REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1735** (CTA Case No. 8905)
-versus-	
CORAL BAY NICKEL CORPORATION, *Respondent.*	

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CORAL BAY NICKEL CORPORATION, *Petitioner,*	**CTA *EB* NO. 1737** (CTA Case No. 8905)
-versus-	Present:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and,* **MODESTO-SAN PEDRO,** *J.J.*
	Promulgated: JAN 09 2020 4:27 p.m.

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AMENDED DECISION

MANAHAN, J.:

For this Court's resolution are the following:

1. Petitioner Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration (Re: Decision promulgated on 18 July 2019)* filed on August 7, 2019 in CTA *EB* No. 1735 with respondent Coral Bay Nickel Corporation's (Coral Bay) *Comment (to Petitioner Commissioner of Internal Revenue's (in CTA EB No.1735) Motion for Reconsideration dated August 7, 2019)* filed on September 23, 2019;
2. Petitioner Coral Bay's *Motion for Reconsideration* filed on August 16, 2019 in CTA *EB* No. 1737 with respondent CIR's *Opposition (To Petitioner's Motion for Reconsideration dated 9 August 2019)* filed on October 11, 2019.

Both parties seek reconsideration of the Court's Decision (assailed Decision) promulgated on July 18, 2019, the dispositive portion of which reads:

> "**WHEREFORE,** considering that the required affirmative votes of five (5) members of the Court *En Banc* was not obtained in the instant case, pursuant to Section 2 of Republic Act No. 1125, as amended by Republic Act No. 9503 in relation to Section 3 of Rule 2 of the RRCTA, the Decision of the Court in Division promulgated on June 2, 2017 and the Resolution dated October 19, 2017 are deemed **AFFIRMED.**

CIR's Motion for Reconsideration

The CIR moves for the reconsideration of the assailed Decision on the ground that Coral Bay did not comply with the following requisites for the refund or tax credit of unutilized input value-added tax (VAT) under Section 112 (A) of the 1997 National Internal Revenue Code (NIRC), as amended:

a. That the taxpayer is VAT-registered;
b. That the taxpayer is engaged in zero-rated or effectively zero-rated sales;
c. That input taxes are due or paid;
d. That the input taxes are not transitional input taxes;
e. That the input taxes have not been applied against output taxes during and in the succeeding quarters;
f. That the input taxes claimed are attributable to zero-rated or effectively zero-rated sales.
g. For zero-rated sales under Section 106 (A) (2) (1) and (2); 106 (B) and 108 (B) of the 1997 NIRC, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.
h. That where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume, and,
i. That the claim is filed within two years after the close of the taxable quarter when such sales were made.

Petitioner CIR alleges that the input VAT sought to be refunded are not attributable to Coral Bay's zero-rated sales and this requisite of attribution is essential for a claim for refund to prosper under Section 112 (A) of the 1997 NIRC, as amended. Petitioner CIR further submits that the law clearly wants to preserve or restrict the refund incentive only to those which are directly attributable to zero-rated sales. In addition, petitioner CIR maintains that Coral Bay is not engaged in zero-rated sales and does not generate any output taxes against which to offset the input taxes incurred outside of its zero-rated sales, hence should not be entitled to the claim for refund.

In its Comment to the arguments proposed by petitioner CIR, Coral Bay argues that the input VAT being claimed as refund for the first quarter of 2013 is entirely attributable to its zero-rated sales as correctly ruled by the Third Division of the Court in its Decision dated June 2, 2017. Coral Bay also cites Revenue Regulations (RR) No. 9-89 where it provides that if the applicant is exclusively engaged in zero-rated or effectively zero-rated transactions, he shall be entitled to the entire amount of VAT paid on purchases of goods and services. In this case, Coral Bay claims that it is engaged in purely zero-rated transactions, hence the entire amount of input VAT, with no distinction, must be refunded.

Coral Bay's Motion for Partial Reconsideration

In its discourse, petitioner Coral Bay contradicts the main reason cited by the *ponencia* in the assailed Decision dated July 18, 2019 where it held that the input taxes incurred and sought to be refunded were not at all attributable or related to its zero-rated sales. Coral Bay asserts that this proposition is misplaced and may set a dangerous precedent. Coral Bay challenges the interpretation made by the assailed Decision of Section 112 (A) of the 1997 NIRC, as amended, in the light of pertinent rules of statutory construction that every part of the statute must be interpreted with reference to its context, i.e, that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment. Its theory is that the "attribution rule" is applicable only if a taxpayer is engaged in three (3) types of sale, i.e, zero-rated, vatable and exempt sale and it cannot be determined to what type of sale the input VAT is attributable to, hence, there shall be proportional allocation based on the volume of sales. Based on this theory, petitioner concludes that if the taxpayer has no other sales but zero-rated sales, there is no need for allocation because all taxpayer's input VAT is attributable to its zero-rated sales.

Coral Bay further argues that the third part of Section 112 (A) of the 1997 NIRC, as amended does not apply in the instant case because petitioner is only engaged in zero-rated sales as proven by evidence.

In his *Opposition* to petitioner Coral Bay's Motion for Reconsideration, the CIR points to the fact that the input VAT incurred by Coral Bay's purchases of goods and services were consumed and rendered outside the Philippine Export Processing Zone Authority (PEZA) zone and within the customs territory and that the goods purchased were used to construct row houses and dormitories for its laborers as well as the foreman's duplex and airport runway which are all unrelated to its export sales. This, according to the CIR, is sufficient ground to deny the entire claim for refund because one of the requirement of the incentive of refund of excess input taxes is that these must be attributable or used in the manufacture or exportation of its zero-rated sales which in this case is the exportation of nickel cobalt and mixed sulfide to Sumitomo Metal Mining Co., Ltd. located in Japan. The CIR maintains that Coral Bay failed to satisfy this requirement, hence, the claim for refund must be denied.

THE COURT *EN BANC'S* RULING

Before we rule on the arguments of both parties in their respective Motions for Reconsideration, it is important to note that the main ruling of the *En Banc* Decision promulgated on July 18, 2019 garnered only four (4) affirmative votes, hence was not enough to modify the Decision of the Third Division dated June 2, 2017 which resulted in the affirmance of the latter decision.

Petitioner Coral Bay's Motion for Reconsideration in CTA *EB* No. 1737

After a careful evaluation of petitioner Coral Bay's arguments in its *Motion for Reconsideration,* we find them to be bereft of merit and have been comprehensively discussed in the assailed *En Banc* Decision which unfortunately did not garner the number of votes necessary to modify the Decision of the Third Division dated June 2, 2017 as earlier mentioned.

Be that as it may, we respond to the petitioner Coral Bay's challenge to take a second look at our ruling embodied in the main portion of the assailed *En Banc* Decision dated July 18, 2019, if only to emphasize the disquisitions therein.

Petitioner Coral Bay seeks reconsideration of the Court's conclusion that the claim for refund of input VAT for the first quarter of 2013 must be denied in its entirety for failure to strictly comply with the conditions provided under Section 112 (A) of the 1997 NIRC, as amended.

Petitioner Coral Bay calls for the application of a basic rule in statutory construction, i.e., that a statute must be read as a whole and that every part of the statute must be interpreted with reference to its context. Applying this to the interpretation of the provisions of Section 112 (A) of the 1997 NIRC, as amended, petitioner Coral Bay proceeds to argue that the third part of the same Section 112 (A) should not be applied to their situation because it is only engaged in zero-rated sales.

The first part of its argument seems to contradict the second part of its argument, i.e., that a statute must be read as a whole but must be compartmentalized in some of its parts.

We read again the provisions of Section 112 (A) for clarity, thus:

> "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 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.
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> xxx xxx xxx

A closer look at the provisions of the afore-quoted Section 112 (A) reveals that the word "attributable" read in the first portion is consistent with and in harmony with the last portion pertaining to the proper allocation of input VAT in case taxpayer is engaged in "mixed transactions" (zero-rated, effectively zero-rated, vatable, or exempt sales), when "the amount of creditable input tax due or paid cannot be attributed to any one of the transactions."

The second portion then proffers a solution in cases where the input VAT is sourced from various sales transactions, hence, allocation should apply in order to reserve the refund incentive only to those which are attributable to the taxpayer's zero-rated or effectively zero-rated sales. This allocation emphasizes the purpose and incentives provided under the law and the corresponding conditions before a taxpayer may avail of said incentive.

Incentives in the form of refunds in cases of VAT zero-rated or effectively VAT zero-rated sales, are likewise covered by the principle of *strictissimi juris,* hence, must be clearly and categorically proven. Well-settled in this jurisdiction is the jurisprudential ruling that actions for tax refund, as in this case, are in the nature of a claim for tax exemption and the law is construed *strictissimi juris* against the taxpayer.[1] In cases where the law provides for conditions for entitlement to a claim for refund, the taxpayer must clearly prove fulfillment of *all* the conditions imposed and which must be strictly assessed by the Court consistent with the afore-stated principle.

It is plain from the provisions of Section 112 (A) of the 1997 NIRC, as amended, that a refund of input taxes shall be granted only if the goods and services are directly attributable to the zero-rated sales which in this case is the export sale of nickel/cobalt mixed sulfide to its client abroad. We quote the relevant portions of the assailed *En Banc* Decision:

> "The records of this case and as adjudged by the Court in Division, show that the sets of input VAT were incurred on Coral Bay's purchases of goods and services which were consumed and rendered outside the PEZA zone and within the customs territory. Further, the Court in Division acknowledged that such purchases were used to construct the row house and dormitory for Coral Bay's laborers as well as the foreman's duplex and airport runway, all located outside of the PEZA zone.
>
> One important requisite for a claim for refund of excess or unutilized input VAT under the aforequoted Section 112 (A) is that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales.

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[1] Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 179961, January 31, 2011.

> This Court finds that Coral Bay failed to comply with this basic requisite because the input taxes that were incurred were not at all related to its zero-rated sales."

<u>Petitioner CIR's Motion for Reconsideration in CTA *EB* No. 1735</u>

As to the contention of the CIR in his Motion for Reconsideration, the discussions merely reiterated the main arguments in the assailed *En Banc* Decision which denied the entirety of the claim for refund of Coral Bay, hence there is no need to delve on his opposition. Suffice it to say that the Court agrees with his main argument that Coral Bay failed to comply with the material and basic pre-requisite for entitlement to the input VAT refund under Section 112 (A) of the 1997 NIRC, as amended, which is **that the input taxes are attributable to zero-rated or effectively zero-rated sales.**

WHEREFORE, premises considered, Coral Bay's *Motion for Reconsideration* filed on August 16, 2019 in CTA *EB* No. 1737 is **DENIED** for lack of merit. However, petitioner Commissioner of Internal Revenue's Motion for Reconsideration in CTA *EB* No. 1735 is **GRANTED.**

Accordingly, the claim for refund of Coral Bay in the total amount of P1,575,051.81 representing its unutilized input VAT for the first quarter of 2013 is hereby **DENIED.**

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(I maintain my position as reflected in the Assailed Decision and Resolution)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL, *Petitioner,* *- versus –* **CORAL BAY NICKEL CORPORATION,** *Respondent.*	**CTA EB No. 1735** *(CTA Case No. 8905)*
CORAL BAY NICKEL CORPORATION, *Petitioner,* *- versus -* **COMMISSIONER OF INTERNAL,** *Respondent.*	**CTA EB No. 1737** *(CTA Case No. 8905)* *Present:* Del Rosario, P.J., Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, JJ. Promulgated: JAN 09 2020 4:27 p.m.

CONCURRING OPINION

DEL ROSARIO, P.J.:

After a second hard look on the case facts, records, pieces of evidence presented and offered by both parties, and pertinent laws and jurisprudence, and consistent with the position taken by the majority of the members of the Court *En Banc* in *Commissioner of Internal Revenue vs. Coral Bay Nickel Corporation / Coral Bay Nickel*

Corporation vs. Commissioner of Internal Revenue, CTA EB Nos. 1909 and 1910, September 5, 2019, I am constrained to reverse the position I have taken in my Concurring and Dissenting Opinion on the assailed Decision.

In *Commissioner of Internal Revenue vs. Coral Bay Nickel Corporation / Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue, CTA EB Nos. 1909 and 1910, September 5, 2019*, the Court *En Banc* elucidated that as an ECOZONE Export Enterprise, Coral bay Nickel Corporation (CBNC) is a VAT-exempt entity and is thus entitled to VAT zero-rating on its local purchases of goods and services. Citing the doctrine laid down in *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue, G.R. No. 190506, June 13, 2016, 793 SCRA 199, 200*, the Court *En Banc* further held that CNBC is "not the proper party to seek the present judicial claim for tax refund and/or credit. In the event that Coral Bay actually paid the said input tax, its recourse is to seek reimbursement thereof against its supplier and not against the Government."

The foregoing disquisition applies on all fours in the present consolidated cases. Since CBNC's purchases are subject to zero-rated VAT, the 12% VAT passed-on by its local suppliers formed part of the purchase price. CBNC is thus precluded from claiming a refund of the input VAT passed on to it by its local suppliers. Its recourse is to seek reimbursement from its local suppliers instead of claiming a tax refund/and or credit against the Government.

All told, I CONCUR in the result.

ROMAN G. DEL ROSARIO
Presiding Justice