REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9649

Members:

CASATAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:

JAN 17 2020 11:57 AM

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RESOLUTION

CASTAÑEDA, J.:

Submitted before this Court is respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 23 September 2019)** filed on October 7, 2019, with petitioner's **Comment/Opposition (to the Respondent's Motion for Partial Reconsideration dated 04 October 2019)** filed on October 29, 2019.

In his Motion, respondent seeks reconsideration of the Decision promulgated on September 23, 2019, in partially granting petitioner's claim for refund of its unutilized input value-added tax (VAT). The dispositive portion of which reads as follows:

> **WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner, in the amount of **₱12,752,844.69** representing its unutilized excess input VAT attributable to its zero-rated sales for the four quarters of CY 2015.

SO ORDERED.

Respondent primarily claims that this Court erred in finding that petitioner was able to sufficiently establish its claim for refund regarding its unutilized excess input VAT for the four quarters of calendar year 2015. He argues that only creditable input taxes that are directly attributable may be refunded – and to be creditable, the input tax must come from purchases of goods that form part of the finished product, or it must be directly used in the chain of production. However, in the promulgated Decision, this Court merely assumed that the petitioner's input tax on purchases was directly attributable to its zero-rated sales. Thus, respondent insists that there is nothing in the Decision that shows the direct connection between the purchases or input tax and the finished product whose sale is zero-rated as "concrete" and not "imaginary" or "remote".

On the other hand, petitioner contends that respondent failed to illustrate how the connections between the petitioner's import purchases and the product are not concrete and merely imaginary or remote. Other than citing the hornbook principle that tax refunds are in the nature of tax exemptions and are therefore construed strictissimi juris against the claimant, no other evidence was cited that would controvert petitioner's claim. As such, given that it complied with the requisites in claiming refund of unutilized excess input VAT attributable to its zero-rated sales, petitioner reiterates it has sufficiently proven that the input taxes paid in its importation purchases are directly attributable to its zero-rated export sales and that it is entitled to its claim for tax refund or a tax credit certificate.

Accordingly, after due consideration, this Court finds no merit in respondent's Motion for Partial Reconsideration.

Contrary to respondent's argument, petitioner is not required to prove which of its purchases are directly attributable to its zero-rated transactions and which are directly attributable to its taxable transactions. In fact, Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for a situation where 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 and entirely attributed to any of the sales, in which case, the input taxes shall be allocated proportionately on the basis of the volume of sales, to wit:

> "**SEC. 112.** *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That **where the taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales**: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales." *(Emphasis supplied)*

Be that as it may, this Court has painstakingly scrutinized the evidence on record and has determined that petitioner has valid zero-rated sales for calendar year 2015 and, furthermore, determined that petitioner incurred input taxes attributable thereto. As held in the assailed Decision, *viz.*:

> Unfortunately, however, only the input VAT of ₱12,752,844.69 is attributable to the valid zero-rated sales of ₱1,079,925,322.01, computed as follows:

Input VAT Allocated to Zero-Rated Sales	19,678,705.22
Less: Net Output VAT Payable	6,102,713.29
Excess Input VAT attributable to zero-rated sales	**₱13,575,991.93**
Divided by Declared Zero-Rated Sales	1,149,630,362.03
Multiply by Valid Zero-Rated Sales	1,079,925,322.01
Refundable Input VAT attributable to Zero-Rated Sales	**₱12,752,844.69**

Jc

In view of the foregoing, the Court finds no convincing reason to reverse or modify the Decision promulgated on September 23, 2019.

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 23 September 2019) is **DENIED** for lack of merit.

SO ORDERED.

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

We Concur:

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice