REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

MSCI HONG KONG LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10131

Members:

UY, *Chairperson*,
RINGPIS-LIBAN, and
MODESTO-SAN PEDRO, *JJ*.

Promulgated:

APR 05 2023
9:15 a.m.

x - x

RESOLUTION

RINGPIS-LIBAN, *J*.:

Submitted before this Court is respondent's *Motion for Partial Reconsideration (Re: Decision dated 02 November 2022)* filed through registered mail on December 9, 2022 and received by the Court on December 20, 2022, with petitioner's *Comment (Re: Motion for Partial Reconsideration dated December 9, 2022)* filed on January 17, 2023.

On November 2, 2022, the Court promulgated a decision, which partially granted petitioner's claim for refund of unutilized input value-added tax (VAT) attributable to its zero-rated sales of services for the four quarters of calendar year 2017, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the *Petition for Review* is **PARTIALLY GRANTED**.
>
> Respondent is **ORDERED** to refund/issue Tax Credit Certificate in the total amount of **Nine Million Eight Hundred Eighty Eight Thousand Two Hundred Sixty Four and 95/100 (₱9,888,264.95)**, representing petitioner's excess and unutilized input VAT, attributable to its zero-rated sales of services for the four quarters of CY 2017.
>
> **SO ORDERED**."

In his motion, respondent primarily argues that the administrative claim for refund of the petitioner was denied by the BIR due to petitioner's failure to submit certain documents vital to its claim. Hence, in its judicial claim for refund, the petitioner must also prove that the BIR committed an error in denying its administrative claim.[1] Respondent claims that the burden of proof for its entitlement to its claim for refund rests upon the claimant-petitioner; and that failure to discharge this burden of proof is fatal to its claim. He further asserts that the petitioner failed to establish that it is engaged in zero-rated sales or effectively zero-rated sales during the four (4) quarters of CY 2017.[2] Lastly, he avers that assuming arguendo that the services rendered by the petitioner qualify as zero-rated VAT transaction, its claim for refund is still dismissible for its failure to comply with the invoicing requirements under the NIRC of 1997, as amended.[3]

On the other hand, in its comment, petitioner states that it is *not* duty-bound to prove that the respondent committed an error in denying its administrative claim in order to be entitled to a judicial claim for refund.[4] It points out that petitioner has proven with substantial and convincing evidence its entitlement to the claim for refund.[5] It also claims that it was able to establish that it was engaged in zero-rated or effectively zero-rated sales in CY 2017.[6] Lastly, it avers that it has faithfully complied with the invoicing requirements under the NIRC of 1997, as amended.[7]

The Court finds respondent's *Motion for Partial Reconsideration (Re: Decision dated 02 November 2022)* bereft of merit.

Notably, the arguments raised by respondent are mere rehashes of the arguments he previously raised in his pleadings which have already been addressed and discussed in the assailed decision.[8]

Ordinarily, when the arguments and issues advanced in a party's motion for reconsideration are mere rehash and repetition of arguments previously raised, which have been sufficiently considered and addressed by the court in the assailed decision, there is *no need* to discuss the same arguments again when the Court resolves the motion for reconsideration.[9]

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[1] Memorandum (for the Respondent), Docket, pp. 1010-1013.
[2] *Id.*, pp. 1013-1015.
[3] *Id.*, pp. 1015-1019.
[4] Comment (Re: Motion for Partial Reconsideration dated December 9, 2022), pp. 3-6.
[5] *Id.*, pp. 6-7.
[6] *Id.*, pp. 7-12.
[7] *Id.*, pp. 12-17.
[8] *Please see the preliminary discussion in the* Decision, Docket, pp. 1033-1036.
[9] *People of the Philippines v. Florencio Agacer, et al.*, G.R. No. 177751, January 7, 2013, Resolution.

Nonetheless, respondent espouses a restrictive view of the role of the Court over appeals filed before it from his decision, which denied a taxpayer's claim for refund/tax credit. Thus, it bears reiterating that the role of this Court on appeal is *not* limited by the findings in the *administrative* claim before the respondent. In the judicial review of the respondent's denial, a taxpayer may present evidence to convince the Court that the respondent had no basis to deny said claim. In short, the Court's review powers are not limited to resolving issues on whether the respondent committed grave abuse of discretion, fraud, or error of law. As evidence is considered and evaluated again during trial, the scope of the Court's review covers *both* factual and legal determination of the taxpayer's entitlement to its claim.

In *Genaro Ursal v. Court of Tax Appeals, et al.*[10] the Supreme Court *En Banc* held that instead of being merely another superior administrative agency, as was the former Board of Tax Appeals (BTA), the Court of Tax Appeals (CTA) was created by Republic Act No. (RA) 1125 as part of the judicial system. Accordingly, an appeal to the CTA is *manifestly judicial*[11] and the proceedings before it are judicial in nature. Specifically, Section 8 of RA 1125, as amended, provides that the CTA shall be a *court of record* and as such the cases filed before it are litigated *de novo* where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[12] Finally, Rule 14, Section 1 of the Revised Rules of the Court of Tax Appeals, "[i]n deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon *related issues* necessary to achieve an orderly disposition of the case."[13]

More specifically, in *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*,[14] the Supreme Court sustained the findings of the CTA *En Banc* and CTA First Division, which partially granted the taxpayer's claim, and stated that the CTA is *not* precluded from considering evidence that was *not* presented in the administrative claim with the Bureau of Internal Revenue, to wit:

> "The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. <u>Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund</u>.
>
> Cases filed in the CTA are litigated *de novo* as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and

[10] G.R. Nos. L-10123 and L-10355, April 26, 1957.

[11] *Rufino Lopez & Sons v. Court of Tax Appeals*, G.R. No. L-9274, February 1, 1957, Supreme Court *En Banc*.

[12] *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204. August 31, 2005

[13] Italics supplied.

[14] G.R. No. 231581, April 10, 2019.

> submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim.' Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.
>
> The issue of whether or not respondent was able to prove by preponderance of evidence its entitlement to the issuance of a Tax Credit certificate, the same is a factual matter. 'It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.'" (*Underscoring supplied; citations omitted*)

In view of the foregoing disquisitions, there being no new matter or substantial issue raised in respondent's *Motion for Partial Reconsideration (Re: Decision dated 02 November 2022)*, the Court finds no compelling reason to reverse, amend, or modify the decision promulgated on November 2, 2022.

WHEREFORE, premises considered, respondent's *Motion for Partial Reconsideration (Re: Decision dated 02 November 2022)* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RIGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO SAN-PEDRO
Associate Justice