REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

RIO TUBA NICKEL MINING CORPORATION, Petitioner,	**CTA CASE NO. 9127**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MANAHAN,** *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 29 2019 4:20 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Amended Decision promulgated 8 August 2019)**, filed on August 22, 2019, without petitioner's comment as per Records Verification dated October 2, 2019; and

2. petitioner's **Motion for Partial Reconsideration (of the August 8, 2019 Amended Decision)**, filed through registered mail on August 27, 2019 and received by the Court on September 3, 2019, with respondent's **Opposition (Re: Motion for Reconsideration of the Amended Decision promulgated 8 August 2019)**, filed on October 9, 2019.

Both parties move for the reconsideration of the Amended Decision promulgated on August 8, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of **₱3,500,966.09** representing its unutilized excess input VAT for the second to fourth quarters of calendar year 2013 attributable to its zero-rated sales for the same period.
>
> **SO ORDERED**."

In his motion, respondent contends that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. He argues that no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales. He alleges that the law itself does not state that all input taxes of a VAT-registered person whose sales are zero-rated are refundable. He states that Sec 112 (A) of the Tax Code provides that what is refundable are "creditable input taxes" and to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. After determining which input taxes are "creditable", the law requires a second evaluation to determine which "creditable" input taxes are "attributable". This means that the connection between the purchases and the finished product is "concrete" and not "imaginary" or "remote". Respondent claims that there is nothing in the decision of the Court showing the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

As to petitioner's Motion for Partial Reconsideration, petitioner claims that the Court disallowed a pro-rated portion of its input taxes from the second quarter to the fourth quarter of calendar year (CY) 2013 on the basis of "prescribed zero-rated" from its declared zero-rated sales for the first quarter of CY 2013. It reiterates that while petitioner's claim for input VAT for the first quarter of CY 2013 may be considered prescribed, the same principle of prescription cannot also be applied to its zero-rated sales for lack of legal basis. It asserts that the Tax Code only provides prescription of input VAT claims but does not contain any provision on prescription of zero-rated sales. Petitioner further submits that Exhibits "P-3534, "P-3539" and "P-

4688" to "P-4692" were not properly considered by the Court. Moreover, petitioner contends that the *Coral Bay* case which revolves around the Cross-Border Doctrine, as specifically applied to PEZA registered entities, finds no application to zero-rated BOI-registered export entities like petitioner which are not similarly situated as VAT exempt PEZA entities.

Respondent opposes petitioner's motion, contending that petitioner's allegations that the principle of prescription cannot be applied to its zero-rated sales and that the Court should allow the refund of its excess VAT input taxes from its local or domestic purchases are utterly bereft of merit. He further claims that the claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund. Respondent stresses that the claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and such, they are looked upon with disfavor.

Both motions lack merit.

It is at once apparent that no new issues are raised in their motions for reconsideration. The arguments presented are a mere rehash of what have been said and reiterated in the pleadings, all of which were already exhaustively passed upon, duly considered and resolved in the assailed Amended Decision.

Be that as it may, it bears reiterating that the law does not require that the input VAT subject of the claim be directly attributable to zero-rated sales. As a matter of fact, the National Internal Revenue Code of 1997, as amended, allows allocation of input taxes in case the same cannot be directly or entirely attributed to any of the sales.[1]

In this case, considering that petitioner did not provide for specific attribution of creditable input taxes, direct and entire attribution of creditable input taxes to any of its VATable and zero-rated sales transactions cannot be made. Hence, petitioner's creditable input taxes amounting to ₱12,155,895.54, as allowed by the Court, were first applied to the output tax due of ₱9,739,524.03. The amount credited to the output tax due already constitutes the input taxes allocated to petitioner's VATable sales and a portion of

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[1] *Commissioner of Internal Revenue vs. FOSECO Philippines, Inc.*, CTA EB No. 1842 (CTA Case No. 8879), August 13, 2019.

the input taxes allocated to zero-rated sales. Thus, the remaining creditable input taxes amounting to ₱2,416,371.51 represent the balance of the input taxes which were allocated to zero-rated sales. However, the Court found that only the amount of ₱2,077,757.45 is allocable to the valid zero-rated sales.

The Court also found to be without merit petitioner's contention that the Tax Code only provides prescription of input VAT claims but not on prescription of zero-rates sales.

It must be stressed that Section 112(A) of the Tax Code states that "Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales". Thus, for purposes of determining when petitioner can be said to be legally entitled to claim a refund of input taxes incurred or paid, what should matter is not the date when the purchases of goods or services were made and the corresponding input taxes were incurred or paid, but rather, *the date when petitioner's zero-rated sales were made*. For it is only then that petitioner can establish with definiteness that the input taxes incurred/paid were in fact, either directly attributable or otherwise, allocable to its zero-rated sales.

Therefore, absent any evidence to the contrary, petitioner's input VAT claim for the first quarter of CY 2013 shall be considered attributable to its reported zero-rated sales for the same quarter. Since the two-year prescriptive period for the filing of the administrative claim for input VAT refund under Section 112(A) of the Tax Code is reckoned from the close of the taxable quarter when the related zero-rated or effectively zero-rated sales were made, petitioner's declared zero-rated sales for the first quarter of CY 2013 related to the input VAT claim for the same quarter shall be disallowed.

Moreover, contrary to petitioner's assertion, the Court reconsidered its pieces of evidence pertaining to disallowed sales since other information in the final invoices (i.e. vessel name, voyage number, volume of shipment) matches the information in the corresponding bills of lading. Consequently, the disallowance was lifted and the amount of valid zero-rated sales was increased by ₱83,468,740.53.

The Court also emphasized that the principle in *Coral Bay case* may, by analogy, be applied insofar as petitioner cannot seek a refund from the BIR of its unutilized input taxes since petitioner's local purchases of goods and services are subject to VAT at zero percent rate, being a BOI-registered entity. Hence, no output shall be shifted to or passed on to it, and conversely, no input VAT shall be paid by it from said purchases. In such a case, petitioner may seek reimbursement of the input VAT paid from its seller (who shifted the output VAT) and not from the government.[2] It bears stressing that where petitioner paid the input VAT, notwithstanding that under the law it is VAT zero-rated, the said input VAT cannot be offset against its output VAT.

It is thus clear that the grounds cited by both parties in in their motions had already been passed upon and resolved by this Court. In the case of *San Juan, Jr. vs. Judge Cruz, et al.*[3], the Supreme Court ruled that:

> "xxx. It bears stressing however that while the motion for reconsideration filed by petitioner assailing the December 2, 2003 Order of the trial court based on the same grounds as those alleged in his first motion is not *pro forma*, such second motion for reconsideration can nevertheless be denied on the ground that it is merely a rehash or a mere reiteration of grounds and arguments already passed upon and resolved by the court. xxx"

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Amended Decision promulgated 8 August 2019)** and petitioner's **Motion for Partial Reconsideration (of the August 8, 2019 Amended Decision)** are **DENIED** for lack of merit.

SO ORDERED. jc

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[2] *Taganito Mining Corporation vs. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue vs. Taganito Mining Corporation*, CTA EB No. 1711 (CTA Case No. 8680) and CTA EB No. 1719 (CTA Case No. 8680), respectively, May 20, 2019.

[3] G.R. No. 167321, July 31, 2006.

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

WE CONCUR:

Catherine T. Manahan
With due respect, I reiterate my Concurring and Dissenting Opinion dated August 8, 2019.
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice