REPUBLIC OF THE PHILIPPINES

COURT OF TAX APPEALS

QUEZON CITY

FIRST DIVISION

AIR LIQUIDE PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8114

Members:

Del Rosario, *Chairperson*
Uy, *and*
Mindaro-Grulla, *JJ.*

Promulgated:

APR 21 2015 2:26 p.m.

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RESOLUTION

DEL ROSARIO, *P.J.*:

This resolves the Motion for Reconsideration (With prayer for reopening of trial for the reception of additional documents into evidence) filed by petitioner on January 15, 2015, with respondent's Comment filed on February 18, 2015 and petitioner's Reply filed on March 27, 2015.

Petitioner is asking this Court that the Decision promulgated on December 10, 2014, which denied its claim for VAT refund be reconsidered, the commissioning of Independent CPA (ICPA) to validate the P145,694,824.92 input VAT carried over from previous quarter be allowed, and that it be permitted to offer the ICPA report and its supporting exhibits through a supplemental formal offer of documentary exhibits.

Petitioner argues that at the time it prepared and presented its evidence until submission of its supplemental formal offer of evidence on April 17, 2013, there was no Court decision yet requiring substantiation of input VAT carried over from previous quarter. Petitioner posits that such substantiation requirement only came up in the consolidated cases of *Total (Philippines) Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 7898, 7980 and 8008,* promulgated on July 24, 2013. It claims that said substantiation requirement poses additional hurdle to taxpayers as the books of accounts may have already been disposed after the lapse of the three-year retention period pursuant to Section 203 of the National Internal Revenue Code of 1997 (NIRC of 1997), as amended.

Petitioner further avers that the reopening of the case to allow the ICPA to validate the amount of input VAT carried over from previous quarter will not prejudice the Government as the subject input VAT was already collected by respondent, and will not as well waste the time of the Court as the VAT-registered invoices and receipts that pertains to such carried over input VAT is readily available in its accounting files. It would accordingly serve the paramount interest of justice. In support of its prayer for the reopening of the case, petitioner cites the cases of Republic of the *Philippines vs. Sandiganbayan,*[1] and *Alegre vs. Reyes.*[2]

Anent the findings of the Court that only P282,022,343.16 out of P490,529,554.99 VAT zero-rated sales was properly supported by Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan Authority (SBMA) certifications and VAT zero-rated invoices, and only P18,714,689.62 is validly substantiated input VAT, petitioner states that it did not have enough time and personnel to validate said findings of the Court as there was only five working days from its receipt of the assailed Decision on December 18, 2014 until the filing of its motion on January 5, 2015 due to Christmas season. Thus, petitioner likewise requests that it be allowed to file a Supplemental Memorandum to this Motion for Reconsideration.

Respondent, by way of comment to the present motion, believes that petitioner's failure to include a proper notice of hearing, or to specify the date and time of the hearing, as it only states that *the motion is submitted for consideration of the Court immediately upon receipt without need of appearance of counsels*, is a fatal procedural flaw. A motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is pro forma and should be considered as a mere scrap of paper. She further argues that while she received a copy of petitioner's motion, her receipt is not tantamount to petitioner's compliance with the requirement.

Respondent also avers that petitioner is not entitled to a re-opening of trial as the additional evidence sought to be presented are not newly discovered or were omitted through inadvertence or mistake, as they are readily available at petitioner's accounting files. Respondent argues that the paramount interest of justice had been served during the proceedings as this case was already re-opened three (3) times for the reception of petitioner's additional evidence.

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[1] G.R. No. 152375, 16 December 2011.
[2] 161 SCRA 226, 231 (1988).

Respondent belittles petitioner's discussion on its survey of Court's decisions about the substantiation requirement of input VAT carried over as Section 110(B) of the NIRC of 1997, as amended, which is the basis of disallowance, is clear and unambiguous, and petitioner does not need the affirmance of a survey of court decisions in order to properly litigate its case.

In its Reply, petitioner argues that its motion did not violate the rule on notice of hearing as it contains a Notice of Hearing addressed to the Division Clerk of Court and all the counsels for respondents. It complies with the requirement of date and time because it includes the phrase *"for consideration of this Honorable Court immediately upon receipt"*. Accordingly, such phrase connotes a date, which is on the date of filing itself, and time, which is immediately upon receipt hereof. As for the phrase *"without need of the presence of counsels"*, petitioner claims that it was referring to its counsels as it has more than one lawyer assigned to each tax cases.

Petitioner argues that, even assuming that its notice of hearing did not comply with the procedural rules, its motion should not be dismissed. While respondent was given the opportunity to be heard as the Court gave her an extended period to file its comment, she actually filed her comment *albeit* late. Citing *Cabrera vs. Ng*[3] wherein the Supreme Court did not dismiss a motion for reconsideration that lacked notice of hearing, petitioner contends that the present motion which respondent claims as defective should *fortiori* not be dismissed.

Sections 4 and 5, Rule 15 of the Rules of Court provide that:

> "Sec. 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, **every written motion shall be set for hearing by the applicant**.
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> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
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> Sec. 5. Notice of hearing. – **The notice of hearing** shall be addressed to all parties concerned, and **shall specify the time and date of the hearing** which must not be later than ten (10) days after the filing of the motion." *(Boldfacing supplied)*

The notice requirement under Sections 4 and 5 of the Rules of Court is an integral component of procedural due process. The purpose of the

[3] G.R. No. 201601, 12 March 2014.

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requirement, *which was established not for the benefit of the movant but rather for the adverse party*, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein.[4]

The requirements of the aforesaid provisions of the Rules of Court are mandatory and that failure to comply therewith is fatal to movant's cause.[5] Nonetheless, when the adverse party had the opportunity to be heard and had filed pleadings in opposition to the motion, there is substantial compliance with the requirements of due process as highlighted in *Cabrera vs. Ng*,[6] *viz.*:

> "Likewise, in Jehan Shipping Corporation v. National Food Authority, the Court held that despite the lack of notice of hearing in a Motion for Reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion. The Court held:
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>> This Court has indeed held time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered pro forma and does not affect the reglementary period for the appeal or the filing of the requisite pleading.
>>
>> As an integral component of the procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution of the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.
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>> The test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. x x x"

A perusal of the records reveals that this Court directed the respondent to file comment, within ten (10) days from notice, on petitioner's Motion for Reconsideration in a Resolution promulgated on January 13, 2015. The period to comment was subsequently extended until February 12, 2015 in

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[4] Cabrera vs. Ng, G.R. No. 201601, March 12, 2014.
[5] Tan v. Court of Appeals, G.R. No. 130314, September 22, 1998.
[6] Supra.

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the Court's Order dated February 4, 2015, upon motion filed by respondent. Respondent failed to file comment within the extended period, but filed a Motion for Leave to Admit Attached Comment on February 18, 2015. The Court eventually granted respondent's Motion for Leave and admitted her Comment in the Resolution promulgated on March 31, 2015. In its 8-page Comment, respondent not only pointed out that the Motion was defective for not containing a definite date and time of hearing; it also raised arguments against the merits of the Motion for Reconsideration. As respondent was able to file her comment on the motion, the purpose of the notice requirement had already been served and, therefore, there is already substantial compliance with the requirements of due process.

Anent the arguments and plea for reliefs presented by petitioner in its motion, the Court finds the same unmeritorious.

Petitioner's plea that it be allowed to file a Supplemental Memorandum *(in relation to its "would be" objection on the findings of the Court which has not been raised in its motion for reconsideration)*, is a direct circumvention of Rule 15 of the Revised Rules of the Court of Tax Appeals[7] which only allows the filing of a motion for reconsideration within fifteen (15) days from notice of the assailed decision, as it is settled rule in this jurisdiction that the period for filing a motion for reconsideration cannot be extended.[8] Moreover, petitioner's failure to state its objections regarding the findings of the Court that *only P282,022,343.16, out of the P490,529,554.99 declared zero-rated sales was duly substantiated and only P18,714,689.62 out of P63,295,675.18 input tax payments from the current transactions are valid* would only mean that objections not so included in its motion for reconsideration are deemed waived pursuant to Section 8, Rule 15 of the Rules of Court.[9]

The alleged absence of Court decisions requiring the substantiation of carried over input VAT during the period it presented and offered its evidence is not a valid justification for petitioner's failure to substantiate its carried over input VAT as the substantiation requirement itself is clearly stated in the law.

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[7] RULE 15. Motion for Reconsideration or New Trial
Section 1. Who may and when to file motion. – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

[8] Habaluyas Enterprises, Inc. vs. Japson, G.R. No. 70895, May 30, 1986.

[9] Sec. 8. Omnibus motion. – Subject to the provisions of Section 1, Rule 9, **a motion attacking a** pleading, order, **judgment**, or proceedings **shall include all objections then available, and all objections not so included shall be deemed waived**. (Boldfacing supplied)

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A tax credit or refund, like tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit, in this case VAT input tax, by submitting evidence that he has complied with the requirements laid down in the NIRC of 1997, as amended and the BIR's revenue regulations under which such privilege of credit or refund is accorded.[10]

Sections 110(A)(1) and (B) of the NIRC of 1997, as amended, provide:

> "SEC. 110. Tax Credits. -
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> (A) Creditable Input Tax. -
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> (1) **Any input tax evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions **shall be creditable against the output tax**: xxx
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> (B) Excess Output or Input Tax. - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: Provided, however, That **any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112**." *(Boldfacing supplied)*

Section 112 of the NIRC, as amended, in turn provides:

> "SEC. 112. Refunds or Tax Credits of Input Tax. -
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> (A) Zero-Rated or Effectively Zero-Rated Sales. - 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**, except transitional input tax, **to the extent that such input tax has not been applied against output tax**: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely

[10] Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 180173, April 6, 2011.

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> attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx
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> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - **In proper cases**, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals." *(Boldfacing supplied)*

Evident from the proviso of the foregoing Section 110 (B) that the refund or credit of "any input tax attributable to zero-rated sales by a VAT-registered person" is "subject to the provisions of Section 112."[11]

The phrase "in proper cases" under Section 112 (C) qualifies the granting of refund under Section 112 (A). Thus, it is not only when the input VAT is attributable to zero-rated sales and the same has not been applied against the output VAT that the grant of refund or tax credit may be made; it must likewise be "proper" or appropriate under the circumstances.[12]

The first sentence of the aforequoted Section 110 (B) is plain that "if at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person." Thus, it would be improper or inappropriate, if not irregular, to grant a refund of, or issue a tax credit certificate for input VAT in favor of a taxpayer-claimant where there are still unpaid output VAT.[13]

Pursuant to Section 110 (A) (1) and (B) of the NIRC of 1997, as amended, the input taxes (including the input taxes carried-over from the previous quarter) shall be credited against the output taxes only if the same

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[11] Total (Philippines) Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 8056 & 8163, December 19, 2014.
[12] Id.
[13] Id.

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are supported by VAT invoices (in cases of purchases of goods or properties) or VAT official receipts (in cases of purchases of services, use or lease of properties) issued in accordance with Section 113 of the same Code.[14]

As petitioner failed to present its VAT invoices or receipts to prove the existence of its declared input tax carried-over from previous quarter in the amount of P145,964,824.92, said amount of input tax carried-over cannot validly be credited against petitioner's output tax for the year.

Finally, petitioner's prayer for the reopening of the case to allow the ICPA to validate the amount of input VAT carried over from previous quarter is likewise bereft of merit as the case is already in the post-judgment stage.

The reopening of a case for the reception of additional evidence may be allowed before judgment is actually rendered and is controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown.[15]

Even if the Court treats petitioner's prayer for the reopening of the case as a Motion for New Trial pursuant to Sec. 5, Rule 15 of the RRCTA in relation to Rule 37 of the Rules of Court, the grant of such relief is still unjustified. It is well-settled that a motion for new trial may be granted only upon specific, well-defined grounds, set forth in the Rules.[16] Since petitioner failed to specify facts and circumstances that may constitute grounds for motion for new trial and the required attachments thereto as provided under Sec. 5 and 6, Rule 15 of the RRCTA,[17] such motion is thereby fatally infirm.

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[14] Id.
[15] Alegre vs. Reyes, G.R. No. L-56923, May 9, 1988.
[16] Id.
[17] SEC. 5. Grounds of motion for new trial. – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
(a)Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or
(b)Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.
SEC. 6. Contents of motion for reconsideration or new trial and notice. – xxx
xxx A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be

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All told, the Court finds no cogent reason to disturb or modify the assailed Decision.

WHEREFORE, premises considered, the Motion for Reconsideration (With prayer for reopening of trial for the reception of additional documents into evidence) filed by petitioner on January 15, 2015 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.