REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CARMEN COPPER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **10201**

Members:

BACORRO-VILLENA, *Acting Chairperson,*
CUI-DAVID, *JJ.*

Promulgated:
JAN 3 1 2023 4:00 PM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1. Respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Partial Reconsideration (Re: Decision promulgated 15 July 2022)"[1] (**MPR**) filed on 09 August 2022, with petitioner Carmen Copper Corporation's (**petitioner**'s/**CCC**'s) "Comment (To Respondent's Motion for Partial Reconsideration) [Re: Decision promulgated 15 July 2022]"[2] filed on 07 September 2022; and,

2. Petitioner's "Motion for Reconsideration (With Motion for Leave of Court to Reopen the Case for the Recall of a Witness)"[3] (**MR**) filed on 18 August 2022, with respondent's "Opposition (Re: Motion for Reconsideration with Motion for Leave of

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1 Division Docket, Volume II, pp. 749-761.
2 Id., pp. 780-785; Received by the Court on 13 September 2022.
3 Id., pp. 765-776; Received by the Court on 31 August 2022

Court to Reopen the Case for the Recall of a Witness)"[4] filed on 03 October 2022.

Both the MPR and MR assail the Court's Decision[5] promulgated on 15 July 2022 (**assailed Decision**). The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in view of the foregoing, the Petition for Review filed by petitioner Carmen Copper Corporation on 25 October 2019 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** in favor of petitioner Carmen Copper Corporation the reduced amount of ₱6,474,060.17, representing unutilized excess input tax attributable to its zero-rated sales for the second (2nd) quarter of taxable year ended 31 December 2017.
>
> **SO ORDERED.**
>
> ...

Citing the July 2019 Court *En Banc*'s case of *Commissioner of Internal Revenue v. Coral Bay Nickel Corporation*[6], respondent claims in his or her MPR that in order for input taxes to be refunded, the same should be *directly* attributable to its zero-rated sales.

Respondent contends further that as in Europe, from which our value-added tax (**VAT**) system was patterned, purchases must relate to the supply of goods or services a person makes. As such, not all accumulated input taxes may be claimed for refund.

According to respondent, Section 110[7] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provides that for input taxes

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4 Id., pp. 788-798.
5 Id., pp. 709-748.
6 CTA EB Nos. 1735 & 1737 (CTA Case No. 8905), 18 July 2019.
7 **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

on purchases of goods, they must be a factor in the chain of production in order to be creditable. After determining which input taxes are creditable, the law requires a second evaluation to determine which creditable input taxes are attributable. This means that the connection between the purchases and the finished product should be "concrete" and not "imaginary" or "remote". However, there is nothing in the assailed Decision that shows the direct attributability of petitioner's input taxes to its finished product (the sales of which are zero-rated).

Respondent also cites the Separate Opinion of Associate Justice Catherine T. Manahan in September 2019 Court *En Banc* case of *Commissioner of Internal Revenue v. Coral Bay Nickel Corporation*[8] where she opined that "the law would clearly want to preserve or restrict the refund incentive only to those which are directly attributable to the zero-rated sales".

Respondent also claims that since a decision was rendered in the administrative level, the Court's jurisdiction is strictly appellate in nature. Thus, the Court should have confined itself to the question of whether the findings of respondent are consistent with the law, following *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[9] (**Total Gas**). As such, petitioner cannot submit documents which were not previously submitted at the administrative level.

Lastly, respondent maintains that a tax refund is in the nature of tax exemption which must be construed *strictissimi juris* against the taxpayer. Therefore, petitioner must present convincing evidence to substantiate its claim.

> (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 for depreciation or amortization is allowed under this Code.
>
> ...

[8] CTA EB Nos. 1909 & 1910 (CTA Case No. 8804), 05 September 2019.
[9] G.R. No. 207112, 08 December 2015.

In reply to respondent's assertions, petitioner argues that respondent has already approved, though partial, its claim for refund and none of the reasons for the partial denial was due to its alleged failure to establish the so-called attributability requirement.

Petitioner contends that respondent failed to grasp the concept of "creditability" under the VAT law. According to petitioner, the test of credibility includes, among others, the direct and indirect relationship of the input taxes to the VATable business activity of the taxpayer such that an input tax is creditable whether directly or indirectly attributable to the VATable activity. Thus, it is not accurate to claim that only input taxes that are directly attributable could be creditable and the subject of a claim for refund.

Relatedly, petitioner argues that the proportional allocation of input taxes (sometimes called common input taxes) that cannot be directly attributed to zero-rated sales clearly betrays respondent's claim that only input taxes *directly* attributable to zero-rated sales can be claimed as input tax refund.

On the other hand, in its MR, petitioner disagrees with the assailed Decision insofar as it denied the total amount of ₱10,750,891.59.

As regards the invalidity of export sales in the total amount of ₱398,294,291.54 due to being supported by invoices dated 04 July 2017 or outside the period of claim of second (2^{nd}) quarter of taxable year (**TY**) 2017, petitioner contends that the reporting of sales ahead of the issuance of the invoice is not contrary to any express provision of law or any revenue issuance of the Bureau of Internal Revenue (**BIR**). Moreover, the accounting standards that petitioner followed require it to recognize the sale even if the delivery of the goods had not been made and the invoice has not been issued. Even if granting for the sake of argument that the sale cannot be considered as a sale for June 2017, it should result only in the reduction of petitioner's zero-rated sales and should have no effect on disallowance of an otherwise validly supported input tax.

Petitioner explains that if the taxpayer's only activity is the exportation of minerals, all of its input taxes (if validly supported) should be deemed attributable to such an activity; thus, if such an activity is zero-rated, then all its input taxes should be deemed refundable.

Petitioner further claims that as held in *Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc.*[10] (**Euro-Philippines**), the failure to comply with invoicing requirements as mandated by law does not make the transaction subject to 12% VAT. By disallowing the refund of input taxes which the Court already held as valid, it unwittingly categorizes the "invalid zero-rated sales" as either subject to 12% VAT or exempt as these are the only reasons that the input tax cannot be refunded.

Petitioner also avers that pursuant to Article 79[11] of Executive Order (**EO**) No. 226[12], it is entitled to have its export sales treated as zero-rated as any doubt as to its treatment should be resolved in its favor.

Petitioner likewise contends that respondent's witness, Revenue Officer Denise R. Dayanan (**RO Dayanan**), herself testified that the BIR had no issue with respect to petitioner's zero-rated sales.[13] Thus, this respondent's exercise of his or her original jurisdiction should be respected by the Court.

In addition, petitioner never included in its petition the approved input taxes as it only appealed the denied amount. Consequently, the Court should not have disturbed the same. As far as the zero-rated sales are concerned, there was no disputed issue or adverse decision that is appealable to the Court.

With respect to the export sales in the amount of ₱1,004,743.37, petitioner contends that the Court likewise erred in using the net value as reference point of the amount that the customer must remit to

[10] G.R. No. 222436, 23 July 2018.
[11] **Art. 79.** *Interpretation.* All doubts concerning the benefits and incentives granted enterprises and investors by this Code shall be resolved in favor of investors and registered enterprises.
[12] THE OMNIBUS INVESTMENTS CODE OF 1987.
[13] TSN dated 20 January 2021, p. 9.

petitioner. As shown in petitioner's summarization[14], the net value is not the amount its customers were billed as there were various adjustments made to arrive at the amount due. Thus, the Court should have considered not the net value but the amount due, which is the amount expected to be remitted by its customers.

Additionally, petitioner's bank, BDO Unibank, Inc. (**BDO**), deducted bank charges from the foreign currency remittance, as can be seen in the Certification[15] which shows the difference between the amount of gross foreign currency remitted to petitioner and the amount actually credited to its bank account.

If the discrepancies noted by the Court were not deemed remitted to the Philippines, petitioner submits that inward remittance is not required for Board of Investments (**BOI**)-registered enterprises (such as petitioner) to make its export sales zero-rated, as long as there is proof of actual exportation.

In relation to the input taxes on domestic purchases in the amount of ₱620,209.22, petitioner submits that the doctrine in *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[16] (**Coral Bay**) applies only to PEZA-registered enterprises and not to BOI-registered enterprises. This is because PEZA-registered entities are enjoying legal fiction that they are located in a foreign territory which is not true for BOI-registered entities.

Petitioner thus insists that under the Cross Border Doctrine and Destination Principle of our VAT system, goods and services destined to be consumed abroad should not contain any VAT. However, the same could not be said true of BOI-registered enterprises since there is no

[14]

Exhibit No.	Final Invoice No.	Adjustment on Shipment	Other Finance Charges	Bank and Other Charges	Total
P-67-a	1820000718	$706.25	$(4,991.99)	$(60.00)	$(4,345.74)
P-67-b	1820000685	800.69	(4,658.61)	(20.00)	(3,877.92)
P-67-f	1820000750	505.73	(3,807.39)	(135.90)	(3,437.56)
P-67-h	1820000751	428.13	(8,717.37)	(226.20)	(8,515.44)
Total		**2,440.80**	**$(22,175.36)**	**$(442.10)**	**$(20,176.66)**

[15] Exhibit "P-68", USB.

[16] G.R. No. 190506, 13 June 2016.

such similar concept of an ECOZONE (that is considered, by fiction of law, outside the territorial jurisdiction of the taxing authority).

Lastly, petitioner maintains that respondent's denial letter did not comply with the requirement of the Constitution and thus violated its right to due process. Petitioner rejects the application of the cases of *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*[17] (**Samar-I**) and *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[18] (**Fitness By Design**) not because they both involve tax assessment, but because the factual circumstances are likewise different.

For instance, in *Samar-I*, the evidence on record therein shows that the taxpayer was sufficiently apprised of the nature, factual and legal bases, as well as how the deficiency taxes being assessed are computed. In this case, however, nothing in the record would show that information was provided to petitioner other than the denial letter.

The Court notes that while the caption of petitioner's MR is "with Motion for Leave of Court to Reopen the Case for the Recall of a Witness", no discussion was made in support thereof.

Respondent opposes and claims that it is incumbent upon petitioner to prove that it is entitled to the refund sought and failure to prove the same is fatal to its claim.

Lastly, respondent vehemently objects to petitioner's motion to reopen the case for the recall of the witness (although petitioner failed to pray for such and discuss the same in its MR).

We resolve.

RESPONDENT'S MOTION FOR RECONSIDERATION (MR)

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17 G.R. No. 193100, 10 December 2014.
18 G.R. No. 215957, 09 November 2016.

Respondent claims that only those purchases with input taxes that are factored in the chain of production are creditable. In other words, respondent insists that only those purchases which form part of the finished product may be the subject of the claim for refund.

We do not agree.

Section 112(A) of the NIRC of 1997, as amended, provides as follows:

> ...
>
> **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 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.[19]
>
> ...

A closer reading of the said provision reveals that the only requirement is that the input tax to be claimed for refund or tax credit is *attributable* to the zero-rated sale. On the contrary, nowhere in the said provision requires the input tax to be *directly* attributable to the zero-rated sale.

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19 Emphasis supplied and italics in the original text.

In fact, a further reading thereof instructs that when there are input taxes that cannot be directly and entirely attributable to any of the zero-rated sales, taxable (subject to 12% VAT) or exempt sales, the same may be allocated proportionately to any of the said transactions on the basis of volume of sales. Thus, by allowing the proportionate allocation of those which cannot be directly and entirely attributable to any type of sales only means that there is no requirement for the input tax be directly attributable or should form part of the finish product before the same may be the subject of claim for refund.

When read with Section 110(A) of the NIRC of 1997, as amended (which provides that not only those input taxes from purchases or importation that are for sale or for conversion into or intended to form part of a finished product are creditable), the interpretation above is even further amplified or bolstered. Contrary to respondent's theory, those which may not form part of the finished product, such as those for use as supplies in the course of business or for use in trade or business for which deduction for depreciation or amortization, among others, are likewise creditable. The said provision reads:

> ...
>
> **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 for depreciation or amortization is allowed under this Code.**

(b) **Purchase of services on which a value-added tax has been actually paid.**[20]

...

Notably, in a plethora of recent cases[21] decided by the Court *En Banc*, this has been its consistent ruling on the same argument being raised herein by respondent.

Consequently, the Court finds no merit in respondent's contention that only those purchases with input taxes that are factored in the chain of production are creditable and refundable.

Anent respondent's claim that petitioner cannot submit documents that it failed to submit before the administrative level, as enunciated in *Total Gas*, the Court reiterates the pertinent portion of the assailed Decision discussing the inapplicability of the said case herein, to wit:

> ...
>
> We find that *Total Gas* is not squarely applicable herein, as petitioner's failure to submit the pertinent VAT Payment Certification is not solely attributable to it. It must be noted that the required VAT Payment Certification is to be issued by the BOC RAD and not a document that is readily in the possession of petitioner at the time when the administrative claim was filed.
>
> As the records bear clearly, as early as 18 June 2019, petitioner's witness, Belen, already complied with the directive of the BOC's Alonzo for her to simply email the schedule of deferred input taxes on importation as there was allegedly no need to make a separate written request for its certification. Subsequently, however, Belen was required to make a formal letter request as regards such deferred input taxes which petitioner complied through its letter dated 09 July 2019.

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20 Emphasis supplied.

21 *Commissioner of Internal Revenue v. S& Woo Construction Philippines, Inc.*, CTA EB No. 2340 (CTA Case No. 9731), 10 December 2021; *Commissioner of Internal Revenue v. Maersk Global Service Centres (Philippines) Ltd.*, CTA EB No. 2260 (CTA Case No. 9432), 29 July 2021; *Commissioner of Internal Revenue v. Lepanto Consolidated Mining Company*, CTA EB No. 2230 (CTA Case No. 9649), 14 June 2021; *Rio Tuba Nickel Mining Corp. v. Commissioner of Internal Revenue*, CTA EB Nos. 2180 & 2182 (CTA Case No. 9127), 10 June 2021; *Commissioner of Internal Revenue v. Lepanto Consolidated Mining Company*, CTA EB No. 2051 (CTA Case No. 9101), 30 September 2020; *Taganito Mining Corporation v. Commissioner of Internal Revenue*, CTA EB Nos. 2055 & 5058 (CTA Case No. 9369), July 23, 2020; *Commissioner of Internal Revenue vs. Toledo Power Company*, CTA EB Nos. 1990 & 2000 (CTA Case Nos. 7233 & 7294), 23 July 2020.

> Petitioner's witness, Balat, even testified that she constantly made several personal follow-ups with the BOC for the release of the said certification from July to September 2019, coupled by a written follow-up on 04 September 2019. Despite petitioner's earnest efforts to secure the required certification, the BOC RAD released the VAT Payment Certification only on 06 September 2019 (although the same was dated as early as 31 July 2019). Had it been timely issued and released by the BOC RAD to petitioner, the same could have been submitted to the BIR on or before its deadline on 31 July 2019.
>
> With the foregoing, the Court finds it unjust and inequitable to apply *Total Gas* in the case at bar considering that petitioner could not actually be penalized for something beyond its control. Additionally, to construe otherwise will unreasonably place the taxpayer at the mercy of the BOC by the simple expedient of not releasing the requested certification on time.[22]
>
> ...

PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION (MPR)

As to petitioner's MPR, it claims that there is nothing in the law or any BIR issuance that provides for a specific date as to when a sale must be recognized and the reporting of sales ahead of the issuance of the invoice is not contrary to any express provision there. Moreover, it contends that the accounting standards that it follows require it to recognize the sale even if the delivery of the goods had not been made and the invoice has not been issued.

We also do not agree with petitioner.

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended[23], provides:

> ...
>
> **Sec. 106.** *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* - ...
>
> ...

[22] Division Docket, Volume II, pp. 742-743; Citations omitted.
[23] Prior to changes brought about by TRAIN; Emphasis supplied.

> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term '*export sales*' means:
>
> (1) The sale **and actual shipment of goods from the Philippines to a foreign country**, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]
>
> ...

Thus, in order for an export sale of goods to qualify as zero-rated, there must be, aside from the sale, an *actual shipment* thereof from the Philippines to a foreign country. In this case, the subject export sales which is covered by Bill of Lading marked as Exhibit "P-66-q" has the notation "CLEAN SHIPPED ON BOARD DATED 04.07.2017". Since the subject goods were actually shipped only on 04 July 2017, the same cannot be considered as valid zero-rated sale for the 2nd quarter of 2017. Moreover, Section 113(B)(3) of the NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
>
> ...
>
> **(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:
>
> ...
>
> (3) **The date of transaction**, quantity, unit cost and description of the goods or properties or nature of the service[.][24]
>
> ...

Thus, by dating the subject Provisional Invoice No. 1810000103[25] as 04 July 2017, petitioner admitted effectively that its date of transaction is such date which is outside the period of claim.

[24] Emphasis supplied.
[25] Exhibit "P-66-q", USB.

In addition, petitioner's reliance on the ruling in *Euro-Philippines*, that the failure to comply with invoicing requirements as mandated by law does not make the transaction subject to 12% VAT, is misplaced.

In *Euro-Philippines*, which is an assessment case (and not a claim for refund) where the taxpayer was assessed 12% VAT on its supposedly zero-rated sales for its alleged failure to present proof of compliance with the invoicing requirements, particularly, on the imprinting of the words "zero-rated" in its receipts, the Supreme Court merely declared that "failure to comply with invoicing requirements as mandated by law does not deem the transaction subject to 12% VAT". In other words, non-compliance with the invoicing requirements for a zero-rated transaction will not render the same subject to 12% VAT.

On the contrary, in *Commissioner of Internal Revenue v. Filminera Resources Corporation*[26] (**Filminera**) which involves a claim for refund under the VAT system, the Supreme Court was categorical in declaring that the taxpayer must not only prove the existence of zero-rated sales but must also prove that the zero-rated sales were issued valid invoice or official receipts, to wit:

> ...
>
> ... However, to be entitled for the refund or tax credit, **the taxpayer must not only prove the existence of zero-rated sales, but must also prove that the zero-rated sales were issued valid invoice or official receipts pursuant to Sections 113 (A) and (B)**, and 237 of the 1997 NIRC, in relation to Section 4.113-1(B) of RR No. 16-2005. ...
>
> ...

Thus, harmonizing *Euro-Philippines* and *Filminera*, it can be deduced that non-compliance with invoicing requirements will not render the supposedly zero-rated transaction to 12% VAT; on the other hand, the same defect (although will not result in a deficiency VAT assessment) will nevertheless result in the denial of claim for refund or tax credit. That the taxpayer's failure to comply with the invoicing requirements for the zero-rated sale shall result to denial of input tax

[26] G.R. No. 236325, 16 September 2020; Citations omitted and emphasis supplied.

claim for refund is further consistent with Revenue Memorandum Circular (**RMC**) No. 42-2003[27] which pertinent provides:

> ...
>
> **Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?**
>
> A-13: ...
>
> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. ...[28]
>
> ...

Anent petitioner's claim that the Court erred in using the net value as reference point of the amount that the customer must remit to petitioner, considering that there were various adjustments made to arrive at the amount due, the Court also finds the same bereft of merit.

Other than plain description of the same to be "adjustment on shipment", "adjustment/advance collection" or "other finance charges", no other explanation or justification was offered by petitioner as to why the same may be appropriately added or deducted from net value of the articles sold.

Moreover, Section 4.106-9 of Revenue Regulations (**RR**) No. 16-2005[29], implementing Section 106(D)[30] of the NIRC of 1997, as amended,

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27 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.

28 Emphasis in the original text and underscoring supplied.

29 Consolidated Value-Added Tax Regulations of 2005.

30 **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* –

> ...
>
> (D) *Sales Returns, Allowances and Sales Discounts.* - The value of goods or properties sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued. Sales discount granted and indicated in the invoice at the time of sale and the grant of which does not depend upon the happening of a future event may be excluded from the gross sales within the same quarter it was given.
>
> ...

provides that only sales returns, allowances and sales discounts are allowed as deduction from the gross selling price, to wit:

> ...
>
> SECTION 4.106-9. ***Allowable Deductions from Gross Selling Price***. — In computing the taxable base during the month or quarter, the following shall be allowed as deductions from gross selling price:
>
> (a) Discounts determined and granted at the time of sale, which are expressly indicated in the invoice, the amount thereof forming part of the gross sales duly recorded in the books of accounts.
>
> Sales discount indicated in the invoice at the time of sale, the grant of which is not dependent upon the happening of a future event, may be excluded from the gross sales within the same month/quarter it was given.
>
> (b) Sales returns and allowances for which a proper credit or refund was made during the month or quarter to the buyer for sales previously recorded as taxable sales.
>
> ...

Accordingly, in the absence of proof that the aforementioned deductions are in the nature of sales returns, allowances and sales discounts, the Court may not consider them in determining the refundable amount due to petitioner.

As regards petitioner's input taxes from domestic purchases that were disallowed due to the application of *Coral Bay*, the Court maintains its ruling that the said case equally applies herein despite the fact that petitioner is a BOI and not a PEZA-registered entity.

In *Coral Bay*, the Supreme Court held that the claimant therein, an entity located within an ECOZONE and enjoying zero-rating preference, must direct its action not on the government but against the seller who erroneously shifted output tax to it (as the purchases of goods and services destined for consumption within the ECOZONE should be free of VAT). The crux of the said decision is that the proper recourse of a taxpayer enjoying zero-rating preference who was erroneously passed on VAT for its purchases of goods and services within the customs territory is not to claim for refund against the government but run after the its seller. It is for this reason that *Coral Bay* equally applies to petitioner despite not being a PEZA-registered entity.

With respect to petitioner's claim that its right to due process was violated as the denial letter merely lumped the amount allowed and disallowed without specifying the specific transaction as to enable it to intelligently decide on what action to take on denied input taxes, the Court reiterates that the cases of *Fitness By Design*, citing *Samar-I* allows substantial compliance with the requirements to state the legal and factual bases of respondent's action. Thus, the Court finds no reason to disturb or modify the assailed Decision.

WHEREFORE, in view of the foregoing, respondent Commissioner of Internal Revenue's "Motion for Partial Reconsideration (Re: Decision promulgated 15 July 2022)" filed on 09 August 2022 and petitioner Carmen Copper Corporation's "Motion for Reconsideration (With Motion for Leave of Court to Reopen the Case for the Recall of a Witness)" filed on 18 August 2022 are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice