REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* No. 2163
(CTA Case No. 9340)

-versus-

COLT COMMERCIAL, INC.,
Respondent.

x- x

COLT COMMERCIAL, INC.,
Petitioner,

CTA *EB* NO. 2164
(CTA Case No. 9340)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Present:

DEL ROSARIO, *P.J.*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:
DEC 15 2021 3:06 pm

x- x

RESOLUTION

MANAHAN, J.:

For resolution is petitioner Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration (Re: Decision dated 22 February 2021)* filed via registered mail on March 15, 2021 and received by the Court on May 19, 2021, with respondent's *Comment/Opposition on Motion for Reconsideration (Re: Decision dated 22 February 2021) dated 15 March 2021* filed via private courier and received by the Court on July 22, 2021.

Petitioner CIR seeks the reconsideration of the Decision of the Court *En Banc* ("the Court") promulgated on February 22, 2021, the dispositive portion of which reads as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the Petitions for Review filed by Colt and the CIR are hereby **DENIED** for lack of merit. Accordingly, the Decision dated April 10, 2019 and the Resolution dated October 2, 2019, all promulgated by the Special First Division of the Court of Tax Appeals are hereby **AFFIRMED.**
>
> **SO ORDERED.**"

Petitioner CIR raises the following grounds for his Motion for Reconsideration, and we quote:

> "1.The Honorable Court *En Banc* erred in ruling that respondent is entitled to refund of the alleged input tax attributable to its zero-rated sales for the fourth quarter of taxable year 2013. Respondent failed to prove that the same remained unutilized and were not carried over to the succeeding periods.
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> 2. The Honorable Court *En Banc* erred in ruling that respondent is entitled to refund of the alleged input tax attributable to its zero-rated sales for the fourth quarter of taxable year 2013. Respondent failed to prove that its input tax in the amount of P2,083,376.41 is creditable and directly attributable to its zero-rated sales."

A reading of petitioner CIR's arguments in support of the grounds adduced in the instant motion for reconsideration would readily reveal that the sole allegation raised is that respondent Colt Commercial, Inc. (Colt) was not able to prove that it did not carry-over the claimed input value-added tax (VAT) to the succeeding taxable quarters as the other error assigned pertains to the factual findings of the Court in Division that petitioner CIR miserably failed to refute. The focal point of his contention is that the VAT returns submitted by respondent Colt are not sufficient bases for the Court to conclude that the claimed input VAT remained unutilized or have not been applied against any output tax for the current and succeeding quarters of the following taxable year. Instead, petitioner CIR suggests that the Court go over the BIR Records submitted during trial to determine if respondent Colt had already applied the entire amount of input VAT against its output VAT by way of carrying it over to the first quarter of 2014, hence, can no longer be the subject of a claim for refund. By way of emphasis, petitioner CIR reiterated the requisites prescribed by law, jurisprudence and implementing regulations in claiming a refund of excess or unutilized input VAT, to wit:

1. That the taxpayer is VAT-registered;
2. That the claim for refund was filed within the prescriptive period both in the administrative and judicial levels;
3. That there must be zero-rated or effectively zero-rated sales;
4. That input taxes were incurred or paid;
5. That the input taxes due or paid were attributable to zero-rated sales; and
6. That the input taxes were not applied against any output VAT liability.

In conclusion, petitioner CIR submits that respondent Colt failed to comply with requisite No. 6, i.e., that it failed to prove that the alleged excess input VAT for the fourth (4^{th}) quarter of taxable year 2013 was not carried over to the succeeding taxable periods. Petitioner CIR then alleges that the Court erred in granting its claim for refund, albeit partially.

In its *Comment/Opposition*, respondent Colt dismisses the arguments of petitioner CIR for being copied *verbatim* from his Petition for Review filed with the Court *En Banc* and prays that the same should be denied outrightly for being repetitions of the arguments which have already been carefully considered and deliberated upon by the Court in the assailed Decision. Respondent Colt offered no other counter arguments and merely relied on the wisdom of the Court to dismiss petitioner CIR's motion for utter lack of merit.

RULING OF THE COURT *EN BANC*

We agree with respondent Colt that petitioner CIR's arguments are mere rehash or a duplication of the arguments raised in his Petition for Review with the Court *En Banc* and which were already extensively discussed in the assailed Decision. This Court, however, finds it prudent to delve into the sole argument of petitioner CIR that respondent Colt's act of carrying over the excess input tax to the succeeding taxable quarter/s should have led the Court to conclude that the same was already utilized, hence no longer refundable.

It is worthy to note, that Section 110 (C) of the 1997 National Internal Revenue Code (NIRC), as amended, does not preclude a taxpayer/claimant from claiming a refund of input taxes that were carried over to the next succeeding taxable quarter/s as long as the amount claimed as refund is deducted from the total amount available to be (subsequently) carried over, and we quote:

> "Section 110. Tax Credits.-
>
> xxx xxx xxx
>
> (C) Determination of Creditable Input Tax. – **The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for value-added tax** and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.
>
> xxx xxx xxx" (emphasis supplied)

It may be recalled that the assailed Decision affirmed the ruling of the Special First Division of the Court and partially granted respondent Colt's claim for refund in the reduced amount of Php1,145,317.71 representing unutilized input VAT attributable to its zero-rated sales for the 4th quarter of taxable year 2013. The Court *En Banc* adopted the findings of the Court in Division and ruled that the evidence submitted by respondent Colt proved that the claimed input VAT of Php2,082,376.41 for the fourth quarter of taxable year 2013 remained unutilized as it was deducted from the amount claimed as refund. The Court *En Banc* quoted with approval the findings of the Court in Division, thus:

> "All told, petitioner was able to prove that the claimed input VAT of Php2,082,376.41 for the 4th quarter of taxable year 2013 was not applied against any output VAT in the succeeding quarters. **The said amount remain unutilized as it was deducted as "VAT Refund/TCC claimed" in its Amended Quarterly VAT Returns for the 3rd quarter of taxable year 2015. Apparently, the subject claim no longer formed part of the excess input VAT of Php278,416.77 at the end of said quarter of taxable year 2015 which can be carried over/applied to the succeeding quarters.** Henceforth, it eliminates the possibility that the present claim would be applied to future output VAT liability." (emphasis supplied)

In view of the foregoing, the Court finds no cogent or justifiable reason to reverse or amend the assailed Decision dated February 22, 2021.

WHEREFORE, premises considered, petitioner Commissioner of Internal Revenue's *Motion for Reconsideration (Re: Decision dated 22 February 2021)* filed on March 15, 2021, is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
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

(no part)
LANEE S. CUI-DAVID
Associate Justice