REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

KURIMOTO (PHILIPPINES) CORPORATION, Petitioner,	**CTA CASE NO. 9417**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
HON. CESAR R. DULAY – In his capacity as THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 2 5 2019 11:22 am

x - x

RESOLUTION

MANAHAN, *J.:*

This resolves respondent's **Motion for Partial Reconsideration**, filed through registered mail on June 20, 2019 and received by the Court on July 1, 2019, with petitioner's **Comment to Respondent's Partial Motion for Reconsideration**, filed on July 29, 2019.

In its motion, respondent seeks partial reconsideration of the Court's Decision promulgated on June 4, 2019 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the

reduced amount of **₱8,996,232.52** representing unutilized input taxes attributable to its zero-rated sales for the first and second quarters of CY 2014.

SO ORDERED."

In support of its motion, respondent raises the following arguments:

1) Kurimoto (Philippines) Corporation's sales of services to Kurimoto Ltd. does not qualify as zero-rated sales but subject to 12% Value-Added Tax (VAT);
2) Kurimoto (Philippines) Corporation's sales of services to Taganito HPAL Nickel Corporation (THPAL), a Philippine Economic Zone Authority (PEZA)-registered enterprise, does not qualify as zero-rated sales but subject to 12% VAT; and
3) Exhibits of petitioner should not be given any probative value for being hearsay evidence.

Respondent argues that petitioner's sales of services to Kurimoto Ltd. do not qualify as zero-rated sales. Citing the case of *Chartis Technology & Operations Management Corporation (Philippines) vs. Commissioner of Internal Revenue*[1], respondent avers that the following evidence presented by petitioner do not prove or establish that Kurimoto Ltd. is a non-resident foreign corporation doing business outside the Philippines:

1. Authenticated and Consularized Articles of Incorporation of Kurimoto Ltd.;
2. Securities and Exchange Commission (SEC) Certification of Non-Registration of Kurimoto Ltd.;
3. Certificate of Withdrawal of License of a Foreign Corporation issued by the SEC dated June 27, 2012; and
4. SEC Certification of Corporate Filing/Information dated August 3, 2016 confirming the issuance of the Certificate of Withdrawal of License of a Foreign Corporation to Kurimoto Ltd. on July 6, 2011.

---

[1] CTA Case Nos. 8432, 8498, 8534 and 8581, November 6, 2015.

Moreover, respondent claims that Kurimonto Ltd. rendered services to petitioner in the Philippines whose services were subjected to VAT to whom petitioner also claims to have made its zero-rated sales. Citing the case of *Amadeus Marketing Philippines, Inc. vs. Commissioner of Internal Revenue*[2], respondent contends that the transactions by and between petitioner and Kurimoto Ltd. are clearly intended to establish a continuous business in the Philippines, hence, Kurimoto Ltd. is doing business in the Philippines.

On the other hand, petitioner submits that this argument is moot since the Court already ruled and disallowed the same sales in the assailed Decision.

In this case, the Court noted that there was never an allegation that Kurimoto Ltd. rendered services to petitioner, neither was there evidence presented to prove such fact. Moreover, upon examination of petitioner's Amended Quarterly VAT Returns for the first and second quarters of calendar year 2014 (Exhibits "P-5-1" and "P-6-1"), only input tax on domestic purchases of goods other than capital goods and input tax on domestic purchases of services were claimed by petitioner; no input tax on services rendered by non-residents were claimed by petitioner. Significantly, respondent did not present any evidence. Moreover, he did not specify any evidence supporting his allegation that Kurimonto Ltd. rendered services to petitioner in the Philippines that is intended to establish a continuous business in the Philippines so that the Court may verify respondent's claim.

Absent evidence showing that Kurimoto Ltd. is doing business in the Philippines, the evidence presented by petitioner is sufficient to prove that Kurimoto Ltd. is a non-resident foreign corporation doing business outside the Philippines.

In any case, as pointed out by petitioner, the question of whether or not Kurimoto Ltd. is a non-resident foreign corporation doing business outside the Philippines has been rendered moot considering that the amount subject of the sales to Kurimoto Ltd. was previously disallowed in the assailed Decision. Hence, the Court will no longer delve into this matter.

Respondent further posits that petitioner's sales of services to THPAL, a PEZA-registered enterprise, do not qualify as zero-rated

---

[2] CTA EB Case No. 1532, April 5, 2018.

sales, arguing that if an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes, however, if an ecozone enterprise chooses the income tax holiday, it is only exempt from payment of the income tax but still subject to other national internal revenue taxes including VAT.

On the other hand, petitioner argues that the sales made by a VAT-registered person to a PEZA-registered entity are considered as zero-rated sales subject to 0% VAT pursuant to the Tax Code and pertinent rules and regulations as well as court decisions. Petitioner stresses that the law or regulations makes no distinction as to whether an enterprise is enjoying income tax holiday or 5% gross income tax.

The Court has already ruled that the sales of services by a VAT-registered taxpayer such as petitioner Kurimoto (Philippines) Corporation, to a PEZA-registered entity are subject to 0% VAT.

To reiterate, Section 8 of Republic Act No. 7916, as amended, otherwise known as "The Special Economic Zone Act of 1995", mandates that the PEZA shall manage and operate the Ecozones as a separate customs territory.

Since the Ecozone is treated as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the Ecozone are considered exports to a foreign country subject to 0% VAT.

As pointed out by petitioner, according to the Certificate[3] issued by the PEZA, THPAL is a PEZA–registered Ecozone Export Enterprise and is a qualified enterprise for the purpose of VAT zero-rating of its transactions with its local suppliers of goods, properties and services, in accordance with Sections 4.106-6 and 4.108-6 of Revenue Regulations No. 16-2005, the Consolidated VAT Regulations of 2005.

Moreover, in the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[4], the Supreme Court ruled that with the issuance of Revenue Memorandum Circular (RMC) No. 74-99, the distinction under the old rule as argued by the respondent

---

[3] Docket, Vol. I. Exhibit "P-10", p. 430.
[4] G.R. No. 190506, June 13, 2016.

was disregarded. RMC No. 74-99 states that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration. The Supreme Court ruled:

> "Prior to the effectivity of RMC 74-99, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives, namely: (1) if the PEZA-registered enterprise chose the 5% preferential tax on its gross income in lieu of all taxes, as provided by Republic Act No. 7916, as amended, then it was VAT-exempt; and (2) if the PEZA-registered enterprise availed itself of the income tax holiday under Executive Order No. 226, as amended, it was subject to VAT at 10% (now, 12%). Based on this old rule, *Toshiba* allowed the claim for refund or credit on the part of Toshiba Information Equipment (Phils) Inc.
>
> This is not true with the petitioner. With the issuance of RMC 74-99, the distinction under the old rule was disregarded and the new circular took into consideration the two important principles of the Philippine VAT system: the Cross Border Doctrine and the Destination Principle. Thus, *Toshiba* opined:
>
>> The rule that any sale by a VAT-registered supplier from the Customs Territory to a PEZA-registered enterprise shall be considered an export sale and subject to zero percent (0%) VAT was clearly established only on 15 October 1999, upon the issuance of RMC No. 74-99. Prior to the said date, however, whether or not a PEZA-registered enterprise was VAT-exempt depended on the type of fiscal incentives availed of by the said enterprise. This old rule on VAT-exemption or liability of PEZA-registered enterprises, followed by the BIR, also recognized and affirmed by the CTA, the Court of Appeals, and even this Court, cannot be lightly disregarded considering the great number of PEZA-registered enterprises which did rely on it to determine its tax liabilities, as well as, its privileges.

> According to the old rule, Section 23 of Rep. Act No. 7916, as amended, gives the PEZA-registered enterprise the option to choose between two sets of fiscal incentives: (a) The five percent (5%) preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and (b) the income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.
>
> xxx xxx xxx
>
> ***This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory.*** It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. Again, for emphasis, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives: (1) If the PEZA-registered enterprise chose the five percent (5%) preferential tax on its gross income, in lieu of all taxes, as provided by Rep. Act No. 7916, as amended, then it would be VAT-exempt; (2) If the PEZA-registered enterprise availed of the income tax holiday under Exec. Order No. 226, as amended, it shall be subject to VAT at ten percent (10%). ***Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration; and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as a VAT-exempt entity.*** (Underscoring and emphasis supplied)

Furthermore, Section 8 of Republic Act No. 7916 mandates that PEZA shall manage and operate the

> ECOZONE as a separate customs territory. The provision thereby establishes the fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an ECOZONE will be considered as exportations. Following the Philippine VAT system's adherence to the Cross Border Doctrine and Destination Principle, the VAT implications are that 'no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority.' xxx"

Hence, this Court correctly held that the sales of petitioner to THPAL were zero-rated.

Respondent further argues that the exhibits of petitioner should not be given any probative value for being hearsay evidence as petitioner did not present a credible and competent witness to testify on such relevant and material matter.

On the other hand, petitioner counters that respondent's statement is sweeping and did not discuss which particular exhibit is being referred to, hence, respondent's motion did not comply with the requirements provided under Section 2 of Rule 37 of the Rules of Court. Moreover, petitioner avers that its documentary exhibits primarily consist of tax returns as well as invoices and official receipts. According to petitioner, official receipts and invoices are commonly recognized in ordinary commercial transaction and should not be considered bereft of probative value. Further, petitioner stresses that the bulk of the voluminous documents are invoices and official receipts which were examined and verified by the Independent Certified Public Accountant.

Section 2 of Rule 37 of the Rules of Court provides:

> "SEC. 2. *Contents of motion for new trial or reconsideration and notice thereof.* – xxx
>
> xxx xxx xxx
>
> **A motion for reconsideration shall point out specifically the findings or conclusions of the**

> **judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence** or to the provisions of law alleged to be contrary to such findings or conclusions." (*Emphasis supplied*)

Respondent's claim is general and it failed to specify and make express reference to the pieces of evidence which should not be given probative value. It should be noted that the Court already scrutinized petitioner's documentary evidence and its compliance with applicable laws and rules and regulations, and its factual findings have been thoroughly discussed in the assailed Decision. Hence, this argument must likewise fail.

In view of the foregoing, the Court finds no cogent reason to modify or reverse the assailed Decision.

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

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice