REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2453** (CTA Case Nos. 9440, 9501, 9534 & 9588)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC., Respondent.	***Promulgated:*** JAN 04 2023 9:35 a.m.

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RESOLUTION

UY, *J.*:

For resolution is the ***MOTION FOR RECONSIDERATION (Re: Decision promulgated 17 August 2022)*** filed by petitioner Commissioner of Internal Revenue (CIR) on August 30, 2022, seeking the reconsideration of this Court's Decision dated August 17, 2022, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated November 18, 2020 and Resolution dated March 1, 2021,

both rendered by the Court in Division in CTA Case Nos. 9440, 9501, 9534 & 9588 are **AFFIRMED**.

SO ORDERED."

Respondent Philippine Geothermal Production Company, Inc. (PGPCI) filed its ***COMMENT (on Petitioner's Motion for Reconsideration dated August 25, 2022)*** on September 14, 2022.

Hence, this resolution.

CIR's arguments:

In support of his *Motion*, the CIR reiterates that new and additional documents that were not submitted at the administrative level cannot be submitted to this Court. Further, since a decision has been rendered in the administrative level, the Court in Division's jurisdiction becomes strictly appellate in nature; and that the Court should confine itself to whether the findings of petitioner are consistent with law.

The CIR further avers that PGPCI failed to establish that its creditable input value-added tax (VAT) is directly attributable to its zero-rated sales. The CIR insists that the law requires that only "creditable input taxes" directly attributable may be refunded. Allegedly, no attributability was established between the input tax purchases vis-à-vis the zero-rated sales of PGPCI.

PGPCI's counter-arguments:

PGPCI counters that this Court is not precluded from accepting evidence that was not presented at the administrative level.

Moreover, it argues that it has established that the creditable input taxes are attributable to its zero-rated sales.

THE COURT'S RULING

After careful examination and consideration of the instant *Motion*, it is noted that the arguments raised therein are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

Cases filed before the Court of Tax Appeals are litigated de novo.

The CIR contends that PGPCI can no longer present documents before the Court that it did not submit at the administrative level. The said contention deserves scant consideration

To reiterate, cases filed before this Court are litigated *de novo,* and party litigants should prove every minute aspect of its case.[1] Further, it bears emphasis that the Court of Tax Appeals (CTA) is not limited by the evidence presented at the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.[2]

Hence, the Court is not precluded from accepting PGPCI's evidence assuming these were not presented at the administrative level.

PGPCI's creditable input taxes are attributable to its zero-rated sales.

The Court *En Banc* likewise finds no merit in CIR's assertion that only "creditable input taxes" that are directly attributable may be refunded.

As ruled in the assailed Decision, Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, allows the allocation of creditable input taxes which cannot be directly or entirely attributable to zero-rated sales, to wit:

> "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

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[1] *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[2] *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 206079-80 and 206309*, January 17, 2018.

> made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): **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 of 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**: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales." (Emphasis and underscoring supplied).

Evidently, creditable input taxes which cannot be directly or entirely attributable to any sale transaction (*i.e., zero-rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services*), shall be allocated proportionately on the basis of the volume of sales.

Thus, contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct.

In sum, the Court *En Banc* finds no compelling reason to reconsider, modify or reverse the assailed Decision.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice