REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

MAIBARARA GEOTHERMAL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 8699, 8732, 8771, and 8811

Members:

DEL ROSARIO, *P.J.*, *Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

JAN 03 2018 ; 2:00 pm

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RESOLUTION

UY, *J.*:

This resolves petitioner's **Motion for Reconsideration** filed on September 6, 2017, with respondent's **Comment/Opposition (Motion for Reconsideration)**, filed on September 20, 2017.

Petitioner seeks reconsideration of the Court's Decision dated August 18, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant *Petitions for Review* are **DENIED** for lack of merit.
>
> **SO ORDERED**."

In the instant *Motion for Reconsideration*, petitioner raises the following arguments:

> I. The petitioner's administrative and judicial claims for the refund of its input value-added tax (VAT) from the 1st to

4th quarters of taxable year 2011 were timely filed; and

II. The zero-rated or effectively zero-rated sale is not required by law to be made during the same period as when the input taxes sought to be refunded were incurred or paid.

Petitioner contends that in several cases decided by the Supreme Court, the latter ruled that the reckoning of the two-year prescriptive period for the filing of a claim for input value-added tax (VAT) refund under Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, starts from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not. Petitioner believes that the term "relevant sales" pertain to the taxpayer-claimant's purchases of goods and services from which it incurred input VAT and not the taxpayer-claimant's zero-rated or effectively zero-rated sales. As such, petitioner insists that the two-year prescriptive period was made from the pertinent sales or transaction from which the input VAT was incurred and not from the zero-rated or effectively zero-rated sales. Allegedly, whether there exist zero-rated or effectively zero-rated sales during the four taxable quarters of calendar year 2011 is immaterial because in claims for refund of unutilized input taxes, the counting of the two-year prescriptive period is the transaction pertaining to the input VAT, not the zero-rated or effectively zero-rated sales.

Petitioner further claims that the law does not impose as a requirement that the zero-rated or effectively zero-rated sales must be made during the same periods as when the input taxes sought to be refunded were incurred or paid. In other words, the taxpayer-claimant must only establish allegedly the existence or presence of zero-rated or effectively zero-rated sales and attribute the input taxes subject of the claim to said sales; however, it is not allegedly necessary that the zero-rated or effectively zero-rated sales and the input taxes subject of the refund fall during the same periods. Petitioner submits that the input taxes incurred during the taxable year (TY) 2011, as well as those incurred in TYs 2012 and 2013, can be traced or attributed to the first zero-rated sale made during the 1st quarter of TY 2014. As such, petitioner asserts that it is entitled to a refund of unutilized input taxes incurred during the 1st to 4th quarters of taxable year 2011 which were attributable to its zero-rated sale for the 1st quarter of TY 2014.

On the other hand, respondent opposes the instant *Motion* on the ground that there were yet no sales made by petitioner within the period of its claim, for it to be entitled to the refund of its input tax pursuant to paragraph (A) of Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended. Allegedly, in order for the petitioner to be entitled to the refund of the input VAT it incurred, it should have already sold electricity from renewable sources of energy.

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit.

We do not subscribe to petitioner's contention that it is not necessary that the zero-rated or effectively zero-rated sales and the input taxes subject of the refund fall during the same periods.

In the first sentence of Section 112(A) of the NIRC of 1997, as amended, the word *"sales"* was mentioned three (3) times, and these all refer to zero-rated sales or effectively zero-rated sales. For easy reference, the said provision is hereby reproduced, to wit:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, **whose <u>sales</u> are zero-rated or effectively zero-rated** may, within two (2) years after the close of the taxable quarter **when the <u>sales</u> were made**, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid **attributable to such <u>sales</u>**, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx." *(Emphases and underscoring supplied)*

Apparently, the first time the word *"sales"* was used in the said provision is when it qualifies that the concerned VAT-registered person must be engaged in *"zero-rated or effectively zero-rated"* **sales**. The second instance is when it is used to describe the reckoning of the two-year period, *i.e.*, after the close of the quarter *"when the **sales** were made"*. And the last and third occasion is when the same provision qualifies that the input tax to be refunded must be ***"attributable to such sales"***.

A more careful and cursory reading of the foregoing provision would reveal that the phrase *"when the sales were made"* would necessarily refer to the word *"sales"* found in the earlier phrase *"whose sales are zero-rated or effectively zero-rated"*.

To say that the words *"sales"* should actually pertain to the taxpayer-claimant's purchases of goods and services which it incurred input VAT, and not the taxpayer-claimant's zero-rated or effectively zero-rated sales, would be absurd, if not, would result in ambiguity.

For one, the elementary rule in statutory construction is that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says.[1] Relative thereto, Section 112(A) is clear and unequivocal, and nothing is said about the taxpayer-claimant's *"purchases of goods and services which it incurred input VAT"*, even before the words *"when the sales were made"*. Thus, such *"purchases"* could not have been contemplated by the legislature.

Moreover, the phrase *"when the sales were made"* could not be equated to mean *"when the purchases were made"*; otherwise, the said sentence will not make any sense, at all, as shown as follows:

> "(A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, **whose <u>sales</u> are zero-rated or effectively zero-rated** may, within two (2) years after the close of the taxable quarter **when the <u>[purchases]</u> were made**, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid..." *(Emphases and underscoring supplied)*

This could not have been the case because nothing in the provision would relate to the word *"purchases"*. If the legislature intended to refer to the phrase *"purchases of goods and services which it incurred input VAT"* as referring to the word *"sales"* in the said phrase *"when the sales were made"*, it could have easily provided the same in the subject provision.

For another, and more significantly, the succeeding words in Section 112(A) would be referring to the *"input tax due or paid **attributable to such sales**"*. In other words, the input tax due or paid which may be refunded by the taxpayer-claimant under Section 112(A) must be attributable to *"such sales"*, or to the *"sales"* previously

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[1] *Baranda, et al. vs. Gustilo, et al.*, G.R. No. 81163, September 26, 1988.

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referred to (by the use of the word *"such"* prior to the word *"sales"*). Obviously, the *"sales"* previously referred to is in the phrase *"when the sales were made"*. Thus, to say that latter phrase actually refers to *"when the purchases were made"*, the subject law becomes incomprehensible, since the input tax due or paid must already be *"attributable to such purchases"*. Thus, such could not be the case.

In the same vein, without any zero-rated or effectively zero-rated sales being shown by petitioner, the attribution requirement or that the input tax due or paid must be attributable *"to **such sales**"* cannot be fulfilled or complied with. To be clear, what is refundable under Section 112(A) is the input VAT attributable to the taxpayer-claimant's zero-rated or effectively zero-rated sales. Thus, petitioner's contention that the existence of zero-rated or effectively zero-rated sales during the subject period is immaterial, has no basis in law.

We do not agree with petitioner's invocation of the case *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*,[2] as authority to the proper interpretation of the aforequoted Section 112(A). This is simply because the factual milieus in the said case are **not** on all-fours with the instant case.

The case in point is that which We have cited in the assailed Decision, *i.e.*, *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*,[3] wherein the Supreme Court ruled:

> "The petitioner did not competently establish its claim for refund or tax credit. **We agree with the CTA *En Banc* that the petitioner did not produce evidence showing that it had zero-rated sales for the four quarters of taxable year 2001. As the CTA *En Banc* precisely found, the petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity.** Had there been zero-rated sales, it would have reported them in the returns. Indeed, it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, or in the *de novo* litigation before the CTA in Division.

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[2] G.R. No. 172129, September 12, 2008.
[3] G.R. No. 188260, November 13, 2013.

> **Although the petitioner has correctly contended here that the sale of electricity by a power generation company like it should be subject to zero-rated VAT under Republic Act No. 9136, its assertion that it need not prove its having actually made zero-rated sales of electricity by presenting VAT official receipts and VAT returns cannot be upheld.** It ought to be reminded that it could not be permitted to substitute such vital and material documents with secondary evidence like financial statements." *(Emphases supplied)*

To reiterate, the thrust of the foregoing jurisprudence is the importance of having to show the presence of zero-rated or effectively zero-rates sales, to which the input VAT being refunded must be attributable. Simply put, when there is no zero-rated or effectively sales on the part of the refund claimant, input VAT is not refundable, or at the very least, is not yet refundable.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such tax exemptions.[4]

WHEREFORE, premises considered, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[4] *Panasonic Communication Imaging Corporation vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.