REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SPECIAL THIRD DIVISION</u>

PILIPINAS TOTAL GAS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7863

Members:

FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 13 2018
10:26 a.m.

x -x

RESOLUTION

Before the Court is respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 19 June 2018)**, filed on July 16, 2018, with petitioner's **Comment to Motion for Partial Reconsideration**, filed on August 10, 2018.

Respondent seeks reconsideration of this Court's Decision dated June 19, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner Pilipinas Total Gas, Inc. in the reduced amount of **SEVEN MILLION THREE HUNDRED THIRTY-TWO THOUSAND FOUR HUNDRED TWENTY-THREE AND 73/100 PESOS (Php7,332,423.73)**, representing its unutilized and excess input VAT attributable to zero-rated sales for the first and the second quarters of TY 2007.

SO ORDERED."

In the instant motion, respondent contends that the Court erred in ruling that petitioner is entitled to refund in the amount of ₱7,332,423.73 representing alleged unutilized and excess input VAT attributable to zero-rated sales for the first and the second quarters of taxable year 2007.

Respondent argues that Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that what is refundable are "creditable input taxes" and in turn, must be attributable to the subject zero-rated sales.

Further, respondent contends that based on Section 110 of the NIRC, as amended, for input taxes on purchase of goods to be creditable, they must be a factor in the chain of production. Respondent asserts that 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, and the connection between the purchases and the finished product should allegedly be concrete and not imaginary or remote.

Respondent added that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer and the taxpayer must present convincing evidence to substantiate a claim for refund.

On the other hand, petitioner in its comment to respondent's present motion, counters that it is entitled to its claim for refund or issuance of tax credit certificate (TCC) on the basis that petitioner's sales consists of zero-rated sales, more particularly sales made to companies who are registered with the Philippine Economic Zone Authority (PEZA).

Petitioner further argued that its entitlement to claim for refund or issuance of TCC is based on Section 106(A)(2) of the NIRC, as amended, in relation to Sections 110(B) and 112(A) of the same code, and Section 3 of Revenue Memorandum Circular (RMC) No. 74-99.

Petitioner stressed that based on the abovementioned RMC, it is clear that the sales of goods or properties by a VAT registered supplier from the Customs Territory to a PEZA registered enterprise shall be subject to zero percent (0%) VAT. As such, input taxes attributable to the said zero-rated sales shall be available for claim for refund or credit.

Moreover, petitioner avers that records of this case clearly show that its claim for refund/tax credit representing unutilized input value-added tax for the first and second quarters of taxable year 2007 was sufficiently substantiated by documentary and testimonial evidence and is supported by law, jurisprudence, and administrative issuances.

With regard to the argument of respondent that tax exemption should be construed *strictissimi juris* against the taxpayer, petitioner counters that when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the instant case, the Court should not hesitate to grant the same.

The Court finds respondent's Motion for Partial Reconsideration bereft of merit.

Section 112(A) of the NIRC, as amended, states:

> **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 (B)(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 sale and also in taxable or exempt sale of goods of 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**. xxx. (*Emphasis supplied*)

Section 112(A) of the NIRC of 1997, as amended is clear and unambiguous thereby leaving no room for construction.[1] The said provision merely states that a VAT-registered person may apply for the issuance of a tax credit or refund of "*creditable input tax due or paid attributable to such sales*", which pertains to input taxes attributable to zero-rated or effectively zero-rated sales. There is nothing in the above provision which requires the input tax subject of a claim for refund/credit to be directly attributable to zero-rated VAT sales or that the same should be limited to input taxes on the purchases of goods that formed part of the finished product.

Contrary to respondent's assertion, input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law.[2] In this case, the Court already found that the input VAT of ₱7,332,423.73 is attributable to the valid zero-rated sales of ₱77,610,519.85 based on the evidence presented by petitioner.[3]

Significantly, in the case of *Republic vs. Team (Phils.) Energy Corporation (formerly Mirant [Phils.] Energy Corporation)*[4], the Supreme Court held that when the taxpayer was able to establish *prima facie* its right to the refund by testimonial and object evidence, the BIR should present rebuttal evidence to shift the burden of evidence back to the taxpayer, *viz*:

> "We are likewise unmoved by the assertion of the petitioner that the respondent should have submitted the quarterly returns of the respondent to show that it did not carry-over the excess withholding tax to the succeeding quarter. **When the respondent was able to establish *prima facie* its right to the refund by testimonial and object evidence, the petitioner should have presented rebuttal evidence to shift the burden of**

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[1] *Abello vs. Commissioner of Internal Revenue*, G.R. 120721, February 23, 2005.
[2] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8905, October 19, 2017.
[3] Assailed Decision, docket, vol. III, p. 1467-1468.
[4] G.R. No. 188016, January 14, 2015.

> **evidence back to the respondent. Indeed, the petitioner ought to have its own copies of the respondent's quarterly returns on file, on the basis of which it could rebut the respondent's claim that it did not carry over its unutilized and excess creditable withholding taxes for the immediately succeeding quarters.** The BIR's failure to present such vital document during the trial in order to bolster the petitioner's contention against the respondent's claim for the tax refund was fatal." (*Emphasis supplied.*)

Considering that petitioner was able to establish *prima facie* its right to claim for refund in this case, it was upon respondent to present a rebuttal evidence to shift the burden of evidence back to petitioner to establish its entitlement for a refund.

However, records show that respondent did not present any evidence to rebut petitioner's refund claim. Thus, respondent's failure to present any evidence is fatal to his contention that petitioner failed to comply with the requisites to be entitled to a refund or issuance of a tax credit certificate of input VAT due or paid attributable to zero-rated sales.

WHEREFORE, finding no cogent reason to reverse the Court's ruling in the assailed Decision, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 19 June 2018)** is **DENIED** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S-L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice