REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SONY ERICSSON MOBILE COMMUNICATIONS, INTERNATIONAL AB.,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA Case No. 8579

Members:

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

Promulgated:

JAN 21 2015 ; 10:54 a.m.

x- -x

AMENDED DECISION

DEL ROSARIO, PJ.

Submitted for the Court's resolution are:

1. Respondent's "**Motion for Partial Reconsideration (Re: Decision dated October 9, 2014)**" filed on October 24, 2014, with petitioner's "**Comment (to Respondent's Motion for Partial Reconsideration)**" filed on November 20, 2014; *and,*

2. Petitioner's "**Motion for Partial Reconsideration/New Trial**" filed on October 29, 2014.

Both parties move for the partial reconsideration of this Court's Decision dated October 9, 2014, the dispositive portion of which reads, as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent COMMISSIONER OF INTERNAL REVENUE is ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner SONY ERICSSON MOBILE COMMUNICATIONS INTERNATIONAL AB in the reduced amount of TWO MILLION ONE HUNDRED THIRTY NINE THOUSAND FOUR HUNDRED FIFTY ONE PESOS (P2,139,451.00), representing petitioner's unutilized input VAT attributable to its zero-rated sales of marketing services to its affiliate company, Sony Ericsson Mobile Communications AB, for the second, third, and fourth quarters of 2010.
>
> SO ORDERED."

Petitioner's Motion for Partial Reconsideration/New Trial

Petitioner's "Motion for Partial Reconsideration/New Trial" is anchored on the ground that this Court erred in disallowing the input VAT for the fourth quarter of 2010 amounting to P361,237.22 notwithstanding that its supporting documents had been validated and examined by the Independent CPA.

At the outset, the Court in its assailed Decision disallowed the input VAT amounting to ₱361,237.22 for the fourth quarter of 2010 as the supporting documents, though validated and examined by the Independent CPA, were not formally offered. Upon re-evaluation, the Court deems it proper to consider the same in the interest of justice as the Supreme Court in the case of *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*,[1] allowed evidence not formally offered to be admitted and considered by the trial court provided that the following requirements are present: (1) the same must have been duly identified by testimony duly recorded; and, (2) the same must have been incorporated in the records of the case.

In the case at bar, records show that Exhibits XX to XX-32 and YY-11, representing the amount of ₱361,237.22, form part of the exhibit folders submitted by the Independent CPA. Moreover, in his Judicial Affidavit,

[1] G.R. No. 197515, July 2, 2014.

Atty. Clifford Chua, the Independent CPA, clearly identified said exhibits, as follows:

> "Q: Mr. Chua, you mentioned that you examined the financial statements, sales invoices and official receipts of the Petitioner and its suppliers as well as Petitioner's monthly and quarterly value-added tax returns, proofs of inward remittance and other documents to support your report. Where are these documents?
>
> A: These documents are here with me.
>
> Q: I am showing to you the following documents, marked as follows: What relation do these documents have with the documents that you are referring to, and are they faithful reproductions of the original?

Exhibit	Description
LL	BIR Certificate of Registration
Y	4th Quarter VAT Return of 2011
MM	Sales and Promotion Marketing Agreement
NN to NN-23	Sales- Official Receipts
OO	2nd Quarter VAT Return of 2010
PP	3rd Quarter VAT Return of 2010
QQ	4th Quarter VAT Return of 2010
RR	2010 Audited Financial Statement
SS	Schedule of Purchases for the 2nd Quarter of 2010
TT	Schedule of Purchases for the 3rd Quarter of 2010
UU	Schedule of Purchases for the 4th Quarter of 2010
VV to VV-75	2nd Quarter of 2010 – Purchases and importation with appropriate supporting documents (No exceptions noted)
VV-76 to VV-98	2nd Quarter 2010 – Summary of input VAT from local purchases and importation without proper supporting documents
VV-99 to VV-100	2nd Quarter 2010 – Summary of input VAT from local purchases where input VAT in the supporting documents are not separately shown
VV-101 to VV-102	2nd Quarter 2010 – Summary of input VAT from local purchases where the TIN of the customer is not indicated in the supporting documents or the TIN indicated is incorrect
VV-103 to VV-106	2nd Quarter 2010 – Summary of input VAT where there are noted alterations in the supporting documents
VV-107 to VV-110	2nd Quarter 2010 – Summary of input VAT where the amount indicated in the schedule of purchases is different from the amount in the supporting documents

VV-111 to VV-126	2nd Quarter 2010 – Summary of input VAT outside the period of claim
VV-127 to VV-130	2nd Quarter 2010 – Summary of input VAT where the amount in words is not indicated
WW to WW-66 and YY to YY-10	3rd Quarter of 2010 – Purchases and importation with proper supporting documents (No exceptions noted)
WW-67 to WW-89 and YY-12 to YY-16	3rd Quarter 2010 – Summary of input VAT from local purchases and importation without proper supporting documents
WW-90 to WW-92	3rd Quarter 2010 – Summary of input VAT from local purchases where input VAT in the supporting documents are not separately shown
WW-93 to WW-105	3rd Quarter 2010 – Summary of input VAT from local purchases where the TIN of the customer is not indicated in the supporting documents or the TIN indicated is incorrect
WW-106 to WW-107	3rd Quarter 2010 – Summary of input VAT outside the period of claim
WW-108 to WW-154	3rd Quarter 2010 – Summary of input VAT where the amount in words is not indicated
XX to XX-32 and YY-11	4th Quarter of 2010 – Purchases and importation with supporting documents (No exceptions noted)
XX-33 to XX-64	4th Quarter 2010 – Summary of input VAT from local purchases and importation without proper supporting documents
XX-65 to XX-67	4th Quarter 2010 – Summary of input VAT from local purchases where input VAT in the supporting documents are not separately shown
XX-68 to XX-96	4th Quarter 2010 – Summary of input VAT from local purchases where the TIN of the customer is not indicated in the supporting documents or the TIN indicated is incorrect
XX-97	4th Quarter 2010 – Summary of input VAT where the amount indicated in the schedule of purchases is different from the amount in the supporting documents
XX-98 to XX-125	4th Quarter 2010 – Summary of input VAT outside the period of claim

A: These are the same documents that I was referring to. They are faithful reproductions of the original, except those I identified in my report as mere photocopies."[2]

Considering that Exhibits XX to XX-32 and YY-11 were identified by the Independent CPA during his direct examination and had been incorporated in the records of the case, the same are hereby considered and

[2] Exhibit "AAA", CTA Docket, pp 779-781.

admitted as evidence for the petitioner. Nonetheless, a careful examination of said exhibits shows that out of the ₱361,237.22 input VAT with no exceptions noted, the following input taxes in the amount of ₱26,487.29 should be disallowed for the following reasons:

Exhibit	OR No./ BOC IEIRD	Supplier		Input Tax
1. Input VAT on purchase of services wherein the VAT amount was not separately shown in the official receipt.				
XX-17	13411	The Clean Company, Inc.		₱ 3,713.56
2. Discrepancy between Input VAT per claim and Input VAT per supporting document.				
XX-18	4681	Villaruz, Villaruz & Co., CPAs		
		per claim (Annex S, Exhibit "MMM", Docket p. 450)	₱ 10,966.92	
		per supporting	(9,660.00)	1,306.92
XX-19	4771	Villaruz, Villaruz & Co., CPAs		
		per claim (Annex S, Exhibit "MMM", Docket p. 450)	₱ 11,065.81	
		per supporting	(9,660.00)	1,405.81
		4th quarter importation of goods with no exception		
		per claim (Annex R, Exhibit "MMM", Docket p. 449)	₱ 40,122.00	
YY-11	SN 110594267	per supporting - Asahi (H.K.) Ltd.	(20,061.00)	20,061.00
			Total	**₱ 26,487.29**

In sum, petitioner's substantiated input taxes for the fourth quarter of 2010 only amount to ₱334,749.93[3].

For all the foregoing, the Court finds that petitioner has sufficiently proven its entitlement to a refund or issuance of a TCC in the amount of ₱2,474,200.93,[4] representing its unutilized input VAT incurred for the second, third and fourth quarters of 2010 attributable to its zero-rated receipts for the same period.

<u>Respondent's Motion for Partial Reconsideration and Petitioner's Comment</u>

Respondent's "Motion for Partial Reconsideration" is anchored on the ground that this Court erred in partially granting petitioner's claim for refund or tax credit certificate considering that petitioner failed to fully substantiate its claim for refund on alleged unutilized VAT on the purchases of goods

om

[3] ₱361,237.22 less ₱26,487.29.
[4] ₱2,139,451.00 plus ₱334,749.93.

and services allegedly attributable to its zero-rated sales by documentary evidence.

In its "Comment (To Respondent's Motion for Partial Reconsideration)", petitioner contends that respondent's Motion for Partial Reconsideration is devoid of merit as the grounds raised therein are a mere rehash of the arguments raised in her Memorandum, which had already been carefully and exhaustively resolved by this Court in the assailed Decision. Petitioner further claims that it had adequately substantiated and proved with clear and convincing testimonial and documentary evidence during trial its entitlement to the claim for refund or issuance of tax credit certificate for unutilized input VAT.

After a careful perusal of the grounds raised in respondent's "Motion for Partial Reconsideration", the Court finds that the points and arguments raised therein are a mere reiteration and amplification of the arguments raised in respondent's Memorandum which had been duly considered and passed upon by this Court in the assailed Decision. Thus, the Court finds no compelling or cogent reason to grant respondent's "Motion for Partial Reconsideration".

WHEREFORE, premises considered:

1) petitioner' s "**Motion for Partial Reconsideration/New Trial**" filed on October 29, 2014 is hereby **PARTIALLY GRANTED.** Accordingly, the dispositive portion of the Court's Decision dated October 7, 2014 is hereby amended to read, as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent COMMISSIONER OF INTERNAL REVENUE is ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner SONY ERICSSON MOBILE COMMUNICATIONS INTERNATIONAL AB in the reduced amount of TWO MILLION FOUR HUNDRED SEVENTY FOUR THOUSAND TWO HUNDRED PESOS and 93/100 (P2,474,200.93), representing petitioner's unutilized input VAT attributable to its zero-rated sales of marketing services to its affiliate company, Sony Ericsson Mobile Communications AB, for the second, third, and fourth quarters of 2010.

om

SO ORDERED"; and,

2) respondent's "**Motion for Partial Reconsideration (Re: Decision dated October 9, 2014)**" filed on October 24, 2014 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice