REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SUMISETSU PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8062

Members:

CASTAÑEDA, JR., Chairperson,
CASANOVA, and
MINDARO-GRULLA, ***JJ.***

Promulgated:

AUG 13 2015 8:42 am

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RESOLUTION

CASTAÑEDA, JR., ***J.***:

For resolution of this Court are the following:

1. Petitioner's **Motion for Partial Reconsideration (Of the Decision dated 26 May 2015)** filed on June 11, 2015, *sans* respondent's comment; and

2. Respondent's **Motion for Partial Reconsideration**, filed through registered mail on June 11, 2015 and received by this Court on June 25, 2015, with petitioner's **Comment (On Respondent's Motion for Partial Reconsideration dated 11 June 2015)** filed on July 20, 2015.

Both petitioner and respondent assail the Decision dated May 26, 2015,[1] partially granting the subject Petition for Review. The dispositive portion thereof reads:

> "**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the amount of ₱6,891,038.03 representing petitioner's excess and unutilized input taxes attributable to zero-rated sales for the taxable year 2008.
>
> **SO ORDERED**."

Considering both motions filed by the parties before this Court and the lapse of the period to submit their comments thereto, both motions are hereby deemed submitted for resolution. Hence, this Resolution.

In its motion for partial reconsideration, petitioner raises the following issues: (1) Services rendered by petitioner to entities exempt under special laws are zero-rated; (2) Petitioner is entitled to the refund of the input VAT noted by the ICPA and this Court as exceptions; and (3) This Court incorrectly invalidated excess input taxes carried over from previous quarters to the calendar year 2008.

On the other hand, respondent contends in its motion that since the substantiated input VAT claim of ₱26,252,619.07 is lower than the output VAT liability of ₱42,735,247.41, there is no unutilized input VAT attributable to effectively zero-rated sales which may be the subject of a claim for refund.

Moreover, considering that this Court found that the amount of ₱75,979,717.53 representing petitioner's sale of services to PEZA-registered enterprises do not qualify for zero-rating, the corresponding 12% output VAT should be imposed in the amount of ₱9,117,566.10. Consequently, the substantiated excess input tax of ₱6,891,038.03 shall be lower than the said output tax and as such, there is no excess input VAT that may be claimed for refund by petitioner.

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[1] Docket, Vol. II, pp. 481-518.

On the contrary, petitioner states that as per this Court's Decision dated May 26, 2015, its substantiated input tax amount to ₱49,626,285.44, higher than its output tax of ₱42,735,247.41. Thus, it has excess input VAT in the amount of ₱6,891,038.03. Furthermore, the amount of ₱75,979,717.53 representing petitioner's sale of services to PEZA-registered entities is the subject of its motion for reconsideration.

The main issue to be resolved in this case is whether or not the Court correctly upheld part of petitioner's claim for refund.

The Court resolves to deny both motions.

Issues raised by petitioner in its motion for partial reconsideration

Petitioner failed to prove that its sale of services to Nanox, Penta-Shimizu and Sanyo qualify for zero-rating

Petitioner states that this Court ruled that the following entities are not qualified for zero-rating due to the foregoing reasons:

> "a. Nanox Philippines, Inc. ("Nanox") – supported by certified true copy of CFZ certification, certified by a person whose authority to certify the same is unknown;
>
> b. Penta-Shimizu TOA Joint Venture ("Penta-Shimizu") – supported by a facsimile copy of SBFE Certificate of Registration and Tax Exemption;
>
> c. Sanyo Capacitor Philippines Corporation ("Sanyo") – supported by a photocopy of the certified true copy of Certificate of Registration."[2]

With respect to Nanox, petitioner avers that since the Clark Freeport Zone (CFZ) certification is issued in the name of CFZ and under its letterhead, the certification carries with it the presumption

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[2] Petitioner's Motion for Partial Reconsideration (Of the Decision dated 26 May 2015), par. 3, Docket, Vol. II, p. 520.

of regularity, following the ruling of the Supreme Court in the case of *Rodriguez et al. v. Court of Appeals et al.*[3]

On the other hand, with respect to Penta-Shimizu and Sanyo, petitioner argues that in the case of *Corpuz v. People of the Philippines*,[4] the Supreme Court allowed the admission of a photocopy of a receipt and was accorded probative value. Moreover, respondent did not object to the admissibility of the same. Thus, petitioner asserts that this Court should give probative weight to the subject certificates of registration.

After considering the arguments presented by petitioner, the Court rules as follows:

Certification issued by CFZ to Nanox

Relying on the *Rodriguez* case[5] where the Supreme Court allegedly applied the presumption of regularity *vis a vis* an NSO certification, petitioner contends that with respect to its sales to Nanox, the alleged certification issued by the CFZ carries with it the presumption of regularity. Therefore, the same should be accorded probative value by the Court.

A reading of the *Rodriguez* case, however, reveals that there was no mention of the doctrine relied upon by petitioner.

At any rate, the Court shall determine whether petitioner duly proved the certification issued by CFZ to Nanox as a public document.

Sections 19 and 24, Rule 132 of the Revised Rules of Court respectively provide:

> "Sec. 19. *Classes of Documents* – For the purpose of their presentation in evidence, documents are either public or private.
>
> Public documents are: *ju*

[3] G.R. No. 121964, June 17, 1997.
[4] G.R. No. 180016, April 29, 2014.
[5] Supra., Note 3.

(a) **The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country**;

(b) Documents acknowledged before a notary public except last wills and testaments; and (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private."*(Emphasis supplied)*

"Sec. 24. *Proof of official record.* – The record of public documents referred to in paragraph (a) of section 19, when admissible for any purpose, **may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy** xxx" *(Emphasis supplied)*

Under the above-quoted provision of the Rules, public documents consist of written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country, among others. These documents may be evidenced by (1) official publication thereof, or (2) copy attested by the officer having the legal custody of the record.

In the instant case, petitioner failed to show that the subject certification was attested to by the officer having legal custody of the record. Hence, the Court is correct in not considering the same.

Certifications issued to Penta-Shimizu and Sanyo

In not according probative weight to the certifications issued to Penta-Shimizu and Sanyo, this Court ruled that:

"On the other hand, the Court found that Exhibit "X-51" is a mere photocopy of an alleged certified true copy, contrary to the testimony of the Court-commissioned ICPA that all of petitioner's pieces of evidence, including the aforesaid exhibit, are faithful reproductions of the originals. Thus, the Court cannot give probative value to the same without violating the *Best Evidence Rule*.

With respect to Exhibit "X-35", the Court likewise cannot give probative value to the same for being a mere facsimile in violation of the *Best Evidence Rule*, in relation to the *Rules on Electronic Evidence*. In this regard, the Supreme Court held in the case of *MCC Industrial Corporation vs. Ssangyong Corporation* that a facsimile is a mere scanned copy of an original copy. Without the original, there is no way to determine the genuineness and authenticity of the said document."[6]

Meanwhile, petitioner contends that in the *Corpuz* case, the Supreme Court accorded probative value to a mere photocopy, in this wise:

"According to petitioner, the CA erred in affirming the ruling of the trial court, admitting in evidence a receipt dated May 2, 1991 marked as Exhibit 'A' and its submarkings, although the same was merely a photocopy, thus, violating the best evidence rule. However, the records show petitioner never objected to the admissibility of the said evidence at the time it was identified, marked and testified upon in court by private complainant. The CA also correctly pointed out petitioner also failed to raise an objection in his Comment to the prosecution's formal offer of evidence and even admitted having signed the said receipt. The established doctrine is when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived."[7]

The Court finds petitioner's arguments untenable.

In the case of *Republic of the Philippines v. Regional Trial Court*,[8] the Supreme Court held that: *gr*

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[6] See Note 1, Docket, Vol. II, pp. 493-494.
[7] See Note 2, Docket, Vol. II, pp. 521-522; G.R. No. 121964, June 17, 1997.
[8] G.R. No. 172931, June 18, 2009.

> "The Best Evidence Rule provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had. Absent a clear showing that the original writing has been lost, destroyed or cannot be produced in court, **the photocopy must be disregarded, being unworthy of any probative value** and being an inadmissible evidence."[9] *(Emphasis supplied)*

In the case of *Rico Rommel Atienza v. Board of Medicine and Editha Sioson,*[10] the Supreme Court differentiated the admissibility of evidence from probative value, as follows:

> "Admissibility of evidence refers to the question of whether or not the circumstance (or evidence) is to be considered at all. On the other hand, the probative value of evidence refers to the question of whether or not it proves an issue."[11]

The *Republic* case enunciates that a mere photocopy is unworthy of any probative value and is inadmissible in evidence. Meanwhile, in the *Atienza* case, the Supreme Court differentiated admissibility of evidence from probative value, such that admissibility seeks to determine whether evidence should be considered, while probative value seeks to determine whether it proves an issue.

In the instant case, the Court admitted Exhibits "X-35"and "X-51" as evidence, respectively, subject to the Court's appreciation of their probative value, among others. Consistent with the ruling of the Supreme Court in *Corpuz* case, the Court admitted the foregoing pieces of evidence. However, following the rulings of the Supreme Court in the *Republic* case and the *Atienza* case, the Court likewise correctly accorded no probative value to the said pieces of evidence because their genuineness and authenticity cannot be ascertained.

Considering the foregoing, the Court finds no merit to petitioner's arguments.

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[9] Id., citing *Philippine Banking Corporation v. Court of Appeals,* G.R. No. 127469, January 15, 2004.
[10] G.R. No. 177407, February 9, 2011.
[11] Id., citing *PNOC Shipping and Transport Corporation v. Court of Appeals,* 358 Phil. 38, 59 (1998).

Exceptions noted by the ICPA and this Court

Petitioner avers that the exceptions noted by the ICPA and by the Court should be considered for the following reasons:

Exception	**Amount of Input VAT**	**Reason**
Input taxes on purchase of goods supported by invoices dated outside the period of claim	64,244.72	The input taxes can be claimed as refund provided these are attributable to zero-rated sales for the period covered by the claim for refund and have not been applied against output taxes.
Input Taxes on purchase of services supported by official receipts but VAT is not separately indicated therein	1,040,220.56	In BIR *Ruling DA-(VAT-081) 519-09*, it was held the official receipt issued by the supplier of the taxpayer was presumed to have included the VAT in the total invoice amount since the VAT is not shown as a separate item. Thus, since the VAT was presumed included in the gross amount, which can be easily computed by simple mathematical computation, Sumisetsu should not be faulted in the failure of its supplier to separately indicate the input taxes on its purchases.
Input VAT on domestic purchases of goods supported by VAT invoices dated outside the period of claim	1,073,407.13	The input taxes can be claimed as refund provided these are attributable to zero-rated sales for the period covered by the claim for refund and have not been applied against output taxes.
Input VAT on domestic purchases of services supported by VAT official receipts dated outside the period of claim	616,207.25	The input taxes can be claimed as refund provided these are attributable to zero-rated sales for the period covered by the claim for refund and have not been applied against output taxes.[12]

Moreover, petitioner argues that the principle of *solutio indebiti* should be applied in the instant case because the BIR received something to which it was not entitled to. Likewise, petitioner contends that it was able to prove its entitlement to its claim for refund by preponderance of evidence.

Petitioner's arguments are devoid of merit.

[12] See Note 2, Docket, Vol. II, pp. 523-524.

With respect to petitioner's input VAT on domestic purchases of services or goods supported by VAT official receipts dated outside the period of claim, suffice it to state that these are outside the period covered by petitioner's claim. Thus, the Court committed no error in not considering the same in the assailed Decision.

On the other hand, with respect to petitioner's input taxes on purchase of services supported by official receipts where VAT is not separately indicated, the Court rules that BIR Ruling DA-(VAT-081) 519-09 is inapplicable.

In the case of *Chevron Holdings, Inc. [formerly Caltex (Asia) Limited] v. Commissioner of Internal Revenue,*[13] the Court *en banc* discussed the basis and applicability of BIR Ruling DA-(VAT-081) 519-09, in this wise:

> "As for the amount of Php24,598,395.58 representing petitioner's input VAT claim which was disallowed because the VAT official receipts and sales invoice do not indicate VAT as a separate item, the Court *En Banc* finds no merit in petitioner's arguments. Petitioner recognizes that the law states that VAT should be indicated as a separate item under Republic Act No. 9337, but cites Revenue Regulation ("RR") No. 16-2005 which deems the selling price to be inclusive of VAT if not billed separately, and BIR Ruling [DA-(VAT- 081) 519-09] which also deems the selling price to be inclusive of VAT if not billed separately.
>
> However, **the provision which petitioner cites in RR No. 16-2005, which was also the basis in BIR Ruling [DA-(VAT-081) 519-09]** states that:
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> > "SECTION 4.106-4. Meaning of the Term "Gross Selling Price". - The term "gross selling price" means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the **sale, barter or exchange of the goods or properties**, excluding VAT. The excise tax, if any, on such

[13] CTA EB No. 940 (CTA Case Nos. 7776 & 7813), October 28, 2014, penned by Associate Justice Lovell R. Bautista.

> goods or properties shall form part of the gross selling price.
>
> In the case of sale, barter or exchange of **real property** subject to VAT, gross selling price shall mean the consideration stated in the sales document or the fair market value whichever is higher. xxx"

> **It is clear from the quoted portion of RR No. 16-2005 that the provision petitioner cited only pertains to sale, barter or exchange of real property subject to VAT**. Thus, the Court *En Banc* cannot accept petitioner's theory and therefore must uphold the disallowance of Php24,598,395.58. The law is clear in that the amount of tax shall be shown as a separate item in the invoice or receipt."*(Emphasis supplied)*

From the foregoing, BIR Ruling DA-(VAT-081) 519-09 which is based on RR 16-2005, is applicable only to sale, barter or exchange of goods or properties or real properties. It does not apply to sale of services, as in this case. Hence, the Court finds petitioner's argument bereft of merit.

Moreover, while petitioner invokes the equitable principle of *solutio indebiti*, the Court finds that said principle is likewise inapplicable in this case. Thus, the Court stresses the ruling of the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,*[14] where it was held that:

> "*In fine*, we reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also **the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized** and must be duly proven." *(Emphasis supplied)*

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[14] G.R. No. 159490, February 18, 2008.

Considering that petitioner failed to present sufficient evidence to prove entitlement to its entire claim for refund, the Court sees no cogent reason to deviate from its earlier ruling.

Petitioner's arguments regarding excess input taxes carried over from previous quarters to the calendar year 2008

In this regard, petitioner states that while the Court found that it still has an output tax due in the amount of ₱9,154,861.30, the ICPA found that its input tax for calendar year 2007 is greater than its output tax.

Section 3, Rule 13 of the 2005 Revised Rules of the CTA, as amended, provides:

> "SEC. 3. *Findings of independent CPA*. – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification**."*(Emphasis supplied)*

As such, assuming that the ICPA found that petitioner's input tax for calendar year 2007 is greater than its output tax, still, such finding is not binding because it is still subject to verification by the Court.

As per verification, however, the Court found that petitioner's output taxes for the subject taxable period as declared in its quarterly VAT returns, exceed its input taxes. In other words, petitioner has no excess input taxes to be carried over to the taxable year 2008. Hence, the Court finds no see cogent reason to disturb its previous findings.

Issues raised by respondent in her motion for partial reconsideration

Petitioner duly proved that it has excess input VAT in the amount of ₱6,891,038.03

Respondent asserts that petitioner's substantiated input VAT claim of ₱26,252,619.07 is lower than the output VAT liability of ₱42,735,247.41. Thus, there is no unutilized input VAT attributable to petitioner's zero-rated sales that may be claimed as a refund.

Respondent's assertion is incorrect.

An examination of the records shows that respondent compared part of petitioner's substantiated input VAT, i.e., ₱26,252,619.07 attributable to petitioner's zero-rated sales, to petitioner's entire or total output VAT liability, i.e., ₱42,735,247.41.

Considering that respondent compared petitioner's total output taxes to part of petitioner's substantiated input taxes, it will necessarily follow that petitioner's output taxes will be greater than its input taxes. However, this computation is erroneous as respondent merely deducted part or portion of petitioner's input taxes from its total output tax.

Thus, the correct amount to be considered in determining petitioner's entitlement to refund is its total input taxes in the amount of ₱49,626,285.44. Considering that the total substantiated input taxes exceeds petitioner's total output tax of ₱42,735,247.41, the Court is correct in partially granting petitioner's claim for refund in the amount of ₱6,891,038.03.

The Court has no power to impose 12% VAT to petitioner's sale of services that did not qualify for zero-rating

Finally, respondent contends that considering petitioner's sale of services to PEZA-registered enterprises do not qualify for zero-rating, the corresponding 12% output VAT of ₱9,117,566.10 should be imposed instead of subjecting it to 0% VAT. In effect, the substantiated excess input tax of ₱6,891,038.03 would be lower than the said output tax. Accordingly, there would be no excess input VAT that may be claimed for refund by petitioner.

The Court finds respondent's argument specious.

In the case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*,[15] the Supreme Court held that:

> "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.
>
> **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)*

In the *SMI-ED* case, the petitioner therein sought to refund the taxes paid representing 5% preferential tax. Upon review by this Court, however, petitioner was found to be liable to 6% capital gains tax instead of the 5% preferential tax. In upholding the Court, the Supreme Court ruled that the CTA has no assessment powers. However, when the determination of the proper category of tax to be paid is intertwined to the issue of entitlement to claim for refund, the CTA may properly determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. Accordingly, the determination of the proper category of tax that petitioner should have paid is an incidental matter necessary

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[15] G.R. No. 175410, November 12, 2014.

for the resolution of the principal issue, which is whether petitioner was entitled to a refund.[16]

In the instant case, respondent wants this Court to impose 12% VAT on petitioner's sales of services to show that petitioner's input taxes will not exceed its output taxes that may be the proper subject of a claim for refund. However, following the ruling of the Supreme Court in *SMI-ED* case, this does not involve the determination of the proper category of tax that should be imposed upon petitioner. Instead, this involves the imposition of 12% VAT to petitioner's sale of services which is equivalent to respondent's power of assessment that the Court does not possess.

In other words, the Court is not empowered to collect any liability in excess of petitioner's refundable amount where the sole issue involved is its entitlement to refund. Verily, it is not within the Court's jurisdiction to impose 12% VAT on petitioner's subject sale of services.

To recapitulate, both petitioner and respondent failed to raise meritorious issues to justify the reversal of the assailed Decision. Hence, the Court sees no cogent reason to deviate from the Decision dated May 26, 2015.

WHEREFORE, in view thereof, both petitioner's Motion for Partial Reconsideration (Of the Decision dated 26 May 2015) and respondent's Motion for Partial Reconsideration, are hereby **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

[16] Id., citing *Collector of Internal Revenue v. Lacson*, 107 Phil. 945, 947-948 (1960).