REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

TOLEDO POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 7233 & 7294

Members:

UY, *Chairperson, and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

DEC 19 2018
3:04 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 13 July 2018)**, filed on August 6, 2018, with **petitioner's Motion for Extension of Time to File Comment**, filed on September 7, 2018 and petitioner's **Comment/Opposition (Re: CIR's Motion for Partial Reconsideration dated August 6, 2018)**, filed on September 24, 2018; and

2. petitioner's **Motion for Partial Reconsideration (Re: Amended Decision dated July 13, 2018)**, filed on August 7, 2018, with respondent's **Opposition (Re: Motion for Partial Reconsideration of the Amended Decision dated 13 July 2018)**, filed on August 31, 2018.

The Court shall first resolve petitioner's Motion for Extension of Time to File Comment.

Pursuant to the Court's Resolution dated August 14, 2018, petitioner was directed to file its comment to respondent's Motion for Partial Reconsideration (Re: Decision promulgated 13 July 2018) within ten (10) days from notice.

Based on the records, petitioner received a copy of the Court's Resolution dated August 14, 2018 on August 28, 2018. Counting ten (10) days from August 28, 2018, petitioner had until September 7, 2018. However, instead of filing its comment, petitioner filed on September 7, 2018 its Motion for Extension of Time to File Comment requesting for an additional period of fifteen (15) days from September 7, 2018, or until September 22, 2018, within which to file its comment to respondent's Motion for Partial Reconsideration (Re: Decision promulgated 13 July 2018) in view of its counsel's heavy pressure of work occasioned by court appearances, conferences with clients and drafting of pleadings in other equally important cases.

In the case of *Philippine National Bank vs. Deang Marketing Corporation, et al.*,[1] the Supreme Court discussed the basic requirement in filing a motion for extension of time to file pleading, as follows:

> "It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed <u>before</u> the expiration of the period sought to be extended. The court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court <u>powerless</u> to entertain or grant it.-Since the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend."

Considering that petitioner filed its motion requesting for an additional period, on September 7, 2018, or within the period given to file its comment, and considering further that proceedings before this Court are not governed strictly by technical rules of evidence as provided under Section 8 of Republic Act (RA) No. 1125, as amended, petitioner's **Motion for Extension of Time to File Comment**, praying for an additional period of fifteen (15) days from September 7, 2018, or until September 22, 2018, is **GRANTED**. Accordingly, petitioner's **Comment/Opposition (Re: CIR's Motion for Partial Reconsideration dated August 6, 2018)**, filed on September 24, 2018[2], is **ADMITTED**.

Now, as to the parties' respective motion for partial reconsideration, assailed therein is the Court's Amended Decision dated July 13, 2018, the dispositive portion of which reads:

[1] G.R. No. 177931, December 8, 2008.
[2] September 22, 2018 fell on a Saturday.

> "**WHEREFORE**, in light of the foregoing considerations, the Petition for Review filed by *Toledo Power Company vs. Commissioner of Internal Revenue* in CTA Case No. 7233 is hereby **PARTIALLY GRANTED**. Accordingly, the Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of Toledo Power Company in the amount of **THREE HUNDRED NINETY-NINE THOUSAND FIVE HUNDRED FIFTY PESOS AND EIGHTY-FOUR CENTAVOS (₱399,550.84)**, representing its unutilized input VAT first quarter of taxable year 2003.
>
> **SO ORDERED**."

Respondent's Motion for Partial Reconsideration

Respondent alleges that the Court erred in ruling that petitioner is entitled to refund in the amount of ₱399,550.84 representing alleged unutilized input value-added tax (VAT) for the first quarter of taxable year 2003. He claims that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. Moreover, respondent stresses that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer.

On the other hand, petitioner argues that the grounds relied upon by respondent for the reversal of the Decision deserve scant consideration from this Court. It asserts that the arguments raised are mere general assertions based on a misinterpretation of the facts and applicable law in this case.

Respondent's motion is bereft of merit.

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, mandates, among others, that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales, thus:

> "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 <u>attributable to such sales</u>, except transitional input tax, to the

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extent that such input tax has not been applied against output tax: xxx." *(Underscoring supplied)*

Contrary to respondent's argument, Section 112(A) of the NIRC of 1997, as amended, does not decree that the input tax be directly attributable to petitioner's zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. *Ubi lex non distinguit nec nos distinguire debemus.* When the law does not distinguish, we must not distinguish.[3]

Petitioner's Motion for Partial Reconsideration

Petitioner asserts that it complied with all of the requisites for its claim for refund and/or issuance of tax credit certificate (TCC). It contends that it is engaged in zero-rated sales pursuant to the provisions of the Electric Power Industry Reform Act of 2001 (EPIRA Law) and its implementing rules and regulations. It claims that it is a VAT-registered taxpayer. It further asserts that its claim has been filed within the period prescribed by law and that the input tax claimed for refund are attributable to petitioner's zero-rated sales which remain unutilized and unapplied against output VAT.

On the other hand, respondent claims that since the issue in the instant case is petitioner's entitlement to a refund and since it is settled that claims for refund, which are in the nature of tax exemptions, are construed in *strictissimi juris* against the claimant, petitioner must prove that it is entitled to the refund sought. He also contends that taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner.

Petitioner's motion lacks merit.

At the outset, the issues and arguments presented in petitioner's motion are essentially a mere rehash of what have been said and reiterated in previous pleadings and that which have been considered, weighed and resolved by the Court in the assailed Amended Decision.

It is settled that the sale of generated power by generation companies shall be VAT zero-rated under Section 6 of the EPIRA Law effective June 26, 2001.

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[3] *Philippine Free Press, Inc. vs. Court of Appeals (12th Division), et al.,* G.R. No. 132864, October 24, 2006.

In this regard, to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA Law, a taxpayer must establish that it is a generation company and that it derives sales from power generation. To be considered a generation company, an entity should be authorized by the Energy Regulatory Commission (ERC) to operate the generation facility. It is required that both new and existing generation facilities must obtain a Certificate of Compliance (COC) from the ERC prior to its operation in accordance to Rule 5, Section 4 (a) of the Implementing Rules and Regulations of RA No. 9136.

However, the Court found that petitioner failed to submit the approved COC and that only the Letter for the Submission of Documents to the ERC for the Issuance of COC dated June 20, 2002 was presented. This letter merely proved that petitioner filed an application for the issuance of COC with the ERC. The Court also noted that the ERC Registration and Compliance attached to its Application for VAT Refund or Issuance of TCC dated December 20, 2004 was not made part of the record nor offered to the Court.

Thus, as previously ruled, petitioner's sales of generated power to Cebu Electric Cooperative III (CEBECO III) and Visayan Electric Company were denied VAT zero-rating pursuant to the EPIRA Law. However, petitioner's sale of power generation services to the National Power Corporation (NPC) qualifies for zero-rating in accordance with Section 108(B)(3) of the NIRC of 1997, as amended, since the latter is an entity enjoying exemption from payment of all taxes as provided under Section 13 of RA No. 6395. Thus, services rendered to NPC by a VAT-registered entity are effectively zero-rated.

After a careful examination and consideration of the evidence presented by petitioner, the Court found that petitioner was able to prove its entitlement to the claim for refund or issuance of TCC for its unutilized input VAT for the first quarter of taxable year 2003 in the reduced amount of ₱399,550.84.

The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim.[4]

In the case of *Shangri-La International Hotel Management, Ltd., et al. vs. Developers Group of Companies, Inc.*[5], the Supreme denied respondent's Motion for Reconsideration for being a mere reiteration of their previous arguments and

[4] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

[5] G.R. No. 159938, January 22, 2007.

for failure to raise matters substantially plausible or compellingly persuasive to warrant the reversal of the assailed Decision, as follows:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
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> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

Considering that petitioner did not raise any new or substantial legitimate ground or reason to justify the reconsideration sought, the Court, therefore, finds no reason to reverse or modify the assailed Amended Decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 13 July 2018)** and petitioner's **Motion for Partial Reconsideration (Re: Amended Decision dated July 13, 2018)** are **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ERLINDA P. UY
Associate Justice