving at the conclusions made in the Court's Decision.

Moreover, the Court also finds no compelling reason to consider the attached sales invoices and bills of lading in petitioner's Motion for Partial Reconsideration in lieu of the blurred exhibits and exhibits with missing pages to support its claim of the additional amount of ₱78,531,165.53. It has been emphasized time and again that actions for tax refund are construed in *strictissimi* juris against the taxpayer-claimant. The pieces of evidence presented entitling it to an exemption are also *strictissimi* scrutinized and must be duly proven.[2]

Apropos, in the *Republic of the Philippines v. Sandiganbayan et al.*,[3] the Supreme Court stressed that evidence may not be given piecemeal. Apparently, petitioner failed to carefully examine and scrutinize all of its supporting evidence before presenting the same to the Court. By exercising reasonable diligence, petitioner could have immediately corrected said blurred exhibits and exhibits with missing pages in a timely manner – at the trial stage of the proceedings. To apply a liberal application of the rules of procedure to suit

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[2] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[3] G.R. No. 152375, December 13, 2011.

petitioner's purpose would pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[4]

Concerning the other arguments raised by petitioner in its *Motion*, the Court shall now proceed to determine the merits of the said arguments.

a. Export Sales and Considered Export Sales

In the assailed *Decision*, the Court ruled that petitioner's claim for refund has been filed under Section 106(A)(2)(a)(1) and (5) of the NIRC of 1997, as amended. Under the said Section, the following essential elements must be present in order for petitioner's export sales of goods to qualify as zero-rated VAT, to wit:

1. the sale was made by a VAT-registered person;
2. there was sale and actual shipment of goods from the Philippines to a foreign country; and,
3. the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP

Corollary, the Court consistently ruled that any VAT-registered person claiming for VAT zero-rating on its export sales of goods must present to the Court at least three (3) types of documents, namely:

1. The **sales invoice** as proof of sale of goods;
2. The **export declaration and bill of lading or airway bill** as proof of actual shipment of goods from the Philippines to a foreign country; and,
3. The **bank credit advice, certificate of bank remittance** or **any other document** proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

As a result, only export sales supported by the above-stated documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

In the case of *Commissioner of Internal Revenue v. Manila Mining Corp.*,[5] the Supreme Court defined the concept of a sales invoice or commercial invoice as **a written account of goods**

[4] *Commissioner of Internal Revenue v. A. Soriano Corporation, et. al.*, G.R. No. 113703, January 31, 1997.
[5] G.R. No. 153204, August 31, 2005.

sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services. As such, these sales invoices are necessary to substantiate the actual amount or quantity of goods sold and their selling price. Taken collectively, they are the best means to prove the sale of goods by petitioner.

While in *Aniceto G. Saludo, Jr., et al. v. Court of Appeals, et al.*,[6] the Supreme Court discussed the nature of a bill of lading as **a written acknowledgment of the receipt of goods and an agreement to transport and deliver them at a specified place to a person named or on his order**. Such an instrument may be called a shipping receipt, forwarder's receipt, and receipt for transportation. The designation, however, is immaterial. **The two-fold character of a bill of lading is all too familiar; it is a receipt for the quantity and description of the goods shipped and a contract to transport the goods to the consignee or other person designated on the terms specified in such instrument**. Simply put, to prove that the goods were shipped to a foreign country, a bill of lading must be presented.

In the present case, petitioner moves to reconsider the disallowance of the unremitted export sales amounting to ₱1,209,764.41, insisting that the export sales are supported by SI No. 291024,[7] BL and ED, which indubitably show proof of actual shipment.

Petitioner's contention is untenable.

As pointed out by the Court, although SI No. 291024 was presented as evidence, it failed to show proof of actual shipment. Correspondingly, the export sale was disallowed since there was no proof of said actual shipment. A further examination of the purported documents mentioned by petitioner reveals no direct correlations among BL No. ATKCNTXG1703211579,[8] ED No. P42828,[9] and SI No. 291024. The Court cannot ascertain the connection of the said export documents (*i.e.*, BL and ED) to SI No. 291024 due to incomplete details that should have been supplied in the said SI.

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6 G.R. No. 95536, March 23, 1992.
7 Exhibits "P-431-a" and "P-172-a".
8 Exhibits "P-442-bbq" and "P-442-a".
9 Exhibit "P-441-auk".

To stress, it is petitioner's responsibility to ensure that all the data in its accountable forms are duly accomplished to prove or provide correlation among its supporting documents so as not to create doubt. Therefore, finding that petitioner failed to prove the actual shipment of goods from the Philippines to a foreign country, the disallowance must be sustained.

