REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2190** (CTA Case No. 9417)
	Present:
- versus –	**DEL ROSARIO,** P.J., **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
KURIMOTO (PHILIPPINES) CORPORATION, Respondent.	**Promulgated:** AUG 1 1 2022 2:42pm

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RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"** filed through registered mail on November 23, 2021, without respondent's comment. In the said Motion, petitioner prays that the Court's Decision dated October 19, 2021, be reversed and set aside. The dispositive portion thereof reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated June 4, 2019 and the Resolution dated October 25, 2019 rendered by the Special Second Division of this Court in CTA Case No. 9417 are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

In support of his Motion, petitioner argues that:

1. Kurimoto (Philippines) Corporation's sales of services to Kurimoto Ltd. does not qualify as zero-rated sales but subject to 12% VAT;

2. Kurimoto (Philippines) Corporation's sales of services to THPAL, a PEZA-registered enterprise, does not qualify as zero-rated sales but subject to 12% VAT;

3. Exhibits of Kurimoto (Philippines) Corporation should not be given any probative value for being hearsay evidence; and

4. The amount of Kurimoto (Philippines) Corporation's tax liability should be computed and deducted from any refundable amount.

THE COURT'S RULING

Petitioner's Motion lacks merit.

After a careful examination and consideration of the petitioner's Motion for Reconsideration, it is noted that the arguments raised in the said Motion are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

Nevertheless, this Court stresses that respondent was able to prove that Kurimoto Ltd., the recipient of the services, is a foreign corporation and that the said corporation is doing business outside the Philippines.

As stated in the assailed Decision, this Court agrees with the Court in Division that the following documents are sufficient to establish that Kurimoto Ltd. is a non-resident foreign corporation, which is not doing business in the Philippines, to wit:

1) Authenticated and Consularized Articles of Incorporation of Kurimoto Ltd.,[1] which is sufficient proof that Kurimoto Ltd. is a non-resident foreign corporation located at Osaka City, Japan;

2) SEC Certification of Non-Registration of Kurimoto Ltd.,[2] which

[1] Exhibit "P-16," Division Docket (CTA Case No. 9417), Vol. 1, p. 448 to 501.
[2] Exhibit "P-17," Division Docket (CTA Case No. 9417), Vol. 1, p. 502.

which shows that the records of the SEC do not show the registration of *Kurimoto Ltd. Japan* as a corporation or as a partnership;

3) Certificate of Withdrawal of License of a Foreign Corporation issued by the SEC dated June 27, 2012,[3] which shows that the petition of Kurimoto Ltd. with SEC Registration No. A1998-746, for the withdrawal of its license to do business in the Philippines as a **branch office** was approved on June 27, 2012; and

4) SEC Certification of Corporate Filing/Information dated August 3, 2016 confirming the issuance of the *Certificate of Withdrawal of License of a Foreign Corporation* to Kurimoto Ltd. on July 6, 2011,[4] which shows that Kurimoto Ltd. is no longer registered to do business in the Philippines.

Taken together, the foregoing documents establish that Kurimoto Ltd. is a non-resident foreign corporation, which is not doing business in the Philippines. In the absence of contrary evidence to controvert the foregoing documents, there is no reason to depart from this ruling.

With regard to petitioner's contention that respondent's sales of services to THPAL, a PEZA-registered enterprise, does not qualify as zero-rated sales but subject to 12% VAT, this Court finds the same to be without merit.

As a PEZA-registered entity, as evidenced by PEZA Certificate Nos. 2014-0620[5] and 2014-0529,[6] THPAL is qualified for VAT zero-rating of its transactions with local suppliers because of Section 8 of R.A. No. 7916, establishing the fiction that ecozones are foreign territory, to wit:

> "**SEC. 8. *ECOZONE to be Operated and Managed as Separate Customs Territory*.** – The ECOZONE shall be managed and operated by the PEZA as separate customs territory."

Accordingly, respondent's reported sales to THPAL into the ecozone are considered exports made to a *foreign territory*, qualifying for VAT zero-rating, without regard to the fiscal incentive availed of. *rd*

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[3] Exhibit "P-18," Division Docket (CTA Case No. 9417), Vol. 1, p. 470.
[4] Exhibit "P-33," ICPA Report, Folder 2, p. 61.
[5] Exhibit "P-10," Division Docket (CTA Case No. 9417), Vol. 1, p. 430.
[6] Exhibit "P-32," ICPA Report, Folder 2, pp. 59 to 60.

In the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,*[7] it was held that regardless of the PEZA-registered enterprise's choice of fiscal incentive, it is entitled to VAT zero-rating, after the issuance of Revenue Memorandum Circular (RMC) No. 74-99, which recognized the *Cross Border Doctrine* and the *Destination Principle*, to wit:

> "**<u>Prior to the effectivity of RMC 74-99, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives, namely</u>**: (1) if the PEZA-registered enterprise chose the 5% preferential tax on its gross income in lieu of all taxes, as provided by Republic Act No. 7916, as amended, then it was VAT-exempt; and (2) if the PEZA-registered enterprise availed itself of the income tax holiday under Executive Order No. 226, as amended, it was subject to VAT at 10% (now, 12%). x x x x
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> xxx xxx **<u>With the issuance of RMC 74-99, the distinction under the old rule was disregarded</u>** and the new circular took into consideration the two important principles of the Philippine VAT system: the Cross Border Doctrine and the Destination Principle. Thus, *Toshiba* opined:
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> xxx xxx xxx
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> > ***This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory.*** x x x ***<u>Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration; and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as a VAT-exempt entity.</u>***" *(Emphasis supplied)*

[7] G.R. No. 190506, June 13, 2016.

From the foregoing, it is clear that with the issuance of RMC No. 74-99, which took into consideration the *Cross Border Doctrine* and the *Destination Principle*, *all* sales of goods, properties and services by a VAT-registered taxpayer, to a PEZA-registered enterprise in an ecozone, shall now be subject to *zero percent (0%) VAT*, without any qualification. In this case, KPC's reported sales to THPAL, a PEZA-registered enterprise within an ecozone, are correctly subjected to zero-rated VAT, without regard to the type of fiscal incentives THPAL would opt to avail of.

Petitioner likewise contends that respondent's exhibits should not be given any probative value for being hearsay evidence.

We disagree.

As stated in the assailed Decision, as between the factual findings of the Court in Division, thoroughly supported by law and evidence on record, and the general and perfunctory statements of the petitioner, the former must perforce prevail.

Finally, the CIR argues that the amount of Kurimoto (Philippines) Corporation's tax liability should be computed and deducted from any refundable amount, citing *SMI-ED Philippine Technology, Inc. v. Commissioner of Internal Revenue*[8] and *Air Canada vs. Commissioner of Internal Revenue.*[9]

We are not persuaded.

In the case of *SMI-ED Philippine Technology, Inc. v. Commissioner of Internal Revenue,*[10] it was held that in an action for refund of taxes allegedly erroneously paid, the Court may determine whether there are taxes that should have been paid, in lieu of the erroneous taxes paid (or 5% final tax in said case), and that the determination of the proper category of tax that should have been paid (or 6% capital gains tax in said case), is not an assessment, but merely incidental to determining whether there should be a refund, to wit:

> "Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax

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[8] G.R. No. 175410, November 12, 2014.
[9] G.R. No. 169507, January 11, 2016.
[10] G.R. No. 175410, November 12, 2014.

payments are correct, the BIR need not make an assessment.

The self-assessing and voluntarily paying taxpayer, however, may later find that he or she has erroneously paid taxes. **Erroneously paid taxes may come in the form of amounts that should not have been paid.** Thus, a taxpayer may find that he or she has paid more than the amount that should have been paid under the law. **Erroneously paid taxes may also come in the form of tax payments for the wrong category of tax. Thus, a taxpayer may find that he or she has paid a certain kind of tax that he or she is not subject to.**

In these instances, the taxpayer may ask for a refund. If the BIR fails to act on the request for refund, the taxpayer may bring the matter to the Court of Tax Appeals.

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Petitioner argued that the Court of Tax Appeals had no jurisdiction to subject it to 6% capital gains tax or other taxes at the first instance. The Court of Tax Appeals has no power to make an assessment.

As earlier established, the Court of Tax Appeals has no assessment powers. In stating that petitioner's transactions are subject to capital gains tax, however, the Court of Tax Appeals was not making an assessment. It was merely determining the proper category of tax that petitioner should have paid, in view of its claim that it erroneously imposed upon itself and paid the 5% final tax imposed upon PEZA-registered enterprises.

The determination of the proper category of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to a refund.

The issue of petitioner's claim for tax refund is intertwined with the issue of the proper taxes that are due from petitioner. A claim for tax refund carries the assumption that the tax returns filed were correct. If the tax return filed was not proper, the correctness of the amount paid, and therefore, the claim for refund becomes questionable. In that case, the court must determine if a

> taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid.
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> In *South African Airways v. Commissioner of Internal Revenue*, South African Airways claimed for refund of its erroneously paid 2 1/2% taxes on its gross Philippine billings. This court did not immediately grant South African's claim for refund. This is because although this court found that South African Airways was not subject to the 2 1/2% tax on its gross Philippine billings, this Court also found that it was subject to 32% tax on its taxable income.
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> In this case, petitioner's claim that it erroneously paid the 5% final tax is an admission that the quarterly tax return it filed in 2000 was improper. Hence, to determine if petitioner was entitled to the refund being claimed, the Court of Tax Appeals has the duty to determine if petitioner was indeed not liable for the 5% final tax and, instead, liable for taxes other than the 5% final tax. As in South African Airways, petitioner's request for refund can neither be granted nor denied outright without such determination.
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> If the taxpayer is found liable for taxes other than the erroneously paid 5% final tax, the amount of the taxpayer's liability should be computed and deducted from the refundable amount." (*Emphasis supplied*)

In the instant case, petitioner prays for this Court to compute respondent's tax liability and deduct the same from any refundable amount.

However, it must be noted that the determination of tax deficiency is ***distinct*** and should not be intertwined to a taxpayer's entitlement to a refund. To automatically hold respondent liable for the alleged tax deficiencies against the claim for refund pertaining to the same category of tax would be unjust as it would deprive respondent the opportunity to dispute the same in the proper venue, and not afford respondent the defenses available under the law.

More importantly, it is stressed that the CTA has *no assessment power* like that of petitioner CIR. It is only empowered to determine whether the proper tax was paid by the taxpayer-claimant, or whether the taxpayer-claimant has paid a certain kind of tax that he or she is not subject to but failed to pay the proper tax that he/she is liable to pay. In such case, the issue of claim for tax refund is intertwined with the issue of proper taxes that are due from the taxpayer.

Lastly, in the same *SMI-ED Philippines* case invoked by petitioner, it was further clarified that any tax deficiency liability of a taxpayer-claimant in a refund case may not be collected in the same refund case where the sole issue therein is the taxpayer-claimant's entitlement to refund, to wit:

> "**Any liability in excess of the refundable amount, however, may not be collected in a case involving solely the issue of the taxpayer's entitlement to refund. The question of tax deficiency is distinct and unrelated to the question of petitioner's entitlement to refund. Tax deficiencies should be subject to assessment procedures and the rules of prescription. The court cannot be expected to perform the BIR's duties whenever it fails to do so either through neglect or oversight. Neither can court processes be used as a tool to circumvent laws protecting the rights of taxpayers**." (*Emphasis supplied.*)

Hence, petitioner's prayer that the Court compute respondent's tax liability, if any, and deduct the same from any refundable amount, must necessarily fail.

In sum, the Court *En Banc* finds no new or substantial matter, or compelling grounds that justifies the reversal or modification of the assailed Decision.

WHEREFORE, premises considered, 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