REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

TOLEDO POWER CO., *Petitioner,*	**CTA CASE NO. 8671**
- *versus* -	Members: **BAUTISTA**, *Chairperson*, **FABON-VICTORINO**, *and* **RINGPIS-LIBAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 25 2017 1:07 p.m.

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AMENDED DECISION

BAUTISTA, J.:

For resolution is petitioner's Motion to Reopen Proceedings (with Motion for Reconsideration) filed on July 20, 2017; with respondent's Opposition (Re: Motion to Reopen Proceedings with Motion for Reconsideration) filed on August 23, 2017.

On June 28, 2017, the Court promulgated a Decision (the "Assailed Decision") denying the Petition for Review which prayed for the refund of petitioner's unutilized input value-added tax ("VAT") arising from its zero-rated sales/receipts for the second, third, and fourth quarters of calendar year ("CY") 2011. The dispositive portion of the Assailed Decision reads:

> **WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Petitioner, in its Motion to Reopen Proceedings (with Motion for Reconsideration) prays for the following: *(1)* reopening of the case to allow petitioner to present further evidence to support the payment of its input VAT incurred from its importations; *(2)* reversal and setting aside of the Assailed Decision insofar as it disallowed petitioner's zero-rated sale to Carmen Copper Corporation in the amount of Php139,370,841.22; *(3)* reversal and setting aside of the Assailed Decision insofar as it deducted petitioner's input VAT from the purchase of services from Toledo Holdings Corporation in the amount of Php214,883.04; and *(4)* reversal and setting aside of the Assailed Decision insofar as it held that petitioner had insufficient input VAT to cover its output VAT due. To this end, petitioner raises the following arguments: *(1)* there was a mistake on the representation of the independent Certified Public Accountant ("ICPA") that all the necessary documents have been photocopied and submitted to the Honorable Court; *(2) Exhibit* "P-105-116" supporting petitioner's zero-rated sales to Carmen Copper Corporation in the amount of Php139,370,841.22 should not be disallowed; *(3) Exhibit* "P-102-2137" was already disallowed by the ICPA in the report; *(4)* the Court did not take into consideration the input VAT incurred by petitioner in relation to sales subject to 12% VAT; and *(5)* the attached Statement of Settlement of Duties and Taxes ("SSDTs") were recently issued by the Bureau of Customs ("BOC") and thus could not have been presented before the Court.

On the other hand, respondent counters that petitioner's Motion should be denied for utter lack of merit. In this regard, respondent raises the following counter-arguments: *(1)* the motion to reopen proceedings should be denied as petitioner was given more than ample opportunity to properly ventilate its case; and *(2)* the Court correctly denied petitioner's claim for refund.

After a careful review of the grounds raised in the Motion to Reopen Proceedings (with Motion for Reconsideration), as well as the counter-arguments raised in the Opposition (Re: Motion to Reopen Proceedings with Motion for Reconsideration, the Court finds petitioner's Motion to Reopen Proceedings (with Motion for Reconsideration) partially meritorious. Upon closer inspection, the Court holds that petitioner is entitled to a VAT refund from its zero-rated sales/receipts for the fourth quarter of CY 2011 in the amount of Php6,241,966.20, as will be discussed below.

With regard to petitioner's Motion to Reopen Proceedings, the Court maintains that it was petitioner's duty to ensure the sufficiency of the evidence it presented during the trial of the case, especially when it filed its formal offer of evidence and rested its case. As duly noted by respondent, petitioner was given several opportunities to present evidence in support of its claim for refund. Precisely, it was the ICPA's duty as an officer of the Court to properly substantiate petitioner's claim, where warranted.

With regard to the disallowance of petitioner's zero-rated sale to Carmen Copper Corporation, the Court holds that the amount Php139,370,841.22 is a valid zero-rated sale for the third quarter of CY 2011, as supported by a zero-rated official receipt[1]. However, the Court maintains that for the second and third quarters, petitioner's valid input VAT for the said periods are insufficient to offset the output VAT; hence, petitioner is only entitled to a refund of excess input VAT for the fourth quarter.

With regard to the deduction of petitioner's input VAT from the purchase of services from Toledo Holdings Corporation, the Court holds that petitioner's argument has merit. Input VAT amounting to Php214,883.04 for the fourth quarter of CY 2011 will be reflected in the computation below.

Finally, with regard to the SSDTs, which petitioner claims were only recently issued by the BOC and could not be presented to the Court, the Court finds that while the SSDTs were indeed recently issued by the BOC, only the SSDTs marked as *Annexes* "C2"[2] and "C3"[3] have the same amount of input VAT covered by the Import Entry and Internal Revenue Declaration ("IEIRD") which the Court examined in the Assailed Decision.

As evidence of input VAT from importations, the Court, as a rule, allows the substantiation of the same by way of the machine validated IEIRD or the BOC official receipt. The transactions sought to be validated by petitioner by way of the attached SSDTs were already properly considered by the Court through the following documents:

NAME OF SUPPLIER	EXH. NO.	BOC IEIRD	VAT	REASON FOR DISALLOWANCE	BOOK
Yashima & Co. LTD.	P-103-3	1126774782	Php 1,182,844.00	IEIRD without machine validation nor BOC OR	6 of 6

[1] *Exhibit "P-105-116."*

[2] *Records, Vol. 8, Statement of Settlement of Duties and Taxes,* p. 4111.

[3] *Id.* at 4112.

KSU Putra Mahakam	P-103-4	112674904	Php12,259,085.00	IEIRD without machine validation nor BOC OR	6 of 6

Accordingly, the presentation of the SSDTs are merely cumulative evidence. In any case, the Court cannot rely on the same as they were never presented through the testimony of any witness nor formally offered as part of petitioner's evidence.

With the foregoing considerations, petitioner's entitlement to a refund of its zero-rated sales/receipts for the fourth quarter of CY 2011 is set out below.

Considering that petitioner is engaged in both taxable sales subject to the zero percent (0%) and twelve percent (12%) rates, as well as sales to government and exempt sales, and its input VAT cannot be directly or entirely attributed to any of the transactions, the Court shall allocate the valid input VAT proportionately on the basis of the volume of its sales pursuant to *Section 112(A) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*[4], as follows:

	2ND QUARTER	3RD QUARTER	4TH QUARTER
Total Input Tax	Php 31,473,072.04	Php 31,051,473.14	Php 44,889,915.83
Less: Disallowances			
Per ICPA	2,568,956.18	1,073,250.94	2,358,511.30
Per Court's Exception			
On Goods and Services	18,261,090.42	1,334,851.84	1,646,687.73
On Importation	2,151,345.00	14,873,459.17	14,696,649.00
Total Disallowances	22,981,391.60	17,281,561.95	18,701,848.03
Substantiated Input VAT	8,491,680.44	13,769,911.19	26,188,067.80
Add: Exhibit P-102-2137 per MR	-	-	214,883.04
Valid input VAT (**A**)	Php 8,491,680.44	Php 13,769,911.19	Php 26,402,950.84
SALES:	Exhibit "P-19"	Exhibit "P-21"	Exhibit "P-23"
Vatable Sales (**B**)	Php 151,295,589.10	Php 198,715,030.05	Php 156,066,571.00
Sale to Government (**C**)	18,122,816.40	15,172,409.20	9,520,185.00
Zero-rated Sales (**D**)	499,588,510.69	494,449,324.81	532,424,341.40
Exempt Sales (**E**)	1,064,950.87	1,031,462.04	1,124,380.78
TOTAL (**F**)	Php 670,071,867.06	Php 709,368,226.10	Php 699,135,478.18
ALLOCATION:			
Input VAT Attributable to			
Vatable Sales **[(B/F) x A]**	Php 1,917,337.32	Php 3,857,359.57	Php 5,893,876.27
Sale to Government **[(C/F) x A]**	229,666.66	294,519.43	359,531.14
Zero-rated Sales **[(D/F) x A]**	6,331,180.57	9,598,009.95	20,107,081.03
Exempt Sales **[(E/F) x A]**	13,495.90	20,022.24	42,462.40
TOTAL	**PHP 8,491,680.44**	**PHP 13,769,911.19**	**PHP 26,402,950.84**

[4] *Republic Act No. 8424,* as amended (1997).

Meanwhile, petitioner's valid input VAT allocated to non zero-rated sales in the respective amounts of Php2,160499.88, Php4,171,901.24, and Php6,295,869.81 for the second, third, and fourth quarters of CY 2011 is not enough to cover its output VAT liability in the amounts of Php20,330,208.66[5], Php25,666,492.71[6], and Php19,870,410.72[7], respectively. Thus, the substantiated input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT of Php18,169,708.78, Php21,494,591.47, and Php13,574,540.91 for the second, third, and fourth quarters of CY 2011, as follows:

	2ND QUARTER		3RD QUARTER		4TH QUARTER	
Total Output VAT	Php	20,330,208.66	Php	25,666,492.71	Php	19,870,410.72
Less: Input VAT Allocated to Non Zero-rated Sales						
Vatable Sales		1,917,337.32		3,857,359.57		5,893,876.27
Sales to Government		229,666.66		294,519.43		359,531.14
Exempt Sales		13,495.90		20,022.24		42,462.40
Total		2,160,499.88		4,171,901.24		6,295,869.81
Remaining Output VAT		18,169,708.78		21,494,591.47		13,574,540.91
Less: Input VAT Allocated to Zero-rated Sales		6,331,180.57		9,598,009.95		20,107,081.03
Output Tax Still Due	**Php**	**11,838,528.21**	**Php**	**11,896,581.52**		
(EXCESS INPUT VAT)					**(PHP**	**6,532,540.12)**

Based on the foregoing, petitioner has no excess input VAT for the second and third quarters of CY 2011. Meanwhile, for the fourth quarter of CY 2011, petitioner has excess input VAT of Php6,532,540.12, which can be attributed to the entire amount of Php532,424,341.40 zero-rated sales declared by petitioner in its Quarterly VAT Return for the fourth quarter of the same year. However, only the input VAT of Php6,241,966.20 is attributable to the valid zero-rated sales of Php508,741,364.66, as computed below:

Excess Input VAT attributable to zero-rated sales		Php	6,532,540.12
Multiplied by Percentage of Valid zero-rated sales			
Valid Zero-rated sales	508,741,364.66		95.5519%
Total Zero-rated Sales	532,424,341.40		
UNUTILIZED EXCESS INPUT VAT		**PHP**	**6,241,966.20**

WHEREFORE, premises considered, petitioner's Motion to

[5] *Records, Vol. 6, Exhibit "P-19," line 19B*, p. 3050.
[6] *Id., Exhibit "P-21," line 19B*, p. 3054.
[7] *Id., Exhibit "P-23," line 19B*, p. 3058.

Reopen Proceedings is hereby **DENIED** for lack of merit, while its Motion for Reconsideration is hereby **PARTIALLY GRANTED.**

Accordingly, the Decision promulgated on June 28, 2017 is **REVERSED** and **SET ASIDE**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund in favor of petitioner Toledo Power Co. the amount of **Six Million Two Hundred Forty-One Thousand Nine Hundred Sixty-Six Pesos and 20/100 (Php6,241,966.20),** representing petitioner's unutilized input value-added tax arising from its zero-rated sales/receipts for the fourth quarter of calendar year 2011.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

A T T E S T A T I O N

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice