REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CBK POWER COMPANY LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **10157**

Members:

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

Promulgated:
APR 16 2024 2:47 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is the "Motion for Partial Reconsideration [re: Decision dated 12 December 2023]"[1] (**MPR**) filed by respondent Commissioner of Internal Revenue (**respondent/CIR**) on 27 December 2023, with "Comment on/Opposition to Respondent's Motion for Partial Reconsideration (Re: Decision dated December 12, 2023)"[2] (**Comment/Opposition**) filed by petitioner CBK Power Company Limited (**petitioner/CBK**) on 29 January 2024 through private courier or LBC.[3]

The MPR seeks the reversal of the Amended Decision dated 12 December 2023[4] (**assailed Decision**) partially granting petitioner's claim for value-added tax (**VAT**) refund. The dispositive portion thereof states:

[1] Division Docket, Volume IV, pp. 1703-1712.
[2] Id., pp. 1716-1724.
[3] Received by the Court on 30 January 2024.
[4] Division Docket, Volume IV, pp. 1670-1702.

> ...
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> **WHEREFORE**, premises considered, the Motion for Reconsideration filed by petitioner CBK Power Company Limited on 13 July 2023 is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner CBK Power Company Limited in the amount of **₱30,791,652.85**, representing its excess and unutilized input value-added tax attributable to its zero-rated sales from the second (2^{nd}) to the fourth (4^{th}) quarters of calendar year 2017.
>
> **SO ORDERED.**
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> ...

In the MPR, respondent argues that this Court erred in relaxing the application of the Revised Rules on Evidence, as amended,[5] and eventually considering the Certificates of Compliance (**COCs**) attached to petitioner's Motion for Reconsideration previously filed on 13 July 2023.[6] He or she explains that petitioner failed to proffer valid reasons for the admission of the said COCs despite not being formally offered during trial. Hence, there is no reason to deviate from the application of the general rules on evidence.

Respondent also avers that petitioner failed to establish that creditable input taxes (subject of the refund) are directly attributable to its zero-rated sales. He or she points out that there is nothing in the assailed Decision which shows or discusses the direct attributability of the purchase or input tax to the sale of finished products (which is treated as zero-rated) or at least used in the chain of production to produce the finished products.

In its Comment/Opposition, petitioner counters that respondent's MPR does not even pray for the reversal of the assailed Decision of 12 December 2023 but actually contest a certain decision promulgated on 28 October 2020.[7]

Apart from the above contention, petitioner claims that respondent failed to raise any new argument to justify the reversal of the assailed Decision. According to petitioner, the Court correctly

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5 A.M. No. 19-08-15-SC.

6 Division Docket, Volume IV, pp. 1513-1562.

7 See Prayer of the Motion for Partial Reconsideration [re: Decision dated 12 December 2023], id. p. 1711.

considered the evidentiary weight of the relevant COC considering that it is a public document and part of the Bureau of Internal Revenue (**BIR**) records. Thus, with its compliance with the requisites for VAT refund, the Court did not err in granting its claim for refund.

We resolve.

A careful review of the present MPR reveals that respondent did not raise any new argument that warrants the modification or reversal of Our previous ruling.

Addressing respondent's allegation on the direct attribution, the Supreme Court in *Commissioner of Internal Revenue v. Cargill Philippines, Inc.*,[8] already sheds light on this argument and clarified that the law does not require direct attributability of the input VAT from the purchase of goods to the finished product whose sale is zero-rated. The pertinent portions of the said case state:

> ...
>
> The jugular legal issue cast in this instant Petition is whether or not respondent, in its claim for refund of excess/unutilized input VAT, is required by law to prove *direct* attributability of its purchases or the input VAT to its zero-rated sales.
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> Petitioner posits that input VAT must be *directly* attributable to the zero-rated sales of the respondent in order to be refundable. Along this grain, it argues that the input VAT must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production.
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> ***Petitioner is clutching at straws.***
>
> Section 112 (A) of the Tax Code elucidates:
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> > SECTION 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 <u>attributable to such sales</u>**, except transitional input tax, **to the extent that such**

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[8] G.R. Nos. 255470-71, 30 January 2023; Citations omitted, emphasis, italics and underscoring in the original text.

> **input tax has not been applied against output tax**: x x x *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. [Emphasis supplied]

Evidently, contrary to petitioner's contention, **the law does *not* require *direct* attributability** of the input VAT from the purchase of goods to the finished product whose sale is zero-rated, in order for such input VAT to be refundable. *Ubi lex non distinguit nec nos distinguere debemos*. When the law has made no distinction, the courts ought not to recognize any distinction.

Thence, it suffices that the purchase of goods, properties, or services upon which the input VAT is based, **can be attributed to the zero-rated sales**. This conclusion is further bolstered by Section 110(A)(1) of the Tax Code, which explicitly sets forth the sources of creditable input VAT:

> SECTION 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:
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> (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, except automobiles, aircraft and yachts.
>
> (b) Purchase of services on which a value-added tax has been actually paid.

Verily, the law does not limit itself to purchases of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production.

In a last-ditch effort to convince this Court to rule in its favor, petitioner zeroes in on its previous pronouncements in the 2007 and 2011 cases of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* —

> The formal offer of evidence of the petitioner failed to include photocopy of its export documents, as required. There is no way therefore, in determining the kind of goods and actual amount of export sales it allegedly made during the quarter involved. This finding is very crucial when we try to relate it with the requirement of the aforementioned regulations that the input tax being claimed for refund or tax credit must be shown to be *entirely* attributable to the zero-rated transaction, in this case, export sales of goods. Without the export documents, the purchase invoice/receipts submitted by the petitioner as proof of its input taxes cannot be verified as being *directly* attributable to the goods so exported. [Emphasis supplied]

The foregoing cases, however, were decided on the basis of **Revenue Regulations No. 5-87, as amended by RR No. 3-88**, which *limited* the amount of refund or tax credit to the amount of VAT paid *directly and entirely* attributable to the zero-rated transaction during the period covered by the application for credit or refund.

Nevertheless, the Secretary of Finance, upon the recommendation of herein petitioner, issued **Revenue Regulations No. 14-2005** on June 22, 2005, which was later superseded by **Revenue Regulations No. 16-2005**. This latter BIR issuance has undergone a series of amendments, the most recent of which is **Revenue Regulations No. 21-2021**.

A meticulous study of these latter-day revenue regulations reveals that **the requirement for input VAT being claimed for refund to be *directly and entirely* attributable to the zero-rated sales was <u>not</u> retained**. The pertinent portion of the relevant regulation, Revenue Regulations No. 16-2005, is plain as day —

> SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* — A zero rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties, or services, **<u>related</u> to such zero-rated sale**, shall be available as tax credit or refund in accordance with these Regulations.
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> x x x
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> SEC. 4.108-5. *Zero-Rated Sale of Services.* —
>
> (a) *In general.* — A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes,

> but shall not result in any output tax. However, the input tax on purchases of goods, properties or services **<u>related</u> to such zero-rated sale** shall be available as tax credit or refund in accordance with these Regulations. [Emphasis supplied]

This Court **cannot** be bound by Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88, requiring *direct* attributability of input VAT *vis-à-vis* zero-rated sales.

All told, the CTA *En Banc* committed no reversible error in affirming the CTA Division's findings that respondent is entitled to the amount of PHP1,779,377.16 representing its unutilized excess input VAT for the period covering March 1, 2003 to August 31, 2004 *attributable to its zero-rated sales* for the same period.

...

Meanwhile, as to respondent's averment that the relevant COC was not formally offered and must be disregarded in the resolution of the case, the same was already passed upon and discussed in the assailed Decision. Thus, it would be useless for Us to again reiterate and tackle this matter.

In *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[9], the Supreme Court declared:

...

The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, **does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant**; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. **It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment**, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or

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9 G.R. No. 109645, 04 March 1996.

modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.

...

WHEREFORE, premises considered, the "Motion for Partial Reconsideration [re: Decision dated 12 December 2023]" filed by respondent on 27 December 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice