REPUBLIC O.F THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC., Petitioner, ***- versus -*** **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB No. 2455** (CTA Case No. 9663)

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COMMISSIONER OF INTERNAL REVENUE., Petitioner, ***- versus -*** **PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC.** Respondent.	**CTA EB No. 2460** (CTA Case No. 9663) ***Present:*** **DEL ROSARIO,** *PJ*, **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.* ***Promulgated:*** MAY 0 4 2023 3:54pm

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RESOLUTION

UY, *J*.:

For resolution is the ***MOTION FOR PARTIAL RECONSIDERATION (re: Decision dated 09 January 2023)*** filed by the Commissioner of Internal Revenue (CIR) on January 24, 2023,[1] with ***Comment (on Petitioner's Motion for Partial Reconsideration dated November 20, 2023)*** filed by Philippine Geothermal Production Company, Inc., (PGPCI) on February 2, 2023.[2]

In the said *Motion*, the CIR prays that the Decision dated January 9, 2023 of the Court in *En Banc* be partially reconsidered, and another one be rendered denying the entire claim for refund. The dispositive portion thereof reads:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* in CTA EB No. 2455 filed by Philippine Geothermal Production Company, Inc. and the *Petition for Review* in CTA EB No. 2460 filed by the Commissioner of Internal Review are **DENIED** for lack of merit. Accordingly, the Decision dated October 28, 2020 and the Resolution dated March 8, 2021 rendered by the Court in Division in CTA Case No. 9663, are **AFFIRMED**.
>
> **SO ORDERED.**"

The CIR's Motion for Partial Reconsideration:

In his *Motion for Partial Reconsideration*, the CIR repleads his argument that PGPCI's judicial claim for refund should have been dismissed for failure to prove its entitlement to refund of alleged excess and unutilized input value-added tax (VAT) for calendar year 2015.

Allegedly, the law requires that "only creditable input taxes" that are "directly attributable" may be refunded. As such, in order that input taxes may be refunded, the same should be directly attributable to its zero-rated sales.[3]

The CIR reiterates that it is part of mandatory judicial notice that the VAT system was adopted from Europe, and introduced in the Philippines in 1988 via Executive Order No. 273.[4] The VAT system was

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[1] EB Docket, pp. 131 to 141.
[2] EB Docket, pp. 142 to 152.
[3] Citing CTA *EB* Nos. 1735 and 1737 dated July 18, 2019 entitled, *Commissioner of Internal Revenue vs. Coral Bay Nickel Corporation, and Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*
[4] *Adopting a Value-Added Tax, Amending for this Purpose Certain Provision of the National Internal Revenue Code, and for Other Purposes, effective January 1, 1988.*

not a mere creation but rather a European system adopted by the Philippines. As it works in Europe, only the VAT paid for supplies in the business is creditable as an input tax of a VAT registered person. Thus, purchases must in turn relate to the supplies (goods/services) a person uses to make products. Not all input tax accumulated by a person may be claimed.

As it is in Europe, not all input tax from purchases by a business is creditable as input tax, but rather only those "related" to the supplies made can be claimed. Purchases by businesses such as personal activities, business entertainment, corporate events, and outside office meetings, cannot be claimed as an attributable and creditable input tax.

According to the CIR, this is the same in Philippine laws; that Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, does not state that all input taxes of a VAT-registered person whose sales are zero-rated are refundable. Rather, Section 110 (A) of the NIRC of 1997, as amended, determines what "creditable input taxes" are, and these are input taxes on purchases of goods which must be a factor in the chain of production in order to be creditable, consistent with the universal definition of VAT as essentially a "tax on transactions". The same is imposed at every stage of the distribution process on the sale, barter, exchange of goods or property and in the performance of services until it finally reaches the consumer. Hence, to be creditable, the input tax must either come from purchases of goods that form part of the finished product of the taxpayer, or be directly used in the chain of production.

Moreover, the CIR contends that after determining which input taxes are "creditable", there is still a need to determine which creditable input taxes are attributable; that the connection between the purchases and the finished product must be "concrete" and not "imaginary" or "remote". The CIR submits that the assailed Decision did not show the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

Finally, the CIR submits that since no attributability was allegedly established in the instant case between the input tax on purchases vis-à-vis the zero-rated sales of PGPCI, the latter had not been able to substantiate its entitlement to a refund. As claims for refund are in the nature of a tax exemption that are to be strictly construed against the taxpayer, PGPCI's claim for refund should have been denied.

PGPCI's Comment on the CIR's Motion for Partial Reconsideration:

In its Comment on the *Motion for Partial Reconsideration*, PGPCI counters that the said *Motion* is simply a rehash of the arguments that the CIR previously made in its *Petition for Review* that were already thoroughly discussed, and passed upon in the January 9, 2022 Decision of the Court.

PGPCI also points out other settled cases[5] where this Court ruled in a similar manner, stating that when Section 112 (A) of the National Internal Revenue Code (NIRC) speaks of "creditable input tax due or paid attributable to such sales" it is more logical to interpret the phrase as referring to instances of an apportionment of the input VAT in mixed transactions. According to PGPCI, there is therefore no dispute that when there are mixed transactions, and a direct attribution of the input VAT cannot be made on such sales, a proportionate allocation on the basis of the volume of sales must be made.

PGPCI further contends that in its case, its sales from the first to fourth quarters of the 2015 taxable year were entirely zero-rated, with the sole exception of a minimal amount of vatable sales in its fourth quarter. PGPCI submits that relative to its sales that were entirely zero-rated, its purchases were therefore substantially directly related and attributable to its zero-rated sales.

With respect to its minimal mixed fourth quarter transactions however, an absolute direct attribution of the input VAT sought to be refunded to the zero-rated sales is unnecessary for a claim for an input tax refund to prosper. Hence, PGPCI claims that it is therefore properly entitled to its claim for excess unutilized input VAT.

THE COURT *EN BANC'S* RULING

After careful and thorough consideration of the CIR's argument in his *Motion for Partial Reconsideration*, the Court *En Banc* finds that the CIR's arguments are complete reiterations of his arguments in his

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[5] Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc., CTA EB No. 2094, February 18, 2021; Pilipinas Kyohritsu, Inc., vs. Commissioner of Internal Revenue, CTA Case No 9706, November 20, 2020; and Southern Luzon Drug Corp. vs. Commissioner of Internal Revenue, CTA Case No. 8941, September 7, 2018.

Petition for Review filed on May 19, 2021 before the Court *En Banc* which have already been duly considered, weighed and addressed by the Court *En Banc* in its assailed Decision. Thus, the CIR failed to raise any new and substantial arguments that would warrant a reconsideration of the Court's assailed Decision.

To stress, Section 112 (A) of the NIRC of 1997,[6] as amended does not require that the input VAT must be "directly attributable" to zero-rated sales in order for it be creditable.

The said provision expressly states that it only requires that the creditable input VAT should be "*attributable*" to the zero-rated or effectively zero-rated sales.

A careful reading of Section 112 (A) of the NIRC of 1997, as amended, shows that the phrase "*directly and entirely attributable*" refers to instances wherein the taxpayer is engaged in zero-rated or effectively zero-rated sales and in taxable or exempt sales, and the input taxes cannot be directly or entirely attributed to any of the sales. The law allows the allocation of creditable input taxes which cannot be directly or entirely attributable to zero-rated sales, in which case, the input taxes shall be allocated proportionately on the bases of the volume sales.

Equally unavailing is the CIR's contention 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.

Section 110 of the NIRC of 1997, as amended, is clear as it provides that any input tax on the following transaction evidenced by a

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[6] 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 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.**" (*Emphases Added*)

VAT invoice or official receipt shall be creditable against output tax, to wit :

" Sec. 110. *Tax Credits.* –

(A) Creditable Input Tax. –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction or depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value added tax has been actually paid.

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Likewise, Section 110 (A) (3) of the NIRC of 1997, as amended, defines the term 'input tax" referring to 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**.

Based on the foregoing, it is clear that there is no basis for the CIR to say that the input taxes on purchases of goods is only limited to those purchases that only form part of the finished product of the taxpayer.

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In view of the foregoing, We find no compelling reason to modify or reverse Our findings and conclusions reached in the Assailed Decision.

WHEREFORE, the CIR's *Motion for Partial Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice