REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TAGANITO MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9057

Members:

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

Promulgated:

NOV 20 2018 9:18 am

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RESOLUTION

For the Court's resolution are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Amended Decision promulgated 27 July 2018)**, filed on August 14, 2018, without petitioner's comment as per Records Verification dated September 25, 2018; and

2. petitioner's **Motion for Partial Reconsideration (of the July 27, 2018 Amended Decision)**, filed through registered mail on August 16, 2018 and received by the Court on August 28, 2018, with respondent's **Opposition (Re: Motion for Reconsideration)**, filed on September 21, 2018; and

Both parties move for the reconsideration of the Court's Amended Decision dated July 27, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration**, is **PARTIALLY GRANTED**; while respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 5 April 2017)**, is **DENIED** for lack of merit.
>
> Accordingly, the Court's Decision dated April 5, 2017, is hereby amended to read as follows:
>
> > '**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to refund to petitioner the amount of **₱2,946,937.07,** representing its excess/unutilized input VAT paid on its importation of capital goods with aggregate acquisition cost exceeding ₱1 million, which are attributable to its zero-rated sales for taxable year 2013.
> >
> > **SO ORDERED**.'
>
> **SO ORDERED**."

In his motion, respondent contends that the Court erred in ruling that petitioner is entitled to refund in the amount of ₱2,946,937.07 representing alleged excess/unutilized input value-added tax (VAT) for taxable year 2013 and that the claimed input VAT subject of the instant case remained unutilized despite being carried over to the succeeding periods. Respondent asserts that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded.

On the other hand, petitioner alleges in its motion that there was double deduction of its output VAT; that the *Coral Bay case* is not applicable to the present case as the law would not have painstakingly made a distinct classification between a zero-rated BOI-registered VAT entity and a VAT exempt PEZA-registered entity if their treatment would in any situation be the same; that the Court should make a distinction between its ruling of non-refundable VAT against non-utilizable VAT; that its rental income was supported by evidence; that the Court's pro-rating of the amount of input taxes on capital goods with an aggregate amount in excess of P1 million to petitioner's zero-rated sales, VAT sales and exempt sales is without legal and factual basis as the nature of the substantiated expenses being claimed for refund, as well as its testimonial and other corroborating evidence, clearly indicate that they arise from expenses incurred in relation to its sale of ores from mining activities; and that Import Entry and Internal Revenue Declarations (IEIRDs) without machine validation are admissible and submits that the absence of machine validation is not sufficient to overturn the presumption of regularity of the issuance of such documents.

In his opposition, respondent claims that the *Coral Bay case* is applicable to the present case. He also states that petitioner's contention of double deduction of output VAT was already resolved in the Amended Decision. Further, respondent asserts that the applicant must prove not only entitlement to the grant of claim under substantive law but must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit.

Both motions lack merit.

The issues and arguments presented by both parties in their respective motions are essentially a mere rehash of what have been said and reiterated in previous pleadings, which have been considered, weighed and resolved by the Court in the assailed Amended Decision.

Respondent's Motion for Partial Reconsideration

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, requires that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales. It does not, however, 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. Thus, the input VAT on importations of capital goods, which are undeniably necessary for the production of petitioner's exports, is attributable to its zero-rated sales.

In addition, the Court has already ruled that the input VAT claim of ₱8,326,025.84 remained unutilized until it was deducted by petitioner as "VAT Refund/TCC claimed"[1] in its Amended Quarterly VAT Return for the fourth quarter of 2014[2]. As such, the same could not have been carried over/utilized in the succeeding first quarter of 2015. Thus, petitioner has sufficiently proven that the subject input VAT claim was not applied against any output VAT for the current taxable year 2013 and the succeeding periods.

Petitioner's Motion for Partial Reconsideration

It must be noted that the Court finds petitioner's alleged double deduction of output VAT to be without merit. To repeat, the Independent Certified Public Accountant (ICPA) clearly stated that *"there is no input VAT subjected for refund that was utilized"* under item II, page 9 of Exhibit "P-755"[3]. Hence, the input VAT being claimed for refund was not applied against any output VAT. Furthermore, the amounts lifted from the Quarterly VAT Returns, from where the substantiated input VAT was determined, pertain to the actual input VAT on Purchases of Capital Goods exceeding ₱1 million (Line 21D) during the year 2013 and not the Net VAT Payable in Box 25. In other words, the amount of input VAT considered by this Court is yet undiminished by output VAT liability. Thus, the Court correctly deducted the output VAT for taxable year 2013 in order to arrive at the excess input tax attributable to zero-rated sales. Petitioner should be mindful that in claiming excess/unutilized input tax from zero-rated transactions, it is the excess over the output taxes which should be refunded to the taxpayer or credited against other internal revenue taxes.

Moreover, it must be stressed that petitioner's local purchases of goods and services are subject to VAT at zero percent (0%) rate, being a BOI-registered entity. In this regard, no output shall be shifted to or passed on to it, and conversely, no input VAT shall be paid by it from said purchases. In this instance, where petitioner paid the input VAT, notwithstanding that under the law it is VAT zero-rated, the said input VAT cannot be offset against its output VAT. Therefore, its recourse is to seek reimbursement from the supplier who shifted to it the output VAT. On this point the ruling in *Coral Bay Case* is applicable.

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[1] Exhibit "P-728", Line 23D.
[2] Exhibits "P-727" to "P-733".
[3] Docket (Vol. I), p. 163.

The Court also finds without merit petitioner's allegation on improper pro-rating of input taxes to its exempt sales. Even though petitioner was able to prove that the capital goods purchased from where the input taxes arose and claimed for refund were used in generating its zero-rated sales of ores, it failed to prove that the same were not used in generating its exempt sales. Consequently, the substantiated input taxes cannot be entirely attributed to any of its type of sales and were properly allocated proportionately on the basis of the volume of sales, in accordance to Section 112(A) of the NIRC of 1997, as amended.

Petitioner also failed to provide zero-rated official receipts to substantiate the rental income in the amount of ₱5,497,040.00.[4] It presented merely billing statements in support of its alleged rental income.

As to the requirement of machine validation on IEIRDs, the Supreme Court, in the case of *Taganito Mining Corporation vs. Commissioner of Internal Revenue*[5], ruled that:

> "xxx With regard to the importation of goods or properties, however, Section 4.110-8 of R.R. No. 16-05, as amended, further requires that an import entry or other equivalent document showing actual payment of VAT on the imported goods must also be submitted, to wit:
>
>> SECTION 4.110-8. Substantiation of Input Tax Credits. –
>> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents and must be reported in the information returns required to be submitted to the Bureau:

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[4] Schedule X of Supplemental ICPA Report.
[5] G.R. No. 201195, November 26, 2014.

> **(1) For the importation of goods – import entry or other equivalent document showing actual payment of VAT on the imported goods.**
>
> (Emphasis supplied)

In relation to this requirement, Customs Administrative Order No. 2-95 provides:

> 2.3 The Bureau of Customs Official Receipt (BCOR) will no longer be issued by the AABs (Authorized Agent Banks) for the duties and taxes collected. In lieu thereof, the amount of duty and tax collected including other required information **must be machine validated** directly on the following import documents and signed by the duly authorized bank official:
>
> 2.3.1 **Import Entry and Internal Revenue Declaration (IEIRD)** for final payment of duties and taxes." (*Emphasis supplied*)

From the foregoing, it is apparent that an IEIRD with machine validation is required to properly substantiate the payment of the duties and taxes on imported goods. Considering that the petitioner failed to submit valid IEIRDs relevant to its claim, the Court did not err in ruling that petitioner's claimed input taxes on importations of non-capital goods for the taxable year 2013 were not sufficiently proven.

In the case *of Social Justice Society (SJS) Officers, et al. vs. Lim*[6], the Supreme Court, quoting the case of *Ortigas and Co. Ltd. Partnership vs. Judge Velasco*[7], held that:

> "The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually

[6] G.R. Nos. 187836 & 187916, March 10, 2015.
[7] G.R. Nos. 109645 & 112564, March 4, 1996.

> and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc."

Considering that the grounds relied on are mere reiterations of the issues/arguments already passed upon by the Court, there is no cogent reason to warrant a reconsideration of the assailed Amended Decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Amended Decision promulgated 27 July 2018)** and petitioner's **Motion for Partial Reconsideration (of the July 27, 2018 Amended Decision)** are **DENIED** for lack of merit.

SO ORDERED.

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice