REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

MAXIMA MACHINERIES, INC., Petitioner,	CTA Case No. 9358
	Members:
-versus-	FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 04 2019 9:24 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

Assailed in petitioner's *Motion for Reconsideration and/or New Trial* dated April 2, 2019 is the Decision[1] dated March 11, 2019, the *fallo* of which states:

> **WHEREFORE**, the instant Petition for Review filed by petitioner Maxima Machineries, Inc. on May 26, 2016, is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.

Relative to its purported zero-rated sales additionally disallowed by the Court[2] amounting to ₱12,232,970.77, petitioner implores the Court's leniency praying that it be

[1] Docket, pp. 1270-1311.
[2] This is in addition to the Court's adoption of the disallowances made by the court-commissioned independent certified public accountant (ICPA) Neil U. Sison on petitioner's zero-rated sales in the aggregate sum of ₱103,786,975.00. See pp. 29-30 of the assailed Decision.

permitted to: a) *resubmit* VAT invoices found to be unreadable/with written insertions,[3] along those with incomplete details;[4] and b) present supporting documents[5] pertaining to those not found in the record, or denied admission by the Court. If allowed, petitioner may be able to substantiate additional zero-rated sales in the sum of ₱6,078,135.86.[6]

Petitioner further states that the VAT invoice[7] dated September 25, 2013 issued by Adnama Mining Resources, Inc. is also a valid source of zero-rated sales for the 3rd Quarter of FY ending March 31, 2014, for which reason, the zero-rated sales amounting to ₱4,960.00 pertaining thereon should be allowed by the Court.

Anent the input taxes rejected by the Court in the sum of ₱33,305,836.80,[8] petitioner moves to resubmit the supporting documents found to be illegible[9] or deficient[10] with invoicing requirements; and to submit those documents[11] not found in the record of the case. If permitted, petitioner may allegedly be able to validate the existence of extra input taxes reflected therein.

Petitioner further avers that the dates appearing on the VAT invoices and/or ORs issued by Indola International Phils Inc.[12] and Nexus Technologies Inc.[13] are within the period of the subject claim for refund, thus, the input taxes found thereon should also be allowed by the Court.

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[3] Exhibits P-46-028, P-46-P-1 to P-46-P-58, P-46-P-60 to P-46-P-63, P-46-P-68 to P-46-P-71, P-46-P-73, P-46-P-77 to P-46-P-81, P-46-P-86 to P-46-P-93, P-46-P-95 to P-46-P-100, P-46-P-112, P-46-P-115, P-46-P-116, P-46-P-120, P-46-P-121, P-46-P-123, P-46-P-124 and P-46-P-126.

[4] Exhibit P-46-P-125.

[5] Exhibits P-46-N-36 and P-46-N-99.

[6] Sum of the amounts reflected in the Exhibits enumerated in Notes 3 to 5.

[7] Exhibit P-46-N-2.

[8] This is in addition to the Court's adoption of ICPA Sison's disallowance of petitioner's input taxes amounting to ₱8,563,027.28. See pp. 34-35 of the assailed Decision and Exhibit P-46.

[9] Exhibits P-46-X-1, P-46-AL-125, P-46-AL-128 and P-46-AP-7.

[10] Exhibits P-46-AL, P-46-AN-1 to P-46-AN-62, P-46-BS-3, P-46-BS-5, P-46-BT-1, P-46-BT-12, P-46-BT-14 to P-46-BT-19, P-46-BT-28 to P-46-BT-30, and P-46-BR.

[11] Supporting documents relative to Bangkok Komatsu Co. Ltd.

[12] Exhibit P-46-V-11.

[13] Exhibit P-46-V-23.

Petitioner opines that the BIR documents,[14] particularly the Letter of Authority (LOA) covering the taxable years (TYs) 2010-2014, Preliminary Assessment Notice (PAN) for TY 2011, Letter Notice (LN) dated February 4, 2014, together with the Termination Letter dated October 25, 2016 collectively show the validity of input taxes incurred in the previous quarters, which were carried-over to 3rd Quarter of FY ending March 31, 2014.

Finally, petitioner claims that the court-commissioned independent certified public accountant (ICPA) Neil U. Sison failed to perform a full audit and/or verification of its supporting documents due to lack of material time. If given additional time, the ICPA will be able to complete his audit which in turn will allow it to prove that the input tax carry-over from the previous quarter, i.e., 2nd Quarter of FY ending March 31, 2014, amounting to ₱320,781,112.70 is sufficient to cover its output tax payable of ₱64,430,056.62 relative to 3rd Quarter of FY ending March 31, 2014, or from October 1, 2013 to December 31, 2013.

Siding with the Court, respondent retorts that: 1) since petitioner failed to prove that it has excess and unutilized input taxes sufficient to answer its output tax liability, no refund shall be forthcoming in its favor; 2) the grant of its motion for new trial is unavailing as the ICPA's failure to complete its examination was due to petitioner's neglect to submit all the required documents during the audit period; and 3) tax refunds partake the nature of tax exemptions which is strictly construed against the taxpayer like petitioner, for which reason its failure to adhere with all the conditions of a input tax refund justify the denial of its claim.

THE RULING OF THE COURT

The instant Motion is devoid of merit.

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[14] Documents enclosed and specified in the Affidavit of Yusuke Yamada, Annex B, petitioner's *Motion for Reconsideration and/or New Trial* dated April 2, 2019, docket, pp. 1325-1387.

The grant of additional zero-rated sales and input taxes is unwarranted.

Basic is the rule that the parties in a case have the prerogative to select on the objects, documents, and testimonies to be offered to support their cause of action or defense. However, upon admission thereof by the Court as evidence, all the parties to the case are considered bound by the favorable or unfavorable effects resulting from the evidence presented by them.[15]

If petitioner is keen on having its admitted documents establish the legitimacy of a portion of its zero-rated sales,[16] as well as a fragment of its input taxes,[17] it could have verified the completeness, legibility, existence, or admissibility thereof prior to their formal offer, but failed. Having opted to offer VAT Invoices and/or ORs, the details of which were unreadable or deficient, alongside those not found in the record, the disallowance of petitioner's zero-rated sales and input taxes originating therefrom must be upheld.

Further, no valid zero-rated sales and input taxes arose from the VAT invoice/ORs issued by Adnama Mining Resources, Inc., Indola International Phils Inc., and Nexus Technologies Inc.

Note that the subject refund claim covers the 3rd Quarter of FY ending March 31, 2014, or from October 1, 2013 to December 31, 2013. This means that the zero-rated sales, as well as input taxes imputable thereon should fall within such period. *A fortiori,* VAT invoices and ORs evidencing such zero-rated sales and input taxes must likewise be issued *during* such periods for the same to be a valid source of zero-rated sales and/or input taxes.

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[15] See *Concepcion Chua Gaw vs. Chua,* G.R. No. 160855, April 16, 2008, citing *Arwood Industries, Inc. vs. D.M. Consunji, Inc.,* G.R. No. 142277, December 11, 2002.

[16] See Notes 3 to 5.

[17] See Notes 9 to 11.

Since the particular[18] VAT invoice by Adnama Mining Resources, Inc. was issued on September 25, 2013, or outside the period of the subject claim, i.e., October 1, 2013 to December 31, 2013, hence, the zero-rated sales reflected on such invoice should be rejected.

By the same token, the VAT ORs issued by Indola International Phils Inc.[19] and Nexus Technologies Inc.[20] respectively dated September 17 2013 and April 15, 2013, are likewise outside the subject claim, hence, the disallowance of input taxes indicated therein is justified.

The documents[21] specified in the Affidavit of Yusuke Yamada does not operate to establish validity of petitioner's input tax carry-over

Jurisprudence teaches us that the right to credit input tax against the output tax is clearly a privilege created by law, a privilege that also the law can limit. It should be stressed that a person has no vested right in statutory privileges.[22] Among the restrictions is Section 110(A)(1)[23] of the NIRC, as amended, which confines the evidence that may be utilized to prove input taxes. It essentially states that only input taxes evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the same Code shall be creditable against output taxes. Conversely, save for a duly valid and complete VAT invoice/OR, other documents are not valid source of input taxes.

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[18] Exhibit P-46-N-2.
[19] Exhibit P-46-V-11.
[20] Exhibit P-46-V-23.
[21] Docket, pp. 1327-1387.
[22] *ABAKADA Guro Party List Officer Samson S. Alcantara, et al. vs. The Hon. Executive Secretary Eduardo Ermita,* G.R. No. 168056, October 18, 2005 (Resolution on Motion for Reconsideration).
[23] **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:

xxx xxx xxx

Petitioner puts much premium on the FDDA for TYs 2010 and 2014, wherein the BIR did not allegedly object to the validity of the input tax carry-over, side by side with the pertinent LOAs relative to TYs 2010-2014, PAN for TY 2011, LN dated April 4, 2014, and Termination Letter dated October 25, 2016 to establish the veracity of its input taxes carried over to 3rd Quarter of FY ending March 31, 2014 in the sum of ₱320,781,112.70. However, these documents do not meet the benchmark mandated by the Tax Code in substantiating input taxes. Without the pertinent VAT invoices and/or official receipts demonstrating such input taxes carry-over as in this case, the existence and validity thereof may not be sustained.

No convincing reason exists to justify the grant of a new trial

Section 5, Rule 30[24] of the Rules of Court provides that it is during the trial stage of the proceeding that the parties are legally permitted to present evidence supporting their cause of action or defense. The exception to the foregoing provision is Section 1, Rule 37 of the Rules of Court which allows the grant of new trial and consequent presentation of evidence after a final judgment or order has been rendered predicated on the following grounds:

> **Section 1.** *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
>
> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced

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[24] **Section 5.** *Order of trial.* — Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
(a) The plaintiff shall adduce evidence in support of his complaint;
(b) The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third-party complaints; xxx

> at the trial, and which if presented would probably alter the result.
>
> xxx xxx xxx

Significantly, compliance with procedural rules is the general rule, and abandonment thereof should only be done in the most exceptional circumstances.[25] Save for the most persuasive of reason, strict compliance with the rules is enjoined to facilitate the orderly administration of justice.[26]

Following the above tenet, it is evident that the ground invoked by petitioner is not a valid ground for a new trial, namely, the ICPA's lack of material time[27] to finish a full audit/examination of petitioner's supporting documents. On this score alone, its request for a new trial must be denied outright.

Assuming *arguendo* that the premise implored by petitioner legally subsists, the reason for the ICPA's non-completion of his audit/examination was due to *petitioner's failure to make available such documents during the course of audit.*[28] Interestingly, no plausible explanation was offered by petitioner on its failure to ensure that all its supporting documents are available for the inspection and audit of the ICPA during the period granted. Evidently, the alleged inability of the ICPA to complete its audit was occasioned by petitioner's own fault.

WHEREFORE, petitioner's *Motion for Reconsideration and/or New Trial* dated April 2, 2019 is **DENIED**, for lack of merit. The assailed Decision dated March 11, 2019 is **AFFIRMED**.

SO ORDERED.

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[25] See *Pilapil vs. Heirs of Briones,* G.R. No. 150175, February 5, 2007.
[26] See *The Government of the Kingdom of Belgium vs. Hon. Court of Appeals,* G.R. No. 164150, April 14, 2008.
[27] Paragraph 15, petitioner's Motion for Reconsideration/New Trial dated April 2, 2019, docket, p. 1319.
[28] Affidavit of Neil U. Sison, Annex A, petitioner's Motion for Reconsideration/New Trial dated April 2, 2019, docket, p. 1323.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice