REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MTI ADVANCED TEST DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9494

Members:

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

Promulgated:

NOV 2 8 2018 8:30 am

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RESOLUTION

MANAHAN, *J.*:

For the Court's resolution is respondent's **Motion for Partial Reconsideration**, filed on August 10, 2018 through registered mail and received by the Court on August 22, 2018, with petitioner's **Comment/Opposition (to Respondent's Motion for Partial Reconsideration dated 10 August 2018)**, filed on September 13, 2018.

Respondent moves for the partial reconsideration of the Court's Decision dated July 26, 2018 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱8,796,386.95**, representing the latter's unutilized input VAT attributable to its zero-rated sales for the four quarters of FY ending March 31, 2015.
>
> **SO ORDERED.**"

Respondent prays that the Court reconsider and set aside the assailed Decision insofar as it partially granted petitioner's claim for input value-added tax (VAT) refund in the amount of ₱8,796,386.95, based on the following grounds:

1. petitioner failed to prove one of the requisites that its sales of services for the four quarters of fiscal year (FY) ending March 31, 2015 indeed qualify for VAT zero-rating under Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 113(A)(2), (B)(2)(a)(c)(d)(3) of the same Code, as implemented under Section 4.113-1(A)(2), B(2)(a)(c)(d) of Revenue Regulations (RR) No. 16-05;

2. petitioner's documentary exhibits (*i.e.*, Official Receipts, Billing Invoices, Bank Credit Memos, Settlement Advice, and Certificate of Inward Remittances from BPI) presented in court as evidence to support its judicial claim for input VAT refund are 'hearsay evidence', hence, inadmissible as evidence in this case; and

3. petitioner's claim for refund is strictly construed against it for the same partakes the nature of tax exemption.

On the other hand, petitioner asserts that no new matters were raised by respondent to warrant a modification or reversal of the assailed Decision. Petitioner reiterates that it is entitled to its unutilized input VAT attributable to its zero-rated sales for the four quarters of FY ending March 31, 2015. Finally, petitioner opposes respondent's claim that the documentary exhibits it presented are mere hearsay evidence. Petitioner avers that respondent was given the opportunity to cross examine its witnesses, including the Court-commissioned Independent Certified Public Accountant (ICPA). Thus, petitioner argues that respondent's claim of hearsay evidence is unfair and contrary to the Rules of Court.

Respondent's motion has no merit.

Respondent argues that Section 113(A)(2), (B)(2)(a)(c)(d)(3) of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(A)(2), (B)(2)(a)(c)(d) of RR No. 16-05, provides that a VAT taxpayer shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the information provided therein. However, respondent alleges that the official receipts presented by petitioner in support of its zero-rated sales for the four quarters of FY ending March 31, 2015 do not contain the required information under Section 113(A)(2), (B)(2)(a)(c)(d)(3) of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(A)(2), (B)(2)(a)(c)(d) of RR No. 16-05. Respondent stresses the importance of strict compliance with the mandatory invoicing requirements and avers that failure to comply with the said invoicing requirements on the documents supporting the sale of goods and services will result to disallowance of the claim for input VAT. Hence, respondent contends that petitioner's claim for input VAT refund should be denied outright for lack of merit.

Section 2, Rule 37 of the Rules of Court provides that a motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

Based on the foregoing, respondent must point out specifically the VAT official receipt/s presented by petitioner which allegedly failed to comply with the invoicing requirements under the law. However, respondent failed to do so. It is noteworthy that the Court already made specific factual findings upon the evidence petitioner presented, which became the basis of the Court's ruling to partially grant the Petition for Review. It is also noteworthy that the Court already scrutinized and examined petitioner's documentary evidence such as its VAT official receipts vis-à-vis its compliance with the requirements laid down by law and regulation to be entitled to a claim for VAT refund or tax credit certificate, including the mandatory invoicing requirement, and thoroughly discussed its findings in the assailed Decision.

Respondent also asserts that petitioner's documentary exhibits should not have been given probative value by the Court for being hearsay evidence pursuant to Section 36, Rule 130 of the Rules of Court, which provides:

> "SEC. 36. *Testimony generally confined to personal knowledge; hearsay excluded.* – A witness can testify only to those facts which he knows of his personal knowledge; that is,

> which are derived from his own perception, except as otherwise provided in these rules."

He claims that petitioner's witnesses have no personal knowledge on the issuance of its documentary exhibits such as official receipts, billing invoices, bank credit memos, settlement advice and certificate of inward remittances, which were prepared by another person other than the witnesses presented by petitioner. Respondent stresses that there is a need for petitioner to present the signatory of those documents, or any person who had a hand in the preparation thereof. Thus, any other attempt on the part of petitioner to pass as absolute truth the contents of the said records are considered hearsay evidence.

This argument is bereft of merit.

In the case of *Seaoil Petroleum Corporation vs. Autocorp Group and Rodriguez*[1], the Supreme Court recognized the probative value of invoices and other commercial documents, as follows:

> "... A sales invoice is a commercial document. Commercial documents or papers are those used by merchants or businessmen to promote or facilitate trade or credit transactions. Business forms, *e.g.*, order slip, delivery charge invoice and the like, are commonly recognized in ordinary commercial transactions as valid between the parties and, at the very least they serve as an acknowledgment that a business transaction has in fact transpired. **These documents are not mere scrap of paper bereft of probative value, but vital pieces of evidence of commercial transactions. They are written memorials of the details of the consummation of contracts**." (*Emphasis supplied*)

Thus, there is no merit to respondent's contention that official receipts, invoices and the like have no probative value. They are commonly recognized in ordinary commercial transactions and should not be considered bereft of probative value.

Furthermore, the Court notes that it was only in the instant motion that respondent raised the allegation that petitioner's documentary exhibits are hearsay evidence. Moreover, respondent manifested that he is adopting the arguments and affirmative defenses in his Answer as part of his

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[1] G.R. No. 164326, October 17, 2008.

Memorandum[2], hence, respondent did not question the probative value of petitioner's evidence. Thus, the issue on hearsay evidence appears to be respondent's mere afterthought in his attempt to obtain a reversal of the ruling in the assailed Decision.

Contrary to respondent's allegation, petitioner's documentary exhibits were substantially identified by its witnesses, including the Court-commissioned ICPA. It should be noted that the documents alleged to be hearsay evidence (*i.e.*, Official Receipts, Invoices, Bank Credit Memos, and Certificate of Inward Remittances) are voluminous documents examined and verified by the Court-commissioned ICPA in accordance with Section 5, Rule 12 and Rule 13 of the Revised Rules of the Court of Tax Appeals.

The Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power.[3]

This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim.[4] Accordingly, once the requirements laid down under the NIRC of 1997, as amended, and other pertinent tax laws and regulations have been met, then, the claimant is considered to have discharged the burden of proving its entitlement to a refund/tax credit and, consequently, the grant of a refund/tax credit is proper.

In this case, the Court found that petitioner has established its claim for refund or issuance of a tax credit certificate in the reduced amount of ₱8,796,386.95, representing its unutilized input VAT attributable to its zero-rated sales for the four quarters of FY ending March 31, 2015. As such, the Court finds no cogent reason to reverse the assailed Decision dated July 26, 2018.

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[2] Respondent's Manifestation & Motion, docket, pp. 354-355.
[3] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[4] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice