REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PILIPINAS KYOHRITSU INC., Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. **9757**

Members:

CASTAÑEDA, JR., *Chairperson*,
BACORRO-VILLENA, *and*,
CUI-DAVID, *JJ.*

Promulgated: JUN 23 2022 11:12 AM

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are:

(1) Petitioner Pilipinas Kyohritsu Inc.'s *Motion for Partial Reconsideration*[1] (**petitioner's MPR**) on the Decision dated 06 July 2021 (**assailed Decision**), filed on 29 July 2021, without respondent's comment despite due notice *per* Records Verification dated 23 November 2021[2]; and,

(2) Respondent Commissioner of Internal Revenue's *Motion for Partial Reconsideration*[3] (**respondent's MPR**) on the assailed Decision, filed *via* registered mail on 26 July 2021[4], with petitioner's *Opposition*[5] filed on 26 October 2021.

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1 Division Docket, Volume II, pp. 1034-1042.
2 Id., pp. 1065.
3 Id., pp. 1043-1047.
4 Received by the Court on 29 September 2021.

In their respective MPRs, both parties seek the partial reconsideration of the assailed Decision that partially granted petitioner's claim for refund of unutilized input value-added tax (**VAT**). The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, the instant Petition for Review filed on 26 January 2018 by petitioner Pilipinas Kyohritsu Inc. is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** petitioner the amount of **SIX MILLION FIVE HUNDRED EIGHTY THREE THOUSAND FIVE HUNDRED SEVENTY EIGHT PESOS and ELEVEN CENTAVOS** (₱6,583,578.11), representing the unutilized input value-added tax (VAT) attributable to zero-rated sales or receipts for the period covering the 4^{th} quarter of fiscal year ending 31 March 2016, or from 01 January 2016 to 31 March 2016.
>
> **SO ORDERED.**
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> ...

PETITIONER PILIPINAS KYOHRITSU INC.'S MOTION FOR PARTIAL RECONSIDERATION

Petitioner argues that it has complied with the third requisite to qualify for VAT zero-rating under Section 106(A)(2)(a)(1)[6] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and that offsetting is categorically and clearly allowed by law.

Petitioner claims that this Court misappreciated the facts of the case in ruling that petitioner failed to establish that a portion of its actual export sale of goods amounting to ₱755,846,488.97 qualify for

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[5] Division Docket, Volume II, pp. 1052-1063.

[6] **SEC. 106**. *Value-Added Tax on Sale of Goods or Properties.* —

(A) *Rate and Base of Tax.* — ...

...

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* — The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

VAT zero-rating under Section 106(A)(2)(a)(1)[7] of the NIRC of 1997, as amended.

Petitioner points out that, in its Report[8], the court-commissioned Independent Certified Public Accountant (**ICPA**), Mr. Neil U. Sison (**Sison**), has explained and reconciled the offsetting of the receivables and payables between petitioner and its non-resident foreign affiliates, namely, Sumitomo Wiring Systems, Ltd. (**SWS-Japan**) and Sumitomo Electric Wiring Systems, Inc. (**SEWS-USA**). Specifically, ICPA Sison noted therein that (**1**) proceeds from export sales to SEWS-USA were net of copper price adjustments based on the pricing terms as discussed in Item No. 4 and Annex II of the Sales and Purchase Agreement between petitioner and SEWS-USA, and (**2**) SWS-Japan's payments for purchases of products from petitioner shall be offset against petitioner's payments for purchases of materials from SWS-Japan and the net proceeds/payments therefrom were also adjusted for the copper price modifications under the Sales and Purchase Agreement between petitioner and SWS-Japan.

Petitioner adds that to limit the options of its non-resident foreign affiliates to only remitting and paying in cash or in foreign currency the goods they bought from petitioner (when they could properly offset the same) would not be in accord with the common business practices in international trade. Thus, considering that such offsetting arrangement (akin to payment in kind or its equivalent in goods and services) is allowed by law, petitioner insists that it is entitled to a refund in the total amount of ₱10,472,047.49, as computed below:

Valid Input VAT Allocated to the Total Zero-Rated Sales	₱10,592,965.65
Less: Output VAT still due	72,285.72
Unutilized Input VAT Allocated to the Total Zero-Rated Sales	**₱10,520,679.93**
Divided by the Total Zero-Rated Sales	2,045,025,490.06
Multiplied by the Valid Zero-Rated Sales	2,035,572,243.28[9]

7 Supra at note 6.

8 Exhibit "P-30", Division Docket, Volume II, pp. 816-835.

9

Particulars	Zero-Rated Sales
Actual export sale of goods	₱2,030,790,316.26*
Sale to PEZA-registered entities	4,781,927.02
Total Zero-Rated Sales	**₱2,035,572,243.28**

*Total reported zero-rated sales arising from export sales of goods to its non-resident foreign affiliates of ₱2,030,790,316.26 (equivalent to US$42,815,841.40) instead of ₱1,274,943,827.29 (the peso equivalent of US$26,840,364.53, which is the sum of the adjusted sales or net proceeds, whichever is lower, on a *per* remittance basis).

Unutilized Input VAT Attributable to Valid Zero-Rated Sales	**₱10,472,047.49**

As previously mentioned, respondent did not file a comment/opposition to petitioner's MPR despite due notice.

RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S MOTION FOR PARTIAL RECONSIDERATION

In his MPR, respondent contends that this Court erred in ruling that petitioner's sales of goods to Philippine Economic Zone Authority (**PEZA**)-registered entities of ₱4,781,927.02 pertain to sale transactions conducted outside the Philippines or export sales not subject to VAT pursuant to the Cross Border Doctrine. According to respondent, petitioner has not sufficiently proven that the goods subject of the transactions between petitioner and the PEZA-registered entities were for consumption within the ecozone.

Citing the Court's 2nd Division's ruling in *Clark Water Corporation v. Commissioner of Internal Revenue*[10] (*i.e.*, if the service is performed or rendered within the Freeport Zone, the sale shall be exempt from VAT), respondent argues that determining the place where the sale of goods is to be consumed and the place where the sale of service is performed determines whether or not the subject transaction would be subject to VAT.

Respondent thus concludes that since petitioner did not indicate in its transactions where the goods were to be consumed, it cannot be ascertained whether the entirety or a part of the transactions made by petitioner to PEZA-registered entities should be subjected to VAT. As such, respondent asserts that petitioner's sales of goods to PEZA-registered entities should be disallowed in the computation of the refundable amount.

On the other hand, in its *Opposition*, petitioner claims that respondent failed to raise matters substantially plausible to warrant partial reconsideration of the assailed Decision considering that the present issue has already been considered and passed upon by this Court.

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10 CTA Case No. 9286, 03 May 2018; Penned by Associate Justice Caesar A. Casanova (Ret.) with Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Catherine T. Manahan, concurring.

Citing the Court's Third Division's ruling in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[11], petitioner then counter-argues that its sales of goods to PEZA-registered entities are deemed VAT zero-rated given that a sale to an enterprise within the ecozone is actually a sale outside the territory; hence, no VAT shall be imposed. Petitioner thus claims that the PEZA Certification dated 05 June 2017[12], which confirms that its customers, International Wiring Systems (Phils.) Corporation (**IWSPC**) and Sumi Philippines Wiring Systems Corporation (**SPWSC**) are registered with PEZA, should be enough to establish that its sales of goods to such entities are deemed zero-rated.

We resolve below.

After due consideration of the parties' arguments, this Court finds both petitioner's MPR and respondent's MPR bereft of merit.

In its MPR, petitioner asserts that the practice of offsetting or netting for tax purposes such as, in this case, the offsetting of receivables and payables and deductions for importation of raw materials from petitioner's non-resident foreign affiliates, is allowed by law. Additionally, such offsetting of receivables and payables was duly explained and reconciled by ICPA Sison, in his Report, stating that petitioner exported and sold goods to its non-resident foreign affiliates (*i.e.*, SWS-Japan and SEWS-USA), and in return, petitioner bought and imported goods from them.

We disagree.

As explained in the assailed Decision, with regard to the adjustments for offsetting of receivables and payables and deductions for importation of raw materials from petitioner's non-resident foreign affiliates, based on this Court's independent evaluation of the evidence on record, including the ICPA's Report and Exhibits, petitioner failed to provide any supporting document for each of the additions for "other receivables credited" and the deductions for "importation of raw materials" and "other charges

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11 CTA Case No. 7863, 19 June 2018; Penned by Associate Justice Lovell R. Bautista (Ret.) with Associate Justice Esperanza R. Fabon-Victorino (Ret.) and Associate Justice Ma. Belen M. Ringpis-Liban, concurring.

12 ICPA Exhibit "P-37-Q", CD.

debited".[13] It is precisely for this reason that this Court deemed unsubstantiated the aforesaid adjustments to petitioner's export sales of goods for offsetting of receivables and payables.

In addition to the fact that the aforesaid offsetting adjustments were unsubstantiated, this Court likewise applied the principle set forth in Revenue Memorandum Circular (**RMC**) No. 61-2016[14], strictly prohibiting for tax purposes the practice of offsetting due to/due from and/or payable/receivable transactions of taxpayers and, consequently, the accounting and recording of the same and its related transactions in the books of the parties. On this basis alone, this Court cannot simply declare the total amount of unadjusted sales (*i.e.*, US$42,815,841.40 equivalent to ₱2,030,790,316.26) as valid zero-rated export sales of goods.

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4th Quarter of FY ending 31 March 2016	Unadjusted Sales (USD)	Sales Adjustments (USD)	Adjusted Sales (USD)	Other Receivables Credited (USD)	Importation of Raw Materials (USD)	Other Charges Debited (USD)	Net Proceeds (USD)
	(a)	(b)	(c)	(d)	(e)	(f)	(g) = (b) + (c) + (d) + (e) + (f)
SWS-Japan							
January	$7,613,466.89	$(1,315,165.09)	$6,298,301.80	$33,776.03	$(5,800,241.26)	$(281,047.76)	$250,788.81
February	7,486,810.08	88,845.82	7,575,655.90	48,034.65	(3,357,729.41)	(348,524.95)	3,917,436.19
March	5,788,956.75	919,616.07	6,708,572.82	94,715.61	(4,293,907.60)	(345,277.70)	2,164,103.13
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Subtotal	**$20,889,233.72**	**$(306,703.20)**	**$20,582,530.52**	**$176,526.29**	**$(13,451,878.27)**	**$(974,850.41)**	**$6,332,328.13**
SEWS-USA							
January	$6,925,925.49	$(1,598,300.25)	$5,327,625.24	$24,167.22	$0.00	$(562,280.00)	$4,789,512.46
February	8,057,104.83	598,658.62	8,655,763.45	8,588.84	0.00	(550,914.00)	8,113,438.29
March	6,943,577.34	661,508.31	7,605,085.65	2,341.64	0.00	0.00	7,607,427.29
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Subtotal	**$21,926,607.66**	**$(338,133.32)**	**$21,588,474.34**	**$35,097.70**	**$0.00**	**$(1,113,194.00)**	**$20,510,378.04**
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Total	**$42,815,841.38**[13]	**$(644,836.52)**	**$42,171,004.86**	**$211,623.99**	**$(13,451,878.27)**	**$(2,088,044.41)**	**$26,842,706.17**
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14 Prescribing Policies and Guidelines for Accounting and Recording Transactions Involving "Netting" or "Offsetting".

As to petitioner's contention that ICPA Sison has reconciled the offsetting of the receivables and payables between petitioner and its non-resident foreign affiliates, it must be stressed that this Court is not bound by the findings of the ICPA. Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), 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.**[15]
> ...

Clearly, the ICPA's findings are not conclusive upon the Court as the same are subject to its verification, to determine its accuracy, veracity and merit. The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification.

This Court likewise finds no merit in respondent's argument that petitioner's sales of goods to PEZA-registered entities should be disallowed in the computation of the refundable amount as it has not sufficiently proven that such goods were for consumption within the ecozone.

It is now a settled rule that based on the Cross Border Doctrine, PEZA-registered entities are VAT-exempt and no VAT can be passed on to them.[16] We thus reiterate, for emphasis, the Supreme Court's ruling in *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*[17], *viz*:

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15 Emphasis supplied.
16 *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, 09 March 2010.
17 G.R. No. 150154, 09 August 2005.

> . . .
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> This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
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> ... An ECOZONE or a Special Economic Zone has been described as —
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>> ... [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>
> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
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> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> **The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT [now, twelve percent (12%)].[18]
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> . . .

[18] Citations omitted and emphasis supplied.

Following the foregoing pronouncement, sales of goods by a VAT-registered taxpayer, such as herein petitioner, to entities located in ecozones are considered "export sales" subject to zero percent (0%) VAT rate pursuant to Section 106(A)(2)(a)(5)[19] of the NIRC of 1997, as amended.

As correctly argued by petitioner, its sales of goods to PEZA-registered entities are deemed zero-rated as any sale of goods and services made by a VAT-registered supplier in the customs territory to any registered enterprise operating in the economic zone, regardless of the class or type of the latter's PEZA registration, is actually a sale outside the customs territory or an export sale.[20] Thus, petitioner only needs to prove, as it did in this case, that (**1**) it is a VAT-registered person and (**2**) its clients are situated in an economic zone or is a PEZA-registered entity.

Having submitted PEZA Certification[21], which confirmed that its customers, IWSPC and SPWSC, are PEZA-registered, as well as the sales invoices and related delivery receipts[22] in support of its sales of goods to IWSPC and SPWSC, petitioner was able to prove that its sales of goods to PEZA-registered entities, in the amount of US$100,884.00 equivalent to ₱4,781,927.02, qualify for VAT zero-rating under Section 106(A)(2)(a)(5)[23] of the NIRC of 1997, as amended.

In view of the foregoing, this Court finds no compelling reason to reconsider or modify the assailed Decision.

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19 **SEC. 106**. *Value-Added Tax on Sale of Goods or Properties.* —
(A) *Rate and Base of Tax.* — ...
...
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) *Export Sales.* — The term 'export sales' means:
...
(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws[.]

20 See *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*, supra at note 17.

21 Supra at note 12.

22 ICPA Exhibits "P-37-R-1" to "P-37-R-6" and "P-37-S-1" to "P-37-S-10", CD.

23 Supra at note 19.

WHEREFORE, premises considered, petitioner's *Motion for Partial Reconsideration* and respondent's *Motion for Partial Reconsideration* on this Court's Decision dated 06 July 2021 are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

LANEE S. CUI-DAVID
Associate Justice