As to the disallowed export sales amounting to ₱86,280,653.00[10] due to mismatched BL indicated in the SI or without BL number indicated in the SI, petitioner argues that it is supported with BL with the same quantity and/or item description in the invoice and ED with the same ED number, quantity, vessel, and/or voyage number indicated in the SI. Yet, the Court cannot figure out the breakdown of the assailed disallowances amounting to ₱86,280,653.00.

Nevertheless, scrutiny of the SIs,[11] BLs,[12] and EDs shows that the ED number is indeed indicated in the SIs, indicating the link between the EDs & the SIs.

However, the data found in the ED (*i.e.,* Country of Destination – Various, Vessel/Aircraft – Various, Gross Weight/Net Weight – Affected, Port and Date of Departure – GSC/Month & Year) failed to provide information that would have linked the EDs and the BLs, which in turn would have shown the connection between the BLs and the SIs. Thus, considering that petitioner failed to show the connection between the BLs and the SIs (which will show proof of actual shipment of goods from the Philippines to a foreign country), the disallowance is rightfully sustained.

As to the disallowed export sales amounting to ₱1,287,803.00 for failure to indicate the date of shipment, petitioner argues that it is supported with ED,[13] with the same

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10 Part of the ₱118,336,107.81 disallowances, Decision, p. 26-30, Docket – Vol. III, pp. 1160 to 1164.

11 Exhibits "P-174-c" to "P-174-j", "P-176-a" to "P-176-g", "P-178-a", "P-181-a", "P-186-b" to "P-186-c", "P-187-c", "P-187-f" to "P-187-g", "P-188-c" to "P-188-e", "P-189-a", "P-190-a", "P-191-a" to "P-191-b", "P-193-d" to "P-193-q", "P-195-b", "P-196-a", "P-225-f", "P-225-k", "P-227-a" to "P-227-c", "P-229-a" to "P-229-m", "P-247-h" to "P-247-j", "P-274-a", "P-277-a", "P-288-a" to "P-288-b", "P-290-a" to "P-290-d", "P-291-c", "P-294-a" to "P-294-b", "P-295-a", "P-296-a" to "P-296-e", "P-339-a", "P-354-a", "P-367-c", "P-388-a" to "P-388-g", "P-391-a" to "P-391-c", "P-396-a" to "P-396-b", "P-399-a" to "P-399-b", "P-409-a" to "P-409-c", "P-411-a" to "P-411-b", "P-411-h", "P-411-k", "P-411-n" to "P-411-o", "P-411-s" to "P-411-u".

12 Exhibits "P-442-e" to "P-442-s", "P-442-u", "P-442-x", "P-442-aj" to "P-442-ak", "P-442-an", "P-442-aq" to "P-442-ar", "P-442-au" to "P-442-aw", "P-442-ay" to "P-442-az", "P-442-ba" to "P-442-bb", "P-442-bf" to "P-442-bs", "P-442-bu", "P-442-bw", "P-442-gs", "P-442-gx", "P-442-hg" to "P-442-hv", "P-442-bby" to "P-442-bbz", "P-442-bca", "P-442-zy", "P-442-aaq", "P-442-abf" to "P-442-abg", "P-442-acd" to "P-442-acg", "P-442-acp", "P-442-adc" to "P-442-ade", "P-442-adg" to "P-442-adk", "P-442-ann", "P-442-aua", "P-442-avr", "P-442-ayl" to "P-442-ayu", "P-442-ayx" to "P-442-ayy", "P-442-azf" to "P-442-azg", "P-442-azu" to "P-442-azw", "P-442-bab" to "P-442-bac", "P-442-bai", "P-442-bal", "P-442-bao" to "P-442-bap", "P-442-bat" to "P-442-bav".

13 Exhibit "P-441-aag".

ED number as indicated in the SI,[14] which shows the date of departure per related ED as of July 2017.

Unfortunately, the Court is not swayed.

An examination of SI No. 92398[15] readily shows that the BL and ED with Nos. DV0700120000[16] and 17005653,[17] respectively, were indeed indicated in the said SI. However, it is inconclusive that the date of departure (July 2017) indicated in ED No. 17005653 specifically pertains to the shipment under BL No. DV0700120000. Notably, ED No. 17005653[18] is a Monthly General Export Declaration for July 2017; it, however, does not show a direct connection with the subject BL. To reiterate, the BL is the competent evidence to confirm the actual shipment of the goods. Thus, it is imperative to indicate the shipment date in the BL, which petitioner failed to do in this case. For failure to do so, the disallowance of ₱1,287,803.00 is upheld.

With respect to the disallowances amounting to ₱45,939,046.00[19] due to blurred BLs and ₱70,549,856.00[20] due to SI's with blurred, incomplete, or missing pages, petitioner re-submitted the previously marked documentary exhibits to show that readable BLs and SIs support it. But, as already discussed earlier, the Court will not consider the same since petitioner should, in the first place, have been wary in ensuring that the ICPA report and the supporting documents or exhibits were clear, complete, and readable before those were formally offered and submitted to the Court.

As to the disallowed amount of ₱88,217,550.00,[21] petitioner states that it is supported by the original copy of Customs Certification[22] certifying that the products corresponding to the SI, airway bill/BL reference number, and ED number have been actually shipped from the Philippines to

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14 Exhibit "P-325-i".
15 Exhibit "P-325-i".
16 Exhibit "P-442-agp".
17 Exhibit "P-441-aag".
18 Exhibit "P-441-aag".
19 Exhibits "P-173-a", "P-174-a" to "P-174-b", "P-177-a", "P-186-a", "P-193-a" to "P-193-c", "P-210-g" to "P-210-k", "P-212-a" to "P-212-c", "P-213-a", "P-238-p", "P-292-b", "P-319-d", "P-319-h", "P-320-a", "P-323-a", "P-332-l", "P-332-o", "P-332-v" to "P-332-w", "P-340-y", "P-343-k", "P-345-g", "P-367-a" to "P-367-b", "P-380-c", "P-380-e", "P-422-a".
20 Exhibits "P-214-r", "P-248-y", "P-250-e", "P-250-f", "P-256-a" to "P-256-b". "P-274-d", "P-301-a", "P-325-as", "P-340-au", "P-346-k", "P-351-g", "P-380-f".
21 Exhibits "P-175-a", to "P-175-c", "P-192-a", "P-194-a", "P-220-a", "P-228-a", "P-230-a" to "P-230-f", "P-290-e", "P-316-a", "P-334-d", "P-368-a" to "P-368-a" to "P-368-l", "P-386-a" to "P-386-b", "P-389-a", "P-390-a" to "P-390-g", "P-407-a", "P-411-j", "P-420-a".
22 Exhibits "P-440-a" to "p-440-c".

a foreign country. Petitioner further contends that out of the ₱88,217,550.00 disallowed export sales, the export sales amounting to ₱71,288,826.00 are not export sales but price adjustments supported by a debit memo[23] and statement of account.

The Court finds petitioner's argument wanting.

As earlier discussed, a VAT-registered person claiming for VAT zero-rating on its export sale of goods must present to the Court at least three (3) types of documents, as follows: (1) **sales invoices** as proof of sale of goods; (2) **bill of lading or airway bill** as proof of actual shipment of goods from the Philippines to a foreign country; and (3) **bank credit advice, certificate of bank remittance**, or **any other document** proving payment for the goods in acceptable foreign currency or its equivalent in goods or services.

Herein, petitioner failed to provide the BLs that will support the *second* essential element that requires the actual shipment of goods from the Philippines to a foreign country. Again, the BL is the best evidence to prove the actual shipment of goods from the Philippines to a foreign country, and petitioner's failure to provide the corresponding BL is fatal to its claim. As such, the Court's disallowance of export sales amounting to ₱16,261,713.39[24] is proper.

On the other hand, upon re-examination, the Court reconsiders export sales in aggregate amount of ₱667,010.83 wherein petitioner was able to prove the payment of goods in acceptable foreign currency, to wit:

Date	**Invoice**		**BL/Airway Bill**	**Proof of Inward Remittance**		**Amount**
	Exhibit No.	**Invoice No.**	**Exhibit**	**Exhibit No.**	**Page No.**	
04/16/2017	"P-290-e"	90780	"P-442-ach"	"P-439-b"	1	₱644,956.65
07/14/2017	"P-411-j"	83719	"P-442-bak"	"P-439-r"	8	22,054.18
Total						**₱667,010.83**

[23] Exhibit "P-420-a".
[24] Exhibits "P-175-a" to "P-175-c", "P-192-a", "P-194-a", "P-220-a", "P-228-a", "P-230-a" to "P-230-f", "P-316-a", "P-334-d", "P-368-a" to "P-368-l", "P-386-a" to "P-386-b", "P-389-a", "P-390-a" to "P-390-g", "P-407-a".

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As to the export sales of ₱71,288,826.00, petitioner offered in evidence Debit Memo ("**DM**") No. 00563[25] to support its claim that the said export sales are price adjustments. However, the Court finds that notwithstanding the presentation of DM No. 00563, petitioner still failed to provide corroborating evidence supporting its alleged sales price adjustment (*e.g.,* Computation of Sales Price Adjustment) to explain the nature of the price adjustment. More so, petitioner likewise failed to present the corresponding SI, which provides the basis for the original sales price allegedly adjusted. Thus, the disallowance of ₱71,288,826.00 is sustained.

As to the export sales amounting to ₱8,992,623.00, petitioner argues that the said amount pertains to Annex V of the ICPA Report, which relates to the partial disallowance by the BIR. Verily, the said Annex had already been considered and passed upon by the Court in the Decision, and the Court finds no reason to deviate from the findings and conclusions reached in the said *Decision.*

As to petitioner's contention that the amount of ₱25,400,026.92 export sales is supported by proof of inward remittance, the Court disagrees.

While the said export sales were allegedly supported by the RCBC foreign currency passbook,[26] the *first* and *second* essential elements to qualify as zero-rated sales were still unmet. In the case of *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,*[27] the Supreme Court ruled that inward remittance attests only as the **fact of payment** in acceptable foreign currency or its equivalent in goods or services and accounted for in accordance with the rules and regulations of the BSP, but not as evidence of the actual shipment of goods. Thus, it bears reiterating that the SIs are necessary to substantiate the exact amount or quantity of goods sold and their selling price. Hence, the disallowance is sustained.

As to petitioner's export sales for ₱1,197,528,390.71,[28] petitioner claims that those are not additional export sales but instead are mere price adjustments supported by DMs.

Again, the Court is not convinced.

[25] Exhibit "P-420-a".
[26] Exhibit "P-438-q".
[27] G.R. No. 166732, April 27, 2007.
[28] Exhibits "P-378" and "P-387".

While examination of the documents shows that the alleged price adjustments in the total amount of ₱1,197,528,390.71 are supported by DMs[29] with Computation of Sales Price Adjustments[30] and Transfer Pricing Update Report for Taxable Year 2015,[31] the Court, however, cannot verify how the sales price previously calculated used in the computation of sales price adjustments were arrived at. In fact, the presentation of the computation of sales price adjustments is insufficient to establish price adjustment as the computation is an internally produced document that can be easily manipulated to favor the petitioner-claimant. Conversely, petitioner should have corroborated it with source documents or with SIs. Thus, the disallowance of ₱1,197,528,390.71 is rightfully sustained.

As to the zero-rated sales issued beyond the period of claim amounting to ₱234,400,539.84[32] and ₱261,692,674.60[33] or in the aggregate amount of ₱496,093,214.44, petitioner contends that the said export sales have already been reversed in the same quarter or same taxable year. Petitioner insists that the reversed export sales did not form part of the petitioner's zero-rated sales for FY 2018; hence, it should no longer be deducted from the petitioner's zero-rated sales.

The Court agrees with petitioner.

A re-examination of petitioner's Schedule of Zero-rated Sales,[34] as tallied with petitioner's Summary List of Sales,[35] reveals that the total amount of ₱496,093,214.44[36] did not form part of the total zero-rated sales of petitioner amounting to ₱33,665,195,868.50.[37] Accordingly, the Court **will reconsider** the total amount of ₱496,093,214.44 since petitioner proved that it did not form part of its zero-rated sales for the FY 2018.

Lastly, as to petitioner's argument that the considered export sales amounting to ₱46,750,779.00 should not be disallowed on account of petitioner's failure to indicate the

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29 Exhibits "P-378-a" to "P-378-n"; "P-387-a" to "P-387-b".
30 Exhibit "P-436".
31 Exhibit "P-437".
32 Exhibit "P-222".
33 Exhibit "P-223".
34 Exhibit "P-446".
35 Exhibit "P-451-a" to "P-451-d".
36 Exhibit "P-395".
37 Table 9-D. ICPA Report (Exhibit "P-77"), page 11.

purchaser's TIN, [38] the Court finds the said argument unfounded.

As already discussed in the assailed Decision, aside from the fact that petitioner's sales are subject to VAT at zero percent, petitioner must ensure that its sales of goods or services are duly supported by SIs or ORs that are compliant with the invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, to qualify for VAT zero-rating. Thus, the disallowance of ₱46,750,779.00 due to petitioner's failure to comply with the invoicing requirements is deemed proper.

b. Disallowed Input VAT

Petitioner asserts that the input VAT with blurred OR/SI amounting to ₱1,541.00 is actually supported by readable SIs.[39] Petitioner also argues that the input VAT supported by ORs but allegedly failed to indicate the nature of service rendered amounting to ₱3,697,489.00[40] is supported by BIR-approved forms which do not provide for the nature of service but is supported with "Freight Bill No./Ref. No." Thus, the ORs the BIR approves should be considered compliant with the BIR regulations since the BIR itself approved the same.

Finally, petitioner avers that the input VAT without supporting documents for ₱6,658,432.00[41] are actually voided purchase transactions with corresponding reversals in the schedule of purchases (Exhibits "P-447" and "P-448") tied up with Summary List of Purchases and VAT returns, hence, was not recognized as an input tax credit by the petitioner. As such, it should no longer be deducted from the petitioner's input tax credit.

At the risk of being repetitive, petitioner should have been wary in ensuring that the ICPA report and the supporting documents or exhibits were clear, complete, and readable before those were formally offered and submitted to the Court. Hence, the disallowance of input VAT amounting to ₱1,541.00[42] is sustained.

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[38] Decision, pp. 35 to 44, Docket – Vol. III, pp. 1169 to 1178.
[39] Decision, p. 54, Docket – Vol. III, p. 1188.
[40] Part of ₱10,704,150.74, Decision, pp. 54 to 60, Docket – Vol. III, pp. 1188 to 1194.
[41] Decision, p. 60, Docket – Vol. III, p. 1194.
[42] Exhibits "P-78-ay" and "P-78-cy".

As to disallowed input VAT amounting to ₱3,697,489.00,[43] the Court already discussed in the assailed *Decision* that to prove entitlement to credits for input taxes due and paid, petitioner must not only present supporting documents prescribed under Section 4.110-8 of Revenue Regulations ("**RR**") No. 16-2005, but also ensure that the supporting documents are compliant with the invoicing requirements as provided for under Sections 113(A) and (B),[44] 237,[45] and 238[46] of the NIRC of 1997, as amended, and further implemented by Section 4.113-1(A) and (B) of RR No. 16-2005.

[43] Exhibits "P-78-cz" to "P-78-dg", "P-78-dh" to "P-78-dn", "P-78-do" to "P-78-ds", "P-78-ef" to "P-78-eh", "P-78-ej" to "P-78-em", "P-78-en" to "P-78-ev", "P-78-ex" to "P-78-ez", "P-78-fa" to "P-78-fb", "P-78-go" to "P-78-gu", "P-78-gy", "P-78-ha" to "P-78-he", "P-78-ia" to "P-78-ib", "P-78-iu", "P-78-jv" to "P-78-jw", "P-78-km" to "P-78-kn", "P-78-ks" to "P-78-kt", "P-83-a" to "P-83-d", "P-84-a", "P-122-v" to "P-122-ac", "P-134-a" to "P-134-b".

[44] "**SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* —

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:

(1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and

(2) A **VAT official receipt** for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated component of the sale.

(3) The date of transaction, quantity, unit cost and **description of the goods or properties or nature of the service**; and

(4) In the case of sales in the amount of One thousand pesos (₱1,000.00) or more where the sale or transfers is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer, or client." *(Emphasis supplied)*

[45] "**SEC. 237.** *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx"

[46] "**SEC. 238.** *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

From the foregoing, it is clear that petitioner must indicate the description of the goods or properties or the nature of the service to prove entitlement to credits for input taxes due and paid. Also worth noting is that all the foregoing provisions use the word "shall," which connotes an imperative and indicates the mandatory character of the statute. Consequently, the petitioner is duty bound to ensure full compliance with the invoicing requirements – and by failing to do so, the Court correctly disallowed petitioner's input taxes amounting to ₱3,697,489.00 for not meeting the required standard of invoicing.

As to the disallowed input VAT without supporting documents amounting to ₱6,658,432.00, the Court finds that the Schedule of Purchases[47] provided for by petitioner was not legible. Furthermore, even if the said Schedule of Purchases was legible, no supporting documents were provided to prove that the purchases were voided. Thus, the disallowance input VAT amounting to ₱6,658,432.00 is proper.

In summation, the Court will reconsider petitioner's export sales amounting to ₱667,010.83 as duly supported by proof of inward remittances and ₱496,093,214.44 as proven to have already been deducted from the total zero-rated sales and does not form part thereof, both in the aggregate amount of ₱496,760,225.27.

Consequently, petitioner's adjusted total valid zero-rated sale amounts to ₱31,881,128,542.60, computed as follows:

Valid zero-rated sales per assailed *Decision*	₱ 31,384,368,317.33
Add: adjustments	496,760,225.27
Adjusted total zero-rated sales	**₱31,881,128,542.60**

On the other hand, petitioner's valid input VAT remains to be ₱1,427,882,814.27.[48] Thus, the Court will now proceed with re-computing the petitioner's refundable amount.

As explained in the assailed *Decision*,[49] since petitioner's valid input VAT cannot be identified to specific sales, the Court

[47] Exhibits "P-447" and "P-448".
[48] Valid input VAT per Court's verification amounting to ₱5,490,260.77 (Decision, p. 60, Docket – Vol. III, p. 1194) add ₱1,422,392,553.50 valid input VAT per BIR's findings.
[49] Decision, p. 61, Docket – Vol. III, p. 1195.

will proportionately allocate the same based on petitioner's reported sales, as follows:

Total Zero-Rated Sales per VAT Returns	₱ 33,665,195,868.50
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 36,785,576,550.64
Multiplied by Total Valid Input VAT	₱ 1,427,882,814.27
Valid input VAT allocated to total zero-rated sales	**₱1,306,760,940.76**

Total VATable Sales per VAT Returns	₱ 2,660,376,823.43
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 36,785,576,550.64
Multiplied by Total Valid Input VAT	₱ 1,427,882,814.27
Valid input VAT allocated to VATable sales	**₱ 103,266,190.23**

Total Exempt Sales per VAT Returns	₱ 460,003,858.71
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 36,785,576,550.64
Multiplied by Total Valid Input VAT	₱ 1,427,882,814.27
Valid input VAT allocated to Exempt sales	**₱ 17,855,683.29**

Moreover, since petitioner's valid input VAT allocated to Vatable sales for ₱103,266,190.23 is not enough to cover its output VAT liability of ₱319,245,218.80, the difference of ₱215,979,028.57 VAT still due, is then charged against petitioner's valid input VAT attributable to its total reported zero-rated sales of ₱1,306,760,940.76 which leaves an excess input VAT attributable to zero-rated sales of ₱1,090,781,912.18.[50]

As a result of the Court's reconsideration of petitioner's zero-rated sales, the total adjusted zero-rated sales properly substantiated by petitioner now amounts to ₱31,881,128,542.60 out of its total declared zero-rated sales of ₱33,665,195,868.50. Thus, only the input VAT of **₱1,032,976,563.99** is attributable to the said adjusted valid zero-rated sales of ₱31,881,128,542.60, computed below as follows:

Excess input VAT attributable to total reported Zero-rated sales	₱ 1,090,781,912.18
Divided by Total Reported Zero-rated sales	₱ 33,665,195,868.50

[50] Decision, p. 63, Docket – Vol. III, p. 1197.

Multiplied by Adjusted Valid Zero-rated sales	₱ 31,881,128,542.60
Excess Input VAT attributable to valid zero-rated sales	**₱1,032,976,563.99**

Additionally, since respondent had already issued a TCC for ₱893,529,266.59 in favor of petitioner for its input VAT on domestic purchases, the said amount of ₱893,529,266.59 shall be offset against the valid input VAT attributable to zero-rated sales of ₱1,032,976,563.99, as found by this Court, to determine the amount of input VAT still to be refunded to petitioner. Accordingly, petitioner is entitled to the refund in the amount of **₱139,447,297.40** (₱1,032,976,563.99 less ₱893,529,266.59) attributable to its zero-rated or effectively zero-rated sales on domestic purchases for the 1st to 4th quarters of FY 2018.

Given the foregoing, the Court finds that the amount of ₱123,351,829.83 initially granted in the *Decision* promulgated on June 13, 2023, should be increased to ₱139,447,297.40.

With that being settled, the Court shall now determine the merits of respondent's *Motion*.

Respondent's Motion for Partial Reconsideration

In his *Motion*, respondent assails the Court's Decision in partially granting petitioner's claim for refund, contending that since he already rendered a decision at the administrative level, the Court's jurisdiction becomes strictly appellate in nature – in the sense that the Court should confine itself as to whether the findings of respondent are consistent with the law. Respondent continues that petitioner cannot also submit documents it did not present at the administrative level and that this Court is limited to the issue of whether respondent's denial was proper given the evidence submitted at the administrative level. Respondent cites the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[51] to bolster its claim.

Furthermore, respondent maintains that the denial of petitioner's claim for refund in the amount of ₱325,271,541.33 was proper on the ground that it failed to comply with the mandatory requirements for claiming refund or tax credits under Section 112(A) of the NIRC of 1997, as amended, as well

[51] G.R. No. 207112. December 08. 2015.

as the invoicing requirements provided in Section 113 of the same Code.

Respondent likewise reiterates that petitioner has additional over-claimed input VAT in the total amount of ₱1,382,553.27 pertaining to the discrepancy on input tax claimed based on Net Available Input Tax per VAT returns of the fiscal year 2018 as against the Application for Tax Credits/Refunds (BIR Form No. 1914). Also, petitioner's direct export sales generated for the period of claim were not properly substantiated, resulting in an allocated and disallowed input tax amount of ₱184,409,246.48.

Lastly, respondent submits that in an action for tax refund, the burden of proof rests upon the taxpayer claimant to prove not only entitlement to the claim but also compliance with all the statutory and administrative requirements so that failure to comply warrants the dismissal of taxpayer's claim for refund.

On the other hand, in its *Comment*, petitioner points out that respondent failed to establish the grounds allowed for a *Motion for Reconsideration* pursuant to Section 1, Rule 37 of the Rules of Court. Petitioner also points out that the arguments raised by respondent in his *Motion* have already been settled by the Court in the *Decision* promulgated on June 13, 2023, and that no new matter or issue was raised by respondent that would warrant the reversal thereof.

Petitioner asserts that, as correctly ruled by the Court, it has sufficiently substantiated and duly proved its entitlement to refund the amount of ₱123,351,829.83 for having complied with the minimum requirements under the governing law and regulations. Petitioner continues that since it has successfully established a *prime facie* right to refund, the burden is shifted to respondent to disprove such claim, based on law and jurisprudence. Nonetheless, petitioner insists that it may present new and additional evidence to support its claim for refund, considering that the Court of Tax Appeals ("**CTA**") is a court of record and is required to conduct a formal trial.

The Court finds no merit in respondent's *Motion for Partial Reconsideration.*

Notably, the arguments raised in respondent's *Motion* are rehashes of the same facts and issues which have already been exhaustively passed upon, duly considered, and resolved in the *Decision* it assails.

In *Licomcen Incorporated v. Foundation Specialists, Inc.*,[52] the Supreme Court held that:

> "The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant, and it would be a needless act, too, with respect to issues raised for the first time, these being, ... deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc."

Nonetheless, to reiterate the Court's appellate jurisdiction, it should be noted that in every appeal or petition for review of an unsuccessful administrative claim, the petitioner must convince the Court that the respondent had no reason to deny its claim. In this regard, a petitioner must show this Court that (1) it was entitled under substantive law to the grant of its claims and (2) it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.

The first requisite is in line with the principle that cases filed in this Court are litigated *de novo*, while the second requisite is concerned with the exercise of this Court's appellate jurisdiction over the decisions of respondent as conferred by law.

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[52] G.R. No. 167022, August 31, 2007; citing *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*, G.R. No. 109645, March 4, 1996.

As cases filed before this Court are litigated *de novo*, party-litigants shall prove every minute aspect of their cases.[53] The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence not presented in the administrative claim in the BIR.[54] Whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[55] More so, this Court, being a court of record, is not governed strictly by technical rules of evidence and, thus, is not precluded from considering evidence not presented at the administrative level, for the paramount consideration remains the ascertainment of truth.[56]

Given the foregoing disquisitions, the Court finds compelling reasons to amend the *Decision* promulgated on June 13, 2023.

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration *(Re: Decision promulgated on May 19, 2023)* is **DENIED** for lack of merit. Meanwhile, petitioner's Motion for Partial Reconsideration is **PARTIALLY GRANTED.** Accordingly, the dispositive portion of the Decision dated June 13, 2023, is hereby amended to read as follows:

> "**WHEREFORE**, in light of the foregoing, 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 additional amount of One Hundred Thirty-Nine Million Four Hundred Forty-Seven Thousand Two Hundred Ninety-Seven Pesos and Forty Centavos (**₱139,447,297.40**), representing petitioner's excess and unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of FY ending March 2018.
>
> **SO ORDERED.**"

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[53] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[54] *Philippine Airlines, Inc. v. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. Nos. 206079-80 and 206309, January 17, 2018.
[55] *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.
[56] *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(With Separate Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

DOLE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10212

Members:

DEL ROSARIO, *P.J.,**
BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated: FEB 07 2024

x - x

SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague Associate Justice Lanee S. Cui-David in partly granting Dole Philippines, Inc.'s (**petitioner's**) *Motion for Partial Reconsideration* filed on 29 June 2023 due to the following grounds: (1) petitioner sufficiently proved that the previously disallowed export sales in aggregate amount of ₱667,010.83 were inwardly remitted; and (2) the previously disallowed 'out-of-period' export sales in aggregate amount of ₱496,093,214.44 had already been reversed by petitioner in the same quarter or taxable year and did not form part of petitioner's zero-rated sales for FY 2018.

However, with due respect, I maintain my view that the "Output VAT Still Due" must be deducted from the valid input VAT allocated to **total *valid* zero-rated sales** and *not* from the valid input VAT allocated to **total zero-rated sales.**

* Special Member *per* Memorandum dated 23 January 2024.

After taking into account the reconsidered items, petitioner's total valid zero-rated sales amounts to ₱31,881,128,542.60. Consequently, the amount of substantiated or valid input VAT of ₱1,427,882,814.27 shall be allocated proportionately on the basis of revised sales volume, as follows:

	Amount		**Allocation Factor**	**Allocated Input VAT**	
	[a]		*[c = a ÷ b]*	*[e= c x d]*	
VATable Sales/Receipts	₱2,660,376,823.43		7.23%	₱103,235,927.47	
Valid Zero-Rated Sales/Receipts	31,881,128,542.60		86.67%	1,237,546,035.13	
Invalid Zero-Rated Sales/Receipts	2,244,071,184.61		6.10%	87,100,851.67	
Total Reported Sales	**₱36,785,576,550.64**	*[b]*	**100.00%**	₱1,427,882,814.27	*[d]*

Thereafter, the refundable amount is computed as follows:

Output Tax Due on Vatable Sales/Receipts	₱319,245,218.80
Less: Input VAT Allocated to Vatable Sales/Receipts	103,235,927.47
Output VAT Still Due	**216,009,291.33**
Valid Input VAT Allocated to Valid Zero-Rated Sales/Receipts	₱1,237,546,035.13
Less: Output VAT Still Due	216,009,291.33
Refundable Amount	**₱1,021,536,743.80**
Less: Already supported by a tax credit certificate (TCC)	893,529,266.59
Amount still to be refunded	**₱128,007,477.21**

In addition to the reasons I forwarded in my previous Separate Opinion (to the Decision dated 13 June 2023), I further submit that the *ponencia*'s computation of deducting the "Output VAT Still Due" from the valid input VAT allocated to **total zero-rated sales,** rather from the valid input VAT allocated to **total *valid* zero-rated sales** would result in a double tax benefit to the taxpayers *i.e.*, input VAT allocated to total *invalid* zero-rated sales may be used to reduce the amount of output VAT and may also be claimed as an expense pursuant to Q-13 and A-13 of RMC No. 42-03[1], since the same is ultimately disallowed for VAT refund purposes.

To illustrate what I perceive as a considerable flaw in the majority's computation of the refundable amount of input VAT attributable to zero-rated sales, I invite you to consider the following set of hypothetical facts. Let's assume that the substantiated/valid input VAT allocated to zero-rated sales is ₱1,000.00 and the output VAT still due is ₱50.00. Suppose further that the invalid zero-rated sales is ₱90.00 and the valid zero-rated sales is ₱10.00, totaling ₱100.00 in declared zero-rated sales. Following the majority's computation, the refundable amount of excess input VAT attributable to

[1] 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.

zero-rated sales would then be ₱95.00.[2] In addition, pursuant to RMC No. 42-03, the amount of ₱900.00 pertaining to input VAT related to invalid zero-rated sales may either be claimed as expense or recorded as part of an asset account subject to depreciation. Moreover, the amount of ₱50.00 will be applied against the output VAT still due. Effectively, the taxpayer stands to gain a total tax benefit of ₱1,045.00[3], notwithstanding that only ₱1,000.00 is the substantiated/valid input VAT allocated to zero-rated sales.

In contrast, the proposed computation herein laid out (based on what I deem to be the proper construction of *Chevron*) aims to rectify the above-illustrated error by *only* awarding a refundable amount *if and only if* there is an excess of substantiated/valid input allocated to *valid* zero-rated sales after applying the output VAT still due. Notably, under this proposed method, the Court would only award a refund of ₱50.00[4], resulting in a potential total tax benefit of ₱1,000.00.

All told, I vote to **PARTIALLY GRANT** petitioner Dole Philippines, Inc.'s Motion for Partial Reconsideration and **ORDER** respondent Commissioner of Internal Revenue to refund the recomputed amount of **₱128,007,477.21**.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[2] Computed as: (₱1,000.00 – ₱50.00) x (₱10.00/₱100.00).
[3] Computed as: ₱95.00 + ₱900.00 + ₱50.00.
[4] Computed as: ₱1,000.00 x (₱10.00/₱100.00) – ₱50.00.