REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, Respondent,	**CTA EB NO. 1842** (CTA Case No. 8879)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
FOSECO PHILIPPINES, INC., Petitioner.	Promulgated: FEB 03 2020 3:39 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

This resolves Petitioner's "Motion for Reconsideration (Re: Decision promulgated 13 August 2019)"[1] ("Motion for Reconsideration") filed on September 02, 2019, without Respondent's comment thereon[2], seeking to set aside the Decision[3] promulgated on August 13, 2019 ("Assailed Decision") and praying that a new one be rendered denying the entire claim for refund.

The dispositive portion of the Assailed Decision reads:

[1] Rollo, pp. 134-143.
[2] Records Verification Report issued by the Judicial Records Division on November 28, 2019.
[3] Rollo, pp. 120-129.

"**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED**. The Decision dated November 03, 2017 and the Resolution dated April 02, 2018 of the First Division in CTA Case No. 8879 are **AFFIRMED**.

SO ORDERED."[4]

In his Motion for Reconsideration, Petitioner claims that the Court erred in ruling that the law does not require that the input VAT subject of the claim be directly attributable to zero-rated sales. According to him, the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. Moreover, Petitioner stresses that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer.

We resolve to deny the motion for lack of merit.

We have previously ruled that Section 112(A) of the National Internal Revenue Code of 1997 does not decree that the input tax be directly attributable to the taxpayer's zero-rated sales.[5] As a matter of fact, the Code allows allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales, as follows:

"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 further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale 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 non-zero-rated sales."[6]

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[4] *Id.*, p. 128.
[5] Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership, CTA EB Case Nos. 1777 & 1779 (CTA Case Nos. 8082 & 8106), August 01, 2019.
[6] *Emphasis and underscoring supplied.*

Contrary to Petitioner's argument, the provision above only mandates that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales, and in this case, the Court *a quo* already found that the excess and unutilized input value-added tax of Respondent amounting to Php3,102,813.87 is attributable to its valid zero-rated sales based on the evidence presented by it.[7] The law does not require that the input tax be directly attributable to Petitioner's zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law.

It is a well-recognized rule that where the law does not distinguish, courts should not distinguish. *Ubi lex non distinguish nec nos distinguere debemos.*[8] The rule, founded on logic, is a corollary of the principle that general words and phrases in a statute should ordinarily be accorded their natural and general significance. The rule requires that a general term or phrase should not be reduced into parts and one part distinguished from the other so as to justify its exclusion from the operation of the law. In other words, there should be no distinction in the application of a statute where none is indicated. For courts are not authorized to distinguish where the law makes no distinction. They should instead administer the law not as they think it ought to be but as they find it and without regard to consequences.[9]

WHEREFORE, finding no cogent reason to reverse the Assailed Decision, Petitioner's "Motion for Reconsideration (Re: Decision dated 08 April 2019)" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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7 Docket, Decision dated November 03, 2017, p. 378.
8 Philippine Free Press, Inc. v. Court of Appeals (12th Division), et al., G.R. No. 132864, October 24, 2006.
9 Philippine British Assurance Co., Inc. s. Honorable Intermediate Appellate Court, et al., G.R. No. 72005, May 29, 1987.

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice