REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

REMA TIP TOP PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 9836**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 27 2022 10:52am

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves petitioner's **Motion for Reconsideration** posted on July 7, 2021, without respondent's comment as per Records Verification dated on February 24, 2022.

The dispositive portion of the assailed Decision[1] reads:

> "**WHEREFORE,** in light of the foregoing, the Petition for Review filed on May 15, 2018 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Petitioner moves for reconsideration of the assailed Decision on the following grounds:

1. Petitioner's sales of goods and services for 2016 in the aggregate amount of ₱97,802,307.13, inclusive of ₱83,178,005.53 zero-rated sales, were properly substantiated as confirmed by the duly commissioned Independent Certified Public Accountant (ICPA);

[1] CTA Docket, Vol. VI, pp. 3648-3692.

2. Petitioner was denied due process when the value-added tax (VAT) official receipts for zero-rated sales in the aggregate amount of ₱16,639,462.23 and the sales invoices and official receipts supporting the input VAT on purchases were disallowed on the ground that the required details are unreadable albeit the same had been admitted in evidence without issue when they were formally offered by petitioner;

3. Petitioner's purchases and importations for 2016 in the aggregate amount of ₱45,628,919.00 were properly substantiated;

4. Photocopies of the importation documents in support of the input VAT on importations in the total amount of ₱3,570,947.00 are admissible under Rule 130 of the Revised Rules on Evidence; and,

5. The disallowance of the input VAT carried over from 2015 in the amount of ₱4,249,849.48 is improper considering that it is not relevant to the matter of the input VAT refund for 2016.

After a careful review of the arguments raised by petitioner, the Court finds no merit on petitioner's Motion for Reconsideration.

Disallowance of Zero-rated Sales

In the assailed Decision, the Court found that out of the total reported zero-rated sales of ₱83,178,005.10, only the amount of ₱62,449,305.68 was considered as valid zero-rated sales for the four (4) quarters of TY 2016, detailed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Zero-rated Sales	₱ 22,759,452.94	₱ 19,064,944.08	₱ 20,776,007.25	₱ 20,577,600.83	₱ 83,178,005.10
Less: Disallowances	7,540,924.62	2,846,064.78	1,023,663.08	9,153,716.15	20,564,368.63
Excess Claims	0.21	0.33	164,330.25	-	164,330.79
Total Valid Zero-rated Sales	**₱ 15,218,528.11**	**₱ 16,218,878.97**	**₱ 19,588,013.92**	**₱ 11,423,884.68**	**₱ 62,449,305.68**

The disallowances to petitioner's reported total zero-rated sales per the Court's verification are as follows:

Disallowances	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Sale of services to non-resident foreign client not qualified for VAT zero-rating under Sec. 108(B)(2) of the	-	-	₱ 1,023,663.08	₱ 2,285,356.12	₱ 3,309,019.20

NIRC of 1997, as amended					
Sale of service not supported by VAT OR	₱ 615,887.20	-	-	-	615,887.20
Sale of goods supported by VAT ORs but with unreadable details (date, payor details, or amount)	6,925,037.42	2,846,064.78	-	6,868,360.03	16,639,462.23
Total Disallowed Zero-rated Sales	**₱ 7,540,924.62**	**₱ 2,846,064.78**	**₱ 1,023,663.08**	**₱ 9,153,716.15**	**₱ 20,564,368.63**

<u>First ground for disallowance: Sale of services to non-resident foreign client not qualified for VAT zero-rating under Sec. 108(B)(2) of the NIRC of 1997, as amended (₱3,309,019.20)</u>

Petitioner claims that it has offered sufficient evidence to prove that it made sales of services to non-resident foreign corporations (NRFC) by submitting the relevant bank statements and payment advice, which show that the payments received by the petitioner for its sales to NRFCs were made in foreign currency. Petitioner also argues that since the payments for the services were made in foreign currency as evidenced by bank statements and payment advice, the NRFC status of petitioner's clients may be presumed.

In *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.* (*DKS Case*),[2] the Supreme Court enumerated the conditions under Section 108(B)(2) of the National Internal Revenue Coder (NIRC) of 1997, as amended, for sales of services rendered to non-resident foreign clients to qualify for VAT zero-rating, *viz.*:

> "Sales of 'other services,' such as those qualifying services rendered by DKS to its foreign affiliates-clients, shall be zero-rated pursuant to Section 108(B)(2) of the Tax Code if the following conditions are met: *First*, the seller is VAT-registered. *Second*, the services are rendered 'to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed.' *Third*, services are 'paid for in acceptable foreign currency and accounted in accordance with [BSP] rules and regulations.'"

Petitioner's submission of bank statements and payment advice only satisfies the third condition as provided for in the *DKS Case*, i.e.,

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[2] G.R. No. 234445, July 15, 2020.

that the services were paid for in acceptable foreign currency and accounted for in accordance with BSP rules.

As held by the Supreme Court in the *DKS Case*:

> "For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz*.: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must, be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines."

The bank statements and payment advice do not satisfy any of the requirements listed above. As this Court has consistently ruled, it is indispensable for claimant in establishing its client's NRFC status to submit, at the very least, both the: (1) SEC Certificate of Non-Registration of Corporation/Partnership; **AND** (2) Proof of Certificate/Articles of Foreign Incorporation/Association or printed screenshots of the US Securities and Exchange Commission (SEC) Website showing the state/province/country where the entity was organized,[3] for a foreign client to be accorded NRFC status.

Thus, since petitioner failed to submit the aforestated two (2) documents, the Court maintains its findings that petitioner failed to prove the NRFC status of its clients.

Second ground for disallowance: Sale of service not supported by VAT ORs (₱615,887.20)

Third ground for disallowance: Sale of goods supported by VAT ORs but with unreadable details (date, payor details, or amount) (₱16,639,462.23)

In the assailed Decision, the Court disallowed sales of services in the amount of ₱17,255,349.43 due to petitioner's failure to submit the supporting VAT official receipts (ORs) and although some are supported by VAT ORs, the details therein are unreadable.

[3] *Commissioner of Internal Revenue vs. CITCO International Support Services Limited-Philippine ROHQ*, CTA EB No. 2015, November 29, 2019.

Petitioner claims that it has submitted evidence to prove that the reported zero-rated sales in the amount of ₱17,255,349.43 comply with the invoicing requirements. Petitioner invokes the findings of the ICPA that petitioner's zero-rated sales complied with the invoicing requirements, *viz.*:

> "10. Related thereto, it should be noted that the evidence submitted by Petitioner were traced, examined and confirmed by the ICPA who was tasked to account and study said documents. The ICPA came to this conclusion after she examined petitioner's voluminous documents and schedules in support of its claim for refund. She verified the amounts of Sales, Purchases and Importations of petitioner as reported to the BIR, examined the Sales Invoices that the company issued for sale of goods and Billing Statements for sale of services, as well as the official receipts that the Company issued upon receipt of payment therefor. She and her team checked each document for its compliance with the substantiation requirements set forth under the law. In particular, she and her team determined if the source document included the Company Name, TIN, Address, date of transaction, description of the goods or properties or nature of service, and if the amount of input tax is presented separately.
>
> 11. Moreover, it is respectfully submitted that the findings of the ICPA which confirmed the evidence presented by Petitioner deserve great weight, especially considering that her testimony and her report were uncontroverted."[4]

Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides:

> "SEC. 3. *Findings of independent CPA.* – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusion subject to verification.**" *(Boldfacing supplied)*

As so provided, the ICPA's findings are not conclusive upon the Court as the same are subject to its verification, to determine their accuracy, veracity and merit. The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification.

Truth to tell, the Court conducted its own independent verification and found that zero-rated sales of services in the amount of

[4] Paragraphs 10 and 11, Petitioner's Motion for Reconsideration, CTA Docket, Vol. VI, p. 3700.

₱615,887.20 were not supported by VAT ORs, and zero-rated sales of services in the amount of ₱16,639,462.23 were supported by VAT ORs but the details therein were unreadable. Thus, the Court came to a conclusion that zero-rated sales amounting to a total of ₱17,255,349.43 failed to comply with the invoicing requirements under the NIRC of 1997, as amended, and RR No. 16-2005, as amended.

In particular, the details of the sales invoices and official receipts supporting the disallowed zero-rated sales of ₱16,639,462.23 are shown below:

OR/SI	OR/SI Date	Customer	Amount	Exhibit
2) Sale of services supported by VAT OR wherein date, payor details or amounts are unreadable				
1st Quarter				
OR 1010	1/15/16	TAGANITO HPAL NICKEL CORPORATION	1,948,286.07	**P-4796**
SI 1094/SI 1093/SI 1092	2/20/16	TAGANITO HPAL NICKEL CORPORATION	4,976,751.35	**P-134 to P-134-B**
Subtotal - 1st Quarter			6,925,037.42	
2nd Quarter				
SI 1157	5/6/16	TAGANITO HPAL NICKEL CORPORATION	2,846,064.78	**P-338**
Subtotal - 2nd Quarter			2,846,064.78	
4th Quarter				
OR 1051	12/16/16	TAGANITO HPAL NICKEL CORPORATION	516,274.00	**P-4827**
OR 1051	12/16/16	TAGANITO HPAL NICKEL CORPORATION	2,808,076.00	**P-4827**
OR 1051	12/16/16	TAGANITO HPAL NICKEL CORPORATION	1,744,010.03	**P-4827**
OR 1051	12/16/16	TAGANITO HPAL NICKEL CORPORATION	1,800,000.00	**P-4827**
Subtotal - 4th Quarter			6,868,360.03	
Total - Sale of services supported by VAT OR wherein date, payor details or amounts are unreadable			₱16,639,462.23	

Petitioner asserts that the foregoing exhibits representing the VAT ORs in support of the disallowed zero-rated sales were previously admitted by the Court in a Resolution dated February 26, 2020, wherein the Court did not include the relevant exhibits in the list of exhibits denied for being blurred or unreadable. Hence, petitioner relied on the said Resolution and believed in good faith that it did not need to submit clearer copies of those exhibits. Ultimately, petitioner argues that it would be denied due process if the ORs and sales invoices were disallowed even if the same were admitted in evidence and not included in the list of unreadable or blurred exhibits.

The Court is not convinced.

Admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[5]

Although the Court admitted in evidence the aforestated pertinent exhibits, the Court is not precluded from evaluating the probative value thereof. In the Resolution dated February 26, 2020, the Court resolved to admit several exhibits, including the subject exhibits (P-4796, P-134 to P-134-B, P-338, and P-4827), **but subject to the Court's final evaluation and/or appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case**.

It is worthy to note that the burden is on the taxpayer to prove its entitlement to the refund.[6] Hence, it is the duty of the taxpayer to ensure that the documents it submits in support of its claim for refund are sufficiently readable for the verification to be conducted by the Court, and that the same should bear the important and critical details to ascertain the validity of the claim.

Disallowance of Input VAT

The Court disallowed input VAT on domestic purchases of goods other than capital goods, and domestic purchases of services in the total amount of ₱1,562,076.91 on various grounds, including the unreadability of certain details in the submitted VAT invoices and VAT ORs.

Petitioner points out that the sales invoices and official receipts supporting Items 3, 4, 5 and 8 in the list of grounds for disallowances of input VAT on domestic purchases of goods and services were previously admitted by the Court in the Resolution dated February 26, 2020. The exhibits corresponding to the sales invoices and official receipts were not included in the list of exhibits that were denied for being blurred or unreadable. Below are the details of the disallowances of input VAT on domestic purchases of goods and services based on the ground of being unreadable:

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[5] *Ma. Melissa Villanueva Magsino vs. Rolando N. Magsino*, G.R. No. 205333, February 18, 2019.
[6] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company*, G.R. No. 173854, March 15, 2010.

3) Input VAT on domestic purchase of goods/services supported by VAT Invoice/OR wherein the indicated TIN is incorrect, incomplete or **unreadable**;

4) Input VAT on domestic purchase of goods/services supported by VAT Invoice/OR where the payor's name is incorrect, incomplete or **unreadable**;

5) Input VAT on domestic purchase of goods/services supported by VAT Invoice/OR where the business address is incorrect, incomplete or **unreadable**; and

8) Input VAT on domestic purchase of goods/services unsupported by VAT Invoice/OR where ATP details are not indicated and/or **unreadable** or the ATP is expired.

As previously discussed, although the Court admitted in evidence those pertinent exhibits, the Court is not precluded from evaluating the probative value thereof. Finding the said exhibits bereft of probative value, the Court maintains the disallowance of the input VAT they allegedly sought to prove.

Disallowance of Input VAT on Importations

In the assailed Decision, the Court disallowed the input VAT on importations in the total amount of ₱3,570,947.00 because the Bureau of Customs' (BOC) Single Administrative Documents (SAD) and Statement of Settlement of Duties and Taxes (SSDT) on petitioner's importation of goods were mere photocopies. The SADs and SSDTs were actually denied admission in the Resolution dated February 26, 2020 for non-presentation of originals to the ICPA.

Petitioner requests that the disallowance be reversed on the ground that under Section 4, Rule 130 of the 2019 Revised Rules on Evidence, photocopies are deemed admissible as an original document itself. It also avers that pursuant to Rule 144 of the Revised Rules of Court, the amendments shall govern all pending proceedings when it took effect on May 1, 2020. Thus, it contends that the rule that photocopies of documents are deemed as originals and may be admitted in evidence applies in the instant case.

It must be noted that the denial of admission of petitioner's SADs and SSDTs was embodied in the Resolution dated February 26, 2020, which was issued well before the effectivity of the 2019 Amendments to 1989 Revised Rules on Evidence on May 1, 2020. Records reveal that petitioner received the February 26, 2020 Resolution on February 28, 2020. It is now too late in the day for petitioner to move for reconsideration of the Resolution which denied the admission in evidence of the aforesaid SADs and SSDTs.

As to petitioner's contention that pursuant to Rule 144 of the Revised Rules of Court, the amendments shall govern all pending proceedings when it took effect on May 1, 2020, the same is bereft of merit. Contrary to petitioner's contention, the amendments referred to in Rule 144 of the Revised Rules of Court is not the 2019 Amendments to the Revised Rules on Evidence but the 2019 Proposed Amendments to the 1997 Rules of Civil Procedure, to wit:

> "RULE 144
> EFFECTIVENESS
>
> These rules shall take effect on January 1, 1964. They shall govern all cases brought after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the court, their application would not be feasible or would work injustice, in which even the former procedure shall apply.
>
> **The 2019 Proposed Amendments to the 1997 Rules of Civil Procedure shall govern all cases filed after their effectivity on May 1, 2020, and also all pending proceedings, except to the extent that in the opinion of the court, their application would not be feasible or would work injustice, in which case the procedure under which the cases were filed shall govern.**
>
> xxx" *(Boldfacing supplied)*

Even assuming that the 2019 Amendments to the Revised Rules on Evidence is applicable in this case, the photocopies of petitioner's SADs and SSDTs shall still be denied admission in evidence.

Section 4, Rule 130 of the 2019 Amendments to 1989 Revised Rules on Evidence, reads as follows:

> "Section 4. *Original of document.* –
>
> (a) xxx
>
> (b) **A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.**
>
> (c) A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the

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original, or (2) in the circumstances, it is unjust or inequitable to admit the duplicate in lieu of the original." *(Boldfacing supplied)*

Based on the aforesaid provision, a "duplicate" is a counterpart produced which is an accurate reproduction of the original. Thus, for a photocopy of a document to be admitted instead of the original the same should be compared with the original to verify that the same is an accurate reproduction.

In truth, the ICPA, in examining the photocopies of petitioner's SADs and SSDTs, has the duty under Section 2 of Rule 13 of the RRCTA, to compare the same with the original documents and certify that they are faithful reproductions of the original, *viz*:

> "SEC. 2. *Duties of independent CPA*. – The independent CPA shall perform audit functions in accordance with the generally accepted accounting principles, rules and regulations, which shall include:
>
> (a) Examination and verification of receipts, invoices, vouchers and other long accounts;
>
> **(b) Reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of original documents, and pre-marking of documentary exhibits consisting of voluminous documents;**
>
> xxx." *(Boldfacing supplied)*

As stated in the ICPA Report, most documents that support petitioner's importations are photocopies, to wit:

> "**Importations**
>
> 27. xxx
>
> 28. **Annex "F"** shows the details of our verification of documents, and also indicates if a transaction is valid or not for purposes of claiming input tax. **It will be noted that most of the documents provided are photocopies.** xxx"[7] *(Boldfacing supplied)*

Considering that the importation documents (including the SADs and SSDTs) that petitioner provided the ICPA are photocopies, the Court cannot consider them as sufficient to prove the fact of importation and the payment of the corresponding VAT thereon.

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[7] CTA Docket, Vol. VI, p. 3223.

Thus, the disallowance of the input VAT on importations in the total amount of ₱3,570,947.00 shall be sustained.

Disallowance of Input VAT carry-over

In the Assailed Decision, the Court disallowed petitioner's "Input Tax Carried Over from Previous Period" amounting to ₱4,249,849.48 for failing to present supporting documents, to wit:

> "While the Court notes that petitioner's 1st Quarter VAT Return for TY 2016 reflected the amount of ₱4,249,849.48 as "Input Tax Carried Over from Previous Period", petitioner failed to submit documents, official receipts and invoices to support the input tax carry-over of ₱4,249,849.48. Hence, petitioner's input tax carried over from previous period cannot be validly applied against petitioner's net output VAT due pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended."

Petitioner contends that the disallowance of the input VAT carry-over from TY 2015 is not relevant to a claim for refund for TY 2016. It argues that there is nothing in Section 112(A) of the NIRC of 1997, as amended, which states that a claimant of input VAT refund for a particular period is required to provide documents, official receipts and invoices to prove the input VAT carry-over from the previous period.

To recall, petitioner was only able to prove a total valid input VAT of ₱342,472.59. Clearly, this amount is not sufficient to cover the current year's output VAT of ₱1,754,936.25. Hence, the Court found it necessary to determine the existence and validity of the input VAT carried over from TY 2015 which, if sufficiently proven, may be utilized to cover the current year's output VAT of ₱1,754,936.25 or the net output VAT payable of ₱1,703,726.59 (net of input VAT attributable to VATable sales), in which case, the valid input VAT attributable to zero-rated sales of ₱291,262.93 may be refunded.

Pursuant to Section 110 (A)(1) of the NIRC of 1997, as amended, any input VAT, including accumulated input tax carry-over, shall be creditable against the output VAT only if the same is evidenced by a VAT invoice or OR issued in accordance with Section 113 of the NIRC of 1997, as amended. Conversely, if the taxpayer fails to present VAT invoices or official receipts to substantiate its accumulated input tax carry-over, said accumulated input tax carry-over cannot be credited against its current output VAT liability.[8]

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[8] *Riofil Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 1984 (CTA Case No. 9344), March 9, 2020.

In claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. It is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year. To reiterate, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[9]

Considering that petitioner failed to substantiate its input VAT carry-over from previous period, there is no basis for the Court to modify its finding that the same may not be applied against petitioner's current net output VAT due.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

(No part)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

[9] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.