REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

S & WOO CONSTRUCTION PHILIPPINES, INC.,
Respondent.

CTA EB No. 2420
(CTA Case No. 9533)

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, *JJ.*

Promulgated:

JUN 2 2 2022 3:45pm

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RESOLUTION

CASTAÑEDA, JR., *J.:*

This resolves petitioner's 'Motion for Reconsideration (Re: Decision promulgated 22 March 2022)" filed on March 31, 2022. On April 27, 2022, respondent filed its "Comment/Opposition (to the Motion for Reconsideration filed by the Commissioner of Internal Revenue)." On April 28, 2022, petitioner's motion was submitted for resolution.

The dispositive portion of the March 22, 2022 Decision states:

> "**WHEREFORE**, the present Petition for Review is **DENIED** for lack of merit, and the Decision dated June 24, 2020 and Resolution dated January 8, 2021 in CTA Case No. 9533 are **AFFIRMED**."

Petitioner reiterates, among others, that the law requires that only "creditable input taxes" that are "directly attributable' may be refunded[1] and that no attributability was established between the input tax on purchases *vis-à-vis* the zero-rated sales of respondent.[2]

On the other hand, respondent also reiterates, among others, that respondent only had VAT zero-rated sales transactions, and in the VAT system all input VAT will necessarily be attributable to such VAT zero-rated sales transactions.

The motion is bereft of merit.

Section 112(A) of the NIRC, as amended, explicitly states that, "That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or 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."

We reiterate that, "In this case, it was established that [respondent's] sole client, SEMPHIL, is a PEZA-registered entity for the subject period of claim as evidenced by PEZA Certificate of Registration No. 97-074 dated October 16, 1997, PEZA Certifications dated December 09, 2014 and December 11, 2015, respectively. Thus, its sales of services to SEMPHIL are indeed considered as 'export sales' subject to VAT at zero percent (0%) rate, pursuant to the above-quoted provisions and jurisprudence."[3] Clearly, respondent's creditable input tax is attributable to such effectively zero-rated sales.

In this case respondent has sufficiently proven its claim for refund in a partial amount only, as found by the CTA Division.

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[4] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties." Jr

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[1] *Rollo*, p. 85.
[2] *Id.*, p. 86.
[3] *Id.*, p. 32.
[4] G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-446.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration (Re: Decision promulgated 22 March 2022)" is **DENIED,** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate 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