REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TOLEDO POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8792

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

JAN 2 9 2019 4:00 pm

x - x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution are the following:

1. petitioner's **Motion for Reconsideration (with Motion to Set Commissioner's Hearing)**, filed on November 21, 2018, without respondent's comment despite notice per Records Verification dated January 7, 2019; and

2. respondent's **Motion for Partial Reconsideration (Re: Amended Decision promulgated November 5, 2018)**, filed on November 21, 2018, with petitioner's **Comment (To Respondent's Motion for Partial Reconsideration dated November 20, 2018)**, filed on December 12, 2018.

Both parties seek reconsideration of the Court's Amended Decision promulgated on November 5, 2018 (assailed Amended Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** is **PARTIALLY GRANTED** while respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 6 June 2017)** is **DENIED**. Accordingly, the dispositive portion of this Court's Decision dated June 6, 2017 is amended to read as follows:
>
>> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **₱27,187,927.75** representing its unutilized excess input VAT for the four quarters of taxable year 2012 attributable to its zero-rated sales/receipts."
>>
>> **SO ORDERED**."
>
> **SO ORDERED**.

Petitioner's Motion for Reconsideration

Petitioner avers that in the Amended Decision, the Court ruled that its sales of power to Cebu Electric Cooperative III (CEBECO III) that were eventually distributed to Balamban Enerzone Corporation (BEC) and Carmen Copper Corporation (CCC) are value-added tax (VAT) zero-rated sales. However, petitioner states that a portion of the sales to CEBECO III was disallowed by the Court as the supporting official receipts, specifically Official Receipt Nos. 2717 and 2718, marked as Exhibits "P-105-138" and "P-105-139", respectively, are unreadable. Petitioner admits that the copy of the said official receipts is difficult to read. As such, petitioner begs the Court to allow it to have the original copies compared in a Commissioner's Hearing so that a legible copy will be submitted to the Court for its consideration. *gr*

Petitioner also avers that the Court ruled that out of petitioner's sales to CEBECO III in the amount of ₱138,162,620.07, only the amount of ₱31,530,518.36 qualifies for VAT zero-rating as this is the only amount that can be clearly traced as pass-through charges of CEBECO III to BEC and CCC. Petitioner submits that petitioner's sales to CEBECO III in the amount of ₱138,162,620.07 qualifies as VAT zero-rated sales in its entirely since the total amount of ₱138,162,620.07 was eventually distributed to BEC and CCC, which are Philippine Economic Zone Authority (PEZA) and Board of Investments (BOI)-registered entities, respectively.

Petitioner argues that its sales of power to CEBECO III that were eventually distributed to BEC and CCC are duly supported with sales invoices and official receipts, billing statements issued by petitioner to CEBECO III as summarized in Exhibit "P-132" and statements of account issued by CEBECO III to BEC and CCC, as summarized in Exhibits "P-133" and "P-134". Petitioner also avers that its witness testified that the electric generation and fuel charges supplied by petitioner to CEBECO III for the year 2012 were passed on to BEC and CCC. Moreover, petitioner contends that its sales of electric power to CEBECO III were distributed to BEC and CCC is further supported with a notarized Certification issued by CEBECO III dated June 30, 2014, marked as Exhibit "P-55".

Petitioner's motion is bereft of merit.

The Court cannot allow petitioner's motion for a Commissioner's Hearing wherein petitioner intends to present additional evidence in order to correct evidence previously offered.

Pursuant to Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals, any aggrieved party may seek a reconsideration or new trial of any decision of the Court.

In this case, petitioner filed a Motion for Reconsideration (with Motion to Set Commissioner's Hearing), hence, petitioner is basically praying for the reconsideration and reopening of the case for the reception of additional evidence, which the Court cannot allow considering that a judgment has already been rendered.

As held in *Alegre vs. Reyes, et al.*[1], a motion to reopen may properly be presented only after either or both parties have formally offered, and closed their evidence, *but before judgment*. The reopening of a case for the reception of additional evidence after a case has been submitted for decision *but before judgment* is actually rendered is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a trial court.

Even if we were to consider petitioner's Motion to Set Commissioner's Hearing as a motion for new trial, petitioner failed to show that its motion is based on the specific grounds provided under Section 1, Rule 37 of the Rules of Court, to wit:

> 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 at the trial, and which if presented would probably alter the result.
>
> Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

In *Alegre* cited earlier, the Supreme Court explained that a motion to reopen the trial is quite distinct from a motion for new trial. A motion for new trial is proper only after rendition or promulgation of judgment. Moreover, a motion for new trial in civil actions may be

---

[1] G.R. No. L-56923, May 9, 1988.

applied for and granted only upon specific, well-defined grounds, set forth in Section 1, Rule 37 of the Rules of Court.

Also, the 1997 Rules of Civil Procedure, as amended, prescribes an order of trial (Section 5, Rule 30).[2] While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[3]

As to petitioner's argument that all of its sales to CEBECO III in the amount of ₱138,162,620.07 qualifies for VAT zero-rating, the Court stands by its finding that only the amount of ₱31,530,518.36 qualifies for VAT zero-rating as this can be clearly traced as pass-through charges of CEBECO III to BEC and CCC. It should be noted that the same documents petitioner cited in its motion to support its argument are the same documents already considered by the Court, to wit:

> In this case, CEBECO III is a registered electric cooperative as shown in the Certificate of Registration issued by the National Electrification Administration. Petitioner alleges that the sale of power to CEBECO III in the total amount of ₱138,162,620.07 are pass through charges and directly attributable to BEC and CCC. Hence, the Court considered the documents supporting the total amount of ₱138,162,620.07, such as the Schedule of Gross Sales (VATable, Zero-Rated, VAT-exempt and Sales to Government) with the related sales invoices and official receipts, billing statements issued by petitioner to CEBECO III as summarized in Exhibit "P-132", statements of account issued by CEBECO III to BEC and CCC as summarized in Exhibits "P-133" and "P-134.

Moreover, the Court cannot merely rely on the notarized Certification issued by CEBECO III dated June 30, 2014, marked as Exhibit "P-55"[4], and identified by petitioner's witness, Mr. Rolando L. Vicente, Finance Manager of CEBECO III, in his Judicial Affidavit[5] dated June 30, 2014, because the total amount of "Zero-rated per return" that were allegedly sourced through petitioner which have

---

[2] *Republic of the Philippines vs. The Hon. Sandiganbayan (Second Division), et al.*, G.R. No. 159275, August 25, 2010.

[3] *Marohomsalic vs. Cole*, G.R. No. 169918, February 27, 2008.

[4] Docket, vol. II, pp. 993-994.

[5] Exhibit "P-61", docket, vol. I, pp. 318-324.

been passed-on to BEC and CCC per said certification is ₱132,369,257.95 which differs from the total amount of zero-rated sales (₱138,162,620.07) per petitioner's Summary of Company's Sales Invoices and Official Receipts Issued to CEBECO III with Schedule of Electric Power Distributed to BEC and CCC for the 1st to 4th Quarters of 2012, marked as Exhibit "P-132". At any rate, the Court already considered the relevant supporting documents and found that out of ₱138,162,620.07, only the amount of ₱31,530,518.36 qualifies for VAT zero-rating as this can be clearly traced as pass-through charges of CEBECO III to BEC and CCC.

Respondent's Motion for Partial Reconsideration

In his motion, respondent argues that for input taxes on purchases of goods – they must be a factor in the chain of production to be "creditable". Respondent claims that Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, uses the word "directly attributable" and not the word "entirely attributable", thus, the fact of "direct attributability" must be established. Respondent avers that it is erroneous to immediately assume that all the input tax is directly attributable to petitioner's zero-rated sales without establishing how it factored in the production chain.

According to respondent, the phrase directly attributable means arising from a particular source or cause, thus, the Court erred in ruling that petitioner has proven this crucial element of a claim for unutilized input tax. Respondent argues that the Court did not rule that the unutilized input tax was "directly attributable" to the zero-rated sale and it does not necessarily follow that when a taxpayer has zero-rated sales alone, all its input tax is automatically directly attributable to such zero-rated sales.

Respondent posits that the input tax must come from purchases of goods that form part of the finished product of the taxpayer. Respondent claims that the word "directly" means that the connection between the purchases and finished product is "concrete" and not "imaginary" or "remote". Respondent points out that there is nothing in the decision of the Court showing the direct connection of the purchases or input tax to the finished product whose sale is zero-rated.

On the other hand, petitioner contends that in the Amended Decision, the Court already ruled that petitioner is entitled to refund in the total amount of ₱27,187,927.75, representing its unutilized excess input VAT for the four quarters of taxable year 2012 attributable to its zero-rated sales/receipts. Petitioner avers that the Court, after evaluating the pieces of evidence offered by petitioner, has come to a conclusion that petitioner was able to comply with the requirements in law and jurisprudence, and prove that a portion of petitioner's input VAT incurred were attributable to its zero-rated sales. Hence, petitioner contends that it is actually the burden of respondent to prove that the Court erred in concluding that petitioner incurred excess input VAT attributable to its zero-rated sales in the first place.

Respondent's motion is likewise bereft of merit.

Section 112(A) of the NIRC of 1997, as amended, allows the tax credit/refund of creditable input VAT attributable to zero-rated or effectively 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 **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 supplied)*

Clearly, contrary to respondent's argument, Section 112(A) of the NIRC of 1997, as amended, uses the words "directly" and "entirely". Moreover, the Court does not agree with respondent's interpretation of the above provision to mean that only those purchases of goods that form part of the finished product of the taxpayer can be subject of an input VAT refund.

Section 110(A)(1) of the NIRC of 1997, as amended, provides that any input tax on the following transactions evidenced by a VAT invoice or official receipt shall be creditable against the output tax:

> 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:
>
> (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.

(b) Purchase of services on which a value-added tax has been actually paid.

Moreover, Section 110(A)(3) of the NIRC of 1997, as amended, provides that the term "input tax" means the value-added tax due from or paid by a VAT-registered person *in the course of his trade or business* on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person.

From the foregoing, it is significant to note that the NIRC did not limit input taxes to those purchases that only form part of the finished product of the taxpayer.

To the extent possible, words must be given their ordinary meaning; this is consistent with the basic precept of *verba legis*.[6] The word "attribute", the adjective form of which is "attributable", is defined in the dictionary as "to explain as to cause or origin"[7], in other words, "creditable input tax due or paid *attributable* to such sales" simply means that the input tax is connected with the zero-rated or effectively zero-rated sales.

Hence, when Section 112(A) of the NIRC of 1997, as amended, speaks of "creditable input tax due or paid *attributable* to such sales", it is more logical to interpret this phrase as referring to instances of an apportionment of the input VAT in mixed transactions (taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable or exempt sales) rather than on the classification of the purchase/expense/cost. However, respondent seem to have confused the phrases "attributable to such sales" and "directly and entirely attributed" to mean "direct costs" which applies to the computation of gross income.

The above interpretation of the phrase "*attributable* to such sales", to simply mean that the input tax is connected with a taxpayer's zero-rated or effectively zero-rated sales and not to its

---

[6] *David vs. Senate Electoral Tribunal, et al.*, G.R. No. 221538, September 20, 2016.
[7] Merriam-Webster Dictionary and Thesaurus, 2007 Edition, p. 50.

taxable or exempt sales, is likewise within the context of Section 112(A) of the NIRC of 1997, as amended, taking into consideration the proviso which states 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". Hence, Section 112(A) of the NIRC of 1997, as amended, provides for a scenario where the taxpayer is engaged in (1) purely zero-rated or effectively zero-rated sales; (2) engaged in both zero-rated or effectively zero-rated sales and in taxable or exempt sales and the creditable input tax due or paid can be attributed to each of the transactions; and (3) engaged in both zero-rated or effectively zero-rated sales and in taxable or exempt sales but the creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions.

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.[8]

It should be noted that the Court already scrutinized petitioner's evidence and its compliance with applicable laws and rules and regulations, and found that petitioner's total substantiated input VAT is ₱122,896,151.50, and considering that petitioner had other kinds of sales, *i.e.*, sales to private entities, sales to government and exempt sales, and its input VAT cannot be directly attributed to specific sales, the Court allocated the valid input VAT proportionately on the basis of the volume of petitioner's sales pursuant to Section 112(A) of the NIRC of 1997, as amended, and determined that input VAT in the amount of ₱34,791,704.05 can be attributed to petitioner's entire declared zero-rated sales/receipts, but the refundable input VAT was further reduced to ₱27,187,927.75

[8] *Philippine International Trading Corporation vs. Commission on Audit*, G.R. No. 183517, June 22, 2010.

since only the amount of ₱1,392,238,205.82 was properly substantiated out of petitioner's total declared zero-rated sales/receipts of ₱1,781,612,046.76.[9]

To reiterate, considering that petitioner was able to establish *prima facie* its right to claim for refund by testimonial and object evidence, it was upon respondent to present a rebuttal evidence to shift the burden of evidence back to petitioner.[10] However, respondent failed to present rebuttable evidence.

In view of the foregoing, the Court finds no compelling reason to reverse or modify the assailed Amended Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (with Motion to Set Commissioner's Hearing)** and respondent's **Motion for Partial Reconsideration (Re: Amended Decision promulgated November 5, 2018)** are **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

---

[9] Decision dated June 6, 2017, pp. 24-25, docket, vol. V, pp. 1866-1867; Amended Decision dated November 5, 2018, pp. 5 and 14-15.

[10] *Republic of the Philippines vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015.