REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2230** *(CTA Case No. 9649)*
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
-versus-	
LEPANTO CONSOLIDATED MINING COMPANY, *Respondent.*	Promulgated: MAR 3 1 2022 4:36 p.m.

x -- x

RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is petitioner's Motion for Reconsideration (Re: Decision promulgated 14 June 2021) ("Motion for Reconsideration"), filed on 28 June 2021,[1] without any comment from respondent.[2]

In the Motion for Reconsideration, petitioner alleges that the Court *En Banc* erred in ruling that respondent was able to sufficiently establish its entitlement to the input VAT refund claimed for the four quarters of calendar year 2015 in the amount of Php12,752,844.69.

---

[1] Records, pp. 79-88.
[2] Records.

According to him, no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales. He then argues the often cited principle that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. Hence, the taxpayer should first present convincing evidence to substantiate a claim for refund before the same can be granted.

We deny the Motion for Reconsideration.

The arguments raised in the Motion for Reconsideration have already been sufficiently passed upon, discussed, threshed out, and judiciously resolved in the Decision, dated 14 June 2021. The Motion for Reconsideration disclose no cogent reason to disturb the findings and conclusions which this Court made in said Decision. Thus, nothing is left for this Court to do but to deny the same.

Nonetheless, this Court shall once again address the issue raised by petitioner to settle once and for all the propriety of his claims and arguments.

The issue on whether an input VAT subject of refund should be directly attributable to zero-rated sales has already long been settled. ***Section 112 of the National Internal Revenue Code ("NIRC")*** does not require absolute direct attribution of the purchases (the input VAT of which is subject of a refund/TCC claim) to zero-rated sales. In fact, the said provision allows the allocation of input VAT that cannot be directly attributed to any of the taxpayer's sales (*i.e.,* zero-rated sales, taxable sales or exempt sales).

This was highlighted in ***Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.***,[3] as follows:

> **"The Court in Division correctly ruled that an input tax need not be directly and entirely attributable to the zero-rated sales to be refundable or creditable.**
>
> The petitioner's claim that the assailed Decision and Resolution of the Court in Division are erroneous for having failed to establish the direct attributability between respondent's input tax on purchases and its zero-rated sales is bereft of merit.
>
> ***Section 112(A) of the Tax Code*** provides for the grounds when input tax may be refunded or claimed as tax credit in cases of zero-rated sales, to wit:

[3] C.T.A. EB No. 2082, CTA Case No. 9496, 21 July 2020.

> '**SEC. 112.** *Refunds or Tax Credits of Input Tax.* –
>
> *(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(8)(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 sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely 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(8)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.'

Contrary to the argument of the petitioner, there is nothing in the provision which states that the input tax needs to be directly attributable or a factor in the chain of production to the zero-rated sale in order for it to be creditable or refundable. In fact, the aforementioned provision allows as tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to the zero-rated sales.

Further, ***Section 110(A) of the Tax Code,*** which enumerates the transactions upon which creditable input tax may be claimed, only requires that the transaction was incurred or paid in connection with the taxpayer's trade or business whether directly or indirectly and that it is evidenced by a VAT invoice or official receipt, to wit:

> 'SEC. 110. Tax Credits.-
>
> A. Creditable Input Tax. –
>
> (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:**
>
> **(a) Purchase or importation of goods:**
>
> **(i) For sale; or**
>
> **(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or**
>
> **(iii) For use as supplies in the course of business; or**
>
> **(iv) For use as materials supplied in the sale of service; or**
>
> **(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.**

> **(b) Purchase of services on which a value-added tax has been actually paid.**
>
> **XXX XXX XXX**
>
> **<u>The term "input tax" means the value-added tax due from or paid by a VAT -registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT - registered person.</u>** It shall also include the transitional input tax determined in accordance with Section 111 of this Code.'

Clearly, based on the foregoing provisions, the Tax Code does not require the input tax to be directly attributable to zero-rated sales to be refundable or creditable.

In fact, this is not the first time the Court En Banc resolved the issue raised by the petitioner. In ***Deutsche Knowledge Services Pte. Ltd. V. Commissioner of Internal Revenue***, this Court ruled, to wit:

> 'The CIR's insistence that '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' is not entirely consistent with the above-quoted Section 110. **<u>This is so because the said provision, as clearly stated, did not limit itself to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production; but also includes, inter alia, purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed; as well as purchase of services for which VAT has been actually paid.</u>**
>
> **Accordingly, provided that the subject input tax is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, the same may be creditable against the output VAT.**
>
> We likewise do not find merit in the CIR's allegation that for an input tax to be attributable to zero-rated sales, it must be shown that 'the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'.
>
> XXX XXX XXX
>
> Based from the foregoing, creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero- rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionally on the basis of the volume of sales. Evidently. contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct.
>
> Moreover, the word 'attribute', the adjective form of which is 'attributable', is defined as 'to explain as to cause or origin', or simply, to 'ascribe'. Thus, when Section 112(A) of the NIRC of 1997, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being

caused by such sales. Accordingly, We sustain the Court in Division's ruling that is it not required that the claimed input tax be directly attributable to zero- rated sales in order to be creditable.'

Moreover, we find that petitioner's reliance in the ***Atlas Cases*** is misplaced. In the said cases, the Supreme Court decided the same under the defunct Revenue Regulations ('RR') No. 5-87 dated 1 September 1987, as amended by RR No. 3-88 dated 15 February 1988, Section 16 of which provides, to wit:

'In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value- added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund.'

However, the requirement that the input tax being claimed for tax credit or refund should be directly and entirely attributable to the zero-rated sales, has not been retained in RR No. 14-2005 and in its amendments, which is the applicable VAT regulation in the present case.

Given the foregoing, we affirm the assailed Decision and Resolution and find that the input tax need not be directly attributable to the zero-rated sales in order for it to be refunded or claimed as tax credit."

With this clear pronouncement, it can no longer be denied that it is not necessary for input taxes to be directly attributable to zero-rated sales so that it can be validly refunded.

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice