REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

CTA *EB* NO. 2358
(CTA Case No. 9112)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 21 2022 3:47pm

x- x

RESOLUTION

MANAHAN, J.:

Before the Court *En Banc* is the *Motion for Reconsideration [of the Decision dated February 10, 2022]*[1] filed by petitioner Oceanagold (Philippines), Inc. on March 3, 2022.

Despite notice,[2] respondent Commissioner of Internal Revenue (CIR) did not file any comment or opposition.[3]

The assailed Decision dated February 10, 2022, disposed of the case, as follows:

> Based on the foregoing, this Court finds no reason to reverse nor modify the CTA 2nd Division's findings, as follows:

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[1] EB Docket, pp. 269-287.
[2] EB Docket, Resolution dated March 21, 2022, pp. 294-295.
[3] EB Docket, Records Verification dated April 20, 2022, p. 296.

> Nevertheless, upon careful examination of all the said provisional invoices issued by petitioner in support of its export sales, the same reveals that the word "zero-rated" was not written or printed prominently thereon, which is a clear violation of the above-quoted Section 113(B)(2)(c) of the NIRC of 1997, as amended, and Sectioni 4.113-1(B)(2)(c) of RR No. 16-2005, as amended. Hence, the zero-rated sales supported by the said provisional invoices in the amount of P1,995,524,661.81 shall likewise be denied *in toto* for VAT zero-rating.

Not having proven that its sales for the 2nd quarter of taxable year 2013 qualify for VAT zero-rating, petitioner's claim for refund of input VAT allegedly attributable to its zero-rated sales must also fail, without the necessity of determining petitioner's compliance with the remaining requisites for a refund of unutilized input VAT.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution of the Court's Second Division, dated June 17, 2020 and October 9, 2020, respectively, are **AFFIRMED**.

SO ORDERED.[4]

In its *Motion*, petitioner argues that absent an express provision in the 1997 National Internal Revenue Code (NIRC), as amended, requiring provisional invoices to contain the word "zero-rated sales", only VAT invoices or VAT official receipts are required to contain the word "zero-rated" written or printed thereon. Petitioner also states that its sales and actual shipment of goods during the second quarter of taxable year 2013 are duly supported by compliant sales invoices as proof of sales of goods, bills of lading and export declarations as proof of shipment of goods from the Philippines to a foreign country, and certificates of inward remittance as proof of payment for the goods in acceptable foreign currency.

Petitioner's *Motion for Reconsideration* is denied.

The 1997 NIRC, as amended, as implemented by Revenue Regulations (RR) No. 16-2005 provide specific requirements that must be complied with by a VAT taxpayer, as follows:

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[4] EB Docket, Decision dated February 10, 2022, p. 261.

SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* –

(A) *Invoicing Requirements.* – A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided, That:*

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term '**zero-rated sale**' shall be written or printed prominently on the invoice or receipt;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service;

xxx xxx xxx

Furthermore, Section 237 of the 1997 NIRC, as amended, also provides:

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* – All persons subject to an internal revenue tax

> shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, <u>issue duly registered</u> receipts or <u>sales</u> or <u>commercial invoices</u>, prepared at least in duplicate, showing the date of the transaction, quantity, unit cost and description of merchandise or nature of service...

In summary, any VAT-registered person claiming VAT zero-rated export sales must present the following documents:

1. The pertinent sales invoice, which must be compliant with the invoicing and registration requirements under the law, as proof of sale of goods;

2. The pertinent bills of lading or airway bills as proof of actual shipment of goods from the Philippines to a foreign country; and

3. Bank credit advice, certificate of bank remittance, or any other convincing document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services, accounted for in accordance with Bangko Sentral ng Pilipinas (BSP) rules and regulations.

In the instant case, petitioner declared zero-rated sales in the amount of Php1,998,260,627.81 for the 2nd quarter of the taxable year 2013. Petitioner presented VAT zero-rated sales invoices[5] dated August 30, 2013, October 4, 2013, September 28, 2013, and October 24, 2013, to support such declared zero-rated sales.

As stated in the quoted provisions of the 1997 NIRC, as amended, VAT invoices should state, among others, the date of the transaction. Clearly, these VAT zero-rated invoices are dated outside the 2nd quarter of taxable year 2013, and are beyond the scope of the present claim for refund. Nevertheless, it has been held that final invoices dated outside the period of claim do not cover separate sales transactions for different taxable periods, but actually relates to the sales transactions

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[5] Exhibit "P-74.1" to "P-74.4", Box 18, Folder 58.

of petitioner during the period of claim as indicated in the provisional invoices, bills of lading and export declarations.[6]

Upon examination of the provisional invoices dated April 8, 2013, May 30, 2013, June 14, 2014, and July 1, 2013, the sales covered by the 4th invoice dated July 1, 2013 was disallowed for being dated outside the period of claim. As to the remaining provisional invoices which are dated within the period of claim, the same cannot be considered considering that the word "zero-rated sales" was not written or printed prominently thereon, in violation of the abovequoted provisions.

It is reiterated that in petitioner's situation, the completeness of the information contained in the provisional invoices are of particular importance considering that the provisional invoices are used as proof that the actual sale transpired during the period of claim, together with the bills of lading and export declarations. Since the word "zero-rated sales" was not stamped nor imprinted on the provisional invoices, petitioner's reported sales cannot qualify for VAT zero-rating.[7]

WHEREFORE, the *Motion for Reconsideration [of the Decision dated February 10, 2022]* filed by petitioner on March 3, 2022 is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[6] *Commissioner of Internal Revenue v. Philex Mining Corporation*, CTA EB No. 1525, April 2, 2018.
[7] *Commissioner of Internal Revenue v. Philex Mining Corporation*, CTA EB No. 1525, April 2, 2018.

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

ERLINDA P. UY
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice