REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

OCEANAGOLD (PHILIPPINES), INC.	**CTA CASE NO. 9112**
Petitioner,	Members:
- versus -	**CASTAÑEDA, JR.**, *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	OCT 0 9 2020 8:32 Am

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RESOLUTION

CASTAÑEDA, J.:

Submitted before this Court is petitioner's **Motion for Reconsideration [of the Decision dated June 17, 2020)** filed on July 6, 2020, with respondent's **Comment [Re: Motion for Reconsideration dated July 6, 2020]** filed through registered mail on August 20, 2020, and received by the Court on September 1, 2020.

On June 17, 2020, the Court promulgated a Decision denying petitioner's claim for refund of unutilized input value-added tax (VAT) for failing to sufficiently establish that it has zero-rated sales during the second quarter of taxable year 32013, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

In its Motion, petitioner claims that the Court erred in using the date of issuance of the provisional and sales invoices as basis in determining the date of actual shipment of goods and its zero-rated export sales. Petitioner argues that it is in fact the Bills of Lading which show the actual date when the export sale of mineral products took place. Thus, petitioner insists that the export sale and actual shipment of petitioner's mineral products from the Philippines to the foreign country were made during the second (2nd) quarter of taxable year 2013.

Moreover, petitioner also claims that the Court erred in using the provisional invoices it issued in support of its export sales as basis to determine compliance with the invoicing requirements, *i.e.* written or printed "zero-rated sale". Petitioner insists that it should be the VAT sales invoices issued in support of its zero-rated rated sale of mineral products as basis to determine compliance with the invoicing and registration requirements.

On the other hand, in his Comment, respondent asserts that the Court correctly ruled that petitioner is not entitled to refund its alleged unutilized input VAT for the 2nd quarter of taxable year 2013 in the amount of ₱1,265,929,377.57. Respondent reiterates that a VAT invoice is proof of sale of goods, thus, the date appearing on the provisional invoices is fittingly considered the date of sale. Respondent further insists that both the provisional invoice and final sales invoice must be compliant with the invoicing and registration requirements under the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing rules, Revenue Regulations (RR) No. 16-2005.

This Court finds petitioner's Motion for Reconsideration bereft of merit.

While this Court acknowledges that the shipment date indicated in the Bills of Lading, as well as in the provisional invoices, is the date of the sale of petitioner's exported products, the absence nonetheless of the written or prominently printed word "zero-rated sale" in the issued provisional invoices is fatal to petitioner's claim for refund. The Court finds the case of *Philex Mining Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8808, May 19, 2016, instructive on the matter, to wit: *ge*

> "A scrutiny of the sales invoices, both provisional and final, supporting petitioner's sales of gold to Heraeus Ltd. amounting to ₱1,099,909.00, shows that the same were not duly registered with the BIR as there was no BIR Permit number reflected thereon and the word 'VAT' after petitioner's TIN was not imprinted. **Likewise, the word 'zero-rated sales' was not stamped nor imprinted on the Provisional Invoice. Thus, petitioner's reported sales in the amount of ₱1,099,909.00 cannot qualify for VAT zero-rating.**" *(Emphasis supplied)*

Evidently, the law does not distinguish whether the invoices are provisional or not when it required that such invoices shall show, among other things, the term "zero-rated sale" on its face. Simply stated, if the sale is subject to zero percent (0%) VAT, the receipts, sales invoices or commercial invoices, whether provisional or not, must have the word "zero-rated sale" written or printed prominently on its face.

The rationale behind the requirement of printing the term "zero-rated" on the face of invoices covering zero-rated sales was discussed by the Supreme Court in *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*[1], to wit:

> "In this respect, the Court has consistently ruled on the denial of a claim for refund or tax credit whenever the word 'zero-rated' has been omitted on the invoices or sale receipts of the taxpayer-claimant as pronounced in *Panasonic Communications Imaging Corporation of the Philippines v. CIR* wherein it was ratiocinated, viz:
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>> **Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services.** As aptly explained by the CTA's First

[1] G.R. No. 183531, March 25, 2015; citing *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.

> Division, **the appearance of the word 'zero-rated' on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid.** If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect.
>
> **Further, the printing of the word 'zero-rated' on the invoice helps segregate sales that are subject to 10% (now 12%) VAT from those sales that are zero-rated.** Unable to submit the proper invoices, petitioner Panasonic has been unable to substantiate its claim for refund."

In the present case, the term "zero-rated" was not written or prominently printed on petitioner's provisional invoices. Accordingly, the zero-rated sales supported by the said provisional invoices in the amount of ₱1,995,524,661.81 was properly denied VAT zero-rating.

In view of the foregoing, the Court finds no cogent reason to disturb the Decision assailed by petitioner.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration [of the Decision dated June 17, 2020] is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice